

Supreme Court No. 898286
Court of Appeals No. 68067-6-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MARY P. DUNPHY AND MARK L. DUNPHY,

Appellants/Petitioners

v.

SHANE AND AMY WATTS

Appellees/Respondents

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SUPREME COURT
STATE OF WASHINGTON
2011 FEB 11 P 2 32
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ON APPEAL FROM THE COURT OF APPEALS, DIVISION ONE

RESPONSE TO PETITION FOR REVIEW

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TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. RESPONSE TO ISSUES FOR REVIEW 1

III. FACTUAL BACKGROUND..... 1

IV. THE APPELLATE COURT ANALYZED THE CASE CORRECTLY 6

V. WHY THE REVIEW SHOULD BE REJECTED..... 9

VI. REQUEST FOR FEES 14

VII. CONCLUSION 14

TABLE OF AUTHORITIES
STATE CASES

Alejandro v. Bull, 159 Wn.2d 674, 689, 153 P.3d 864 (2007)..... 2, 7, 8, 10, 12,
14

Douglas v. Visser, 173 Wash.App. 823, 295 P.3d 800 (2013)..... 2, 8, 10, 11, 12,
14

Puget Sound Serv. Corp. v. Dalarna Mgmt. Corp., 51 Wn. App. 209, 214-15,
752 P.2d 1353 (1988)..... 8, 10

Jackowski v. Borchelt, 151 Wn. App. 1, 209 P.3d 514 (2009),)..... 10

COURT RULES

RAP 13.4(b)(4)..... 9

RAP 13.4(b)(3) 10

TABLE OF EXHIBITS

Ex. No.	Exhibits
1	Bankruptcy Court Order Granting Summary Judgment/Denying Dischargeability
2	Watts v. Dunphy – Final Unpublished Opinion on Appeal - Div I (12/23/13)
3	King County Sup. Ct. Findings of Fact (Case No. 10-2-07806-1 SEA)
4	King County Sup. Ct. Judgment and Order (Case No. 10-2-07806-1 SEA)
5	Watts v. Dunphy – Appellate Court Denying Reconsideration/Awarding Fees- Div I
6	Report of Proceedings (RP) - Extract - Trial Day 1 (10/17/11)
7	Report of Proceedings (RP) - Extract - Trial Day 2 (10/18/11)
8	Report of Proceedings (RP) - Extract - Trial Day 3 (10/19/11)
9	Report of Proceedings (RP) - Extract - Trial Day 4 (10/20/11)
10	Report of Proceedings (RP) - Superior Court Trial (Selected Exhibits)
11	Report of Proceedings (RP) - Oral Ruling (10/26/11)
12	Declaration of Attorney Re Exhibits

COMES NOW Respondents/Apellees, Shane and Amy Watts, by and through counsel of record, and responds to the Petition for Review.

I. INTRODUCTION

Respondent respectfully asks the court to deny the Petition in its entirety, and award attorney fees. This is because (1) the case fails to meet the considerations under RAP 13.4; (2) the decision by the trial court and the analysis by the Court of Appeals was correct.

We should note that Mary Dunphy filed for Chapter 7 Bankruptcy, subsequent to the Appeals Court Opinion. The Watts filed for summary judgment on the issue of the judgment's dischargeability. Dunphy contested that as well. The Watts' motion was granted on February 7, 2014. See Exhibit 1. At this point – barring any appeal in the bankruptcy court – this claim is non-dischargeable. The court should also note that Ms. Dunphy changed her last name in her divorce to Pong, and is known by that in her bankruptcy case. With no disrespect, we refer to Ms. Pong as Dunphy throughout this Response.

II. RESPONSE TO ISSUES FOR REVIEW

BRIEF OF RESPONDENTS RE:
PETITION FOR REVIEW

Respondent's response to Dunphy's issues is as follows:

Whether a buyer's duty to inquire is triggered, where notice of a specific defect in their specific property, under Alejandre and Douglas, does **not** exist, is a factual question; the duty was not triggered in this case.

III. FACTUAL BACKGROUND

This case started as a King County Superior Court case for fraud. In 2006, Mary and Mark Dunphy, then wife and husband (but now divorced), bought a condominium at 13020 102nd Lane NE, Unit #3, Kirkland WA 98034. This was a condominium conversion project. Mary Dunphy was a realtor trained and experienced in selling condominium conversions. Dunphy Testimony, RP, Ex. 7, pages 349-351.

Ms. Dunphy volunteered to be the Vice-President of the Kirkland Village HOA. Findings at Exhibit 3, page 2, para b. She was the Vice-President from the inception of the HOA until she sold her unit to the Watts in June 2007. As the Vice-President, she arranged for a number of inspections of the project, starting with an inspection by Safe & Sound Inspection (Darrel Hay) in October 2006. See Findings at Exhibit 3, page 2, para c. She knew about problems with missing WRB then. Ex. 7, page 389. The Village had a number of problems, and ultimately the HOA Board decided to undertake an "envelope study". This was an intrusive

study which, among other things, took the siding off most of the buildings. See Findings at Exhibit 3, page 2, paras e-h; Mary Dunphy was integral to the inspection. She attended the meetings of the HOA at which the inspection was discussed. See Findings at Exhibit 3, paras f-h; Ex. 7, page 400. When the inspection was done, before any siding was put back on the buildings, she and Craig Cleaver (the HOA President) walked through the complex with the lead inspectors on May 4, 2007. See Findings at Exhibit 3, pages 2-3; Photographs at Exhibit 10 (Trial Ex. 9), Dunphy Testimony at RP, Ex. 8, pages 414-415; Craig Cleaver Testimony at RP, Ex. 6, page 73; Mark Cress Testimony at RP, Ex 6, pages 161, 170. Mark Cress, the project lead inspector, led the walk-through, and showed them all of the problems with the complex. Trial Testimony of Cress, Exhibit 6, Pages 161-175. Also Findings at Ex. 3, pages 2-3; Exhibit 10, Trial Exhibit 9, page 039, showing photographs of the complex with siding off, as well as Dunphy's unit #13020 with the siding off.)

The core problem at the complex was a lack of Water Resistant Barrier ("WRB") on the buildings. 70% of the units had missing WRB. RP, Ex. 6, pages 167-168. This was defective construction; had to be replaced, and was going to cost a great deal of money. (In the millions of dollars.) This was a significant material problem. Findings, Ex. 3, page 3,

para 1; also Cress testimony at RP, Ex. 7, pages 197-217.

Mary Dunphy's own unit had missing WRB. She saw this and knew it was missing. See Findings at Exhibit 3, pages 2-3. Trial Testimony of Dunphy, Exhibit 8, RP, page 411-412; Trial Exhibits at Ex. 10, exhibits 9-11. The only members of the HOA Board that went on the walkthrough, and saw all of the problems, were Mary Dunphy and Craig Cleaver. See Findings at Exhibit 3, page 2-3. Mary Dunphy was well aware that there were significant material problems with the missing WRB. See Findings at Exhibit 3, page 2-3.; Ex. 8, pages 413-416

Dunphy was also well aware that CAI would produce a report; that report would detail the problems; and once that report was produced she would have to disclose it. See Findings at Exhibit 3, page 3.

It is notable that Dunphy did not know what was in the HOA Minutes, had not looked at them before she left them on the counter for the Watts to pick up, **and could not have relied on them to provide notice.** Exhibit 9, RP, pages 498-500.

Dunphy testified that she did not create the Minutes and did not see them after they were created. Exhibit 7, RP, page 379-380. She could not recall having read them at all. Exhibit 7, RP, page 379. Judge Lum found, as a Finding of Fact, that the mention of inspections, etc., in the Minutes

were not sufficient to put the Watts on notice. See Findings at Exhibit 3, The appellant court agreed with him. Unpublished Opinion at Ex. 2, pages 22-23.

A month after the inspection, and before the formal report was sent to the HOA, Dunphy put her condo on the market. Right after the inspection, she had started shopping for a single family home, and had found one in Juanita. Ex. 8, RP, page 427. To close the sale, she needed to sell the condo, and quickly. She did not have the cash for a down payment and needed to sell her condo, at full market value, and close the sale. See Findings at Exhibit 3, page 3; Dunphy Testimony, Ex. 8, RP, pages 432-438; Bank Accounts at Exhibit 10, Trial Exhibit 28. She listed her unit for sale in June 2007. Dunphy did not disclose anything about any problems; she did not disclose that there had been an inspection and there were major problems. See Findings at Exhibit 3, page 3-4.

The Watts were a young family and first time buyers. Amy Watts testimony at Ex. 7, RP, page 281. They liked the unit and made a full price offer. They were risk-averse. They had backed out of other offers when they found the units had problems. Ex. 7, RP, page 282.

Dunphy accepted immediately. She then lied on two Form 17's (Disclosure Forms), about whether there had been any inspections,

problems, etc. See Findings at Exhibit 3, pages 3-4; Ex. 10, Trial Exhibits 16; Ex. 8, RP, pages 444-448. She never told them anything about the problems with the complex or her own unit. That was intentional. She agreed at trial that the defects had to be disclosed. Ex. 7, RP, pages 356; 357; Ex. 8, RP, pages 386-387. She agreed the missing WRB was a defect. Ex. 7, RP, pages 364-366. She agreed - finally - that she had seen the siding off her own unit, and missing WRB, during the May inspection. Ex 8, RP, pages 411-413.

Some time after closing, the Watts found out that the complex had very serious problems. The HOA had filed a multi-million dollar claim and then a lawsuit against the developers. The Watts sued Mary Dunphy, alleging that she had purposely, fraudulently lied to them in order to sell the unit for full price, so she could buy her new house.

Watts v. Dunphy went to trial on October 17, 2011, in King County, with Judge Dean Lum. It was a bench trial. Judge Lum found that the Dunphys had committed fraud. Mary Dunphy intentionally lied on the mandatory disclosure form ("Form 17") and otherwise purposely, intentionally, and with intent to defraud, did not disclose any of the problems with the complex, which she knew about, to the Plaintiffs. See Oral Ruling at Exhibit 11; Findings at Exhibit 3, pages 6-7.

IV. THE APPELLATE COURT ANALYZED THE CASE CORRECTLY.

The Dunphys then appealed the Judgment to Washington State Appeals Court, Division I. In the appeal, the Dunphys agreed that Mary Dunphy had lied to the Watts in filling out the Form 17's.

That appeal was denied, and the court's ruling upheld the trial court, in an unpublished opinion on August 26, 2013. Unpublished Opinion, Exhibit 2; Order Denying Reconsideration/Order Awarding Fees, Exhibit 5. That decision allowed for fees. The Dunphys, still with Matthew Davis representing them, filed a reconsideration, which the appellate court denied on December 23, 2013. Fees were awarded.

Judge Lum had – correctly – found that the HOA Minutes, even assuming the Watts had read them, were not sufficient to put the Watts on notice. Oral Decision, RP, Exhibit 11 at 520-521; Findings at Exhibit 3.

The Court of Appeals went into further analysis of the case, and agreed with Judge Lum. It found Alejandro v. Bull, 159 Wn.2d 674, 689, 153 P.3d 864 (2007), not controlling based on the facts of this case. Decision at 15. In Alejandro, the court observed that “reasonably diligent and careful inspection[by the buyers] would have revealed the defective baffle...” Alejandro at 689-90. But the appellate court noted that the Watts had

conducted a proper inspection. The court also noted that the Alejandre buyers' prepurchase inspection had notice about their specific property, unlike the Watts. Exhibit 2, Unpublished Opinion, at 16.

The Court went on to analyze the HOA Minutes; not, as the Dunphys would have the court analyze, by picking minute excerpts out of them, but by analyzing all 33 pages in context. Out of that 33 pages, the Dunphys relied on seven select minute excerpts. Exhibit 2, Unpublished Opinion at 16. There was no reference to the Watt's unit at all, anywhere in the Minutes. Exhibit 2, Unpublished Opinion at 16.

The Appeals Court went on to find that the Minutes contained no context or explanation for the brief references buried in the maze of other irrelevant information. Exhibit 2, Unpublished Opinion at 17.

The Appeals Court discussed Douglas v. Visser, 173 Wash.App. 823, 295 P.3d 800 (2013), Exhibit 2, Unpublished Opinion at 18, as well as Puget Sound Serv. Corp. v. Dalarna Mgmt. Corp., 51 Wn. App. 209, 214-15, 752 P.2d 1353 (1988), Exhibit 2, Unpublished Opinion at 19, Jackowski v. Borchelt, 151 Wn. App. 1, 209 P.3d 514 (2009), Exhibit 2, Unpublished Opinion at 20. In all of these cases, the buyers had failed to inquire further after they had, before their purchase ("prepurchase") notice of a specific defect involving the specific property purchased. There is no dispute

– none – that Watts did not have any notice of a specific defect involving their specific unit. At most, the Watts had, in the Minutes, seven words or phrases, referring to things and events in the Complex, without any context or explanation, buried in 33 pages of other phrases, bullet points, notes, etc., none of which had anything to do with the missing WRB or defects.

The court correctly found that the above-cited cases are not controlling. It went on to find the seven excerpts did not trigger a legal duty for the Watts to make further inquiry. Exhibit 2, Unpublished Opinion at 21.

V. WHY THE REVIEW SHOULD BE REJECTED

Dunphy argues the Court should accept review because this unpublished opinion is in conflict with multiple decisions of this Court.

As an initial matter, in a precedential sense, it cannot conflict with other cases: it is unpublished. It may not be used for any purpose.

As another matter, the case – and the appeal – affirmed the trial court’s Findings of Fact. Findings of Fact are reviewed on a substantial evidence basis, which clearly existed here. It is very hard to see how a factual finding can conflict with other appellate decisions.

There is no “issue of substantial public interest” in this case. RAP 13.4(b)(4). This case is a run of the mill fraud case, that affects only the parties and is unpublished. The Court will note there is no outpouring of confusion or concern from the legal or real estate community. There are no

amicus briefs; no op-ed pieces in the Bar News; no blog postings or any signs of any public interest at all. While the case is very important to the Watts and the Dunphys, sadly, it is important only to them.

There is not a “significant question of law”.RAP 13.4(b)(3). This was a case where the court found the information, buried and scattered as it was, would not have told the Watts anything. The Appeals Court found that the existing case law - Alejandre, Douglas, as well as Puget Sound Serv. Corp. v. Dalarna Mgmt. Corp.. 51 Wn. App. 209, 214-15, 752 P.2d 1353 (1988), and Jackowski v. Borchelt, 151 Wn. App. 1, 209 P.3d 514 (2009) – simply did not apply to this set of facts. That is not a question of law; that is applying the law to the facts. That is what courts do.

Dunphys would have the court order that any information, no matter how confusing; no matter how minute, as a matter of law, puts a buyer on notice. That is not what the case law holds.

It is an argument that fails the common sense anyway. Under Alejandre, etc. – which this case does not remotely modify- if a buyer has notice of a specific defect in his specific property, he has a duty to inquire further. If the court now extends that to all information contained in HOA Minutes, then a buyer has a duty to investigate all possible problems which may be mentioned in the Minutes. And because the HOA Minutes are

informal at best; not designed or intended as an inspection or notice

BRIEF OF RESPONDENTS RE:
PETITON FOR REVIEW

mechanism; are done by volunteer Board members; and reflect the things the Board discussed, rather than major problems with the HOA, this means, quite literally, the burden will be on the buyer to find a needle in a haystack.

Thus, under the Dunphy's proposed reading of Douglas, the Watts— in the days between getting the Minutes and accepting the sale— would have a duty to track down all owners of barking dogs; get an inspection of the parking lot; check with the City and electricians to see if an owner's complaint to the Board was a real problem or not; and would have to plow through all items found in the Minutes, no matter how tiny. That makes no sense.

In a case like this, where there is no prepurchase notice of a specific defect in the Watt's unit, there is necessarily a factual question whether the information that was given to the buyers, was enough to put them on notice. **That is always a factual question, because it depends on the facts.** It can never be an issue of law, because the answer depends on the facts. Calling it a legal question does not make it so.

Dunphy argues that the HOA Minutes are the same thing as an inspection report. Saying so, does not make it so. The Dunphys presented no evidence, nor any coherent argument, how the two are the same, either at trial or in the appeal. **That is because they are not the same thing**

Dunphy argues that the Appeals Court abandons the rule in Alejandre, etc., when it said "specific notice". That is not "abandoning" Alejandre. It is a

precise way of stating the rule in Alejandro, Douglas, etc., all of which were cases involving specific defects involving specific properties.

Dunphy also argues that “inquiry notice” is not a question of fact. That is not correct. In cases where there is no prepurchase notice of a specific defect involving the specific property, necessarily whether the information was sufficient to put the buyer on notice is a factual question.

It cannot be a simply legal rule. It depends on how close the “notice” is to the buyers. An inspection report, commissioned by the buyers, about their (specific) single family home, is obviously very close to the buyers. A set of HOA minutes, which discuss everything under the sun in running the HOA, and which is not designed to alert buyers, is not.

It depends on the quality of the information. A buyer’s inspection is designed to warn buyers about defects; it focuses solely on the condition of the property; it is written to highlight problems. Conversely, HOA Minutes are not intended, written, or kept to warn buyers about anything. They discuss problem areas only to the extent that the HOA board discussed them; and then are written down entirely in the discretion and memory of whoever is doing the writing. (As is apparent from these Minutes.) Here the information was very poor: as the trial court found, the

mention of possible problems consisted of a few terms, buried in a maze of other information.

It depends on the other information contained in the “notice”. A homeowner’s inspection report focuses, again, on the condition of the property; the inspector’s job is to find and alert the buyer about problems. A buyer will naturally tend to read that report carefully. HOA Minutes, on the other hand, perfectly appropriately are a list of information, bullet points, brief references: 98% of which deal with things other than the problems with the WRB. And almost all of which are completely irrelevant in terms of warning a buyer of defects.

It depends on the verbiage contained in the “notice”. Here, the “notice” consisted of seven isolated words, phrases, or sentences, without any explanation, or indeed anything that would tell a reader that here – here! was a major problem, as compared to the kerfuffle about, say, a water feature, which took up considerably more space.

There is no avoiding that this is a factual issue.

Last, Appellants argue that the Watts had “notice of defects in the specific property”. But that is inherently a factual question. The trial court found that they did not have notice of defects in their property; this court found that the trial court had substantial evidence to support its finding. If

there is substantial evidence the appeals court will not overturn a trial court's finding.

VI. REQUEST FOR FEES

Respondents request fees under RAP 18.1.

VII. CONCLUSION

This was not a case where the court of appeals “decided the result it wanted and tried to make the law reach the result”. This was a case fairly decided on the facts of the case. The court rightly decided Alejandre, Douglas, etc. did not apply; and therefore determined, based on the facts, that the Minutes – taken as they were , at the time, not in hindsight – were insufficient to put the Watts on notice.

This court should deny the Petition for Review and award attorney fees.

DATED this 10 day of February 2014.



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Exhibit 1



Timothy W. Dore
U.S. Bankruptcy Court
(Dated as of Entered on Docket date above)

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TIMOTHY W. DORE
United States Bankruptcy Judge
700 Stewart Street, Room 8106
Seattle, WA 98101
(206) 370-5300

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

In re:

MARY HSING PONG,

Debtor.

Bankruptcy No. 13-18066-TWD

SHANE WATTS and AMY WATTS,

Plaintiffs,

Adversary No. 13-01542-TWD

v.

MARY H. PONG,

Defendant.

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT**

THIS MATTER came before the Court on the summary judgment motion filed by Shane and Amy Watts (“Watts”). The Court has reviewed and considered the summary judgment motion, all

1 evidence submitted in support of and in opposition to the summary judgment motion, the records and
2 files in this adversary proceeding and the oral argument held on February 7, 2014. Specifically, the
3 Court considered the pleadings and evidence appearing at Docket Nos. 1, 4, 7, 12 and 14. The Court
4 stated its reasons for granting the summary judgment motion on the record at the conclusion of the
5 hearing on the summary judgment motion on February 7, 2014 as contemplated by Federal Rule of
6 Bankruptcy Procedure 7056 and Federal Rule of Civil Procedure 56(a). The Court concluded that
7 there is no just reason for delay and that entry of final judgment in favor of Watts on the 11 U.S.C. §
8 523(a)(2)(A) cause of action is appropriate under Federal Rule of Bankruptcy Procedure 7054 and
9 Federal Rule of Civil Procedure 54(b). Now, therefore, it is hereby ORDERED that:

10 1. Watts' request for summary judgment on the 11 U.S.C. § 523(a)(2)(A) cause of action
11 is granted.

12 2. The entire amount of the debt owed by Mary H. Pong to Watts set forth in the Order
13 and Judgment dated November 22, 2011 in Watts v. Dunphy, King County, Washington Superior
14 Court Case No. 10-2-07806-1SEA is excepted from discharge under 11 U.S.C. § 523(a)(2)(A).

15 3. The entire amount of the debt owed by Mary H. Pong to Watts set forth in the
16 Commissioner's Ruling Awarding Fees and Costs dated January 23, 2014 in Watts v. Dunphy,
17 Washington State Court of Appeals Division One Case No. 68067-6-1 is excepted from discharge
18 under 11 U.S.C. § 523(a)(2)(A).

19 4. Watts is awarded reasonable attorneys fees and costs incurred in this adversary
20 proceeding in the total amount of \$9,836, which shall be paid by Mary H. Pong.

21 5. This is a final order. All further activity in this adversary proceeding is stayed absent
22 further order of this Court until such time as any appeal of this Order is complete. If there is no appeal
23 of this Order, the Clerk's office shall close this adversary proceeding.

24 /// End of Order ///

Exhibit 2

APPELLATE COURT OF THE STATE OF WASHINGTON
NO. 68067-6-1
FILED: December 23, 2013

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SHANE and AMY WATTS,)	NO. 68067-6-1
)	
Respondents,)	DIVISION ONE
)	
v.)	
)	
MARY P. DUNPHY and MARK L.)	
DUNPHY,)	UNPUBLISHED OPINION
)	
Appellants.)	FILED: December 23, 2013

LAU, J. — Generally, a home buyer’s duty to inquire further of a seller about a home’s defect arises upon notice of the defect. Mary Dunphy, an experienced real estate agent, sold her condominium unit to Shane Watts. Dunphy knew her unit’s lack of weather resistant barrier (WRB) made it vulnerable to water leaks and damage. She intentionally lied about it on the form 17 disclosure statement.¹ As part of the sale documents, Watts reviewed homeowners’ association Board meeting minutes that mentioned “inspections,” “envelope studies,” a “defect attorney,” and other issues but made no mention of particular defects, Dunphy’s unit, or any other individual unit. Watts

¹ The trial court found Dunphy “lied” about the defect.

68067-6-1/2

discovered the defect after the sale closed and sued Dunphy. The trial court found Dunphy liable for fraudulent concealment and fraud. Because the meeting minutes triggered no duty flowing to Watts to inquire further under these circumstances, we affirm and award Watts attorney fees and costs under the purchase and sale agreement.

FACTS

The trial court's factual findings are undisputed. In 2006, Mary Dunphy purchased a condominium unit at 13020 102nd Lane Northeast #3, in Kirkland, Washington. On July 27, 2006, Dunphy became vice president of the Kirkland Village Homeowners' Association (HOA).

In October 2006, Dunphy arranged for Darrel Hay to inspect the buildings in Kirkland Village. Hay checked three buildings and found that all three lacked tar paper or weather resistant barrier (WRB). Hay opined that the lack of WRB was problematic because it made the buildings vulnerable to water leaks and damage. He noted no specific damage. Hay gave his report to Dunphy, who read it.

Dunphy attended all HOA Board meetings—some of which were held in her home—through May 2007. In February 2007, the Board asked construction inspection firm Corke Amento Inc. (Corke) to prepare a presentation regarding Kirkland Village. During its February 2007 meeting, the Board heard Corke's presentation and discussed Hay's report.

Based on the information it received, the Board decided to further pursue its ongoing disputes with Kirkland Village's developer, Center Bay. The Board hired a new property manager, Suhrco Management, which recommended a thorough inspection of

68067-6-1/3

the complex so that the Board could give Center Bay a list of problems that needed to be fixed. The lack of WRB was one of the issues to consider.

In March 2007, Corke prepared a "Scope of Limited Investigation" showing its plan for inspecting the complex. Among other things, the plan showed that Dunphy's unit would have its siding removed. The proposal was circulated among the Board members, and Dunphy read it.

In April 2007, the Board hired Corke to inspect the complex. This decision was discussed and approved by all Board members, including Dunphy. Lack of WRB was among the problems Corke was hired to investigate. The inspection began on May 1, 2007. Corke removed siding on the majority of the complex buildings, and 75 percent of the buildings either lacked WRB altogether or had incorrectly installed WRB. Removal of siding on Dunphy's unit revealed that it lacked WRB. Dunphy saw that her unit lacked WRB.

On May 4, 2007, Corke (including Corke's lead engineer Mark Cress and president Steven Amento), defects attorney David Onsager (hired by the Board to recommend legal action against Center Bay), Board president Craig Cleaver, and Dunphy met to walk through the Kirkland Village complex and view the buildings. Some portions of the buildings still had siding removed, so that the Board and its attorney could see what was underneath the siding. The walk through revealed that the majority of the buildings lacked WRB. Dunphy witnessed the lack of WRB. To summarize, Dunphy—as a member of the Board who participated in the walk through—was aware of significant material problems with the missing WRB under the siding on the buildings throughout the complex, including her own unit. Dunphy was also aware that Corke

68067-6-1/4

would soon produce a written report that, when given to the Board, would have to be disclosed to potential buyers.

The next month (June 2007), Dunphy and her husband purchased a single family home in Juanita for \$473,000. Dunphy needed cash to close the sale. The only way for her to close the sale and move was to sell her Kirkland Village unit at full market value. Buyer Shane Watts signed a purchase and sale agreement for Dunphy's unit, providing for attorney fees to the prevailing party in case of a dispute involving the agreement. As part of the agreement, Dunphy completed a seller's disclosure statement (form 17), as required under chapter 64.06 RCW. Around July 23, 2007, the parties agreed that Watts would purchase the unit for \$273,000.

Watts hired a home inspector to inspect the unit. The inspector did not look under the siding or inspect any other buildings in the complex. The inspection did not reveal the missing WRB on Dunphy's unit or the problems with the buildings in the rest of the complex. The evidence was uncontroverted that a normal, routine home inspection of a condominium would not have revealed any of the problems in the complex or the missing WRB in Dunphy's unit. The trial court found that Watts did a reasonably diligent inspection of the property.

Dunphy filled out two form 17s on July 9 and 25.² In the July 25 form 17, in response to question 4(F), "Are there any defects with the following: . . . Siding . . . Interior Walls . . . Exterior Walls . . . Other", Dunphy answered, "No." This

² The trial court found that Watts had the right to rely on Dunphy's disclosures on form 17, that Dunphy had a duty to fill out form 17 completely and correctly, and that the July 25 form 17 controlled with respect to disclosures.

was a lie. Dunphy knew about the missing or incorrectly installed WRB in multiple buildings in the complex—including her own unit—but she represented that there were no defects in the siding or external and internal walls. No evidence indicated any defect in the siding itself, but a substantial question existed regarding whether the lack of vapor barrier or moisture barrier was a defect. Notices, studies, and oral reports well known to Dunphy indicated the moisture barrier did not exist and that future damage was likely if the problem went untreated.

Also in the July 25 form 17, in response to question 10(A) “Are there any other existing material defects affecting the property that a prospective buyer should know about?”, Dunphy answered, “Don't know.” This was also a lie. Dunphy was well aware of the Corke inspection and the problems pointed out during the May 2007 walk through. Dunphy's misstatements were intentional. Dunphy intended to mislead Watts to ensure the condominium sale closed for full price in a timely manner.³

Dunphy arranged for property manager Suhrco to produce a resale certificate and a series of required documents. These documents included a copy of the HOA Board's meeting minutes for the past 6 to 12 months.⁴ Watts received the minutes and read them enough to comment on the parking situation. The minutes contain a list of the issues the Board addressed in its monthly meetings. Included among those issues

³ As the trial court later found in granting partial summary judgment in Watts's favor, Dunphy also lied regarding whether any study, survey project, or notice existed that would adversely affect the property. We address the partial summary judgment order below.

⁴ It is undisputed that the meeting minutes consist of 33 pages. Watts received 25 pages (through July 2007) covering numerous issues.

68067-6-1/6

are mentions of inspections, envelope studies, Hay's report, and other items. The meeting minutes were admitted at trial as exhibit 3.

The October 16, 2006 meeting minutes mention "[c]oncerns about the moisture barrier under siding." Ex. 3 at 7. The December 12, 2006 meeting minutes state, "Vinyl siding is held off until the rain is more cooperative, so large portions can be pulled back to insure no damage underneath." Ex. 3 at 8.

The February 13, 2007 meeting minutes contain the following notations:

1. Envelop[e] Study was discussed by Mark Cress; an overview of the independent inspection report by Darrell Hays was commented by Mark.
2. Mark Cress presented his findings with photo of the property which included siding, moisture barrier.
3. Discussed options on how to proceed depending on what the POS states about envelop[e] study. Two options are proposed: 1. Intrusive Investigation or 2. Envelop[e] Study
4. Envelop[e] study was the recommendation
5. David Onsager (another attorney) at Stafford Frie Law Firm was mentioned as another option.

.....

Ex. 3 at 11.

The March 13, 2007 meeting minutes include the notation, "Update on inspection. Deferred until next meeting, no response from Mark W. of Corke-Amento." Ex. 3 at 12. The minutes also note, "Inspection—find a second company." Ex. 3 at 14.

The April 10, 2007 meeting minutes include the notation, "Craig/Terry spoke to Corke Amento and we are moving ahead with the envelope/invasive inspection. Center [B]ay wanted to use their inspector, Craig declined that offer, but accepted the offer for Center [B]ay to pay 50% of the cost." Ex. 3 at 15.

The May 8, 2007 meeting minutes include the following notation:

68067-6-1/7

2) Discussion of Intrusive Study

- a. Need David Onsager to weigh in on the moisture barrier and whether or not there is significant damage.
- b. Waiting for results from Corke Amento and David Onsager
- c. David Onsager will provide recommendation in the report
- d. Terry to call David's assistant in order to get the date the report will be ready

Ex. 3 at 17.

On June 12, 2007, the Kirkland Village HOA held its annual meeting for all unit owners. Ex. 3 at 19. The meeting minutes include the notation, "Discussed envelope study and possible assessments. Informed that we are working with Center [B]ay and trying to resolve issues and working on not going into a legal battle." Ex. 3 at 20. The minutes also contain the following notation:

IV. New Business (8:19–8:24)

- a. Inspection/Construction Defect
 - i. Corke Amento performing inspection
 1. Currently waiting for report
 - ii. Asked owners to inform board of any [] defects or issues
 - iii. Timeline—depends on cooperation of builder

Ex. 3 at 20.

The July 12, 2007 meeting minutes include the following notation:

Bill from Corke Amento, inspectors for Envelope inspection came in at \$9350.03
We are holding Center Bay to their offer to pay for half of this inspection.
David Ansager defect Attorney has billed us 1792.00 for 5.6 hours of work.
Missing insulation is an issue the Board will be going after Center Bay for.

Ex. 3 at 23.

After the sale closed,⁵ Watts discovered the condominium's lack of WRB. Watts sued Dunphy for damages in February 2010, alleging breach of warranties, negligent

⁵ Although the trial court made no findings on this issue, the bench trial testimony indicates that the sale closed on August 20, 2007. The testimony also indicates that the

68067-6-1/8

misrepresentation, intentional misrepresentation, and breach of duty of good faith.

Watts amended his complaint in July 2010, voluntarily dismissing the negligent misrepresentation claim but adding claims for breach of contract, fraudulent concealment, and fraud.

The HOA sued Center Bay, and that lawsuit settled for a little over a million dollars. The HOA also has a bankruptcy court claim against Center Bay's owner that was pending at the time Watts and Dunphy went to trial. The HOA has collected approximately \$1.3 million. At the time of trial, no repairs had begun and no plan existed for when repairs would start. Some testimony addressed the repair cost, but "there was no definite plan on what would be done; how much it would cost." The court found the future possible repairs too speculative to use in determining the effect on the current value of Watts's unit. The court found that the "current value of the unit, by clear, cogent, and convincing evidence, is \$132,000." The court also found that without damage, "the condominium would have been worth a minimum of \$170,000," meaning damages were \$38,000.

In December 2010, Watts moved for partial summary judgment, requesting the court to find that Dunphy committed fraudulent concealment and fraud in selling the condominium to Watts.⁶ In February 2011, the court granted in part Watts's motion

HOA Board did not receive Corke's final report regarding the missing or defective WRB until September 2007.

⁶ Regarding fraudulent concealment, Watts argued that (1) the condominium had a concealed defect, (2) Dunphy knew about the defect, (3) the defect presented a danger to the purchaser's property, health or life, (4) the defect was unknown to the purchaser, and (5) the defect would not be disclosed by a careful, reasonable inspection by the purchaser. Regarding fraud, Watts claimed that (1) Dunphy represented that

for partial summary judgment in making the following finding of fact: "1. The court finds that when on the Form 17 dated July 25, 2007, Mary Dunphy answered Question No 1.(G), 'Is there any study, survey project, or notice that would adversely affect the property,' as 'Don't know,' this was a false statement."⁷

During the bench trial, Dunphy argued that the meeting minutes put Watts on inquiry notice of the condominium's lack of WRB, thus triggering Watts's duty to inquire further. The court disagreed and found Dunphy liable for fraudulent concealment and fraud. In its conclusions of law, ¶ 3.4(5), the court stated:

Additionally, [Dunphy's] argument is that the HOA meeting minutes in and of themselves [were] sufficient to put [Watts] on notice and that they had no right to rely on the Form 17 representations and their own Homeowner's inspection report.

But if the Watts had read the [HOA] meeting minutes, what would it have told them? Although the words "defect," "envelope studies," "Investigation," and "defect attorney" were mentioned several times, there is no context or explanation for the brief references buried in a maze of other irrelevant information. Only with the use of 20/20 hindsight and specialized knowledge can we pick out the significance of these words.

The court does not find persuasive the argument that meeting minutes alone are sufficient to give Mary Dunphy the same level of knowledge that we are imputing to the Watts. Although the Watts had the minutes, Ms. Dunphy not only had the minutes for her review, but actually attended all the HOA meetings, except for possibly the June meeting. She was also the Vice President of the Board, and therefore had the opportunity and could reasonably understand what was in those Minutes. She actually lived through them. She experienced it. She was there, and she was present for at least part of the walk through inspection in May 2007. She was aware that the complex did not have a vapor or water

there were no defects, among other material facts, (2) the defects were material, (3) Dunphy's answers were false, (4) Dunphy knew her answers were false, (5) Dunphy intended Watts to rely on her false answers, (6) Watts did not know Dunphy's answers were false, (7) Watts relied on the false answers, (8) Watts had a right to so rely, and (9) Watts suffered severe damages.

⁷ Dunphy does not appeal the trial court's grant of partial summary judgment, and she agrees on appeal that she lied on the form 17.

resistant barrier; and was aware that the engineer and a defect attorney was present on the walk through.

Much has been made of the fact that the engineer only made factual comments and did not offer any conclusions. But that is beside the point. Mary Dunphy knew that a defect attorney and an engineer were looking at several issues in the complex, including the lack of a vapor resistant barrier; and that part of the reason that Ms. Dunphy knew the investigation was going on, was to go [to] the developer and seek to have the developer pay for any cost required to fix the problem. Ms. Dunphy also knew the report would be completed soon, and once the report was done it would have to be disclosed.

The court entered judgment against Dunphy and awarded Watts \$38,000 in damages and over \$55,000 in attorney fees and costs. Dunphy appeals.

ANALYSIS

Standard of Review

Following a bench trial, we review factual findings for substantial evidence and legal conclusions de novo, determining whether the findings support the conclusions.⁸

Sunnyside Valley Irrigation Dist. v. Dickie, 149 Wn.2d 873, 880, 73 P.3d 369 (2003).

The standard of review for a trial court's findings of fact and conclusions of law is a two-step process. First, we must determine if the trial court's findings of fact were supported by substantial evidence in the record. If so, we must next decide whether those findings of fact support the trial court's conclusions of law.

Landmark Dev., Inc. v. City of Roy, 138 Wn.2d 561, 573, 980 P.2d 1234 (1999). If the trial court mislabels a factual finding or legal conclusion, we consider it for what it really is. Willener v. Sweeting, 107 Wn.2d 388, 394, 730 P.2d 45 (1986). "Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the declared premise." Douglas v. Visser, 173 Wn. App. 823, 829, 295 P.3d 800 (2013). In

⁸ Dunphy's reliance on Speelman v. Bellingham/Whatcom County Housing Authorities, 167 Wn. App. 624, 273 P.3d 1035 (2012), is misplaced. Speelman involves due process notice requirements. Dunphy also relies on inapplicable bona fide purchaser case authority.

