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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

SOLTERRA CITIES, LLC, a Washington company,

Plaintiff,

v.

DUSTIN VAN WYCK, an individual,
IAN PORTER, an individual, and
WINDEREMERE REAL
ESTATE/CAPITOL HILL, INC., a
Washington corporation,

Defendants.

Case No.:

COMPLAINT

- 1) NEGLIGENT MISREPRESENTATION;
- 2) INTENTIONAL MISREPRESENTATION;
- 3) VIOLATION OF RCW 18.86.030;
- 4) CONSUMER PROTECTION ACT PER SE VIOLATION;
- 5) CONSUMER PROTECTION ACT VIOLATION;
- 6) INTERFERENCE WITH BUSINESS EXPECTATNCY

COMES NOW Plaintiff SolTerra Cities, LLC (“plaintiff”) and brings claims for negligent misrepresentation, intentional misrepresentation, violation of RCW 18.86.030, Consumer Protection Act *per se* violation, Consumer Protection Act violation, and interference with business expectancy, against defendants Dustin Van Wyck, Ian Porter, and Windermere Real Estate/Capitol Hill, and alleges as follows:

I. PARTIES

1.1 Plaintiff SolTerra Cities, LLC (“SolTerra”) is a Washington limited liability company. Plaintiff is a developer of property.

1.2 Defendant Dustin Van Wyck (“Van Wyck”) is a resident of Washington, a real estate broker at Windermere Real Estate/Capitol Hill, and provides services in King County. At

1 all material times, he was acting in the course and scope of his employment with Windermere
2 Real Estate/Capitol Hill.

3 1.3 Ian Porter (“Porter”) is a resident of Washington, a real estate agent working for
4 Windermere Real Estate/Capitol Hill, and provides services in King County. At all material
5 times, he was acting in the course and scope of his employment with Windermere Real
6 Estate/Capitol Hill.

7 1.4 Windermere Real Estate/Capitol Hill (“Windermere”) is a Washington
8 corporation doing business in King County, with an office for the transaction of business in King
9 County, and at all material times transacted business and provided services in King County.

10 **II. JURISDICTION AND VENUE**

11 2.1 This court has jurisdiction over plaintiff’s claims and venue is proper in King
12 County under RCW 4.12.020 and RCW 14.12.025 because the cause of action arose, the torts
13 and violation were committed, and defendants reside in, or have an office for the transaction of
14 business in, or have continuous and systematic contacts and/or purposely availed themselves or
15 the privilege of conducting business in King County.

16 **III. FACTUAL ALLEGATIONS**

17 3.1 On or about June 2, 2014, defendant Van Wyck approached plaintiff regarding the
18 purchase of a parcel of property located at 2912 Beacon Avenue S, Seattle, WA 98144 (“the
19 Property”), listed for sale by Windermere.

20 3.2 At the time that defendant Van Wyck solicited plaintiff’s offer for the purchase of
21 the Property, it was for sale by John Chow and was being purchased by “ID Investments, LLC
22 and/or assigns.” (See Exhibit 1, Purchase and Sale Agreement dated May 14, 2014). Defendant
23

1 Van Wyck told plaintiff that if it were interested in purchasing the Property, ID Investments,
2 LLC would assign the Purchase and Sale Agreement (“PSA”) to plaintiff.

3 3.3 Plaintiff told defendant Van Wyck that it was interested in purchasing the
4 Property, and the parties began preparations to consummate that deal. Emails were exchanged
5 about the details of the sale; defendant Van Wyck’s emails were sent from his Windermere-
6 Capitol Hill email address. Plaintiff agreed to pay defendant Van Wyck a 6% commission on the
7 purchase of the Property. The parties discussed a closing date for the deal in August 2014.
8 Defendant Van Wyck provided plaintiff with an addendum to the PSA, giving the parties until
9 the end of June 2014 for the feasibility study. In reliance on defendant Van Wyck’s
10 representations that ID Investments, LLC would assign the PSA to plaintiff, plaintiff spent
11 money toward due diligence inspections on the Property, conducting site development and
12 feasibility, developing conceptual architect plans and building floor plans.

13 3.4 On June 13, 2014, plaintiff wrote defendants Van Wyck and Porter confirming
14 that plaintiff was continuing to move forward on all fronts for the Property. In response,
15 defendant Porter replied that plaintiff should pause its site development feasibility efforts.

16 3.5 On June 18, 2014, plaintiff’s geologist was still waiting for access to the Property
17 to do its portion of a construction feasibility study. Plaintiff emailed defendants Van Wyck and
18 Porter to obtain access to the Property for the geologist’s study.

19 3.6 Defendants Van Wyck and Porter subsequently advised plaintiff they were
20 advising ID Investments, LLC to sell the Property to another buyer. The stated reason was that
21 the other buyer had higher potential to provide defendants with future business than could be
22 expected from plaintiff.
23

1 3.7 By email dated June 20, 2014, defendants Van Wyck and Porter advised plaintiff
2 that the property had been sold to Landmark Property Holdings.

