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Hon. Jean Rietscher CASE NUMBER: 14-2-13149-6 SEA

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

JESSICA WUBBELS,

Plaintiff,

v.

WINDERMERE REAL ESTATE/BELLEVUE  
COMMONS, INC, a Washington corporation;  
KENNY PLEASANT, individually and his marital  
community; SEAN STEWART AND MARGARET  
STEWART, husband and wife,

Defendants.

No. 14-2-13149-6 SEA

DEFENDANTS SEAN STEWART  
AND MARGARET STEWART'S  
ANSWER, AFFIRMATIVE  
DEFENSES AND  
COUNTERCLAIMS TO  
PLAINTIFF'S COMPLAINT

**COME NOW** the Defendants, Sean Stewart and Margaret Stewart, husband and wife, (hereinafter collectively "Stewart"), a married couple, by and through their counsel of record, Jordan M. Hecker of Wakefield & Feilberg, P.S., and by way of Answer, Affirmative Defenses and Counterclaims to Plaintiff Jessica Wubbels' (hereinafter "Wubbels") Complaint, state and allege as follows:

**I. ANSWER**

1.1 By way of Answer to Paragraph 1 of the Complaint, Stewart lacks sufficient information as to the truth or falsity of the information contained therein and therefore denies the same.

1           1.2     By way of Answer to Paragraph 2 of the Complaint, Stewart admits the same.

2           1.3     By way of Answer to Paragraph 3 of the Complaint, Stewart lacks sufficient  
3 information as to the truth or falsity of the information contained therein and therefore denies  
4 the same.

5           1.4     By way of Answer to Paragraph 4 of the Complaint, Stewart admits the same.

6           1.5     By way of Answer to Paragraph 5 of the Complaint, Stewart admits the same.

7           1.6     By way of Answer to Paragraph 6 of the Complaint, Stewart admits that he  
8 sold the house to Wubbels but denies the other (mis)characterizations within the paragraph.  
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10          1.7     By way of Answer to Paragraph 7 of the Complaint, Stewart admits the same,  
11 but denies any wrongdoing with respect to failing to obtain necessary permits and inspections.  
12

13          1.8     By way of Answer to Paragraph 8 of the Complaint, Stewart admits that the  
14 parties entered into the Purchase and Sale Agreement and that Pleasant and Windermere acted  
15 as dual agents and that otherwise, the Agreement speaks for itself.

16          1.9     By way of Answer to Paragraph 9 of the Complaint, Stewart answers the  
17 document speaks for itself.

18          1.10    By way of Answer to Paragraph 10 of the Complaint, Stewart answers the  
19 document speaks for itself.

20          1.11    By way of Answer to Paragraph 11 of the Complaint, Stewart lacks sufficient  
21 information as to the truth or falsity of the information contained therein and therefore denies  
22 the same.  
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24          1.12    By way of Answer to Paragraph 12 of the Complaint, Stewart answers that the  
25 sale closed in May of 2012. As to the remaining allegations, Stewart answers the document  
26 speaks for itself.

1           1.13 By way of Answer to Paragraph 13 of the Complaint, Stewart denies the same.

2           1.14 By way of Answer to Paragraph 14 of the Complaint, Stewart realleges  
3 Paragraphs 1.1 through 1.13 as though set forth herein.

4           1.15 By way of Answer to Paragraph 15 of the Complaint, Stewart denies the same.

5           1.16 By way of Answer to Paragraph 16 of the Complaint, Stewart realleges  
6 Paragraphs 1.1 through 1.15 as though set forth herein.

7           1.17 By way of Answer to Paragraph 17 of the Complaint, Stewart denies the same.

8           1.18 By way of Answer to Paragraph 18 of the Complaint, Stewart realleges  
9 Paragraphs 1.1 through 1.17 as though set forth herein.

10          1.19 By way of Answer to Paragraph 19 of the Complaint, Stewart denies the same.

11          1.20 By way of Answer to Paragraph 20 of the Complaint, Stewart realleges  
12 Paragraphs 1.1 through 1.19 as though set forth herein.

13          1.21 By way of Answer to Paragraph 21 of the Complaint, Stewart denies the same.

14          1.22 By way of Answer to Paragraph 22 of the Complaint, Stewart denies the same.