68067-6-1/11

determining the sufficiency of evidence, an appellate court need only consider evidence favorable to the prevailing party. Bland v. Mentor, 63 Wn.2d 150, 155, 385 P.2d 727 (1963). We defer to the trial court's assessment of witness credibility and evidence weight. In re Welfare of Sego, 82 Wn.2d 736, 739-40, 513 P.2d 831 (1973).

Unchallenged findings of facts are verities on appeal. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 808, 828 P.2d 549 (1992).

Fraudulent Concealment

On a claim for fraudulent concealment, the seller's duty to speak arises

where (1) the residential dwelling has a concealed defect; (2) the vendor has knowledge of the defect; (3) the defect presents a danger to the property, health, or life of the purchaser; (4) the defect is unknown to the purchaser; and (5) the defect would not be disclosed by a careful, reasonable inspection by the purchaser.

Alejandro v. Bull, 159 Wn.2d 674, 689, 153 P.3d 864 (2007). Failure to disclose a material fact where there is a duty to disclose is fraudulent. Stieneke v. Russi, 145 Wn. App. 544, 560, 190 P.3d 60 (2008). The plaintiff must establish each element of fraudulent concealment by clear, cogent, and convincing evidence. Stieneke, 145 Wn. App. at 561.

The parties dispute the fourth requirement—that the defect is unknown to the buyer. Dunphy contends certain HOA Board meeting minute excerpts triggered Watts's duty to inquire about the condominium's latent WRB defects. Watts responds that the meeting minutes' intermittent mention of inspections and defects "buried in a sea of other problems" is insufficient to trigger a duty to inquire. Resp't's Br. at 16 (capitalization omitted). Watts also contends that these minutes provided no specific notice about a specific problem to their specific condominium unit.

Our Supreme Court discussed a buyer's duty to inquire further in the fraudulent concealment context:

Although a fraudulent concealment claim may exist even though the purchaser makes no inquiries which would lead him to ascertain the concealed defect, in those situations where a purchaser discovers evidence of a defect, the purchaser is obligated to inquire further. Simply stated, fraudulent concealment does not extend to those situations where the defect is apparent.

Atherton Condo. Apartment-Owners Ass'n Bd. of Directors v. Blume Dev. Co., 115 Wn.2d 506, 525, 799 P.2d 250 (1990) (citations omitted); see also Douglas, 173 Wn. App. at 830 ("When a buyer is on notice of a defect, it must make further inquiries of the seller"); Puget Sound Serv. Corp. v. Dalarna Mgmt. Corp., 51 Wn. App. 209, 214-15, 752 P.2d 1353 (1988) (same; if the buyer fails to inquire, he cannot later argue that he knew nothing about the extent of the problem).

Dunphy claims, "This is one of those rare appeals that can be decided entirely on the basis of a single recent Supreme Court case, Alejandre v. Bull, 159 Wn.2d 674, 153 P.3d 864 (2007)."⁹ Appellant's Br. at 14. Dunphy argues that under Alejandre, the meeting minutes constitute constructive notice of the condominium defect. Watts responds that any "notice" contained in the meeting minutes is factually distinguishable from the notice in Alejandre.

In Alejandre, defendant Mary Bull owned a single family residence that was served by a septic system. Alejandre, 159 Wn.2d at 678. The year before she put the house up for sale, she noticed soggy ground over the septic system. Alejandre, 159 Wn.2d at 678. She hired William Duncan of Gary's Septic Tank Service to pump the septic tank and also hired Walt Johnson Septic Service to empty the tank and repair a

⁹ Dunphy's opening brief relies exclusively on Alejandre.

68067-6-1/13

broken pipe leading from the tank to the drain field. Alejandre, 159 Wn.2d at 678. Bull also applied for a connection to the city sewer, but abandoned the idea after learning she would have to pay a \$5,000 hook-up fee. Alejandre, 159 Wn.2d at 678.

Bull placed her home on the market in June 2000. Alejandre, 159 Wn.2d at 678. In September 2001, Bull and Arturo and Norma Alejandre entered into an agreement for the sale of Bull's home to the Alejandres. Alejandre, 159 Wn.2d at 678. The agreement required Bull to pump the septic tank before closing and conditioned the sale on a septic system inspection. Alejandre, 159 Wn.2d at 678.

As provided for in the agreement, Walt's Septic Tank Service pumped the tank and sent the Alejandres a copy of the bill. Alejandre, 159 Wn.2d at 679. The bill stated, "[T]he septic system's back baffle could not be inspected but there was '[n]o obvious malfunction of the system at time of work done.'" Alejandre, 159 Wn.2d at 679 (second alteration in original) (quoting Ex. 6). Bull gave the Alejandres a seller's disclosure statement indicating that the house had a septic tank system that was last pumped and inspected in fall 2000 and that "Walt Johnson Jr. replaced broken line between house and septic tank" Alejandre, 159 Wn.2d at 679 (quoting Exhibit 5). Bull answered "no" to the inquiry whether there were any defects in the septic system's operation. Alejandre, 159 Wn.2d at 679.

A month after the sale closed, the Alejandres smelled an odor inside the home and heard water gurgling. Alejandre, 159 Wn.2d at 680. They also noticed a foul odor outside the home and believed it came from the ground around the septic tank, which they said was soggy. Alejandre, 159 Wn.2d at 680. By chance, they hired William Duncan of Gary's Septic Tank Service—the same person who pumped the system for

68067-6-1/14

Bull in 2000. Alejandre, 159 Wn.2d at 680. Duncan told the Alejandres that he could pump the tank, but he could not fix the underlying problem because the drain fields were not working. Alejandre, 159 Wn.2d at 680. He also informed them that he previously told Bull that the drain fields were not working and that she should connect to the city's sewer system. Alejandre, 159 Wn.2d at 680.

The Alejandres hired another company to connect to the city sewer system. Alejandre, 159 Wn.2d at 680. During this work, the company found that the baffle to the outlet side of the septic system was missing, thus allowing sludge from the septic tank to enter and plug the drain field. Alejandre, 159 Wn.2d at 680.

The Alejandres sued Bull for fraud and misrepresentation, claiming costs and damages totaling nearly \$30,000. Alejandre, 159 Wn.2d at 680. After they rested their case, Bull moved for judgment as a matter of law. Alejandre, 159 Wn.2d at 680. The trial court granted the motion, ruling that the economic loss rule barred the Alejandres' claims and that they failed to present sufficient evidence supporting their claims. Alejandre, 159 Wn.2d at 680. We reversed, holding that the Alejandres presented sufficient evidence to warrant the jury's consideration. Alejandre, 159 Wn.2d at 680-81.

Our Supreme Court reversed. Although Alejandre is better known for its economic loss rule discussion—which is not relevant here—the court also affirmed the trial court's decision to dismiss the Alejandres' fraudulent concealment and fraud claims. Regarding fraudulent concealment, the issue in Alejandre concerned element five—whether the buyers had shown that the defect in the septic system would not have been discovered through a reasonably diligent inspection. Alejandre, 159 Wn.2d at 689-90. Our Supreme Court concluded they had not met their burden:

The Alejandres failed to meet their burden of showing that the defect in the septic system would not have been discovered through a reasonably diligent inspection. In fact, the Alejandres accepted the septic system even though the inspection report from Walt's Septic Tank Service disclosed, on its face, that the inspection was incomplete because the back baffle had not been inspected. The testimony at trial showed that this part of the septic system was relatively shallow and easily accessible for inspection. A careful examination would have led to discovery of the defective baffle and to further investigation.

Alejandre, 159 Wn.2d at 689-90.

Alejandre is not controlling based on the facts of this case.¹⁰ Our Supreme Court faulted the buyers for failing to conduct a reasonably diligent prepurchase inspection of their home's septic system in the face of an obvious, incomplete inspection report that revealed no inspection of the back baffle. As the court observed, a reasonably diligent and careful inspection of the septic system would have revealed the defective baffle that was easily accessible for inspection.

The present case involves no dispute over whether Watts undertook a reasonably diligent prepurchase inspection of their condominium unit. Watts hired a home inspector to conduct a prepurchase inspection of the condominium unit. That

¹⁰ From the opinion, it appears the Alejandres did not hire their own home inspector or septic system inspector. Instead, they relied on the report prepared by the seller's septic tank service provider as well as a property inspection report—required by the lending bank—that indicated the septic system “Performs Intended Function” and stated that “everything drains OK.” Alejandre, 159 Wn.2d at 680. The earnest money agreement required the seller to pump the tank before closing.

As provided in the earnest money agreement, a septic tank service (Walt's Septic Tank Service) pumped the tank, and the Alejandres received a copy of the bill. The bill stated on it that the septic system's back baffle could not be inspected but there was “[n]o obvious malfunction of the system at time of work done.” Alejandre, 159 Wn.2d at 679. (quoting Ex. 6). As noted above, Watts hired and relied on their home inspector's report as to the condition of their condominium unit.

inspection revealed nothing to indicate the condominium's lack of WRB such as exterior water damage. The court's unchallenged findings state:

The Watts had a home inspection done by a home inspector. The inspection did not look under the siding, or inspect the rest of the complex. The inspection did not disclose any of the missing WRB on the Dunphy unit, or the missing [WRB] or the problems with the buildings in the rest of the complex. The evidence was uncontroverted that a normal, routine home inspection of a condominium would not have uncovered any of the problems in the complex or the missing WRB in the Dunphy unit. The court finds the Watts did a reasonably diligent inspection of the property.

Unlike the present case, the buyers in Alejandre had prepurchase notice of an incomplete inspection. They relied on an obvious, incomplete septic system report that revealed the back baffle had not been inspected.

Also, the Alejandres' prepurchase notice about the incomplete inspection involved the specific property they purchased. In the present case, Dunphy relies exclusively on 33 pages¹¹ of meeting minutes to argue that Watts should have inquired further after reviewing the minutes. To make this point, Dunphy relies on seven select meeting minute excerpts quoted above. Even when viewed in complete context, no mention or reference to WRB problems associated with Watts's condominium unit appears in any of the meeting minutes. And there is no information identifying which of the 64 units or 12 buildings are affected by the WRB problem.¹²

¹¹ We question whether Watts received the monthly meeting minutes from August to December 2007 because the record shows they received the meeting minutes at the end of July 2007, when they purchased the unit.

¹² The undisputed facts show the Kirkland Village Condominiums complex consists of 12 buildings with each building comprised of 3 to 7 individual townhome style units. Watts's unit is one of 7 in the 13020 building. Most of the units, including Watts's, are two stories high. A trial court is not required to make findings on stipulated or undisputed matters. Swanson v. May, 40 Wn. App. 148, 158, 697 P.2d 1013 (1985).

It is true the meeting minute excerpts mention “inspection,” “envelope inspection,” “invasive inspection,” “moisture barrier,” “intrusive study,” “report,” and “defect.” According to Dunphy, this notice triggered Watts’s duty to inquire about the WRB problem. The court’s unchallenged finding of fact states:

The Minutes contain a list of all the issues the Board dealt with. In there, among the other issues, are mentions of inspections; envelope studies, Darrel Hay’s report, etc. The court looks at the minutes in the context of what the Watts knew at the time, not with the 20/20 hindsight at the time of trial. . . .

The court also made the following finding of fact which it mistakenly labeled as a conclusion of law:¹³

But if the Watts had read the [HOA] meeting minutes, what would it have told them? Although the words “defect,” “envelope studies,” “[I]nvestigation,” and “defect attorney” were mentioned several times, there is no context or explanation for the brief references buried in a maze of other irrelevant information.

Substantial evidence supports this finding of fact. The meeting minutes provide no details or explanation about the nature and extent of the WRB defect and specific units affected. Review of the trial evidence and meeting minutes establish substantial evidence to support the trial court’s finding that the disputed meeting minute “words” were “brief references buried in a maze of other irrelevant information.” For example,

¹³ This finding appears under the heading “conclusions of law” in the written findings of fact and conclusions of law. It is well settled that the labels used by the trial court to distinguish findings versus conclusions are not controlling. We will consider legal conclusions and factual findings for what they are even though they may be mislabeled as a finding or a conclusion. Kane v. Klos, 50 Wn.2d 778, 788, 314 P.2d 672 (1957) (findings of fact are not made such by label or by commingling conclusions of law with findings of fact); Willener v. Sweeting, 107 Wn.2d 388, 394, 730 P.2d 45 (1986) (if the trial court mislabels a finding or legal conclusion, we consider it for what it really is). Here, the trial court commingled its factual findings and conclusions of law. But we treat them for what they are. Dunphy assigns error to this factual finding as an erroneous “conclusion of law.”

68067-6-1/18

HOA president Craig Cleaver described the October 16, 2006 meeting minutes as a “laundry list” of issues affecting the condominium complex, including homeowners complaining about several things, especially parking and landscaping. The record evidence shows the HOA Board sought to gather information on all complaints and issues about the condominium complex in order to submit them to the developer for redress. The WRB problem was merely one item in the developer “laundry list” during the condominium’s conversion from developer owner to a homeowners association structure. As Watts points out, these were simply “‘bullet points’ in a long list of ‘bullet points,’” none of which specifically related to Dunphy’s unit or any other unit. Resp’t’s Br. at 17. We conclude substantial evidence supports the trial court’s findings of fact and the findings support its conclusion of law that no duty to inquire further flowed to Watts based solely on review of the HOA Board meeting minutes.

Dunphy also relies on other cases to support her duty to inquire claim. None of those cases control for the reasons discussed above. Those cases involve buyers with prepurchase notice of a particular obvious defect affecting the specific property purchased. In Douglas,¹⁴ the buyers’ inspector identified an area of rot and decay near the roof line and caulking suggestive of a prior roof leak. He found an area of rotted sill plate below the section of water-damaged exterior siding. A portion of sill adjacent to the rotted section had recently been replaced and floor joists near the rotted area had been sistered. Douglas, 173 Wn. App. at 831-32. The buyers argued that the area of rot their inspector discovered was not unusual and they had no knowledge that 50 to 70 percent of the sill plate and rim joist were destroyed. We rejected that argument. Citing

¹⁴ We decided Douglas after the close of appellate briefing.

68067-6-1/19

Dalarna, we stated the well-settled rule that “[w]hen a buyer is on notice of a defect, it must make further inquiries of the seller.” Douglas, 173 Wn. App. at 830. We reasoned:

The Douglasses and their inspector were on notice of the defect and had a duty to make further inquiries. The Douglasses argue that “they had no idea that 50 to 70% of the sill plate and rim joist were destroyed” and that the area of rot [their inspector] discovered was not unusual. That, however, is the precise argument we rejected in Dalarna. Once a buyer discovers evidence of a defect, they are on notice and have a duty to make further inquiries. They cannot succeed when the extent of the defect is greater than anticipated, even when it is magnitudes greater.

Douglas, 173 Wn. App. at 832.

We also noted that additional facts should have prompted the Douglasses to inquire further:

Despite [the discovery of rot], on top of the Vissers’ previous evasive and incomplete answers and the Vissers’ on-going failure to provide their own prepurchase inspection report, either of which should have caused concern and further inquiry, there is no evidence that the Douglasses made any inquiries whatsoever after the inspection.

Douglas, 173 Wn. App. at 834 (emphasis added).

In Dalarna, a buyer purchased an apartment building and later sued the seller for fraudulent concealment after discovering substantial water leakage problems. The buyer’s inspector noted water stains and loose tiles. Despite this prepurchase notice of a water leak, the buyer closed on the sale. The buyer later discovered the water damage was more extensive. The buyer claimed that the seller concealed the extensive nature of the leak. Dalarna, 51 Wn. App. at 211-12. We held that due to the buyer’s prepurchase knowledge of the water leak, its severity was readily ascertainable through further inquiries. Dalarna, 51 Wn. App. at 215.

In Jackowski v. Borchelt, 151 Wn. App. 1, 209 P.3d 514 (2009), the buyers purchased a waterfront home and later sued the sellers for fraud and fraudulent concealment when soil instability caused the house to slide. Before the sale, the sellers gave the buyers a form 17 disclosure statement that contained language referring the buyers to a Mason County Department of Community Development letter. Jackowski, 151 Wn. App. at 8. The letter indicated that the “following critical areas are present on this property: . . . Landslide Hazard Areas.” Jackowski, 151 Wn. App. at 8. The letter also referenced an existing geotechnical report conducted by a geologist. Jackowski, 151 Wn. App. at 8. The sellers faxed a copy of the letter to their real estate agent. Jackowski, 151 Wn. App. at 8. The fax included an addendum, provided by the geologist, that again referenced the geotechnical report. Jackowski, 151 Wn. App. at 8. The sellers’ real estate agent then faxed the letter and addendum to the buyers’ agent. Jackowski, 151 Wn. App. at 8. The buyers received and read the letter and addendum. Jackowski, 151 Wn. App. at 8. An addendum to the real estate purchase and sale agreement provided that the sale was contingent on the buyers’ inspection—including, at the buyers’ option, a soils/stability inspection. Jackowski, 151 Wn. App. at 8. The buyers conducted no soil stability investigation before the sale closed. Jackowski, 151 Wn. App. at 8.

Jackowski addressed two issues relevant here—whether a reasonable inspection would have disclosed the landslide risk (fraudulent concealment claim) and whether the buyers established they had a right to rely on the sellers’ fraudulent representations (fraud claim). Jackowski, 151 Wn. App. at 17. The court affirmed summary judgment dismissal of those claims:

Here, as we discussed above, the Jackowskis had prepurchase knowledge of the landslide hazard area and, thus, reliance on the Form 17 disclosure could not be reasonable. A reasonable inspection would have disclosed the landslide risk. The Jackowskis acknowledge that they had read the letter indicating that the property that they were contracting to buy was in a landslide hazard area. Tim Jackowski read documents before closing that referenced an existing geotechnical report. Tim Jackowski acknowledged that he made the sale contingent on his ability to hire professionals to conduct property inspections including soil and slope stability. Nevertheless, he failed to utilize the contingency to request such inspections. The trial court did not err by granting summary judgment on the Jackowskis' fraudulent concealment claims based on the landslide risk.

Jackowski, 151 Wn. App. at 17-18 (emphasis added).

Douglas, Dalarna, and Jackowski stand for the unremarkable proposition that a buyer's failure to inquire further after prepurchase notice of a specific defect involving the specific property purchased defeats a fraudulent concealment claim. These cases are not controlling. The undisputed facts and reasonable factual inferences support the conclusion that the meeting minutes triggered no duty flowing to Watts to make further inquiry.

Fraud

To succeed on a fraud claim, the plaintiff must establish by clear, cogent, and convincing evidence all nine elements of fraud:

(1) representation of an existing fact; (2) materiality; (3) falsity; (4) the speaker's knowledge of its falsity; (5) intent of the speaker that it should be acted upon by the plaintiff; (6) plaintiff's ignorance of its falsity; (7) plaintiff's reliance on the truth of the representation; (8) plaintiff's right to rely upon it; and (9) damages suffered by the plaintiff.

Stiley v. Block, 130 Wn.2d 486, 505, 925 P.2d 194 (1996). The sole issue on appeal is element 8—whether Watts had a right to rely on Dunphy's form 17 disclosures.

As our Supreme Court noted in Williams v. Joslin, 65 Wn.2d 696, 698, 399 P.2d 308 (1965), “The right to rely on representations is inseparably connected with the correlative problem of the duty of a representee to use diligence in respect of representations made to him.” (Quoting Puget Sound Nat’l Bank v. McMahon, 53 Wn.2d 51, 54, 330 P.2d 559 (1958)). A buyer who is on notice of a defect and has a duty to make further inquiry cannot justifiably rely on the seller’s misrepresentations. Douglas, 173 Wn. App. at 834; see also Alejandro, 159 Wn.2d at 690 (“Having failed to exercise the diligence required, [the Alejandres] were unable to present sufficient evidence of a right to rely on the allegedly fraudulent representations.”).

Dunphy’s sole argument on appeal is that Watts failed to show he had a right to rely on Dunphy’s representations because “[t]he Watts’ right to rely on any representations made to them was tied to their diligence concerning the information they had.”¹⁵ Appellant’s Br. at 20. As discussed above, the meeting minutes were insufficient to put Watts on inquiry notice of the latent defect. Watts had no duty to inquire further, and his reliance on Dunphy’s form 17—a required disclosure form under chapter 64.06 RCW—was not unreasonable. Substantial evidence supports the trial court’s findings and the findings support its conclusion that Dunphy was liable for fraud.

Attorney Fees

Dunphy and Watts each request attorney fees on appeal as the prevailing party under the purchase and sale agreement. In Washington, parties may recover attorney fees if allowed by statute, contract, or some well-recognized principle of equity.

¹⁵ Dunphy does not challenge the trial court’s conclusion that Watts met the other eight elements of fraud.

Torgerson v. One Lincoln Tower, LLC, 166 Wn.2d 510, 525, 210 P.3d 318 (2009).

Here, although no copy of the real estate purchase and sale agreement appears in the record on appeal, the parties agree—and the trial court found—that the purchase and sale agreement provides for an award of fees to the prevailing party in a dispute concerning the agreement. Because Watts is the prevailing party on appeal, he is entitled to attorney fees and costs conditioned on his compliance with RAP 18.1.

CONCLUSION

For the reasons discussed above, we affirm and award reasonable attorney fees and costs to Watts as the prevailing party conditioned on compliance with RAP 18.1.¹⁶

WE CONCUR:

Cox, J.

Becker, J.

¹⁶ In her reply brief, Dunphy moved to strike certain references to trial testimony in Watts's response brief. The motion is denied under RAP 17.4(d) ("A party may include in a brief only a motion which, if granted, would preclude hearing the case on the merits. . . ."). In any event, this court is able to decide which portions of the record to consider even without such a motion.



Exhibit 3

ORIGINAL

IT IS ORDERED that moving party is required to provide a copy of this order to all parties who have appeared in the case.

Superior Court of Washington
County of KING

SHANE AND AMY WATTS

Plaintiffs,

No. 10-2-07806-1 SEA

v.
MARY DUNPHY AND MARK DUNPHY

Defendants.

Findings of Fact and
Conclusions of Law

I. Basis for Findings

The findings are based on trial. The following people attended:

Plaintiffs.

Plaintiffs' Lawyer.

Defendants

Defendant's Lawyer.

II. Findings of Fact

Upon the basis of the court record, the court *Finds*:

2.1 Residency of Plaintiffs

Plaintiff Shane Watts and Amy Watts are residents of the State of Washington.
Defendants Mary Dunphy and Mark Dunphy are residents of the State of Washington.
All parties are residents of King County, and were residents in July 2007.
All actions by Mary and Mark Dunphy were for the benefit of the community.
Jurisdiction and venue are proper in King County, Washington.

 ORIGINAL

1 **2.2 Background Facts**

2 a. In 2006, Mary Dunphy purchased a condominium at 13020 102nd Ln NE, #3, Kirkland
3 WA 98034.

4 b. On July 27, 2006, Mary Dunphy became Vice President of the Kirkland Village
5 Homeowner's Association.

6 c. In October 2006, Mary Dunphy arranged for an inspection of buildings in Kirkland
7 Village by Darrel hay. Mr. Hay checked three buildings and found that all three buildings, there
8 was no tar paper or weather resistant barrier (WRB). He opined that these were problems and
9 that the lack of WRB would allow the buildings to be vulnerable to water leakage and damage,
10 though at the time he did not note any specific damage. That report was provided to Mary
11 Dunphy. She read the report.

12 d. In a Board meeting in February 2007, the Hay report was discussed by the Board.
13 Mary Dunphy was present at all Board meetings, some of which were held in her home, through
14 May 2007.

15 e. The Board decided to investigate further, in connection with its ongoing disputes with
16 the developer, Center Bay. The Board hired a new property manager, Suhroco, who
17 recommended a thorough inspection of the complex be done , in order to go back to the
18 developer with a list of things that needed to be fixed. The lack of WRB was one of the issues to
19 look at.

20 f. In February 2007, The Board asked a construction inspection firm, Corke Amento
21 (CAI), to prepare a presentation for the Board. That was presented at the Board meeting in
22 February 2007. In the same meeting, the Hay report was discussed by the Board.

23 g. On March 14, 2007, CAI prepared a "Scope of Limited Investigation", showing the
24 plan for the complex inspection. It showed, among other things, that Mary Dunphy's unit would
25 have the siding taken off. That proposal was circulated among the Board members and Mary
Dunphy read it.

h. In April 2007, the Board hired CAI to do the inspection. It was discussed and
approved by the entire Board, including Mary Dunphy. Among the potential problems being
looked at was the lack of WRB.

i. The inspection took place starting on May 1, 2007. The majority of the complex
buildings had siding taken off, and showed that 75% or so of the buildings had WRB either
missing or installed incorrectly. Mary Dunphy's unit had siding taken off and showed there was
no WRB on her unit. Mary Dunphy saw that there was no WRB on her unit.

k. On May 4 2007, CAI, including Mark Cress, the CAI lead engineer; Steven Amento,
CAI President; David Onsager, a defects attorney retained by the board to make
recommendations as to legal action against Center Bay; Craig Cleaver, and Mary Dunphy met
to walk through the complex and look at the buildings. Some portion of the buildings still had
siding off, specifically so the board and the attorney could look at what was underneath the

1 siding. The walkthrough showed there was no WRB on the majority of the buildings. Mary
2 Dunphy saw there was no WRB.

3 l. Mary Dunphy, as a member of the Board, who had been at the walkthrough, was
4 aware that there were significant material problems with the missing WRB under the siding on
the buildings throughout the complex.

5 m. Mary Dunphy was aware that CAI would produce a report; and when the report was
6 produced to the Board it would have to be disclosed to a potential buyer.

7 n. The next month, in June 2007, Mary and Mark Dunphy purchased a single family
8 home in Juanita, for \$473,000. Mary Dunphy did not have the cash she needed to close the
sale. The only way for her to close the sale, and move, was to sell her unit, at full market value,
and close the sale.

9 o. The Watts signed a Purchase and Sale Agreement, which provided for attorney fees
10 to the prevailing party, in a dispute that involved the Agreement. Along with that, Mary Dunphy
provided a Real Property Disclosure Statement (Form 17.). The parties reached an agreement
11 to purchase the unit for \$280,000 about July 23, 2007.

12 p. The Watts had a home inspection done by a home inspector. The inspection did not
13 look under the siding, or inspect the rest of the complex. The inspection did not disclose any of
the missing WRB on the Dunphy unit, or the missing or the problems with the buildings in the
14 rest of the complex. The evidence was uncontroverted that a normal, routine home inspection of
a condominium would not have uncovered any of the problems in the complex or the missing
WRB in the Dunphy unit. The court finds the Watts did a reasonably diligent inspection of the
15 property.

16 o. Mary Dunphy filled out two Form 17's, on July 9 and July 25. The court finds the
17 buyers (the Watts) had a right to rely on Mary Dunphy's disclosures on the Form 17. The court
also finds Mary Dunphy had a duty to fill the Form 17 out completely and correctly. The court
finds the July 25 Form 17 is the Form that controls with respect to disclosures.

18 q. In the July 25 Form 17, in response to Question 1(G), "Is there any study... that would
19 affect the property", Mary Dunphy answered "Don't Know". This was a lie. Mary Dunphy knew
about both the Darrell Hay inspection and the CAI inspection in May. The court in a summary
20 judgment order found that Mary Dunphy lied when she answered this question. That order was
not appealed and is the law of the case, as well.

21 r. In In the July 25 Form 17, in response to Question 4(F), "Are there any defects with
22 the following...", Mary Dunphy answered "No". This was a lie. She knew of the missing or
wrongly installed WRB in multiple buildings in the complex, including her own unit. She did not
23 say material defects, but she represented that there were no defects in the siding, external, and
the internal walls. There was no evidence that there was any defect in the siding itself, but there
24 was a substantial question whether the lack of the vapor barrier or moisture barrier was a
defect. There were clearly notices, studies, and oral reports well known to Ms. Dunphy that the
25 moisture barrier did not exist, and that future damage was likely if something was not done. The
fact that no damage might ever occur, or that the whole fix might be paid by the developed,

1 does not mean there was no defect.

2
3 s. In the July 25 Form 17, in response to Question 10(A) "Are there any other existing
4 material defects affecting the property that a prospective buyer should know about?", Mary
5 Dunphy answered "Don't Know". This was a lie. She was well aware of the CAI inspection, the
6 walk through, and the problems that Mark Cress had pointed out in the walkthrough on May 4
7 that she had attended.

8
9 t. These misstatements were intentional, and intended to mislead the Watts, in order to
10 make sure the sale closed, for full price, and on time.

11
12 u. Mary Dunphy arranged for Suhrco, the property manager, to produce a Resale
13 Certificate, along with a series of required documents. Those documents included a copy of the
14 HOA Board Minutes for the past 6-12 months. Though testimony was conflicting, the court finds
15 the Watts did receive the Homeowner's Association meeting minutes and had the
16 opportunity to read them, and in fact did read them enough to comment on the parking
17 situation .

18
19 v. The Minutes contain a list of all the issues the Board dealt with. In there, among the
20 other issues, are mentions of inspections; envelope studies, Darrel Hay's report, etc. The court
21 looks at the minutes in the context of what the Watts knew at the time, not with the 20/20
22 hindsight at the time of trial. The court finds that the mention of the various studies was
23 insufficient to put the Watts on notice that there were major problems with the complex in terms
24 of missing WRB.

25
26 q. The sale closed, and Mary Dunphy purchased their new home. The Watts found out
27 about the problems after the purchase. The HOA sued the developer. That lawsuit has settled,
28 for a little over a million dollars. The HOA also has a bankruptcy court claim against the
29 developer's owner, which at the time of trial was still under way. The HOA has collected
30 approximately 1.3 million dollars. No repairs have been started, and there is no plan on when
31 they will be started. While there was testimony as to how much the repairs would cost, there
32 was no definite plan on what would be done; how much it would cost. The court finds the future
33 possible repairs to be too speculative to use in determining the effect on the current value of the
34 unit.

35
36 r. The court finds that the current value of the unit, by clear, cogent, and convincing
37 evidence, is \$132,000.

38
39 While the HOA has a substantial amount of money in the bank, there remain a few
40 unanswered questions that do affect the value of the condo today. It may be that the stigma will
41 be significantly reduced, if not eliminated, years into the future once the repairs are completed
42 and paid for, but the issue is the fair market value now, not years into the future.

43
44 The court finds the testimony of the current value of the unit without damage to be more
45 difficult. While the condo would clearly be more valuable without the damage, the court finds Mr.
46 Stegelman's testimony that the value is \$238,000 to be too high, given his testimony that the
47 market has tended downwards; the Case Shiller Index, which includes single family and condo
48 sale, is lower; and other units have sold for less. If the court applies just the Case-Shiller Index,

1 the value would be less than \$238,000. The value would be in the neighborhood of \$212,000,
2 plus whatever discount would have to be made for the market softening between April and
3 October. The court finds the \$238,000 figure completely unpersuasive.

4 In the present case, the court finds the plaintiffs have established by clear, cogent, and
5 convincing evidence that the condominium would have been worth a minimum of \$170,000. In
6 other words, more than the damage price of the three bedroom sale of the same complex,
7 whose seller had to make an additional 420,000 concession to the buyer. Their damages are
8 \$38,000.

9 III. Conclusions of Law

10 The court makes the following conclusions of law from the foregoing findings of fact:

11 3.1 Jurisdiction

12 Jurisdiction and venue are proper in King County.

13 3.2 **Breach of Covenant of Good Faith and Fair Dealing.** The court finds that is not a free
14 floating duty, but one that rather must come within other causes of action, and is also subject to
15 other restrictions under Washington case law. The court really has a claim for fraudulent
16 concealment and a claim for fraud.

17 3.3 **Effect of Order on Summary Judgment.** The court finds the Order on Summary
18 Judgment issued by Judge Middaugh is the law of the case; and that constitutes a finding of fact
19 that Mary Dunphy's statement "Don't Know" was a false statement. That goes a long ways
20 towards establishing liability; but the court finds it needs to make several alternative findings.

21 3.4 **Fraudulent Concealment.** The court finds the Dunphys liable for fraudulent
22 concealment as follows. The court finds all factors were proven by clear, cogent, and convincing
23 evidence:

24 (1) The residential dwelling has a concealed defect. The court finds the
25 missing/damaged WRB in the complex, and on the Dunphy's unit, was concealed. A routine,
normal inspection would not have discovered the missing WRB on the Dunphy's unit or on the
other buildings in the complex.

(2) The vendor has knowledge of the defect. The court finds that Mary Dunphy had
direct personal knowledge of the defect: she got the Hay report; she saw personally that there
was no WRB on her unit during the May 1-2 inspection, and she saw the other buildings, and
the problems, during the May 4 walkthrough with CAI. She was unaware of the exact cost of the
repairs but she knew the defects existed. She knew more than the Board minutes indicated.
She was present at all Board meetings through May 2007; she participated in Board
discussions; and she was at the May 4 walkthrough.

(3) The defect presents a danger to the property, health, or life of the purchaser. It is
undisputed that the defects (the missing and damaged WRB) presented a risk of damage from
water getting into the buildings. Although there was testimony that damage had not occurred to

1 all buildings, it was undisputed that water damage might occur in the future due to the missing
2 WRB.

3 (4) The defect is unknown to the purchaser. There was no dispute that the Watts did not
4 know about the defects.

5 (5) The defect would not be disclosed by a careful, reasonable inspection by the
6 purchaser. Although the court has found the Watts did receive the HOA meeting minutes, they
7 plaintiffs have shown by clear, cogent, and convincing evidence that a careful, reasonable
8 inspection would not have turned up the defects, and/or that they had a right to rely on the
9 representations in the Form 17.

10 The plaintiffs offered uncontroverted testimony and evidence that the Watts home
11 inspection was standard in the industry for home buyers; and that such inspection does not
12 entail invasive removal of siding. There was no evidence that such an inspection was
13 unreasonable, or that the inspection should have discovered the concealed defects.

14 Additionally, the argument is that the HOA meeting minutes in and of themselves
15 sufficient to put the buyers on notice and that they had no right to rely on the Form 17
16 representations and their own Homeowner's inspection report.

17 But if the Watts had read the HOPA meeting minutes, what would it have told them?
18 Although the words "defect", "envelope studies", "Investigation", and "defect attorney" were
19 mentioned several times, there is no context or explanation for the brief references buried in a
20 maze of other irrelevant information. Only with the use of 20/20 hindsight and specialized
21 knowledge can we pick out the significance of these words.

22 The court does not find persuasive the argument that meeting minutes alone are
23 sufficient to give Mary Dunphy the same level of knowledge that we are imputing to the Watts.
24 Although the Watts had the minutes, Ms. Dunphy not only had the minutes for her review, but
25 actually attended all the HOA meetings, except for possibly the June meeting. She was also the
Vice President of the Board, and therefore had the opportunity and could reasonably
understand what was in those Minutes. She actually lived through them. She experienced it.
She was there, and she was present for at least part of the walk through inspection in May
2007. She was aware that the complex did not have a vapor or water resistant barrier; and was
aware that the engineer and a defect attorney was present on the walk through.

Much has been made of the fact that the engineer only made factual comments and did
not offer any conclusions. But that is beside the point. Mary Dunphy knew that a defect attorney
and an engineer were looking at several issues in the complex, including the lack of a vapor
resistant barrier; and that part of the reason that Ms. Dunphy knew the investigation was going
on, was to go the developer and seek to have the developer pay for any cost required to fix the
problem. Ms. Dunphy also knew the report would be completed soon, and once the report was
done it would have to be disclosed.

3.5 **Fraud.** The court finds all elements of fraud are proven by clear, cogent, and convincing
evidence as follows:

(1) Representation of an existing fact. See above.

(2) Materiality. See above.

(3) Falsity. See above.

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(4) The speaker's knowledge of its falsity. See above.

(5) Intent of the speaker that it should be acted upon by the plaintiff. See above.

(6) Plaintiff's ignorance of its falsity. See above.

(7) Plaintiff's reliance on the truth of the representation. See above.

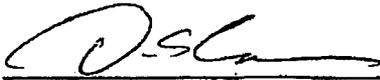
(8) Plaintiff's right to rely upon it. See above.

(9) Damages suffered by the plaintiff. See above.

The court makes the finding that the plaintiffs have established by clear, cogent, and convincing evidence all of the elements for the fraud and fraudulent concealment claims.

