

09-2-08671-6 32016159 CMP 05-07-09

FILED
IN COUNTY CLERK'S OFFICE
A.M. MAY - 6 2009 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

ANDREA FIGUEIRA, a single person, and
SILVER LEGACY VENTURES, INC., a
British Columbia, Canada corporation,

Plaintiffs,

v.

MARIA KALAFATICH and JOHN DOE
KALAFATICH, and their marital community,
LESLIE WALTERS and JOHN DOE
WALTERS, and their marital community,
COMMENCEMENT ASSOCIATES INC.
d.b.a. WINDERMERE/COMMENCEMENT
ASSOCIATES, a Washington corporation,
PROFESSIONAL PARTNERS, LLC d.b.a.
WINDERMERE/ PROFESSIONAL
PARTNERS, a Washington limited liability
company,

Defendants.

NO. 09 2 08671 6
COMPLAINT FOR DAMAGES OR
RESCISSION

I. PARTIES AND JURISDICTION

1.1 Plaintiff ANDREA FIGUEIRA is a resident of Pierce County, Washington.

1.2 Plaintiff SILVER LEGACY VENTURES, INC. is a British Columbia, Canada
corporation, closely owned by Plaintiff ANDREA FIGUEIRA and family members Armando
Figueira, Donzilla Figueira, Amanda Figueira and Alicia Figueira.

1 1.3 Defendant MARIA KALAFATICH is a resident of Pierce County, Washington.
2 MARIA and JOHN DOE KALAFATICH are a Washington marital community. All acts or
3 omissions of MARIA KALAFATICH alleged herein were by or for the benefit of the marital
4 community.

5 1.4 Defendant LESLIE WALTERS is a resident of Pierce County, Washington.
6 LESLIE and JOHN DOE WALTERS are a Washington marital community. All acts or
7 omissions of LESLIE WALTERS alleged herein were by or for the benefit of the marital
8 community.

9 1.5 COMMENCEMENT ASSOCIATES INC. d.b.a WINDERMERE/
10 COMMENCEMENT ASSOCIATES is a Washington corporation and real estate brokerage
11 company.
12

13 1.6 PROFESSIONAL PARTNERS LLC d.b.a WINDERMERE/ PROFESSIONAL
14 PARTNERS is a Washington limited liability company and real estate brokerage company.
15

16 1.7 The residential condominium unit that is the subject of this action is in Piece
17 County, Washington, and is commonly known as Unit E303 of the Gold Pointe Condominiums,
18 3008 N. Narrows Drive, Tacoma, Washington. Gold Pointe Condominiums are hereinafter
19 referred to as "the Project," and Unit E303 of the Project is hereinafter referred to "the
20 Residence."

21 1.8 The conduct of Defendants which is the subject of this action occurred in Pierce
22 County, Washington.
23

24 1.9 Jurisdiction and venue are properly laid in the Superior Court of the State of
25 Washington in and for Pierce County.

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II. FACTS

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2 2.1 At all times material hereto, KALAFATICH was a licensed real estate salesperson
3 in the State of Washington, and was employed by broker PROFESSIONAL PARTNERS LLC as
4 a real estate agent.

5
6 2.2 At all times material hereto, WALTERS was a licensed real estate sales person in
7 the State of Washington, and was employed by broker COMMENCEMENT ASSOCIATES
8 INC. as a real estate agent.

9 2.3 Plaintiffs are citizens of Canada, and are unfamiliar with Washington real estate
10 law and practice, both in general and as pertains to condominium unit sales.

11 2.4 On or about January 9, 2008, a preliminary intrusive investigation of the physical
12 condition of the concealed common elements of several of the Project's seven buildings was
13 performed at the request of the Board of Directors of Directors of the Project's owners'
14 association ("the HOA"). The investigation uncovered concealed water intrusion and extensive
15 concealed dry rot in the framing, sheathing and other common elements and limited common
16 elements of the Project.
17

18 2.5 On or about March 18, 2008, the Board of Directors of the HOA resolved to call a
19 special meeting of the association to seek authorization to proceed with litigation against the
20 developer of the Project for the construction defects revealed in the investigation.
21

22 2.6 On or about May 22, 2008, KALAFATICH, as owner of the Residence,
23 contracted with SILVER LEGACY VENTURES, INC. and ANDREA FIGUEIRA to sell the
24 Residence to ANDREA FIGUEIRA for the sum of \$200,000. A true and correct copy of the
25 purchase and sale agreement is appended hereto as Exhibit A.

