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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMERCO REAL ESTATE COMPANY, a
Nevada corporation,

Plaintiff,

vs.

THE ESTATE OF HARVEY L. GROHS
AND WILMA J. GROHS; LARRY L.
GROHS, as an individual and as co-personal
representative of the Estate of Harvey L.
Grohs and Wilma J. Grohs; RIVA GROHS
BJORKLUND, as an individual and as co-
personal representative of the Estate of Harvey
L. Grohs and Wilma J. Grohs;
WINDERMERE REAL ESTATE/WEST
CAMPUS, INC., a Washington corporation;
and DAN DENNIS, as an individual and as an
agent of Windermere Real Estate/West
Campus, Inc.,

Defendants.

NO. **C 07-1808** JCC
COMPLAINT



07-CV-01808-CMP

Plaintiff, AMERCO Real Estate Company, asserts its complaint against the Estate of
Harvey L. Grohs and Wilma J. Grohs, Larry L. Grohs, and Riva Grohs Bjorklund (collectively
"Sellers"), Windermere Real Estate/West Campus, Inc., and Dan Dennis as follows:

Summ. FS&C.

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I. PARTIES

1. AMERCO Real Estate Company is a Nevada corporation with its principal place of business in Phoenix, Arizona.

2. At all times material hereto, the Estate of Harvey L. Grohs and Wilma J. Grohs was, on information and belief, an estate lawfully established and administered under the laws of the State of Washington.

3. At all times material hereto, the Estate of Harvey L. Grohs and Wilma J. Grohs was, on information and belief, the owner of the real property commonly known as 25300 Pacific Highway South, Kent, Washington.

4. At all times material hereto, Larry L. Grohs was, on information and belief, a resident of the State of Washington.

5. At all times material hereto, Riva Grohs Bjorklund was, on information and belief, a resident of the State of Washington.

6. On information and belief, at all times material hereto, Larry L. Grohs and Riva Grohs Bjorklund were co-owners of the real property commonly known as 2505 S. 252nd Street, Kent, Washington.

7. On information and belief, at all times material hereto, Larry L. Grohs and Riva Grohs Bjorklund were co-personal representatives for the Estate of Harvey L. Grohs and Wilma J. Grohs.

8. At all times material hereto, Windermere Real Estate/West Campus, Inc., was, on information and belief, a corporation incorporated in the State of Washington, with its principal place of business at 33310 1st Way South, Suite 200, Federal Way, WA 98003.

9. At all times material hereto, Dan Dennis was, on information and belief, an employee of Windermere Real Estate/West Campus, Inc., and a resident of the State of Washington.

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II. JURISDICTION

10. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is between citizens of different states.

III. VENUE

11. Venue is appropriate in this district pursuant to 28 U.S.C. § 1391(a) because all Defendants reside in this district, the property that is the subject of this action is situated in this district, and a substantial part of the events or omissions giving rise to the claims occurred in this district.

IV. FACTS

12. AMERCO Real Estate Company (“AMERCO”) functions as the real estate arm of its parent company AMERCO (“AMERCO Parent”), also the parent company of U-Haul International, Inc..

13. AMERCO effectuates all of the acquisitions, disposals, and administration of real property for AMERCO Parent, its subsidiaries, and affiliates in North America.

14. In early February of 2007, AMERCO made an offer to purchase one parcel of real property and acquire the right of first refusal on another parcel of real property owned by Sellers.

15. The purpose of AMERCO’s effort to acquire the real property was for the construction of commercial facilities for U-Haul storage and truck rentals and retail sales.

16. Windermere Real Estate/West Campus, Inc. and Dan Dennis served as Sellers’ agents in the transaction for the property at issue.

17. Defendants were aware of AMERCO’s intended use of the property.

18. After AMERCO made its initial offer, negotiations took place between the parties which led to their entering into a Purchase and Sale Agreement (the “Agreement”) on April 6, 2007, which encompassed three parcels of real property owned by Sellers.