3.6 Damages. The court is persuaded that the Plaintiffs have the burden of proving damages by clear, cogent, and convincing evidence. The court has no problem finding that some damages were caused. It is more difficult to determine exactly how much damage was caused. See above for analysis; the court finds the damages to be \$38,000.

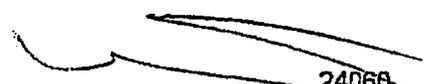
Dated: 11/22/11



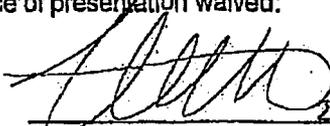
Judge Michael Fox
Dean Lum

Presented by:

Approved for entry:
Notice of presentation waived:



24060 Date
Craig Jonathan Hansen
Attorney for Plaintiff



20939 4/4/11 Date
Matthew F. Davis
Attorney for Defendant

Amy Watts/Plaintiff

Mary Dunphy/Defendant

Exhibit 4

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ORIGINAL

IT IS ORDERED that moving party is required to provide a copy of this order to all parties who have appeared in the case.

Superior Court of Washington, County of KING

SHANE AND AMY WATTS
Plaintiffs,
v.
MARY DUNPHY AND MARK DUNPHY
Defendants.

No. 10-2-07806-1 SEA
Order and Judgment
(Clerk's Action Required)

I. Judgment/Order Summaries

1.1 Money Judgment Summary:

Judgment Summary is set forth below.

- A. Judgment creditor: Shane and Amy Watts
- B. Judgment debtor: Mary Dunphy and Mark Dunphy
- C. Principal judgment amount: \$38,000.00
- D. Interest to date of judgment 0.00
- E. Attorney fees 54,711.85
- F. Costs 900.00
- G. Other recovery amount
- H. Principal judgment shall bear interest at 5.25% per annum
- I. Attorney fees, costs and other recovery amounts shall bear interest at 5.25 % per annum
- J. Attorney for judgment creditor: Craig Jonathan Hansen
- K. Attorney for judgment debtor: Matthew F. Davis
- L. Other: _____

End of Summaries

II. Basis

Findings of Fact and Conclusions of Law have been entered in this case.

Judgment and Order

Hansen Law Group PS
12000 NE 8th St. Ste 202
Bellevue, WA 98005-3193
V: 425-709-6762/ F: 425-451-4931

ORIGINAL

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III. Order

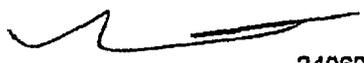
It Is Ordered That:

3.1 Mary and Mark Dunphy are liable for fraud and fraudulent concealment, in the sale of their condominium to Shane and Amy Watts, pursuant to the Findings of Fact and Conclusions of Law.

3.2 The Watts are awarded damages of \$38,000 against the Dunphs, jointly and severally.

3.3 The court further awards attorney fees of \$ 54,711.55 and costs of \$ 900 to the Watts.

Dated: 11/22/11 
Judge Dean Lum

Presented by:  24060 Date
Approved for entry:  20939 11/2/11 Date
Notice of presentation waived:
Craig Jonathan Hansen Attorney for Plaintiff
Matthew F. Davis Attorney for Defendant

Amy Watts/Plaintiff Mary Dunphy/Defendant

Exhibit 5

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

SHANE and AMY WATTS)	No. 68067-6-1
)	
Respondents,)	COMMISSIONER'S RULING
)	AWARDING FEES AND COSTS
v.)	
)	
MARY P. DUNPHY and MARK L. DUNPHY,)	
)	
Appellants.)	
)	

On August 26, 2013, this Court issued an unpublished opinion in favor of respondents Shane and Amy Watts. On December 23, 2013, this Court withdrew the opinion and issued a new unpublished opinion in favor of respondents Watts. This Court affirmed the trial court's judgment and awarded attorney fees to Watts subject to compliance with RAP 18.1.

On August 30, 2013, Watts initially filed a cost bill and declaration of counsel for attorney fees. After the withdrawal of the August 26, 2013 opinion and issuance of the December 23, 2013 opinion, Watts filed an updated declaration of counsel for attorney fees and cost bill. Appellants Mary and Mark Dunphy did not file an objection to the cost bill under RAP 14.5 or to the declaration of fees under RAP 18.1(e).

I have reviewed Watts' cost bill and declaration of fees. With respect to the cost bill, the requested costs (\$436.47) include items not allowed under RAP 14.3, such as costs for e-filing, legal messenger delivery, and parking. However, this Court may allow the costs for transmittal of the record (\$48 and \$7.51) and reproduction of brief (\$69.50) in the total amount of \$125.01 under RAP 14.3.

No. 68067-6-1

With respect to the attorney fees, the requested fees (\$12,417.50) are reasonable and should be awarded.

Watts request an award of interest at the rate of 5.25% per year on the awarded costs and attorney fees. But this Court's award of costs and fees is not a judgment. Watts may reduce the award to judgment at the trial court and then seek interest on the judgment. Accordingly, it is

ORDERED that the costs of \$125.01 and the attorney fees of \$12,417.50, in the total amount of \$12,542.51 are awarded to respondents Shane and Amy Watts. Appellants Mary and Mark Dunphy shall pay the costs and the fees.

Done this 23rd day of January, 2014.



Court Commissioner

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 JAN 23 AM 9:17

Exhibit 6

Watts v. Dunphy

RP – Cleaver Trial Testimony – 10/17/11

1 part of the money that we had approved, so it was
2 expected.

3 Q. And as far as you know from Mark's billings -- and Mark
4 has worked with you -- the billings that Mark does, is
5 an accurate reflection of the hours he spent?

6 A. Correct.

7 Q. Would you look at page 13, please. And page 13 is a
8 detailed receipt for the period 5/1 through 5/31?

9 A. Okay.

10 Q. Half way down where it says "5/04/07," there is an
11 "SJA"? Do you see that?

12 A. Yes.

13 Q. And there is a 2.1 hours?

14 A. Ah hum.

15 Q. And there is a "Site visit with M Cress." That's Mark,
16 right?

17 A. Correct.

18 Q. And D. Onsager. That's actually the defects attorney?

19 A. Correct.

20 Q. And then there is the Board. Now, the Board was you
21 and Mary, wasn't it?

22 A. I believe that's correct.

23 Q. And do you have any recollection of how much time you
24 spent out there now, five years later?

25 A. 45 minutes, maybe.

Watts v. Dunphy

RP – Cress Trial Testimony – 10/17/11

1 Q. That was with you, with the Board, and David Onsager?
2 A. That's right.
3 Q. What was the purpose of that walk-through?
4 A. To show them what we had been finding and what was
5 consistent throughout the project.
6 Q. Now, at that point, this is a Friday, was the
7 inspection pretty much done as far as taking things off
8 the building?
9 A. I think that the removal of most of the siding
10 components was complete. It looks like it carried over
11 a little bit into the following Monday.
12 Q. But, most of it was done?
13 A. Correct.
14 Q. And you walked the decision makers through, to show
15 them what the problems were?
16 A. Yes.
17 Q. You are familiar with home owner inspections, right?
18 A. Yes.
19 Q. On residential and condominiums?
20 A. Yes, I am.
21 Q. And homeowner inspectors typically will either do the
22 inspection with the homeowner or say here is what I
23 have found, here is the problem?
24 A. I believe so, yes.
25 Q. Was this walk-through one of those kinds of

1 reading wouldn't have been cause for concern, would it?

2 A. Depends on when the reading was taken and what the

3 reading was.

4 Q. If the moisture readings were taken daily, those

5 readings on May 1st would not have been a cause for

6 concern?

7 A. That's correct.

8 Q. And the inspector would not have known that there was

9 no moisture resistant barrier under the siding,

10 correct?

11 A. Not unless he looked.

12 Q. Now, in this inspection, obviously there was a lot work

13 taking off the siding. Homeowner inspection for home

14 buyers, condo buyers, do they take off the sidings?

15 A. I have haven't been present when they took the siding

16 off.

17 Q. They don't do intrusive inspection, do they?

18 A. Rarely.

19 Q. You had a walk-through with the Board and David Onsager

20 on May 4th?

21 A. Correct.

22 Q. You talked a little bit about the purpose of it. Do

23 you remember Ms. Dunphy being out there?

24 A. Yes.

25 Q. Do you remember Mr. Cleaver being out there?

1 Q. Now, as part of that inspection, you and Lisa Hanses
2 and the others took a lot of pictures, didn't you?
3 A. Yes.
4 Q. The individual inspector or the person that was
5 looking, took pictures of the building as they were
6 inspecting it?
7 A. That is correct.
8 Q. Would you turn to Exhibit 9. This is called the LAH
9 Working Notebook. What is that?
10 A. That is Lisa Hanses' own personal notebook she kept.
11 She assisted me in preparation of the report, as well
12 as preparation of the investigation plan and other
13 things regarding the project.
14 Q. Would you turn to page two, lot.
15 A. Okay.
16 Q. Looking at the top of the page, it says "Kirkland
17 Village, the JCJ Day 1." Who is JCJ?
18 A. I believe -- again, this is years ago -- that stood for
19 Jens (phonetic) Joe Hansen.
20 Q. These were pictures of the building that Mr. Joe Hansen
21 took as he was looking at it?
22 A. Yes.
23 Q. And was it on these pictures and notes and your
24 impressions, and so on, that you based your report
25 later on?

1 A. Not in these photos but photos of all the parties
2 involved.

3 Q. I will ask you a couple of questions about that. If
4 you still look at page two, we are looking three rows
5 down the page to one that says "7060." Generally, what
6 does that show, do you recall?

7 A. 7060?

8 Q. Yes.

9 A. That is a photo where I stated earlier. Typically we
10 will not write notes on a photo, before an
11 investigation opening or during the investigation we
12 take a note showing where the photograph is taken. In
13 this case, it was Unit 4, being that we get into the
14 report process we need to be able to look through the
15 photos and identify where we were at the time.

16 Q. The photograph below it was the subject on Unit 4?

17 A. I believe so.

18 Q. Is that a photograph underneath the siding in which
19 there is no moisture barrier showing or what does that
20 show?

21 A. Depends on the photograph you are referring to
22 specifically.

23 Q. The one that says IMG 7060 above it. The one that
24 shows bare wood.

25 A. That is a photograph of the location itself, not a

1 photograph identifying where we were.

2 THE COURT: I think you are looking at 7063.

3 MR. DAVIS: I'm sorry, Your Honor.

4 Q. 7063.

5 A. 7063 shows some resemblance of a moisture barrier
6 underneath the siding. It looks deteriorated. There
7 was water standing on the gypsum sheathing.

8 Q. Is that an indication of a problem?

9 A. Yes.

10 Q. Why?

11 A. You do not want or expect to see water standing on the
12 face of gypsum sheathing if there is a WRB intact. You
13 could possibly see water trails on the face of the
14 building paper or WRB, but not behind it.

15 Q. What would be the case, that it was improperly
16 installed somewhere else?

17 A. Correct.

18 Q. Would you turn to page four, lot. As an idea, can you
19 tell, looking at the second row, IMG 7084, what that
20 shows? Second row, first picture.

21 A. What would you like to know about it?

22 Q. What does that show, if anything?

23 A. It appears to be under the eave of a roof, showing
24 water intrusion at some interface; and they are doing a
25 moisture test of the sheeting.

1 Q. The photograph right next to it, what does that show?
2 A. Water damage to the gypsum sheathing.
3 Q. Would both of those be considered problems?
4 A. Yes.
5 Q. Would both of those be indicative of the problems you
6 found throughout the complex?
7 A. No. I wouldn't say indicative, the reason being we did
8 not look at that many of these locations with
9 representative samplings of various locations. So,
10 this would be a relatively unique situation here.
11 Q. Would you turn to page 13, lot. At the top, it says
12 "JCJ Day 2"?
13 A. Okay.
14 Q. Second row, far right hand picture, IMG 7194?
15 A. Okay.
16 Q. What does that show?
17 A. That is the interface with the vinyl siding to what we
18 call a belly band, which is installed on the building,
19 and shows moisture damage and organic growth on the
20 face of the gypsum sheathing.
21 Q. As you turn through these pictures, through these
22 pages, there seems to be a lot of pages of bare wood or
23 damage. For example, turn to page 14.
24 A. Okay.
25 Q. Second row, middle pictures, IMG 7209. What does that

1 show?

2 A. A moisture reading taken of the underlying gypsum
3 sheathing below the window.

4 Q. Does that show damage?

5 A. It shows staining on the face of the gypsum sheathing.

6 Q. That doesn't necessarily indicate damage, though, or
7 does it?

8 A. It's damage to the gypsum sheathing itself.

9 Q. Is that a problem?

10 A. It can be, yes.

11 Q. Would you turn to page 39, lot. Page 39 at the top
12 says "Building 13020 May 1, 2007." The second picture
13 says "DSCN 7872," right?

14 A. Yes.

15 Q. What does that show me?

16 A. That's an area where the vinyl siding had been removed,
17 showing the plywood substraight underneath.

18 Q. Is there a moisture resistant barrier there at all?

19 A. There is not.

20 Q. Is that a problem?

21 A. Yes, it is.

22 Q. Why?

23 A. The moisture barrier is really the primary layer of the
24 defense. The moisture barrier keeps the water out of
25 the interior building components.

1 Q. That's between Units 3 and 4, isn't it?

2 A. Yes, it appears to be.

3 Q. That would be right there, correct?

4 A. Yes.

5 THE COURT: Counsel, can you clarify if it is in
6 the middle or the third unit.

7 MR. DAVIS: Number three, Your Honor.

8 MR. HANSEN: The siding removed is in Units 3 and
9 4.

10 Q. Is there any sign of water damage there?

11 A. There appears to be a little bit at the interface with
12 the concrete entrance and the siding.

13 Q. The fact that there is no water barrier, that would be
14 a problem, wouldn't it?

15 A. Yes.

16 Q. Did you find that to occur at many areas in this
17 complex?

18 A. Yes, I did.

19 Q. What percentage did you estimate of the buildings had
20 water resistant barrier missing?

21 A. Missing or improperly installed, probably around
22 70 percent.

23 Q. That's a lot?

24 A. It is.

25 Q. That is a blowup of that same page, page 39. You are

1 looking at the second row. Those are the moisture
2 readings, correct?

3 A. Yes.

4 Q. The first picture, DSCN 7674, has a moisture reading of
5 11.3?

6 A. Okay.

7 Q. The second one has a moisture reading of 12.7?

8 A. Right.

9 Q. The third has a moisture reading of 10.1?

10 A. Right.

11 Q. This is in July, right?

12 A. Yes.

13 Q. I'm sorry. May. Are these moisture readings out of
14 the ordinary?

15 A. No. They are actually not out of the ordinary, not for
16 this time of year. Any moisture reading below
17 15 percent on a Delmore meter is considered acceptable.
18 15 percent or above is reason for alarm.

19 Q. If there was a homeowners inspection on May 1st, doing
20 the moisture reading on the siding, they would have no
21 cause for concern, would they?

22 A. Would you restate that.

23 Q. Yes. If there was a homeowners inspection, if that
24 condo had been sold on May 1st and there was a moisture
25 reading done by a homeowners inspection, the moisture

1 reading wouldn't have been cause for concern, would it?

2 A. Depends on when the reading was taken and what the
3 reading was.

4 Q. If the moisture readings were taken daily, those
5 readings on May 1st would not have been a cause for
6 concern?

7 A. That's correct.

8 Q. And the inspector would not have known that there was
9 no moisture resistant barrier under the siding,
10 correct?

11 A. Not unless he looked.

12 Q. Now, in this inspection, obviously there was a lot work
13 taking off the siding. Homeowner inspection for home
14 buyers, condo buyers, do they take off the sidings?

15 A. I have haven't been present when they took the siding
16 off.

17 Q. They don't do intrusive inspection, do they?

18 A. Rarely.

19 Q. You had a walk-through with the Board and David Onsager
20 on May 4th?

21 A. Correct.

22 Q. You talked a little bit about the purpose of it. Do
23 you remember Ms. Dunphy being out there?

24 A. Yes.

25 Q. Do you remember Mr. Cleaver being out there?

1 A. Yes.

2 Q. Do you remember David Onsager?

3 A. Yes.

4 Q. Did you and Mr. Amento meet them at the site?

5 A. Yes.

6 Q. What happened then?

7 A. As I stated earlier, we just walked around the project
8 and briefly touched on some of investigation openings
9 and what we were finding.

10 Q. Did you touch on the fact that moisture barrier was
11 missing?

12 A. Absolutely.

13 Q. Did you touch on the fact that it was missing in most
14 of the buildings?

15 A. Yes.

16 Q. Did you touch on other major problems that you were
17 seeing with the buildings?

18 A. Yes, we did.

19 Q. At the time did you have any idea how much it would
20 cost to fix that?

21 A. No, I did not.

22 Q. Did you know it would be expensive?

23 A. Absolutely.

24 Q. Did you communicate that to them?

25 A. To who?

1 Q. Did you communicate that to the Board, or did you think
2 it was self evident?

3 A. No; I did not communicate that to the Board.

4 Q. What other kinds of problems did you communicate to the
5 Board, that you can recall, in that inspection?

6 A. I don't really remember communicating anything to the
7 Board members that were present as to what we were
8 finding.

9 Typical protocol, when we do these types of things
10 is, you don't share a lot of information with the Board
11 members at the time. Keep it quite vague and then give
12 them a report.

13 Q. You did tell them that the moisture barrier was a
14 problem?

15 A. Correct.

16 Q. Did you discuss the drainage issue with them?

17 A. I don't believe so.

18 Q. Did Mr. Cleaver bring up the drainage problem with
19 them?

20 A. I don't believe he did in that walk-through.

21 Q. Did Mr. Amento, when you got through briefing them on
22 what the issues were, what you had found, did
23 Mr. Amento spend some time talking with them
24 separately?

25 A. I don't recall.

1 Q. Do you recall him talking with them, with Mr. Onsager?
2 A. I at least remember him talking briefly with Craig
3 Cleaver and Mr. Onsager.
4 Q. Do you recall what they were talking about?
5 A. I don't.
6 Q. Subsequent to that, when you finished the briefing, was
7 there any doubt in your mind that the Board knew that
8 there were problems with the complex?
9 A. I don't know what the Board was thinking. We had just
10 walked around and pointed out what we had seen. What
11 their conclusion was, I don't know.
12 Q. Mr. Davis has mentioned the method of construction. Do
13 you know what he meant by that when you e-mailed
14 Mr. Cleaver?
15 A. Would you restate that.
16 Q. Okay. You had mentioned in an e-mail or in the
17 deposition that you had been surprised that there were
18 defects with as little damage as you saw?
19 A. Yes.
20 Q. Why was that?
21 A. Well, one of the reasons for the lack of extensive
22 damage, at least on the surface, is that these
23 buildings were built prior to the energy code. So,
24 water gets in, water gets out, and the natural air flow
25 through the building dries out the surface of the

1 underlying building components.

2 The reason I made the comment is, really for the
3 reason is, when you are dealing with these, you are
4 going after an insurance carrier, and typically what
5 happens here, they simply have an insurance carrier,
6 the damage is what triggers the insurance coverage. It
7 doesn't mean the problems don't have to be fixed, but
8 you are trying to identify where they come from.

9 Q. And in this case, there were clearly problems?

10 A. Absolutely.

11 Q. Were they significant problems?

12 A. Yes.

13 Q. Hypothetical situation. If the complex were an
14 apartment complex, and you were asked by a prospective
15 buyer to do this inspection on the complex, and you
16 finished it, would you tell your client, the buyer,
17 that these were significant problems?

18 A. Yes, I would. Yeah.

19 Q. Do you feel you communicated that to the Board?

20 A. I communicated to the Board in the report form.

21 Q. Do you feel the Board had any idea about it in the
22 walk-through?

23 A. I can't speak to what the Board was thinking.

24 Q. But, you did tell them about it?

25 A. I pointed out what we were finding.

1 Q. Do you know how long you spent on the site?

2 A. During a particular day or?

3 Q. During the walk-through.

4 A. I was there all day, sir. I started walking a small
5 portion that day.

6 Q. You know the term grandfather at all?

7 A. Yes.

8 Q. What does it mean?

9 A. Well, it means, depending on what you are talking
10 about. If somebody thinks a permit can be
11 grandfathered or a certain aspect of the building can
12 be grandfathered into the conversion. But what in
13 particular are you referring to?

14 Q. Did you ever tell the Board that the problems had been
15 grandfathered?

16 A. I would never say that.

17 Q. Were you asked as part of this project, after the
18 inspection finished, to put together an estimate for
19 the HOA as to how much to cost to repair?

20 A. I personally did not put together an estimate. We went
21 out there. At the time, I believe there were three
22 different contractors that were engaged in preparing
23 estimates.

24 Q. How much were the estimates?

25 MR. DAVIS: Objection. Hearsay.

Exhibit 7

Watts v. Dunphy

RP – Cress Trial Testimony – 10/18/11

1 investigation, the engineer was retained by defense
2 counsel to basically go out and observe what basically
3 we were documenting.

4 Q. Well, there wasn't a lawsuit, was there?

5 A. No, there was not.

6 Q. So, there would not be defense counsel?

7 A. There was somebody there for JRP at the time.

8 Q. And that was for Centerbay?

9 A. Yes, I believe it was.

10 Q. And do you recall that Centerbay had asked if they
11 could have their engineer tag along?

12 A. Yes, they did.

13 Q. And Mr. Cleaver asked you if that was okay, and you
14 said it was fine?

15 A. That's correct.

16 Q. Now, at the end of your inspection, you had collected
17 a lot of data, but you hadn't analyzed it yet; is that
18 right?

19 A. That's correct.

20 Q. And at that point you had concluded that there was
21 concerns about the moisture barrier, right?

22 A. Yes, that's a good way of putting it.

23 Q. But, not problems with the moisture barrier,
24 necessarily?

25 A. There were obvious problems.

1 Q. I am handing you your deposition. Do you remember
2 when you gave your deposition in this case in 2010?
3 A. Vaguely.
4 Q. If you would, turn to page 64?
5 A. Okay.
6 Q. On line 14, there is a question from Mr. Hansen: "All
7 right. When you finished up with the inspection, is
8 it safe to say - well, let's strike that. When you
9 finished up with the inspection in May, is it safe to
10 say that there were significant moisture barrier
11 problems with the complex?" Your answer was: "Safe
12 to say that we perceived there to be significant
13 concerns with the moisture barrier." You made that
14 distinction yourself in your deposition, didn't you?
15 A. Yes.
16 Q. And in fact, isn't it true that one of the perplexing
17 things about this inspection and this project was the
18 whole defect damage thing?
19 A. Correct.
20 Q. And that's because you didn't see the damage that you
21 expected to see?
22 A. We saw damage, but not to the extent one would expect.
23 Q. Right. So, would you agree that after your
24 inspection, the question of construction defects is
25 more of a question than a fact?

1 A. Would you re-ask that, please.

2 Q. Would you agree that after the inspection, the issue
3 of construction defects was more of a question than a
4 fact?

5 A. Not at all. The defects were very evident and
6 present. There was no question whether or not there
7 were defects. The only question was why was there
8 less damage than expected.

9 Q. And you did, in fact, tell Mr. Cleaver that there was
10 less damage than you would expect?

11 A. Yes.

12 Q. During the inspection itself, you didn't tell
13 Mr. Cleaver or anyone else on the board that it was
14 going to be expensive to fix the problem, did you?

15 A. I did not.

16 Q. And you didn't tell them what specifically needed to
17 be done to fix the problem?

18 A. That's correct.

19 Q. You simply told them that the moisture barrier was
20 missing?

21 A. Amongst other things, yes.

22 Q. What else did you tell them?

23 A. Well, I probably would have pointed out the lack of
24 wall interfaces, no caulking on the windows and such.

25 Q. But, it was more of a descriptive of what you are

1 looking at rather than analytical, that this is what
2 this means?
3 A. That's correct.
4 Q. On May 4th, there was a walk through. May 4th or
5 May 5th. I think we end it May 4th, don't we?
6 A. We do.
7 Q. And you were present, Mr. Amento was present,
8 Mr. Onsager was present. What was your role in that
9 walk through?
10 A. I believe it was a tour, as a man on the ground,
11 taking them around, the openings that we had opened,
12 inspection openings, and showing them what we found.
13 Q. Were you there the whole time?
14 A. I was not there the entire time with Amento and
15 Onsager, but I was on-site during the entire time.
16 Q. And would you agree that it's -- back up. Was Mary
17 Dunphy there?
18 A. I believe she was there for part of the walk through,
19 yes.
20 Q. Do you recall any conversations that you had with Mary
21 Dunphy?
22 A. I do not.
23 Q. Do you recall where you had any conversations with
24 Mary Dunphy?
25 A. I don't believe I had any one-on-one conversations

1 with her.

2 Q. Do you recall any instances when you explained
3 something and she was in the group to whom you
4 explained to?

5 A. I don't recall. I believe she may have been in the
6 group at first, but I don't know if she was there the
7 entire time.

8 Q. So, is there any specific thing that you can tell us
9 that you told Mary Dunphy about the project?

10 A. I cannot.

11 Q. Now, in your deposition, if you would turn to page 48,
12 and line 16 you were asked "So, on May 4th, Mr. Amento
13 is out there two hours, you're out there six hours,
14 and you're out there with the board and Mr. Onsager?
15 Correct."

16 A. Correct..

17 Q. "Do you recall who was out there on the board?" "I
18 only recall Craig Cleaver being there." "Do you
19 remember any other members of the board being there at
20 all?" "I don't."

21 A. Okay.

22 Q. But, today you do?

23 A. I have had a chance to think about it and who was
24 there at the time, yes.

25 Q. Did you know who Ms. Dunphy was?

1 A. I think I met her once or twice before.

2 Q. But, did you know who she was at the May 4th meeting?

3 A. What do you mean who she was? By name?

4 Q. Right.

5 A. I knew she was a board member.

6 Q. You knew she was a board member?

7 A. Yes.

8 Q. But, did you know her name?

9 A. I don't know.

10 Q. Would you look at page 25 of your deposition, on line

11 one. You were asked, "Do you recall Ms. Dunphy being

12 there? Let me propose to you that Ms. Dunphy is

13 sitting over here, a very nice woman. Do you recall

14 her being at the board meetings?" Your response was,

15 "I may have seen her before. I don't remember where."

16 Is that consistent with your recollection of Mary

17 Dunphy?

18 A. Yes.

19 Q. Now, as a result of this inspection that you did, on

20 the May 4th meeting shortly after, you hadn't even

21 started on your report, had you?

22 A. Correct.

23 Q. And, so, when you talked with Mr. Cleaver or the

24 board, you didn't tell them that the siding was going

25 to have to be removed and a weather barrier put in,

1 did you?

2 A. I would not have said that at that time.

3 Q. And Mr. Onsager was there. And I understood you to
4 testify yesterday that he was out there in
5 anticipation of possible litigation; is that right?

6 A. Yes, I believe he was there to take a firsthand look
7 and form his own opinion on what needed to happen
8 next.

9 Q. But, litigation as a concept wasn't actually
10 discussed, was it?

11 A. Not with me present, it wasn't.

12 Q. And your prior experience with Mr. Onsager was not
13 limited to construction inspections, you knew he
14 represented homeowner associations?

15 A. That's correct.

16 Q. And no one said anything at that May 4th meeting about
17 suing the developer, did they?

18 A. Not with me present.

19 Q. So, after the May 4th meeting, you set to work
20 drafting your report, correct?

21 A. That's correct.

22 Q. How long do you think it would take to do a report
23 like that?

24 A. It varies by its size and the scope of the project,
25 but you know, you could research, do all relevant

1 documents, typically we produce it in a month or two.

2 Q. And this particular draft report is Exhibit Number 10
3 and it's dated July 12th. Two months. Did it take an
4 unusually long time to do this report?

5 A. I don't recall if it was unusually long not or not.

6 Q. Do you recall any specific conversations that you had
7 with anybody at the board between the May 4th meeting
8 and the July 12th?

9 A. I don't recall, although Craig may have e-mailed me
10 regarding the report, but I don't think so.

11 Q. Do you recall that you sent the draft report to
12 Mr. Cleaver, and him returning it to you and saying
13 hey, where is the drainage issue?

14 A. That's right.

15 Q. Mr. Cleaver hadn't talked to you at all about the
16 drainage issue since May 4th, had he?

17 A. I don't think he had.

18 Q. So, you then revised it to the final report, which is
19 Exhibit Number 11, right?

20 A. That's correct.

21 Q. And in Exhibit Number 11, it's dated August 14th, but
22 apparently didn't get to the board until September.
23 You heard that?

24 A. I did hear that.

25 Q. Is that consistent with your recollection?

1 A. Yes, it is.

2 Q. And you didn't share any of the contents of the final
3 report with Mr. Cleaver until you gave him the final
4 report, did you?

5 A. I don't believe I did.

6 Q. We have looked at page 22 of Exhibit 11, which is
7 titled Site Drainage Issue?

8 A. Okay.

9 Q. It says, "During our initial visit to the Kirkland
10 Village complex, we noted numerous areas of the
11 complex with improper site drainage and standing
12 water. Our review of the public offering statement
13 indicates." It does not appear that there appears to
14 be a recommendation in the public offering statement.
15 So, you amended the report to include this statement
16 about drainage, right?

17 A. That's right.

18 Q. You did that without going back to the site, didn't
19 you?

20 A. Not just for that purpose. I think we had returned to
21 the site several other times, probably to make sure
22 all the openings had been put back correctly or put
23 back in a preexisting condition, and maybe have looked
24 at other things, but not specifically to look at
25 drainage.

1 Q. Perhaps a better way for me to ask this would be, the
2 site drainage issue is based on your visit of
3 February 23, 2007?
4 A. Yes.
5 Q. So, it wasn't based on the May 1st and 2nd inspection?
6 A. That's right.
7 Q. Because you weren't looking at it on the May 1st and
8 2nd inspection?
9 A. That's correct.
10 Q. Except for the one pipe?
11 A. That's correct.
12 Q. Which seemed a lot more important to Mr. Cleaver than
13 it did to you?
14 A. That's correct.
15 Q. Now, on February 23, 2007, you took pictures in order
16 to do the proposal, right?
17 A. I don't recall. Maybe not being the only reason out
18 there, I don't recall.
19 Q. To put this back, Exhibit Number 7 is your
20 presentation to the board with pictures taken on
21 February 6; Exhibit 8 is your proposed, which is
22 Number 14; and the proposed scope has pictures some of
23 which are dated 2/23?
24 A. Okay.
25 Q. And your proposed scope, you weren't really thinking

1 about drainage issues at that time; is that correct?

2 A. That's correct.

3 Q. So, when you revised the report on August 14th to add
4 the site drainage issue, you were simply making
5 assumptions based upon what you had seen, but no
6 additional investigation?

7 A. That's correct.

8 Q. Now, in fact, in September of 2008, you did do an
9 investigation of the drainage system?

10 A. That is correct.

11 Q. And you found out that the drainage system had not
12 been done the way it was supposed to have, right?

13 A. That is correct.

14 Q. But, you didn't have that information until September,
15 2008?

16 A. We visually could see that there was not a
17 comprehensive drainage system installed, but we did
18 not investigate to see how the current system was
19 functioning.

20 Q. You didn't know whether the public offering
21 statement --

22 A. It was very obvious that the plan identified in the
23 public offering statement had not been implemented.

24 Q. And then on the next page, page 23 of your conclusion,
25 you state that "Based on the investigation performed

1 on site, it is apparent that moisture intrusion is
2 occurring at numerous locations throughout the
3 condominium project. Due to the as-built construction
4 of the project and the fact that the current energy
5 code requirements were not in place at the time of
6 construction, most of the moisture that enters behind
7 the cladding has the ability to exit at the bottom of
8 the cladding, or is evaporated." Then there is
9 "moisture that causes damage." Did you hear
10 Mr. Cleaver testify that this report didn't change his
11 own subjective notion of the value of the condo?

12 A. Can you restate that one more time.

13 Q. Did you hear Mr. Cleaver testify after he got this
14 report, that it didn't change his own view of the
15 value of the condominium?

16 A. I believe he stated that, yes.

17 Q. Do you think that you had given him information that
18 should have changed his view of the condominium by now
19 or had you just given him information about what
20 needed to be done?

21 A. You said by now. Does that mean currently or?

22 Q. By August 14, 2007, or September of 2007, when he
23 first got the report.

24 A. You are asking did I give him information that the
25 condo was worth less?

1 Q. I am asking you a horrible question. Based upon the
2 totality of everything that you had told Mr. Cleaver,
3 up to and including the final report, was his response
4 that he didn't see anything that changed the value of
5 the condominium seem reasonable to you?

6 MR. HANSEN: I have to object, Your Honor. I
7 don't think he is an expert in values. I don't think
8 he can testify to what Mr. Cleaver was thinking about
9 its valuation.

10 THE COURT: Sustained.

11 Q. Had you told Mr. Cleaver anything to alert him that
12 these defects would likely affect the value of the
13 units and condominiums?

14 A. I had not.

15 Q. Now, there was a lawsuit filed in 2010. Were you
16 still with Amento-Corke or had you left by then?

17 A. I had left by then.

18 Q. And they decided to keep you on as the expert?

19 A. That's correct.

20 Q. And exhibit 13 is this Remco Deacon estimate. This
21 estimate says that it's "based upon JRP's Scope of
22 Repair dated June 4, 2008 and Addendum 1 dated
23 February 15, 2008." Do you see that?

24 A. I do.

25 Q. Now, had you actually seen that Scope of Repair and

1 Addendum?

2 A. I had helped work on it.

3 Q. You what?

4 A. I don't create it.

5 Q. In order to understand what this bid is for, you would
6 need these two documents?

7 A. Yes, you would.

8 Q. If you look at the second page, it has section 01
9 GC's. Is that general cost?

10 A. General condition.

11 Q. General condition. And, so, this has \$315,000 of
12 general conditions?

13 A. That's correct.

14 Q. And the wall repairs themselves was \$756,000?

15 A. That's correct.

16 Q. For the whole project?

17 A. Yes.

18 Q. And "WDO's & Door." What would that be?

19 A. That's windows and doors.

20 Q. Does WDO's include organisms, or did I get that wrong?

21 A. You got that wrong. It's abbreviation for windows. I
22 don't know why they do it that way.

23 Q. Okay. So, windows and doors. Does this call for
24 replacing all the windows and doors in the project?

25 A. It did not. We were trying to reuse the windows by

1 pulling them out, and pre-flashing them properly and
2 putting them back in.

3 Q. Were the windows and doors a necessary part of doing
4 the wall repair?

5 A. Yes.

6 Q. You sort of lumped those two together?

7 A. Yes; although it's separated.

8 Q. But, as a practical matter, if you were to say fix the
9 moisture barrier problem, you would have to pull off
10 the siding and install the flashing around the
11 windows?

12 A. Yes.

13 Q. So, as a realistic matter, if you add these two
14 numbers up, it's about a million dollars for the
15 actual cost of the moisture barrier problems,
16 exclusive of general conditions; is that right?

17 A. That's correct.

18 Q. And then there were problems with decks. And those
19 came up to \$57,000 and then miscellaneous, and then
20 there is site work for another \$248,000. Now, I
21 understand you are re-scoping this bid; is that right?

22 A. That's correct.

23 Q. Now, re-scoping means both trying to get little prices
24 to do the same work, and deciding which work is
25 actually essential, isn't it?

1 A. That's correct.

2 Q. And would you agree with me that in your re-scoping
3 process, you have been able to identify work and
4 submit a bid, and re-scoping can be omitted without
5 leaving the complex in a vulnerable or damaged
6 condition?

7 A. What we have done in the re-scoping is, we went back
8 and did a more thorough review of what needs to
9 happen, the priorities.

10 We have separated the drainage scope of work away
11 from the rest of the work to eliminate general
12 conditions and the overhead of the general contractor
13 managing that work. And we have also prepared an
14 alternate to install new windows. But, the overall
15 change, the scope of work, it has really not been
16 reduced; but in fact, maybe increased.

17 Because of the current economy, there is more value
18 out there. So, we are not reducing the amount of work
19 we are going to do, we are trying to separate the
20 tasks by individual contractors, and give them more
21 work for the money.

22 Q. So, now, this Remco Deacon's estimate was prepared by
23 Remco Deacon, based on input from both sides?

24 A. That's correct.

25 Q. And you were working as a consultant for the

1 plaintiffs at that time?

2 A. That's correct.

3 Q. So, your input would be designed to maximize that
4 number, wouldn't it?

5 A. No. My input, we were working on, again, ER 408
6 agreement. We were trying to come to an agreement on
7 a joint scope of repair that both parties agreed to.
8 And then that agreement was sent out to three
9 contractors for pricing.

