

NO. 35646-5-II

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COURT OF APPEALS

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COURT OF APPEALS, DIVISION II STATE OF WASHINGTON
OF THE STATE OF WASHINGTON BY *LN*
DEPUTY

JOHN HARPER and LANA KUDINA,
Plaintiffs-Petitioners,

v.

COLDWELL BANKER BARBARA SUE SEAL PROPERTIES and
PYRAMID HOMES INCORPORATED
Defendants-Respondents.

COLDWELL BANKER BARBARA SUE SEAL PROPERTIES'
RESPONSE TO MOTION FOR DISCRETIONARY REVIEW

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RESPONSE TO MOTION FOR DISCRETIONARY REVIEW

A. Identity of Respondent

Respondent Coldwell Banker Barbara Sue Seal Properties (“CBBSSP”) asks this court to deny review of the decision designated in Part B of petitioners’ motion for discretionary review.

B. Decision

Petitioners have asked this court to review only the trial court’s denial of their motion to continue the hearing on respondent’s motion for summary judgment. (Mot. for Discretionary Review at 1). Petitioners’ motion does not contain a request that this court review the merits of the trial court’s ruling on the summary judgment motion itself.

C. Issue Presented For Review

Is it a manifest abuse of discretion for the trial court to deny a late-filed motion seeking a continuance for purposes of hiring an interpreter where the record reveals that the moving parties were not indigent, had more than 30 days notice before the hearing in which to hire an interpreter, and had not previously used or claimed a need for an interpreter?

D. Statement of the Case

Petitioners initiated this case on May 8, 2006, naming CBBSSP as defendant. (App. 1). Petitioners later amended their complaint to name Pyramid Homes, Inc. (“Pyramid”) as an additional defendant. (App. 9). Between May 24, 2006, and October 16, 2006, petitioners actively engaged in litigation of their claims. (App 65-87). At all times, petitioners

represented themselves. There is no evidence that petitioners relied on interpreters for assistance with discovery or motion practice.

On September 27, 2006, Pyramid filed a motion for summary judgment as to all petitioners' claims for relief and served the same on petitioners. (App. 18). On September 28, 2006, CBBSSP filed a Motion for Summary Judgment as to all petitioners' claims for relief and served the same on petitioners. (App. 26). On October 5, 2006, CBBSSP served petitioners with a hearing citation advising that the summary judgment motion would be heard by Judge Harris on November 3, 2006. (App. 34). Pyramid did the same on October 11, 2006. (App. 36).

On October 26, 2006, petitioners contacted counsel for CBBSSP and indicated that they wish to reschedule the summary judgment hearing in order to bring an interpreter. (App. 51, 58). Counsel for CBBSSP told petitioners that she has no objection to an interpreter's presence, but that the dates petitioners proposed were unworkable. (App. 51-52, 58). She asked petitioners to get back to her with new dates that would work for all parties and the court. (App. 52, 58). Petitioners never followed up. (App. 52, 58).

At no time before October 31, 2006, did petitioners advise the court that petitioners were unable to participate in the summary judgment hearing without the assistance of an interpreter. On October 31, 2006, three days before the date set for hearing, petitioners filed a "Notice of Hearing Strike." (App. 45). In that motion,, petitioners alleged that they

were unable to proceed without an interpreter. (App. 46). The trial court denied petitioners' motion and proceeded with the summary judgment hearing. The trial court granted both CBBSSP and Pyramid's motions. Orders reflecting the trial court's rulings were filed on December 22, 2006. (App. 59-64).

ARGUMENT

Discretionary review is not appropriate. The issue raised by petitioners meets none of the criteria set forth in RAP 2.3. The trial court's order was not obvious error, did not render further proceedings useless, did not substantially alter the status quo or limit the freedom of a party to act, and was not such a departure from the accepted and usual course of practice so as to call for review. Further, the order does not involve a controlling question of law as to which there is substantial ground for a difference of opinion and immediate review of the order would not materially advance the ultimate termination of the litigation.

1. Petitioners' Motion Does Not Satisfy The Requirements Of RAP 2.3(b)

Discretionary review lends itself to piecemeal, multiple appeals and, therefore, is not favored. *State v. State Credit Ass'n*, 33 Wn.App. 617, 622, 657 P.2d 327 (1983). For this reason, the Court of Appeals accepts discretionary review only in limited circumstances. *Right-Price v. Community Council*, 105 Wn.App. 813, 820, 21 P3d 1157 (2001). By rule, discretionary review may be accepted only if:

“(1) The superior court has committed an obvious error which would render further proceedings useless;

“(2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act;

“(3) The superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by an inferior court or administrative agency, as to call for review by the appellate court; or

“(4) The superior court has certified, or that all parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.”

RAP 2.3(b).

Petitioners’ motion does not address the criteria set forth in RAP 2.3(b), which are the only circumstances under which this court may accept review. Petitioners have not shown that the trial court’s ruling was an obvious error precluding further proceedings; they have not shown that the trial court committed probable error that substantially altered the status quo or limited their freedom to act; they have not shown that the trial court departed from the accepted and usual course of proceedings, let alone a departure so great as to call for review; and the trial court has not certified the question for review. The fact of the matter is that the trial court issued a ruling that was within its discretion and which did not make further proceedings useless or moot. Indeed, the case continued to conclusion; summary judgment was granted and orders memorializing that grant were entered. There is simply no reason for this court to review the single, interlocutory order identified by petitioners in their motion.

2. Petitioners' Contentions On Review Are Without Merit

Further, there is no merit to petitioners' stated issue on review.

"Whether a motion for continuance should be granted or denied is a matter discretionary with the trial court, reviewable on appeal for manifest abuse of discretion." *Balandzich v. Demeroto*, 10 Wn.App. 718, 720, 519 P2d 994 (1974). In exercising its discretion, it is proper for the court to consider, among other things, the necessity of prompt disposition of the litigation, the needs of the moving party, the prejudice to the adverse party. *Id.* Here, the report of the proceedings provided by petitioners as appendix to their motion clearly shows that the court fully considered the issues raised by petitioners' motion and the prejudicial effect of a continuance on the proceedings and concluded that a continuance would serve no good purpose. Petitioners constitutional arguments are a red herring. Petitioners chose to initiate this litigation, and participated in motion practice and discovery without interpreters. Petitioners had over 30 days in which to obtain interpretive services for the scheduled hearing. The report of proceedings clearly shows that petitioners were aware of the court's provision of interpreting services. Petitioners' own failure to timely procure interpreting services does not raise the court's ruling to the level of a constitutional violation.

3. Discretionary Review Is Not The Appropriate Vehicle By Which To Review The Trial Court's Decision

Finally, even if there were merit to petitioners' arguments, there is no reason those arguments could not be raised as part of an appeal from the final judgment in this case, once such judgment is entered. There is no

reason to force a separate review of this issue.

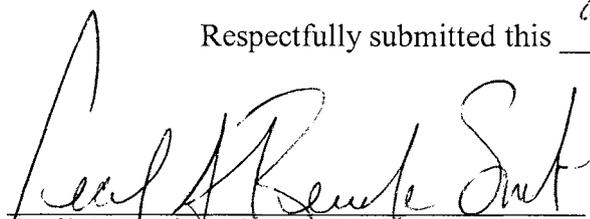
4. Petitioners Should Be Required To Pay Respondent's Attorney Fees and Costs Incurred In Responding To This Motion

Petitioners' motion is entirely without merit, both procedurally and substantively. CBBSSP has incurred attorney fees and costs in responding to the motion. Pursuant to RAP 18.7 and RAP 18.9, CBBSSP asks this court to order petitioners and their counsel to pay those fees and costs as sanction for bringing this motion.

CONCLUSION

There simply is no reason that this court should review the trial court's order denying a continuance before the entry of final judgment in this matter. Even assuming that petitioners arguments had merit, discretionary review is not the proper vehicle. If petitioners were to appeal from the entry of final judgment, the denial of a continuance could be addressed at that time. There is no evidence that petitioners' rights would be prejudiced by deferring review until such time.

Respectfully submitted this 9th day of January 2007.



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APPENDIX

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

JOHN HARPER
LANA KUDINA

Plaintiffs,

COLDWELL BANKER Barbara Sue
Seal Properties

Defendant.

06 2 02392-1
CASE NO. _____

COMPLAINT

FILED

MAY - 8 2006

JoAnne McBride, Clerk, Clark Co.

Plaintiffs allege:

FIRST CLAIM FOR RELIEF

(Conspiracies in restraint of trade RCW 19.86.030)

1.

Plaintiff John Harper resident of the State of Oregon, Multnomah County.

2.

Plaintiff Lana Kudina resident of the State of Oregon Multnomah County.

3.

Defendant Coldwell Banker Barbara Sue Seal Properties is Washington Corporation, doing business as real estate under State of Washington law.

4.

Jenny Keepers is an educated Coldwell banker's agent. She posses all the knowledge and of being a real state agent. She knew how to do her job perfectly.

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5.

Plaintiffs John Harper and Lana Kudina hired Jenny Keepers, Defendant's Agent, to act as a buyer's agent in the purchase of a vacant lot located in Lincoln Meadows subdivision at 329 NW 53rd Ct Vancouver, WA 98661 Clark County. Mrs. Keepers could have refused to be our agent, but she chose not to.

6.

We run some research on Vancouver schools on www.greatschools.net web site. As a result, we have chosen the Lincoln Elementary school based one of the highest parent's rating score and after the school program. On March 16th 2006, Mrs. Keepers said that lot #6 in the Lincoln Meadows subdivision just came back on the market. Plaintiffs immediately decided to buy that lot. However, Plaintiffs could not decide with out young kids first seeing the school and the lot #6 because they were the one who will attend this school and live in this neighborhood.

7.

On the next morning of March 17th 2006, about 9:00 a.m., Plaintiffs and their children Roman, Ekaterina, (age 8 and almost 5) went to the Lincoln Meadows subdivision. In order to chose the most appropriate vacant lot so we could build our family's "dream" house. Plaintiffs kids wanted lot #6 because of the wooded area in the back yard and the easy access to the creek. They also absolutely adore their future Lincoln Elementary school.

8.

About 9:30 a.m. on the same day, Mr. Harper got call from the Defendant's agent while Plaintiffs and their kids were on the lot #6. Defendant's told that lot #6 is still available. Mrs. Kudina scheduled an appointment with Defendant's agent at 12:30 on the same day of March 17th 2006.

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9.
At 11:39 a.m. Defendant's agent got fax from the seller's agent with the legal dimensions and the sight plan of the vacant lot #6 in the Lincoln Meadows subdivision.

10.

At 12:30 Plaintiffs have met Defendant's agent, wrote a full price offer on this lot #6 as it was originally advertised, and wrote a check in the amount of \$1,000 as Earnest Money. Defendant's agent said **"That this amount would be enough to fix Plaintiffs rights on this lot.** Plaintiffs were agreed that Pyramid Home, will build our house with our own plan.

11.

At about 6:00 p.m. Defendant's agent called Plaintiff and said: "Plaintiffs lost the deal on lot #6 because another person (security dealer, who purchased this lot for resale) wrote an offer on or about 4:00 p.m. of the same day. He gave more money (\$10,000) as an Earnest Money. The Defendant said that they already signed a construction contract for \$420,000, and brought plans for this property. Plaintiffs told Defendant's agent that **it was an unfair deal** because it should be on first come - first serve basis and **it was not an auction** where you place the highest bid. Mr. Harper mentioned that he will not give up on that deal, if he needed to give \$10,000 as an earnest money he would. He also asked to talk to Seller's agent. Defendant's agent told: **" I will not talk to the seller agent, we still have an appointment with the builder on March 21, 2006 at 9:30 a.m. and we will discuss this issue then".**

12.

On March 21, 2006 at 9:30 a.m. Plaintiffs met Defendant's agent and Mr. Grisham. Plaintiffs demanded Mr. Grisham's business card for **five times.** Mrs. Keepers and Mr. Grisham said that lot #6 was sold and there was nothing we could do or say about it. The Plaintiffs asked who bought this property, when the contract was signed. Mr. Grisham refused to provide this information. At this time

1 Defendant's agent represented seller's side and did not act as a buyer's agent. Furthermore, Defendant's
2
3 agent was disclosing personal information that rose up the conflicting situation, between the seller and
4
5 the buyer, even though the Plaintiffs tried to stop her.

6
7 13.

8
9 On March 21, 2006 at 11:47 a.m. Mr. Harper called Pyramid Home and asked their secretary
10
11 Carol about Grisham's title, and to talk to someone above his level. He then left message with for Mark
12
13 Bush, President of Pyramid Home. Mr. Bush returned Mr. Harper's call at 12:35 p.m and stated: "Mrs.
14
15 **Keepers faxed Plaintiffs offer on March 20th, instead of March 17th, 2006**".

16
17 14.

18
19 On March 30, 2006 Plaintiffs send "Final Note Before Action" to Defendant and
20
21 demanded compensation in the amount of \$500,000 (five hundred thousand dollars), for
22
23 Defendant's negligence, bad faith, dishonesty, untrustworthiness, conspiracy and attempt to monopoly
24
25 (RCW 18.235.130(11); RCW 18.85.010(b); RCW18.85.230; RCW 19.86.040; RCW 19.86.020) .

26
27 15.

28
29 On April 19, 2006 Defendant's, attorney Cally J. Warfield, declined Plaintiffs demand.
30
31 Defendant's attorney said " If you retain counsel, please forward my name to him or her for further
32
33 discussion." Defendant's attorney discriminated Plaintiffs by refusing to discuss directly with the
34
35 Plaintiffs.

36
37 16.

38
39 **If Defendant's agent refused to sign the contract to represent the Plaintiffs as a buyer's**
40
41 **agent, then Plaintiffs would go directly to the seller and buy this property before 2:00 p.m. on**
42
43 **March 17, 2006.**

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17.

Plaintiffs told their kids that another person purchased lot #6. After this news, their son was very upset and cried because he lost the opportunity to enjoy this place.

18.

Furthermore, Mr. Harper (Plaintiff) gives up his rights as General Contractor to another Builder because Plaintiffs and their kids wanted to purchase the property located in the good neighborhood and located next to the one of best Elementary schools in Vancouver, WA for my children.

19.

As a result, Plaintiffs entitled to relief actual damages under RCW 19.86.090 in the amount of \$150,000 and the award damage in the amount of \$450,000 under RCW 19.86.140, .090 and injunctive relief and such other equitable relief as maybe appropriate.

20.

SECOND CLAIM FOR RELIEF

(Attempted to monopolize or conspire RCW 19.86.040)

Plaintiffs reallege §4; §11 through §13, above.

