

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

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

JERRY D. PALMISANO and THERESA  
IRVIN PALMISANO,

Plaintiffs,

v.

WINDERMERE REAL  
ESTATE/NORTHWEST, INC., a Washington  
corporation, and DEBBIE J. HEARD,

Defendants.

NO. 10-2-26702-6 SEA

ANSWER, AFFIRMATIVE  
DEFENSES, AND COUNTERCLAIMS  
OF DEFENDANTS WINDERMERE  
REAL ESTATE/NORTHWEST, INC.  
AND DEBBIE J. HEARD

COME NOW Defendants WINDERMERE REAL ESTATE/NORTHWEST, INC. (“Windermere”), and its licensed broker Debbie J. Heard (collectively the “Windermere Defendants”), by and through its attorneys, David C. Daniel and the Demco Law Firm, P.S., and hereby answer the Plaintiffs’ Complaint. Windermere hereby objects to the allegations set forth in the complaint to the extent Plaintiffs fail to state the claims as short and plain statements as required by CR 8.

The following paragraph numbers are intended to correspond with the paragraph numbers set forth in the Plaintiffs’ Complaint. “Insufficient knowledge” as stated herein shall mean “responding defendants have insufficient knowledge and information upon which to form an answer and therefore deny the allegation.”

I. ANSWER TO COMPLAINT

1.1 Insufficient knowledge.

1.2 Admit.

1.3 Admit.

---

2.1 Insufficient knowledge.

2.2 Admit.

---

3.1 Deny.

3.2 Deny.

3.3 Deny.

3.4 Deny.

3.5 Deny.

3.6 Deny.

3.6 (Second 3.6 in Complaint) Deny.

---

4.1 Deny.

---

5.1 Deny.

5.2 Deny.

---

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

**II. AFFIRMATIVE DEFENSES**

By way of further answer to the Plaintiffs' Complaint, and as affirmative defenses to the same, the answering Defendants allege the following:

1. Failure to state a claim upon which relief can be granted;
2. Actual and/or constructive notice;
3. Breach of contract;
4. Bad faith;
5. Contributory negligence and/or comparative fault;
6. Waiver and estoppel;
7. Accord and satisfaction;
8. Assumption of the risk;
9. License;
10. Payment;
11. Release.

**III. PRAYER FOR RELIEF ON COMPLAINT**

NOW THEREFORE, the Windermere Defendants seek the following relief from the Court with respect to the Plaintiffs' claims set forth in the Complaint:

1. A defense judgment and a dismissal of all claims against Windermere with prejudice;
2. An award of all statutory costs;
3. An award of contractual attorney fees and litigation expenses to the extent available by law or by contract; and
4. For such other relief as the court may deem just and equitable.

1 **IV. COUNTERCLAIMS**

2 1. The Windermere Defendants (as defined above) bring counterclaims against the Plaintiffs  
3 for breach of contract. The Windermere Defendants hereby incorporate all statements of  
4 jurisdiction, venue, and identity of the parties as set forth in the Plaintiffs' Complaint.

5 2. The Windermere Defendants executed with Plaintiffs a Listing Agreement and  
6 Addendum on or about August 6, 2009 (the "Listing Agreement").

7 3. The Windermere Defendants advanced funds to the Plaintiffs in the amount of \$2,377.58,  
8 for purposes of preparing the property for listing, marketing, and sale.

9 4. The Listing Agreement Addendum states that those funds are reimbursable to the  
10 Windermere Defendants.

11 5. Plaintiffs have not repaid those funds and are in breach of contract, causing damages.

12 6. The Windermere Defendants are not in breach of contract.

13 7. The Listing Agreement contains an attorney fee provision.

14 **V. PRAYER FOR RELIEF ON COUNTERCLAIMS**

15 NOW THEREFORE, the Windermere Defendants seek the following relief from the  
16 Court with respect to the Counterclaims of the Windermere Defendants:

17 1. A judgment in favor of the Windermere Defendants and a finding of breach of contract  
18 against the Plaintiffs;

19 2. An award of all statutory costs;

20 3. An award of contractual attorney fees and litigation expenses to the extent available by  
21 law or by contract; and

22 4. For such other relief as the court may deem just and equitable.

23 **DECLARATION OF SERVICE**

24 I certify under penalty of perjury under the laws of the  
25 State of Washington that I caused to be mailed or  
26 delivered [ ] the original  a copy of this document and  
all attachments to the regular office or residence of  
Theresa + Jerry Palmisano on this  
2 day of SEPTEMBER, 2010.

x Ellen M. K...

DATED this 2<sup>nd</sup> day of September, 2010.

DEMCO LAW FIRM, P.S.

By [Signature]  
David C. Daniel, WSBA #34410  
Attorneys for Defendants