

IN THE SUPERIOR COURT OF SKAGIT COUNTY, IN AND FOR THE STATE OF WASHINGTON.

Wendelin

Plaintiff,

vs.

Nathan Scott, Colleen Craig, Meredith Laws, Guy
Davidson, Regal Hospitality, LLC., Mary Mansfield.

Defendants.

NO: 09-2-00178-5

MEMORANDUM IN SUPPORT OF PLAINTIFF'S
CLAIMS.

I. INTRODUCTION

I Wendelin, Pro Se and the Plaintiff, purchased Real Estate listed on WindermereCommercial.com ("WC.com") as Property ID number: 26111701 ("the Listing") located in Skagit County ("the County"). It is specifically located at 401 Commercial Ave., Anacortes, Washington ("the Property") under the Tax Parcel Number 55013 which the County defined with legal description "ALL LT 7 & N 50FT LTS 8 TO 10 BLK 24" ("the Legal").

I purchased the Property from the Defendants, Guy Davidson ("Davidson"), J Michael Keenan ("Keenan") and Robert Morand ("Morand") all co-owners of Regal Hospitality, LLC ("Regal") under a Commercial and Investment Real Estate Purchase and Sale Agreement ("CIREPSA") executed by Defendants, Nathan Scott ("Scott"), Colleen Craig ("Craig"), Meredith Laws ("Laws") - owner and employees of Windermere Anacortes ("Windermere") in July of 2008.

I never received a Preliminary Title Report. On July 22nd 2008, I received the Commitment for Title Insurance ("the Title Insurance") for the Property specified in the Listing. On August 18th 2008, I received and distributed the survey ("the Survey") of the Property I commissioned based on the Listing, the Legal from the County and the Commitment for Insurance. The sale was closed by Defendant, Mary Mansfield

("Mansfield") – manager of Chicago Title Island Division Anacortes ("Chicago Title") on August 22nd, 2008 (the Closing).

Five days after closing on August 27th 2008, I was informed by Chicago Title that they had removed 3,000 square feet of Commercial Property from the deed causing it to no longer conform to the Listing, the Legal from the County and the Title Insurance. When requested on three separate occasions (my initial request to Mansfield on August 27th 2008, the second request sent from my lawyer to Mansfield September 23rd 2008, the third request was a complaint sent to the Washington State Insurance Commissioner and forwarded to Mr. Abrams Managing Counsel for Chicago Title) Chicago Title has refused to honor the Title Insurance citing the creation of a fraudulent "Second Commitment for Title Insurance" allegedly created on July 14th 2008 - four days before the original "Commitment for Title Insurance" was sent to me and was created on July 14th 2008 because of the error I discovered on August 21st 2008 – which seems physically impossible without the aid of time travel.

To date the defense has not presented a tangible reason for failing to correctly conform the deed to the Property as: advertised in the Listing, represented by the Legal on record with the County, represented in my Survey, insured by the Title Insurance and as existing on the date of Closing. The County did reform the Property to match the deed 65 days after the date of sale. Heretofore the defendants combined transgressions have rendered me a victim of fraud; negligent misrepresentation; breach of contract and consumer protection act violations that have precluded me from the quiet enjoyment and profitability of the Property covered by the Title Insurance for over a year and a half. As a direct effect of the illegal actions perpetrated by the defendants backed by exceedingly wealthy companies and their costly super-lawyers, I have had to close my small business, lay off my few employees and not afford preventative cancer surgery or therapists for my five year old with special needs.

II. FACTS

In summary, the facts are that Regal, with the help of Windermere maintained two different listings for the Property for most of the time it was posted for sale (July-December 2006 and January-August 2008). During the January-August 2008 timeframe, one listing available to the general public and referenced on the "For Sale" sign offered the entire County Tax Parcel 55013 containing 7500 sq ft of land for a sale price starting at \$800,000 then lowered to \$600,000 approximately one month after I first toured the Property on June 6th 2008 (Listing #26111701); the alleged second listing, **not** made available or advertised to the general public, offered only part of the County Tax Parcel 55013 containing 4500 sq ft of land for a sale price starting at \$650,000 then lowered to \$600,000 on June 6th 2008 when I initially toured the property (MLS #28068614). Importantly the Property was not sub-divided by the County to match the alleged second listing until 65 days after the date of sale.

