

Judge Linda G. Tompkins

**FILED**

MAY 06 2013

THOMAS R. FALLOQUIST  
SPOKANE COUNTY CLERK

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

CARYL HELLER,

Plaintiff,

v.

VESTUS, LLC, a Washington Limited Liability Company; BRIAN SANDUSKY and JANE DOE SANDUSKY, individually and the marital community comprised thereof; and AARON CUNNINGHAM and JANE DOE CUNNINGHAM, individually and the marital community comprised thereof,

Defendants.

NO. 13-2-00611-6

ANSWER AND  
AFFIRMATIVE DEFENSES  
OF DEFENDANT  
VESTUS, LLC

Defendant Vestus, LLC (hereinafter "Vestus"), through counsel, answers the plaintiff's Complaint as follows. Paragraph numbers of the Answer correspond to those of the Complaint. "Insufficient knowledge" is an abbreviation for "defendant Vestus has insufficient knowledge and information upon which to form an answer and therefore denies."

1.1 Insufficient knowledge.

1.2 Admit first sentence. As to second sentence, admit defendants Brian Sandusky and Aaron Cunningham are agents of Vestus. As to third sentence, Vestus does not admit to all acts alleged by plaintiff but does admit that the circumstances and events the subject of this lawsuit are such that Spokane County venue is appropriate.

Answer & Affirmative Defenses of Defendant Vestus, LLC - 1

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1           1.3    Insufficient knowledge inasmuch as the allegation pertains to matters within the  
2 personal knowledge of defendant Brian Sandusky, who is represented by another attorney.

3           1.4    Insufficient knowledge inasmuch as the allegation pertains to matters within the  
4 personal knowledge of defendant Aaron Cunningham, who is represented by another attorney.

5           2.1    The foregoing is realleged.

6           2.2    No response necessary.

7  
8           2.3 - 2.4   Without admitting the conduct alleged, defendant Vestus stipulates to the  
9 jurisdiction and venue of this court.

10          3.1    The foregoing is realleged.

11          3.2    Admit that Vestus is and has been engaged in "trade or commerce" as popularly  
12 understood and as defined by dictionaries, and has advertised and made its real estate services  
13 available to the general public of the State of Washington. Vestus does not admit to the legal  
14 conclusion alleged in this paragraph of the Complaint but defers to applicable Washington State  
15 law.  
16

17          3.3    Admit that Aaron Cunningham was associated with Vestus at the time; that  
18 Vestus has been known as The Foreclosure Group; and that Vestus, LLC assists customers with  
19 the purchase of homes in foreclosure. Otherwise, insufficient knowledge inasmuch as the other  
20 allegations pertain to matters within the personal knowledge of Aaron Cunningham, who is  
21 represented by separate counsel.  
22

23          3.4    Vestus's advertising says what it says, and admit and deny this paragraph  
24 accordingly.

25          3.5    Admit first sentence. As to the second sentence, admit that this is the general  
26 practice on most, but not all, Thursday evenings. Deny third sentence. As to the rest of the

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paragraph, admit that Vestus representatives provide investors with information and advice concerning foreclosure properties based on their knowledge and expertise, but otherwise any characterization of the Thursday evening meetings needs to take into account the totality of what is represented and is dependent on the personal knowledge of defendants Sandusky and Cunningham who are represented by separate counsel; and therefore deny except as specifically admitted in this Answer.

3.6 As to the first two sentences, admit that defendants Brian Sandusky and Aaron Cunningham held themselves out as representatives of Vestus and that they were and are licensed real estate brokers, but otherwise, insufficient knowledge. Deny the third sentence as misleading.

3.7 Insufficient knowledge inasmuch as the allegations pertain to matters within the personal knowledge of plaintiff and defendants Sandusky and Cunningham, who are represented by separate counsel.

3.8 The referenced Agreement states what it states, and admit and deny accordingly.

3.9 Insufficient knowledge.

3.10-3.13 Insufficient knowledge inasmuch as the allegations pertain to matters within the personal knowledge of plaintiff and defendants Sandusky and Cunningham, who are represented by separate counsel.

3.14 Admit upon information and belief.

3.15 Deny.

3.16 Deny.

3.17 Insufficient knowledge.

1           3.18   Insufficient knowledge inasmuch as the allegations pertain to matters within the  
2 personal knowledge of plaintiff and defendants Sandusky and Cunningham, who are represented  
3 by separate counsel.

4           3.19   Deny.

5           3.20   Deny that defendant Sandusky was "unsupervised", and deny Vestus violated any  
6 Washington law. Otherwise, insufficient knowledge.

7           3.21   Deny first sentence. Admit second sentence. As to third sentence, admit most  
8 foreclosure sales take place on Friday mornings, and many are at 10:00 a.m.; otherwise deny.  
9 Admit fourth sentence. Insufficient knowledge as to the fifth sentence.

10          3.22   Insufficient knowledge as to the first three sentences. Deny the fourth sentence.

11          3.23   Insufficient knowledge as to the first sentence. Deny the second sentence.

12          4.1 - 4.8 Admit paragraph 4.7, but otherwise deny.

13          5.1   The foregoing is realleged.

14          5.2   As to first sentence, uncertain what is meant by "commercial setting" and  
15 therefore deny. Deny the remainder of the paragraph.

16          5.3   Deny.

17          5.4   Deny.

18          5.5   Deny.

19          5.6   Deny.

20          6.1   Deny.

21           Deny that plaintiff is entitled to any of the relief requested from Vestus.

22           BY WAY OF FURTHER ANSWER, INCLUDING AFFIRMATIVE DEFENSES,  
23 defendant Vestus alleges that plaintiff's claims must be dismissed or diminished on the grounds  
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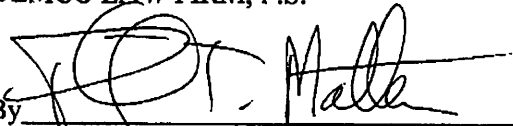
1 of statute of limitations, laches, waiver, estoppel, assumption of risk, comparative fault and/or  
2 contributory negligence, failure to mitigate damages, collateral estoppel, res judicata, and failure  
3 to state a claim upon which relief may be granted. Further, defendant Vestus reminds all parties  
4 and the court that a defendant does not need to plead as an affirmative defense plaintiff's failure  
5 to allege and prove all essential elements of their claims.

6 WHEREFORE, defendant Vestus seeks the following relief:

- 7 1. Dismissal with prejudice of all claims against Vestus.
- 8 2. Costs, disbursements, and reasonable attorney's fees as may be found applicable
- 9 pursuant to contract and/or RCW 4.84.185, 4.84.330, other statutes, court rules, case authority
- 10 and/or equity; and
- 11 3. Such other relief as the court may deem just, equitable, or otherwise appropriate.

12 DATED this 2nd day of May, 2013

13 DEMCO LAW FIRM, P.S.

14  
15  
16 By 

17 Lars E. Neste, WSBA #28781  
18 Philip T. Mattern, WSBA #16986  
19 Attorneys for Defendant Vestus, LLC