3 **IV. LIABILITY**

4 **FIRST CLAIM FOR RELIEF**

5 **(NEGLIGENT MISREPRESENTATION)**

6 4.1 Defendant Van Wyck supplied false information for the guidance of plaintiff in its
7 business transactions regarding the purchase of the Property, by saying that plaintiff would be
8 able to purchase the Property through an assignment from ID Investments, LLC. Defendant Van
9 Wyck knew or should have known that the information was supplied to guide plaintiff in
10 business transactions. Defendant Van Wyck was negligent in obtaining or communicating the
11 false information to plaintiff. Plaintiff relied on the false information supplied by defendant Van
12 Wyck. Plaintiff's reliance on the false information supplied by defendant Van Wyck was
13 justified, in that reliance was reasonable under the surrounding circumstances. The false
14 information was the proximate cause of damages to plaintiff.

15 4.2 Defendant Porter supplied false information for the guidance of plaintiff in its
16 business transactions regarding the purchase of the Property, by saying that plaintiff would be
17 able to purchase the Property through an assignment from ID Investments, LLC. Defendant
18 Porter knew or should have known that the information was supplied to guide plaintiff in
19 business transactions. Defendant Porter was negligent in obtaining or communicating the false
20 information to plaintiff. Plaintiff relied on the false information supplied by defendant Porter.
21 Plaintiff's reliance on the false information supplied by defendant Porter was justified, in that
22 reliance was reasonable under the surrounding circumstances. The false information was the
23 proximate cause of damages to plaintiff.

1 4.3 Defendant Windermere is vicariously liable for the negligent misrepresentations
2 of defendants Van Wyck and Porter done in the course and scope of their employment with
3 Windermere.

4 **V. SECOND CLAIM FOR RELIEF**
5 **(INTENTIONAL MISREPRESENTATION)**

6 5.1 Defendant Van Wyck represented to plaintiff that if plaintiff were interested in
7 buying the Property, ID Investments, LLC would assign the PSA for the Property to plaintiff.
8 Those facts were material. Those facts were false, and defendant Van Wyck knew of their
9 falsity. Defendant Van Wyck intended that plaintiff act upon his false and material
10 representations regarding the assignment of the PSA for the Property to plaintiff. Plaintiff was
11 ignorant of the falsity of defendant Van Wyck’s representations regarding the assignment of the
12 PSA for the Property to plaintiff. Plaintiff relied on, and had the right to rely on, the truth of
13 defendant Van Wyck’s representations regarding the assignment of the PSA for the Property to
14 plaintiff. Plaintiff sustained damages consequent to its justifiable reliance on defendant Van
15 Wyck’s representations regarding the assignment of the PSA for the Property to plaintiff.

16 5.2 Defendant Porter represented to plaintiff that the property would be assigned or
17 sold to it. Those facts were false, and defendant Porter knew of their falsity. Defendant Porter
18 intended that plaintiff act upon his false and material representations regarding the assignment of
19 the PSA for the Property to plaintiff. Plaintiff was ignorant of the falsity of defendant Porter’s
20 representations regarding the assignment of the PSA for the Property to plaintiff. Plaintiff relied
21 on, and had the right to rely on, the truth of defendant Porter’s representations regarding the
22 assignment of the PSA for the Property to plaintiff. Plaintiff sustained damages consequent to its
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1 justifiable reliance on defendant Porter’s representations regarding the assignment of the PSA for
2 the Property to plaintiff.

3 5.3 Defendant Windermere is vicariously liable for the intentional misrepresentations
4 of defendants Van Wyck and Porter done in the course and scope of their employment with
5 Windermere.

6 **VI. THIRD CLAIM FOR RELIEF**

7 **(VIOLATION OF RCW 18.86.030)**

8 6.1 Defendant Van Wyck failed to deal honestly and in good faith with plaintiff
9 regarding the purchase of the Property, as required by RCW 18.86.030 (1)(b).

10 6.2 Defendant Porter failed to deal honestly and in good faith with plaintiff regarding
11 the purchase of the Property, as required by RCW 18.86.030 (1)(b).

12 6.3 As a direct result of defendants Van Wyck’s and Porter’s failure to adhere to
13 RCW 18.86.030 (1), plaintiff was damaged in the amount of \$18,450 and such additional
14 amounts as still to be proven at trial, representing money expended in preparation for the
15 purchase of the Property.

16 6.4 Defendant Windermere is vicariously liable for defendants Van Wyck's and
17 Porter’s violations of RCW 18.86.030 done in the course and scope of their employment with
18 Windermere.

19 **VII. FOURTH CLAIM FOR RELIEF**

20 **(CONSUMER PROTECTION ACT *PER SE* VIOLATION)**

21 7.1 Plaintiff is a “person” entitled to sue under Washington’s Consumer Protection
22 Act (“CPA”). RCW 19.86.010.

23

1 7.2 The CPA prohibits “[u]nfair methods of competition and unfair or deceptive acts
2 or practices in the conduct of any trade or commerce.” RCW 19.86.020.

3 7.3 RCW 18.86.030 has been interpreted as containing a declaration of public interest
4 impact.