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1 2.7 "WINDERMERE" is identified as the listing broker below KALAFATICH's
2 signature on the purchase and sale agreement between KALAFATICH and Plaintiffs. On
3 information and belief, KALAFATICH availed herself of certain real estate services from
4 defendant PROFESSIONAL PARTNERS LLC d.b.a WINDERMERE/ PROFESSIONAL
5 PARTNERS to facilitate the sale of the residence, including but not limited to MLS listing,
6 forms, email address and fax services.

7 2.8 In negotiating the terms of the purchase and sale agreement with Plaintiffs,
8 KALAFATICH prepared, signed, and provided to Plaintiffs a completed NWMLS Form No. 17
9 disclosure, dated January 30, 2008. A true and correct copy of that Form 17 disclosure is
10 attached hereto as Exhibit B.

11 2.9 KALAFATICH supplied the completed Form 17 disclosure for the Plaintiff's
12 guidance, and knew or should have known that it would be used by Plaintiffs to guide them in
13 making the decision to purchase the Residence.
14

15 2.10 The Form 17 disclosure provided by KALAFATICH to Plaintiffs states that there
16 are no defects in the siding, decks, windows, walkways, exterior walls or other portions of the
17 Project.
18

19 2.11 The Form 17 disclosure provided by KALAFATICH to Plaintiffs is inaccurate in
20 that there are serious and systemic defects in the Project common elements as noted. These
21 misrepresentations and omissions were material to Plaintiffs' decision to purchase the Residence,
22 and the price paid for it.
23

24 2.12 The purchase and sale agreement between KALAFATICH and the Plaintiffs
25 states, at paragraph 7 of the General Terms: "If Seller provides Buyer with a disclosure statement
pursuant to RCW 64.06 (Form 17) and if, in Specific Term No. 9, the parties agree that Buyer
will have a remedy for economic loss resulting from negligent errors, inaccuracies, or omissions

1 in Form 17, then Buyer may bring an action in tort for negligent misrepresentation against Seller
2 based upon the disclosures in Form 17.”

3 2.13 The purchase and sale agreement between KALAFATICH and the Plaintiffs
4 states, in Specific Term No. 9, that “Buyer will have a remedy for Seller’s negligent errors,
5 inaccuracies, or omissions in Form 17.”

6 2.14 KALAFATICH failed to take reasonable measures to determine the truth or
7 falsity of the representations she made in the Form 17 disclosure.

8 2.15 In the alternative, before May 22, 2008, KALAFATICH knew of the intrusive
9 investigation and concealed defective conditions in the Project common elements and limited
10 common elements. KALAFATICH negligently or intentionally did not update her Form 17
11 disclosure, or otherwise communicate this knowledge to Plaintiffs.

12 2.16 Also in the alternative, before May 22, 2008, KALAFATICH knew of the Board
13 of Directors’ intention to pursue litigation against the developer of the Project. KALAFATICH
14 did not communicate this knowledge to Plaintiffs.

15 2.17 In the purchase and sale agreement with Plaintiffs, KALAFATICH promised to
16 procure a legally required Resale Certificate from the Board of Directors of HOA.

17 2.18 Such a Resale Certificate, if procured, would have disclosed the existence of
18 concealed defects in the Project common elements and limited common elements.

19 2.19 Such a Resale Certificate, if procured, would have disclosed the intention of the
20 Board of Directors of the HOA to prosecute litigation for concealed construction defects against
21 the developer of the Project.

22 2.20 KALAFATICH knew or should have known that a properly completed Resale
23 Certificate would disclose to Plaintiffs both the existence of defects and the HOA’s intention to
24
25

1 prosecute litigation; however, KALAFATICH failed to procure the required Resale Certificate
2 prior to closing of the sale of the Residence to Plaintiffs.