10 Q. But, the stuff that you had input on what was included
11 in the scope of repair, you, on behalf of the
12 homeowners would want everything to get included,
13 wouldn't you?

14 A. That's correct.

15 Q. And some items might be obviously necessary, for
16 example, the moisture barrier, that both of you would
17 agree needed to be repaired, right?

18 A. Correct.

19 Q. And then you proposed to add skylight windows to the
20 upper floor, that obviously would not be included?

21 A. That's correct.

22 Q. And then there were a whole bunch of things that
23 needed to be included, and you argued with the other
24 side about, weren't there?

25 A. That's correct.

1 Q. I want to ask you about -- this was really, really
2 weird to have this siding with no moisture barrier
3 behind it, wasn't it?

4 A. Yes, it was.

5 Q. You guys actually sort of collectively, scratched your
6 heads together and asked how is this possible, didn't
7 you?

8 A. Yes, we did.

9 Q. You ultimately concluded that at the time it was
10 built, the code allowed it, didn't you?

11 A. It was a somewhat if gray area; but it appeared that
12 it could have been allowed, although standard building
13 practices, it's just not reasonable that they would
14 have ever attempted to do so.

15 Q. But, at the time, because energy codes didn't require
16 buildings to be so air tight, air came in, air came
17 out, water came in, water came out, right?

18 A. That's correct.

19 Q. So, the notion that even if it doesn't conform to 2007
20 standards, that it complied with the building code
21 when it was installed, that it appeared to be correct?

22 A. Yes, sir.

23 MR. DAVIS: Thank you very much. That's all
24 my questions.

25

1 REDIRECT EXAMINATION

2 BY MR. HANSEN:

3 Q. Good morning, again. How are you?

4 A. Good morning.

5 Q. I have a few questions. You testified that you walked
6 through the complex with Craig Cleaver, right, Steven
7 Amento, David Onsager, and to some degree, Mary
8 Dunphy?

9 A. Correct.

10 Q. It's a fairly small complex, isn't it?

11 A. It's not overly large, but I wouldn't consider it
12 small.

13 Q. How long would it take to walk from one end to the
14 other? Ten minutes?

15 A. At most.

16 Q. You could walk from one end to the other with a group
17 in 10, 15 minutes?

18 A. Correct.

19 Q. Now, at the time that you testified yesterday that
20 there was at least, and maybe more than that, siding
21 left off the buildings?

22 A. That's correct.

23 Q. And that was left off specifically for the lawsuit?

24 A. Correct.

25 Q. When you walked through with the board, you would have

1 walked by the buildings where the siding was off,
2 right, because you wanted to show them what was there?
3 A. That is correct.
4 Q. And they would have seen areas that had no moisture
5 resistant barriers?
6 A. That's correct.
7 Q. And they would have seen areas where it was installed
8 incorrectly?
9 A. Yes, that is correct.
10 Q. They would have seen all the other things that you
11 talked about because you wanted to show them what you
12 had found?
13 A. That's correct.
14 Q. And it would have been relatively obvious that in fact
15 there was no moisture barriers there?
16 A. Yes.
17 Q. And when you walked through, you would have said there
18 is no moisture barrier there?
19 A. I think it would have been readily obvious.
20 Q. Would you turn back to Exhibit 9, please. We talked
21 about this yesterday. Exhibit 9 is the working
22 notebook that Lisa Hanses put together?
23 A. Correct.
24 Q. These are all photographs taken, to document what you
25 found on-site, right?

1 A. That's correct.

2 Q. Now, you can't remember exactly which buildings you
3 looked at, can you?

4 A. No.

5 Q. But, it was throughout the complex?

6 A. I believe it was.

7 Q. And it was a good sampling of buildings throughout the
8 complex?

9 A. That's correct.

10 Q. So, the board that walked through, would have seen
11 things like this all the way through, wouldn't they?

12 A. Yes.

13 Q. And again, it would have been obvious to them?

14 A. That's correct.

15 Q. Let me ask you to turn to Exhibit 3. And we are
16 talking about a February 13th meeting of the board
17 that you did your presentation at. That is on page 11
18 of Exhibit 3, and paragraph one, where it says
19 "Envelope study was discussed"?

20 A. Yes.

21 Q. You actually had given an overview of Darrell Hay's
22 report too, didn't you?

23 A. Evidently.

24 Q. You had discussed Darrell Hay's report that talked
25 about the moisture barrier problem that he had found

Watts v. Dunphy

RP – Watts Trial Testimony – 10/18/11

1 Q. How old is he?
2 A. One.
3 Q. How many do you have now?
4 A. Three.
5 Q. Had you ever owned a home before you bought this
6 condominium?
7 A. No. We always rented.
8 Q. Back in 2007, you were looking for a condominium to
9 buy?
10 A. Correct.
11 Q. Why?
12 A. Well, we wanted a home, but home prices were pretty
13 high for our price range, so we looked at condos.
14 Q. Where did you look?
15 A. We looked at the east side, so mostly Bellevue, a
16 little bit in Redmond, Kirkland.
17 Q. How many condominiums did you look at?
18 A. I don't know. We looked online. We had our realtor
19 take us around to quite a number also.
20 Q. What were your criteria?
21 A. We were wanting to go to the east side. We were
22 looking a little bit down south because they were
23 cheaper there, but we decided ultimately not to
24 purchase down there. We wanted two bedrooms or more,
25 and we needed to be in a nice area.

1 Q. Were the costs or repairs, or potential costs or
2 repairs a factor?

3 A. Oh, yes. Definitely. We were using all our money to
4 make that money down. We couldn't afford to put more
5 money down on repairs.

6 Q. Now, you actually put an offer down on one, right?

7 A. Correct.

8 Q. Where was that?

9 A. Bellevue, Redmond area. Near Microsoft.

10 Q. Do you remember the name of the complex?

11 A. No, I don't.

12 Q. What happened with that?

13 A. We put our earnest money down. Then we had our
14 inspector come out. He did the inspection. He told
15 us then that there were some major problems, that we
16 shouldn't buy.

17 Q. What did you do?

18 A. We backed out of it.

19 Q. Got your earnest money back?

20 A. Correct.

21 Q. Did you look at the Form 17 for that unit?

22 A. I don't remember that we ever got a Form 17.

23 Q. Now, did you look at other units?

24 A. We looked at quite a number of them.

25 Q. Your broker was Jean LeTellier, right?

Watts v. Dunphy

RP – Dunphy Trial Testimony

1 Q. And what training did you receive as a realtor?
2 A. To get my license, I went to Rockwell.
3 Q. How long then did you train at Rockwell?
4 A. I took their two weeks training.
5 Q. And then you passed a license, right?
6 A. Correct.
7 Q. And you went to work for a firm called Better
8 Property?
9 A. No. I started off with Mercer Island Windermere.
10 Q. What did you do at Mercer Island Windermere?
11 A. I was a licensed real estate agent.
12 Q. Were you selling primarily single family homes, or
13 condos, or what?
14 A. At the time I was working with Robert, so my
15 experience had been with his clients, and they were
16 mostly single family.
17 Q. And then you went to work for Windermere Builder
18 Services?
19 A. That is correct.
20 Q. What did you do with them?
21 A. Selling agent.
22 Q. When did you start there?
23 A. I was recruited, I believe, started perhaps around
24 July of 2006. July, August is when the Cambria Hills,
25 that is the project I was assigned to in Bothell.

1 Q. By the time you sold your unit, you had been working
2 there for about a year, then, maybe a little longer?
3 A. No. Well, actually, I started about July, August.
4 So, yeah, I would say.
5 Q. And during that time, you represented one builder with
6 multiple sites, right?
7 A. That's correct.
8 Q. And you sold a combination of new condo developments
9 and used condo developments?
10 A. My main experience prior to selling my condo was
11 Cambridge Hills. That was a condo conversion.
12 Q. Apartment building?
13 A. That's correct.
14 Q. You are familiar with what a POS is, then, aren't you?
15 A. Yes.
16 Q. What is a POS?
17 A. It's a public offering statement.
18 Q. What does that mean?
19 A. It's a statement that's prepared for a prospective
20 buyer when you have a condo conversion project.
21 Q. What does it include?
22 A. It includes a summary of what projects that the
23 builder has done before; and it includes a study of
24 the site of the condominium project. And it typically
25 has the board bylaws.

1 Q. Does it include inspections of the site?

2 A. From what I recall, it did.

3 Q. Does the POS also include statements of specific

4 things wrong with the complex, i.e., landscaping not

5 done, drainage problems? Does it include things like

6 gutter flashing not put on correctly? Does it get

7 into that kind of detail? Typically not, does it?

8 A. No.

9 Q. Not that you recall?

10 A. I don't recall.

11 Q. Does the public offering statement get to the level of

12 detail in specifying, say that there is no water

13 resistant barrier under the siding?

14 A. Not from the two public offering statements that we

15 have, right.

16 Q. It doesn't go to the level of detail in saying when a

17 specific problem, or a material, or something to do

18 with the condominium complex is grandfathered, does

19 it?

20 A. Not from the two public offering statements, that is

21 right.

22 Q. And in fact, POS's they never use the term

23 "grandfathered," do they?

24 A. No.

25 Q. Now, you are pretty familiar with condominium

1 Q. What do they do if they have questions about it?
2 A. To consult with an attorney.
3 Q. What do they do if they have any questions about a
4 specific item that they think they should disclose or
5 not? Do they talk to an attorney?
6 A. I cannot give any legal advice, if that's what you
7 mean.
8 Q. If Mr. Watts came to you as a seller and said I am
9 filing out my Form 17, I have got this issue, I am not
10 sure what I am suppose to do, would you tell him to go
11 talk to an attorney?
12 A. Depends on what the question is.
13 Q. Let's say he said I discovered that I have no moisture
14 resistant barrier under my siding. Would you tell him
15 to go talk to an attorney about whether or not he
16 should disclose it?
17 A. No.
18 Q. What would you tell him?
19 A. Disclose it.
20 Q. If there is a question, disclose it, right?
21 A. Ah hum.
22 Q. Always, right?
23 A. Yes.
24 Q. Be very careful, right?
25 A. Yes.

1 Q. If there is a question about whether something is a
2 problem or not, he should disclose it, right?

3 A. Yes.

4 Q. In fact, if you know about the problem, you have to
5 disclose it as a realtor, right?

6 A. Yes.

7 Q. And that's even if you think in might be a problem,
8 right?

9 MR. DAVIS: Objection. Foundation.

10 THE COURT: Overruled. You can answer. Go
11 ahead.

12 A. Can you repeat the question.

13 Q. That's true even if you are not sure it's a problem,
14 right?

15 A. Yes.

16 Q. Have you ever had a seller ask you that?

17 A. No.

18 Q. Would you turn to page 21, please, line 11. I asked
19 you if a seller of a property asks you what to put on
20 a Form 17, what would you tell them? What was your
21 answer at line 13?

22 A. "I cannot advise you."

23 Q. Then I asked you if you have ever had a seller ask you
24 about you that. What did you answer on line 15?

25 A. "Oh yeah, all the time."

1 as to what kind of things needed to be disclosed: And
2 what was your answer?

3 A. "If the seller knows it for sure, they need to
4 disclose it."

5 Q. Then I asked you "And what does that mean if the
6 seller knows it for sure?"

7 A. "If they them self have seen or have firsthand
8 knowledge of the defect, they need to disclose it."

9 Q. And I ask you "Now, is that any defect, or is that a
10 big defect, a substantial defect"?

11 A. "Any."

12 Q. And I said "Any defect." And you said?

13 A. "Yes. Ah hum."

14 Q. And I said "Did you disclose that?" And you said?

15 A. "Ah hum."

16 Q. Which was a yes, right?

17 A. Yes.

18 Q. Look down on line 24, asking about condominium
19 complex. I said "But if the seller has knowledge of
20 other defects in the complex, they should disclose it,
21 right?" And you said?

22 A. "Yes."

23 Q. And I said "Why is it important for them to disclose
24 it?"

25 A. "For liability. They don't want to be sued later. If

1 they know something that they purposefully left out."

2 Q. I asked you "In that sense It's important to disclose

3 things, right? And they should disclose it, that's

4 part of your great training from day one, isn't it?"

5 And you said?

6 A. "Yes."

7 Q. Down on line 14, I asked or line 16, "Do you recall --

8 strike that. Now, let me ask you to turn to Exhibit

9 Number 15. That is your Form 17, that you signed on

10 July 9th?

11 A. Yes.

12 Q. Okay. You had read this disclosure statement

13 completely as part of your training?

14 A. Yes.

15 Q. You are familiar with it?

16 A. Familiar.

17 Q. Under the Notice to Buyer, do you see "City: Kirkland,

18 County: King"? Do you see that?

19 A. I'm sorry. Give me a second.

20 Q. If you look on the line numbers on the right-hand

21 side, line 15.

22 A. Okay.

23 Q. And it says "Seller makes the following disclosures of

24 existing material facts or material defects to buyer

25 based on seller's actual knowledge of the property at

1 the time the seller completes his disclosure
2 statement." What would you define, what is your
3 definition of a fact?
4 A. That it's been proven, a fact. It's been proven.
5 Q. It's something in existence, right?
6 A. With expert.
7 Q. Does it have to be an expert?
8 A. If I am not an expert, I would have to rely on an
9 expert to tell me whether it's a fact or not.
10 Q. Are you a construction expert?
11 A. No.
12 Q. Are there parking spaces in the condominium complex?
13 A. Yes.
14 Q. Is it a fact that there are parking spaces in the
15 condominium complex?
16 A. Yes.
17 Q. Are you relying on a construction expert to tell you
18 that?
19 A. Not for that particular subject, no.
20 Q. That's just a fact, right? You can see it with your
21 eyes?
22 A. Yes.
23 Q. What is your definition of "existing"?
24 A. Something that is at the time, it's apparent.
25 Q. Or maybe a month earlier? Would that be true? If

1 something cannot change?

2 A. Yes.

3 Q. How would you define a defect?

4 A. If a condition that exists today, that is wrong,
5 something wrong. Yeah.

6 Q. Now, let me ask you to turn to page 106?

7 A. Of the same?

8 Q. Of the deposition. I'm sorry.

9 A. Okay.

10 Q. I had asked you on line 18 what is your definition of
11 a defect. What was your answer?

12 A. "From what I understand, it's a big problem, that it
13 was something that, I don't know how to define it."

14 Q. Then I had asked "Well, you did use a definition."
15 And you said?

16 A. Yes.

17 Q. And I asked "How do you define defect"?

18 A. I said that it was a problem.

19 Q. A problem would be a working definition of a defect,
20 right?

21 A. A layman's term, I suppose.

22 Q. From your definition, right?

23 A. Yes.

24 Q. That is what you testified was your understanding of
25 what it was?

1 A. Yes.

2 Q. Now, would you agree with me that something can be a
3 problem without actually causing damage yet?

4 A. Yes.

5 Q. There could be an issue or something wrong with the
6 building that may cause damage at some future point,
7 but had not caused damage yet, that would still be a
8 problem, right?

9 A. Yes.

10 Q. And if it was a big enough problem, it would have to
11 be reported, right?

12 A. Yes.

13 Q. You would have to disclose it?

14 A. Yes.

15 Q. You had testified earlier that it's better to be safe
16 than sorry and report something, even if you weren't
17 sure, right?

18 A. Yes.

19 Q. And that's true if you know it as a realtor, right?

20 A. Yes.

21 Q. And if you know as a seller as well, right?

22 A. Yes.

23 Q. And as a seller, you have a duty to do that, don't
24 you?

25 A. Yes.

1 A. Yes.

2 Q. -- they have a responsibility to fill out the form,
3 right?

4 A. Yes.

5 Q. They have no responsibility to recheck the resale
6 certificate?

7 A. No.

8 Q. A resale certificate is never a substitute for a Form
9 17 in an owner occupied sale, is it?

10 A. For a condominium, the resale certificate is an
11 additional material for the prospective buyer to
12 review.

13 Q. But, it doesn't substitute for it?

14 A. It does not.

15 Q. You bought the condominium from Centerbay as part of
16 the conversion, right?

17 A. Yes.

18 Q. You weren't the first buyer, were you?

19 A. No.

20 Q. How long had it been on the market as a condominium,
21 do you recall?

22 A. It had been on the market for a while.

23 Q. Do you recall what number you were? Were you buyer
24 number one, buyer 30?

25 A. I don't know. I don't remember since we were looking

1 statements, right?

2 A. Yes.

3 Q. You had some experience with how condo conversions
4 work, right?

5 A. That's true.

6 Q. And you had some experience with how a transition from
7 a developer owned project to an HOA project works to
8 some degree?

9 A. That was my first experience.

10 Q. Okay. And you were able to help the complex out in
11 that area, right, as far as running the complex?

12 A. My experience was very limited. And we were all
13 learning during that transitional period from
14 developer board to homeowner HOA.

15 So, we were all figuring out as we went. I didn't
16 have any particular, more knowledge as far as being a
17 volunteer board member of a newly transitioned HOA. I
18 wouldn't say that.

19 Q. But, you were able to use your experience as on-site
20 for a condo project to help to some degree with
21 working issues between the board and Centerbay?

22 A. You know, that opportunity never became available
23 because Craig was so capable. He was the president.

24 The most of what I have helped was offering my home
25 for meeting site. When they needed a resource for

1 A. Yes.

2 Q. A number of times?

3 A. Yes.

4 Q. And would you agree with me that if it lists your name
5 as vice president as people that were there, you were
6 at that meeting, right?

7 A. That would be a fair assumption.

8 Q. Now, did you ever create the minutes of the meetings?

9 A. No.

10 Q. Did you ever review the minutes of the meeting
11 afterwards?

12 A. Typically, from what I recall, you know, Tammy would
13 type up the minutes because she was the secretary.
14 And then she would send it to either Craig or the rest
15 of the board. I don't remember.

16 Sometimes, depends on the situation, who was
17 present, to be sure you know if there are any
18 grammatical errors, things that were missed, that was
19 pretty much the extent of the review.

20 Q. Do you have any specific memory, other than having
21 read these during this litigation, of reading the
22 minutes particularly, or proofing them, or reviewing
23 them before you sold your unit?

24 A. No.

25 Q. And when they were done, and Tammy had circulated them

1 or sent them to Craig, she sent them to the property
2 manager, right, probably?

3 A. Yes. It would make sense.

4 Q. You are not sure where they ended up, are you?

5 A. No. In the beginning, you know, we were all so new,
6 and there is a transition not only with us all being
7 new in our roles, but also there was new property
8 management.

9 So, it was a learning process for all of us.
10 Things got a little bit more formalized towards the
11 end, but in the beginning there wasn't a specific
12 place that these notes went.

13 Q. Now, the notes didn't go out to all the owners, did
14 they?

15 A. I don't know.

16 Q. Were the owners notified of the meetings particularly?

17 A. Are you referring to the board meetings or the general
18 meetings?

19 Q. Let me clarify. You only had a couple of general
20 meetings for the owners a year, right, if you recall?

21 A. Yes. Just a couple.

22 Q. And the monthly meetings were normally just the board,
23 right?

24 A. Yes.

25 Q. And you heard Craig Cleaver testify that sometimes he

1 Q. Would you turn to Exhibit Number 6, please.

2 A. Okay.

3 Q. And this is the inspection that was done on

4 October 2nd. You heard Mr. Hay testify that you had

5 arranged it with him, right?

6 A. Yes.

7 Q. And you met him there on the site, right?

8 A. I remember I did, yes.

9 Q. And you got this report, right?

10 A. Yes.

11 Q. And this report says that "The vinyl siding was spot

12 checked on the three buildings and found they had no

13 tar paper or weather resistant barrier." Down further

14 it says "This allows the buildings to be more

15 vulnerable to water leakage and damage, and is

16 contrary to manufacturer's installation instructions.

17 I would expect present or future damage in concealed

18 areas," right?

19 A. Yes.

20 Q. And the board knew that, right?

21 A. Yes.

22 Q. And you knew it?

23 A. Yes.

24 Q. And you started to get concerned about it with the

25 board in the October meeting, didn't you?

1 Q. Now, you were a careful member of the board right?

2 A. Can you define that? What do you mean?

3 Q. When things were discussed, you paid attention, you

4 looked at documents, you went back and researched the

5 HOA on issues, mostly around parking, but there were

6 some other issues, right?

7 A. We were there to -- I'm sorry. One more time.

8 Q. Were you an involved member of the board?

9 A. Involved in that I was there whenever I can for

10 meetings.

11 Q. And most of them were held in your unit?

12 A. The majority, but not all.

13 Q. And would you agree with me that when you look in the

14 minutes up to June, your name appears on every single

15 meeting minutes?

16 A. If my name was there.

17 Q. You were there?

18 A. Yes.

19 Q. You would agree that you were at the meetings?

20 A. Right.

21 Q. And you would have looked at this as a proposal,

22 right, if it was passed around?

23 A. As someone who is not an expert, you know, all of us

24 had the documents passed around, and probably just

25 scanned through it.



Exhibit 8

Watts v. Dunphy

RP – Dunphy Trial Testimony –
10/19/11

1 MORNING SESSION

2 October 19, 2011

3
4 THE COURT: Thank you. Please be seated.

5 MR. HANSEN: Thank you, Your Honor.

6 THE COURT: Counsel.

7 MR. HANSEN: I will recall Ms. Dunphy.

8 THE COURT: Ms. Dunphy, you are still under
9 oath.

10 (Mary Dunphy resumes the witness chair.)

11
12 DIRECT EXAMINATION (continued)

13 BY MR. HANSEN:

14 Q. Good morning, Ms. Dunphy.

15 A. Good morning.

16 Q. Before we get started on looking at the minutes and so
17 on, a couple of questions about your knowledge as a
18 realtor of a condominium. Would you agree with me
19 when you buy a condo, you buy a unit and a share of
20 the overall complex?

21 A. That is correct.

22 Q. And the duty to disclose that you discussed yesterday,
23 that you have to disclose material defects and so on,
24 right?

25 A. Yes.

1 that the resale certificate is the way in which
2 prospective buyers find out about the issues in the
3 complex?

4 A. That's correct.

5 Q. Is it also your testimony that the seller has no
6 responsibility to disclose conditions in the rest of
7 the complex, if they know about them?

8 A. That's not what I am saying.

9 Q. Does the seller of the condominium have any duty to
10 disclose material defects or facts in the rest of the
11 complex?

12 A. If the seller knows and is aware of the material
13 defects, yes, it is the seller's responsibility to
14 disclose it, if they know it for a fact.

15 Q. And that would also refer to material facts with
16 respect to the rest of the complex, right?

17 A. That's correct.

18 Q. And if you would look at paragraph ten on page four.
19 On page four, at the bottom of the page.

20 A. Okay.

21 Q. Where it says "Full disclosure by seller." And it
22 asks "Are there any other existing material defects
23 affecting the property that a prospective buyer should
24 know about?" That would refer to the rest of the
25 complex as well, doesn't it?

1 Q. Okay. Would you agree with me that you were living at
2 home that day?

3 A. Which day was that?

4 Q. May 1st and 2nd.

5 A. May 1st and 2nd?

6 MR. HANSEN: May I approach, Your Honor?

7 THE COURT: Yes.

8 Q. I handed this up to you before. Hopefully everybody
9 still has copies. Let me hand you a calendar for
10 May 1st. What day is May 1st and 2nd?

11 A. A Tuesday and Wednesday.

12 Q. Were you working those days?

13 A. I am not sure. I don't remember. I do remember
14 frequently, I would tell the board that, you know, my
15 schedule is very unpredictable because of the nature
16 of my business. I could be out at any time, meeting
17 with clients; and therefore a lot of times Craig
18 Cleaver was the contact person for anybody, and
19 because his schedule was more flexible.

20 Q. You remember Mark Cress testifying that they took the
21 siding off on May 1st and 2nd, and they were told to
22 keep the siding off, some of the siding off, for the
23 walk through inspection on the 4th, right?

24 A. I personally do not remember that; but if it's in the
25 notes, I would agree it happened.

1 Q. That would mean the siding was off on May 1st through
2 the 4th, at least some of the buildings in the
3 complex, right?
4 A. It would appear so.
5 Q. Would you turn to Exhibit Number 9, if you are not
6 already there?
7 A. Yes.
8 Q. Turn to page 39.
9 A. Yes, I am there.
10 Q. That says "Building 13020, May 1st, 2007"?
11 A. Okay.
12 Q. That's your building, isn't it?
13 A. Yes.
14 Q. And if you look at the time stamp on those
15 photographs, it says, the ones you can read, seem the
16 say May 1st, don't they?
17 A. Yes.
18 Q. Would you agree with me that that's your unit?
19 A. It's the photo documents for that building. I have to
20 believe that's the case.
21 Q. Do you have any reason to believe that it's not your
22 building?
23 A. I don't.
24 Q. You had Unit 3, right?
25 A. Yes.

1 Q. And the scope of the investigation up there is Units 3
2 and 4, right?

3 A. I am not sure.

4 Q. Well, take a look at it.

5 A. Where did you say is 3 and 4?

6 Q. If you looked at the Proposed Scope of Limited
7 Investigation?

8 A. All I see is 13020.

9 Q. Look at that time the site plan that we had just
10 looked at in the Proposed Scope of Limited
11 Investigation. Let's go back to that. That's Exhibit
12 Number 8.

13 A. Okay.

14 Q. And if you turn to page seven on Exhibit Number 8.

15 A. Yes.

16 Q. That's the one we had just looked at, right?

17 A. Yes.

18 Q. And that's Units 3 and 4, right?

19 A. That's what it says.

20 Q. And they were going to remove the trim, downspout and
21 siding between the two?

22 A. Yes.

23 Q. Okay. Would you agree with me that that is Units 3
24 and 4?

25 A. That is what the picture of the document appears to

1 be.

2 Q. Now, you saw that at some point during the week,
3 didn't you?

4 A. Yes.

5 Q. Okay. So, you saw there was no siding on your unit?

6 A. Right.

7 Q. Okay. Looking at that, it seems pretty clear, there
8 is no barrier of any kind there, is there?

9 A. There isn't.

10 Q. And you knew that at the time?

11 A. Yes.

12 Q. And you knew from Darrell Hay's report that that was a
13 problem, right?

14 A. That was a concern, according to the report for
15 potential problems.

16 Q. Because it would let water in?

17 THE COURT: Did you answer?

18 A. I'm sorry. I am still trying to understand the
19 question. Would you say it again.

20 Q. Because if there is no water resistant barrier, it
21 would let water in?

22 A. There is a potential that the water would intrude.

23 Q. Now, would you agree with me if the siding is on the
24 unit, there is no way to tell that, is there?

25 A. No.

1 Q. You have to take the siding off?

2 A. Yes.

3 Q. And in your experience as a realtor, as a realtor, do
4 buyers ever, in a standard home owner's inspection, do
5 buyers ever take the siding off of units?

6 A. No.

7 Q. So, would you agree with me that a standard owner's
8 inspection would have no way of knowing there is no
9 water resistant barrier under the siding, on your
10 unit?

11 A. I agree.

12 Q. On May 4th, that Friday, there was a walk through with
13 the board?

14 A. There was a walk through with Craig Cleaver. I do not
15 remember.

16 Q. Let's go back. First, you heard Craig Cleaver testify
17 that he thought you were there, right?

18 A. He thought.

19 Q. And you admitted in your Interrogatories that you were
20 at the walk through, didn't you?

21 A. I wasn't sure. I remember that I was not sure.
22 Whether it was in the beginning or for a few minutes,
23 I don't recall.

24 Q. Would you turn to Exhibit Number 1, please.

25 A. Okay.

1 Q. Exhibit 1, the first set of Interrogatories that was
2 sent to you. Do you remember answering these?
3 A. Yes.
4 Q. Did you answer to the best of your ability?
5 A. At that time, to the best of my ability.
6 Q. And this was, well, would you turn to page 19, please.
7 You signed these under penalty of perjury, right?
8 A. Yes.
9 Q. And you said that they were true and correct?
10 A. To the best of my knowledge at the time, yes.
11 Q. This was back in July of 2010?
12 A. Yes.
13 Q. So, about a year and three months ago?
14 A. Yes.
15 Q. Would you turn to page 23, please, 23 on the bottom
16 right-hand corner. Interrogatory Number 16 asks you
17 "With respect to the Corke Amento inspection, who from
18 the HOA was on-site and observed?" Your answer on 16
19 was what?
20 A. "I do not recall who was present May 1st and 2nd of
21 2007. At some point I recall walking the premises
22 with Craig. And other board members were present.
23 That the buildings were in not too bad a condition
24 given the lack of moisture barrier."
25 Q. You were there at the walk through with Mr. Cress,

1 lac of communication or in-action will result in the
2 next communication from the board coming from a very
3 different context from an external entity." That's a
4 veiled reference to a lawsuit, isn't it?" And you
5 said?

6 A. "A formal letter from the attorney."

7 Q. I asked you on line 20, "Okay. Once you start sending
8 letters from attorneys, threatening things
9 potentially, right?" You said?

10 A. "Ah hum."

11 Q. "The next step is a lawsuit, isn't It?"

12 A. "Typical."

13 Q. So, the board was clearly aware that there is a
14 process?

15 A. Ah hum.

16 THE COURT: That's what you said in the
17 deposition, right?

18 A. Yes.

19 MR. HANSEN: Your Honor, do you want a copy
20 of the deposition?

21 THE COURT: No. That's fine.

22 Q. Is it safe to say that there were issues uncovered in
23 the walk through inspection that were problems?

24 A. That were potential problems.

25 Q. And they were significant, weren't they?

1 A. Significant?

2 Q. There were a lot of them?

3 A. There were a lot of issues that we are not, as
4 experts, understood, that needed to be looked further
5 into.

6 Q. That was also discussed at the board meeting on
7 May 9th, or on May 8th, correct?

8 A. I'm sorry. Can you repeat.

9 Q. Is it safe to say that as of May 9th, when Craig
10 Cleaver wrote this e-mail, you were aware of
11 everything that Mark Cress had pointed out in the
12 boardwalk through that he testified to?

13 A. I don't agree with that statement.

14 THE COURT: Hold on. Is there an objection?

15 MR. DAVIS: Objection. Calls for
16 speculation.

17 THE COURT: The objection is sustained to the
18 form of the question.

19 Q. You testified earlier that if Mark Cress had testified
20 as to what was seen in the walk through, that you
21 would have not disagree with him, right?

22 A. That was his testimony.

23 Q. And you don't remember otherwise, do you?

24 A. I do not.

25 Q. And there is no testimony anywhere otherwise, is

1 I don't remember at what point I joined Tech in the
2 transitional period.

3 Q. Were you able to do any of the work in looking for a
4 new house?

5 A. We looked, but I don't recall the details.

6 Q. But, it's your testimony that you started looking for
7 a new house after May 9th?

8 A. Must have.

9 Q. And that was five days after the walk through, right?

10 A. What?

11 Q. The walk through?

12 A. The actual walk through.

13 Q. The walk through with the board.

14 A. My appointment, you mean?

15 Q. No. When you started to look for a new house?

16 A. No.

17 Q. You just testified you started to look for a new house
18 after May 9th?

19 A. After May 9th. I don't know actually when. It could
20 have been a month or two after, I am not sure.

21 Q. Sometime after May 9th though?

22 A. Sometime, but I don't know exactly when.

23 Q. You bought a house in Juanita, didn't you?

24 A. Yes, I did.

25 Q. Would you turn to Exhibit Number 27, please, in the

1 thick white binder.

2 A. Yes.

3 Q. Would you turn to page seven in that binder.

4 A. Yes.

5 Q. That's a letter that you wrote on June 30th to the
6 owners, didn't you?

7 A. Yes.

8 Q. And you said "We have been looking for the perfect
9 house for the past several months," right?

10 A. Yes.

11 Q. And you said "It's a perfect home and location for us
12 as we are preparing to welcome two adoptive children
13 to our family"?

14 A. Yes.

15 Q. Now, was that intended to be factually correct or was
16 that kind of a field letter to the seller?

17 A. No. During that March time, multiple offers were still
18 very prominent; and it was a recommendation from my
19 brother, who represented us in the purchase of the
20 home, to send the letter. And during that time
21 period, transactions often included a cover letter, to
22 give the seller a better profile of who is buying
23 their home.

24 Q. You had been looking for several months? You had been
25 looking since May 9th, right?

1 THE COURT: Overruled.

2 Q. You filled out a form to get that house that you

3 really wanted, didn't you?

4 A. It was a good house.

5 Q. You filled out a form and put a false number under

6 there under penalty of perjury, right?

7 A. I do not agree. I put an estimate of what I thought I

8 would be making.

9 Q. The financial form doesn't call for an estimate, does

10 it?

11 A. I always disclose that I am a real estate agent and my

12 income fluctuates.

13 Q. Let's look at page nine of Exhibit Number 27.

14 A. Exhibit Number 7?

15 Q. Exhibit Number 27. You got two loans for the Juanita

16 house, didn't you?

17 A. Page 7? I'm sorry?

18 Q. Exhibit Number 27, page nine.

19 A. Can you ask me the question again.

20 Q. You got a first and a second for the Juanita house,

21 didn't you?

22 A. No.

23 Q. You did not?

24 A. No.

25 Q. Did you get two loans or just one loan?

1 A. Just one loan.

2 Q. And I see a good faith estimate on page nine for
3 \$380,000, right? Do you see that, total loan amount?

4 A. Yes.

5 Q. Look at page ten. I see a second total loan amount of
6 \$71,250, right?

7 A. Yes.

8 Q. What was that loan for?

9 A. I don't recall, because we only had one loan. I don't
10 know what this is.

11 Q. Do you recall how much cash you had to come up with to
12 close?

13 A. We had to get a conforming loan. At the time the
14 conforming loan was for 415 or 417. I don't remember.

15 Q. 415 or 417?

16 A. Yes. I am not sure of the number. I think it was
17 417, 415.

18 Q. You had to come up with 40,000 or 50,000 dollars,
19 right?

20 A. Yes.

21 Q. I look at the bottom of page nine. The total estimate
22 of funds needed to close is \$30,401, right?

23 A. I see that.

24 Q. At the bottom of page ten, I see total estimated loan,
25 \$24,269, right?

1 A. Yes.

2 Q. You had to come up with that kind of cash, didn't you?

3 A. Yes.

4 Q. We had put up here, but that's \$54,671 total?

5 A. Yes.

6 Q. Somewhere in there. Now, would you turn to Exhibit

7 Number 28, please. Do you recall that I had sent you

8 a set of interrogatories and request for production,

9 asking you to disclose all bank accounts back in June

10 and July of 2007 that you used for a down payment?

11 A. Yes.

12 Q. You had three bank accounts at that time, didn't you?

13 A. Yes.

14 Q. Again, this, Mark didn't have enough money on his own,

15 did he?

16 A. He is also a small business owner like me, so his

17 income fluctuated.

18 Q. You didn't depend on his income for this?

19 A. We both contributed to the household income, but the

20 loan was under my name. So, yes, the house payment

21 was supposed to be from both of us.

22 Q. Exhibit Number 28, page one. That's your Wells Fargo

23 account. And that was a minor account, wasn't it?

24 A. Yes.

25 Q. You rarely had more than two or three hundred dollars

1 in it, right?

2 A. Yes.

3 Q. Would you turn to page 14, please. That's your Bank
4 of America account?

5 A. Yes.

6 Q. Now, you called this smart business strategy, LLC, but
7 in reality it's your personal account, isn't it?

8 A. Back then it was a business account.

9 Q. But, you also paid personal expenses from it?

10 A. Yes.

11 Q. In fact, that was your only real bank account, wasn't
12 it?

13 A. I don't recall back then if I had a separate. I don't
14 remember.

15 Q. Well, I asked you, didn't I, in the Interrogatories to
16 provide all bank account statements?

17 A. Yes.

18 Q. You provided three bank accounts?

19 A. Right.

20 Q. There is the Wells Fargo account?

21 A. Ah hum.

22 Q. That didn't have any money in it, right? And there is
23 a Bank of America account?

24 A. Right.

25 Q. Were there any other bank accounts that you didn't

1 disclose?

2 A. No. That's all that we had.

3 Q. It's safe to say this Bank of America account is

4 really your main account?

5 A. It would make sense back then.

6 Q. On page 14 of that is the account statement for May

7 1st through May 31st, 2007, right?

8 A. Yes.

9 Q. What is the ending balance for May?

10 A. \$4,196.

11 Q. That's not \$54,000 is it?

12 A. No.

13 Q. You didn't have \$54,000 anywhere, did you?

14 A. No, not in the bank account.

15 Q. In order to get that kind of money, you had to sell

16 your condo, didn't you?

