

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper
Carrier Classification of, and Complaint
for Penalties Against:

GHOSTRUCK, INC.

DOCKET TV-161308

ORDER 03

ORDER DENYING MOTION FOR
SUMMARY DETERMINATION;
DENYING MOTION TO DISMISS

BACKGROUND

- 1 On February 9, 2017, the Washington Utilities and Transportation Commission (Commission) entered Order 01, Order Instituting Special Proceeding; Complaint Seeking to Impose Penalties; Notice of Hearing (Order 01) in Docket TV-161308. The Commission initiated this special proceeding to determine if Ghostruck, Inc. (Ghostruck or Company) has engaged, and continues to engage, in business as a common carrier for the transportation of household goods without the required Commission-issued permit. On the same date, the Commission issued a *Subpoena and Subpoena Duces Tecum for Production of Documents* (Subpoenas) requiring Ghostruck to appear before the Commission at a special proceeding that was later rescheduled for March 22, 2017, at 9:30 a.m.
- 2 On March 10, 2017, Ghostruck filed with the Commission a Motion to Dismiss or for Summary Judgment (Motions). In its Motions, Ghostruck argues that the Complaint should be dismissed for failing to state a claim upon which relief can be granted, or, in the alternative, that the Commission should make a summary determination that there are no genuine issues as to any material fact. With respect to its Motion to Dismiss, Ghostruck contends that Commission staff (Staff) cannot prove any set of facts that would entitle it to relief because the 141 household goods moves documented in the Complaint were performed by another entity, not Ghostruck. The Company further contends that, as a matter of law, the facts set out in the Complaint do not amount to any violation of Commission rules. Ghostruck argues that it is a household goods broker, not a household goods mover.
- 3 With respect to its Motion for Summary Judgment, Ghostruck argues that Staff's own evidence conclusively demonstrates that Ghostruck is a household goods broker, not a household goods carrier. Finally, Ghostruck argues that even if Staff did state any

cognizable claims, the doctrine of estoppel precludes the Commission from asserting those claims against Ghostruck.

- 4 On March 17, 2017, Staff filed a Response in Opposition to Ghostruck’s Motion to Dismiss or for Summary Judgment (Response). In its Response, Staff argues that both Motions are untimely; motions to dismiss must be filed no later than when a responsive pleading is due or within 20 days after a pleading is served, whichever comes first, and motions for summary determination must be filed at least 30 days before the next applicable hearing date. Even if the Commission addresses the Motions on their merits, Staff argues, they should be denied. Staff contends that the Complaint sets out legally sufficient allegations that Ghostruck engages in business as a household goods carrier and material issues of fact exist about the nature of Ghostruck’s agreement with its customers and its advertising. Finally, Staff argues that Ghostruck cannot show that it is entitled to judgment as a matter of law on estoppel grounds.

DISCUSSION AND DECISION

- 5 We deny Ghostruck’s Motions. As a preliminary matter, we find that neither Motion was timely filed. WAC 480-07-380(1) provides that a party moving to dismiss a case must do so “no later than the time the responsive pleading is due, or within 20 days after the pleading is served, whichever time is less, unless the party shows good cause for delay.” Ghostruck was served with the Complaint and Subpoenas on February 9, 2017, and filed its answer and affirmative defenses on February 28. Accordingly, Ghostruck’s motion to dismiss was either due by February 28 or, if filed thereafter, should have set forth an argument establishing good cause for delay. Because Ghostruck’s Motion to Dismiss was filed March 10 and failed to make any such argument, it was untimely.
- 6 WAC 480-07-380(2) provides that a party “must file any motion for summary determination at least thirty days before the next applicable hearing session, unless the Commission establishes by order a different specific date for any such motion to be filed.” Ghostruck filed its Motion for Summary Determination 12 days before the hearing date and failed to move the Commission to set a different deadline for filing such motions. Accordingly, Ghostruck’s Motion for Summary Determination was also untimely.
- 7 The Commission denies the Motions for failure to comply with WAC 480-07-380. We nevertheless address the substance of the Motions to provide guidance on the issues to be addressed in the evidentiary hearing.