21.

Defendant attempted to monopolize or conspire with the Seller's Real Estate Agent. She was trying to waste the Plaintiffs time so that they could seal the deal on Monday, or before the Plaintiffs appointment with the builder on Tuesday morning March 21st 2006.

22.

As a result Plaintiff s entitled to relief actual damages under RCW 19.86.090 in the amount of \$150,000 and the award damage in the amount of \$450,000 under RCW 19.86.140, .090 and injunctive relief and such other equitable relief as maybe appropriate.

24.

THIRD CLAIM FOR RELIEF

(Unprofessional conduct under RCW 18.235.130(4)(7)(12))

Plaintiffs realleges: § 5 and §12 above.

25.

Defendant failes to comply with an order issued by the disciplinary authority and conducted negligence and incompetence or malpractice.

26.

As a result Defendant required pay fine to the State of Washington in the amount of \$25,000 under RCW 18.235.160. and injunctive relief and such other equitable relief as maybe appropriate.

27.

FOURTH CLAIM FOR RELIEF

(Disciplinary action under RCW 18.85.230(3))

Plaintiffs realleges: § 10 and § 11.

28.

Defendant knowingly committed misrepresentation, conspiracy and tricks.

29.

As a result Defendant required pay fine to the State of Washington in the amount of \$5,000 Under RCW 18.235.110(h). and injunctive relief and such other equitable relief as maybe appropriate.

30.

Plaintiffs reserve the rights to bring all information to the public by internet, news papers, magazines, fliers and TV.

31

Plaintiffs reserve the rights to request a jury trial.

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32.

Plaintiffs expressly reserve the rights to plead further claims, cross claims or third-party claims as future investigation and/or discovery may warrant.

33.

WHEREFORE, as a result Plaintiffs respectfully request that this Court grant the following relief:

- I. On Plaintiff's First claim for relief:
 - a. For actual damage in the amount of \$150,000 under RCW 19.86.090
 - b. For award damage in the amount of \$450,000 under RCW 19.86.140, .090.
 - c. For injunctive relief, and such other equitable relief as may be appropriate:

- II. On Plaintiff's Second claim for relief:
 - a. For actual damage in the amount of \$150,000 under RCW 19.86.090
 - b. For award damage in the amount of \$ 450,000 under RCW 19.86.140, .090
 - c. For injunctive relief, and such other equitable relief as may be appropriate:

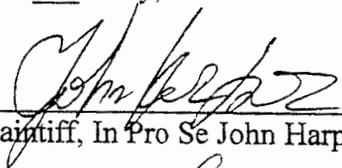
- III. On Plaintiff's Third claim for relief:
 - a. For the Civil penalty to the State of Washington in the amount of \$25,000 under RCW 18.235.160
 - b. For injunctive relief, and such other equitable relief as may be appropriate:

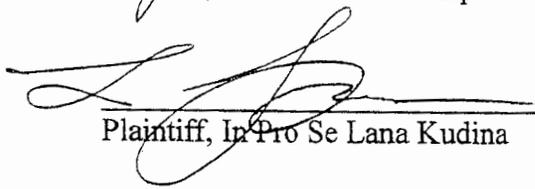
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IV. On Plaintiff's Fourth claim for relief:

- a. For payment of fine in the amount of \$5,000 under RCW 18.235.110
- b. For suspension of the licenses under RCW 18.235.110(b)
- c. For injunctive relief, and such other equitable relief as may be appropriate:

DATED this 8 May, 2006


 Plaintiff, In Pro Se John Harper


 Plaintiff, In Pro Se Lana Kudina

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

JOHN HARPER
LANA KUDINA

Plaintiffs.

COLDWELL BANKER BARBARA
SUE SEAL PROPERTIES
and PYRAMID HOMES
INCORPORATED

Defendants.

CASE NO. 06 2 02392-1

FIRST AMENDED
COMPLAINT
UNFAIR PRACTICE
RCW 49.60.225

To: Calliste J. Warfield, Attorney for Defendant Coldwell Banker Barbara Sue Seal Properties;
To: Mark Bush, Registered Agent and President for Pyramid Homes, Inc.

INTRODUCTION AND DIFINITION

- A. "John Harper" and "Lana Kudina" refers to Plaintiffs;
- B. "This matter" refers to the litigation filed in the Superior Court of Washington in Clark County, No. 06 2 02392-1;
- C. "Subject property" refers to 307 NW 53rd Ct., Vancouver, WA 98663, Lot #6 in the Lincoln Meadows subdivision;
- D. Defendant Coldwell Banker Barbara Sue Seal Properties further referred as "CB BSSP"
- E. "Communication" means and includes without limitation, written contact, email contact or verbal contact by phone, in person, etc.

1.

Plaintiffs, John Harper and Lana Kudina, are couple with three children ages: 5, 9, and 15, residents of Portland, Oregon.

2.

In fall of 2006, the 5 year old child will attend kindergarten; the 9 year old will attend 4th grade of Elementary school, and the 15 year old child will transfer to high school 9th grade.

3.

Defendant CB BSSP, is Washington Corporation, doing business as a real estate agency under the State of Washington law.

4.

Jenny Keepers is the Sales Associate Agent of CB BSSP, Defendant whose office is located at Vancouver Square 5101 NE 82nd Ave, Suite 100, Vancouver, WA 98662.

5.

Defendant Pyramid Homes Inc, is Washington Corporation, doing business as a construction company under the State of Washington law. Pyramid Homes, Inc' main office is located at: 10000 NE 7th Ave., Suite 120, Vancouver, WA 98685.

6.

Mark Allen Bush, President of Defendant Pyramid Homes, Inc. whose office is located at 10000 NE 7th Ave., Suite 120, Vancouver, WA 98685.

FACTUAL ALEGATIONS

7.

The Plaintiffs ran some research on Vancouver schools at www.greatschools.net. As a result, they have chosen the Lincoln, Franklin, Lake Shore, and Felida Elementary schools based on one of the high rating scores in WASL tests and after the school programs. (See Exhibit 5).

8.

Jenny Keepers represented Plaintiffs as a buyer's agent in the purchase of a vacant Lot #6, located in Lincoln Meadows subdivision Vancouver, Washington Clark County. (See Exhibit 2,4 pg1) Mrs. Keepers could have refused to be Plaintiff's agent, but she chose not to.

9.

On March 16th 2006, Mrs. Keepers said that Lot #6 in the Lincoln Meadows subdivision just came back on the market. Plaintiffs immediately decided to purchase that Lot. However, Plaintiffs could not decide without their kids first seeing the school and Lot 6 because they were the one who will attend this school and live in this neighborhood.

///

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1 10.

2 The next morning of March 17th 2006, about 8:30 a.m., Plaintiffs and their children Roman and
3 Ekaterina (age 9 and 5) went to the Lincoln Meadows subdivision. In order to chose the most
4 appropriate vacant Lot, so they could build their family's "dream" house. Plaintiffs' kids wanted Lot #6
5 because of the wooded area in the back yard and the easy access to the creek. The kids also adore their
6 future school.

7 11.

8 At 9:06 a.m. on the same day, Mr. Harper (Plaintiff) got call from Mrs. Keepers while he and his
9 family were at Lot #6. Mrs. Keepers said that Lot #6 is still available. Mr. Harper requested more
10 information on Lot #6.

11 12.

12 At 10:30 a.m. Mrs. Kudina called Mrs. Keepers to schedule at 12:30 appointment and to write an
13 offer for Lot #6 to the seller.

14 13.

15 At 11:39 a.m. CBBSSP' agent got a fax from the seller's agent with the legal dimensions and the
16 site plan of the vacant Lot (#6) in the Lincoln Meadows subdivision. (See Exhibit 3)

17 14.

18 At 12:30 Plaintiffs and their two younger kids met Jenny Keepers at her office and wrote a full
19 price offer on Lot #6 as it was originally advertised, plus an extra one thousand. The total offered price
20 was \$151,000. (See Exhibit 4) In addition, Plaintiffs wrote a check in the amount of \$1,000 as Earnest
21 Money. Defendant's agent said "**This amount would be enough to fix Plaintiffs rights on this Lot**".
22 Plaintiffs were agreed that Pyramid Homes will build a house on that subject property, with their own
23 plan.

24 15.

25 At 7:08 p.m. of March 17, 2006, Defendant's agent called Plaintiff and said: "Plaintiffs lost the
26 deal on Lot #6 because "another person" (security dealer, who purchased this Lot for resale) wrote an
27 offer on or about 4:00 p.m. of the same day. He gave more money (\$10,000) as an Earnest Money. The
28 Defendant said that they already signed a construction contract for \$420,000, and brought plans for this
29 property.

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16.

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2 Plaintiffs told Defendant's agent that **it was an unfair deal** because it should be on first come –
3 first serve basis and **it was not an auction**, where you place the highest bid. Mr. Harper mentioned that
4 he will not give up on that deal and if he needed to give \$10,000 as an earnest money he would.
5 John Harper asked Jenny Keepers if she could talk again with the seller. The CBBSSP' agent said. "I
6 will not talk to the seller's agent, we still have an appointment with the builder on March 21, 2006 at
7 9:30 a.m. and we will discuss this issue then".

17.

8
9 On March 21, 2006 at 9:30 a.m., Plaintiffs went to the Pyramid Homes' office to talk about Lot
10 #6 in the Lincoln Meadows subdivision. Jenny Keepers met Plaintiffs in the hallway and brought them
11 to the meeting room. The unknown man from Pyramid Homes, came to the same meeting room and
12 without identifying himself announced: "Lot # 6 in Lincoln Meadows subdivision is sold and there was
13 nothing to say about it". Lana Kudina asked: "Sir, please identify yourself" three times because
14 CBBSSP' agent Jenny Keepers previously told to Plaintiffs that they will meet with the Builder.

18.

15
16 While Mrs. Kudina was trying to obtain the name and the title of Pyramid Homes'
17 representative, Mrs. Keepers got into the conversation and begins to defend Pyramid Homes and
18 disclosed information about John Harper, such as he is a General Contractor who builds houses in Long
19 Beach, Washington. The CB BSSP's agent was disclosing personal information that rose up the
20 conflicting situation between the seller and the buyer, even though Mrs. Kudina tried to stop her by
21 saying: "Mrs. Keeper, you should stop disclosing the information about John Harper as a Builder".

19.

22
23 John Harper asked who bought this property and when the contract/offer was signed. Mr.
24 Grisham refused to provide this information. At this time the CB BSSP's agent represented the seller
25 and by doing this she breached her duties as a buyer's agent. At the end of this appointment on March
26 21, 2006, Mr. Harper requested for a business card from Pyramid Homes' representative twice. The
27 Pyramid Homes' representative finally provided Plaintiffs with his business card with the name and no
28 title.

20.

29
30 On March 21, 2006 at 11: 47 a.m. Mr. Harper called Pyramid Homes and asked their secretary,

1 Carol, about Mr. Grisham's title, and asked to speak with someone who is above his level. He then left
2 message with Mark Bush, President of Pyramid Homes. Mr. Bush returned Mr. Harper's call at 12: 35
3 p.m and stated: "Mrs. Keepers faxed Plaintiffs offer on March 20th, instead of March 17th, 2006".
4

5 **THE CAUSES OF ACTION**

6 **COUNT I**

7 **Conspiracies in restraint of trade under RCW 19.86.030**

8 Plaintiffs incorporate by reference herein the allegations set forth in ¶¶ 14-20, and do further allege and
9 aver as follows:

10 21.

11 Defendants conspired and combined together, to effect a preconceived, common, and concerted
12 plan of action. Defendants' common plan had unlawful primary purposes, namely to defraud the
13 Plaintiffs. Each Defendant intended to accomplish their unlawful common plan. Upon information
14 (Exhibit 8,9) and belief, each Defendant, as a member of the conspiracy, had knowledge of the intent of
15 all Defendants to accomplish their unlawful common plan.

16 22.

17 On March 17 and 21 of 2006, both Defendants, with intent to defraud the Plaintiffs, told to
18 Plaintiffs that "subject property" was sold. This representation was false and known to be false by each
19 Defendant at the time they were made. In fact, Lot #6 in the Lincoln Meadows Subdivision located at
20 physical address: 307 NW 53rd CR, Vancouver, WA 98663 still belongs to the Pyramid Homes, Inc.,
21 and there was no sale transaction recorded by the Clark County or the Tax Assessors office since it was
22 purchased by the Pyramid Homes, Inc. until the present time or August 14, 2006 on this Lot. (See
23 Exhibit 6, 7).

24 23.

25 Plaintiffs relied upon this wrongful representation, and were induced to believe that the above
26 described Lot was sold on March 17, 2006. Plaintiffs told their kids that another person purchased
27 "subject property". After this news, their three children were very upset, and their son was cried
28 because he lost the opportunity to enjoy this place.

29 //

30 //

1 24.

2 Defendants conspired and combined together, to effect a preconceived, common, and concerted
 3 plan of action. Mr. Bush's first statement said that he received the purchase offer on March 20th, 2006.
 4 After the entire investigation, made by the Department of Licensing, Mr. Bush changed his story about
 5 receiving the Plaintiffs' offer on the 20th of March 2006 in his letter to Ms. Keepers. He confirmed that
 6 he received the purchase offer on the 17th, not 20th of March 2006.(Exhibit 8 pg 2) There is no date, but
 7 Ms. Keepers signed below that she received the letter from Mark Bush on April 20, 2006. In
 8 "Defendants responses to Plaintiff set of Interrogatories" Jenny Keepers hid the fact that Mark Bush was
 9 lying.

10 25.

11 Defendants made this fraudulent representation for the purpose of inducing the Plaintiffs to back
 12 off the purchasing of Lot #6 in the Lincoln Meadows Subdivision.

13 26.

14 As a result of the Defendants' conduct, the Plaintiffs sustained compensatory damage in the
 15 amount of \$151,000.

16 **COUNT II**

17 **Negligent Misrepresentation under RCW 18.100.070**

18
 19 Plaintiffs incorporate by reference herein the allegations set forth in ¶¶ 15-19, and do further allege and
 20 aver as follows:

21 27.

22 In the course of real estate sale operations and conduct of their business, Defendant CB BSSP, in
 23 which they had a pecuniary interest, negligently misrepresented to the Plaintiffs the address for Lot #6 in
 24 the Lincoln Meadows Subdivision. Defendant CB BSSP' stated the address for Lot #6 in the Lincoln
 25 Meadows Subdivision as 329 NW 53rd Cr, Vancouver, WA 98661 was false, and the Plaintiffs
 26 reasonably relied upon it. Based on the Clark County records the correct address is: 307 NW 53rd Cr.,
 27 Vancouver, WA 98663.