3 **III. FIRST CAUSE OF ACTION: NEGLIGENT MISREPRESENTATION**

4 3.1 Plaintiffs reallege and incorporate by reference paragraphs 1.1 through 2.20
5 above.

6 3.2 KALAFATICH was negligent in obtaining or communicating the false
7 information contained in the Form 17 disclosure.

8 3.3 Plaintiffs justifiably relied on the false information supplied by KALAFATICH in
9 the Form 17 disclosure.

10 3.4 The false information supplied by KALAFATICH proximately caused the
11 Plaintiffs to suffer damage.

12 3.5 Accordingly, KALAFATICH is liable to Plaintiffs for negligent misrepresentation
13 pursuant to the terms of Exhibit B to Plaintiffs in an amount to be determined at trial, plus
14 attorney fees and expenses pursuant to Paragraph "q." thereof.

15 **IV. SECOND CAUSE OF ACTION AGAINST DEFENDANT KALAFATICH:**
16 **FRAUD AND FRAUDULENT CONCEALMENT**

17 4.1 Plaintiffs reallege and incorporate by reference paragraphs 1.1 through 3.5 above.

18 4.2 KALAFATICH intended Plaintiffs to rely on her false representations and
19 omissions of material fact in their decision to purchase the Residence, and the price paid for it.

20 4.3 Plaintiffs had a right to rely on KALAFATICH's false representations and
21 omissions of material fact, and did so rely.

22 4.4 The false information supplied by KALAFATICH, and her omissions of material
23 fact, have proximately caused the Plaintiffs to suffer damage.
24
25

1 4.5 Accordingly, KALAFATICH is liable to Plaintiffs for fraud and/or fraud in the
2 inducement of the purchase and sale agreement in an amount to be determined at trial.

3 **V. THIRD CAUSE OF ACTION: RESCISSION**

4 5.1 Plaintiffs reallege and incorporate by reference paragraphs 1.1 through 4.5 above.

5 5.2 Pursuant to Paragraph "aa." of the purchase and sale agreement (Exhibit A) for
6 the residence, KALAFATICH agreed to provide Plaintiffs with a Resale Certificate by June 11,
7 2008, and agreed that Plaintiffs would have 5 days after providing the Resale Certificate to
8 rescind the sale.

9 5.3 KALAFATICH has breached paragraph "aa." of the purchase and sale agreement.

10 5.4 By reason of this breach, and by reason of KALAFATICH's fraud and/or
11 misrepresentation in inducement of the purchase and sale agreement, Plaintiffs are entitled, as an
12 alternative to award of damages, to rescission of the sale of the Residence.
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15 **VI. FOURTH CAUSE OF ACTION AGAINST DEFENDANT KALAFATICH:
16 VIOLATION OF CONSUMER PROTECTION ACT**

17 6.1 Plaintiffs reallege and incorporate by reference paragraphs 1.1 through 5.4 above.

18 6.2 KALAFATICH knew or should have known that a resale certificate would
19 disclose both defects in the Project and planned litigation, and negligently or intentionally failed
20 to provide a resale certificate to Plaintiffs.

21 6.3 KALAFATICH conduct constituted an unfair or deceptive act or practice.

22 6.4 KALAFATICH's actions in this regard were committed in her practice as a
23 licensed real estate agent.
24

25 6.5 KALAFATICH's actions occurred in trade or commerce, and have an impact on
the public interest.

1 6.6 KALAFATICH's actions have proximately caused injury to Plaintiffs in their
2 business or property.

3 6.7 Accordingly, pursuant to *Svendsen v. Stock*, 143 Wn.2d 546 (2001) and *Bloor v.*
4 *Fritz*, 143 Wn. App. 718 (2008), KALAFATICH is liable to Plaintiffs for violation of the
5 Washington Consumer Protection Act, RCW 19.86, *et seq.*, in an amount to be determined at
6 trial, treble damages up to the statutory limits, and reasonable attorney fees.

7
8 **VII. FIFTH CAUSE OF ACTION AGAINST DEFENDANT KALAFATICH:
9 PROFESSIONAL NEGLIGENCE / VIOLATION OF RCW 18.86.030**

10 7.1 Plaintiffs reallege and incorporate by reference paragraphs 1.1 through 6.7 above.

