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13 MAY 30 PM 3:49

HONORABLE ELIZABETH J. BERNS
KING COUNTY
SUPERIOR COURT CLERK

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CASE NUMBER: 13-2-00452-6 KNT

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

JACOB FRAZIER and SHAWNACEE
FRAZIER, husband and wife and the marital
community comprised thereof,

Plaintiffs,

vs.

JEFFERY L. BOYER and PATRICIA D.
BOYER, husband and wife and the marital
community comprised thereof, KENNETH J.
FREED and JUDITH A. FREED, husband
and wife and the marital community
comprised thereof, WINDERMERE REAL
ESTATE / LAKE TAPPS, INC., a
Washington corporation, and CRAIG D.
THIELBAR and JANE DOE THIELBAR,
and the marital community comprised
thereof,

Defendants.

NO. 13-2-00452-6 KNT

PLAINTIFFS' MOTION TO COMPEL
DEFENDANT BOYERS' ANSWERS TO
PLAINTIFFS' INTERROGATORIES AND
REQUESTS FOR PRODUCTION

Note on Motion Calendar: June 7, 2013

1. *Relief Requested.*

COMES NOW the plaintiffs, Jacob and Shawnacee Frazier, by and through their
attorney of record, Daniel G. Wilmot, and moves this Court for an Order Compelling

PLAINTIFFS' MOTION TO COMPEL DEFENDANT
BOYERS' ANSWERS TO PLAINTIFFS'
INTERROGATORIES AND REQUESTS FOR
PRODUCTION - 1

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DANIEL G. WILMOT
ATTORNEY AT LAW
1105 Tacoma Avenue S.
Tacoma, WA 98402
TEL (253) 383-5346 / FAX (253) 572-6662

1 Defendants Boyer to answer interrogatories and requests for production propounded upon
2 Defendants Boyer on March 8, 2013.

3 2. *Statement of Facts.*

4 The plaintiffs purchased the residential real property located at 30229 - 108th Ave SE,
5 Auburn, WA 98092 (the "Property") from defendant Jeffery Boyer on June 22, 2012. Mr.
6 Boyer and his wife, Patricia Boyer, resided at the Property as their primary residence prior to
7 the sale.

8 In September 2012, three months after the title to the Property was transferred to the
9 plaintiffs, the septic system failed. At that time, Plaintiffs learned that the Boyers had been
10 informed in November 2011 that the septic drain field piping was collapsing and in need of
11 repair, that the Boyers deceived and misled the plaintiffs by representing in the seller disclosure
12 statement that there were no defects with the operation of the septic system when in fact Boyers
13 were aware that the drain field was failing and in need of repair, and that Boyers concealed,
14 withheld, and manipulated information regarding the defective condition of the drain field in
15 order to prevent plaintiffs from discovering its true condition. This is an action for the recovery
16 of damages proximately caused by the Boyers' conduct, and the conduct of the other
17 defendants.
18

19 On March 8, 2013, plaintiffs propounded interrogatories and requests for production
20 upon defendants Boyer. *Declaration of Daniel G. Wilmot in Support of Motion to Compel*
21 (*"DGW Dec."*), Exs. A and B. On April 3, 2013, the paralegal assisting defendant Boyers'
22 counsel, Sheila Gerlach, contacted plaintiffs' counsel to request an extension for answering the
23 interrogatories and requests for production. *DGW Dec.*, Ex. C. It was agreed between the
24 parties that the Boyers' answers to the interrogatories and requests for production would be
25

1 provided on April 12, 2013. *Id.* Defendants Boyer failed to provide the answers to the
2 discovery on April 12, 2013 as agreed.

3 On April 17, 2013, counsel for the plaintiffs and counsel for defendants Boyer had a
4 “meet and confer” telephonic conference per CR 26(i). Prior to the conference call, plaintiffs’
5 counsel emailed Ms. Gerlach to inquire whether the answers to the interrogatories and requests
6 for production would be delivered on April 17, 2013 since they were not received on April 12,
7 2013. *DGW Dec.*, Ex. D. Ms. Gerlach did not respond.

8 During the CR 26(i) conference call, counsel for defendants Boyer acknowledged that
9 the answers to the interrogatories and requests for production were late beyond the agreed
10 extension date, that he was working to finalize the answers, and that he would call the
11 following day, April 18, to advise when he anticipated being able to deliver the answers. No
12 call was received from defendant Boyers’ counsel on April 18, 2013.

13 On May 1, 2013, plaintiffs’ counsel sent an email to Boyers’ counsel to follow up
14 regarding discovery issues, including the past due answers to the interrogatories and requests
15 for production. *DGW Dec.*, Ex. E. On May 2, 2013 Boyers’ counsel stated in his reply email
16 that the answers were “largely done” and that he was attempting to finish them that day and
17 circulate for his clients’ signatures. *Id.*

18 Still not having received the answers to the interrogatories and requests for production,
19 on May 20, 2013, plaintiffs’ counsel called Boyers’ counsel to discuss the matter again.
20 Defendant Boyers’ counsel repeated the refrain that the answers were being finalized, he would
21 circulate for signature, etc.
22

23 The answers have never been provided.
24
25

1 3. *Statement of Issue.* Whether defendants Boyer should be compelled to provide
2 answers to plaintiffs' interrogatories and requests for production without objection when the
3 deadline for providing such answers has passed?

