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HONORABLE JUDGE JEAN RIETSCHEL
KING COUNTY
TRIAL DATE: JUNE 29, 2015
SUPERIOR COURT CLERK

E-FILED

CASE NUMBER: 14-2-13149-6 SEA

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

JESSICA WUBBELS,)
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Plaintiff,)
)
v.)
)
WINDERMERE REAL ESTATE/)
BELLEVUE COMMONS, INC., a)
Washington State corporation; KENNY)
PLEASANT, individually and his marital)
community; and, SEAN STEWART and)
MARGARET STEWART, husband and)
wife,)
)
Defendants.)

CAUSE NO.: 14-2-13149-6 SEA

**PLAINTIFF'S REPLY TO DEFENDANTS
STEWARTS' COUNTERCLAIM REGARDING
PROMISSORY NOTE AND CROSS CLAIM
AGAINST DEFENDANTS WINDERMERE AND
PLEASANT FOR INDEMNITY**

COMES NOW the Plaintiff and for REPLY to the counterclaim alleged by Defendants
Stewarts and cross claim against defendants Windermere and Pleasant, admits, denies,
and alleges as follows:

I. REPLY TO COUNTERCLAIM [PROMISSORY NOTE]

1.1. In reply to paragraph 3.1, admit and state that Wubbels would not have pro-
ceeded with the purchase transaction if the Notice of Violation (NOV) dated
March 21, 2012 had been disclosed to purchaser. Both Sean Stewart and the
dual agent Kenny Pleasant owed a duty to disclose the NOV to Wubbels and
failed to do so.

1 1.2. In reply to paragraph 3.2, state that on or about April 12, 2013, Stewart deliv-
2 ered \$16,000 to Wubbels to be used as purported “buyer funds” in order to close
3 the purchase transaction. State that the so-called loan was initiated and di-
4 rected by Kenny Pleasant, in order to cause Wubbels to proceed with closing of
5 the sale, for the financial benefit of Pleasant and Stewart. Further state that the
6 “loan” was a sham transaction whereby the \$16,000 delivered by Stewart prior
7 to closing was re-delivered to him at closing in the form of sale proceeds. Ex-
8 cept as stated, the remaining allegations are denied.

9 1.3. In reply to paragraph 3.3, admit that a correct copy of the document entitled
10 “Promissory Note” is attached.

11 1.4. In reply to paragraph 3.4, state that the Promissory Note was fraudulently
12 procured and admit that five “payments” were made. Deny the remaining alle-
13 gations.

14 1.5. In reply to paragraph 3.5, deny and state that the ‘loan’ was fraudulently pro-
15 cured.

16 1.6. In reply to paragraph 4.1, no further pleading is required.

17 1.7. In reply to paragraph 4.2, deny.

18 **II. AFFIRMATIVE DEFENSES**

19 2.1. For affirmative defenses to the counterclaim, Plaintiff alleges:

- 20 a. Fraud and misrepresentation,
21 b. Failure of consideration, and
22 c. Sham transaction concocted by defendant Pleasant and Stewart.

23 **III. CROSS-CLAIM AGAINST DEFENDANTS WINDERMERE AND PLEASANT FOR**
24 **IDEMNITY**

25 3.1. The so-called loan was initiated and directed by Kenny Pleasant in order to
26 cause Wubbels to proceed with closing of the Purchase and Sale Agreement

1 (PSA) with defendant Stewart which, unknown to Wubbels, was the subject of a
2 NOV from the City of Seattle. As described below, Wubbels would not have sold
3 her existing house and would not have purchased the Stewart house if the NOV
4 had been disclosed to her.

5 3.2. Kenny Pleasant was the dual agent for the sale of Wubbels existing house on
6 Lafayette street in Seattle and the purchase of the subject Stewart house on
7 Mead street. The Lafayette PSA is dated March 12, 2012 and the Mead PSA is
8 dated March 13. Due to mortgage financing and payoffs, the two PSA's had to
9 close at the same time. The NOV was issued by the City on March 21. Pleasant
10 received the NOV on the same day but never disclosed it to Wubbels. On March
11 23, the purchasers under the Lafayette PSA advised Pleasant that they were dis-
12 satisfied with the house condition and, on March 30, requested a price reduc-
13 tion of \$20,000. If Wubbels had known about the NOV, she would not have
14 consented to any price reduction and the Lafayette PSA would likely have ter-
15 minated. Instead, while keeping Wubbels in the dark as to the NOV, Pleasant
16 convinced her to accept a \$9000 reduction on the Lafayette PSA. On April 6,
17 Pleasant obtained Wubbels signature on an Amendment reducing the Lafayette
18 house price from \$319,000 to \$309,000. Hence, Pleasant maneuvered Wub-
19 bels into a position where she was required to sell her house and move out with-
20 out any knowledge that Stewart house was defective due to the NOV. During
21 this same time frame, Wubbels learned that she did not have sufficient funds to
22 purchase the Stewart house. In order to cause Wubbels to close on the Stewart
23 house, Pleasant made a plan with the seller for him to deliver \$16,000 to Wub-
24 bels which would be re-delivered to Stewart at closing as "buyer funds." If the
25 NOV had been disclosed to Wubbels she would have terminated the Mead PSA.
26

1 By initiating and directing the "loan", Kenny Pleasant violated statutory and
2 common law duties of an agent and broker owed to Wubbels.

3 3.3. To the extent that Wubbels is liable to Stewart for any amount or cost under the
4 Promissory Note, Pleasant and Windermere are liable to plaintiff for indemnity
5 in the same amount together with the amount of Wubbels attorney fees and
6 costs incurred in the defense of the Stewart counterclaim.

7 **IV. REQUEST FOR RELIEF**

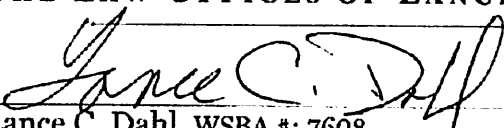
8 4.1. That Stewarts' counterclaim be dismissed with prejudice;

9 4.2. That Plaintiff have judgment against Defendants Windermere and Pleasant for
10 indemnity in the amount of all costs of defense regarding the Stewart promisso-
11 ry note claim and, in the event of any judgment or set-off in favor of Stewart on
12 such claim, for judgment against Windermere and Pleasant in the same
13 amount; and,

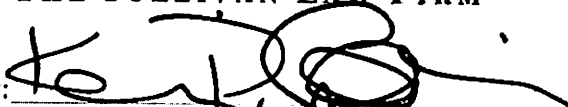
14 4.3. For such further relief as is just and equitable.

15 **DATED** this 8th day of August, 2014.

16 **THE LAW OFFICES OF LANCE C. DAHL**

17
18 By: 
Lance C. Dahl, WSBA #: 7608
Attorney for Plaintiff

19
20 **THE SULLIVAN LAW FIRM**

21 By: 
22 Kevin P. Sullivan, WSBA #: 11987
23 Mina Shahin, WSBA #: 46661
24 Attorneys for Plaintiff