15          1.23 By way of Answer to Paragraph 23 of the Complaint, Stewart realleges  
16 Paragraphs 1.1 through 1.22 as though set forth herein.

17          1.24 By way of Answer to Paragraph 24 of the Complaint, Stewart is not involved  
18 in these allegations and therefore does not respond.

19          1.25 By way of further Answer to the Complaint, Stewart denies that the Plaintiff is  
20 entitled to any of the relief requested.

21                   Having answered Plaintiff's Complaint, Stewart states and alleges the following:  
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**II. AFFIRMATIVE DEFENSES**

2.1 Wubbels has failed to state a claim upon which relief can be granted.

2.2 Wubbels' injuries and damages, if any, were proximately caused by her contributory negligence.

2.3 Wubbels is estopped from asserting her claims against Stewart.

2.4 Stewart's actions were justified.

2.5 Wubbels gave Stewart license/permission to engage in the challenged acts and is not entitled to relief.

2.6 Wubbels failed to mitigate her damages.

2.7 Wubbels' injuries and damages, if any, were negligently and proximately caused by her failure to exercise reasonable care.

2.8 Wubbels' claims are subject to set off.

2.9 Wubbels did not institute this action within the period specified under the applicable statute of limitations.

2.10 Wubbels comes to the court with unclean hands and her claims must be barred.

2.11 Wubbels has waived her rights against Stewart and is not entitled to relief.

2.12 Wubbels' claims are barred by accord and satisfaction.

2.13 Wubbels failed to satisfy all prerequisites and conditions precedent to bring this claim.

2.14 Wubbels' claims are barred by the assumption of risk.

2.15 Wubbels' pleading fails to satisfy CR 9(b).

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**III. COUNTERCLAIM FACTS**

3.1 Prior to closing the subject real estate transaction, Wubbels was unable to obtain the necessary funds to purchase the property.

3.2 As a result, Wubbels requested that Stewart provide a loan to aid with her purchase of the property. On or about April 12, 2013, to facilitate the closing of the transaction, Stewart provided Wubbels a loan of \$16,000.00.

3.3 A true and correct copy of the Promissory Note identified above is attached hereto as Exhibit A and incorporated by reference herein.

3.4 Despite the requirement for monthly installment payments of \$486.75, only five of the original eleven monthly payments were made. Payments completely stopped in April of 2013.

3.5 Wubbels has defaulted on the loan.

**IV. COMPLAINT FOR BREACH OF PROMISSORY NOTE**

4.1 Stewart realleges Paragraphs 1.1 through 3.5 above as set forth fully herein.

4.2 Pursuant to the terms of the Promissory Note, by failing to pay, Stewart is entitled to accelerate the loan and obtain Judgment against Wubbels for the full amount due and owing on the obligation.

**WHEREFORE**, having answered the Complaint and alleged Affirmative Defenses and Counterclaims, Stewart requests the following:

**V. REQUEST FOR RELIEF**


5.1 That the Court dismiss with prejudice all claims brought by Wubbels.

1           5.2     That the Court award damages against Wubbels for breach of the Promissory  
2 Note.

3           5.3     That the Court order reimbursement of Stewart's attorney's fees and costs as  
4 allowed under contract, equity or statute.

5           5.4     That the Court award such other relief it deems just and equitable.  
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8           **Dated** this 21<sup>st</sup> Day of July, 2014.

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10 \_\_\_\_\_  
11 Jordan M. Hecker, WSBA #14374  
12 Lindsey Truscott, WSBA #35610  
13 HECKER WAKEFIELD & FEILBERG, P.S.  
14 Attorneys for Defendants Stewart  
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**CERTIFICATE OF SERVICE**

I certify that on this day I caused to be served a copy of the pleading to which this Certificate is attached, as follows:

Kevin P. Sullivan  
Mina Shahin  
THE SULLIVAN LAW OFFICE  
701 Fifth Avenue, Suite 4600  
Seattle, WA 98104

- Via telecopier
- Via e-mail (per agreement)
- Via U.S. Mail
- Via ABC Legal Messengers
- Via Hand Delivery

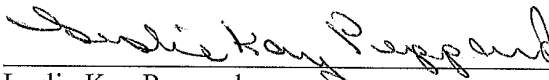
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- Via Hand Delivery

DATED this 21<sup>st</sup> Day of July, 2014.

  
\_\_\_\_\_  
Leslie Kay Peppard

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