28 28.

29 If the Defendant's agent refused to sign the contract to represent the Plaintiffs as a buyer's

1 agent, then Plaintiffs would negotiate directly with the seller and will buy this property before 2:00 p.m.
2 on March 17, 2006.

3 29.

4 After the meeting on March 21, 2006 was over, Mrs. Keepers had told the Plaintiffs to go find
5 another Real Estate Agent. She not only wrecked the whole deal, but crossed over to their side.

6 30.

7 Plaintiffs relied upon this wrongful representation, and were induced to believe that the "subject
8 property" was sold on March 17, 2006. As a result of Defendant CB BSSP' actions, the Plaintiffs
9 sustained compensatory damage in the amount of \$151,000.

10
11 **COUNT III**

12 **Disclosure of restricted information under RCW 18.100.070**

13 Plaintiffs incorporate by reference herein the allegations set forth in ¶18, and do further allege and aver
14 as follows:

15 31.

16 Jenny Keepers was told not to disclose information about John Harper being a builder before the
17 meeting on March 21, 2006. Plaintiffs and their kids wanted to purchase the property for personal
18 pleasure located in the good neighborhood with high ranking Elementary and High schools in
19 Vancouver Washington, and with an easy access to the freeway.

20 32.

21 The CB BSSP' agent started disclosing that information to Pyramid Homes Inc, against the
22 Plaintiffs will. Plaintiff, Lana Kudina, tried to stop her from doing this however Jenny Keepers would
23 not listen.

24 33.

25 As a result of Defendants' conduct, the Plaintiffs sustained compensatory damage in the amount
26 of \$151,000.

27 **COUNT IV**

28 **Discriminatory Housing Practice under RCW 49.60.030 and Civil Rights**

29 Plaintiffs incorporate by reference herein the allegations set forth in ¶¶ 15-19, and do further allege and
30 aver as follows:

1 34.

2 According to the US Constitution, all citizens of the United States shall have the same right, in
3 every State and Territory, as is enjoyed by citizens thereof to inherit, purchase lease, sell, hold, and
4 convey real and personal property. It is more than the simple purchase of housing, for it directly impacts
5 the hopes, dreams, aspirations, and economic destiny of those involved.

6 35.

7 On March 17, and 21, 2006 the Plaintiff Lana Kudina was denied the purchase of the "subject
8 property" by Pyramid Homes, Inc., the Defendant, because her spouse, John Harper is a Builder. The
9 Defendant Pyramid Homes completely ignored the fact that Lana Kudina agreed to let Pyramid Homes,
10 Inc. build a house. (See Exhibit 4 pg. 5).

11 36.

12 As a result of Defendants' conduct, Plaintiffs sustained the following damages: future house loss in
13 the amount of \$490,000.

14 37.

15 Plaintiffs reserve the rights to request a jury trial. Plaintiffs expressly reserve the rights to plead
16 further claims, cross claims or third-party claims as future investigation and/or discovery may
17 warrant.

18 CONCLUSION

19 **WHEREFORE**, the Plaintiffs respectfully request that this Court grant the following relief:

20 That process issue to the Defendant requiring them to answer within the time required under the
21 Rules;

22 That the Court enters a judgment against the Defendants as follows:

23
24 **FIRST CLAIM FOR RELIEF ON COUNT-I Against the Defendant, Coldwell Banker Barbara**
25 **Sue Seal Properties**, RCW 49.60.225.

- 26 a. Awarding compensatory damage in the amount of \$151,000.
27 b. Awarding punitive damage in the amount of \$450,000.
28 c. Awarding Plaintiff any further or additional relief which the court finds equitable or just.

29 ///

COPY ORIGINAL FILED
SEP 28 2006
JoAnne McBride, Clerk, Clark Co

IN THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

JOHN HARPER and LANA KUDINA,

Plaintiffs

vs.

COLDWELL BANKER BARBARA SUE
SEAL PROPERTIES; and PYRAMID
HOMES INCORPORATED,

Defendant

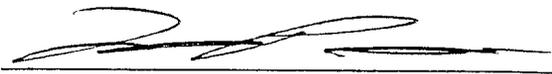
NO. 06-2-02392-1

DEFENDANT PYRAMID HOMES,
INC.'S MOTION FOR SUMMARY
JUDGMENT

Pursuant to CR 56, Defendant, Pyramid Homes, Inc., by and through their attorneys of record, moves the Court for an entry of an order of summary judgment dismissing all of Plaintiff's claims against said Defendant.

This motion is based upon the attached Declaration of Jon Grisham and the attached memorandum of law and the files and record herein.

DATED this 28th day of September, 2006



Quinn H. Posner, WSBA #31463
Of Attorneys for Defendant, Pyramid Homes, Inc.

DEFENDANT PYRAMID HOMES, INC.'S
MOTION FOR SUMMARY JUDGMENT - 1
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IN THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

| | | |
|------------------------------|---|------------------|
| JOHN HARPER and LANA KUDINA, |) | NO. 06-2-02392-1 |
| |) | |
| Plaintiffs |) | CITATION |
| |) | |
| vs. |) | |
| |) | |
| COLDWELL BANKER BARBARA SUE |) | |
| SEAL PROPERTIES; and PYRAMID |) | |
| HOMES INCORPORATED, |) | |
| |) | |
| Defendant |) | |

TO THE CLERK OF THE COURT:

Please note the above cause for hearing at the following day and time:

DATE: Friday, October 27, 2006
TIME: 9:00 a.m.
JUDGE: Hon. Robert L. Harris
TO: Plaintiffs John Harper and Lana Kudina

The following matters in the above-entitled cause will be brought on for hearing at the above time and date: Motion for Summary Judgment

DATED this 28th of September, 2006



Quinn H. Posner, WSBA #31463
Of Attorneys for Defendant, Pyramid Homes, Inc.

COPY ORIGINAL FILED SEP 28 2006 JoAnne McBride, Clerk, Clark Co

IN THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

JOHN HARPER and LANA KUDINA,

Plaintiffs

vs.

COLDWELL BANKER BARBARA SUE SEAL PROPERTIES; and PYRAMID HOMES INCORPORATED,

Defendant

NO. 06-2-02392-1

MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

I. FACTS

Pyramid Homes, Incorporated (hereinafter "Pyramid") is a locally owned residential construction company that builds residential homes in a residential development entitled Lincoln Meadows. Grisham Dec. As a requirement of purchasing a home site, Pyramid was required to be the builder for the home. Grisham Dec. As a builder, Pyramid provides different home models from which a purchaser may choose their home to be built. Grisham Dec. Pyramid is very familiar with their offered home plans, which reduces construction time, costs, and mistakes; leading to higher quality, consistency and affordability for the purchaser. Grisham Dec.

On March 17, 2006, Plaintiffs, through their realtor, tendered an offer on Lincoln Meadows Lot 6. Exhibit A. As part of their offer, Plaintiffs requested a host of conditions including, but not limited to,

1 allowing two weeks for Plaintiffs' home design selection. Exhibit A, pg 5. Further, Plaintiffs refused to
2 provide earnest money until the home design and price were determined. Exhibit A, pg 5. Pyramid did
3 not accept Plaintiffs' offer, did not initial any of the offer documents, and did not sign the purchase and
4 sale agreement. Exhibit A. That same day, Pyramid received a competing offer it deemed superior.
5 Grisham Dec. The competing offer was full price and included one of Pyramid's standard home design
6 plans. Grisham Dec. Pyramid determined this offer to be more valuable for the company. Grisham Dec.
7 Therefore, Pyramid signed the competing offer. Grisham Dec. Plaintiffs met in person with Pyramid on
8 March 20, 2006 regarding their offer. Grisham Dec. However, at that time Pyramid had already
9 accepted the superior offer and declined to negotiate with Plaintiffs. Grisham Dec.
10
11
12

13 Plaintiffs have since filed suit alleging unfair business practices and violations of state and
14 federal civil rights laws. On September 21, 2006, Plaintiffs filed liens of lis pendens on ten (10) lots
15 within Lincoln Meadows that are not associated with lot #6 and are completely unrelated to this case.
16 Exhibit B.
17
18
19

20 II. ARGUMENT

21 Summary judgment is appropriate if there is no genuine issue of material fact and the moving
22 party is entitled to judgment as a matter of law. Clements v. Travelers Indem. Co., 121 Wash.2d 243
23 (1999). When deciding whether to grant summary judgment all facts submitted and all reasonable
24 inferences from them are to be considered in the light most favorable to the nonmoving party. Id. at
25 249. If, after consideration of all the relevant facts, only one reasonable conclusion can be reached
26 then summary judgment should be granted. Id. The adverse party to the summary judgment may
27
28

1 not rest upon mere allegations or denials of the pleading but, rather, they must set forth specific facts
2 showing there is a genuine issue for trial. CR 56(e). Bare assertions that a genuine material issue
3 exists will not defeat a summary judgment motion in the absence of actual evidence. White v. State,
4 131 Wash.2d 1, 9 (1997).
5

6 **1. Plaintiffs cannot support a claim based on RCW 19.86.030, Unfair Business Practices –**
7 **Consumer Protection.**

8 Plaintiffs assert a claim against Pyramid alleging a violation of the Consumer Protection Act.
9 Plaintiffs allege Pyramid conspired with Plaintiffs' realtor with the intent to defraud Plaintiffs into
10 believing Lot 6 was sold. Plaintiffs claim \$151,000.00 in compensatory damages, the amount of their
11 offer.
12

13
14 In order to prevail under the Consumer Protection Act, Plaintiff's must demonstrate five distinct
15 elements:

- 16 (1) Unfair or deceptive act or practice;
- 17 (2) Occurring in trade or commerce;
- 18 (3) Public interest impact;
- 19 (4) Injury to plaintiff in his or her business or property; and
- 20 (5) Causation.

21 Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d
22 778, 780, 719 P.2d 531, 533 (1986).

23 Here, Plaintiffs not only fail to demonstrate these elements, but they are completely unable to
24 demonstrate any of the elements as deceptive acts do not exist, nor did Plaintiffs suffer injury.
25 Pyramid made no promises to Plaintiffs and simply accepted a superior offer.
26
27
28

1 **2. Plaintiffs cannot support a claim based on RCW 49.60.030 and the United States Civil**
 2 **Rights Act of 1964.**

3 Plaintiffs assert a claim against Pyramid alleging a civil rights violation. Plaintiff's allege
 4 Pyramid refused to enter into a purchase and sale agreement with Plaintiffs due to John Harper's
 5 occupation as a homebuilder. Plaintiffs claim \$490,000.00 in damages for the loss of future housing.
 6

7 RCW 49.60.030(1) states:

8 The right to be free from discrimination because of **race, creed, color, national**
 9 **origin, sex, sexual orientation**, or the **presence of any sensory, mental, or physical**
 10 **disability** or the **use of a trained dog guide or service animal** by a disabled person
 11 is recognized as and declared to be a civil right.

12 (emphasis added).

13
 14 RCW 49.60.030(2) states, in pertinent part:

15 Any person deeming himself or herself injured...shall have a civil action...to recover
 16 the actual damages sustained by the person...

17
 18 Again, this is merely a case where Pyramid accepted and signed a superior offer prior to meeting
 19 the Plaintiffs or learning Mr. Harper was a builder. Plaintiffs are unable to demonstrate **any** form of
 20 discrimination. Even if Plaintiffs were able to prove Pyramid discriminated against them due to Mr.
 21 Harper's occupation, RCW 49.60.030 does not consider builders a social class requiring civil rights
 22 protection. In addition, as the court is aware, builders are not a protected class under any area of state
 23 or federal constitutional law. Further, Plaintiffs are unable to demonstrate any actual damages. As
 24 such, 49.60.030(2) does not allow recovery by Plaintiffs. Quite simply, Plaintiffs may not utilize
 25 civil rights protection as a claim against Pyramid.
 26
 27
 28

1 3. CR11 entitles Pyramid to recovery of its reasonable attorney fees and costs.

2 The signature of a party...constitutes a certificate by the party...that the party... read
3 the pleading, motion, or legal memorandum, and that to the best of the
4 party's...knowledge, information, and belief, formed **after an inquiry reasonable**
5 **under the circumstances:** (1) it is well grounded in fact ; (2) it is warranted by
6 existing law or a good faith argument for the extension, modification, or reversal of
7 existing law or the establishment of new law; (3) it is not interposed for any improper
8 purpose, such as to harass or to cause unnecessary delay or needless increase in the
9 cost of litigation; and (4) the denials of factual contentions are warranted on the
10 evidence or, if specifically so identified, are reasonably based on a lack of
11 information or belief...If a pleading, motion, or legal memorandum is signed in
12 violation of this rule, the court, upon motion or upon its own initiative, may impose
13 upon the person who signed it...an appropriate sanction, which may include an order
14 to pay to the other party or parties the amount of the reasonable expenses incurred
15 because of the filing of the pleading, motion, or legal memorandum, including a
16 reasonable attorney fee.

17 CR 11 (emphasis added).

18 Plaintiffs' pleadings to this court are not well grounded in fact and are not warranted by existing
19 law or contain a good faith argument for new law. Further, Plaintiffs did not attempt a reasonable
20 inquiry into the circumstances of the case. Had Plaintiffs done so, they would have discovered that
21 Pyramid was not obligated to accept their offer. Further, Plaintiffs would have discovered that their
22 causes of action have absolutely no merit.

23 Since filing their complaint, Plaintiffs have filed improper liens of lis pendens against ten (10)
24 lots in Lincoln Meadows and have followed up with notices of foreclosure. These lots are
25 completely unrelated to the case and are nothing more than tools utilized by Plaintiffs in an attempt
26 to harass Pyramid.