11 7.2 KALAFATICH violated RCW 18.86.030 by failing to exercise reasonable skill
12 and care in the sale of the Residence in that she failed to disclose defects and planned litigation
13 by the HOA, both of which she knew or should have known about, and neither of which were
14 apparent or readily ascertainable by Plaintiffs.

15 7.3 KALAFATICH further violated RCW 18.86.030 in that she failed to deal
16 honestly and in good faith with Plaintiffs.

17 7.4 As a proximate result of KALAFATICH's violations of RCW 18.86.030,
18 Plaintiffs have suffered damage.

19 7.5 Accordingly, KALAFATICH is liable to Plaintiffs for violation of RCW
20 18.86.030 in an amount to be determined at trial.

21
22 **VIII. SIXTH CAUSE OF ACTION AGAINST DEFENDANT WALTERS:
23 PROFESSIONAL NEGLIGENCE / VIOLATION OF RCW 18.86.030**

24 8.1 Plaintiffs reallege and incorporate by reference paragraphs 1.1 through 7.5 above.

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1 8.2 WALTERS violated RCW 18.86.030 by failing to exercise reasonable skill and
2 care in the sale of the Residence in that she failed to ensure that Plaintiffs were provided with a
3 duly executed Resale Certificate from the Board of Directors of the HOA, which would have
4 disclosed defects and planned litigation by the HOA.

5 8.3 WALTERS further violated RCW 18.86.030 by failing to require or recommend
6 that KALAFATICH be required to supply an updated Form 17 disclosure statement.

7 8.4 As a proximate result of WALTERS' violation of RCW 18.86.030, Plaintiffs have
8 suffered damage.

9 8.5 Accordingly, WALTERS is liable to Plaintiffs for violation of RCW 18.86.030 in
10 an amount to be determined at trial.

11
12 **IX. SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS PROFESSIONAL**
13 **PARTNERS LLC AND COMMENCEMENT ASSOCIATES INC.: VICARIOUS**
14 **LIABILITY**

15 9.1 Plaintiffs reallege and incorporate by reference paragraphs 1.1 through 8.5 above.

16 9.2 The tortious conduct of defendants KALATAFICH and WALTERS occurred
17 within the course and scope of their employment as real estate sales persons for
18 PROFESSIONAL PARTNERS LLC and COMMENCEMENT ASSOCIATES INC., or as actual
19 or ostensible agents thereof.

20 9.3 Under RCW 18.85.155, as employers and as principals, defendants
21 PROFESSIONAL PARTNERS LLC and COMMENCEMENT ASSOCIATES INC. are each,
22 respectively, liable for the tortious conduct of defendants KALATAFICH and WALTERS.

23 9.4 Accordingly, PROFESSIONAL PARTNERS LLC and/or COMMENCEMENT
24 ASSOCIATES INC. are liable to Plaintiffs in an amount to be determined at trial.
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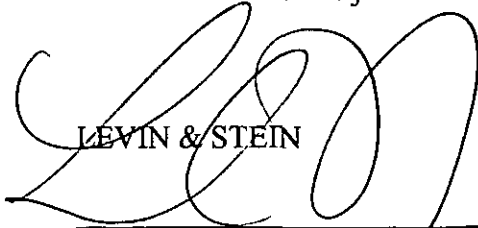
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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. For judgment for damages against defendant KALAFATICH for negligent misrepresentation and/or fraud and/or fraudulent concealment, and/or professional negligence;
2. Alternatively, for rescission of the sale of the Residence;
3. For judgment for damages and civil penalty against KALATAFICH for violation of Washington's Consumer Protection Act;
4. For an award of attorney fees and expenses against KALATAFICH pursuant to statute and contract;
5. For judgment for damages against WALTERS for professional negligence;
6. For judgment for damages and award of attorney fees against PROFESSIONAL PARTNERS LLC and COMMENCEMENT ASSOCIATES INC. according to proof;
7. For such other and further relief as the court deems just and equitable.

DATED this 3rd day of March, 2009.


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