

FILED

11 FEB 10 PM 2:54

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 10-2-37317-9 SEA

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

SHANNON CALVIN O'NEIL, by and
through his GAURDIAN AD LITEM, JON
GILLIS, and TYLER HOMES
CORPORATION,

Plaintiffs,

v.

DENNIS SCHNABEL, CHERIE
SCHNABEL, STERLING GRAY
INVESTMENTS, LLC, COMMONWEALTH
LAND TITLE COMPANY OF PUGET
SOUND, LLC, FOUNDATION BANK,
BANNER BANK, COLUMBIA BANK and
COLUMBIA BANKING SYSTEM, INC.,

Defendants.

NO. 10-2-37317-9 SEA

DEFENDANT COMMONWEALTH
LAND TITLE COMPANY OF PUGET
SOUND, LLC'S ANSWER AND
AFFIRMATIVE DEFENSES

[Clerk's Action Required]

COMES NOW Defendant Commonwealth Land Title Company of Puget Sound, LLC
("Defendant Commonwealth") by and through its undersigned counsel and hereby answers
Plaintiffs' Complaint by admitting, denying, and otherwise pleading as set forth below. Any
pleadings not specifically admitted are hereby denied.

DEFENDANT COMMONWEALTH LAND TITLE
COMPANY OF PUGET SOUND, LLC'S ANSWER AND
AFFIRMATIVE DEFENSES – Page 1

80 008 gl158301

SCHEER & ZEHNDER LLP
701 PIKE STREET, SUITE 2200
SEATTLE, WA 98101
P: (206) 262-1200 F: (206) 223-4065

1 **I. JURISDICTION AND VENUE**

2

3 1. Defendant Commonwealth lacks sufficient knowledge and information with which to

4 form a reasonable belief as to the truth of the allegations contained in this paragraph, and

5 therefore, denies the same.

6 2. Defendant Commonwealth lacks sufficient knowledge and information with which to

7 form a reasonable belief as to the truth of the allegations contained in this paragraph, and

8 therefore, denies the same.

9 3. Defendant Commonwealth lacks sufficient knowledge and information with which to

10 form a reasonable belief as to the truth of the allegations contained in this paragraph, and

11 therefore, denies the same.

12 4. Defendant Commonwealth lacks sufficient knowledge and information with which to

13 form a reasonable belief as to the truth of the allegations contained in this paragraph, and

14 therefore, denies the same.

15 5. Admit.

16 6. Defendant Commonwealth lacks sufficient knowledge and information with which to

17 form a reasonable belief as to the truth of the allegations contained in this paragraph, and

18 therefore, denies the same.

19 7. Defendant Commonwealth lacks sufficient knowledge and information with which to

20 form a reasonable belief as to the truth of the allegations contained in this paragraph, and

21 therefore, denies the same.

22 8. Defendant Commonwealth lacks sufficient knowledge and information with which to

23 form a reasonable belief as to the truth of the allegations contained in this paragraph, and

24 therefore, denies the same.

1 9. The allegations in this paragraph appear to call for legal conclusions and do not
2 require an answer. Without waiving any defenses or responses, and to the extent that an
3 answer is required, Defendant Commonwealth lacks sufficient knowledge to admit or deny
4 the remainder of the allegations contained in this paragraph and, therefore, denies the same.

5
6 **II. BACKGROUND FACTS**
7

8 10. Defendant Commonwealth admits that a 5-acre property was sold to the City of
9 Bellevue recently, which transaction forms the basis of this dispute. The remainder of this
10 paragraph appears to call for a legal conclusion. To the extent a response is required and
11 without waiving any objections, Defendant Commonwealth denies the remaining allegations
12 contained in this paragraph.

13 11. Defendant Commonwealth lacks sufficient knowledge and information with which to
14 form a reasonable belief as to the truth of the allegations contained in this paragraph, and
15 therefore, denies the same.

16 12. This allegation does not appear to call for a response. However, to the extent an
17 answer is required, Defendant Commonwealth denies the allegations made in this paragraph.
18 Defendant Commonwealth further states that the Holdback Agreement speaks for itself.

19 13. The Holdback Agreement speaks for itself.

20 14. This allegation does not appear to call for a response. However, to the extent an
21 answer is required, Defendant Commonwealth lacks sufficient knowledge to admit or deny
22 the remainder of the allegations contained in this paragraph and, therefore, denies the same.

23 //

24 //

25 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

III. CLAIMS

15. The allegations in this paragraph appear to call for legal conclusions and do not require an answer. Without waiving any defenses or responses, and to the extent that an answer is required, Defendant Commonwealth denies the allegations in this paragraph as alleged against Commonwealth.

16. The allegations in this paragraph appear to call for legal conclusions and do not require an answer. Without waiving any defenses or responses, and to the extent that an answer is required, Defendant Commonwealth lacks sufficient knowledge and information with which to form a reasonable belief as to the truth of the allegations contained in this paragraph, and therefore, denies the same.

17. The allegations in this paragraph appear to call for legal conclusions and do not require an answer. Without waiving any defenses or responses, and to the extent that an answer is required, Defendant Commonwealth lacks sufficient knowledge and information with which to form a reasonable belief as to the truth of the allegations contained in this paragraph, and therefore, denies the same.

IV. REQUEST FOR RELIEF

The plaintiffs' Request for Relief appears to call for a legal conclusion and thus no response is required. Without waiving any defenses or responses, and to the extent that an answer is required, Defendant Commonwealth denies the request in its entirety.