1 19. The first parcel of real property (hereinafter "Phase I"), is commonly known as
2 2505 S. 252nd Street, Kent, Washington. Its legal description is as follows:

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4 Lot 2 of City of Kent Short Plat No. SP-90-13 recorded under
5 Recording No. 9010160102, 9010160103 and 9010160104, being a
6 portion of the Southwest quarter of the Southeast quarter of
7 Section 21, Township 22 North, Range 4 East, W.M., in King
8 County, Washington.

9 Parcel Number: 2122049150

10 SITUATED in the County of King, State of Washington

11 20. The second parcel of real property is commonly known as 25300 Pacific Highway
12 S., Kent, Washington. This parcel includes two tax parcels, (hereinafter "Phase IIA" and "Phase
13 IIB") respectively, whose legal descriptions are as follows:

14 Parcel A:

15 That portion of the Southwest quarter of the Southeast quarter of
16 Section 21, Township 22 North, Range 4 East, W.M. described as
17 follows:

18 Beginning at the South quarter section of said Section 21;

19 THENCE North 01°03'06" East, along the West line of said
20 Southwest quarter, a distance of 827.90 feet to the North line of the
21 South 5 acres of that portion of said Southwest quarter lying
22 Westerly of State Route No. 1 (Pacific Highway S.) and to the
23 True Point of Beginning;

24 THENCE continuing North 01°03'06" East, a distance of 265.08
25 feet;

THENCE South 87°30'01" East, a distance of 504.00 feet to the
West margin of State Route No. 1;

THENCE South 20°43'50" West, along said West margin, a
distance of 278.84 feet to the North line of the hereinbefore
described South 5 acres;

THENCE North 87°42'23" West, along said North line a distance
of 410.07 feet to the True Point of Beginning;

1 (ALSO KNOWN as Lot B, City of Kent Lot Line Adjustment No.
LL-90-8, recorded under Recording No. 9003010460.)

2 Parcel Number: 2122049183

3 Parcel B:

4 Lot 1 of City of Kent Short Plat No. SP-90-13 recorded under
5 Recording No. 9010160102, 9010160103 and 9010160104, being a
6 portion of the Southwest quarter of the Southeast quarter of
Section 21, Township 22 North, Range 4 East W.M., in King
County, Washington.

7 SITUATED in the County of King, State of Washington

8 ABBREVIATED LEGAL:

9 SW ¼ SE ¼, Section 21, Township 22 North, Range 4 East and
10 Lot 1 Kent Short Plat SP-90-13, Rec. 9010160102 through
9010160104.

11 Parcel Number: 2122049029

12 21. Prior to the parties entering into the Agreement, Sellers and their agents
13 represented to AMERCO, orally and in writing, that the real property at issue was located within
14 the City of Kent.

15 22. The Agreement entered into by the parties describes the real property at issue as
16 located within the City of Kent.

17 23. Pursuant to the Agreement, AMERCO conducted due diligence regarding the
18 property at issue including, but not limited to, title commitment, Alta survey, environmental
19 assessment, site plan development, and a review of the documents provided by Defendants.

20 24. The documents provided by Defendants for AMERCO's review indicate that the
21 property at issue is located within the City of Kent.

22 25. The title commitment and Alta survey provided to AMERCO during its due
23 diligence indicate that the property at issue is located within the City of Kent.
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1 26. On July 5, 2007, the Feasibility Expiration Date set forth in the Agreement,
2 AMERCO approved a portion of its earnest money deposit, in the amount of \$100,000, to be
3 released to Sellers. An additional \$100,000 of AMERCO's earnest money deposit remains in
4 escrow.

5 27. The Agreement was amended by the parties on August 13, 2007.

6 28. On August 14, 2007, during a Pre-Application meeting with the City of Kent,
7 AMERCO's representative was informed—for the first time—that a portion of the property at
8 issue is located within the City of Des Moines rather than within the City of Kent as represented
9 by Defendants.

10 29. City of Kent officials indicated to AMERCO's representative that AMERCO's
11 prospective use of the property at issue would have to be resolved in an intra-jurisdictional
12 review process between the two municipalities.

