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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

SKITTLES PROPERTIES, LLC, a Washington
Limited Liability Company,

Plaintiff,

vs.

ERIN HAROLD and MAIN STREET
BROKERAGE, LLC, a Washington Limited
Liability Company, d/b/a Marketplace
Sotheby's International Realty,

Defendants.

NO.

**MOTION TO DISMISS PURSUANT
TO CR 12**

I. INTRODUCTION

COMES NOW Defendant ERIN HAROLD and MAIN STREET BROKERAGE, LLC, by and through their attorneys, and hereby moves this Court pursuant to CR 12(c) for an order dismissing the second claim that plaintiff Skittles Properties, LLC ("Skittles") has asserted against her in this action, for violation of RCW 18.86.030. Skittles' claim for violation of RCW 18.86.030 is legally deficient because no private right of action exists for violation of that statute.

STATEMENT OF FACTS

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2 In its complaint (Exhibit A hereto), Skittles alleges that its agent, Dana Hannon, hired Erin
3 Harold to assist it in finding a location to open a new restaurant. (Id. at ¶¶ 7-8) Skittles further alleges
4 that Ms. Harold owned a salon, which was located at 3000 NW Market Street in Seattle (the
5 “Premises”), and convinced Ms. Hannon and Skittles member David Johnson to sublease the Premises
6 from her or enter into a new lease with the landlord. (Exh. A at ¶ 9) Ms. Harold allegedly assured Ms.
7 Hannon and Mr. Johnson that the Premises were suitable for use as a restaurant, that Skittles would not
8 need to obtain permits from the City to perform the necessary tenant improvements, and that a restaurant
9 use was permitted at the Premises. (Id. at ¶ 10) However, according to Skittles, Ms. Harold knew that
10 the Premises were not suitable for a restaurant and that special permits might be necessary. Skittles
11 claims it spent approximately \$30,000 in preparation for leasing the Premises in reliance on Ms.
12 Harold’s purported representations. (Id. at ¶ 13) Skittles then learned that the Premises had never been
13 permitted or licensed for use as a restaurant and that it would not be able to open a restaurant there
14 without spending significant sums and “months and months of delays.” (Id. at ¶ 14) Skittles therefore
15 sought a new location for its restaurant. (Exh. A ¶ 15)

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18 In consequence of those allegations, Skittles asserts three purported causes of action. In
19 its first claim, it alleges that Ms. Hannon negligently failed to disclose that the Premises were unsuitable
20 for use as restaurant, that the owner intended to raise the rent by 30%, and that Ms. Harold was going to
21 demand \$40,000 for her interest in the Premises. (Exh. A at ¶¶ 17-18) It alleges in its second cause of
22 action that Ms. Harold’s failure to disclose those matters constituted violations of RCW 18.86.030,
23 which inter alia allegedly requires real estate brokers to disclose all material facts known to a broker that
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1 are not readily apparent to a party. (*Id.* at ¶¶ 21-23) And in its third claim, Skittles contends that Ms.
2 Hannon’s conduct constituted violation of the Washington Consumer Protection Act. (*Id.* at ¶¶ 27-30)

3
4 **II. ISSUE**

5 Whether the Court should dismiss Skittles’ second cause of action for failure to state a
6 claim because no private right of action exists for violation of RCW 18.86.030.

7 **III. ARGUMENT**

8 **A. Dismissal Pursuant to CR 12(c).**

9 Courts “treat a CR 12(c) motion for judgment on the pleadings identically to a CR 12(b)(6)
10 motion to dismiss for failure to state a claim.” *P.E. Systems, LLC v. CPI Corp.*, 289 P.3d 638, 641, 176
11 Wn.2d 198, 203 (2012). Accordingly, as with CR 12(b)(6), the motion “challenges the legal sufficiency
12 of the allegations in a complaint.” *McAfee v. Select Portfolio Servicing, Inc.*, 370 P.3d 25, 29, 193 Wn.
13 App. 220, 226 (Wash. App. 2016).

14
15 **B. Skittles Fails to State a Claim in its Second Cause of Action.**

16 Skittles fails to state a claim for violation of RCW 18.86.030 because no private right of action
17 exists for violation of that statute. A private right of action for a statutory violation arises only where it
18 can be inferred from the statutory text. Unless “congressional intent can be inferred from the language
19 of the statute, the statutory structure, or some other source, the essential predicate for implication of a
20 private remedy simply does not exist.”¹ RCW Ch. 18.86 does not indicate that the legislature intended
21 a private right of action. It merely codifies a real estate broker's duties. RCW 18.86 (defining a real
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24 ¹ *Karahalios v. Natl. Federation of Fed. Employees*, Local 1263, 489 U.S. 527, 547, 109 S. Ct. 1282, 103 L. Ed. 2d
25 539 (1989) (citation omitted); *Bennett v. Hardy*, 113 Wn.2d 912, 920, 784 P.2d 1258; 1990 (Washington state borrows
federal test).

1 estate broker's duties) and RCW 18.85 (authorizing the Department of Licensing to discipline licensees)
2 relate to the same subject matter and should be considered together. *Bennett*, 113 Wn.2d at 926.
3 “[V]iolation of RCW 18.86.030 is a violation of RCW 18.85.230.” RCW 18.86.031. Nothing in RCW
4 18.85 or 18.86 implies any intent by the Legislature to create a private right of action. The Washington
5 State Supreme Court has in fact stated that “common law tort causes of action remain the vehicle
6 through which a party may recover for a breach of statutory duties set forth in chapter 18.86 RCW.”
7 *Jackowski v. Borchelt*, 174 Wn.2d 720, 735-36, 278 P.3d 1100, 1108 (2012). A direct claim for
8 violation of the statute does not exist. *Id.* See also *Woodhouse v. Re/Max Northwest Realtors*, 878 P.2d
9 464, 466, 75 Wn.App. 312, 315-16 (Wn. App. 1994). Skittles’ second claim should therefore be
10 dismissed.
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12 **IV. CONCLUSION**

13 For the reasons set forth above, Defendant Erin Harold respectfully requests this Court
14 dismiss plaintiff Skittles’ second claim against the Defendants.
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16 DATED this 24th day of February, 2017.

17
18 ROSENBERG LAW GROUP, PLLC

19 /s/ Seth Rosenberg

20 Seth Rosenberg WSBA# 41660
21 Attorneys for Erin Harold

22 PACIFIC ALLIANCE LAW, PLLC

23 /s/ Cecilia A. Cordova

24 Cecilia A. Cordova, WSBA No. 30095
25 Attorney for Main Street Brokerage, LLC

d/b/a Marketplace International Realty

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