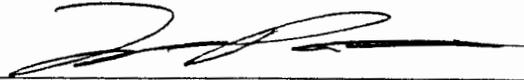
27 Plaintiffs are upset they did not receive Lot 6. While it is understandable that they are upset, it is
28 not actionable. It is preposterous to believe a disappointed party should be allowed to recover sums

1 of money merely because their offer was not accepted. However, that is what Plaintiffs attempt to
2 do. Their suit is an attempt to harass Pyramid and needlessly increase Pyramid's litigation costs.
3 Plaintiffs' recent action against unrelated lots in Lincoln Meadows further demonstrates Plaintiffs'
4 intentions to badger Pyramid. Therefore, Pyramid respectfully requests that Plaintiff's be ordered to
5 pay all reasonable attorney fees and costs incurred.
6

7 III. CONCLUSION

8
9 Pyramid accepted an offer it deemed superior to that submitted by Plaintiffs. Plaintiffs may
10 not harass Pyramid through frivolous causes of action as a result. In accordance with the above and
11 the lack of genuine issues of material fact, Pyramid respectfully requests the court grant Pyramid's
12 motion for summary judgment and dismiss Plaintiffs' claims with prejudice. Further, Pyramid
13 requests Plaintiff be ordered to pay all reasonable attorney fees and costs incurred.
14

15 DATED this 28 day of September, 2006

16
17 

18
19 Quinn H. Posner, WSBA #31463
20 Of Attorneys for Defendant, Pyramid Homes, Inc.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR CLARK COUNTY

JOHN HARPER and LANA KUDINA,

Case No. 06 2 02392-1

Plaintiffs,

v.

COLDWELL BANKER BARBARA SUE SEAL PROPERTIES and PYRAMID HOMES INCORPORATED,

COLDWELL BANKER BARBARA SUE SEAL PROPERTIES' MOTION FOR SUMMARY JUDGMENT RE: PLAINTIFFS' CLAIMS FOR RELIEF

Defendants.

I. RELIEF REQUESTED

Defendant Coldwell Banker Barbara Sue Seal Properties ("CB BSSP") moves the court for summary judgment as follows:

1. Dismissing plaintiffs' claim for Violation of RCW 19.86.030;
2. Dismissing plaintiffs' claim for Negligent Misrepresentation (RCW 18.100.070);
3. Dismissing plaintiffs' claim for Disclosure of Restricted Information (RCW 18.100.070);

///

///

///

///

1 This motion is made on the ground that no genuine issue of material fact exists with
 2 respect to any of plaintiffs' claims asserted against CB BSSP and CB BSSP is entitled to
 3 judgment as a matter of law on each of plaintiffs' claims. Further, pursuant to CR 11, CB
 4 BSSP is entitled to recover its reasonable attorney fees and costs associated with the claims
 5 asserted by plaintiffs.

6 Plaintiffs are not represented by counsel in this litigation.

7 II. STATEMENT OF FACTS

8 This case is not complicated. Ms. Keepers, a real estate licensee for over 20 years,
 9 and affiliated with Coldwell Banker Barbara Sue Seal Properties, represented the plaintiffs
 10 as a buyer's agent. *See* Dec of J. Keepers. On the plaintiffs' behalf, Ms. Keepers wrote and
 11 submitted an offer to the seller/builder of certain real property described as "Lot 6, Lincoln
 12 Meadows, Vancouver, WA" (hereinafter referred to as "subject property.") *See* Dec of J.
 13 Keepers and Ex A attached to the Dec of C. Warfield.

14 The seller/builder of the subject property, defendant Pyramid Homes, elected to
 15 accept a different offer. *See* Dec of J. Keepers and Ex A attached to the Dec of C. Warfield.
 16 The plaintiffs contend this is somehow the fault of Coldwell Banker Barbara Sue Seal
 17 Properties.

18 Plaintiffs, unrepresented by counsel, filed a complaint against Ms. Keepers, a claim
 19 with the Department of Licensing and, most recently an Amended Complaint.¹ Plaintiffs
 20 also filed a Notice to Set Trial. CB BSSP has filed an objection to the Notice to Set Trial.

21 ///

22 ///

23 ///

24 ///

25 ¹ Plaintiffs added defendant Pyramid Homes to the Amended Complaint. It is
 26 unknown whether Pyramid Homes has been properly served.

1 unresolved factual issues remain. *Vacova Co. v. Farrell*, 62 Wn App 386, 395, 814 P2d 255
2 (1991). The motion should be granted only if, from all the evidence, reasonable persons
3 could reach but one conclusion. *Morris v. McNichol*, 83 Wn 2d 491, 494, 519 P2d 7 (1974).

4 In the present case, based on the evidence at hand, reasonable minds could only
5 reach but one conclusion: none of the claims asserted by plaintiffs have any basis in law.
6 cannot be supported by any evidence and should be dismissed with prejudice. Further,
7 pursuant to CR 11, CB BSSP is entitled to recover its reasonable attorney fees and costs
8 associated with the claims asserted by plaintiffs.

9 **1. As a matter of law, plaintiffs cannot support a claim based on RCW 19.86.030,**
10 **Unfair Business Practices - Consumer Protection**

11 Plaintiffs assert a claim against CB BSSP based on an alleged violation of RCW
12 19.86.030, part of the Consumer Protection Act. Plaintiffs contend CB BSSP conspired
13 with seller Pyramid Homes to defraud plaintiffs by informing plaintiffs that the subject
14 property was sold. Plaintiffs contend this representation was false and made for the purpose
15 of inducing plaintiffs to believe the subject property was sold.

16 However, plaintiffs are unable to demonstrate any conspiracy among defendants to
17 restrain trade. The undisputed facts are as follows: Ms. Keepers prepared an offer to
18 purchase real property on behalf of plaintiffs, presented the offer to the seller's
19 representative, was advised the seller accepted another offer and communicated that
20 information to plaintiffs. Dec J. Keepers. There is no evidence that defendants violated any
21 provision of the Consumer Protection Act.

22 ///

23 ///

24 ///

25 ///

26 ///

1 **2. As a matter of law, plaintiffs cannot support a claim for Negligent**
 2 **Misrepresentation against CB BSSP**

3 Washington State has adopted the Restatement (Second) of Torts with respect to the
 4 elements of negligent misrepresentation. *Schaaf v. Highland*, 127 Wn2d 17, 22, 896 P2d
 5 665 (1995). Accordingly, negligent misrepresentation occurs when one who, in the course
 6 of his business, profession or employment, or in any other transaction in which he has a
 7 pecuniary interest, supplies false information for the guidance of others in their business
 8 transaction, is subject to liability for pecuniary loss caused to them by their justifiable
 9 reliance upon the information, if he fails to exercise reasonable care or competence in
 10 obtaining or communicating the information. Restatement (Second) of Torts § 552(1)
 11 (1977).

12 A plaintiff must prove that he/she justifiably relied upon the information negligently
 13 supplied by the defendant. *Condor Enters., Inc. v. Boise Cascade Corp.*, 71 Wn App 48, 52,
 14 856 P2d 713 (1993). Reliance is justifiable if it is reasonable under the circumstances.
 15 *Lawyers Title Ins. Corp. v. Baik*, 147 Wn2d 536, 551, 55 P3d 619 (2002).

16 Under the Restatement, damages for negligent misrepresentation are limited to
 17 “those necessary to compensate the plaintiff for the pecuniary loss to him of which the
 18 misrepresentation is a legal cause” and include: (a) the difference between the value of what
 19 he has received in the transaction and its purchase price or other value given for it; and (b)
 20 pecuniary loss suffered otherwise as a consequence of the plaintiff’s reliance upon the
 21 misrepresentation. Restatement (Second) of Torts, § 552B. Recovery of damages for the
 22 benefit of the plaintiff’s contract with the defendant is specifically not allowed under the
 23 Restatement. *Id.*

24 ///

25 ///

26 ///

1 Plaintiffs vaguely allege CB BSSP negligently misrepresented the physical address
 2 for the subject property. At the outset, there is no evidence that CB BSSP provided
 3 plaintiffs with an incorrect physical address. In any event, it is unclear what plaintiffs
 4 contend is the consequence of this alleged misrepresentation. At all material times,
 5 plaintiffs' offer was to purchase Lot 6; this is undisputed. Moreover, it is undisputed that
 6 the seller/builder rejected the plaintiffs' offer to purchase Lot 6. There is no evidence to
 7 demonstrate that the physical address played any role in the seller/ builder's election to reject
 8 plaintiffs' offer.

9 Further, plaintiffs will not be able to prove that they suffered any pecuniary loss as a
 10 result of any allegedly false information provided by CB BSSP. Lastly, there is no evidence
 11 that CB BSSP failed to exercise reasonable care or competence in obtaining or
 12 communicating the information concerning the physical address of the subject property. In
 13 fact, the evidence before the court demonstrates that CB BSSP met the appropriate standard
 14 of care for a buyer's agent under the circumstances as they existed at the time. *See* Dec of
 15 V. Manning.

16 **3. As a matter of law, plaintiffs cannot support a claim based on RCW 18.100.070**
 17 **for Disclosure of Restricted Information.**

18 Plaintiffs contend CB BSSP wrongfully disclosed to the seller of the subject property
 19 that Mr. Harper was a builder, causing damage to plaintiffs. Even if the court accepts
 20 plaintiffs' allegations as true, there is no basis for this claim and plaintiffs will be unable to
 21 demonstrate Pyramid Homes rejected their offer based on this alleged disclosure. Further,
 22 plaintiffs will be unable to prove any compensable damages suffered as a result of any
 23 alleged disclosure of restricted information by CB BSSP.

24 ///

25 ///

26 ///

1 4. Pursuant to CR 11, CB BSSP is entitled to recover its reasonable attorney fees
2 and costs.

3 *Pro se* litigants are bound by the same rules of procedure and substantive law as
4 attorneys. *Westberg v. All-Purpose Structures, Inc.*, 86 Wn App 405, 411, 936 P2d 1175
5 (1997) (citation omitted.)

6 Pursuant to CR 11, a party who is not represented by counsel shall sign and date their
7 pleadings, motions and memoranda, thereby certifying that to the best of the party's
8 knowledge, information and belief, the document is (1) well grounded in fact; (2) it is
9 warranted by existing law; (3) it is not made for any improper purpose; and (4) any denials
10 of factual contentions are warranted on the evidence.

11 Plaintiffs' certifications to the court are false. Plaintiffs' claims are not well
12 grounded in fact and are not warranted by existing law. There is absolutely no authority for
13 the proposition that a real estate transaction operates on a "first come first serve" basis. *See*
14 plaintiffs' amended complaint. Moreover, there is no evidence to suggest defendants
15 conspired in any manner with respect to the plaintiffs' offer to purchase the subject property.

16 Instead, the complaint, and all subsequent pleadings, correspondence and discovery
17 has been conducted for the purpose of harassing CB BSSP and to needlessly increase the
18 cost of litigation. Plaintiffs' claims are entirely frivolous and without any merit.

19 Moreover, despite defense counsel's constant urging, plaintiffs have failed to explain
20 the basis for the claims asserted and have ignored all correspondence from defense counsel
21 that this motion and request for fees and costs would be forthcoming in the event plaintiffs
22 were unable to provide a basis for the asserted claims or dismiss the matter. *See* Ex B
23 attached to the Dec of C. Warfield.

24 Therefore, CB BSSP respectfully requests that plaintiffs be ordered to pay all
25 reasonable attorney fees/costs incurred by CB BSSP.

26 !!!

IV. CONCLUSION

In accordance with the above, CB BSSP respectfully requests that its motion for summary judgment be granted on the basis that there is no disputed issue of fact and that, accordingly, the court dismiss plaintiffs' claims against CB BSSP with prejudice. Further, CB BSSP requests reasonable attorney fees and costs incurred.

DATED this 28 day of September, 2006

HOFFMAN, HART & WAGNER, LLP

By: Calliste J. Wanfield
Calliste J. Wanfield, WSBA No. 31127
Of Attorneys for Defendant Coldwell Banker
Barbara Sue Seal Properties

CERTIFICATE OF SERVICE

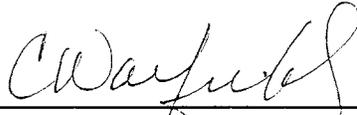
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I hereby certify that on the 5th day of October, 2006, I served the foregoing AMENDED COMPLAINT, on the following parties at the following address:

JOHN HARPER AND LANA KUDINA
PO BOX 16566
PORTLAND, OR 97292
Pro Se

ALBERT F. SCHLOTFELDT
DUGGAN SCHLOTFELDT & WELCH PLLC
900 WASHINGTON STREET, SUITE 1020
PO BOX 570
VANCOUVER, WA 98666
Atty for Pyramid Homes Incorporated

by mailing to them a true and correct copy thereof, certified by me as such, placed in a sealed envelope addressed to them at the address set forth above, and deposited in the U.S. Post Office at Portland, Oregon on said day with postage prepaid.



Cally J. Warfield

IN THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

| | | |
|------------------------------|---|------------------|
| JOHN HARPER and LANA KUDINA, |) | NO. 06-2-02392-1 |
| |) | |
| Plaintiffs |) | AMENDED CITATION |
| |) | |
| vs. |) | |
| |) | |
| COLDWELL BANKER BARBARA SUE |) | |
| SEAL PROPERTIES; and PYRAMID |) | |
| HOMES INCORPORATED, |) | |
| |) | |
| Defendant |) | |

TO THE CLERK OF THE COURT:

Please note the above cause for hearing at the following day and time:

DATE: Friday, November 3, 2006
TIME: 11:00 a.m.
JUDGE: Hon. Robert L. Harris
TO: Plaintiffs John Harper and Lana Kudina

The following matters in the above-entitled cause will be brought on for hearing at the above time and date: Motion for Summary Judgment

DATED this 11th day of October, 2006

for 
 QUINN H. POSNER, WSBA #31463
 Of Attorneys for Defendant, Pyramid Homes, Inc.

1 IN THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

JOHN HARPER and LANA KUDINA

Plaintiffs,

v.

COLDWELL BANKER BARBARA SUE
SEAL PROPERTIES; and PYRAMID HOMES
INCORPORATED

Defendant.

Case No. 06-2-02392-1

NOTICE OF REMOVAL TO
FEDERAL COURT

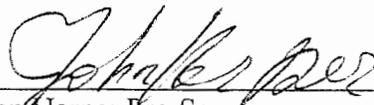
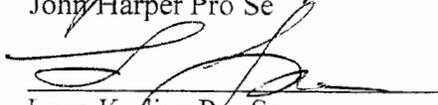
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Please take a note that Plaintiffs hereby transferred this action as it was pleaded on the First Amended Complaint on the **Count I – Conspiracies under RCW 19.86.030 and Count IV – Discrimination under RCW 49.60.030** to the United State District Court District of Oregon, at Portland, on October 16, 2006. A copy of said Notice of Removal is attached to this Notice and is served and filed herewith.

DATED: October 16 2006

Presented By:


John Harper Pro Se

Lana Kudina Pro Se

NOTICE OF REMOVAL TO
FEDERAL COURT

Page - 1 -

1 **IN THE SUPERIOR COURT OF WASHINGTON**
2 **FOR CLARK COUNTY**

JOHN HARPER and LANA KUDINA

Plaintiffs,

v.