My offer and purchase was based on the public listing advertised on the building with Davidson as the listing agent. Having done residential business exclusively with Laws/Craig/Scott in Anacortes for four years, I trusted their level of professionalism so did not question when the Commercial Purchase and Sale Agreement (CIREPSA) did not contain a copy of the listing to initial. I figured that since the purchase form was different, that the process must be different too.

On July 22nd 2008 I received the Title Insurance* from Chicago Title. I cross-checked the document for accuracy in this order (I printed out the exhibits on 6/6/08 in preparation for my initial visit to the property but they are still accurate representations of the County resources I re-checked on July 22nd 2008):

Exhibits J & S

1. In Schedule A 2. A. – I checked that the Title Insurance was for the correct amount \$550,000 – which it was.
2. In Schedule A 5. – I compared the referenced Exhibit 'A' with the legal description as defined by the County Assessor's web site "ALL LOT 7 & N 50FT L TS 8 TO 10 BLK 24" then compared the Assessor's building and land reported square footage with the Listing and they were all consistent.
3. In Schedule B Special Exceptions: 3 & 4, I looked up those documents on the County Auditor's web site and they matched the dates, amounts and the Legal.
4. In Schedule B Special Exceptions: 8, I compared the property tax amount with that on the County Assessor's web site and they matched.
5. In Schedule B 2. I compared the address to that on the Listing and on the County Assessor's web site and they were all consistent reporting 401 Commercial Ave Anacortes WA 98221.
6. In Schedule C I noticed the statement in section 2: *The legal description in this commitment is based on information provided with the application and the public records as defined in the policy to issue. The parties to the forthcoming transaction must notify the title insurance company prior to closing if the description does not conform to their expectations.* The Legal matched the County public records thus conformed so I saw no need to contact the Chicago Title about anything other the abbreviated Legal erroneously citing BLK 23 instead of BLK 24 which I reported before closing on August 21st 2008. (If Regal reviewed the Title Insurance during feasibility, and if Regal did not intend to sell Lot 7, then why did they not notify Chicago Title prior to closing that the description did not conform to their expectations – especially after receiving the Survey five days prior to closing?)

*Chicago Title provided me a COMMITMENT FOR TITLE INSURANCE which promises in their signed document on company letterhead SHOULD cover any defect that would deed me less than the legal description in the COMMITMENT FOR TITLE INSURANCE specifies:

Chicago Title Insurance Company, a Nebraska corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or

*interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; **all subject to the provisions of Schedule A and B and to the Conditions of this Commitment.***

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate 6 months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The company will provide a sample of the policy form upon request.

IN WITNESS WHEREOF, Chicago Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

All representations made in the Listing, Title Insurance and County public records were consistent so I was satisfied with my review of the document. I then commissioned a survey based on those three matching sources. On August 18th 2008 and while still protected by the feasibility clause, I noticed an encroachment and sent my survey to Laws/Craig, Mansfield and Davidson with my request for an easement. Craig, Mansfield and Davidson created the requested easement. I signed the closing documents and the easement on August 22nd 2008.

On August 27th 2008, I was informed that in a collusion to defraud with the intent to retain almost half of the property listed, advertised, represented by a Title Report and confirmed by all when reviewing my survey in order to create the easement – I was in fact deeded only 4500 sq ft of the County Tax Parcel 55013. Subsequently, the defendants acted together to create a completely new fraudulent set of listing and closing documents to cover their deception. Windermere contends that the CIREPSA was actually created based on the alleged private listing for the property (MLS #28068614) which was included as part of their pending file but not presented or executed by signature/initialed as part of the CIREPSA.

Additionally, the timeline of the supposed creation of these new fraudulent documents defies nature. I had not yet seen or received the alleged errant Title Insurance until eight days after the defense contends that I reported an error that necessitated new revised document to be created eight days earlier – I will pause to allow for contemplation of how the crux and basis of the defense's case could be organically possible.