4 4. *Evidence Relied Upon.*

5 This Motion is based on the pleadings and papers on file in this case, and the
6 Declaration of Daniel G. Wilmot filed herewith.

7 5. *Argument & Authority.*

8 A. *Plaintiffs are entitled to an Order compelling discovery.*

9 Civil Rule 37 allows this Court to enter an Order compelling discovery. The rule
10 provides, in pertinent part, that a party may make a motion for an Order compelling discovery
11 if a party or a person from whom discovery is sought fails to respond to the discovery request.
12 CR 37(a)(2). Plaintiffs have complied with all the requirements of CR 37, including CR 26(i).

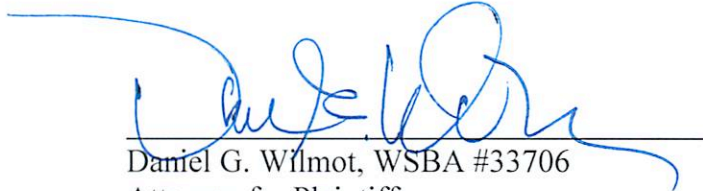
13 Plaintiffs' counsel and defendant Boyers' counsel have had several conversations and
14 email exchanges where defendant Boyers' counsel makes statements and assurance regarding
15 the discovery, but the answers are never provided. Plaintiffs have attempted to cooperate with
16 defendants Boyer to obtain the discovery and have done all that they can to facilitate
17 production. Boyers, on the other hand, delay, stall, make assurances, and then fail to follow
18 through. The Court must intervene as it is rapidly becoming apparent that the Boyers will not
19 provide the answers to the interrogatories and requests for production unless they are
20 compelled to do so.

21 6. *Conclusion.*

22 The defendant Boyers' conduct warrants an Order compelling them to provide answers
23 to the interrogatories and requests for production propounded upon them by plaintiffs.
24
25

1 Plaintiffs have complied with CR 26 and CR 37 requirements for filing a motion to compel.
2 Plaintiffs do not waive any claims regarding attorney's fees and costs related to this issue to be
3 presented to the Court by separate cost bill. A proposed Order is attached hereto.

4 DATED 30th day of May, 2013.

5 

6 Daniel G. Wilmot, WSBA #33706
7 Attorney for Plaintiffs

HONORABLE ELIZABETH J. BERNS

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and the marital community comprised
thereof,

Defendants.

NO. 13-2-00452-6 KNT

ORDER COMPELLING DEFENDANT
BOYERS' ANSWERS TO PLAINTIFFS'
INTERROGATORIES AND REQUESTS FOR
PRODUCTION

[PROPOSED]

THIS MATTER came on for consideration without oral argument on the ____ day of _____, 2013, upon plaintiffs' Motion to Compel Defendant Boyers' Answers to Plaintiffs' Interrogatories and Requests for Production, and the Court having reviewed the records and files herein, and having considered the following:

1 1. Plaintiff's Motion to Compel Defendant Boyers' Answers to Plaintiffs'
2 Interrogatories and Requests for Production;

3 2. Declaration of Daniel G. Wilmot in Support of Plaintiffs' Motion to Compel
4 Defendant Boyers' Answers to Plaintiffs' Interrogatories and Requests for Production;

5 3. _____

6 _____;

7 4. _____

8 _____.

9 and being fully advised in the premises, the Court finds as follows:

10 1. On March 8, 2013, plaintiffs propounded on defendants Boyer their first set of
11 interrogatories and requests for production;

12 2. Plaintiffs and defendants Boyer agreed to extend the deadline for Boyers'
13 answers to plaintiffs' interrogatories and requests for production to April 12,
14 2013;

15 3. Counsel for plaintiffs and defendants Boyer engaged in a CR 26(i) conference on
16 April 17, 2013 to discuss discovery matters, including the Boyers' answers to
17 plaintiffs' interrogatories and requests for production;

18 4. Defendants Boyer have never provided the answers to plaintiffs' interrogatories
19 and requests for production and the deadline for providing such answers has
20 expired; and

21 5. Plaintiffs have incurred attorneys' fees and costs in bringing this motion in an
22 amount that may be presented by separate cost bill for approval by the Court.
23
24
25

1 Consistent with the foregoing findings, it is hereby ORDERED, ADJUDGED AND
2 DECREED as follows:

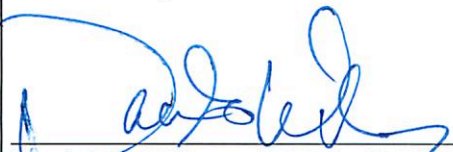
- 3 1. Plaintiffs' Motion is granted.
- 4 2. Defendants Boyer shall immediately deliver to plaintiffs' counsel full and
5 complete answers, without objection to plaintiffs' first set of interrogatories and
6 requests for production to defendants Boyer.
- 7 3. The issue of an award of attorneys' fees and costs to plaintiffs incurred in
8 bringing this motion is reserved subject to plaintiffs' filing of a separate cost bill
9 to be presented to this Court for approval.

- 10 4. _____
11 _____.
- 12 5. _____
13 _____
14 _____.

15 DONE IN OPEN COURT this ___ day of _____, 2013.

16
17
18 _____
19 Judge Elizabeth J. Berns

20
21 Presented by:

22 
23 _____
24 Daniel G. Wilmot, WSBA #33706
25 Attorney for Plaintiffs