17 A. We were depending on part of the down payment to come

18 from the proceeds of the sale.

19 Q. In fact, almost all of it, wasn't it?

20 A. Whatever we could get from the sale of the condo.

21 Q. You had purchased the condo back in June of 2006

22 somewhere, right?

23 A. I don't recall exactly when. It was back in 2006.

24 Q. When you had purchased it, it was for zero down?

25 A. Yes.

1 Q. So, any money you got from the condo would be from
2 appreciation?

3 A. Yes.

4 Q. That would be appreciation for about only over a year,
5 wasn't it?

6 A. Yes.

7 Q. So, you didn't have much of a cushion, did you?

8 A. As far as having reserves? What do you mean?

9 Q. You could not afford to discount the condo, could you,
10 and buy the Juanita house?

11 A. That's right.

12 Q. You had to sell it for full price?

13 A. I could sell for whatever the market would bear.

14 Q. As much as the market could bear, right?

15 A. We pretty much just, you know, depended on the sale of
16 the condo and whatever we can sell it for.

17 Q. And if you didn't sell the condo, you couldn't get the
18 Juanita house, right?

19 A. We could not.

20 Q. If you look at, we are still on Exhibit Number 28, and
21 look at page 20, this is the account statement for
22 June 1st through June 30, 2007. You signed your
23 purchase and sale agreement for the Juanita house on
24 June 30th, right?

25 A. I don't recall when I signed it.

1 would not have had the \$24,000 net, right?

2 A. We would not have.

3 Q. Would you agree with me that a condo that has problems
4 sells for less than the equivalent condo that doesn't
5 have problems?

6 MR. DAVIS: Objection. Vague.

7 THE COURT: Rephrase that, please.

8 Q. In your experience as a realtor, two equivalent
9 condos, same everything, same location, same finish,
10 same everything, one has problems, one doesn't, the
11 one with problems generally will sell for less than
12 the one without problems, right?

13 A. That's a more complicated question than it should be.
14 You really have to analyze it, because it really
15 depends on the situation, the market, the location,
16 and what the buyer is willing to pay. In my
17 experience, I have seen buyers pay a lot more for
18 homes with problems because they really want it.

19 Q. Is it safe to say that you could not afford to
20 discount your condo and buy the Juanita house?

21 A. If we were unable to sell our condo and get the
22 proceeds, we would have had to either delay
23 purchasing, which means delay submitting for adoption,
24 or you know, paperwork, or we would have had to look
25 at another option.

1 A. I see that.

2 Q. Paragraph one, line 47.

3 A. I see.

4 Q. When you filled this out, you filled this out
5 carefully, didn't you?

6 A. To the best of my knowledge and how I understood the
7 question.

8 Q. But you looked at every line?

9 A. Yes.

10 Q. You filled it out on the computer, right?

11 A. It appears that I did.

12 Q. And then you printed it out and looked at it again?

13 A. I don't remember my process.

14 Q. But, it's safe to say that you thought about each
15 question?

16 A. Yes.

17 Q. And is there any study, survey that would adversely
18 affect the property, you checked no?

19 A. At the time that's how I interpreted the question and
20 what I knew the answer would be for me.

21 Q. Okay. That wasn't correct, was it?

22 A. I don't know.

23 Q. Would you turn to page three, please. And paragraph 4
24 F asks if there were any defects with the following.
25 And siding is one of those. You said "Don't know,"

1 right?

2 A. From what I understood at the time, there was no
3 defects.

4 Q. Would you turn to page four, please.

5 A. I see that.

6 Q. 7 a. "Have there been drainage problems on the
7 property?" You said "No"?

8 A. I didn't. At the time, I did not understand that
9 there were any drainage problems.

10 Q. Okay. And would you turn down to paragraph 10 where
11 it says "Other conditions or defects. Are there any
12 other existing material defects?" You said "No."

13 A. At the time I did not know there were any material
14 defects, so my answer was no.

15 Q. Now, did you think about these questions when you
16 answered them?

17 A. Of course I thought about the questions.

18 Q. Did you think about the CAI inspection?

19 A. No.

20 Q. Not at all?

21 A. No.

22 Q. Although it was a month and-a-half earlier?

23 A. Yes.

24 Q. Did you have any doubts about this?

25 A. Doubts? What do you mean?

1 Q. You said that you thought that there were no defects
2 with the property?

3 A. From what I understood, that there were no defects.
4 They were just doing a routine envelope study.

5 Q. Now, you testified yesterday that if there was any
6 question about something, you would tell the seller to
7 call an attorney, right?

8 A. If my client had questions on how to fill out a Form
9 17, and if there is a question of legal matter, I
10 would refer them to an attorney because I do not have
11 license to practice law.

12 Q. You didn't call your attorney, did you?

13 A. I didn't have an attorney.

14 Q. You didn't call Mr. Davis?

15 A. No, I didn't.

16 Q. Although you used him to review your finances?

17 A. I did not use him.

18 Q. Okay. You didn't ask your brother, did you?

19 A. Ask my brother about?

20 Q. About any of these questions.

21 A. No.

22 Q. You didn't ask your brother if you should disclose
23 them?

24 A. No.

25 Q. Would you turn to page 16, please. I'm sorry.

1 Exhibit Number 16. This is a Disclosure Statement
2 that you filled out on July 25th?

3 A. I see that.

4 Q. This is the part of the resale certificate, or the
5 part of the new one that you filled out, on the walk
6 on the inspection. Okay. Line G asks "Is there any
7 study, survey project or notice." You changed it from
8 "no" to "don't know."

9 A. You know, when I read these the second time, I don't
10 remember if I looked back at the original. I just
11 answered to the best of my ability. And it could be
12 at the time when I answered this, that I thought about
13 it, and probably that's what I thought the answer was.

14 Q. Okay. I hate to do this, but would you pick up your
15 deposition again. Strike that. Again, you didn't
16 call your brother, did you, and ask him what his
17 advice was?

18 A. No.

19 Q. You didn't call an attorney?

20 A. No.

21 Q. But, you knew you checked "no," or "don't know."
22 Would you look at paragraph 1 G, checked "don't know,"
23 you intended to check "don't know," didn't you?

24 A. At the time I was answering every single question to
25 the best of my ability as a seller; and that is the

1 first time, you know, homeowner and seller, and
2 looking at it from a homeowner's perspective, a
3 seller's perspective as opposed to a licensed agent,
4 and trying to understand what the question is asking,
5 and what I understood the answer to be.

6 Q. Why not just put "yes" and disclose the inspection?

7 A. I didn't realize that the inspection was a survey. At
8 the time, I didn't know. This is how I answered it.

9 Q. Okay. The next page, I'm sorry, page three, paragraph
10 four F again asks about defects with the siding. You
11 checked "no." Why not say "yes," and tell about the
12 moisture barrier?

13 A. Because it was asking about defects, and from what I
14 understood, there were not defects.

15 Q. And if you told, you might not be able to sell the
16 condo, true?

17 MR. DAVIS: Objection. Calls for
18 speculation.

19 THE COURT: The objection is sustained.
20 Counsel, I am sustaining the objection. You have been
21 over it several times. The defendant hasn't even
22 started their case. You really can't use your time
23 like this.

24 MR. HANSEN: Then I will rest Your Honor.
25 Sorry about that. I will rest.



Exhibit 9

Watts v. Dunphy

RP – Dunphy Testimony – 10/20/11

1 A. Yes.

2 Q. And it was the same exact questions about the siding
3 and about material defects? You thought about those
4 carefully as well, didn't you?

5 A. Yes. There were no defects.

6 Q. And you still answered them no or don't know, didn't
7 you?

8 A. Yes.

9 Q. In fact, you changed some of them, didn't you?

10 A. I answered to the best of my ability when I refilled
11 out the form.

12 Q. Would you turn to Exhibit 16, please. This is a
13 seller disclosure statement dated 7-25. Would you
14 look at page three, please. This looks like you
15 actually spent some time with this. I will wait until
16 you get there.

17 A. Okay.

18 Q. Exhibit 16, page three. This looks like you spent
19 some time, you actually made some handwritten notes?

20 MR. DAVIS: Asked and answered.

21 THE COURT: Sustained. I think you did ask
22 this before.

23 MR. HANSEN: Okay.

24 Q. Would you turn to page four of Exhibit 15, please.

25 Again, I asked you about paragraph ten. You answered

1 "Don't no," didn't you?

2 A. Yes.

3 Q. Why didn't you just make a note like you did on page
4 three?

5 MR. DAVIS: Objection. Asked and answered.

6 THE COURT: Sustained. I think you asked it.

7 Q. Let me ask you about the resale certificate. You had
8 testified earlier yesterday that you could not recall
9 having read the minutes at the homeowners meeting,
10 right?

11 A. Can you repeat that.

12 Q. Up to the point that you sold your unit, can you
13 recall ever having actually read the homeowners
14 association's minutes?

15 A. You mean after each meeting?

16 Q. Any time in there.

17 A. What I recall was, Tammy, which is our secretary,
18 after she typed up the meeting, she circulated it
19 among the board members, and we reviewed it to see if
20 there were any grammatical errors or if there was
21 anything discussed that was missed.

22 Q. You didn't keep a copy, though?

23 A. We don't usually keep copies.

24 Q. When you sold your condo and filled out the first Form
25 17, did you go to SUHRCO and ask to see copies of the

1 minutes?

2 A. No; because why would I?

3 Q. When you filled out the next form, before you filled
4 out this Form 17 on the 25th, did you go to the
5 property manager and ask to see a copy of the minutes?

6 A. No. There is no reason to.

7 Q. Now, if you would turn to Exhibit 14, please. That's
8 the resale certificate; is that right?

9 A. Yes; it looks it would be.

10 Q. And your husband, Mark, has signed at the bottom?

11 A. That's correct.

12 Q. You had left it on the counter in the condo for Mary
13 and Shane to pick up during the inspection, right?

14 A. I didn't. The resale certificate, I never had in my
15 hand. So, my husband picked it up, and then brought
16 it to the condo, and dropped it off.

17 Q. At any time in there, did you look inside of it to see
18 what was there?

19 A. No. I never even touched the resale certificate.

20 MR. HANSEN: I have got no other questions,
21 Your Honor.

22 THE COURT: Counsel.

23 MR. DAVIS: Thank you.

24

25

REDIRECT EXAMINATION

Exhibit 10

Watts v. Dunphy

King County Superior Court Trial
Exhibits

SUPERIOR COURT OF WASHINGTON, COUNTY OF KING

SHANE AND AMY WATTS,
Plaintiffs
and

NO. 10-2-07806-1 SEA

PLAINTIFF'S EXHIBIT LIST

MARY P. DUNPHY AND MARK L.
DUNPHY, Wife and Husband,
Defendants.

Petitioner expects to offer at trial:

No.	Description	No Obj.	Auth. Adm. But Object.	Other-wise Objec-tionable
1	1 st Interrogatories to Def. Dunphy w/Answer	x		
2	Corke Amento Billing to Kirkland Village HOA	x		
3	Kirkland Village HOA Minutes (Oct 2006-July 2007)	x		
4	Kirkland Village Emails	x		
5	Northwest Engineers (Jack Swardz) Inspections (nov 2005/Jan 2006)	x		
6	Safe & Sound Inspections Documents: Report/Daytime/Ltr to Dunphy) (Oct. 06)	x		
7	Proposal – Corke Amento (2/13/07 Presentation)	x		
8	Proposed Scope of Limited Investigation (Corke Amento)	x		
9	Photographs – LAH Working Notebook – May 1-2 Intrusive Inspection	x		
10	Inspection Observations and Recommendations (Corke Amento) (Draft report- July 2007)	x		
11	Inspection Observations and Recommendations (Corke Amento) (Final report- August 2007)	x		
12	Complaint – Kirkland Village v. Center Bay (Extract) and Answer	x		
13	Remco Deacon Estimate of Repairs	x		
14	Resale Certificate Checklist	x		
15	Dunphy's Form 17 Dated July 9, 2007 (w/Highlights)	x		
16	Dunphy's Form 17 Dated July 25, 2007 (w/Highlights)	x		
17	Watts' Home Inspection (Thompson Home Inspectors) (Extract)	x		
18	Watts' Purchase & Sale Agreement (Signed by Dunphy 7/9/07)	x		
19	Condo Agent Detail (From Tec Real Estate,	x		

	Completed Purchase Agreement)			
20	Emails (Between Robert Pong, Mary Dunphy, and Jean LeTellier)	x		
21	Esplanade Condominium HOA Minutes	x		
22	Esplanade Condominium Statutory Warranty Deed	x		
23	Kirkland House Statutory Warranty Deed	x		
24	Warranty Deed - Tingchun Kang	x		
25	Comparative Market Valuations – Jeffrey Stegelman		x	
26	FHA HPI/Schilling-Case Index		x	
27	Purchase & Sale Agreements – Dunphy's Juanita House w/Form 17	x		
28	Bank Statements – Mary Dunphy (Wells Fargo/ Bank of America	x		
29	Order on Summary Judgment	x		

Trial Exhibit 9

In Re Dunphy Bankruptcy
King County Superior
Court Trial Exhibits
Exhibit 9 (CAI Photographs -
Inspection)

**KIRKLAND
VILLAGE**



Kirkland Village

13150 102nd Lane NE
Kirkland, WA 98034-8847

LAH WORKING NOTEBOOK



**CORKE
AMENTO,
INC.**

001

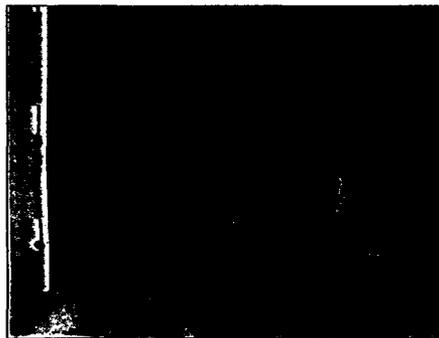
Kirkland Village
JCJ Day 1



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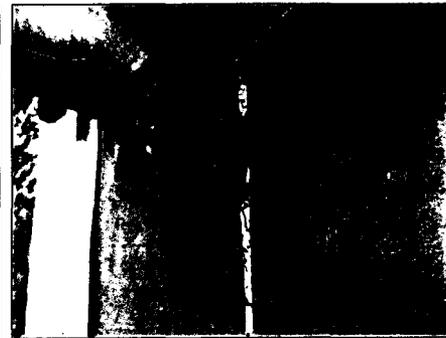
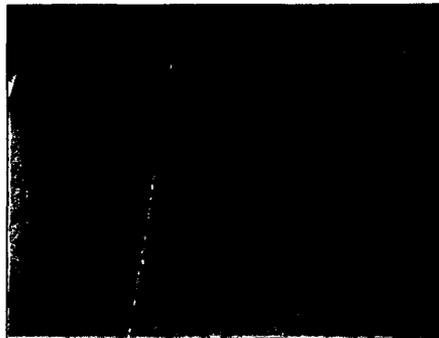
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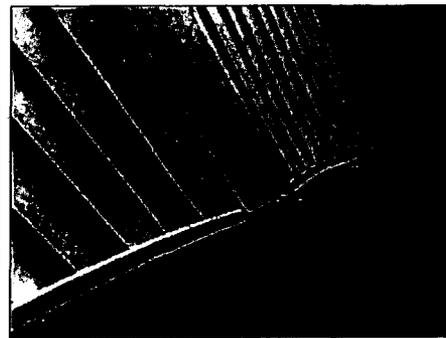
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Kirkland Village
JCJ Day 1



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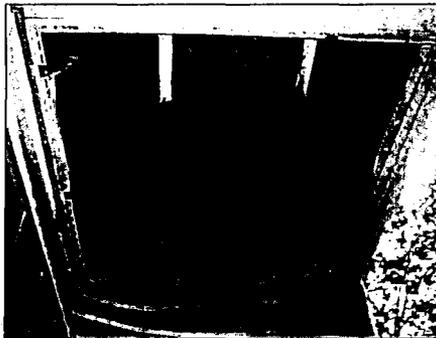
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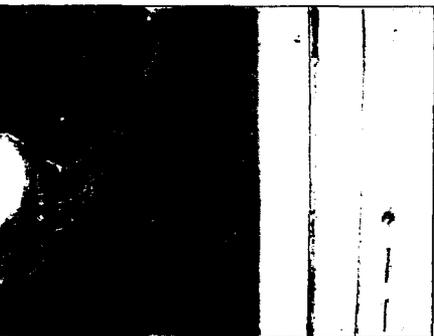
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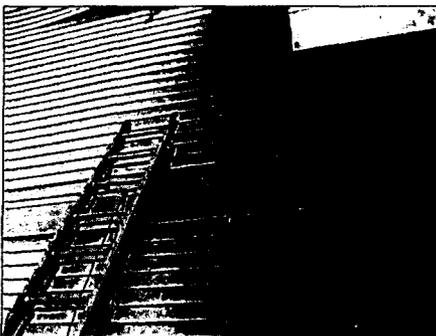
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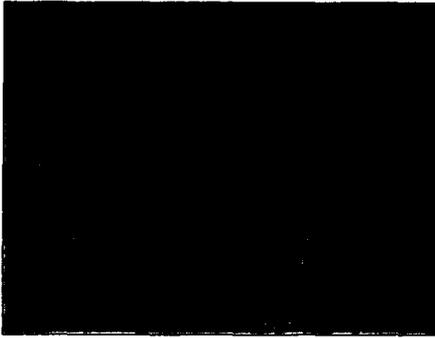
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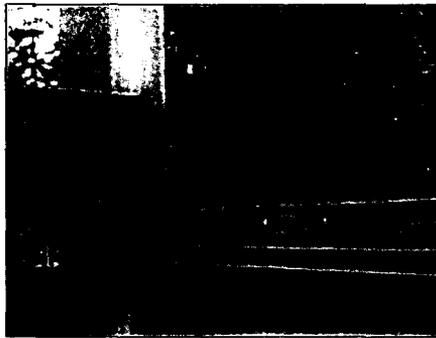
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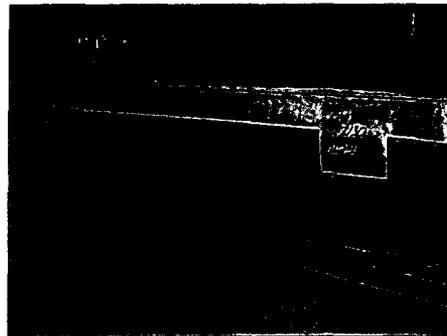
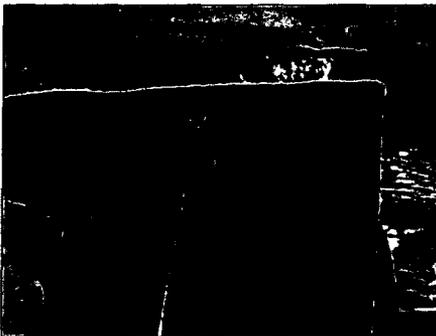
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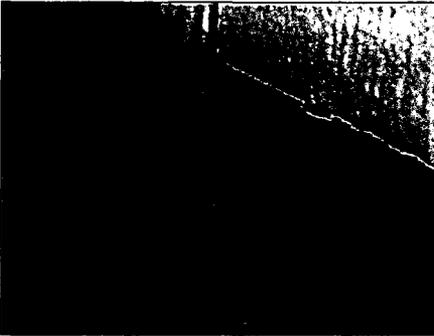
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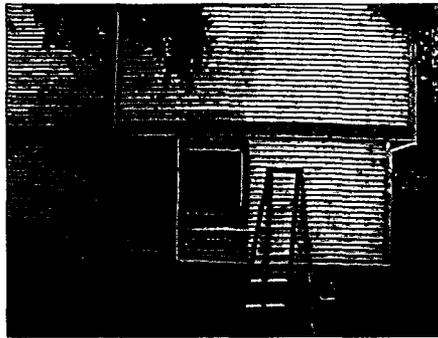
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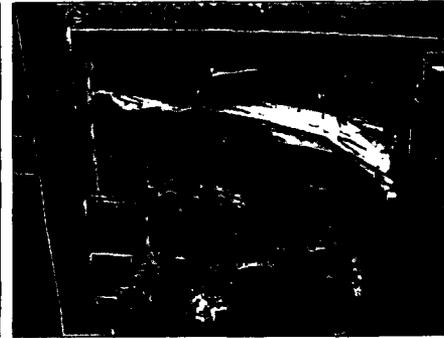
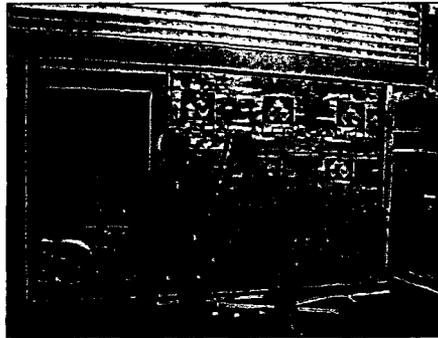
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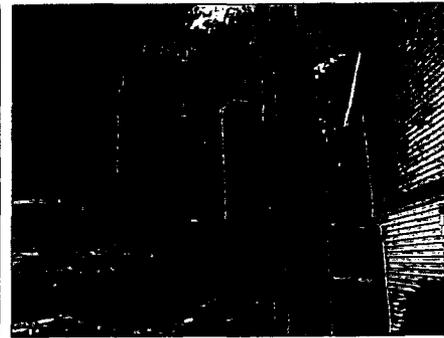
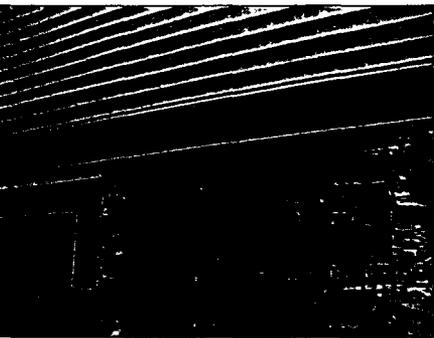
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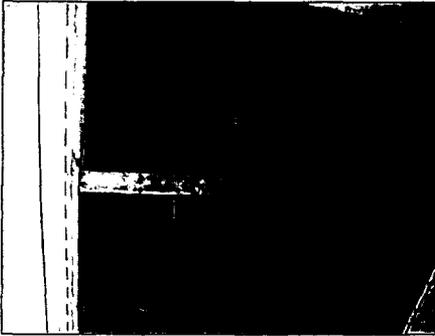
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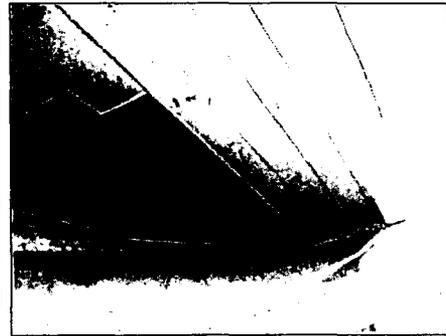
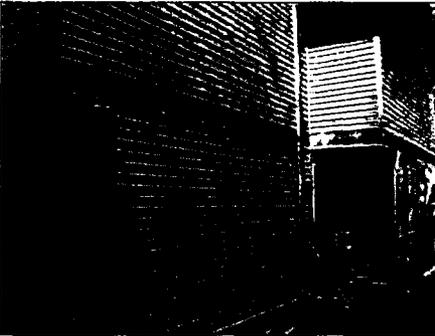
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JCJ Day 1



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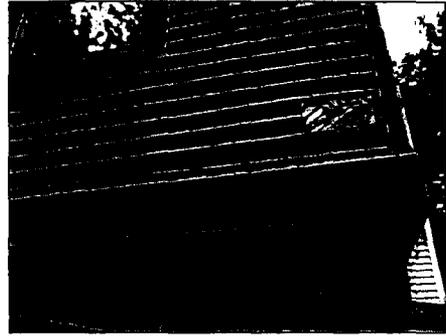
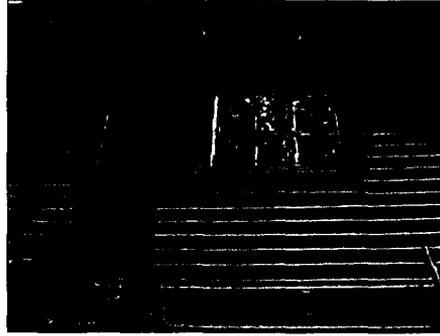
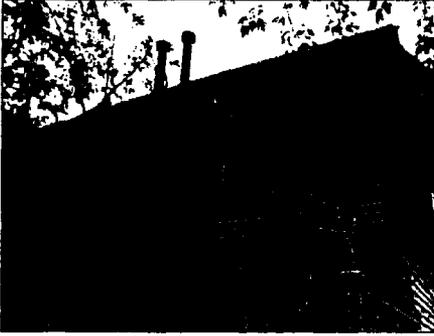


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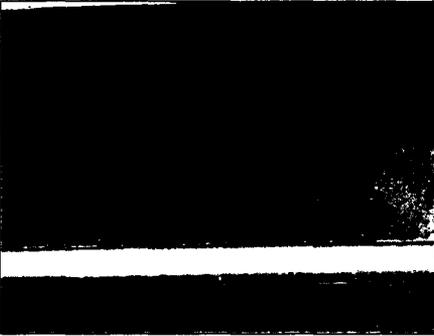
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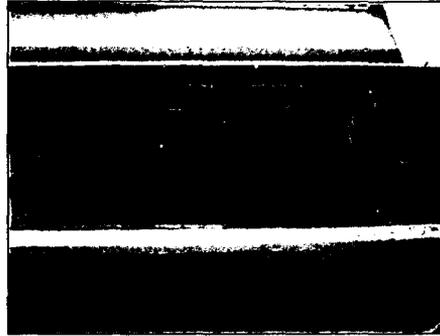
Kirkland Village
JCJ Day 2



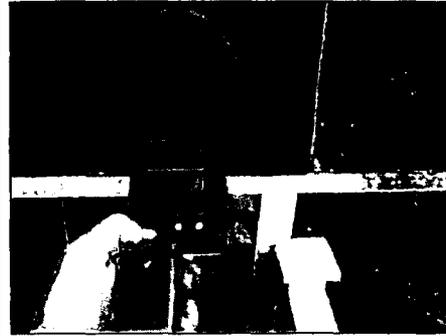
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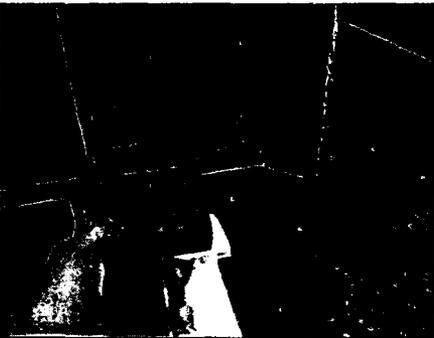
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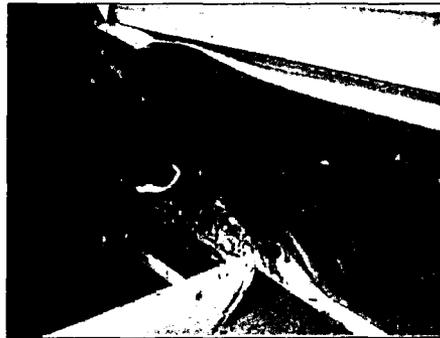
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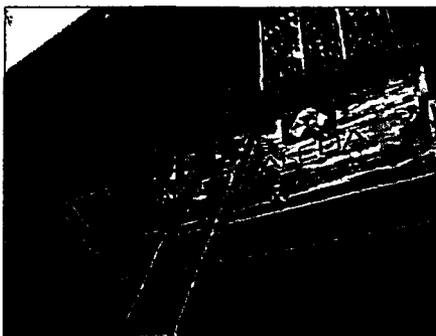


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Kirkland Village
JCJ Day 2



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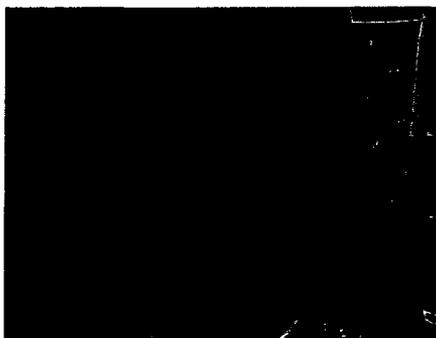
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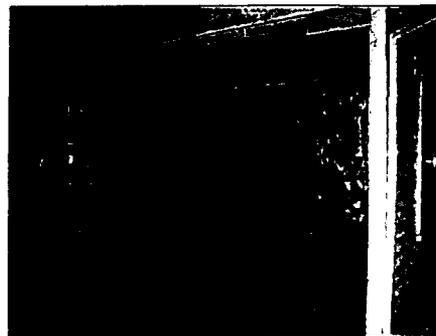
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Kirkland Village
JCJ Day 2



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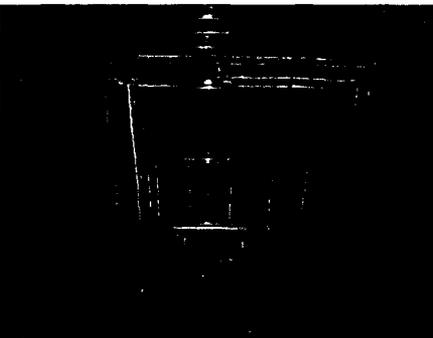
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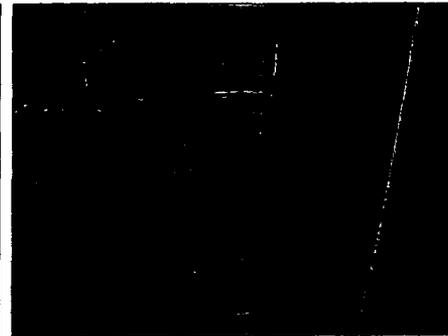
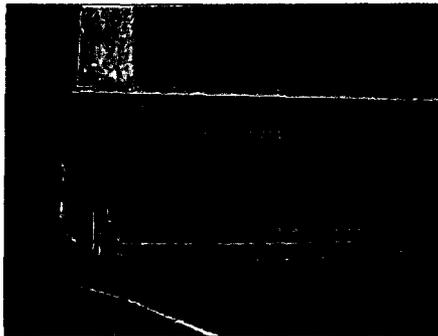
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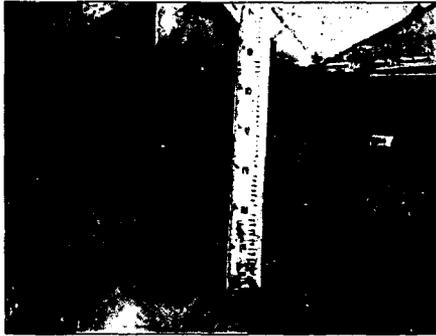
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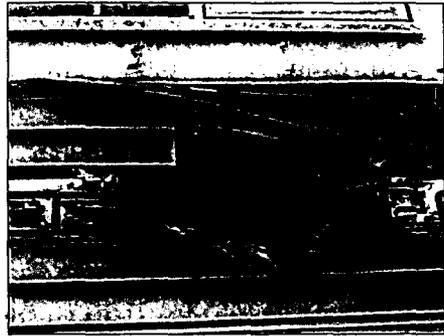
Kirkland Village
JCJ Day 2



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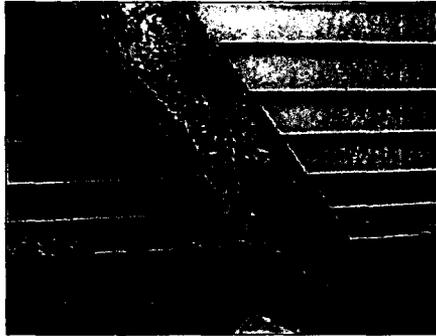
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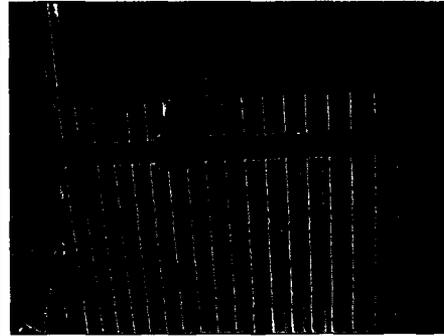
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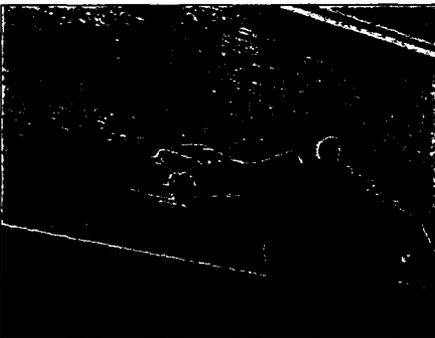
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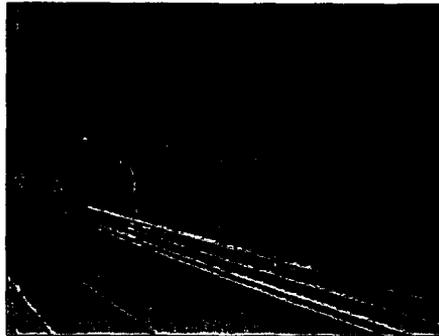


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Kirkland Village
JCJ Day 2



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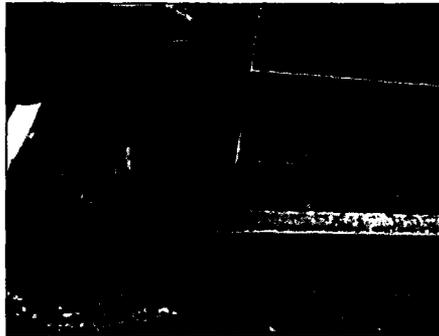
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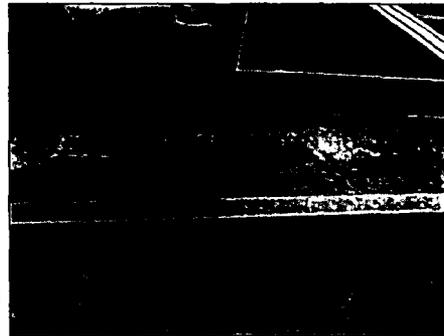
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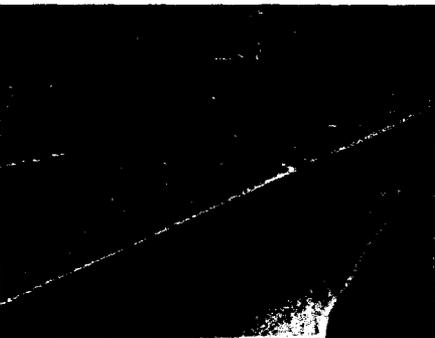
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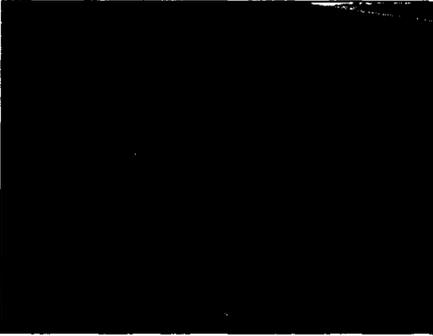


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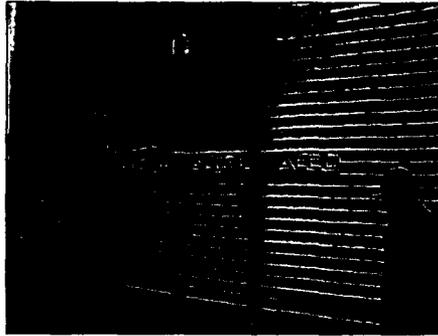


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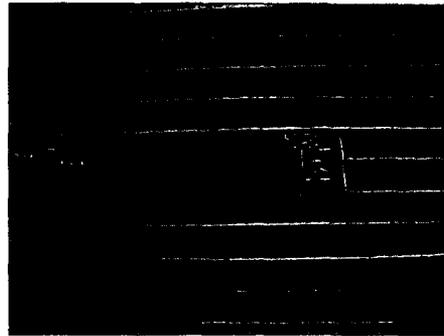
Kirkland Village
Building 13150 LAH May 1, 2007