For ease of representation, I created a timeline of the actual documents that caused me to act upon and believe that I was in fact purchasing the Property containing all of tax parcel 55013 as listed, advertised, and surveyed (details in Exhibit A). I also included the dates and documents the defense claims prove that I knowingly and with intent closed on the property as currently deeded to me. The inclusion of these dates and documents in the same timeline as the actual facts illustrates the absurdity of the any validity in their claims. I have also posed some follow up questions that I plan to ask when I call each of the defendants to the stand (details in Exhibit A).

III. STATEMENT OF AUTHORITIES

I am not an Attorney, Real Estate Agent, Broker, Title Agent, Escrow Agent, Judge or Jury, but I would like to present the following statutes occurring in the Revised Code of Washington ("RCW") with my interpretation of how "the facts" as presented by the defendants are actually the grounds upon which I am contending the following violations.

It is possible that the defendants are guilty of many crimes as defined by various RCWs including but not limited to (details in Exhibit AA):

Chapter 9.38 RCW - False representations

RCW 9.38.020 - False representation concerning title.

Mansfield – In creating her fraudulent Second Commitment for Title Insurance she maliciously or fraudulently execute or file for record any instrument, or put forward any claim, by which the right or title of another to any real or personal property is, or purports to be transferred, encumbered or clouded, shall be guilty of a gross misdemeanor.

Laws/Craig/Regal – By testifying under various forms of oath to receiving the and validating the fraudulent Second Commitment for Title Insurance they put forward a claim, by which the right or title of another to any real or personal property is, or purports to be transferred, encumbered or clouded, shall be guilty of a gross misdemeanor.

Laws/Craig/Regal/Scott – By claiming to have had a hand in creating the fraudulent MLS listing for only 4500 sq ft which the fraudulent Second Commitment for Title Insurance was purportedly generated from they put forward a claim, by which the right or title of another to any real or personal property is, or purports to be transferred, encumbered or clouded, shall be guilty of a gross misdemeanor.

Chapter 9A.56 RCW - Theft and robbery

RCW 9A.56.030 - Theft in the first degree

Mansfield/Regal/Scott/Laws/Craig – are guilty of otherwise affecting my valuable legal right to Lot 7 and shall be held responsible for the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

Mansfield/Regal are guilty of - "Wrongfully obtaining" and "exerts unauthorized control" to take the property of another; Having any property one's possession, agent, employee, trustee, executor, administrator, or officer of any association, or corporation, or person authorized by agreement or competent authority to take or hold such possession, custody, or control, to secrete, withhold, or appropriate the same to his or her own use or to the use of any person other than the true owner or person entitled thereto.

Due to the value of Lot 7 that was withheld being worth \$150,000 (as evidenced by the land market value prorated for the amount) plus the losses from my quiet enjoyment and profitability from the property for 1.5 years, Mansfield/Regal/Laws/Craig/Scott are guilty of a class B felony.

Chapter 9A.60 RCW – Fraud

RCW 9A.60.020 - Forgery.

By claiming to have had a hand in creating the fraudulent MLS listing for only 4500 sq ft which the fraudulent Second Commitment for Title Insurance was purportedly generated from Mansfield/Regal/Laws/Craig/Scott are guilty of a class C felony

RCW 9A.60.030 - Obtaining a signature by deception or duress.

By presenting the Listing for the Property that caused me to make my offer and subsequent Title Insurance that conformed with the Property I made my offer on, commissioned a survey upon and delivered to Laws/Craig/Mansfield before closing; the defendant's accepting my signature on the closing documents while claiming to have had a hand in creating the fraudulent MLS listing for only 4500 sq ft which the fraudulent Second Commitment for Title Insurance was purportedly generated from Mansfield/Regal/Laws/Craig/Scott caused me to sign under duress (believing that the Listing and Title Insurance would be acted upon via fiduciary duty of licensed professionals) of being presented with documents other than what was closed upon and are therefore guilty of a class C felony.

Chapter 9A.72 RCW - Perjury and interference with official proceedings

RCW 9A.72.020 - Perjury in the first degree.

By presenting as fact under oath: the fraudulent MLS listing for only 4500 sq ft which the fraudulent Second Commitment for Title Insurance was purportedly generated from; Mansfield/Regal/Laws/Craig/Scott are guilty of a class B felony.