- 8 **Motion to Dismiss.** WAC 480-07-380(1)(a) provides that “a party may move to dismiss another party’s case on the asserted basis that the opposing party’s pleading fails to state a claim upon which the Commission may grant relief.” In deciding whether to grant or deny a motion to dismiss, the Commission considers the standards applicable to a motion made under Civil Rule (CR) 12(b)(6) and CR 12(c) of the Washington Superior Court Rules.¹ As Staff notes in its response, when the Commission considers a motion to dismiss, it is required to accept the allegations in a complaint as true, and deny the motion if those facts would sustain the complaint.² Accordingly, as Staff further notes, granting such a motion is only appropriate if it appears that no facts exist that would justify recovery.³
- 9 RCW 81.80.010(5) defines a “household goods carrier” as a person who transports household goods for compensation, or who advertises, solicits, offers, or enters into an agreement to transport household goods. Staff alleges that Ghostruck enters into agreements to transport household goods and advertises its services to the public, consistent with the statutory definition of a “household goods carrier.” Accepting Staff’s allegations and all reasonable inferences as true, this conduct violates RCW 81.80.075 whether or not Ghostruck transports customers’ goods.
- 10 Accordingly, we find that Staff’s Complaint makes claims for which the Commission may grant relief – namely, ordering the Company to cease and desist unpermitted operations and assessing penalties – and thus cannot be dismissed on that basis.
- 11 **Motion for Summary Determination.** WAC 480-07-380 provides that a party may move for summary determination of one or more issues if the pleadings filed in the proceeding, taken together with any properly admissible evidence, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

¹ CR 12(b)(6) addresses motions to dismiss, while CR 12(c) addresses motions for judgment on the pleadings. CR 12(c) applies where the moving party alleges that no genuine issue material fact is in dispute. Because Speedishuttle makes no such allegation, we base our decision only on Speedishuttle’s claim that Shuttle Express has failed to state a claim upon which relief can be granted.

² Staff’s Response in Opposition to Motion to Dismiss or for Summary Judgment, ¶27, citing *Kinney v. Cook*, 159 Wn.2d 837, 842, 154 P.3d 206 (2007).

³ *Id.*

- 12 Ghostruck argues that it is entitled to summary determination on the basis that the Commission lacks jurisdiction over the Company as a matter of law, or because Staff is estopped from arguing that the Commission has jurisdiction. We disagree with both points.
- 13 As Staff notes in its Response, the record before the Commission at this stage in the proceeding shows the existence of material issues of fact that preclude summary determination. At most, the Motion raises factual issues regarding the nature of Ghostruck’s agreement with its customers and whether the Company holds itself out as a household goods mover. It would be premature for the Commission to determine whether Ghostruck’s conduct violates Commission laws and rules in advance of the evidentiary hearing.
- 14 With respect to its estoppel claim, Ghostruck bases its Motion almost entirely on its exchanges with Staff regarding whether its operations constitute household goods moving or common carrier broker services. Ghostruck claims that Staff informed the Company its operations were not jurisdictional to the Commission. Conversely, Staff claims that the guidance it gave Ghostruck was based on the Company’s misrepresentation of its operations. The parties’ claims that each was misled by the other creates a material issue of fact that precludes summary determination.
- 15 Even more fundamentally, Ghostruck failed to provide sufficient uncontroverted evidence to establish that Staff is estopped from asserting claims against the Company. As Staff notes, five elements must be present for a party seeking estoppel against a government agency to prevail: 1) a statement, admission, or act by another party that is inconsistent with a later statement, admission, or act; 2) that the party asserting estoppel acted in reliance on that statement, admission, or act; 3) that injury would result if the other party could repudiate its prior statement, admission, or act; 4) that estoppel is necessary to prevent a manifest injustice, and 5) that it will not impair government functions.⁴
- 16 Ghostruck argues that the Company relied, to its detriment, on advice it received from Staff but fails to make any arguments related to the remaining elements of estoppel other than a blanket claim that it has incurred “substantial legal fees.” Instead, the Company restates each element as fact – e.g., “[the Complaint] has damaged the goodwill and reputation of the company and its members,” and “[a]n order estopping WUTC Staff

⁴ Staff’s Response, ¶43, citing *Silverstreak, Inc. v. Dep’t of Labor & Indus.*, 59 Wn.2d 868, 887, 154 P.3d 891 (2007).

from pursuing its claims is necessary to prevent further manifest injustice of penalties and an order to cease and desist. No government function will be impaired by dismissal for equitable estoppel. Such an order will not prevent or interfere with any Commission authority or act.”⁵

- 17 Restating the legal elements without providing any argument or evidentiary support is both insufficient and unpersuasive. With respect to the single element for which Ghostruck puts forth an argument, we agree with Staff that Ghostruck could not have reasonably relied on Staff’s statements. Had Ghostruck wanted a definitive, legal answer regarding the applicability of Commission laws and rules to its operations, it could have obtained one by filing a petition for a declaratory order.
- 18 Ghostruck’s Motion fails to show that there is no genuine issue of any material fact, that Ghostruck is entitled to judgment as a matter of law, or that the Commission is estopped from bringing its Complaint. Accordingly, no grounds exist on which the Commission could grant summary determination.

ORDER

- 19 **THE COMMISSION ORDERS THAT** Ghostruck, Inc.’s Motion to Dismiss or for Summary Judgment is DENIED.

DATED at Olympia, Washington, and effective March 21, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.

⁵ Ghostruck’s Motion to Dismiss or For Summary Judgment, p. 15.