5 7.4 By breaching their duties to plaintiff under RCW 18.86.030, defendants Van
6 Wyck and Porter also violated the Consumer Protection Act.

7 7.5 Defendants’ unfair and deceptive acts or practices in the conduct of their trade
8 have induced plaintiff to act to expend funds in preparation for the purchase of the Property as
9 the assignee of the PSA for the Property. Plaintiff suffered damage brought about by defendants’
10 unfair and deceptive acts or practices, because defendants found another buyer for the Property.
11 The defendants’ deceptive acts or practices have the potential for repetition, because defendants
12 have shown that they will jettison a contracted buyer in favor of a buyer who will provide
13 defendants with a greater financial benefit.

14 7.6 Defendant Windermere is vicariously liable for the Consumer Protection Act
15 violations of defendants Van Wyck and Porter that were committed in the course and scope of
16 their employment with Windermere.

17 7.7 Plaintiff is entitled to recover attorney fees expended in connection with his
18 Consumer Protection Act *per se* claim.

19 **VIII. FIFTH CLAIM FOR RELIEF**

20 **(CONSUMER PROTECTION ACT VIOLATION)**

21 8.1 Plaintiff is a “person” entitled to sue under Washington’s Consumer Protection
22 Act (“CPA”). RCW 19.86.010.

23

1 8.2 The CPA prohibits “[u]nfair methods of competition and unfair or deceptive acts
2 or practices in the conduct of any trade or commerce.” RCW 19.86.020.

3 8.3 By soliciting plaintiff to purchase the Property as the assignee of ID Investments,
4 LLC, but then instead finding another buyer who might be more financially beneficial to
5 defendants in the future, defendants Van Wyck and Porter engaged in unfair or deceptive acts or
6 practices in the conduct of their real estate business. This act not only deceived plaintiff, it has
7 the capacity to deceive a substantial portion of the public.

8 8.4 Defendants Van Wyck's and Porter’s unfair and deceptive acts or practices in the
9 conduct of their trade has induced the plaintiff to act to expend funds in preparation for the
10 purchase of the Property. Plaintiff suffered damage brought about by defendants Van Wyck’s
11 and Porter’s unfair and deceptive acts or practices, because those defendants found another buyer
12 for the property. Plaintiff would not have expended funds in preparation for the purchase of the
13 Property if it knew that defendants Van Wyck and Porter were seeking other buyers. Defendants
14 Van Wyck's and Porter’s acts or practices have the potential for repetition, because defendants
15 Van Wyck and Porter have shown that they will jettison a contracted buyer in favor of a buyer
16 who will provide them with a greater financial benefit.

17 8.5 Defendant Windermere is vicariously liable for the Consumer Protection Act
18 violations of defendants Van Wyck and Porter that were committed in the course and scope of
19 their employment with Windermere.

20 8.6 Plaintiff is entitled to recover attorney fees expended in connection with his
21 Consumer Protection Act claim.

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1 **X. SIXTH CLAIM FOR RELIEF**

2 **(INTERFERENCE WITH BUSINESS EXPECTANCY)**

3 9.1 Plaintiff had a valid business expectancy with ID Investments, LLC, the assignor
4 of the PSA for the Property. It expected to be the assignee of the PSA for the Property.

5 9.2 Defendants Van Wyck and Porter had knowledge of plaintiff's business
6 expectancy of becoming the assignee of the PSA for the Property.

7 9.3 Defendants Van Wyck and Porter intentionally interfered with that relationship
8 between plaintiff and ID Investments, LLC, inducing or causing a termination of the expectancy
9 between plaintiff and the assignor of the PSA for the Property.

10 9.4 Defendants Van Wyck and Porter interfered with the relationship between
11 plaintiff and the assignor of the PSA for the Property for an improper purpose or used improper
12 means.

13 9.5 As a result of the interference by Defendants Van Wyck and Porter, plaintiff
14 sustained damages.

15 9.6 Defendant Windermere is vicariously liable for the interference by defendants
16 Van Wyck and Porter with plaintiff's business expectancy of being the assignee of the PSA for
17 the Property, as that interference was done in the course and scope of their employment with
18 Windermere.

19 **XI. DAMAGES**

20 10.1 As a direct result of defendants' negligence and breach of contract, as alleged
21 above, plaintiff has sustained damages as follows:

- 22 a. \$18,450.00
23 b. Plaintiff's attorney fees and costs in pursuit of this action

1 c. Such additional damages as shall be proven at trial

2 **XII. PRAYER FOR JUDGMENT**

3 **WHEREFORE**, having set forth its Complaint, plaintiff requests that the Court enter
4 judgment in its favor against defendants, jointly and severally, for:

- 5 A. All damages sustained by plaintiff in the amount of \$18,450.00;
6 B. Pre-judgment interest as allowed by law from the date of breach;
7 C. Attorney fees;
8 D. Other reasonable costs and fees incurred herein; and
9 C. Such further relief as justice requires.

10 DATED this 23rd day of January, 2015.

11 Respectfully Submitted,

12 SHENKER & BONAPARTE, LLP

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