COLDWELL BANKER BARBARA SUE
SEAL PROPERTIES; and PYRAMID HOMES
INCORPORATED

Defendants.

Case No.

PLAINTIFF'S OPPOSITION
TO DEFENDANT COLDWELL
BANKER BARBARA SUE SEAL
PROPERTIES' MOTION FOR
SUMMARY JUDGMENT

3
4 Plaintiffs, John Harper and Lana Kudina , respectfully request that this Honorable Court
5 deny Defendant Coldwell Banker Barbara Sue Seal Properties ("CB BSSP") Motion For
6 Summary Judgment and grant Plaintiffs' Cross- Motion for Partial Summary judgment on the
7 **Count II** - Professional negligence and **Count III** – Disclosure of restricted information.

8 In support, Plaintiffs states as follows:

9 **I. FACTUAL ALLEGATIONS**

10 There is overwhelming evidence that Defendant CB BSSP' agent, Jenny Keepers, who
11 possessed 20 years of a professional experience as a real estate broker, did not possess a good
12 moral character, honesty, integrity and trustworthiness in the sale of "subject property" located
13 at: 307 53rd Court, Vancouver, WA 98663.

14 ///

PLAINTIFF'S OPPOSITION TO DEFENDANT COLDWELL BANKER BARBARA
SUE SEAL PROPERTIES' MOTION FOR SUMMARY JUDGMENT

John Harper & Lana Kudina
PO Box 16566
Portland, OR 97292
Ph: 503-267-3536

1 **COUNT I. CONSPIRACIES RCW 19.86.30; RCW 49.60.220; 42 USC §1986**

2 This complaint is very argumentative and required more time for discovery and witness
3 testimony. Furthermore, it was removed to the US District Court District of Oregon because the
4 it involves a federal issue such as the Constitution, treaties or laws of the United States. Pursuant
5 to 28 USC §1343(a), Civil rights and elective franchise: "The district courts shall have original
6 jurisdiction of any civil action authorized by law". 42 USC § 1981 - Equal rights under the law -
7 "All persons within the jurisdiction of the United States shall have the same right in every State...
8 to the full and equal benefit of all laws and proceedings for the security of persons and
9 property..." A conspirator is responsible for the acts of other conspirators who have left the
10 conspiracy before he joined it, or joined after he left it. See, e.g., U.S. v. Guest, 86 S.Ct. 1170,
11 U.S. v. Compagna, 146 F.2d 524; and, etc.

12
13 **COUNT II. PROFESSIONAL NEGLIGENCE RCW 18.100.070**

14 **Fact #1.** On March 17 of 2006, Jenny Keepers wrote Purchase Agreement/Contract where
15 she negligently provided an incorrect address for the lot #6 in the Lincoln Meadows Subdivision,
16 also known as part of Home Crest Subdivision.

17 **Evidence #1 in support of Fact #1.** On Exhibit # 4, Page 1, Line 20; Page 5, Line 4; Page 8,
18 Line 4 of an, Mrs. Keepers wrote: "buyer agrees to purchase seller's property on the following
19 terms and conditions: property common address is: 329 NW 53rd Ct. Vancouver, WA 98661; on
20 Exhibit # 4 Page. 4, Line 69, she provided the wrong MLS number for the advertisement of
21 "subject property": 6004076; on Exhibit # 4, Page 10, Line 4 on Purchase & Sale Agreement,
22 Mrs. Keeper wrote: " concerning the Property, located at: 529 NW 53 Ct. Plaintiffs, who
23 possessed a limited expertise in the real estate transactions, REASONABLY relied upon such
24 wrongful information and signed an official offer to purchase this wrong property as a result of
25 such reliance.

26 **Evidence #2 in support of Fact #1.** On March 21, 2006, The President of Pyramid Homes Inc.
27 (the seller), Mark Bush, told to Plaintiff John Harper, that he did not received Plaintiffs' offer on
28 the lot # 6 located at: 307 NW 53rd Court, Vancouver, WA 98663. That fact constitutes that CB

1 BSSP' agent Jenny Keepers was involved in inexcusable negligence.

2 **Fact #2.** On March 17, 2006, Plaintiffs give CB BSSP' agent a personal check in the
3 amount of \$1,000.00 as an Earnest money for the purchase of "subject property" as it was agreed
4 in the Purchase & Sale Agreement. CB BSSP' agent Mrs. Keepers had earnest money in the
5 amount of \$1,000 in her possession and refused to forward them to the seller. (*See Exhibit # 10*
6 *Page 2*).

7 **Evidence #1 in support of Fact #2.** On September 28, 2006, attorney Quinn Posner, testified in
8 his memorandum that Plaintiffs did not provided an earnest money (*See Exhibit # 10 Page 2*),
9 furthermore, he accelerated with the statement that Plaintiffs refused to provide an earnest
10 money. As a result of that, the seller did not initiate the review of Plaintiffs offer.

11 **Summary of negligence.** As a result of this fraudulent negligence the Plaintiffs experienced
12 an injury – a loss of property in the amount of \$151,000 and the future loss of construction
13 contract in the amount of \$396,000. (*See Exhibit # 8 Page. 2 Deed of Trust in support of*
14 *construction-contract amount, where the seller took a construction loan from the Riverview*
15 *Community Bank to build their own spec house on the "subject property"*).

16

17 **COUNT III. PROFESSIONAL RELATIONSHIPS AND LIABILITIES. RCW 18.100.070**

18 **Fact #1.** CB BSSP' agent, Mrs. Keepers, had earnest money in the amount of \$1,000 in her
19 possession and refused to forward them to the seller. This is a clear and undisputed fact of
20 breaching by CBBSSP' agent fiduciary duties and the breach of contract.

21 **Evidence #1 in support of Fact #1.** On September 28, 2006, attorney Quinn Posner testified in
22 his notarized memorandum that Plaintiffs did not provided an earnest money, furthermore, he
23 accelerated with the statement that Plaintiffs refused to provide an earnest money. As a result of
24 that, the seller did not initiate the review of Plaintiffs offer.

25 **Fact #2.** About a year ago, Plaintiffs whent to CB BSSP to hire an agent, so he (she) will
26 help in finding a vacant lot, located nearby good elementary and high schools. CB BSSP

1 appointed Jenny Keepers as Plaintiffs' real estate agent. On one of Plaintiffs friendly
 2 conversations with Mrs. Keepers, she asked Plaintiffs about their accent and what country
 3 Plaintiffs came from. Plaintiffs told: "We are Russian family; came to the U.S. about 10 years
 4 ago; we are standing for an excellent education for our kids; we are desperately looking for a
 5 vacant lot located within Lincoln, Franklin and Lake Shore schools and John is a builder, so he
 6 could build our own house".

7 On March 21, 2006, during the meeting with management of Pyramid Homes, Inc., CB
 8 BSSP' agent disclosed the above mentioned personal information that Plaintiffs told her during
 9 business conversation on one of their appointments. Plaintiffs did not mean at that time that Mrs.
 10 Keepers need to disclose this personal information to a third party. Furthermore, it was well
 11 understood from Pyramid Homes' advertisement that they will sell a vacant lot located in the
 12 desired location only if Pyramid will do construction for the buyer. To avoid any conflict of
 13 interest between builders John Harper and Pyramid Homes Inc., Plaintiffs were agreed that
 14 Pyramid Homes will build their house.

15 Therefore, when CB BSSP' agent begins to disclosing the above mentioned confidential
 16 information, Plaintiffs became mad about this unethical behavior and ordered Mrs. Keepers to
 17 stop disclosing. After that CB BSSP' agent said that she will no longer represent Plaintiffs as a
 18 Buyer, and they should find another realtor. After this incident on March 21, 2006, Jenny
 19 Keeper never contacted or e-mailed Plaintiffs about new listings on real estate market.

20 **Summary of negligent disclosure and breach of the contract** . The law of agency is based on
 21 the Latin maxim "*Qui facit per alium, facit per se*," which means "he who acts through another is
 22 deemed in law to do it himself." CB BSSP' agent breached her fiduciary duties and refuses to
 23 carry out the obligations of the verbal and written contract satisfactory.

24 EVIDENCE RELIED UPON

25 This motion is based upon factual allegations, memorandum, and upon the Court's
 26 review of the attachments to Plaintiffs' motion. Plaintiffs declared: regardless of position, status,

1 wealth or associations, fraudulent activity will not be tolerated.

2 Where, as here, the Plaintiffs have established *a prima facie* case of negligence and
3 conspiracy the burden of proof shifts to the Defendant CB BSSP to demonstrate that Defendant
4 CB BSSP did not have a contributory negligence that could have been avoided with the exercise
5 of reasonable care. Defendant's Motion for Summary Judgment is curious. Plaintiffs argue that
6 many material facts are in dispute in this unfair practice and conspiracy case. Defendants'
7 Motion ignores all of the remaining evidence and common sense.

9 APPLICABLE LAW

10 In determining whether the defendant has a prima facie defense, the court may look
11 beyond the incomplete and "bad face" declarations submitted in connection with the Motion For
12 Summary Judgment, and consider materials in the court file.

13 The defense must be demonstrated factually; mere arguments and conclusions are
14 insufficient. Calhoun v. Merritt, 46 Wn.App 616, 731 P.2d 1094 (1986).

15 Defendant's failure to offer material facts to rebut Plaintiffs' complaint is further
16 demonstrated by their negative and uncooperative answer to Interrogatory and Production of
17 Documents for the Plaintiffs. Evidence relied upon in support of or in opposition to motion for
18 summary judgment must be admissible at trial. Raymond v. Pac. Chem, 98 Wn. App.
19 733,744,992 P.2d 517 (1999)

20 Attorney for the Defendant CB BSSP simply attached declarations to her memorandum
21 and proceeded to make arguments based upon them. This is utterly inadequate to establish the
22 foundation necessary for the admission of a document into evidence. ER 901(a). Pursuant to the
23 Rule 56(e), an adverse party may not rest the mere allegations or denials of the pleading, but his
24 response, by affidavits or as otherwise provided in this rule, must set forth specific facts shown
25 that there is a genuine issue for trial".

26 Real estate agent bound by the law of negligent misrepresentation regarding statements
27 which may be relied upon by third parties, such as prospective purchasers or lenders. Also, a
28 realtor's employer are vicariously liable for the realtor's fraud or negligent misrepresentation.

29 *RCW 18.100.070 Professional relationships and liabilities preserved.*

PLAINTIFF'S OPPOSITION TO DEFENDANT COLDWELL BANKER BARBARA
SUE SEAL PROPERTIES' MOTION FOR SUMMARY JUDGMENT

Page 5 of 7

John Harper & Lana Kudina
PO Box 16566
Portland, OR 97292
Ph: 503-267-3536

1 “Any director, officer, shareholder, agent or employee of a corporation organized under
 2 this chapter shall remain personally and fully liable and accountable for any **negligent or**
 3 **wrongful acts or misconduct** committed by him or by any person under his direct
 4 supervision and control, while rendering professional services on behalf of the
 5 corporation to the person for whom such professional services were being rendered. The
 6 corporation shall be liable for any negligent or wrongful acts of misconduct committed
 7 by any of its directors, officers, shareholders, agents or employees while they are engaged
 8 on behalf of the corporation, in the rendering of professional services”.

9 *RCW 49.60.220 Unfair practice to aid violation.*

10 “It is an unfair practice for any person to aid, abet, encourage, or incite the commission of
 11 any unfair practice, or to attempt to obstruct or prevent any other person from complying
 12 with the provisions of this chapter or any order issued thereunder.”

13 *42 USC 2000g-2*

14 “The activities of all officers and employees of the Service in providing conciliation
 15 assistance shall be conducted in confidence and without publicity, and the Service shall
 16 hold confidential any information acquired in the regular performance of its duties upon
 17 the understanding that it would be so held.”

18 *RCW 21.20.010 Unlawful offers, sales, purchases.*

19 It is unlawful for any person, in connection with the offer, sale or purchase of any
 20 security, directly or indirectly:

21 (1) To employ any device, scheme, or artifice to defraud;

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 24 (2) To make any untrue statement of a material fact or to omit to state a material fact
 25 necessary in order to make the statements made, in the light of the circumstances under
 26 which they are made, not misleading; or

27
 28 (3) To engage in any act, practice, or course of business which operates or would
 29 operate as a fraud or deceit upon any person.
 30

31 III. CONCLUSION

32 Summary judgment is appropriate only in cases where no question of fact exists for a court to
 33 decide. The truth is mighty and will prevail. Defendant CB BSSP cannot meet its burden of
 34 establish a probability that it will prevail in the action, for the reasons set forth above.

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

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JOHN HARPER
LANA KUDINA

Plaintiffs,

COLDWELL BANKER BARBARA
SUE SEAL PROPERTIES
and PYRAMID HOMES
INCORPORATED

Defendants.

CASE NO. 06 2 02392-1

NOTICE OF HEARINGS STRIKE

**JUDGES: Honorable Robert Harris
Honorable Barbara Johnson**

- 21 **To:** THE COURT CLERK,
- 22 **To:** Calliste J. Warfield, Attorney for Defendant Coldwell Banker Barbara Sue Seal Properties,
- 23 **To:** Albert F. Schlotfeldt, Attorney for Defendant Pyramid Homes Incorporated.

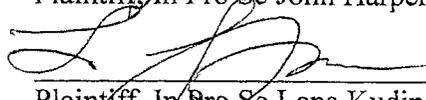
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26 The Plaintiffs move the court to strike hearing on Summary Judgment, scheduled on November
27 3, 2006 at 11:00 before Honorable Judge Robert Harris and hearing on Entry of Attorney's Fees before
28 Honorable Judge Barbara Johnson, scheduled on November 17, 2006 at 9:00 for the following reasons:

- 30 1) Scandalous matter and impertinent.
- 31 2) On October 16, 2006 the Notice of Removal to the Federal Court was filed (by Plaintiffs) with the
32 State court, removal is effective and the State court shall proceed no further until appropriate court
33 jurisdiction and venue will be established and until the case is remanded back to the State court.
34 28 USC §1447(d).
- 35 3) The Plaintiffs are Non-English speakers; because of the oral communication barriers they have the
36 right to an interpreter. This fundamental right safeguards the fairness of the court process. RCW
37 2.43.010.