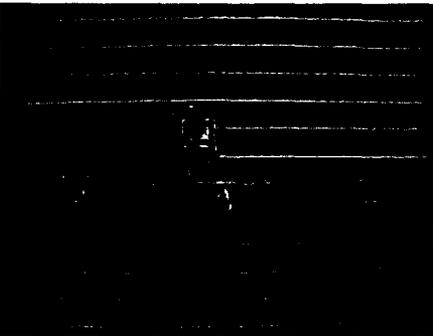
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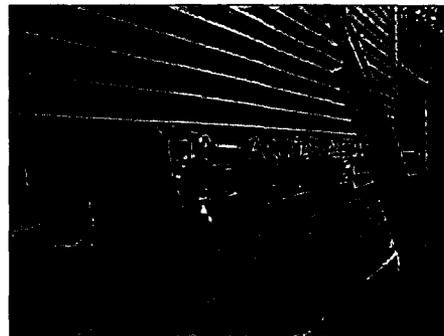
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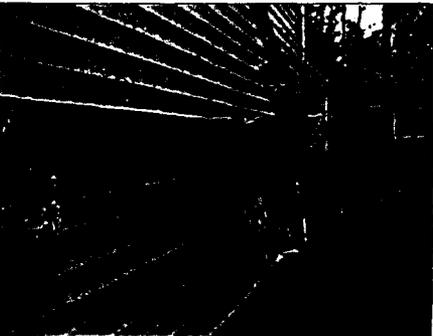
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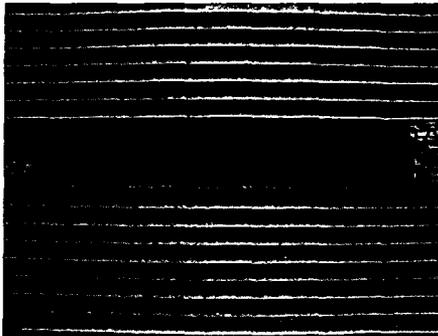
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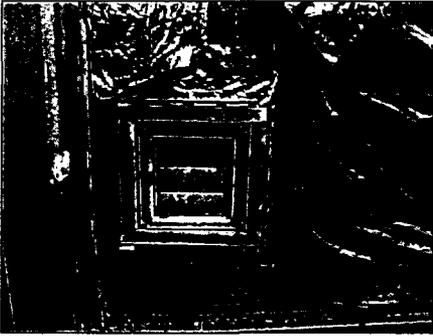


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Kirkland Village
Building 13130 LAH May 1, 2007



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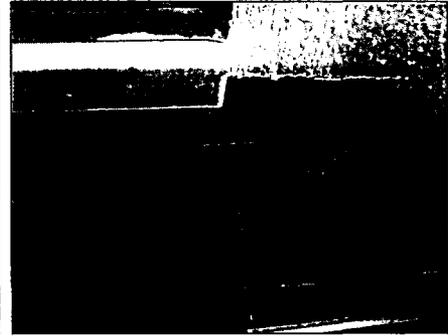
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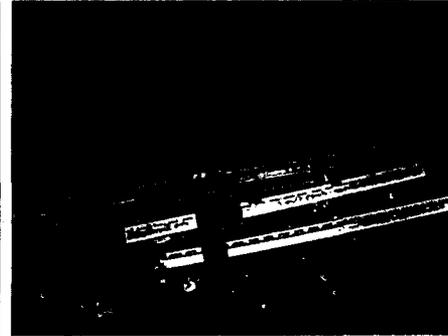
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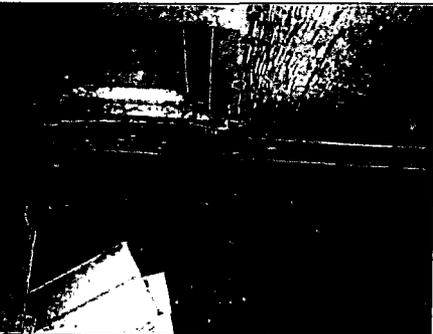
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Kirkland Village
Building 13020 LAH May 1, 2007



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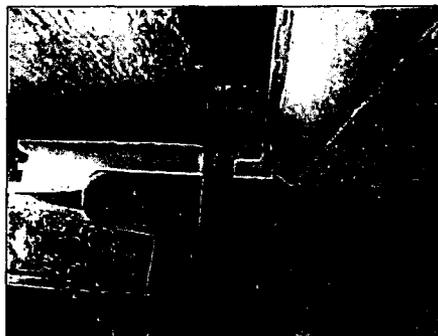
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Kirkland Village
Building 13020 LAH May 1, 2007



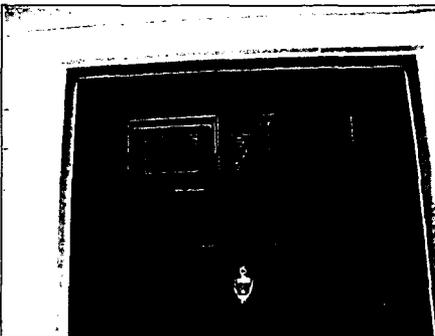
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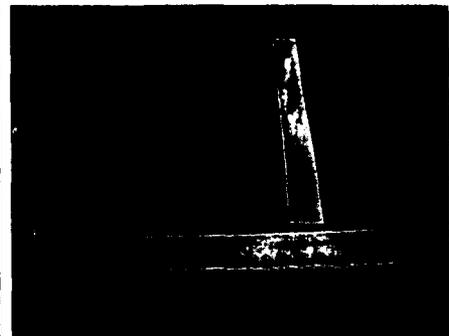
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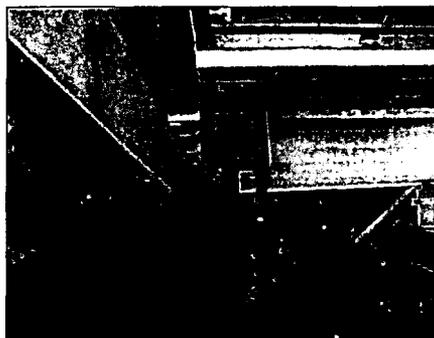
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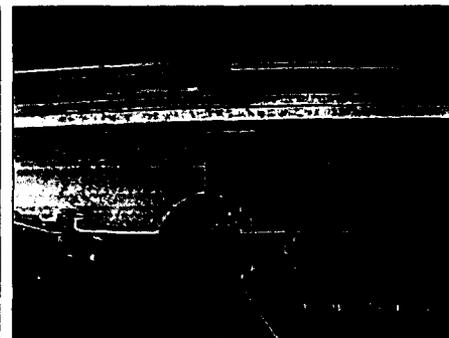
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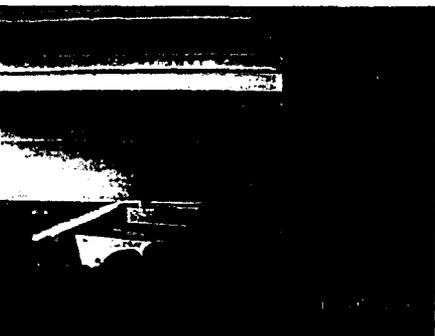
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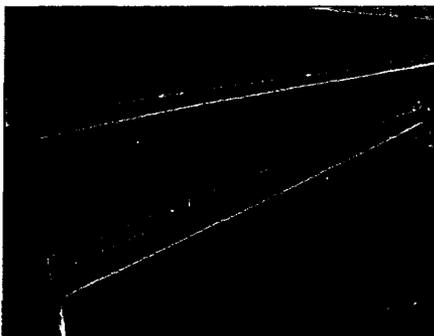
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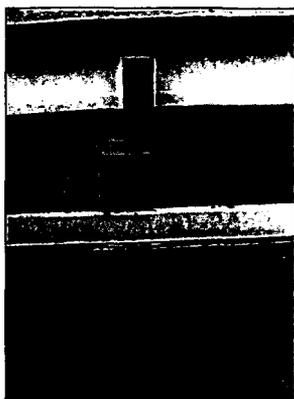


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Kirkland Village
Building 13020 LAH May 1, 2007



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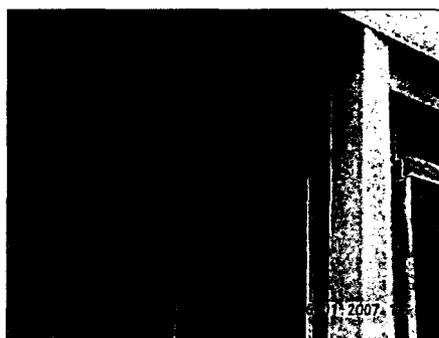
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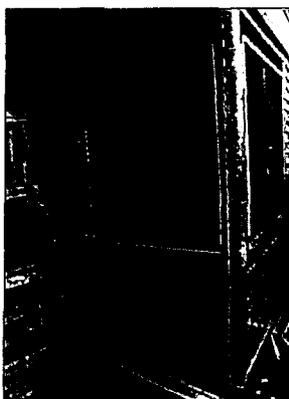
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Trial Exhibit 10

In Re Dunphy Bankruptcy

King County Superior
Court Trial Exhibits
Exhibit 10 (CAI Draft
Report)



Kirkland Village

13150 102nd Lane NE • Kirkland, WA 98034-8847

Investigation Observations and Repair Recommendations

July 12, 2007

Prepared For
Kirkland Village Condominium Homeowners' Association

Prepared By



Mark Cress
CORKE AMENTO INC.

Contents

Introduction.....	3
Site Plan.....	4
Orientation Photographs.....	5
Specific Observations and Repair Recommendations	
A. General Conditions and Bid Instructions.....	8
B. Siding, WRB, And Flashing Repairs – Exterior Walls.....	11
C. Sheathing And Framing Repairs Due to Water Damage.....	21
D. Conclusion.....	22
Exhibit A Investigation Observations	

Introduction

In March 2007, Corke Amento, Inc. ("CAI") was retained by the Kirkland Village Condominium Homeowners Association to perform an investigation and provide opinions regarding complaints generated by the homeowners. Kirkland Village Condominiums consists of 61 homeowners.

The homes are located in Kirkland, Washington, and were originally built in approximately 1982. Sixty-one homes are two stories and are comprised of wood frame built over a crawl space. These homes are configured as townhomes in groups ranging from three to seven homes. The remaining three homes are single story homes, placed as an end unit of one of the previously-referenced "groups." The siding is vinyl siding which is supplemented with wood trim around door and window perimeters. The roof is covered with fiberglass shingles. A site plan and locator map can be found on page 4.

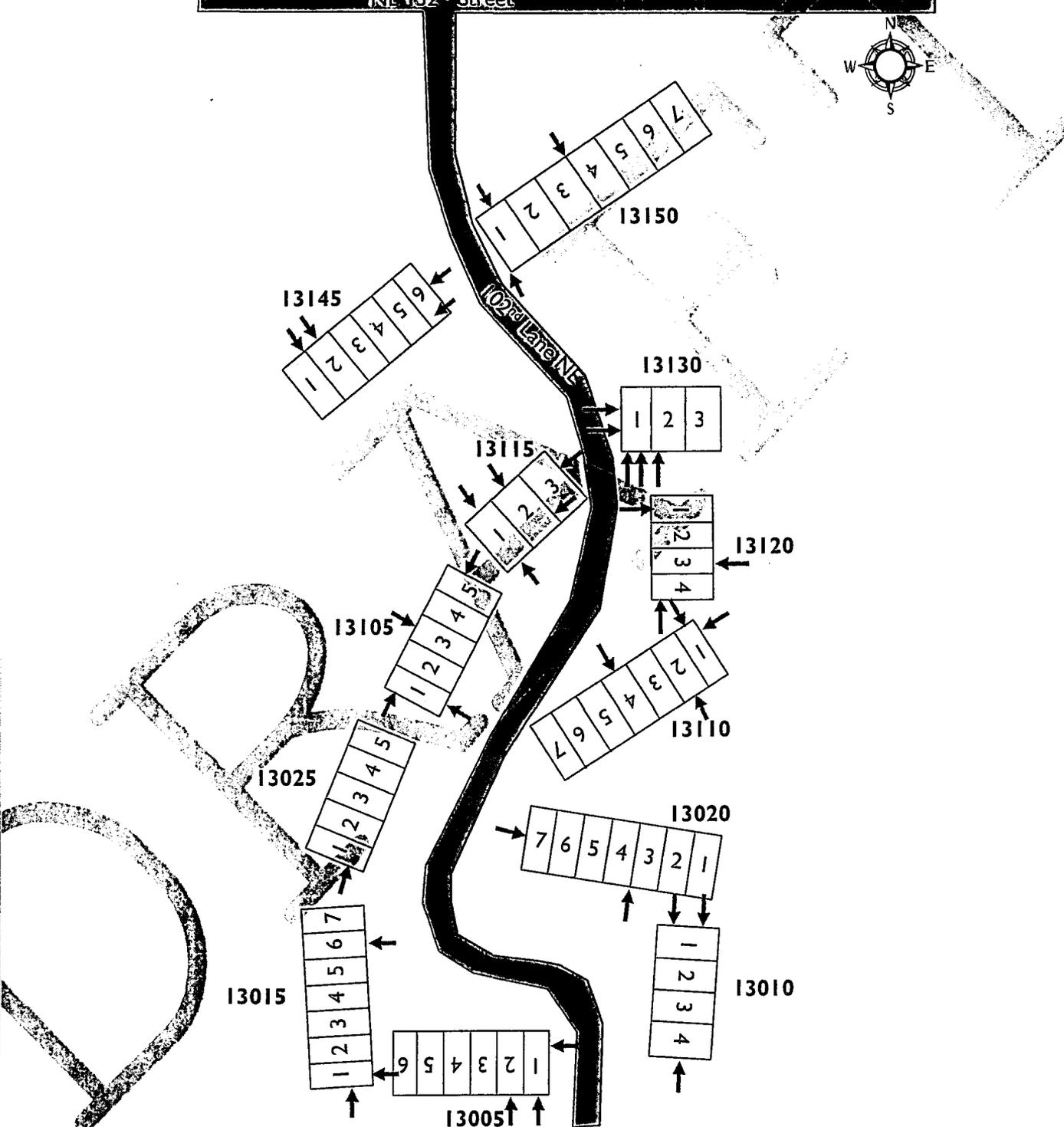
No plans or specification were made available to CAI for review. The Kirkland Village Homeowners provided CAI with the Public Offering Statement dated February 10, 2006. CAI reviewed this information and performed a destructive investigation of 12 building exteriors the week of May 2, 2007. On May 4, CAI met with representatives from the HOA to discuss our observations and provide a review of the investigation openings.

The Scope of Repair, as described herein, is defined as the Work and is based on visual observations, industry standards, and code research. Any party preparing an estimate based on this Scope of Repair shall include any minor or incidental items not mentioned, but obviously needed to accomplish the Work. Unless specifically noted, no attempt has been made to furnish quantities of the various items in connection with the described work. For those parties using this document as a basis for estimate, quantities of materials should be determined by visiting the site.

To assist parties in understanding the project, orientation photographs are provided on pages 5-7.

Site Plan

NE 132nd Street



→ May 1 & 2, 2007 investigation locations

Orientation Photographs

Front Elevations



Typical front elevation not facing parking.



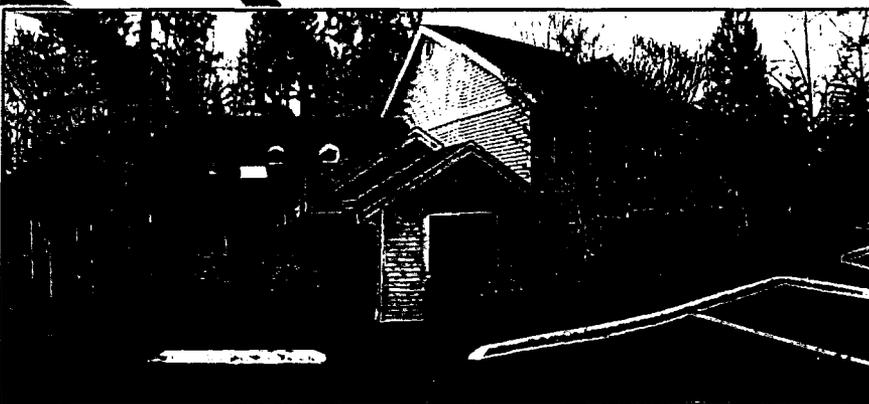
Typical front elevation facing parking.



Front elevation of Building 13115.



Front elevation of Building 13115 (similar to 13115).



Front elevation of Building 13145.

Specific Observations and Repair Recommendations

B. Siding, WRB, Flashing, and Trim at Exterior Walls

Investigation Observations

1. Siding.
 - a. At several entry and patio locations, concrete has been poured over the bottom rows of siding, eliminating the designed drainage from behind the system. See photos 1 and 4-6 on page 14.
 - b. Multiple locations of cracked, broken, missing, or poorly repaired siding. See photos 7-11 on page 15.
2. Weather Resistive Barrier (WRB). The WRB is improperly installed:
 - a. WRB is missing in areas. See photos 13-17 on pages 16-17.
 - b. WRB is mislapped in areas. See photos 2 and 18 on pages 14 and 16.
 - c. WRB is missing at window penetrations and behind multiple bellybands. See photos 19-22 on page 17.
 - e. Water infiltration and damage exists underneath WRB. See photos 23-24 on page 17 and photo 25-28 on page 18.
3. Flashing.
 - a. Windows. All windows observed during CAI's investigation were missing head flashing and perimeter flashing. See photos 29-30 on page 18.
 - b. Bellybands. Flashing is improperly integrated with WRB at all locations. In addition, the upleg of the flashing only extends 1". This allows wind-driven rain to gain ingress into and behind the flashing and bellyband, leading to premature degradation of the wood trim members and underlying components. See photo 31 on page 19.
 - c. Roof-to-Wall locations. Diverter flashing is omitted at all roof-to-wall locations. Moisture-damaged sheathing beneath an omitted diverter location was observed and documented. Visible gaps and opportunities for water entry behind the siding and wood trim were observed during the investigation. Moisture readings were taken at two locations during CAI's investigation. See photos 3 and 26 on pages 14 and 18.
 - d. Trim. Several windows are missing trim. The window flanges and sheathing below have simply been painted white to blend in with the trim that is installed. See photos 35-38 on pages 19 and 20. This provides opportunities for water entry and damage to the plywood or GWB directly behind the nail fin.

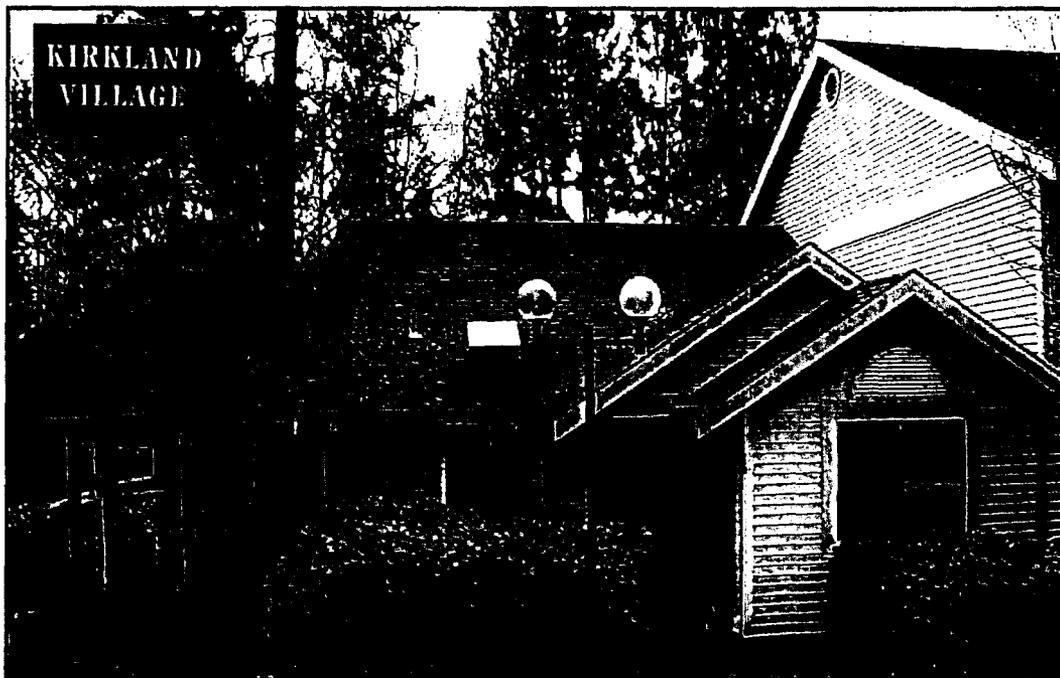
Conclusion

Based on the investigation performed on site, it is apparent that moisture intrusion is occurring at numerous locations throughout the condominium project. Due to the as-built construction of the project, and the fact that the current energy code requirements were not in place at the time of construction, most of the moisture that enters behind the cladding has the ability to exit at the bottom of the cladding, or is evaporated by heating of the cladding from solar energy. Moisture that does not exit from the bottom termination, or is removed by evaporation, is causing damage and premature degradation of cladding components, underlying sheathing, and structural framing. In addition, at areas that contain gypsum sheathing, the moisture intrusion has resulted in organic growth, and could affect interior air quality. Several areas are in need of immediate attention to prevent further degradation of underlying components. Improper venting and improper vent connections were also observed to be present and has led to substantial decay at one location found during our investigation. Due to the fact that no plans or specifications were provided for review, it is difficult to compare to as-built conditions of the project versus the as-designed plans of the project, thus we were only provided with visual information derived from our investigation. All known construction defects were noted in our report, and this report may be amended as new information is obtained.

Trial Exhibit 11

In Re Dunphy Bankruptcy

King County Superior
Court Trial Exhibits
Exhibit 11 (CAI Final
Report)



Kirkland Village

13150 102nd Lane NE • Kirkland, WA 98034-8847

Investigation Observations and Repair Recommendations

August 14, 2007

Prepared For
Kirkland Village Condominium Homeowners' Association

Prepared By



Mark Cress
CORKE AMENTO INC.

Specific Observations and Repair Recommendations

B. Siding, WRB, Flashing, and Trim at Exterior Walls

Investigation Observations

1. Siding.
 - a. At several entry and patio locations, concrete has been poured over the bottom rows of siding, eliminating the designed drainage from behind the system. See photos 1 and 4-6 on page 14.
 - b. Multiple locations of cracked, broken, missing, or poorly repaired siding. See photos 7-11 on page 15.
2. Weather Resistive Barrier (WRB). The WRB is improperly installed:
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 - e. Water infiltration and damage exists underneath WRB. See photos 23-24 on page 17 and photo 25-28 on page 18.
3. Flashing.
 - a. Windows. All windows observed during CAI's investigation were missing head flashing and perimeter flashing. See photos 29-30 on page 18.
 - b. Bellybands. Flashing is improperly integrated with WRB at all locations. In addition, the upleg of the flashing only extends 1". This allows wind-driven rain to gain ingress into and behind the flashing and bellyband, leading to premature degradation of the wood trim members and underlying components. See photo 31 on page 19.
 - c. Roof-to-Wall locations. Diverter flashing is omitted at all roof-to-wall locations. Moisture-damaged sheathing beneath an omitted diverter location was observed and documented. Visible gaps and opportunities for water entry behind the siding and wood trim were observed during the investigation. Moisture readings were taken at two locations during CAI's investigation. See photos 3 and 26 on pages 14 and 18.
 - d. Trim. Several windows are missing trim. The window flanges and sheathing below have simply been painted white to blend in with the trim that is installed. See photos 35-38 on pages 19 and 20. This provides opportunities for water entry and damage to the plywood or GWB directly behind the nail fin.

Specific Observations and Repair Recommendations

B. Siding, WRB, Flashing, and Trim at Exterior Walls *(continued)*



Photo 13. Bldg 13020. WRB missing under siding between entries of units 3 & 4.



Photo 14. Bldg 13020. WRB missing under siding around windows of unit 7.

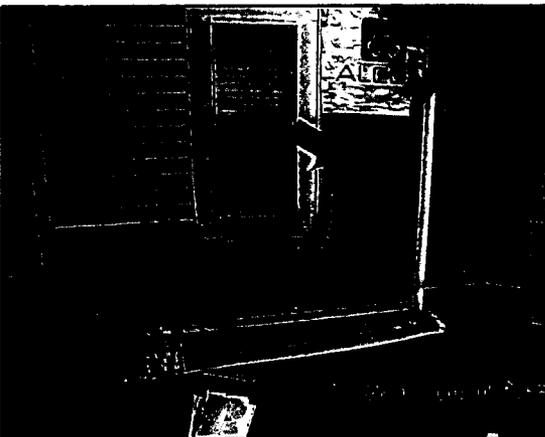


Photo 15. Bldg 13015. Unit 4. WRB missing under siding.

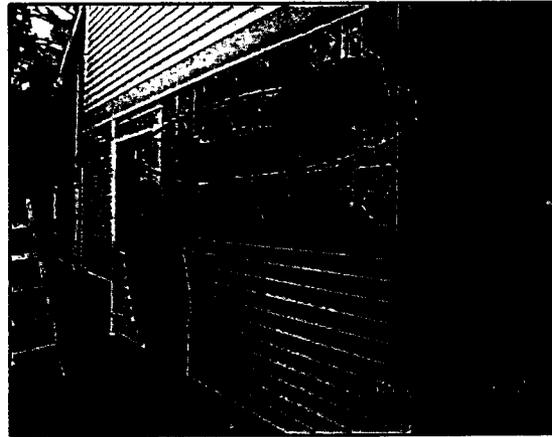


Photo 16. Bldg 13025. Unit 1. WRB sections missing.



Photo 17. Bldg 13105. WRB missing above bellyband flashing (in excess of 4").



Photo 18. Bldg 13110. WRB mislapped at corner.

Trial Exhibit 16

In Re Dunphy Bankruptcy

King County Superior

Court Trial Exhibits

Exhibit 16 (July 2007 Form
17)

Dunphy / Watts
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Rev. 6/07
Page 1 of 5 Pages

SELLER: Dunphy

† To be used in transfers of improved residential real property, including multi-family dwellings up to four units, new construction, condominiums not subject to a public offering statement, certain timeshares, and manufactured and mobile homes. See RCW Chapter 64.06 and Section 43.22.432 for further explanations.

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any asterisked (*) item(s), please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and initial each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five (5) business days, unless otherwise agreed, after mutual acceptance of a written purchase and sale agreement between Buyer and Seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY THE SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT 13020 102nd LN NE, Unit #3

CITY Kirkland, COUNTY King ("THE PROPERTY") OR AS LEGALLY DESCRIBED ON THE ATTACHED EXHIBIT A. SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE (3) BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A PURCHASE AND SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller is/ is not occupying the property.

I. SELLER'S DISCLOSURES:

* If you answer "Yes" to a question with an asterisk (*), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

1. TITLE

A. Do you have legal authority to sell the property? If not, please explain.

*B. Is title to the property subject to any of the following?

- (1) First right of refusal
- (2) Option
- (3) Lease or rental agreement
- (4) Life estate

*C. Are there any encroachments, boundary agreements, or boundary disputes?

*D. Is there a private road or easement agreement for access to the property?

*E. Are there any rights-of-way, easements, or access limitations that may affect Buyer's use of the property?

*F. Are there any written agreements for joint maintenance of an easement or right-of-way?

*G. Is there any study, survey project, or notice that would adversely affect the property?

*H. Are there any pending or existing assessments against the property?

*I. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the property that would affect future construction or remodeling?

*J. Is there a boundary survey for the property?

*K. Are there any covenants, conditions, or restrictions which affect the property?

	YES	NO	DON'T KNOW
A.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*B.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(1)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(2)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(3)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(4)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
*C.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
*D.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
*E.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
*F.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
*G.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
*H.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
*I.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
*J.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
*K.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

PLEASE NOTE: Covenants, conditions, and restrictions which purport to forbid or restrict the conveyance, encumbrance, occupancy, or lease of real property to individuals based on race, creed, color, sex, national origin, familial status, or disability are void, unenforceable, and illegal. RCW 49.60.224.

SELLER'S INITIAL: MD DATE: 7/25/07 SELLER'S INITIAL: _____ DATE: _____

NWMLS Form No. 17
W.A.R. Form No. D-5
Rev. 6/07
Page 2 of 5 Pages

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2. WATER

YES NO DONT KNOW 58

A. Household Water

- (1) The source of water for the property is: Private or publicly owned water system 60
 - Private well serving only the subject property * Other water system 61
 - *If shared, are there any written agreements? YES NO DONT KNOW 62
- *(2) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source? YES NO DONT KNOW 63
- *(3) Are there any known problems or repairs needed? YES NO DONT KNOW 65
- (4) During your ownership, has the source provided an adequate year-round supply of potable water? YES NO DONT KNOW 66

If no, please explain: _____ 67
- *(5) Are there any water treatment systems for the property? YES NO DONT KNOW 68

If yes, are they: Leased Owned 69
- *(6) Are there any water rights for the property, associated with its domestic water supply, such as a water right permit, certificate, or claim? YES NO DONT KNOW 70
 - (a) If yes, has the water right permit, certificate, or claim been assigned, transferred, or changed? YES NO DONT KNOW 72
 - (b) If yes, has all or any portion of the water right not been used for five or more successive years? YES NO DONT KNOW 73

If yes, please explain: _____ 74

B. Irrigation

- (1) Are there any irrigation water rights for the property, such as a water right permit, certificate, or claim? YES NO DONT KNOW 75
 - *(a) If yes, has all or any portion of the water right not been used for five or more successive years? YES NO DONT KNOW 77
 - *(b) If so, is the certificate available? (If yes, please attach a copy.) YES NO DONT KNOW 78
 - (c) If so, has the water right permit, certificate, or claim been assigned, transferred, or changed? YES NO DONT KNOW 79

If so, please explain: _____ 80
- (2) Does the property receive irrigation water from a ditch company, irrigation district, or other entity? YES NO DONT KNOW 81

If so, please identify the entity that supplies water to the property: _____ 82

_____ 83

C. Outdoor Sprinkler System

- (1) Is there an outdoor sprinkler system for the property? YES NO DONT KNOW 84
- (2) If yes, are there any defects in the system? YES NO DONT KNOW 86
- *(3) If yes, is the sprinkler system connected to irrigation water? YES NO DONT KNOW 87

3. SEWER/ON-SITE SEWAGE SYSTEM

A. The property is served by:

- Public sewer system On-site sewage system (including pipes, tanks, drainfields, and all other component parts) 89
- Other disposal system 90
- Please describe: _____ 91

- B. If public sewer system service is available to the property, is the house connected to the sewer main? YES NO DONT KNOW 93
- If no, please explain: _____ 94

- C. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service? YES NO DONT KNOW 96

- D. If the property is connected to an on-site sewage system: 98
 - *(1) Was a permit issued for its construction, and was it approved by the local health department or district following its construction? YES NO DONT KNOW 99
 - (2) When was it last pumped? _____ 101
 - *(3) Are there any defects in the operation of the on-site sewage system? YES NO DONT KNOW 102
 - (4) When was it last inspected? _____ 103
 - By whom: _____ 104
 - (5) For how many bedrooms was the on-site sewage system approved? _____ bedrooms 105

SELLER'S INITIAL: MPQ DATE: 7/25/07

SELLER'S INITIAL: _____ DATE: _____ 106

NWMLS Form No. 17
W.A.R. Form No. D-5
Rev. 6/07
Page 3 of 5 Pages

**SELLER DISCLOSURE STATEMENT
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	YES	NO	DON'T KNOW	
E. Are all plumbing fixtures, including laundry drain, connected to the sewer/on-site sewage system?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	107
If no, please explain: _____				108
*F. Have there been any changes or repairs to the on-site sewage system?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	109
G. Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	110
If no, please explain: _____				111
H. Does the on-site sewage system require monitoring and maintenance services more frequently than once a year?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	112
If yes, please explain: _____				113

NOTICE: IF THIS SELLER DISCLOSURE STATEMENT IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH HAS NEVER BEEN OCCUPIED, SELLER IS NOT REQUIRED TO COMPLETE THE QUESTIONS LISTED IN ITEM 4 (STRUCTURAL) OR ITEM 5 (SYSTEMS AND FIXTURES). 114

4. STRUCTURAL

*A. Has the roof leaked?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	115
*B. Has the basement flooded or leaked?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	116
*C. Have there been any conversions, additions or remodeling? (Condo Conversion; effective year 2006)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	117
* (1) If yes, were all building permits obtained?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	118
* (2) If yes, were all final inspections obtained?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	119
D. Do you know the age of the house?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	120
If yes, year of original construction: <u>1985</u>				121
*E. Has there been any settling, slippage, or sliding of the property or its improvements?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	122
*F. Are there any defects with the following: (If yes, please check applicable items and explain.)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	123
<input type="checkbox"/> Foundations	<input type="checkbox"/> Decks	<input type="checkbox"/> Exterior Walls		124
<input type="checkbox"/> Chimneys	<input type="checkbox"/> Interior Walls	<input type="checkbox"/> Fire Alarms		125
<input type="checkbox"/> Doors	<input type="checkbox"/> Windows	<input type="checkbox"/> Patios		126
<input type="checkbox"/> Ceilings	<input type="checkbox"/> Slab Floors	<input type="checkbox"/> Driveways		127
<input type="checkbox"/> Pools	<input type="checkbox"/> Hot Tub	<input type="checkbox"/> Sauna		128
<input type="checkbox"/> Sidewalks	<input type="checkbox"/> Outbuildings	<input type="checkbox"/> Fireplaces		129
<input type="checkbox"/> Garage Floors	<input type="checkbox"/> Walkways	<input type="checkbox"/> Wood Stoves		130
<input type="checkbox"/> Siding	<input type="checkbox"/> Other _____			131
*G. Was a structural post or "whole house" inspection done?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	132
If yes, when and by whom was the inspection completed? _____				133
H. During your ownership, has the property had any wood destroying organisms or pest infestations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	134
I. Is the attic insulated?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	135
J. Is the basement insulated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	136

5. SYSTEMS AND FIXTURES

*A. If any of the following systems or fixtures are included with the transfer, are there any defects?				137
If yes, please explain: _____				138
Electrical system, including wiring, switches, outlets, and service	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	139
Plumbing system, including pipes, faucets, fixtures, and toilets	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	140
Hot water tank	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	141
Garbage disposal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	142
Appliances	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	143
Sump pump	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	144
Heating and cooling systems	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	145
Security system <input type="checkbox"/> Leased <input checked="" type="checkbox"/> Owned (You can registered w/ ADT to continue service)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	146
Other _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	147

SELLER'S INITIAL: MPG DATE: 7/25/07 SELLER'S INITIAL: _____ DATE: _____ 150

NWMLS Form No. 17
W.A.R. Form No. D-5
Rev. 6/07
Page 4 of 5 Pages

**SELLER DISCLOSURE STATEMENT
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	YES	NO	DON'T KNOW	158 159
*B. If any of the following fixtures or property is included with the transfer, are they leased? (If yes, please attach copy of lease.)				
Security System	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	160
Tanks (type): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	161
Satellite dish	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	162
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	163
6. HOMEOWNERS' ASSOCIATION/COMMON INTERESTS				164
A. Is there a homeowners' association?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	165
Name of association <u>Kirkland Village, LLC</u>				166
B. Are there regular periodic assessments?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	167
<u>\$219.37</u> per <input checked="" type="checkbox"/> month <input type="checkbox"/> year				168
<input type="checkbox"/> Other _____				169
*C. Are there any pending special assessments?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	170
*D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	171 172
7. ENVIRONMENTAL				173
*A. Have there been any drainage problems on the property?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	174
*B. Does the property contain fill material?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	175
*C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	176 177
D. Are there any shorelines, wetlands, floodplains, or critical areas on the property?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	178
*E. Are there any substances, materials, or products on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	179 180
*F. Has the property been used for commercial or industrial purposes?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	181
*G. Is there any soil or groundwater contamination?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	182
*H. Are there transmission poles, transformers, or other utility equipment installed, maintained, or buried on the property?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	183
*I. Has the property been used as a legal or illegal dumping site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	184
*J. Has the property ever been used as an illegal drug manufacturing site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	185
*K. Are there any radio towers in the area that may cause interference with telephone reception?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	186
8. LEAD BASED PAINT (Applicable if the house was built before 1978.)				187
A. Presence of lead-based paint and/or lead-based paint hazards (check one below):				188
<input type="checkbox"/> Known lead-based paint and/or lead-based paint hazards are present in the housing (explain) _____				189 190
<input checked="" type="checkbox"/> Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.				191
B. Records and reports available to the Seller (check one below):				192
<input type="checkbox"/> Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below) _____				193 194 195
<input checked="" type="checkbox"/> Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.				196
9. MANUFACTURED AND MOBILE HOMES				197
If the property includes a manufactured or mobile home,				198
*A. Did you make any alterations to the home?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	199
If yes, please describe the alterations: _____				200
*B. Did any previous owner make any alterations to the home?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	201
If yes, please describe the alterations: _____				202
*C. If alterations were made, were permits or variances for these alterations obtained?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	203
10. FULL DISCLOSURE BY SELLERS				204
A. Other conditions or defects:				205
*Are there any other existing material defects affecting the property that a prospective buyer should know about?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	206 207
SELLER'S INITIAL: <u>MPD</u> DATE: <u>7/25/07</u>				208
SELLER'S INITIAL: _____ DATE: _____				

NWMLS Form No. 17
W.A.R. Form No. D-5
Rev. 6/07
Page 5 of 5 Pages

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B. Verification

The foregoing answers and attached explanations (if any) are complete and correct to the best of Seller's knowledge and Seller has received a copy hereof. Seller agrees to defend, indemnify and hold real estate licensees harmless from and against any and all claims that the above information is inaccurate. Seller authorizes real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the Property.