RCW 9A.72.030 - Perjury in the second degree.

By presenting as fact under oath: the fraudulent Second Commitment for Title Insurance; Mansfield is guilty of a class C felony

Chapter 18.85 RCW - Real estate brokers and salespersons

RCW 18.85.155 - Responsibility for conduct of subordinates.

Scott is not only responsible for his own actions and transgressions but equally for the actions and transgressions of Laws/Craig/Davidson.

RCW 18.85.230 - Disciplinary action. Grounds.

Scott by his own fault and that of Laws/Craig/Davidson is guilty of violating (1), (2), (3), (6), (10), (18), (20), (22) and (23).

RCW 18.85.310 Broker's records.

Scott by responsibility for Laws/Craig/Davidson failed to provide a copy of the Listing as part of the CIREPSA.

Chapter 18.86 RCW - Real estate brokerage relationships

RCW 18.86.020 Agency relationship.

In my CIREPSA, Section 19. Agency Disclosure, the selling licensee Laws/Craig is listed as representing the Buyer and the listing agent Scott is listed as representing the Seller. It seems to indicate that Scott, as broker and listing agent was supposed to act as a dual agent. I viewed him as only being the seller's agent as mentioned in the CIREPSA. If he was in fact a dual agent, I never felt that he had my interests in mind during or after the transaction.

RCW 18.86.030 Duties of licensee.

Scott did not: "disclose in writing to all parties to whom the licensee renders real estate brokerage services, before the party signs an offer in a real estate transaction handled by the licensee, whether the licensee represents the buyer, the seller, both parties, or neither party. The disclosure shall be set forth in a separate paragraph entitled "Agency Disclosure" in the agreement between the buyer and seller or in a separate writing entitled "Agency Disclosure."

Scott/Laws/Craig did not exercise skill and care for me - especially when the seller was notified that there was a new survey contracted by the buyer in which an encroachment was discovered. It was Scott/Laws/Craig's fiduciary duty to review the new survey and notify me that the seller's disclosure contained misrepresentations by clearly documenting "No" encroachments.

Scott/Laws/Craig did not exercise skill and care for me - especially upon receiving my survey, it was Scott/Laws/Craig's fiduciary duty to review the survey and notify me that it allegedly represented more that was actually for sale.

If Scott/Laws/Craig had indeed received the alleged Second Commitment for Title Insurance which pertained to my existing contract to purchase, I should have been notified by at least one representative of Windermere in writing.

RCW 18.86.050 Buyer's agent. Duties.

Scott/Laws/Craig took actions that were detrimental to the buyer's interest in a transaction by not informing me that I had submitted a survey containing and was preparing to purchase 3,000 sq ft less of land than I expected.

If Scott/Laws/Craig did not feel comfortable interpreting or confirming the correctness of legal descriptions then they should have advised me to seek expert advice upon receiving my survey and preparing the easement.

RCW 18.86.060 Dual agent — Duties.

Scott took actions that were detrimental to the buyer's interest in a transaction by not informing me that I had submitted a survey containing and was preparing to purchase 3,000 sq ft less of land than I expected.

Chapter 19.86 RCW - Unfair business practices —consumer protection

RCW 19.86.020 - Unfair competition, practices, declared unlawful.

By claiming to have had a hand in creating the fraudulent MLS listing for only 4500 sq ft which the fraudulent Second Commitment for Title Insurance was purportedly generated from in an attempt to willfully prevent me from obtaining all assets advertised for sale Mansfield/Regal/Laws/Craig/Scott are guilty of Consumer Protection Act violations.

RCW 19.86.080 - Attorney general may restrain prohibited acts — Costs — Restoration of property.

Due to the impact of the defendant's dubious actions on my livelihood, credit score, health, wellbeing and that of my three employees having to be laid off as a direct result, I will be seeking all reparations possible in order to help make me and those adversely affected whole.

RCW 19.86.140 - Civil penalties.

Since three different corporations were involved in this deception, I expect the civil penalty to not exceed 1,500,000.

Chapter 48.29 RCW - Title insurers

RCW 48.29.200 - Prohibited practices.