13 30. City of Kent officials informed AMERCO's representative that two other entities
14 had previously attempted to purchase the property at issue from Sellers and had abandoned their
15 purchase attempts, in part due to intra-jurisdictional issues.

16 31. City of Des Moines officials have informed AMERCO that the proposed use of
17 the property for storage facilities will not be approved and that the City of Des Moines will deny
18 a variance application for that use.

19 32. City of Des Moines officials have informed AMERCO that they previously met
20 with Harvey Grohs to discuss difficulties he or future purchasers of the property would face in
21 developing it.

22 33. Without the portion of the property located in Des Moines, AMERCO will not be
23 able to develop the remaining property for its intended use.

24 34. Under § 12(a) of the Agreement, if Sellers default on any material terms or
25 provisions of the Agreement, AMERCO is entitled to terminate the Agreement, whereupon the

1 earnest money deposit shall be immediately returned to AMERCO, and pursue recovery of all
2 actual out-of-pocket third party expenses suffered or incurred by Buyer together with any other
3 incidental, consequential, or other monetary damages incurred as a result of Sellers' breach.

4 35. On October 30, 2007, AMERCO terminated the Agreement based on Sellers'
5 breach of representations and warranties in the Agreement and demanded return of the earnest
6 money deposit, including the portion released to Sellers. Sellers have not complied with this
7 request.

8 **V. FIRST CAUSE OF ACTION: BREACH OF CONTRACT**

9 **(Concealment or Misrepresentation of Material Term and**
10 **Breach of Duty of Good Faith and Fair Dealing)**

11 **(As to Sellers)**

12 36. AMERCO incorporates by reference paragraphs 1-35 above.

13 37. The location of the property in an area suitable for AMERCO's contemplated use
14 was a material fact and formed the basis of the bargain between the parties.

15 38. Sellers knew or should have known that a portion of the property was within the
16 City of Des Moines.

17 39. Pursuant to the Agreement, Sellers represented to AMERCO that there were no
18 material conditions relating to the property which would adversely impact AMERCO'S intended
19 development.

20 40. The location of a portion of the property at issue in the City of Des Moines
21 renders the entire property unsuitable for AMERCO's contemplated use.

22 41. Sellers' failure to disclose that the location of the property could prevent
23 AMERCO's contemplated use constitutes a breach of the Agreement.

24 42. Sellers also breached their duty of good faith and fair dealing by failing to
25 disclose that a portion of the property was located within the City of Des Moines.

1 51. AMERCO had a right to rely upon representations made by Sellers and their
2 agents regarding the property at issue and was unable to discover the falsity of these
3 representations despite its due diligence.

4 52. AMERCO was harmed by Sellers' misrepresentations regarding the location of
5 the property at issue in an amount to be proven at trial.

6 **VII. THIRD CAUSE OF ACTION: UNJUST ENRICHMENT**

7 **(As to Sellers)**

8 53. AMERCO incorporates by reference paragraphs 1-35 above.

9 54. AMERCO released \$100,000 of its earnest money deposit to Sellers based on its
10 inability to discover Sellers' misrepresentations about the property's location.

11 55. Sellers will be unjustly enriched if they are permitted to retain funds released to
12 them in reliance on their misrepresentations.

13 56. AMERCO is entitled to the return of the earnest money deposit, including the
14 portion released to Sellers.

15 **VIII. FOURTH CAUSE OF ACTION: NEGLIGENT MISREPRESENTATION**

16 **(as to Windermere Real Estate/West Campus, Inc. and Dan Dennis)**

17 57. AMERCO incorporates by reference paragraphs 1-35 above.

18 58. In the course of their business or employment and with a pecuniary interest in the
19 outcome, Windermere Real Estate/West Campus, Inc. and Dan Dennis supplied false
20 information to AMERCO in its business transaction, and caused AMERCO pecuniary loss due to
21 its justifiable reliance on that false information. Windermere Real Estate/West Campus, Inc. and
22 Dan Dennis further failed to exercise reasonable care in communicating the information to
23 AMERCO.

