

11 AUG 01 PM 3:30

KING COUNTY
SUPERIOR COURT CLERKE-FILED
THE HONORABLE CATHERINE SHAFFER

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 OF PUGET SOUND,
LLC'S AMENDED ANSWER,
AFFIRMATIVE DEFENSES, AND
COUNTERCLAIM

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 OF PUGET SOUND,
LLC'S AMENDED ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIM - Page 1

80 008 h212803

SCHERER & ZEHNDER LLP
701 PIKE STREET, SUITE 2200
SEATTLE, WA 98101
P: (206) 262-1200 F: (206) 223-4063

I. JURISDICTION AND VENUE

1. 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.

2. 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.

3. 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.

4. 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.

5. Admit.

6. 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.

7. 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.

8. 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.

9. 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

1 answer is required, Defendant Commonwealth lacks sufficient knowledge to admit or deny
2 the remainder of the allegations contained in this paragraph and, therefore, denies the same.
3

4 II. BACKGROUND FACTS

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

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

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

16 13. The Holdback Agreement speaks for itself.

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

20 III. CLAIMS

21 15. The allegations in this paragraph appear to call for legal conclusions and do not
22 require an answer. Without waiving any defenses or responses, and to the extent that an
23 answer is required, Defendant Commonwealth denies the allegations in this paragraph as
24 alleged against Commonwealth.
25
26

1 16. 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 and information
4 with which to form a reasonable belief as to the truth of the allegations contained in this
5 paragraph, and therefore, denies the same.

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

11 **IV. REQUEST FOR RELIEF**

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

15 **V. AFFIRMATIVE DEFENSES**

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

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

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

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

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

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

8 6. Pursuant to RCW 4.22.070, the trier of fact must determine the percentage of
9 total fault that is attributable to every party/entity/individual that caused Plaintiffs' alleged
10 damages. To the extent Defendant Commonwealth is found liable for any part of Plaintiffs'
11 damages, Defendant Commonwealth is entitled to an offset for any and all amounts
12 attributable to the fault of other parties/entities individuals. Furthermore, to the extent that
13 Defendant Commonwealth pays, or is found liable in this lawsuit, Defendant Commonwealth
14 is entitled to contribution and/or indemnification from any third-parties, including but not
15 limited to Dennis Schnabel, Cherie Schnabel, Sterling Gray Investments, LLC, Foundation
16 Bank, and Banner Bank, who may be responsible for Plaintiffs' damages.

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

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

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

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

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

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

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

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

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

13 **IV. COUNTERCLAIM AGAINST ALL PLAINTIFFS**

14 **(BREACH OF ESCROW INSTRUCTIONS)**

15 By way of supplemental answer and as a counterclaim to the Plaintiffs' complaint,
16 Defendant Commonwealth alleges as follows:

17 1. Plaintiff Tyler Homes Corporation entered into a Closing Agreement and Escrow
18 Instructions for Purchase and Sale Transaction with the City of Bellevue ("Escrow
19 Instructions") that governed the sale of the 5-acre property referred to by Plaintiffs as the
20 "Property" in Plaintiffs' Complaint for Declaratory Judgment and Damages.

21 2. The Escrow Instructions includes a provision that requires the parties to the
22 Escrow Instructions to pay the closing agent's attorney's fees and costs incurred in any legal
23 action arising out of or in connection with the transaction. Defendant Commonwealth was
24 the closing agent for the sale of the "Property." Plaintiff Tyler Homes Corporation and the
25 City of Bellevue were the parties to the Escrow Instructions. Plaintiff Shannon Calvin
26

1 O'Neil is the sole shareholder and sole officer of Tyler Homes Corporation and signed the
2 Escrow Instructions on behalf of Tyler Homes Corporation.

3 3. On June 8, 2011, Defendant Commonwealth tendered defense to Plaintiffs and
4 payment of its attorney's fees and costs incurred in this legal action, which arises out of and
5 is in connection with the transaction governed by the Escrow Instructions. Plaintiffs have
6 failed to accept this tender.

7 4. Plaintiffs owe Defendant Commonwealth its attorney's fees and costs and defense
8 of this present lawsuit. By failing to accept the tender, Plaintiffs have breached the Escrow
9 Instructions.

10 5. Defendant Commonwealth has incurred damages as a proximate result of
11 Plaintiffs' breach of the Escrow Instructions in an amount to be proven at trial.

12 6. Plaintiffs breach is on-going and unjustified.

13 **VI. RELIEF REQUESTED**

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

- 16 1. Dismissal of Plaintiffs' claims against Defendant Commonwealth,
17 with prejudice;
- 18 2. Indemnity and Contribution from other parties;
- 19 3. All other fees and costs to the extent permitted by law or contract;
- 20 4. Awarding Defendant Commonwealth damages on its counterclaim in an
21 amount to be established at the time of trial, plus interest;
- 22 5. Injunctive relief in the form of an order requiring Plaintiffs to perform under
23 the Escrow Instructions by paying Defendant Commonwealth's attorney's fees and costs as
24 they accrue;
- 25
- 26

1 6. Such other relief as the Court deems just and equitable.

2 DATED this 14 day of July, 2011.

3 SCHEER & ZEHNDER LLP

4
5 By 

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

7 jzehnder@scheerlaw.com

8 Jonathan Dirk Holt, WSBA No. 28433

9 dholt@scheerlaw.com

10 William Elsinger, WSBA No. 42008

11 welsinger@scheerlaw.com

12 Attorneys for Defendant Commonwealth Land
13 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.

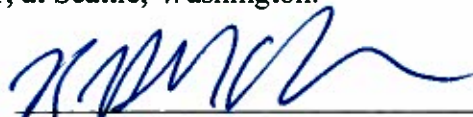
At all times hereinafter mentioned, I was and am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

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 Theresa Pruett 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 Ludlow 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
<u>CO/ Def Banner Bank</u> 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
<u>CO/ Def Columbia Bank and Columbia Banking System</u> 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 1st day of August, 2011, at Seattle, Washington.


 Krista M. Stokes