Date: 07/25/2007 Date: _____
Seller: [Signature] Seller: _____

**NOTICES TO THE BUYER
SEX OFFENDER REGISTRATION**

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

PROXIMITY TO FARMING

THIS NOTICE IS TO INFORM YOU THAT THE REAL PROPERTY YOU ARE CONSIDERING FOR PURCHASE MAY LIE IN CLOSE PROXIMITY TO A FARM. THE OPERATION OF A FARM INVOLVES USUAL AND CUSTOMARY AGRICULTURAL PRACTICES, WHICH ARE PROTECTED UNDER RCW 7.48.305, THE WASHINGTON RIGHT TO FARM ACT.

II. BUYER'S ACKNOWLEDGEMENT

Buyer hereby acknowledges that:

- A. Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- C. Buyer acknowledges that, pursuant to RCW 64.06.050 (2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
- D. This information is for disclosure only and is not intended to be a part of the written agreement between Buyer and Seller.
- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature(s).
- F. If the house was built prior to 1978, Buyer acknowledges receipt of the pamphlet *Protect Your Family From Lead in Your Home*.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE (3) BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE: July 26, 2007 DATE: 7-26-07
BUYER: [Signature] BUYER: [Signature]

BUYER'S WAIVER OF RIGHT TO REVOKE OFFER

Buyer has read and reviewed the Seller's responses to this Seller Disclosure Statement. Buyer approves this statement and waives Buyer's right to revoke Buyer's offer based on this disclosure.

DATE: July 26, 2007 DATE: 7-26-07
BUYER: [Signature] BUYER: [Signature]

BUYER'S WAIVER OF RIGHT TO RECEIVE COMPLETED SELLER DISCLOSURE STATEMENT

Buyer has been advised of Buyer's right to receive a completed Seller Disclosure Statement. Buyer waives that right. However, if the answer to any of the questions in the section entitled "Environmental" would be "yes," Buyer may not waive the receipt of the "Environmental" section of the Seller Disclosure Statement.

DATE: July 26, 2007 DATE: 7-26-07
BUYER: [Signature] BUYER: [Signature]

If the answer is "Yes" to any asterisked (*) items, please explain below (use additional sheets if necessary). Please refer to the line number(s) of the question(s).

SELLER'S INITIAL: MPD DATE: 7/25/07 SELLER'S INITIAL: _____ DATE: _____

In Re Dunphy Bankruptcy

King County Superior

Court Trial Exhibits

Exhibit 28 (Dunphy's Bank
Statements)



Account Statement

May 23 through June 22, 2007

Account Number: 507-6496297

Page 1 of 3

36,816

(CO120)



MARY P DUNPHY
13020 102ND LN NE APT 3
KIRKLAND WA 98034-8849

Thank you for banking with Wells Fargo. For assistance, call: 1-800-TO-WELLS (1-800-869-3557), TDD number (for the hearing impaired only): 1-800-877-4833. Or write: WELLS FARGO BANK, N.A., OVERLAKE PARK, P.O. BOX 6995, PORTLAND, OR 97228-6995.

Account Tips & News

How to Reach Us

Got a question about your Wells Fargo checking account? Here are three ways to contact us:

- Call *Wells Fargo Phone Bank*™ 24/7 at 1-800-WFB-OPEN (1-800-869-3557)
- Log on to wellsfargo.com
- Meet with a banker at any of our stores. To find the Wells Fargo nearest you, go to www.wellsfargo.com/locator

Custom Management Checking

Mary P Dunphy

Account Number: 507-6496297

Activity summary

Balance on 05/22	\$167.20
Deposits	100.00
Withdrawals	-25.00
Balance on 06/22	\$242.20

001



May 23 through June 22, 2007
Account Number: 507-6496297
Page 2 of 3
36,817

Activity detail

Deposits

Date	Description	\$ Amount
06/05	Online Transfer Ref #IBE2557B6C From Custom Management Chkng 9244741Xxx On 06/05/07	100.00

Total deposits

\$100.00

Withdrawals

Other withdrawals

Date	Description	\$ Amount
06/01	Recurring Transfer Ref #OPEQFHD56C To Savings 9635476Xxx	25.00

Total other withdrawals

\$25.00

Daily balance summary

Date	\$ Balance	Date	\$ Balance
05/22	167.20	06/01	142.20
		06/05	242.20

002



Account Statement

June 23 through July 24, 2007

Account Number: 507-6496297

Page 1 of 3

37,020 (CO120)



MARY P DUNPHY
13020 102ND LN NE APT 3
KIRKLAND WA 98034-8849

Thank you for banking with Wells Fargo. For assistance, call: 1-800-TO-WELLS (1-800-869-3557), TDD number (for the hearing impaired only): 1-800-877-4833. Or write: WELLS FARGO BANK, N.A., OVERLAKE PARK, P.O. BOX 6995, PORTLAND, OR 97228-6995.

Account Tips & News

It's never too early or too late to plan for a bright financial future - visit Hands on Banking®, a FREE online financial education tool. Fourth graders on up can learn the essentials of money management in English or Spanish. Find everything from worksheets and calculators to a dictionary of financial terms and other resources created for the whole family.



<http://handsonbanking.org>

Custom Management Checking

Mary P Dunphy

Account Number: 507-6496297

Activity summary

Balance on 06/22	\$242.20
Deposits	0.00
Withdrawals	-25.00
Balance on 07/24	\$217.20

003



June 23 through July 24, 2007
Account Number: 507-6496297
Page 2 of 3
37,021

Activity detail
Withdrawals

Other withdrawals

Date	Description	\$ Amount
07/02	Recurring Transfer Ref #OPEX7NNYG6 To Savings 9635476Xxx	25.00
Total other withdrawals		\$25.00

Daily balance summary

Date	\$ Balance	Date	\$ Balance
06/22	242.20	07/02	217.20

004



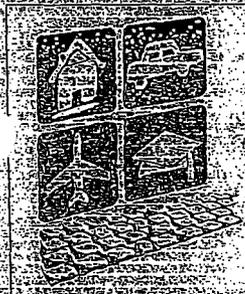
Account Statement

July 1 through July 31, 2007
Account Number: 963-5476311
Page 1 of 3

71,692 (CO120)

MARY P DUNPHY
13020 102ND LN NE APT 3
KIRKLAND WA 98034-8849

Thank you for banking with Wells Fargo. For assistance, call: 1-800-TO-WELLS (1-800-869-3557), TDD number (for the hearing impaired only) 1-800-877-4833. Or write: WELLS FARGO BANK, N.A., OVERLAKE PARK, P.O. BOX 6995, PORTLAND, OR 97228-6995.



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- Automatically track your progress and see how much you've saved towards your goals
- Get tips and guidance to help you reach your goals faster

To learn more, talk to your local banker or visit
www.wellsfargo.com/jump/mysavingsplan

Wells Fargo Goal Savings

Mary P. Dunphy
Account Number: 963-5476311

Activity summary

Balance on 06/30	\$350.70
Deposits and interest	25.09
Withdrawals	-300.00
Balance on 07/31	\$275.79

Interest you've earned

Interest earned during this period	\$0.09
Average collected balance this period	\$439.40
Annual percentage yield earned	0.24%
Interest and bonuses paid to date this year	\$0.79

005



Account Statement

July 25 through August 22, 2007

Account Number: 507-6496297

Page 1 of 3

36,491 (CO120)

|||||

MARY P DUNPHY
13020 102ND LN NE APT 3
KIRKLAND WA 98034-8849

Thank you for banking with Wells Fargo. For assistance, call: 1-800-TO-WELLS (1-800-869-3557), TDD number (for the hearing impaired only): 1-800-877-4833. Or write: WELLS FARGO BANK, N.A., OVERLAKE PARK, P.O. BOX 6995, PORTLAND, OR 97228-6995.

Effective August 17, 2007, the Bank's Funds Availability Policy will change to provide faster availability on certain checks deposited to your Account. Funds from checks drawn on a California bank account and deposited in California are local items and will be available the next Business Day unless otherwise provided under the Funds Availability Policy. These changes are being made as a result of changes in the offices of the Federal Reserve Bank of San Francisco that process checks. For a complete copy of the Bank's Funds Availability Policy as amended by these changes, please visit us online at https://www.wellsfargo.com/jump/checking/account_addenda. You may also request a copy of the policy at a Wells Fargo store.

Custom Management Checking

Mary R Dunphy

Account Number: 507-6496297

Activity summary

Balance on 07/24	\$217.20
Deposits	0.00
Withdrawals	- 25.00

Balance on 08/22	\$192.20

08/26



July 25 through August 22, 2007

Account Number: 507-6496297

Page 2 of 3

36,492

Activity detail

Withdrawals

Other withdrawals

Date	Description	\$ Amount
08/01	Recurring Transfer Ref #OPE259G327 To Savings 9635476Xxx	25.00
Total other withdrawals		\$25.00

Daily balance summary

Date	\$ Balance	Date	\$ Balance
07/24	217.20	08/01	192.20

007



Account Statement

July 1 through August 31, 2007
Account Number: 178-7397296
Page 1 of 3
77,071 (CO120)

|||||
MARY P DUNPHY
PO BOX 336
KIRKLAND WA 98083-0336

Thank you for banking with Wells Fargo. For assistance, call: 1-800-TO-WELLS (1-800-869-3557), TDD number (for the hearing impaired only): 1-800-877-4833. Or write: WELLS FARGO BANK, N.A., JUANITA VILLAGE, P.O. BOX 6995, PORTLAND, OR 97228-6995.

Effective August 17, 2007, the Bank's Funds Availability Policy will change to provide faster availability on certain checks deposited to your Account. Funds from checks drawn on a California bank account and deposited in California are local items and will be available the next Business Day unless otherwise provided under the Funds Availability Policy. These changes are being made as a result of changes in the offices of the Federal Reserve Bank of San Francisco that process checks. For a complete copy of the Bank's Funds Availability Policy as amended by these changes, please visit us online at <https://www.wellsfargo.com/jump/checking/account/addenda>. You may also request a copy of the policy at a Wells Fargo store.

Wells Fargo Goal Savings

Mary P. Dunphy
Account Number: 178-7397296

Activity summary

Balance on 06/30	\$247.83
Deposits and interest	\$0.11
Withdrawals	297.94

Closing balance on 08/30	\$0.00

Interest you've earned

Interest earned during this period	\$0.11
Average collected balance this period	\$284.52
Annual percentage yield earned	0.24%
Interest and bonuses paid to date this year	\$0.80

08/18



July 1 through August 31, 2007

Account Number: 178-7397296

Page 2 of 3

77,072

Activity detail

Deposits and interest

Date	Description	\$ Amount
07/02	Recurring Transfer Ref #OPETBM619G From Custom Management Chkng 9244741Xxx	25.00
07/31	Interest Payment	0.06
08/01	Recurring Transfer Ref #Opemilgyrc From Custom Management Chkng 9244741Xxx	25.00
08/30	Interest Payment	0.05
Total deposits and interest		\$50.11

Withdrawals

Date	Description	\$ Amount
08/30	Outstanding Items Close. Int W/O Fee	0.00
08/30	Tele Transfer To XXXXXX1659 Reference # TPEFQKN6Jh	297.94
Total withdrawals		\$297.94

009



Account Statement

August 1 through August 31, 2007

Account Number: 963-5476311

Page 1 of 3

72,616

(CO120)



MARY P DUNPHY

PO BOX 336

KIRKLAND WA 98083-0336

Thank you for banking with Wells Fargo. For assistance, call: 1-800-TO-WELLS (1-800-869-3557), TDD number (for the hearing impaired only): 1-800-877-4833. Or write: WELLS FARGO BANK, N.A., OVERLAKE PARK, P.O. BOX 6995, PORTLAND, OR 97228-6995.

Effective August 17, 2007, the Bank's Funds Availability Policy will change to provide faster availability on certain checks deposited to your Account. Funds from checks drawn on a California bank account and deposited in California are local items and will be available the next Business Day unless otherwise provided under the Funds Availability Policy. These changes are being made as a result of changes in the offices of the Federal Reserve Bank of San Francisco that process checks. For a complete copy of the Bank's Funds Availability Policy as amended by these changes, please visit us online at https://www.wellsfargo.com/jump/checking/account_addenda. You may also request a copy of the policy at a Wells Fargo store.

Wells Fargo Goal Savings

Mary P Dunphy

Account Number: 963-5476311

Activity summary

Balance on 07/31	\$275.79
Deposits and interest	25.06
Withdrawals	- 300.85
Closing balance on 08/30	\$0.00

Interest you've earned

Interest earned during this period	\$0.06
Average collected balance this period	\$300.79
Annual percentage yield earned	0.25%
Interest and bonuses paid to date this year	\$0.85

010



August 1 through August 31, 2007
Account Number: 963-5476311
Page 2 of 3
72,617

Activity detail
Deposits and interest

Date	Description	\$ Amount
08/01	Recurring Transfer Ref #OPE259G327 From Custom Management Chkng 5076496Xxx	25.00
08/30	Interest Payment	0.06
Total deposits and interest		\$25.06

Withdrawals

Date	Description	\$ Amount
08/30	Outstanding Items Close, Int W/O Fee	0.00
08/30	Tele-Transfer To XXXXXX1659 Reference # TFEBTJ5Vfx	300.85
Total withdrawals		\$300.85

001



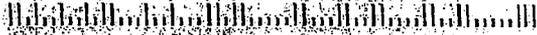
Account Statement

August 23 through September 25, 2007

Account Number: 507-6496297

Page 1 of 3

37271 (CO120)


 MARY P DUNPHY
 PO BOX 336
 KIRKLAND WA 98083-0336

Thank you for banking with Wells Fargo. For assistance, call: 1-800-TO-WELLS (1-800-869-3557), TDD number (for the hearing impaired only): 1-800-877-4333. Or write: WELLS FARGO BANK, N.A., OVERLAKE PARK, P.O. BOX 6995, PORTLAND, OR 97228-6995.

Account Tips & News

Get Free Alerts

Stay on top of transaction activity in your accounts with FREE alerts sent to your email or wireless device. For instance, you can set up alerts to let you know when:

- A deposit or withdrawal posts to your account
- Your account balance is above or below a pre-specified amount
- A check clears your account



To learn more about account alerts, visit www.wellsfargo.com/special. Keyword: Alerts

*Fee may be charged by your service provider.

Custom Management Checking

Mary P Dunphy

Account Number: 507-6496297

Activity summary

Balance on 08/22	\$192.20
Deposits	0.00
Withdrawals	192.20
Closing balance on 08/30	\$0.00

012



August 23 through September 25, 2007

Account Number: 507-6496297

Page 2 of 3

37272

Your Checking Package account is designed to help you reach your Next Stage of financial success by providing you with the opportunity to get additional benefits on the accounts and services you need. Remember, to avoid monthly service fees on your checking account, you must meet the checking account requirements and have three additional qualifying Wells Fargo accounts and/or services. If you have any questions, please contact your Wells Fargo banker or call Wells Fargo Phone Bank at 1-800-TO-WELLS (1-800-869-3557).

Activity detail

Withdrawals

Other withdrawals

Date	Description	Amount
08/30	Outstanding Items Close - Non-Int W/O Fee	0.00
08/30	Tele Transfer To XXXXXX1659 Reference # TRF06884	192.20

Total Other Withdrawals

\$192.20

Daily balance summary

Date	Balance	Date	Balance
08/22	192.20	08/30	0.00

003

Bank of America



ACCOUNT STATEMENT

H

MERCER ISLAND BRANCH
2830 80TH AVENUE SE
MERCER ISLAND WA 98040

PAGE 1 OF 6

FOR CUSTOMER SERVICE CALL 1.800.461.0810,
IN THE SEATTLE AREA CALL 206.461.0810.
TTY/TDD USERS: 1.800.232.6299.

SMART BUSINESS STRATEGIES LLC
13020 102ND LN NE #3
KIRKLAND WA 98034-8849

ACCOUNT NUMBER
60306313
STATEMENT PERIOD
5-01-2007 TO 5-31-2007
C 1M2 0



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SUMMARY OF YOUR ACCOUNTS			
CHECKING		SAVINGS	
<u>FIRSTCHOICE BUSINESS</u>	<u>60306313</u>	<u>FIRSTCHOICE BUSINESS</u>	<u>60306313</u>
BEGINNING BALANCE	1840.42	BEGINNING BALANCE	.84
DEPOSITS	9859.66	ENDING BALANCE	.84
WITHDRAWALS	7505.08	INTEREST YEAR-TO-DATE	.83
ENDING BALANCE	4195.00	AVERAGE DAILY BAL	.84
MINIMUM BALANCE	863.80		
TOTAL NUMBER OF CHECKS	16		

FIRSTCHOICE BUSINESS CHECKING ACTIVITY

POSTED	TRANSACTION DESCRIPTION/SERIAL NUMBER	DEBIT AMOUNT	CREDIT AMOUNT	REFERENCE #
5-07	DEPOSIT		3,558.89	M 07408857
5-08	DEPOSIT		1,500.00	M 03850028
5-14	DEPOSIT		600.00	M 10803490
5-18	DEPOSIT		1,200.22	M 04889787
5-22	DEPOSIT	0522FL023P009040390350	600.11	EFLO570536
5-25	DEPOSIT		1,800.33	M 05743794
5-29	DEPOSIT		600.11	M 06888701
5-01	CHECK	2003 48.00		M 09702354
5-07	CHECK	2004 54.00		M 06752379
5-03	CHECK	2005 67.23		M 03843831
5-03	CHECK	2006 42.47		M 03843877
5-03	CHECK	2007 80.23		M 03913563
5-04	CHECK	2008 124.99		M 09052373
5-07	CHECK	2009 131.65		M 05792598
5-07	CHECK	2010 50.00		M 05792595
5-09	CHECK	2011 9.97		M 05362836
5-01	CHECK	2012 300.00		M 08088082
5-04	CHECK	2013 200.00		M 07228111
5-01	CHECK	2014 46.15		M 05624566
5-17	CHECK	2015 47.04		M 10956781
5-15	CHECK	2016 48.00		M 05729251
5-21	CHECK	2017 400.00		M 0863179

Bank of America



ACCOUNT STATEMENT

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PAGE 2 OF 6

SMART BUSINESS STRATEGIES LLC

ACCOUNT NUMBER 50306313
STATEMENT PERIOD 5-01-2007 TO 5-31-2007

FIRSTCHOICE BUSINESS CHECKING ACTIVITY CONTINUED

POSTED	TRANSACTION DESCRIPTION/SERIAL NUMBER	DEBIT	AMOUNT	CREDIT	AMOUNT	REFERENCE #
5-10	CHECK 10037*		300.00			M 10642659
5-01	PURCHASE 90630428004867944262701 ON 04/28 AT BANH THAI REST 206-2830444 WA		44.88			VCC000000
5-04	PURCHASE 90630502012397544262701 ON 05/02 AT ROYAL INDIA KIRKLAND WA		22.67			VCC000000
5-07	PURCHASE 90630505002248744262701 ON 05/05 AT NW MULTIPLE LISTING SER 425-8209200 WA		180.00			VCC000000
5-08	PURCHASE 90630507032716544262701 ON 05/07 AT KAU KAU BBQ MARKET 425-7656223 WA		100.00			VCC000000
5-09	MORTGAGE COUNTRYWIDE 158530453		3.00			LACH271943
5-09	PURCHASE 90630508008483044262701 ON 05/08 AT HOTELS.COM 800-219-4606 TX		102.45			VCC000000
5-09	FEE & PMT SWACHOVIA DEALER 8701280122		500.00			LACH052626
5-09	MORTGAGE COUNTRYWIDE 158530453		1,233.50			LACH271755
5-11	PURCHASE 90630510031135444262701 ON 05/10 AT D THAI RESTAURANT 4254816800 WA		7.57			VCC000000
5-11	PAYMENT HSBC ONLINE WEB 1178639273177		500.00			LACH498949
5-14	PURCHASE 90630512020362644262701 ON 05/12 AT TERIYAKI BEST BOTHELL WA		7.64			VCC000000
5-14	PURCHASE 90630509027328444262701 ON 05/09 AT WRD-TRENDWEST RESORTS 425-498-3000 WA		500.00			VCC000000
5-16	PURCHASE 90630514033626644262701 ON 05/14 AT MASSAGE ENVY KIRKLAND KIRKLAND WA		59.00			VCC000000
5-16	PURCHASE 90630515022875944262701 ON 05/15 AT KIZMIT INC EASTSOUND WA		99.08			VCC000000
5-17	PURCHASE 90630515016722744262701 ON 05/15 AT ONESUITE.COM DB 866-4178483 CA		20.00			VCC000000
5-17	PURCHASE 90630516029859144262701 ON 05/16 AT TOKYO JAPANESE REST ANACORTES WA		30.48			VCC000000
5-18	PURCHASE 90630517032911744262701 ON 05/17 AT NORTHWEST REPRODUCTIVE 4252844400 WA		250.00			VCC000000
5-21	PURCHASE 90630518001421644262701 ON 05/18 AT SAFEWAY STORE00027342 KIRKLAND WA		22.55			VCC000000
5-21	PREM PAYM MASS MUTUAL 6101032042146 0		830.85			LACH450258
5-22	PAYMENT HSBC ONLINE WEB 1179412133666		400.00			LACH921964
5-25	PURCHASE 90630524031060344262701 ON 05/24 AT V MASON PATIENT FINANCI 206-2236601 WA		162.97			VCC000000
5-30	PURCHASE 90630529020525844262701 ON 05/29 AT EVERGREEN HOSPITAL MEDC 425-8991601 WA		200.00			VCC000000
5-31	PURCHASE 90630530029630844262701 ON 05/30 AT PON PROEM THAI RESTAURA MERCER ISLAND WA		28.71			VCC000000
5-31	PURCHASE 90630530032004644262701 ON 05/30 AT WIN NAILS 4258205158 WA		50.00			VCC000000
5-24	WITHDRAWAL 0524FL023PO08240360921 9		200.00			EFL0580489

* = GAP IN CHECK SEQUENCE

THANK YOU FOR BANKING WITH BANK OF AMERICA

045

Bank of America



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PAGE 3 OF 6

SMART BUSINESS STRATEGIES LLC

ACCOUNT NUMBER
STATEMENT PERIOD

60306313
5-01-2007 TO 5-31-2007

CHECK IMAGE

Mary Dunphy
SMART BUSINESS STRATEGIES, LLC
1700 BAY ST
NEWLAND, VA 22080

DATE: 4/29/07

PAY TO THE ORDER OF: Rogene Bluehill \$ 48.00

FOR: Acct 999740476

12204903492 05/02/2007 1900 SATURN STREET
FIRST SOURCE ENERGY HOLDINGS BANK, CA 91755

REF. NO.: M 09702354 AMOUNT: \$48.00

12204903492 05/02/2007 1900 SATURN STREET
FIRST SOURCE ENERGY HOLDINGS BANK, CA 91755

Mary Dunphy
SMART BUSINESS STRATEGIES, LLC
1700 BAY ST
NEWLAND, VA 22080

DATE: 4/29/07

PAY TO THE ORDER OF: F. Mobile \$ 54.00

FOR: Acct 345953074

12204903492 05/02/2007 1900 SATURN STREET
FIRST SOURCE ENERGY HOLDINGS BANK, CA 91755

REF. NO.: M 06752379 AMOUNT: \$54.00

12204903492 05/02/2007 1900 SATURN STREET
FIRST SOURCE ENERGY HOLDINGS BANK, CA 91755

Mary Dunphy
SMART BUSINESS STRATEGIES, LLC
1700 BAY ST
NEWLAND, VA 22080

DATE: 4/30/07

PAY TO THE ORDER OF: Paget Sound Garage \$ 67.23

FOR: Acct 271-958-912-0

12204903492 05/02/2007 1900 SATURN STREET
FIRST SOURCE ENERGY HOLDINGS BANK, CA 91755

REF. NO.: M 03843831 AMOUNT: \$67.23

12204903492 05/02/2007 1900 SATURN STREET
FIRST SOURCE ENERGY HOLDINGS BANK, CA 91755

Mary Dunphy
SMART BUSINESS STRATEGIES, LLC
1700 BAY ST
NEWLAND, VA 22080

DATE: 4/30/07

PAY TO THE ORDER OF: Paget Sound Garage \$ 42.47

FOR: Acct 271-958-912-0

12204903492 05/02/2007 1900 SATURN STREET
FIRST SOURCE ENERGY HOLDINGS BANK, CA 91755

REF. NO.: M 03843877 AMOUNT: \$42.47

12204903492 05/02/2007 1900 SATURN STREET
FIRST SOURCE ENERGY HOLDINGS BANK, CA 91755

Mary Dunphy
SMART BUSINESS STRATEGIES, LLC
1700 BAY ST
NEWLAND, VA 22080

DATE: 4/30/07

PAY TO THE ORDER OF: Convent \$ 80.23

FOR: Acct 84923105075112

12204903492 05/02/2007 1900 SATURN STREET
FIRST SOURCE ENERGY HOLDINGS BANK, CA 91755

REF. NO.: M 00012552 AMOUNT: \$80.23

12204903492 05/02/2007 1900 SATURN STREET
FIRST SOURCE ENERGY HOLDINGS BANK, CA 91755

SMART BUSINESS STRATEGIES LLC

ACCOUNT NUMBER 60306313

STATEMENT PERIOD 5-01-2007 TO 5-31-2007

CHECK IMAGE CONTINUED

SMART BUSINESS STRATEGIES, LLC
 2008
 DATE: 4/31/07
 PAY TO THE ORDER OF: *Holdback Hello*
 \$ 124.99
 DOLLARS

REF. NO. M 09052373 AMOUNT: \$124.99

MR & MRS ROBERT RAYE COOT
 2002 10111 262 0100
 050552373

SMART BUSINESS STRATEGIES, LLC
 2009
 DATE: 7/31/07
 PAY TO THE ORDER OF: *Holdback Hello*
 \$ 131.65
 DOLLARS

REF. NO. M 05792598 AMOUNT: \$131.65

MR & MRS ROBERT RAYE COOT
 2002 10111 262 0100
 050552373

SMART BUSINESS STRATEGIES, LLC
 2010
 DATE: 4/30/07
 PAY TO THE ORDER OF: *Holdback Hello*
 \$ 50.00
 DOLLARS

REF. NO. M 05792599 AMOUNT: \$50.00

MR & MRS ROBERT RAYE COOT
 2002 10111 262 0100
 050552373

SMART BUSINESS STRATEGIES, LLC
 2011
 DATE: 4/30/07
 PAY TO THE ORDER OF: *Holdback Hello*
 \$ 9.97
 DOLLARS

REF. NO. M 05352836 AMOUNT: \$9.97

MR & MRS ROBERT RAYE COOT
 2002 10111 262 0100
 050552373

SMART BUSINESS STRATEGIES, LLC
 2012
 DATE: 4/30/07
 PAY TO THE ORDER OF: *Green Health Care*
 \$ 300.00
 DOLLARS

REF. NO. M 08080802 AMOUNT: \$300.00

ACCOUNT TO THE BUILDING ACCOUNT
 05012807
 KEYWAY NATIONAL ASSOCIATION
 051122080801800165476



SMART BUSINESS STRATEGIES LLC

ACCOUNT NUMBER
STATEMENT PERIOD

60306313
5-01-2007 TO 5-31-2007

CHECK IMAGE CONTINUED

2013
 PAY TO THE ORDER OF *Virginia Mason Clinic* \$ 200.
 TWO HUNDRED AND 00/100 DOLLARS
 BANK OF AMERICA, N.A.
 1221-0527-84
 REF# 07228112
 60306313

164 16263 7789 01 4544 364 4842304491
 05A 07 42481 687855890
 CREDIT TO THE ACCT OF THE NAMED PAYEE
 BANK OF AMERICA
 1221-0527-84
 0750228112

REF. NO.: M-07228112 AMOUNT: \$200.00

2014
 PAY TO THE ORDER OF *The Center Trust* \$ 46.15
 FORTY SIX AND 15/100 DOLLARS
 BANK OF AMERICA, N.A.
 1221-0527-84
 REF# 05624566
 60306313

164 16263 7789 01 4544 364 4842304491
 05A 07 42481 687855890
 CREDIT TO THE ACCT OF THE NAMED PAYEE
 BANK OF AMERICA
 1221-0527-84
 0550624566

REF. NO.: M 05624566 AMOUNT: \$46.15

2015
 PAY TO THE ORDER OF *Verizon* \$ 47.04
 FORTY SEVEN AND 04/100 DOLLARS
 BANK OF AMERICA, N.A.
 1221-0527-84
 REF# 10956789
 60306313

164 16263 7789 01 4544 364 4842304491
 05A 07 42481 687855890
 CREDIT TO THE ACCT OF THE NAMED PAYEE
 BANK OF AMERICA
 1221-0527-84
 10956789

REF. NO.: M 10956789 AMOUNT: \$47.04

2016
 PAY TO THE ORDER OF *Residency Blue Shield* \$ 48.00
 FORTY EIGHT AND 00/100 DOLLARS
 BANK OF AMERICA, N.A.
 1221-0527-84
 REF# 05729253
 60306313

164 16263 7789 01 4544 364 4842304491
 05A 07 42481 687855890
 CREDIT TO THE ACCT OF THE NAMED PAYEE
 BANK OF AMERICA
 1221-0527-84
 0550729253

REF. NO.: M 05729253 AMOUNT: \$48.00

2017
 PAY TO THE ORDER OF *Virginia Mason Clinic* \$ 400.00
 FOUR HUNDRED AND 00/100 DOLLARS
 BANK OF AMERICA, N.A.
 1221-0527-84
 REF# 08631799
 60306313

164 16263 7789 01 4544 364 4842304491
 05A 07 42481 687855890
 CREDIT TO THE ACCT OF THE NAMED PAYEE
 BANK OF AMERICA
 1221-0527-84
 08631799

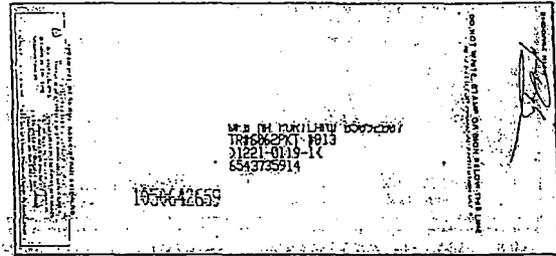
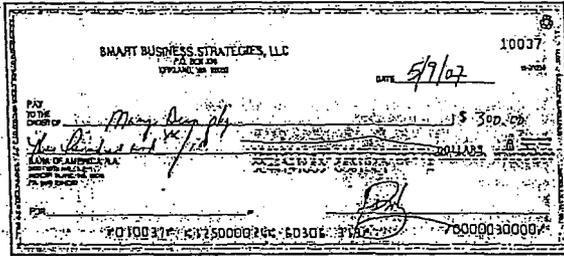
REF. NO.: M 08631799 AMOUNT: \$400.00

SMART BUSINESS STRATEGIES LLC

ACCOUNT NUMBER 60306313

STATEMENT PERIOD 5-01-2007 TO 5-31-2007

CHECK IMAGE CONTINUED



REF. NO.: M 10642659 AMOUNT: \$300.00

019

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ACCOUNT STATEMENT

H

MERCER ISLAND BRANCH
2830 BOTH AVENUE SE
MERCER ISLAND WA 98040

PAGE 1 OF 5

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SMART BUSINESS STRATEGIES LLC
13020 102ND LN NE #3
KIRKLAND WA 98034-8849

ACCOUNT NUMBER
60306313
STATEMENT PERIOD
6-01-2007 TO 6-30-2007
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SUMMARY OF YOUR ACCOUNTS

Table with 2 main columns: CHECKING and SAVINGS. Sub-headers: FIRSTCHOICE BUSINESS. Rows include BEGINNING BALANCE, DEPOSITS, WITHDRAWALS, ENDING BALANCE, INTEREST YEAR-TO-DATE, AVERAGE DAILY BAL, MINIMUM BALANCE, and TOTAL NUMBER OF CHECKS.

FIRSTCHOICE BUSINESS CHECKING ACTIVITY

Table with 4 columns: POSTED, TRANSACTION DESCRIPTION/SERIAL NUMBER, DEBIT AMOUNT, CREDIT AMOUNT, REFERENCE #. Lists various transactions from 6-11 to 6-04 including deposits and checks.