1 4) On October 26, 2006 John Harper made a good faith effort through personal telephone call to
2 CBBSSP' s Attorney Calliste Warfield to reschedule this date on the date when Plaintiff's Court
3 Certified interpreter is available, and have been unable to do so. Pursuant to RCW 2.43.010: "It is
4 hereby declared to be the policy of this state to secure the rights, constitutional or otherwise, of
5 persons who, because of a non-English-speaking cultural background, are unable to readily
6 understand or communicate in the English language, and who consequently cannot be fully
7 protected in legal proceedings unless qualified interpreters are available to assist them."
8

9 DATED this 31 October, 2006

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13 Plaintiff, In Pro Se John Harper

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16 Plaintiff, In Pro Se Lana Kudina
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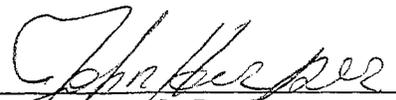
18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on the 31 day of October 2006, I served the forgoing NOTICE OF
20 HEARING STRIKE on the following party at the following address:
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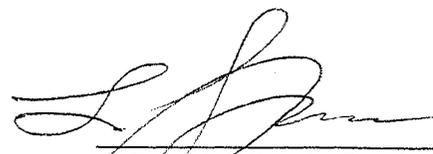
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23 Calliste J. Warfield
24 Hoffman Hart Wagner LLP
25 Twenties Floor
26 1000 SW Broadway
27 Portland, OR 97205

28
29 Albert F. Schlotfeldt
30 Duggan Schlotfeldt & Welch PLLC
31 900 Washington Street, Suite 1020
32 PO Box 570
33 Vancouver, WA 98666-0570

34 by mailing to them a true copy thereof, certified by us as such, placed in a sealed envelope addressed to
35 them at the addresses set forth above, and deposited in the U.S. Post Office at Portland, Oregon on said
36 day with postage prepaid.
37

38 

John Harper In Pro Se



Lana Kudina In Pro Se

1 Defendants filed Motions to Remand the District Court matter to Washington State
2 Court. The Court issued Findings and Recommendation in relation to those motions.
3 Findings and Recommendations attached to Dec of C. Warfield as Ex A. U.S. District Court
4 Magistrate Hubel recommended remand and an award of attorney fees and costs to
5 defendants.

6 Plaintiffs now move to strike the hearing for defendants' summary judgment motions
7 on November 3, 2006.

8 I. OPPOSITION

9 CB BSSP opposes the plaintiffs' Notice of Hearings Strike based on the Findings
10 and Recommendation issued by U.S. District Magistrate Hubel, attached to the Dec of C.
11 Warfield as Ex A.

12 In addition, CB BSSP opposes plaintiffs' Notice on the basis of untimeliness. The
13 hearing for defendants' Motion for Summary Judgment has been scheduled since October 5,
14 2006. Plaintiffs have participated in multiple hearings before the Court without an
15 interpreter. Further, plaintiffs first requested an interpreter on or about October 26, 2006.
16 However, plaintiffs have made no further efforts to re-set the hearing due to any request to
17 retain an interpreter. See letter attached to Dec of C. Warfield as Ex B.

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CERTIFICATE OF SERVICE

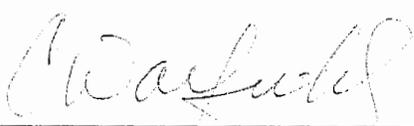
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I hereby certify that on the 2nd day of November, 2006, I served the foregoing
COLDWELL BANKER BARBARA SUE SEAL PROPERTIES' OPPOSITION TO
PLAINTIFFS' NOTICE OF HEARINGS STRIKE, on the following parties at the following
address:

JOHN HARPER AND LANA KUDINA
PO BOX 16566
PORTLAND, OR 97292
Pro Se

ALBERT F. SCHLOTFELDT
QUINN POSNER
DUGGAN SCHLOTFELDT & WELCH PLLC
900 WASHINGTON STREET, SUITE 1020
PO BOX 570
VANCOUVER, WA 98666
Atty for Pyramid Homes Incorporated

by mailing to them a true and correct copy thereof, certified by me as such, placed in a sealed
envelope addressed to them at the address set forth above, and deposited in the U.S. Post Office
at Portland, Oregon on said day with postage prepaid.



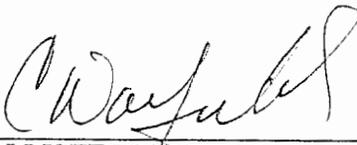
Cally J. Warfield

1 interpreter and that if he could coordinate a date on which all parties and Judge
2 Harris were available, I would not oppose rescheduling the hearing for the pending
3 motion for summary judgment.

4 5. I have not heard anything further from Mr. Harris with respect to efforts to
5 reschedule the hearing for the summary judgment motion, other than the Notice of
6 Hearings Strike.

7 I declare under the penalty of perjury and under the laws of the State of Washington
8 that the foregoing is true and correct.

9 DATED this 2nd day of November, 2006.

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13 CALLISTE WARFIELD
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JOHN HARPER and LANA KUDINA,)
)
Plaintiff,)
)
v.)
)
COLDWELL BANKER BARBARA SUE)
SEAL PROPERTIES and PYRAMID)
HOMES INCORPORATED,)
)
Defendants.)

No. CV-06-1457-HU

FINDINGS & RECOMMENDATION

John Harper
Lana Kudina
P.O. Box 16566
Portland, Oregon 97292

Plaintiffs Pro Se

Martha J. Hodgkinson
HOFFMAN, HART & WAGNER, LLP
Twentieth Floor
1000 S.W. Broadway
Portland, Oregon 97205

Attorney for Defendant Coldwell Banker Barbara
Sue Seal Properties

Albert F. Schlotfeldt
DUGGAN, SCHLOTFELDT & WELCH, PLLC
900 Washington Street, Suite 1020
P.O. Box 370
Vancouver, Washington 98666-0570

1 - FINDINGS & RECOMMENDATION

EXHIBIT A
PAGE 1

1 HUBEL, Magistrate Judge:

2 Plaintiffs John Harper and Lana Kudina filed an action against
3 defendants in the Superior Court of the State of Washington, Clark
4 County. On October 16, 2006, plaintiffs removed that action to
5 this Court. Defendants move to remand the action back to state
6 court. I recommend that the motions be granted.

7 Removal of cases from state court is governed by 28 U.S.C. §
8 1441. Removal is the defendant's prerogative, not the plaintiff's.
9 The statute vests the right to remove in "the defendant or
10 defendants." 28 U.S.C. § 1441(a). "Congress has given the right
11 to remove lawsuits to defendants, not to plaintiffs." Guttman v.
12 Silverberg, 374 F. Supp. 2d 991, 992 (D.N.M. 2005); Southland Corp.
13 v. Estridge, 456 F. Supp. 1296, 1300 (C.D. Cal. 1978) (plaintiff
14 who chooses to commence the action in state court cannot later
15 remove to federal court, even to defend against a counterclaim).

16 Because plaintiffs removed the case to this Court without
17 authority to do so, the case should be remanded. 28 U.S.C. §
18 1447(c).

19 Two other bases for remand are also apparent from the record.
20 First, the notice of removal must be filed within thirty days after
21 the receipt by the defendant of a copy of the initial pleading
22 setting forth the claim for relief. 28 U.S.C. § 1446(b).
23 Plaintiffs filed their state court Complaint on May 8, 2006. Exh.
24 1 to "CBBSSP TABLE OF CONTENTS" filed by plaintiffs with Notice of
25 Removal. Coldwell Banker Barbara Sue Seal was served with the
26 Summons and Complaint on May 9, 2006. Id. It is unclear when
27 defendant Pyramid Homes was served.

28 Plaintiffs filed an Amended Complaint in state court on or

2 - FINDINGS & RECOMMENDATION

EXHIBIT A
PAGE 2

1 about August 17, 2006. Exh. 12 to "CBESSP TABLE OF CONTENTS" filed
2 by plaintiffs with Notice of Removal. The certificate of service
3 attached to the Amended Complaint shows that plaintiffs served a
4 copy of the pleading to counsel for Coldwell Banker Barbara Sue
5 Seal, by mail, on August 17, 2006, and on the registered agent for
6 Pyramid Homes by hand delivery, also on August 17, 2006.

7 Even using August 17, 2006 as the operative date for starting
8 the thirty-day clock rather than a date in May 2006 when the
9 original Complaint was filed, removal on October 16, 2006, is
10 beyond the thirty-day time period allowed in 18 U.S.C. § 1446(b).
11 Thus, the case should be remanded.

12 Second, 28 U.S.C. § 1441(a) makes clear that removal of a
13 state court action to a federal court must be to the "district
14 court of the United States for the district and division embracing
15 the place where such action is pending." Because this action was
16 pending in Clark County, Washington, the United States District
17 Court for the District of Oregon is not the appropriate removal
18 court.

19 For all of the above reasons, the defendants' motions to
20 remand should be granted.

21 Defendants have requested that plaintiffs be ordered to pay
22 fees associated with defendants' motions to remand. 28 U.S.C. §
23 1447(c) ("An order remanding the case may require payment of just
24 costs and any actual expenses, including attorney fees, incurred as
25 a result of the removal."). A recent Ninth Circuit case explains
26 that a 2005 Supreme Court case "established the general rule that
27 absent unusual circumstances, courts may award attorney's fees
28 under § 1447(c) only where the removing party lacked an objectively

3 - FINDINGS & RECOMMENDATION

EXHIBIT

PAGE

A

3

1 reasonable basis for seeking removal. Conversely, when an
2 objectively reasonable basis exists, fees should be denied."
3 Associates Nat'l Bank. v. Erum, No. 04-16436, 2006 WL 3017424, at
4 *1 (9th Cir. Oct. 17, 2006) (quoting Martin v. Franklin Capital
5 Corp., 126 S. Ct. 704, 711 (2005)).

6 Here, plaintiffs lacked an objectively reasonable basis for
7 removal. An award of costs and fees is appropriate. I recommend
8 that should the Article III District Judge adopt this Findings &
9 Recommendation, the fee requests be granted in an amount determined
10 by the Article III District Judge.

11 Finally, plaintiffs move for an order of sanctions against
12 Pyramid Homes's counsel Albert Schlotfeldt. Because it is
13 inappropriate for this Court to rule on this motion given my
14 conclusion that the action was improperly removed here, I stay this
15 motion until after a ruling by the Article II District Judge. If
16 the Article III District Judge adopts this Findings &
17 Recommendation, I recommend that this motion be denied.

18 CONCLUSION

19 Defendants' motions to remand (#7, #10) should be granted, as
20 should defendants' requests for fees and costs in an amount
21 determined by the Article III District Judge. Plaintiffs' motion
22 for sanctions (#13) is stayed, but should be denied if the Article
23 II District Judge adopts this Findings & Recommendation.

24 SCHEDULING ORDER

25 The above Findings and Recommendation will be referred to a
26 United States District Judge for review. Objections, if any, are
27 due November 14, 2006. If no objections are filed, review of the
28 Findings and Recommendation will go under advisement on that date.

4 - FINDINGS & RECOMMENDATION

EXHIBIT
PAGE

A
4

1 If objections are filed, a response to the objections is due
2 November 28, 2006, and the review of the Findings and
3 Recommendation will go under advisement on that date.

4 IT IS SO ORDERED.

5 Dated this 30th day of October, 2006.
6
7

8 /s/ Dennis James Hubel
9 Dennis James Hubel
10 United States Magistrate Judge
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**HOFFMAN
HART
WAGNER** ^{LLP}
Attorneys at Law

Cally J. Warfield

cjw@hhw.com
Admitted in Oregon

Twentieth Floor
1000 S.W. Broadway
Portland, Oregon 97205
Phone (503) 222-4499
Fax (503) 222-2301

October 31, 2006

John Harper and Lana Kudina
PO Box 16566
Portland, OR 97292

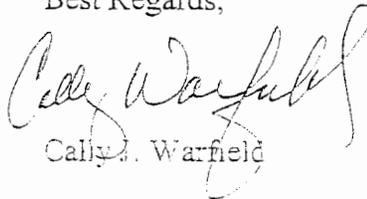
RE: **Harper/Kudina v. CBBSSP/Keepers**
U.S. District Court of Oregon Case No.: CV06-1457 HU
Our File No.: 18450
Claim No.: RE526226

Dear Mr. Harper and Ms. Kudina:

On or about October 26, 2006, Mr. Harper called me about bringing an interpreter to the hearing on my clients' motion for summary judgment currently scheduled for November 3, 2006. I indicated to Mr. Harper that I did not object to an interpreter being present. Mr. Harper requested that the hearing be rescheduled and proposed several dates. However, my calendar could not accommodate the proposed dates and/or Judge Harris was not available on the proposed dates. My conversation with Mr. Harper concluded with the plan that if Mr. Harper was able to propose additional available dates, I was open to rescheduling the hearing to accommodate his request to have an interpreter. At no time did I object to an interpreter being present at the hearing.

As of today's date, I have not heard from you in regard to rescheduling the hearing and/or having an interpreter present for the hearing.

Best Regards,



Cally J. Warfield

CJW:sem

cc: Jenny Keepers
Gail Fisher
Quinn Posner

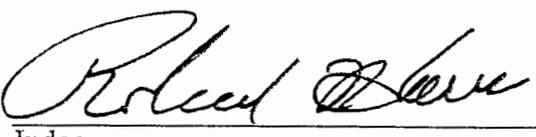
- 1 1. Plaintiffs' Notice of Hearings Strike;
- 2 2. Defendants' Opposition to Plaintiffs' Notice of Hearings Strike; and
- 3 3. Defendants' Motions for Summary Judgment, along with all declarations and
- 4 exhibits.

5 Based on the argument of counsel, the argument of plaintiffs, the evidence presented,
 6 and the pleadings of record, the Court finds:

- 7 1. Plaintiffs failed to obtain an interpreter for the hearing scheduled for November 3,
- 8 2006;
- 9 2. Plaintiffs appear to speak and comprehend English competently and an interpreter is
- 10 not required to adjudicate the matter;
- 11 3. Plaintiffs failed to provide sufficient notice to defendants of Plaintiffs' Notice of
- 12 Hearings Strike;
- 13 4. Plaintiffs failed to issue a citation setting Plaintiffs' Notice of Hearings Strike for
- 14 hearing.