//

//

//

1
2
3 **V. AFFIRMATIVE DEFENSES**

4 BY WAY OF FURTHER ANSWER to Plaintiffs' Complaint and without waiving
5 any allegations previously denied, the below affirmative defenses are asserted in good faith
6 by Defendant Commonwealth. Should discovery reveal that one or more of these affirmative
7 defenses are not applicable, Defendant Commonwealth will withdraw the same.

8 1. Defendant Commonwealth asserts herein all defenses stated in CR 12 (b).

9 2. Plaintiffs' action should be dismissed in whole or in part because Plaintiffs'
10 alleged damages, if any, resulted from alleged acts or omissions by other persons, parties,
11 and/or entities over whom Defendant Commonwealth had no responsibility or control,
12 including but not limited to the named parties and other parties later identified and/or added
13 to this lawsuit after further discovery.

14 3. Plaintiffs' action should be dismissed in whole or in part because Plaintiffs'
15 alleged damages, if any, resulted from its own negligence.

16 4. Plaintiffs' action should be dismissed in whole or in part because Plaintiffs
17 may have failed to file a claim within the statutory deadline set forth in the appropriate
18 Statute of the Revised Code of Washington.

19 5. Plaintiffs have failed in whole or in part to mitigate, minimize, or avoid the
20 damages allegedly sustained, and any recovery must be reduced by that amount.

21 6. Pursuant to RCW 4.22.070, the trier of fact must determine the percentage of
22 total fault that is attributable to every party/entity/individual that caused Plaintiffs' alleged
23 damages. To the extent Defendant Commonwealth is found liable for any part of Plaintiffs'
24 damages, Defendant Commonwealth is entitled to an offset for any and all amounts
25 attributable to the fault of other parties/entities individuals. Furthermore, to the extent that
26 Defendant Commonwealth pays, or is found liable in this lawsuit, Defendant Commonwealth

1 is entitled to contribution and/or indemnification from any third-parties, including but not
2 limited to Dennis Schnabel, Cherie Schnabel, Sterling Gray Investments, LLC, Foundation
3 Bank, and Banner Bank, who may be responsible for Plaintiffs' damages.

4 7. Plaintiffs have entered into a separate agreement with defendants in this
5 matter to settle the title claims alleged herein. Defendant Commonwealth has complied with
6 the terms of that agreement, and thus the Plaintiffs' claims should be dismissed

7 8. Plaintiffs' allegations and causes of action in the Complaint are barred by the
8 Statute of Frauds.

9 9. Plaintiffs' claims should be dismissed in whole or in part because plaintiff's
10 failed to state a claim upon which relief can be granted.

11 10. Plaintiffs' claims may be barred by the doctrines of Laches, Waiver, Estoppel
12 and/or Accord and Satisfaction.

13 11. Plaintiffs' claims should be dismissed in whole or in part because truth is an
14 absolute bar to recovery for slander.

15 12. Plaintiffs' claims may be barred or limited by the terms of the contract
16 including any resolution mechanisms.

17 13. Plaintiffs' claims should be dismissed, limited or barred by the terms and/or
18 conditions of the Closing Agreement and Escrow Instructions.

19 14. Plaintiff's claims against Defendant Commonwealth lack a good faith basis
20 under CR 11.

21 15. Defendant Commonwealth reserves the right to amend this Answer, to assert
22 additional Affirmative Defenses, cross-claims or counter-claims based upon future discovery
23 in this case. Further, nothing contained in this Answer should be construed as a waiver of
24 any such additional defenses or claims.

25 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

VI. RELIEF REQUESTED

Having answered Plaintiffs' Complaint and having asserted Affirmative Defenses thereto, Defendant requests that judgment be entered in this matter as follows:

1. Dismissal of Plaintiffs' claims against Defendant Commonwealth, with prejudice;
2. Indemnity and Contribution from other parties;
3. All other fees and costs to the extent permitted by law or contract;
4. Such other relief as the Court deems just and equitable.

DATED this 10 day of February, 2011.

SCHEER & ZEHNDER LLP

By 

John E. Zehnder, Jr., WSBA No. 29440

jzehnder@scheerlaw.com

Jonathan Dirk Holt, WSBA No. 28433

dholt@scheerlaw.com

William L. Jessee, WSBA No. 36138

wjessee@scheerlaw.com

Attorneys for Plaintiff Commonwealth Land
Title Company of Puget Sound, LLC

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington, that the following is true and correct:

I am employed by the law firm of Scheer & Zehnder LLP.

At all times hereinafter mentioned, I was and am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On the date set forth below I served the document(s) to which this is attached, in the manner noted on the following person(s):

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
<u>CO/ Plaintiffs Shannon Calvin O'Neil, Jon Gillis and Tyler Homes Corporation</u> George O. Tamblyn Advocates Law Group PLLC 8043 W. Mercer Way Mercer Island, WA 98040-5626	<input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Overnight Mail
<u>CO/ Def Foundation Bank</u> John Thomas Lulow Hanson Baker Ludlow Drumheller PS 2229 112th Ave NE Ste 200 Bellevue, WA 98004-2936	<input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Overnight Mail
<u>CO/ Defs Dennis and Cheri Schnabel and Sterling Gray Investments</u> Thomas S. Linde Joseph Ward McIntosh Schweet Rieke & Linde PLLC 575 S Michigan St Seattle, WA 98108-3316	<input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Overnight Mail

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
CO/ Def Banner Bank Arnold M. Willig Hacker & Wilig Inc PS 1501 4th Avenue, Suite 2150 Seattle, WA 98101-3225	<input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Overnight Mail
CO/ Def Columbia Bank and Columbia Banking System John Tony John Graham & Dunn PC Pier 70 2801 Alaskan Way, Suite 300 Seattle, WA 98121-1128	<input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Overnight Mail

DATED this 10th day of February, 2011, at Seattle, Washington.