020

Bank of America



ACCOUNT STATEMENT

H

SMART BUSINESS STRATEGIES LLC

ACCOUNT NUMBER
STATEMENT PERIOD

60306313
6-01-2007 TO 6-30-2007

FIRSTCHOICE BUSINESS CHECKING ACTIVITY CONTINUED

POSTED	TRANSACTION DESCRIPTION/SERIAL NUMBER	DEBIT AMOUNT	CREDIT AMOUNT	REFERENCE #
6-06	PURCHASE 90630605029658644262701 DN 06/05 AT REGENT BAKERY & CAFÉ REDMOND WA	47.83		VCC000000
6-07	PURCHASE 90630606029086644262701 DN 06/06 AT GRACE TAILOR N ALTERATI BOTHELL WA	114.24		VCC000000
6-11	PURCHASE 90630606013137244262701 DN 06/06 AT MAIN STREET ALEHOUSE & BOTHELL WA	30.78		VCC000000
6-12	PAYMENT HSBC ONLINE WEB 1181410240252	500.00		LACH921089
6-14	PURCHASE 90630613027347444262701 DN 06/13 AT GEORGES PLACE KIRKLAND WA	20.92		VCC000000
6-14	BANKOFAMERICA ATM WITHDRAWAL DN 06/13 AT 101 KIRKLAND AVE KIRKLAND WA	50.00		\$97D001132
6-14	PURCHASE 90630613020600544262701 DN 06/13 AT SEA KNG CNTY ASSOC/RLTR 425-9741012 WA	55.00		VCC000000
6-14	PURCHASE 90630612020863144262701 DN 06/12 AT SUPRA GE SECURITY 2 8776996787 OR	103.67		VCC000000
6-15	PURCHASE 90630613007759644262701 DN 06/13 AT SZECHUAN CHEF CHINESE R BELLEVUE WA	83.41		VCC000000
6-18	PURCHASE 90630617042133744262701 DN 06/17 AT THE MALTBY CAFE SNOHOMISH WA	30.68		VCC000000
3-18	PURCHASE 90630614001743744262701 DN 06/14 AT MASSAGE ENVY KIRKLAND KIRKLAND WA	59.00		VCC000000
6-19	PURCHASE 90630617011289644262701 DN 06/17 AT RACHA THAI CUISINE WOODINVILLE WA	47.78		VCC000000
6-20	PREM PAYMTMASS MUTUAL 6101032042146 0	830.85		LACH676030
6-26	PURCHASE 90630624005376044262701 DN 06/24 AT RACHA THAI CUISINE WOODINVILLE WA	26.84		VCC000000
6-26	PAYMENT HSBC ONLINE WEB 1182468702121	500.00		LACH589359
6-29	PURCHASE 90630627016729144262701 DN 06/27 AT SUNS TERIYAKI GRAHAM WA	11.52		VCC000000

* = GAP IN CHECK SEQUENCE

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021



SMART BUSINESS STRATEGIES LLC

ACCOUNT NUMBER
STATEMENT PERIOD

60306313
6-01-2007 TO 6-30-2007

CHECK IMAGE

Mary Dunphy
 SMART BUSINESS STRATEGIES, LLC
 2018
 DATE 6/16/07
 PAY TO THE ORDER OF T-Mobile
 \$548.87
 BANK OF AMERICA, N.A.
 FOR SUBARU PAYMENT

REF. NO.: M 03098651 AMOUNT: \$48.87

Mary Dunphy
 SMART BUSINESS STRATEGIES, LLC
 2018
 DATE 6/16/07
 PAY TO THE ORDER OF T-Mobile
 \$48.87
 BANK OF AMERICA, N.A.
 FOR SUBARU PAYMENT

REF. NO.: M 05676220 AMOUNT: \$400.00

Mary Dunphy
 SMART BUSINESS STRATEGIES, LLC
 2020
 DATE 6/16/07
 PAY TO THE ORDER OF Wal-Mart Supercenter, Inc.
 \$400.00
 BANK OF AMERICA, N.A.
 FOR Subaru Payment

REF. NO.: M 03114354 AMOUNT: \$400.00

Mary Dunphy
 SMART BUSINESS STRATEGIES, LLC
 2021
 DATE 6/16/07
 PAY TO THE ORDER OF Wal-Mart Supercenter, Inc.
 \$400.00
 BANK OF AMERICA, N.A.
 FOR Subaru Payment

REF. NO.: M 07300102 AMOUNT: \$300.00

Mary Dunphy
 SMART BUSINESS STRATEGIES, LLC
 2022
 DATE 6/13/07
 PAY TO THE ORDER OF Verizon
 \$391.02
 BANK OF AMERICA, N.A.
 FOR Subaru Payment

REF. NO.: M 05405056 AMOUNT: \$91.02

BANK OF AMERICA
 442007622
 6/12/07 20655574
 60306313

SMART BUSINESS STRATEGIES LLC

ACCOUNT NUMBER 60306313
STATEMENT PERIOD 5-01-2007 TO 5-30-2007

CHECK IMAGE CONTINUED

SMART BUSINESS STRATEGIES LLC
DATE 5/13/07
PAY TO THE ORDER OF
\$ 50.00
FIVE DOLLARS AND 00/100
MONEY ORDER
#002023 60306313 60306 3133 2000005000

REF. NO. M 08574752 AMOUNT: \$50.00

60306313 001326 116
60306313 001326 116
BANK OF AMERICA
FOR DEPOSIT ONLY
#002023 60306313 60306 3133 2000005000

SMART BUSINESS STRATEGIES LLC
DATE 5/13/07
PAY TO THE ORDER OF
\$ 80.23
EIGHTY DOLLARS AND 23/100
MONEY ORDER
#002023 60306313 60306 3133 2000008023

REF. NO. M 03268387 AMOUNT: \$80.23

60306313 001326 116
60306313 001326 116
BANK OF AMERICA
FOR DEPOSIT ONLY
#002023 60306313 60306 3133 2000008023

SMART BUSINESS STRATEGIES LLC
DATE 5/13/07
PAY TO THE ORDER OF
\$ 775.00
SEVEN HUNDRED SEVENTY FIVE DOLLARS AND 00/100
MONEY ORDER
#002023 60306313 60306 3133 200000775000

REF. NO. M 09085312 AMOUNT: \$775.00

60306313 001326 116
60306313 001326 116
BANK OF AMERICA
FOR DEPOSIT ONLY
#002023 60306313 60306 3133 200000775000

SMART BUSINESS STRATEGIES LLC
DATE 5/13/07
PAY TO THE ORDER OF
\$ 85.00
EIGHTY FIVE DOLLARS AND 00/100
MONEY ORDER
#002023 60306313 60306 3133 2000008500

REF. NO. M 09457542 AMOUNT: \$85.00

60306313 001326 116
60306313 001326 116
BANK OF AMERICA
FOR DEPOSIT ONLY
#002023 60306313 60306 3133 2000008500

SMART BUSINESS STRATEGIES LLC
DATE 5/13/07
PAY TO THE ORDER OF
\$ 85.00
EIGHTY FIVE DOLLARS AND 00/100
MONEY ORDER
#002023 60306313 60306 3133 2000008500

60306313 001326 116
60306313 001326 116
BANK OF AMERICA
FOR DEPOSIT ONLY
#002023 60306313 60306 3133 2000008500

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ACCOUNT STATEMENT

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MERCER ISLAND BRANCH
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MERCER ISLAND WA 98040

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SMART BUSINESS STRATEGIES LLC
PO BOX 336
KIRKLAND WA 98083-0336

ACCOUNT NUMBER
60306313
STATEMENT PERIOD
8-01-2007 TO 8-31-2007
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SUMMARY OF YOUR ACCOUNTS

CHECKING		SAVINGS	
FIRSTCHOICE BUSINESS	60306313	FIRSTCHOICE BUSINESS	60306313
BEGINNING BALANCE	10595.80	BEGINNING BALANCE	.84
DEPOSITS	54550.30	ENDING BALANCE	.84
WITHDRAWALS	7495.25		
SERVICE CHARGES/FEES	10.00	INTEREST YEAR-TO-DATE	.83
ENDING BALANCE	57640.85	AVERAGE DAILY BAL	.84
MINIMUM BALANCE	8202.85		
TOTAL NUMBER OF CHECKS	10		

FIRSTCHOICE BUSINESS CHECKING ACTIVITY

POSTED	TRANSACTION DESCRIPTION/SERIAL NUMBER	DEBIT AMOUNT	CREDIT AMOUNT	REFERENCE #
8-06	DEPOSIT		3,045.46	M 03464358
8-13	DEPOSIT		1,231.34	M 07010662
8-20	DEPOSIT		1,221.34	M 08874215
8-21	DEPOSIT		22,000.00	M 05308528
8-21	WIRE IN TIME:1542 ET TRN:2007082100209911		24,609.48	TTFT209911
8-29	DEPOSIT		1,221.34	M 09041206
8-31	DEPOSIT		1,221.34	M 05948327
8-06	CHECK 2039	135.40		M 06075068
8-03	CHECK 2040	57.80		M 07095393
8-06	CHECK 2041	108.85		M 0763472E
8-03	CHECK 2042	3.63		M 07117312
8-08	CHECK 2043	150.28		M 05265717
8-06	CASHED CHECK 2045*	1,240.00		M 08227949
8-06	CASHED CHECK 2046	520.00		M 08227950
8-10	CHECK 2047	500.00		M 06972799
8-27	CHECK 2049*	50.00		M 08922857
8-06	CHECK 10049*	250.00		M 0492389
8-06	PURCHASE 90630806044985044262701 ON 08/06 AT JUANITA BAY CLUB-CHE #5 425-821-0882 WA	167.71		VCC00000
8-06	FEE & PMTSWACHOVIA DEALER 8701280122	600.00		LACH04056

025

Bank of America



ACCOUNT STATEMENT

H

SMART BUSINESS STRATEGIES LLC

ACCOUNT NUMBER

60306313

STATEMENT PERIOD

8-01-2007 TO 8-31-2007

FIRSTCHOICE BUSINESS CHECKING ACTIVITY

CONTINUED

POSTED	TRANSACTION DESCRIPTION/SERIAL NUMBER	DEBIT AMOUNT	CREDIT AMOUNT	REFERENCE #
8-06	PURCHASE 90630803007717144262701 DN 08/03 AT WRD-TRENDWEST RESORTS 425-498-3000 WA	1,000.00		VCC000000
8-08	PURCHASE 90630807029815244262701 DN 08/07 AT GRACE TAILOR N ALTERATI BOTHELL WA	46.34		VCC000000
8-08	ONLINE PMTCAPITAL ONE 722039960009143	250.00		LACH237397
8-09	ONLINE PMTCAPITAL ONE 722139960142726	200.00		LACH769379
8-09	PURCHASE 90630808030417544262701 DN 08/08 AT ORIENTAL RETREAT AND SP 425-8226888 WA	208.40		VCC000000
8-14	PAYMENT HSBC ONLINE WEB 1186670942934	250.00		LACH078895
8-16	PURCHASE 90630814036397044262701 DN 08/14 AT MASSAGE ENVY KIRKLAND KIRKLAND WA	59.00		VCC000000
8-20	PURCHASE 90630817001015644262701 DN 08/17 AT T-MOBILE TEL PAYMENT 800-937-8997 WA	56.87		VCC000000
8-20	PREM PAYMTMASS MUTUAL 6101032042146 0	830.85		LACH404454
8-21	PURCHASE 90630821033346944262701 DN 08/21 AT COMCAST CABLE COMM 800-COMCAST WA	1.06		VCC000000
8-21	WIRE TRANSFER FEE	10.00		TTFT209911
8-22	PURCHASE 90630820021435944262701 DN 08/20 AT STARVING STUDENTS INC 8004416683 WA	466.69		VCC000000
8-24	PURCHASE 90630823026488544262701 DN 08/23 AT TERIYAKI ETC. BOTHELL WA	7.38		VCC000000
8-30	PAYMENT HSBC ONLINE WEB 1188165226156	334.99		LACH088552

* = GAP IN CHECK SEQUENCE

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PAGE 3 OF 4

SMART BUSINESS STRATEGIES LLC

ACCOUNT NUMBER 60306313
STATEMENT PERIOD 8-01-2007 TO 8-31-2007

CHECK IMAGE

ACC # 00201215679
SMART BUSINESS STRATEGIES, LLC
2039
DATE 8/31/07
PAY TO THE ORDER OF Tranmed / World Mark The Club \$ 135.40
DOLLARS
FOR Account 271-918-912-0

2263244548 08/31/2007 4000 4936 0122004964
PUGET SOUND ENERGY 1000 SOUTH STREET
PUGET SOUND ENERGY 2000 PLYMOUTH PARK, CA 91755
9708178 08/31/2007 66489 11
6554973668

REF. NO.: M 06075068 AMOUNT: \$135.40

SMART BUSINESS STRATEGIES, LLC
2040
DATE 8/31/07
PAY TO THE ORDER OF Puget Sound Energy \$ 57.80
DOLLARS
FOR Account 271-918-912-0

2263244548 08/31/2007 4000 4936 0122004964
PUGET SOUND ENERGY 1000 SOUTH STREET
PUGET SOUND ENERGY 2000 PLYMOUTH PARK, CA 91755
9708178 08/31/2007 66489 11
6554973668

REF. NO.: M 07095393 AMOUNT: \$57.80

SMART BUSINESS STRATEGIES, LLC
2041
DATE 8/31/07
PAY TO THE ORDER OF Tranmed / World Mark The Club \$ 108.85
DOLLARS
FOR Account 271-918-912-0

2263244548 08/31/2007 4000 4936 0122004964
PUGET SOUND ENERGY 1000 SOUTH STREET
PUGET SOUND ENERGY 2000 PLYMOUTH PARK, CA 91755
9708178 08/31/2007 66489 11
6554973668

REF. NO.: M 07634726 AMOUNT: \$108.85

SMART BUSINESS STRATEGIES, LLC
2042
DATE 8/31/07
PAY TO THE ORDER OF Tranmed / World Mark The Club \$ 3.63
DOLLARS
FOR Account 271-918-912-0

2263244548 08/31/2007 4000 4936 0122004964
PUGET SOUND ENERGY 1000 SOUTH STREET
PUGET SOUND ENERGY 2000 PLYMOUTH PARK, CA 91755
9708178 08/31/2007 66489 11
6554973668

REF. NO.: M 07117312 AMOUNT: \$3.63

SMART BUSINESS STRATEGIES, LLC
2043
DATE 8/31/07
PAY TO THE ORDER OF Liberty Mutual Group \$ 150.28
DOLLARS
FOR Account 271-918-912-0

170179335 08-08-07 1601 05
6554973668
LIBERTY MUTUAL GROUP
170179335 08-08-07 1601 05
6554973668
LIBERTY MUTUAL GROUP
170179335 08-08-07 1601 05
6554973668
LIBERTY MUTUAL GROUP

REF. NO.: M 05265717 AMOUNT: \$150.28

SMART BUSINESS STRATEGIES LLC

ACCOUNT NUMBER
STATEMENT PERIOD

60306313
8-01-2007 TO 8-31-2007

CHECK IMAGE CONTINUED

SMART BUSINESS STRATEGIES LLC
DATE: 8/6/07
PAY TO THE ORDER OF: Bank of America
AMOUNT: \$1,240.00
MICR LINE: ⑆0000025000⑆

REF. NO. : M 08227949 AMOUNT: \$1,240.00

Bank of America
MICR LINE: ⑆0000025000⑆

SMART BUSINESS STRATEGIES LLC
DATE: 8/6/07
PAY TO THE ORDER OF: Bank of America
AMOUNT: \$520.00
MICR LINE: ⑆0000025000⑆

REF. NO. : M 08227950 AMOUNT: \$520.00

Bank of America
MICR LINE: ⑆0000025000⑆

SMART BUSINESS STRATEGIES LLC
DATE: 8/6/07
PAY TO THE ORDER OF: Bank of America
AMOUNT: \$500.00
MICR LINE: ⑆0000025000⑆

REF. NO. : M 08922795 AMOUNT: \$500.00

Bank of America
MICR LINE: ⑆0000025000⑆

SMART BUSINESS STRATEGIES LLC
DATE: 8/23/07
PAY TO THE ORDER OF: Design Group
AMOUNT: \$50.00
MICR LINE: ⑆0000025000⑆

REF. NO. : M 08922852 AMOUNT: \$50.00

Bank of America
MICR LINE: ⑆0000025000⑆

SMART BUSINESS STRATEGIES LLC
DATE: 7/21/07
PAY TO THE ORDER OF: Design Group
AMOUNT: \$250.00
MICR LINE: ⑆0000025000⑆

Bank of America
MICR LINE: ⑆0000025000⑆

Bank of America



ACCOUNT STATEMENT

H

MERCER ISLAND BRANCH
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MERCER ISLAND WA 98040

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SMART BUSINESS STRATEGIES LLC
PO BOX 336
KIRKLAND WA 98083-0336

ACCOUNT NUMBER
60306313
STATEMENT PERIOD
9-01-2007 TO 9-30-2007
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SUMMARY OF YOUR ACCOUNTS

CHECKING		SAVINGS	
<u>FIRSTCHOICE BUSINESS</u>	<u>60306313</u>	<u>FIRSTCHOICE BUSINESS</u>	<u>60306313</u>
BEGINNING BALANCE	57640.85	BEGINNING BALANCE	.84
DEPOSITS	18518.45	ENDING BALANCE	.84
WITHDRAWALS	72119.44	INTEREST YEAR-TO-DATE	.83
SERVICE CHARGES/FEES	25.00	AVERAGE DAILY BAL	.84
ENDING BALANCE	4014.86		
MINIMUM BALANCE	2712.02		
TOTAL NUMBER OF CHECKS	10		

FIRSTCHOICE BUSINESS CHECKING ACTIVITY

POSTED	TRANSACTION DESCRIPTION/SERIAL NUMBER	DEBIT AMOUNT	CREDIT AMOUNT	REFERENCE #
9-06	DEPOSIT		14,000.00	M 06352275
9-10	DEPOSIT		1,221.34	M 09424271
9-14	DEPOSIT		1,179.79	M 07281332
9-17	DEPOSIT		638.67	M 06279106
9-18	DEPOSIT		257.31	M 09480594
9-21	DEPOSIT		610.67	M 05741675
9-24	DEPOSIT		610.67	M 09979092
9-12	CHECK 2050	520.00		M 05052214
9-11	CHECK 2051	500.00		M 03088140
9-11	CHECK 2052	700.00		M 03061918
9-10	CASHED CHECK 2053	14,000.00		M 06727386
9-14	CHECK 2054	30.22		M 09137413
9-13	CHECK 2055	400.00		M 06493231
9-26	CHECK 2056	50.00		M 06396760
9-27	CHECK 2057	100.00		M 03043982
9-27	CHECK 2058	57.45		M 10473124
9-11	CHECK 10050*	17.22		M 06082271
9-04	PREM PYMT LIBERTY MUTUAL A02268434773107	150.28		LACH748331
9-05	PCS SVC T-MOBILE IVR 1112900	49.04		LACH744551
9-06	WIRE TRANSFER FEE	25.00		TTFT15675
9-06	PURCHASE 90630905005875144262701 ON 09/05	167.71		VCC00000
	AT JUANITA BAY CLUB-CHE #5 425-821-0882 WA			

Bank of America



ACCOUNT STATEMENT

H

PAGE 2 OF 4

SMART BUSINESS STRATEGIES LLC

ACCOUNT NUMBER

60306313

STATEMENT PERIOD

9-01-2007 TO 9-30-2007

FIRSTCHOICE BUSINESS CHECKING ACTIVITY CONTINUED

POSTED	TRANSACTION DESCRIPTION/SERIAL NUMBER	DEBIT AMOUNT	CREDIT AMOUNT	REFERENCE #
9-06	WIRE OUT TIME:1241 ET TRN:2007090600156751	52,421.27		TTFT156751
9-10	PURCHASE 90630908007295744262701 ON 09/08 AT VS IPO DEPT LICENSING 360-6641487 WA	119.75		VCC000000
9-10	PURCHASE 90630907023806944262701 ON 09/07 AT 0850 SECRETARY OF STATE 360-5864455 WA	195.00		VCC000000
9-10	ONLINE PMTCAPITAL ONE 725339960000348	500.00		LACH464527
9-11	PURCHASE 90620911024500544262701 ON 09/11 AT COSTCO WHSE #0000 KIRKLAND WA	95.29		FPDS
9-12	PURCHASE 90630910029503844262701 ON 09/10 AT PARADISE BEAUTY SALON 4255760496 WA	205.00		VCC000000
9-13	PURCHASE 90620913070468144262701 ON 09/13 AT SAFEWAY STORE 2 KIRKLAND WA	12.14		FPDS
9-13	PURCHASE 90630911007523344262701 ON 09/11 AT NOODLE LAND REDMOND WA	32.47		VCC000000
9-13	PURCHASE 90630910022794544262701 ON 09/10 AT WORLD MARK RESERVATION REDMOND WA	40.00		VCC000000
9-17	PURCHASE 90630914016510844262701 ON 09/14 AT MASSAGE ENVY KIRKLAND KIRKLAND WA	59.00		VCC000000
9-18	PAYMENT HSBC ONLINE WEB 1189719346523	500.00		LACH349964
9-19	PURCHASE 90620919026830744262701 ON 09/19 AT COSTCO WHSE #0000 KIRKLAND WA	209.97		FPDS
9-20	PREM PAYMTMASS MUTUAL 6101032042146 0	830.85		LACH720202
9-24	PURCHASE 90630923007239444262701 ON 09/23 AT BITTER FACE VENDING LAKE STEVENS WA	120.00		VCC000000
9-25	PURCHASE 90620925010104344262701 ON 09/25 AT ARCO PAYPOINT KIRKLAND WA	36.78		FPDS

* = GAP IN CHECK SEQUENCE

THANK YOU FOR BANKING WITH BANK OF AMERICA

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Exhibit 11

Watts v. Dunphy

RP – Oral Decision – 10/26/11

1 MORNING SESSION

2 October 26, 2011

3
4 MR. HANSEN: Your Honor, Craig Hansen here.

5 THE COURT: Anyone on the phone?

6 MS. DUNPHY: Mary and Mark Dunphy.

7 THE COURT: And, counsel is here, present in
8 person; is that right?

9 MR. DAVIS: That's true. My deposition ran
10 late.

11
12 ORAL DECISION

13 THE COURT: We have a court reporter here, so
14 we will go on the record. The prevailing parties will
15 prepare findings of fact and conclusions of law. And
16 we will set a presentation date down the road. To the
17 extent that counsel can agree on the form of the
18 order, that will obviate a live hearing. If counsel
19 do not agree on the form of the order, then they can
20 make an appearance at the presentation hearing. My
21 bailiff will be on the phone with all of you to
22 discuss a presentation hearing date that is mutually
23 convenient for all parties.

24 The Court heard extensive testimony during this
25 bench trial. It had the opportunity to observe the

1 demeanor and manner of the witnesses, has reviewed all
2 the admitted exhibits, and I am ready to render a
3 decision. I reiterate my earlier comments about
4 counsel and how appreciative I am of their
5 presentation. So, let's proceed.

6 We have two related claims here by the plaintiffs.
7 There is one for fraudulent concealment, and the other
8 is an assertion of fraud. There is an allegation of a
9 breach of covenant of good faith and fair dealing, but
10 to my understanding of the Washington law, that is not
11 a free-floating duty, but one that rather must come
12 within other causes of action, and also is subject to
13 other restrictions within Washington case law. So, we
14 really have a claim for fraudulent concealment and a
15 claim for fraud.

16 The elements of a fraudulent concealment claim are
17 that, number one, a residential dwelling has to have a
18 concealed defect; number two, that the seller has to
19 have knowledge of the defect; number three, that the
20 defect presents a danger to the property, health or
21 life of the buyer; four, that the defect must be
22 unknown to the buyer; and five, that the defect would
23 not have been disclosed by a careful, reasonable
24 inspection by the buyer. The plaintiffs have the
25 burden of proving each and every one of these elements

1 by clear, cogent, and convincing evidence.

2 Similarly, the plaintiffs must prove by clear,
3 cogent and convincing evidence several elements of a
4 fraud claim. Number one, that there is a
5 representation of an existing fact, number two,
6 materiality; number three, falsity; number four, the
7 speaker's knowledge of the falsity; number five, the
8 intent of the speaker that it should be acted upon by
9 the plaintiff; number six, the plaintiff's ignorance
10 of the falsity; number seven, plaintiff's reliance on
11 the truth of the representation; number eight,
12 plaintiff's right to rely upon it; and number nine,
13 the damage suffered by the plaintiff.

14 To the extent that these elements focus on the
15 seller's intent or knowledge, however, our Washington
16 legislature has imposed several additional
17 requirements. For example, RCW 64.06.050(1) specifies
18 that, "The seller shall not be liable for any error,
19 inaccuracy, or omission in a real property transfer
20 disclosure statement if the seller had no actual
21 knowledge of error, inaccuracy, or omission."

22 So, the legislature told us that the plaintiff in
23 these types of claims needs to prove the seller's
24 actual knowledge rather than imputation of knowledge,
25 based upon what a reasonable person would have known.

1 It is also true, however, that a plaintiff can prove
2 knowledge circumstantially, and that a trier of fact
3 can infer actual knowledge based upon what a
4 reasonable person would have known under the same
5 circumstances.

6 The trier of fact is not required to accept the
7 seller's statement at face value and may make a
8 credibility determination. In other words, the Court
9 can decide that a seller's statement that she did not
10 know something to be untrue and give the statement
11 that she did not know, has little or no weight,
12 depending on what that evidence actually is.

13 Several of these elements are not really disputed.
14 This case really turns on whether the defect was known
15 to the seller, and whether the defect would have been
16 disclosed by careful, reasonable inspection by the
17 buyer. And whether it's couched by whether the defect
18 would have been disclosed by a careful, reasonable
19 inspection by the buyer, or whether the plaintiffs had
20 a right to rely on the representation. It really
21 boils down to the same set of evidentiary facts. For
22 example, there is no real dispute that it actually
23 ended up being a defect.

24 It's clear that it cost a lot of money to fix that
25 condition at the apartment. But, that's not really

1 what this case was about. It's whether the seller had
2 subjective knowledge that it was a defect at the time
3 the sale occurred, not what in hindsight turned out to
4 be clearly a defect later on when litigation began and
5 once the investigation was fully known. So, let's
6 take a look at the evidence here.

7 It is important to note that the basis of the
8 alleged misrepresentation is not the first Form 17,
9 but the second. It's also important to review the
10 exact wording of the alleged misrepresentation because
11 the defendant did not necessarily, affirmatively
12 represent several circumstances that were known
13 material defects, but stated rather on several
14 occasions that she did not know.

15 The specific questions were under the heading
16 title: The seller represented that she did not know
17 whether there was any study, survey, project, or
18 notice that would adversely affect the property.

19 The most interesting aspect of this particular
20 issue for me is the effect of Judge Middaugh's earlier
21 order granting partial summary judgment to the
22 plaintiffs. He entered a finding of fact specifically
23 finding that Mary Dunphy's statement "Don't know" was
24 a false statement. And the Court has struggled a
25 little bit with it, trying to figure out what to do

1 with that, and how that finding, a factual finding,
2 could have been made in the context of a partial
3 summary judgment order.

4 The Court has some questions about whether that
5 could really be determined at summary judgment; but
6 the reality is that that is the law of the case right
7 now. And, so, that is why I struggled with it a bit.
8 It's difficult to interpret that it was a specific
9 finding of fact and a specific order granting partial
10 summary judgment on that factual finding.

11 So, in other words, if the Court is governed by the
12 law of the case, the law of the case is that Mary
13 Dunphy knew that there was a study, survey, project or
14 notice that would adversely affect the property, and
15 that when she said she didn't know that, that was not
16 true. So, I query whether that is a long way towards
17 establishing liability right then and there.

18 I think to be safe, the Court needs to make several
19 alternative findings; but I think if we accept Judge
20 Middaugh's order at face value, that would be in an
21 imposition of liability. So, I am going to elaborate
22 on that further.

23 Now, further down in Form 17, in paragraph 4-F, the
24 seller affirmatively represented that there were no
25 defects. It's not preceded by material defects, but

1 she represented that there were no defects in the
2 siding, external and the interior walls.

3 There is no evidence that there was actually any
4 defect or knowledge of a defect in the siding,
5 although it had been taken off for inspection. But,
6 there was a substantial question about whether the
7 lack of the vapor barrier or moisture barrier was a
8 defect.

9 There clearly were notices, studies and oral
10 reports well-known to Ms. Dunphy that the moisture
11 resistant barrier did not exist, and that future
12 damage was likely if something was not done. The fact
13 that no damage might ever occur if the problem were
14 fixed, or that the whole fix might be paid by the
15 developer with no additional capital assessment, no
16 out-of-pocket to the home owner, and no diminution of
17 value, does not mean that there was no defect.

18 Under paragraph ten, full disclosure of Form 17,
19 the form asks about other conditions or defects. The
20 specific question is as follows: "Are there any other
21 existing material defects affecting the property that
22 a prospective buyer should know about?" The seller,
23 Ms. Dunphy, said "Don't know."

24 So, the first operative legal question is, has the
25 plaintiff demonstrated by clear, cogent, and

1 convincing evidence that these answers or any one of
2 them was false, and that she did know of an existing
3 material defect affecting the property that the
4 prospective buyer should know about?

5 As discussed above, this question very well may
6 have been definitively answered by Judge Middaugh's
7 partial summary judgment order; but to be safe, the
8 Court needs to make some additional alternative
9 findings. Alternatively, this Court finds by clear,
10 cogent, and convincing evidence that the plaintiff has
11 met her burden by showing by circumstantial evidence
12 that the defendant's statements in paragraph G, and
13 the statement in paragraph 4-F, and/or the statement
14 under paragraph ten, were false, and that she did have
15 actual knowledge of studies, notices, and projects
16 which adversely affected the property, defects, a
17 material defect, which a prospective buyer should know
18 about. She failed to disclose them. However, this is
19 not the end of the inquiry.

20 The plaintiffs must also prove by clear, cogent,
21 and convincing evidence that they did not know of a
22 defect, and that a defect could not have been
23 discovered through an exercise of reasonable
24 diligence. And as otherwise stated in the other
25 claim, this relates also to the "right to rely"

1 element of the fraud claim; and "The defect would not
2 have been disclosed in the course of a reasonable
3 investigation" element relates to the fraudulent
4 concealment claim.

5 For reasons already stated on the record, this
6 Court has already found, and will reiterate, that the
7 Watts did receive the Homeowner's Association meeting
8 minutes. There was no reason for Ms. LeTellier, the
9 Washington real estate broker, to mention in her
10 specific e-mails that the Watts had reviewed the
11 minutes unless they actually had received them. The
12 Court did not find Ms. LeTellier's speculation that
13 this may have been a mistaken e-mail to be credible.
14 Rather, there was no reason for Ms. LeTellier to have
15 mentioned this in her e-mail unless they actually
16 received the Homeowner's Association meeting minutes.

17 Having received the meeting minutes, the plaintiffs
18 have shown by a clear, cogent, and convincing evidence
19 that a careful, reasonable investigation would not
20 have turned up the defects, and/or that they had a
21 right to rely on the representations in the second
22 Form 17.

23 At trial, the plaintiffs offered uncontroverted
24 testimony and evidence that the Watts home inspection
25 was standard in the industry for home buyers; and that

1 such inspection does not entail invasive removal of
2 siding.

3 There was no evidence that such an inspection was
4 unreasonable, or that the inspection would have or
5 should have discovered the concealed defects. There
6 could have been an evidentiary challenge, or
7 additional witnesses, or another expert controverting
8 this evidence, but none was presented.

9 Apparently the argument is that the Homeowner's
10 Association meeting minutes were in and of themselves
11 sufficient to put the buyers on notice of the defects,
12 and that they had no right to rely on the Form 17
13 representations and their own Homeowner's inspection
14 report. But, if the Watts had read the Homeowner's
15 Association meeting minutes, which they clearly had in
16 their possession, what would it have told them?

17 Although the words "defect," "envelope studies,"
18 "investigation," and "defect attorney" were mentioned
19 several times, there is no content for the brief
20 references buried in a maze of other irrelevant
21 information. Only with the use of 20/20 hindsight and
22 specialized knowledge as judges and lawyers can we
23 pick out the significance of these words. After all,
24 let's remember, these are meeting minutes, not
25 full-blown reports or personal observations that were

1 available to Ms. Dunphy.

2 I don't find persuasive the argument that meeting
3 minutes alone are sufficient to give Ms. Mary Dunphy
4 the same level of knowledge that we are inputting to
5 the Watts. It's simply not the case.

6 Although I found that it persuasively incredible
7 that the Watts did receive the Homeowner's Association
8 meeting minutes and had the opportunity to read them,
9 and in fact did read them enough to comment on the
10 parking situation, Ms. Dunphy did not only have the
11 meeting minutes available for her review, but actually
12 attended the Homeowner's Association meetings, except
13 for possibly a June meeting.

14 She was also the vice president of the board, and
15 therefore had the opportunity and could reasonably
16 understand what was being mentioned in those minutes.
17 She actually lived through them. She experienced it.
18 I think that's a completely different situation than
19 somebody trying to pick up some snippets of
20 conversation or recorded meeting minutes months after
21 the fact.

22 She was there, and she was present for at least
23 part of the walk through inspection in May; was aware
24 that the complex did not have a vapor water resistant
25 barrier; and was aware that the engineer and a defect

1 attorney were present on the walk through.

2 Much has been made of the testimony that the
3 engineer only made factual comments and did not offer
4 any conclusions, and that Mary Dunphy may not have
5 been present to overhear any of these comments, even
6 if they had been made. But, this really isn't the
7 point. Ms. Dunphy knew that a defect attorney and an
8 engineer were looking at several issues in the
9 complex, including the lack of a vapor resistant
10 barrier; and that part of the reason that Ms. Dunphy
11 knew the investigation was going on, was to go to the
12 developer and seek to have a developer pay for any
13 cost required to fix the problem.

14 Ms. Dunphy also knew the report would be soon, and
15 that once that report was done, it would have to be
16 disclosed to any potential buyer.

17 The Court makes the alternative finding that the
18 plaintiffs have established by clear, cogent, and
19 convincing evidence all of the elements for her
20 fraudulent concealment and fraud claim.

21 Having found liability, we then turn to the
22 measure of damages. The Court is persuaded that the
23 plaintiffs have the burden of proving damages by
24 clear, cogent, and convincing evidence. The Court has
25 received additional briefing from each of the parties.

1 And although often in other types of civil cases the
2 damages are established by a preponderance of the
3 evidence, that does not appear to be the state of the
4 law in Washington.

5 Now, clearly, the Court has no problem whatsoever
6 finding by clear, cogent, and convincing evidence that
7 some damages were caused. However, it is more
8 difficult to determine exactly how much damage was
9 caused. And I think this is where the burden of proof
10 is relevant here.

11 In our case, the Court finds persuasive by clear,
12 cogent, and convincing evidence that the present value
13 of the unit is as Mr. Stegelman testified: \$132,000.
14 There is clear, cogent, and convincing evidence that
15 plaintiffs have been damaged, although again,
16 quantifying that damage is a different question.
17 While the Homeowner's Association meeting minutes have
18 a substantial amount of money in the bank, there
19 remains a few unanswered questions that do affect the
20 value at the time of the sale and today. It may be
21 that the stigma will be significantly reduced, if not
22 eliminated, years into the future once the repairs are
23 completed and paid for; but the issue is the fair
24 market now, not years in the future.

25 As we previously discussed, however, the more

1 challenging issue for the Court is the condo value had
2 it not had the defects. The Court finds that
3 Mr. Stegelman's ultimate opinion that an undamaged
4 condo would have been worth \$238,000 as of April is
5 not persuasive. First, even he conceded that the
6 market had softened between April and the October
7 trial date, on top of the general real estate market
8 collapse just after 2007.

9 Moreover, if the Case-Shiller Index deduction of
10 24.1 percent were applied to the original purchase
11 price, it results in a lower fair market value than
12 \$238,000. Indeed, if we just apply the straight
13 reduction according to Case-Shiller, the fair market
14 value would be in the neighborhood of \$212,000, plus
15 whatever discount you would wish to choose for the
16 condominium market, further softening between April
17 and October, as discussed previously.

18 The Case-Shiller Index also includes single family
19 home sales, which Mr. Stegelman conceded were worth
20 more than condominiums, and which further inflated the
21 average value. In other words, the \$238,000 figure
22 was much, much, much too high, and the Court found it
23 completely unpersuasive.

24 The defendants did not offer a countervailing
25 expert at trial probably and understandably for

1 tactical reasons. However, the plaintiffs may prove
2 damages even if the Court rejects the plaintiffs'
3 expert testimony so long as there is evidence in the
4 record to support its decision. Such evidence is in
5 the record, in terms of the testimony and the
6 comparable sales offered by the defendants, and with
7 the understanding that the Court can find by clear,
8 cogent, and convincing evidence that plaintiffs
9 undoubtedly suffered a certain amount of damage at a
10 minimum.

11 There is a distinction between finding that a
12 plaintiff has suffered X amount of damage and finding
13 that at a minimum, plaintiff suffered X amount of
14 damage, but that the Court is unable to award more
15 than X due to the burden of proof and lack of
16 evidentiary basis.

17 In the present case, the Court finds that the
18 plaintiffs have as established by clear, cogent, and
19 convincing evidence that the condominium would have
20 been worth a minimum of \$170,000, in other words, more
21 than the damage price of the three bedroom sale, whose
22 seller had to make an additional \$20,000 concession to
23 the buyer; and that their damages that they proved,
24 are \$38,000. Their actual damages may have been more,
25 particularly if the burden of proof were different,

1 but they have not proved them. The Court will enter
2 judgment in the amount of \$38,000 in favor of the
3 plaintiffs.

4 The Court reserves the issue of attorney's fees,
5 subject to further briefing. I am not convinced that
6 there is a basis for award of attorney's fees either
7 way; but if anybody wishes to argue for attorney's
8 fees now that the Court has rendered a decision on the
9 other bases, any party may so move the Court by
10 separate motion.

11 Plaintiffs counsel will prepare findings of fact
12 and conclusions of law consistent with this decision.
13 And my bailiff will get on the phone in a few minutes
14 to discuss a presentation date.

15 Counsel, the court reporter is here. You may
16 discuss with him to order the transcript if you wish.
17 My bailiff will be out in a few minutes. Thank you
18 very much.

19 MR. HANSEN: Thank you, sir.

20 (The Court adjourned.)

21 *****
22
23
24
25



Exhibit 12

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MARY P. DUNPHY AND
MARK L. DUNPHY,
Appellants.

v.
SHANE AND AMY
WATTS,
Respondents

SUP. COURT NO. 898286
APP COURT NO. 68067-6-I

DECLARATION OF
ATTORNEY RE: EXHIBITS

I certify that I am Craig Jonathan Hansen, the attorney for Plaintiffs in this case. I certify that the following exhibits are true and correct copies of documents obtained in discovery, or otherwise obtained. This includes the following exhibits:

Ex. No.	Exhibits
1	Bankruptcy Court Order Granting Summary Judgment/Denying Dischargeability
2	Watts v. Dunphy – Final Unpublished Opinion on Appeal - Div I (12/23/13)
3	King County Sup. Ct. Findings of Fact (Case No. 10-2-07806-1 SEA)
4	King County Sup. Ct. Judgment and Order (Case No. 10-2-07806-1 SEA)
5	Watts v. Dunphy – Appellate Court Denying Reconsideration/Awarding Fees- Div I
6	Report of Proceedings (RP) - Extract - Trial Day 1 (10/17/11)
7	Report of Proceedings (RP) - Extract - Trial Day 2 (10/18/11)
8	Report of Proceedings (RP) - Extract - Trial Day 3 (10/19/11)
9	Report of Proceedings (RP) - Extract - Trial Day 4 (10/20/11)
10	Report of Proceedings (RP) - Superior Court Trial (Selected Exhibits)
11	Report of Proceedings (RP) - Oral Ruling (10/26/11)
12	Declaration of Attorney Re Exhibits

I hereby certify under penalty of perjury under the laws of the State of Washington that the foregoing is true.

DATED at Bellevue, Washington, this 9 day of February 2014.



CRAIG JONATHAN HANSEN
WSB 24060
Attorney for Respondents