15 Based on the above findings, It Is Ordered: Plaintiffs' Notice of Hearings Strike is
 16 denied.

17 DATED this 22 day of December, 2006

19
 20 By: 
 21 Judge

22 Presented by:

23
 24 
 25 Calliste J. Korach, WSBA No. 31127
 26 Attorney for Defendant Coldwell Banker Barbara Sue Seal Properties

FILED

DEC 22 2006

JoAnna McBride, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

| | | | |
|----|------------------------------|---|-------------------------|
| 8 | JOHN HARPER and LANA KUDINA, |) | Case No. 06 2 02392-1 |
| 9 | |) | |
| 10 | Plaintiffs, |) | |
| 11 | v. |) | |
| 12 | COLDWELL BANKER BARBARA SUE |) | ORDER GRANTING COLDWELL |
| 13 | SEAL PROPERTIES and PYRAMID |) | BANKER BARBARA SUE SEAL |
| 14 | HOMES INCORPORATED, |) | PROPERTIES' SUMMARY |
| | Defendants. |) | JUDGMENT MOTION |

This matter came before the Court for hearing on the defendant Coldwell Banker Barbara Sue Seal Properties' motion for summary judgment seeking the following relief:

1. Dismissing plaintiffs' claim for Violation of RCW 19.86.030;
2. Dismissing plaintiffs' claim for Negligent Misrepresentation (RCW 18.100.070);
3. Dismissing plaintiffs' claim for Disclosure of Restricted Information (RCW 18.100.070); and
4. Awarding attorney fees and costs in favor of Coldwell Banker Barbara Sue Seal Properties.

///
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///

1 The Court heard oral argument of counsel for Coldwell Banker Barbara Sue Seal
 2 Properties and oral argument of plaintiffs, *Pro Se*. The Court considered the pleadings filed
 3 in the action. The Court also considered the following documents and evidence which was
 4 brought to the Court's attention before Coldwell Banker Barbara Sue Seal Properties'
 5 motion for summary judgment was granted:

6 1. Exhibit A attached to the Declaration of C. Warfield in support of Coldwell Banker
 7 Barbara Sue Seal Properties' motion for summary judgment:

- 8 a. The complaint filed by plaintiffs in Clark County Superior Court;
 9 b. The amended complaint filed by plaintiffs in Clark County Superior Court;
 10 c. Plaintiffs' Response to Defendants' Request for Statement of Damages;
 11 d. Harper / Kudina complaint filed with Department of Licensing;
 12 e. Ms. Keeper's narrative regarding the subject transaction that she submitted to the
 13 Department of Licensing along with transaction materials; and
 14 f. Letter from Department of Licensing dated August 3, 2006.

15 2. Exhibit B attached to the Declaration of C. Warfield in support of Coldwell Banker
 16 Barbara Sue Seal Properties' motion for summary judgment:

- 17 a. Letter dated July 11, 2006;
 18 b. Letter dated July 14, 2006;
 19 c. Letter dated July 27, 2006;
 20 d. Letter dated August 11, 2006;
 21 e. Letter dated August 28, 2006; and
 22 f. Letter dated August 31, 2006.

23 3. Plaintiffs' offer to purchase real property, described as "Lot 6, Lincoln Meadows,
 24 Vancouver, WA," attached as Exhibit C to the Declaration of C. Warfield in support of
 25 Coldwell Banker Barbara Sue Seal Properties' motion for summary judgment;

26 4. Fax cover sheet from Rollie Wolk to Jenny Keepers, faxed April 11, 2006, attached
 as Exhibit D to the Declaration of C. Warfield in support of Coldwell Banker Barbara
 Sue Seal Properties' motion for summary judgment;

5. Declaration of J. Keepers in support of Coldwell Banker Barbara Sue Seal
 Properties' motion for summary judgment;

///

- 1 6. Declaration of R. Wolk in support of Coldwell Banker Barbara Sue Seal Properties'
2 motion for summary judgment;
- 3 7. Declaration of V. Manning in support of Coldwell Banker Barbara Sue Seal
4 Properties' motion for summary judgment; and
- 5 8. Plaintiffs' Opposition to Coldwell Banker Barbara Sue Seal Properties' motion for
6 summary judgment, including all exhibits.

7 Based on oral argument and the evidence presented, the Court finds:

- 8 1. The undisputed factual record establishes that:
- 9 a. On the plaintiffs' behalf, Jenny Keepers / Coldwell Banker Barbara Sue Seal
10 Properties wrote and timely submitted an offer to the seller/builder of certain
11 real property described as "Lot 6, Lincoln Meadows, Vancouver, WA;"
- 12 b. The seller/builder of the subject property, defendant Pyramid Homes, elected
13 to accept a different offer.
- 14 2. No genuine issue of material fact exists on plaintiffs' claim against Coldwell Banker
15 Barbara Sue Seal Properties under the Consumer Protection Act and Coldwell
16 Banker Barbara Sue Seal Properties is entitled to judgment as a matter of law
17 dismissing the claim.
- 18 3. No genuine issue of material fact exists on plaintiffs' negligent misrepresentation
19 claim against Coldwell Banker Barbara Sue Seal Properties and Coldwell Banker
20 Barbara Sue Seal Properties is entitled to judgment as a matter of law dismissing the
21 claim.
- 22 4. No genuine issue of material fact exists on plaintiffs' claim against Coldwell Banker
23 Barbara Sue Seal Properties under RCW 18.100.070 for Disclosure of Restricted
24 Information and Coldwell Banker Barbara Sue Seal Properties is entitled to judgment
25 as a matter of law dismissing the claim.

26 ///

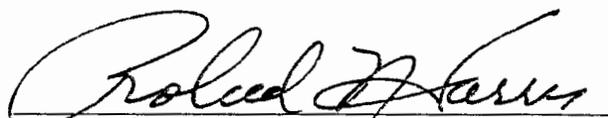
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Based on the above findings, It Is Ordered:

1. Defendant Coldwell Banker Barbara Sue Seal Properties' motion for summary judgment is granted;
2. Judgment shall be entered in favor of defendant Coldwell Banker Barbara Sue Seal Properties, dismissing each and every claim asserted by plaintiffs against Coldwell Banker Barbara Sue Seal Properties, with prejudice.
3. Defendant Coldwell Banker Barbara Sue Seal Properties may move for recovery of its reasonable attorney fees and costs.

DATED this 22 day of December, 2006


 Judge Robert Harris
 Superior Court Judge

Presented by:


 Calliste J. Korach, WSBA No. 31127
 Attorney for Defendant Coldwell Banker Barbara Sue Seal Properties

1
2 John Harper
3 Lana Kudina
4 PO Box 16566
5 Portland, OR 97292
6 Ph: 503-267-3536
7 In Pro Se
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15 **SUPERIOR COURT OF THE STATE OF WASHINGTON**
16
17 **FOR CLARK COUNTY**
18

19)
20 **JOHN HARPER**)
21 **LANA KUDINA**)

22) **CASE NO. 06 2 0292-1**
23 Plaintiffs,)
24)

25 **COLDWELL BANKER Barbara Sue**)
26 **Seal Properties**)

27) **PLAINTIFF'S FIRST SET OF**
28 Defendant.) **INTERROGATORIES TO DEFENDANT**
29) **COLDWELL BANKER BARBARA SUE**
30) **SEAL PROPARTIES**
31)

32 **TO: Calliste J. Warfield, Attorney for Defendant**
33

34
35 The plaintiffs John Harper and Lana Kudina hereby notifies the defendant, Coldwell Banker
36
37 Barbara Sue Seal Properties, that it is to answer the following interrogatories under oath, separately and
38
39 fully, within thirty (30) days of the time of the service in accordance with Civil Rules 26 and 33 of
40
41 Superior Court Procidure. In answering these interrogatories, please furnish all information that is
42
43 available to you including, but not limited to, information in the possession of your principals, agents,
44
45 attorney(s) and accountants; notmerely information known to the personal knowledge of the person
46

1 preparing the answer. These interrogatories shall be deemed continuing, so as to require supplement
2
3 answer if you obtain further information between the time answering are served and the time of trial.
4

5 **Definitions**
6
7

8 1. The term "incident" shall refer to the entire transactions between John Harper
9
10 Lana Kudina and agents and officers and employees of the defendant from March 1, 2006 to the
11
12 present time.

13
14 2. The term "documents" shall refer to all writing and materials of kind, including but not
15
16 limited to, orders, instructions, reports, directives, summaries, interviews, complaints, statements,
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18 transcripts, regulations, memoranda, not, correspondence, logs,, drafts, microfilms, microfiche,
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20 videotape, motion, pictures, and any other electronic or mechanical recording. The documents
21
22 may be originals or true and accurate copies.

23
24 3. The term "identify" or "identity" when used with respect to persons, is requested for you
25
26 to supply the full name, address, height, weight, hair color and date of birth of the person to be
27
28 identified.

29
30 4. The term "identify" or "identity" when used with respect to documents, is request for you
31
32 to supply the date of the documents, the author, the addressee, if any, the length in page, the title
33
34 and a brief description of the contents of the documents.
35

36 **INTERROGATORIES**
37

38 1. Please state the name, address, job title, and employer of the person(s) answering these
39
40 interrogatories.

41
42 **ANSWER:**
43
44
45
46

1 5. Please describe in detail the training of the individual(s) in No 1, supra, received with
2
3 regards to following Real Estate agent rules in contract procedures, consumer/customer presentation.
4
5 consumer/customer protection, consumer/customer`s confidential information . In particular, please
6
7 state: the nature and substance of training each individual received; the inclusive dates of the period
8
9 during which each individual received training; the name and address of each specialized school each
10
11 individual attended to receive such training and degree or certificate, if any, each individual received
12
13 from each such specialized school.

14
15 **ANSWER:**
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27 6. Please describe in detail the affirmative action plans of the Coldwell Banker BSSP for
28
29 the consumers/customers representation, submission of an offer or counter-offer, protection and
30
31 promotion the interests of the consumers/customers.

32
33 **ANSWER:**
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1 7. Please describe in detail the affirmative action plans of the Coldwell Banker BSSP for
2
3 the consumers/customers preservation of confidential information provided by clients in the course of
4
5 any agency or non-agency relationship cooperation with other brokers.
6

7 ANSWER:
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21 8. Have any complaints alleging Real Estate rules and /or civil right violated by an
22
23 officer, employee or agent of the Coldwell Banker BSSP been filed with any court, State or Federal,
24
25 since 1990? If so, for each complaint state: the date on which it was filed, the name and address of the
26
27 complainant, the substance of the complaint and ultimate disposition of the complaint, including any
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29 discipline which may have been imposed on the officer, employee or agent.
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31 ANSWER:
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9. Identify all persons who, to your knowledge, or to the knowledge of your agent or attorneys, witnessed or purport, to have knowledge of fact relevant to this incident.

ANSWER:

10. For each witness identified in response to Interrogatory No 9 above, state the substance of the information the witness claims to have regarding the incident.

ANSWER:

1 John Harper
2 Lana Kudina
3 PO Box 16566
4 Portland, OR 97292
5 Ph: 503-267-3536
6 In Pro Se

7
8 **SUPERIOR COURT OF THE STATE OF WASHINGTON**
9
10 **FOR CLARK COUNTY**

11
12
13 **JOHN HARPER**
14 **LANA KUDINA**

15
16 Plaintiffs,

17
18 **COLDWELL BANKER Barbara**
19 **Sue Seal Properties**

20
21 Defendant.
22 _____)

)
)
) **Case No. 06 2 02392-1**

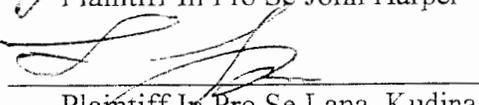
) **RESPOND TO DEFENDANT'S**
) **REQUEST FOR STATEMENT**
) **OF ALLEGED DAMAGES**

23
24
25 **STATEMENT OF ALLEGED DAMAGES**

26
27 **TO: Calliste J. Warfield, Attorney for Defendant**

28
29 Plaintiffs are entitled to recover a loss in the amount of \$150,000 or the fair market value of
30
31 the property at the time of the trial, whichever is higher; and \$1,500,000 as a *prima facie* infliction of
32
33 emotional distress of Plaintiffs and their children. In addition to the above two amounts, the loss for
34
35 the kid's future loss for education cannot be computed or estimated, therefore the Plaintiffs will
36
37 account to the court for periodic award damages.

38
39 DATED this 24 May, 2006

40
41 
42 _____
43 Plaintiff In Pro Se John Harper
44 
45 _____
46 Plaintiff In Pro Se Lana Kudina

RESPOND TO DEFENDANT'S REQUEST FOR STATEMENT OF ALLEGED DAMAGES

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John Harper
Lana Kudina
PO Box 16566
Portland, OR 97292
Ph: 503-267-3536
In Pro Se

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

JOHN HARPER
LANA KUDINA

Plaintiffs,

COLDWELL BANKER Barbara Sue
Seal Properties

Defendant.

CASE NO. 06 2 0292-1

PLAINTIFFS FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: Calliste J. Warfield, Attorney for Defendant

The plaintiffs request that defendant answer the following request for production of documents under oath, separately and fully, within thirty (30) days of the time of service of said request in accordance with Civil Rule 30 of Superior Court Procedure. These requests shall be deemed continuing, so as to require supplemental responses if obtain further materials between time requested are served and of trial.

1 **Definitions**
 2

- 3 1. The term "plaintiff(s)" shall refer to John Harper and/or Lana Kudina.
 4
 5 2. The term "defendant" shall refer to Coldwell Banker Barbara Sue Seal Properties
 6
 7 (CBBSSP) and its officers, employees, or agents.
 8
 9 3. The term "incident " shall refer to the entire transaction between John Harper, Lana
 10
 11 Kudina and officers, employees and agents of the Coldwell Banker Barbara Sue Seal
 12
 13 Properties, Pyramid Home, Equity Northwest Properties and Party who bought this
 14
 15 lot or attempt to buy.
 16
 17 4. The term "documents" shall refer to all writings and materials of any kind, including, but
 18
 19 not limited to; orders, instructions, reports, directives, summaries, interviews, complaints,
 20
 21 statements, transcripts, regulations, memoranda, notes, correspondence, logs, and drafts.
 22
 23 "Documents" also refer to records including, but not limited to, and any other electronic
 24
 25 or mechanical recording. The documents may be originals or true and accurate copies.
 26
 27

28 **REQUEST FOR PRODUCTION**
 29
 30

31 **Request No. 1:** Please produce all documents, and/or telephone messages between
 32
 33 Coldwell Banker BSSP, Pyramid Home, Equity Northwest Properties and Party who bought this lot
 34
 35 or attempt to buy for the period from March 1, 2006 to the present time.
 36

37 **Request No 2:** Please produce all calendars that you keep or kept for the time period
 38
 39 beginning March 1, 2006 to present.
 40

41 **Request No 3:** For each person you expect to call as an expert witness at trial, please
 42
 43 produce: (1) that person's resume; (2) all documents, notes, drafts, working papers, memoranda,
 44
 45 correspondence, reports or other materials written or created by that person that are related to this case;
 46
 47 (3) all documents, publications, statistics and/or any other written materials utilized or relied upon by

1
2 each expert that are related to this case; (4) all documents which constitute or contain any prior
3
4 testimony of each expert.