Mansfield is guilty of violating (2), (4), (6), (7)

IV. ARGUMENT

Having demonstrated the level of deceit and blatant disregard Washington State laws that the defendants are individually and collectively liable for; I request swift action in this case. The defendants collectively violated at least 16 different sections of the RCW with possible penalties ranging from licensing violations and gross misdemeanors to class B and C felonies.

I have begged the defendants since August 27th 2008 to make this right but due to their continued denial of the facts and resulting responsibilities, I have been damaged in so many ways. Specifically, some of the damages resulting directly from the defendants multiple acts of FRAUD; NEGLIGENT MISREPRESENTATION; BREACH OF CONTRACT AND CONSUMER PROTECTION ACT VIOLATIONS.

Of course the damages resulting from the stress, sadness and distress are much more difficult to quantify. For that I ask all to keep in mind my personal battles and upsets while fighting this case:

1. I had to lay off husband and wife with two children under the age of five at the end of October for a very un-Merry Christmas among many other concerns.
2. I had to lay off the woman who provided much of the intervention for my daughter's autism and who I believe was instrumental in having my daughter on track to start typically developing Kindergarten age appropriately. Now with seven month to go until Kindergarten and her being without intervention that I am not capable of providing, my daughter could be disadvantaged for life by being left back at such a young age when she possesses great intelligence but minimal social skills.

3. Having been given the diagnosis of pre-cancerous tissue in October 2009 after having no sign of trouble when screened in August 2008 – and not being able to afford the corrective surgery in the doctor recommended timeframe.
4. The lost time and quality of life from having to figure out how to represent myself in Superior Court while researching and preparing documents in what is almost a foreign language when having PTSD and an absolute fear of public speaking.
5. Having to close my business in October 2009; a business I had been operating since 2003 that was supposed to move into 401 Commercial to be able to operate out of a Commercial location instead of my basement.
6. Having to bring all of my jewelry and just about anything of value to sell at the pawn shop to stave off bankruptcy and loss of home while fighting this long, drawn out lawsuit.
7. Stress from the growing number of collection agencies that I would have been able to easily pay from the rental income alone from the building – not to mention the income from being able to expand my business while operating from a Commercial location.
8. Seeing the loss of business that has resulted from having to close my company.

V. EVIDENCE RELIED UPON

Exhibit A - Timeline and Defendant Questions	Exhibit N: Lot 7 not for sale
Exhibit AA - Details of Statement of Authorities	Exhibit O: Final Title Policy
Exhibit B: All docs from 07/10/06 MLS Listing	Exhibit P: Final Closing Documents Recorded and Unrecorded
Exhibit BB: All docs from 04/04/07 MLS Relisting	Exhibit Q: Survey Info
Exhibit C: All docs from 04/21/08 MLS Listing	Exhibit R: Re-reviewing WC.com
Exhibit D: Listing and Agent Collage	Exhibit S: County Files
Exhibit E: 06/06/08 MLS 2 Price Drop	Exhibit T: Original Deed from 1966
Exhibit F: Email about the Listing Price	Exhibit U: Nate E-mails
Exhibit G: Davidson Deposition Declaration & Survey Stakes	Exhibit V: Windermere Pending File
Exhibit H: Intent to make offer	Exhibit W: Similar WC.com Listings
Exhibit I: CIREPSA	Exhibit X: Laws Craig Scott Rog Responses
Exhibit J: Mansfield Declaration with 1st and 2nd Commitments for Title Insurance	Exhibit Y: Partial Reconveyance
Exhibit K: Emails about Regal Representative	Exhibit Z: Listing Closing Form
Exhibit L: Depictions of Property for Sale	Exhibit ZZ: Dove Letter Loan Closing Docs
Exhibit M: Name Change	Exhibit ZZZ: Escrow Checklist
	Exhibit ZZZZ: Damages

VI. CONCLUSION

For the reasons set forth above, my claims for reparations should be delivered in their entirety as soon as possible along with an order granting a revised judicial deed that conforms to the Property as: advertised in the Listing, represented by the Legal on record with the County, represented in my Survey; insured by the Title Insurance and as existing on the date of Closing.

Respectfully submitted this 8th day of March 2010.

Wendelin, Pro Se