5
6 **Request No 4.** All documents relating to all complaints filed against any employee or
7
8 agent of the Coldwell Banker BSSP and /or against the Coldwell Banker BSSP itself which alleged
9
10 disciplinary action, unprofessional conduct, attempt to monopolize, conspire, psychological and
11
12 emotional distress, and/or violation of civil rights. This request includes, but not limited to, all
13
14 complaints filed, all documents and reports compiled in connection with each such complaint, and all
15
16 documents relating in any way to the investigation of each such complaint.

17
18 **Request No 5.** Complete copies of any and all contracts and/or agreements made between
19
20 the defendants Coldwell Banker BSSP and the State of Washington Department of Licensing which
21
22 related to consumers/customers protection, presentation and procedure.

23
24 **Request No 6.** All documents which relate to the incident which rise to this lawsuit
25
26 including, but not limited to, any or other documents generated as result of any investigation into any
27
28 aspect of the incident gave rise to this lawsuit.

29
30 **Request No 7.** Copies of all training materials, directives, instructions, and/or policy
31
32 statements issued at any time since 2001 which address in any way the procedure to be followed with
33
34 respect to consumer rights.

35
36 **Request No 8.** A complete copy of the defendant's Operational Policies and Procedure in
37
38 effect at the time of the incident. In particular those sections of said polices and procedures which
39
40 related to consumers/customers rights.

41
42 **Request No 9.** Any and all documents that comprise or are part personnel file of Jenny
43
44 Keepers, including disciplinary records, any other documents in the possession of the defendant that
45
46 concern her training, duties, performance, assignment, and mental and physical condition.
47

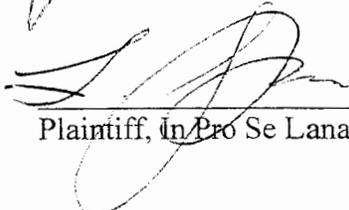
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Request No 10. Any and all documents that concern or are relevant to, to any extent or degree, any formal or informal complaint made against or about Jenny Keepers from any source and concerning any subject matter.

DATED: this 24 May, 2006



Plaintiff, In Pro Se John Harper



Plaintiff, In Pro Se Lana Kudina

RESPONSE:

Objection. Irrelevant to Coldwell Banker Barbara Sue Seal, argumentative overall.

Request for Admission No 3. Admit that you read and understood the terms of the offer you made to purchase real property described as 329 NW 53rd Ct., Vancouver, WA 98661.

RESPONSE:

Objection. Plaintiffs made an agreement with Coldwell Banker Barbara Sue Seal to represent them in the purchase of vacant lot number six in the Lincoln Meadows, Vancouver, Washington. (See your Exhibit CB BSSP 0001, line 8 and 9). Jenny Keepers who is the Selling Agent of Coldwell Banker Barbara Sue Seal provided Plaintiffs with the address described as 329 NW 53 Ct, Vancouver, WA 98661. Plaintiffs relied up on her information that was wrong at the time of signing this contract. The original conversation was about **LOT #6 in the Lincoln Meadows Vancouver, Washington.**

Plaintiffs verified with the City of Vancouver about the address for the above mentioned lot. The correct address was/is: 307 NW 53 Ct. Vancouver, WA 98663 not the 329 NW 53 Ct. Vancouver, WA 98661.

(See attached City Of Vancouver Parcel Information Sheet and the Clark County Property Information Sheet).

Request for Admission No 4. Admit that the real property described as 329 NW 53 Ct., Vancouver, WA 98661 is in Franklin Elementary School District.

RESPONSE:

Admit. Based on the City of Vancouver Property Fact Sheet.

Request for Admission No 4. Admit that you are unaware of any evidence to substantiate any allegation of wrongdoing by Coldwell Banker Barbara Sue Seal Properties.

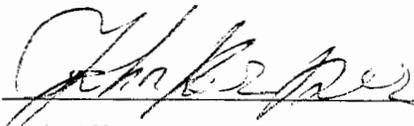
RESPONSE:

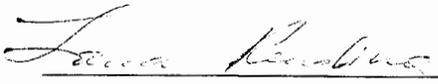
Objection. Plaintiffs are fully aware and ready to substantiate the following alleged wrongdoing evidences by Coldwell Banker Barbara Sue Seal Properties:

////

- 1 1) Negligence of CB BSSP employees.
- 2 2) Disclosure of information.
- 3 3) Conspiracy with Pyramid Homes, Inc.
- 4 (See First Amended Complaint)

DATED this 17 August, 2006


 Plaintiff, In Pro Se John Harper


 Plaintiff, In Pro Se Lana Kudina

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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

JOHN HARPER)
LANA KUDINA)
Plaintiffs,)
COLDWELL BANKER BARBARA)
SUE SEAL PROPERTIES)
and PYRAMID HOMES)
INCORPORATED)
Defendants.)

CASE NO. 06 2 02392-1
NOTICE TO SET FOR TRIAL
Assigned Judge: Robert Harris

To: THE DISTRICT COURT CLERK,
To: Calliste J. Warfield, Attorney for Defendant Coldwell Banker Barbara Sue Seal Properties,
To: Albert F. Schlotfeldt, Attorney for Defendant Pyramid Homes Incorporated.

I. NOTICE TO SET FOR TRIAL

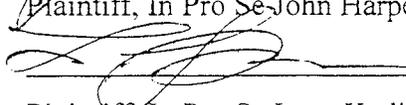
Nature of Case: Discriminatory housing practice, conspiracies in restraint of trade, negligent misrepresentation, disclosure of restricted information.
Trial Length: three hours (3).
Trial Setting Consideration: Non-Jury, mandatory personal appearance, Court Reporter required.

II. READINESS CERTIFICATION

I hereby certify that all pleadings necessary to place the case fully at issue have been filed, all discovery will be completed before trial, and all parties have been served with a copy of this notice. I understand

1 that the Court may impose terms and sanctions upon a party or counsel who is not prepared to proceed
2 to trial on the assigned date in accordance with Local Rule 40(b)(5).

3
4 DATED this 28 August, 2006

5
6 
7 Plaintiff, In Pro Se John Harper
8 
9 Plaintiff, In Pro Se Lana Kudina

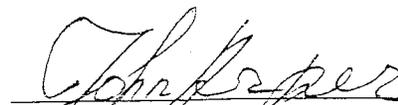
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11
12 **CERTIFICATE OF SERVICE**

13
14 I hereby certify that on the 28 day of August 2006, I served the forgoing "Notice To Set For
15 Trial" on the following party at the following address:

16
17 Calliste J. Warfield
18 Hoffman Hart Wagner LLP REGULAR MAIL
19 Twenties Floor
20 1000 SW Broadway
21 Portland, OR 97205

22
23 Albert F. Schlotfeldt REGULAR MAIL
24 Duggan Schlotfeldt & Welch PLLC
25 900 Washington Street, Suite 1020
26 PO Box 570
27 Vancouver, WA 98666-0570

28
29
30 by mailing to them a true copy thereof, certified by us as such, placed in a sealed envelope addressed to
31 them at the addresses set forth above, and deposited in the U.S. Post Office at Portland, Oregon on said
32 day with postage prepaid.

33
34
35 
36 John Harper In Pro Se

37 
38 Lana Kudina In Pro Se

True Copy

1 IN THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

JOHN HARPER and LANA KUDINA

Plaintiffs,

v.

COLDWELL BANKER BARBARA SUE
SEAL PROPARTIES; and PYRAMID HOMES
INCORPORATED.

Defendants.

Case No. 06-2-02392-1

PLAINTIFFS' REPLY TO DEFENDANT
PYRAMID HOMES INCORPORATED'S
MOTION FOR MORE DEFINITE
STATEMENT

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To: Albert F. Schlotfeldt, Attorney for Defendant Pyramid Homes Incorporated.

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In reply to paragraph 1: Plaintiffs have no objections.

6

In reply to paragraphs 3 and 4 of the Declaration In Support Of Pyramid Homes

7

Inc. Motion For More Definite Statement: Plaintiffs clearly indicated that:

8

The allegations set forth in ¶¶ 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 34, and 35 of the

9

Plaintiffs' First Amended Complain, are the causes of action directed to the Pyramid Homes

10

Incorporated. The Count I Conspiracies in restraint of trade under RCW 19.86.030 is related to

11

both Defendants COLDWELL BANKER BARBARA SUE SEAL PROPARTIES and

12

PYRAMID HOMES INCORPORATED. The Count IV Discriminatory Housing Practice under

13

RCW 49.60.030 and Civil Rights is related to PYRAMID HOMES INCORPORATED.

14

Pursuant to LR 15, Pyramid Homes Incorporated should plead in response to an amended

15

pleading within the time remaining or 10 days on two counts:

16

a) Count I (Conspiracies in restraint of trade under RCW 19.86.030) and

PLAINTIFFS' REPLY TO DEFENDANT PYRAMID HOMES INCORPORATED'S
MOTION FOR MORE DEFINITE STATEMENT

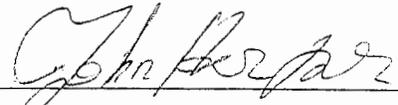
John Harper & Lana Kudina
PO Box 16566
Portland, OR 97292
Ph: (503) 267-3536

PAGE - 1 -

1 **b) Count IV (Discriminatory Housing Practice under RCW 49.60.030 and Civil Rights)**

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Dated this 11 day of September 2006.



John Harper In Pro Se



Lana Kudina In Pro Se

PLAINTIFFS' REPLY TO DEFENDANT PYRAMID HOMES INCORPORATED'S
MOTION FOR MORE DEFINITE STATEMENT

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Ph: (503) 267-3536

True Copy

1 IN THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

JOHN HARPER and LANA KUDINA

Plaintiffs,

v.

COLDWELL BANKER BARBARA SUE
SEAL PROPARTIES; and PYRAMID HOMES
INCORPORATED,

Defendants.

Case No. 06-2-02392-1

MOTION AND AFFIDAVIT
FOR ORDER OF DEFAULT
AND DEFAULT JUDGMENT

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JUDGMENT SUMMARY

JUDGMENT CREDITOR(S) John Harper and Lana Kudina (In Pro Se)

JUDGMENT DEBTOR (S) Coldwell Banker Barbara Sue Seal Properties

ATTORNEY FOR JUDGMENT DEBTOR Calliste J. Warfield, WSBA No.31127

PRINCIPAL AMOUNT ON THE COUNTS I, II, and III:

\$1,803,000 (One Million Eight Hundred and Three Thousand dollars).

POST JUDGMENT INTEREST RATE 9% per annum from the date hereof until paid.

///

///

Motion And Affidavit For Order
Of Default And Default Judgment

Page 1 of 5

John Harper & Lana Kudina
PO Box 16566
Portland, OR 97292
Ph: (503) 267-3536

7.

In this action, according to the CR 55, the Defendant Coldwell Banker Barbara Sue Seal Properties having been regularly served with process, and having failed to answer the plaintiffs' Complaints filed herein, no answer or demurrer having been filed with the clerk of said court within the time specified in the Summons and Certificate of Service, and the legal time for answering had been expired.

8.

The Plaintiffs further allege that amount due is certain and move for an ORDER OF DEFAULT AND DEFAULT JUDGMENT jointly and severally against defendant Coldwell Banker Barbara Sue Seal Properties.

Default and Judgment Prayed for:

On Count I. Conspiracies in restrain of trade under RCW 19.86.030

- a. Awarding compensatory damage in the amount of \$151,000.
- b. Awarding punitive damage in the amount of \$450,000.

On Count II. Negligent misrepresentation under RCW 18.100.070

- a. Awarding compensatory damage in the amount of \$151,000.
- b. Awarding punitive damage in the amount of \$450,000.

On Count III. Disclosure of restricted information under RCW 18.100.070

- a. Awarding compensatory damage in the amount of \$151,000
- b. Awarding punitive damage in the amount of \$450,000

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Motion And Affidavit For Order
Of Default And Default Judgment

Page 3 of 5

John Harper & Lana Kudina
PO Box 16566
Portland, OR 97292
Ph: (503) 267-3536

1 **Total Judgment: \$1,803,000 (One Million Eight Hundred and Three Thousand dollars).**
2 with interest on the judgment at the rate of 9% per annum.

3
4
5 By John Harper
6 John Harper In Pro Se

7
8 By Lana Kudina
9 Lana Kudina In Pro Se

10
11
12 SUBSCRIBED and SWORN to before me on this 20th day of September, 2006.



13
14 Tiffany Hager-Reedy
15 NOTARY PUBLIC in and for the State of Oregon
16 County: multnomah
17 exp. Nov 13, 2007

18
19 On the basis of the foregoing Motion and Affidavit for an Order of Default and Default
20 Judgment, IT IS ORDERED that the defendant be declared in default for failure to respond to
21 these two actions and ADJUDGED that the Plaintiffs are awarded judgment against the
22 Defendant Coldwell Banker Barbara Sue Seal Properties in the amount set forth above.

23
24 Signed this ____ day of _____, 20 ____.

25
26
27
28 _____
29 JUDGE ROBERT HARRIS

AFFIDAVIT OF SERVICE

STATE OF OREGON)
)ss
County of Multnomah)

I, Cecil A. Reniche-Smith, having first been duly sworn, state that on January 10, 2007, I mailed a copy of the foregoing RESPONSE TO MOTION FOR DISCRETIONARY REVIEW to petitioners' attorney, postage prepaid and addressed as follows:

Boris Petrenko
1855 Trossachs Blvd. SE, 203
Sammamish, Washington 98075

Attorney for Plaintiffs-Petitioners

Quinn Posner
Duggan Schlotfeldt & Welch PLLC
900 Washington Street, Suite 1020
PO BOX 570
Vancouver, Washington 98666

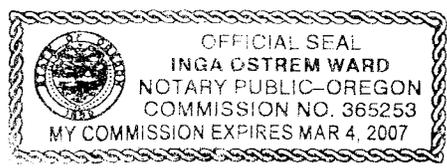
FILED
COURT OF APPEALS
67 JAN 12 PM 12:50
STATE OF WASHINGTON
BY [Signature]
DEPUTY

Of Attorneys for Defendant-Respondent Pyramid Homes, Inc.

DATED at Portland, Oregon this 10 day of January 2007

[Signature]
Cecil A. Reniche-Smith, WSBA No. 37132

Sworn and signed before me this 10 day of January 2007



Inga Ostrem Ward
NOTARY PUBLIC FOR OREGON
My Commission Expires: 3-4-07