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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

FRED AND KATHLEEN REPASS,

Plaintiffs,

v.

WINDERMERE REAL ESTATE/S.C.A., INC.;  
CHRISTOPHER JUDD, a single man;  
WASHINGTON LOAN COMPANY, Inc., a  
Washington corporation; and ALISON A . HAIG,  
as trustee of subject of deed of trust,

Defendants.

NO.

**COMPLAINT FOR: INTENTIONAL  
MISREPRESENTATION; QUIET  
TITLE; BREACH OF WARRANTY;  
DECLARATORY AND INJUNCTIVE  
RELIEF**

Plaintiffs complain and allege as follows:

**I. PARTIES**

1. Plaintiffs, Fred and Kathleen Repass are husband and wife residing in King County, Washington. Mr. and Mrs. Repass purchased a home, which is the subject of this action, located at 609 18<sup>th</sup> Avenue W., Kirkland, Washington (“Kirkland Property”) from the defendant Christopher Judd on or about March 27, 2008.

2. Christopher Judd (“Judd”) is believed to be a single man residing in King County. At all times material herein, Judd was a licensed real estate agent employed by or working under Windermere Real Estate/SCA, Inc., (“Windermere Real Estate”) a real estate office located in Kirkland, Washington.

3. Windermere Real Estate is a Washington corporation engaged in the business



1 of representing members of the public in purchasing and selling real estate in King County,  
2 Washington. Windermere Real Estate employs licensed real estate agents to engage in such  
3 services, and either it or its principals act as a broker responsible for oversight and supervision  
4 of the sales and purchase related real estate activities of its employees.

5 4. Washington Loan Company, Inc. ("WLC") is a Washington corporation owned  
6 by or related to Windermere Real Estate or its principals. On information and belief, WLC  
7 makes loans to customers and/or real estate salespersons of Windermere Real Estate in  
8 connection with real estate related transactions.

9 5. Alison A. Haig ("Trustee Haig") is a successor trustee under a Deed of Trust  
10 dated March 29, 2007 recorded under King County Recording No. 20070330002740 ("Deed  
11 of Trust") originally between Judd and WLC. This defendant is included in this action solely  
12 in her capacity as trustee.

13 6. Defendants Judd, Windermere and WLC are hereafter sometimes referred to  
14 jointly as "Real Estate Professionals."

## 15 II. BACKGROUND

16 7. Defendants Judd, Windermere Real Estate and WLC created or participated in  
17 an unlawful scheme to enrich themselves at the expense of the plaintiffs and others, by  
18 permitting and/or facilitating the sale of a residence to Mr. and Mrs. Repass by  
19 misrepresentations and omissions of adverse facts known to them but not known to plaintiffs.

20 8. Judd is a licensed real estate salesperson. At all times herein, Judd worked for  
21 and was supervised by Windermere Real Estate which served as a supervising broker of  
22 Judd's work-related activities. Using funds and/or credit of Windermere Real Estate and  
23 related party WLC, Judd purchased residential properties for his own account for resale.

24 9. In April 2004, Judd purchased a residential property located at 8812 Golden  
25 Gardens Drive N.W. ("Golden Gardens House") for \$475,000. Shortly after the purchase,  
26



1 Judd encumbered the property with several mortgages. In late 2005 or early 2006, WLC  
2 loaned Judd \$400,000. Some months later, WLC and Judd agreed to record a deed of trust on  
3 the heavily encumbered Golden Gardens house purportedly to secure the antecedent debt.

4 10. On information and belief, the WLC loan to Judd was guaranteed by  
5 Windermere Real Estate or one of its principal owners.

6 11. In April 2006, and after the defendants completed the loan in connection with  
7 the above transactions, Judd purchased the Kirkland Property which is the subject of this  
8 action in Kirkland, Washington. It is located at 609 18<sup>th</sup> Avenue W., Kirkland, Washington.  
9 Judd encumbered that property with mortgages exceeding the value of the Kirkland Property.

10 12. Thereafter, on March 30, 2007, Judd and WLC executed another deed of trust  
11 purportedly using the Kirkland Property to secure the same previous antecedent loans  
12 involving the Real Estate Professionals in 2005 or early 2006. This deed of trust is dated  
13 March 29, 2007 and recorded under King County Recording No. 20070330002740 ("Deed of  
14 Trust"). The amount of this encumbrance exceeded the value of the Kirkland Property by  
15 several hundred thousand dollars. The defendant Real Estate Professionals, Judd,  
16 Windermere Real Estate and WLC were aware that this Deed of Trust was worthless to secure  
17 the prior debt and that it was inferior to all prior encumbrances for which the aggregate  
18 indebtedness already exceeded the value of the Kirkland Property.

19 13. In February 2008, prior secured lenders on the Kirkland Property initiated  
20 foreclosure proceedings. The defendant Real Estate Professionals were each aware of these  
21 proceedings and were aware that a result of the foreclosure proceedings would be the  
22 extinguishment of their junior deed of trust.

23 14. Judd and Windermere Real Estate undertook to sell the Kirkland Property  
24 before the foreclosure. Windermere Real Estate (or its affiliate office) was the listing broker.  
25 When the Kirkland Property was listed for sale, the total encumbrances against it exceeded  
26 the value of the property by several hundred thousand dollars. Defendants and each of them



1 (excluding the Trustee Haig) knew that if the Deed of Trust between them was disclosed to a  
2 purchaser, the Kirkland Property could not be sold.

3 15. At no time did any of the defendant Real Estate Professionals disclose the  
4 existence of the Deed of Trust to plaintiffs. However, prior to closing, Mr. Repass discovered  
5 the subject Deed of Trust of record. He objected to it. Defendant Judd and other  
6 representatives of Windermere Real Estate assured him that the Deed of Trust would be  
7 eliminated from title before closing and placed on another property. Mr. Repass relied upon  
8 this representation. Subsequently, plaintiffs were provided a title report prior to closing which  
9 did not disclose the subject Deed of Trust and they assumed that defendants had eliminated  
10 the Deed of Trust from title as had been represented would be done. In fact, the Real Estate  
11 Professionals became aware that the title report omitted the Deed of Trust by mistake. With  
12 knowledge of this material mistake, defendants intentionally remained silent and deliberately  
13 refrained from removing the Deed of Trust from the title to the property as promised.  
14 Plaintiffs were unaware of the mistake and in good faith relied at their substantial detriment  
15 upon defendants to do what was promised – remove the deed of trust from title before closing.

16 16. The Real Estate Professional Defendants' purpose in remaining silent in the  
17 face of adverse material facts affecting the transaction was purposeful and intended to serve  
18 their own interest at the expense of others. These defendants' silence was intended to allow:  
19 (1) defendants Judd and/or Windermere Real Estate to receive substantial commissions on a  
20 sale which would not have otherwise occurred; (2) to give an otherwise worthless and  
21 questionable Deed of Trust value and priority on the property of innocent persons; (3) to  
22 avoid personal guaranty obligations owed by Windermere Real Estate or its principal; (4)  
23 defendant Judd to totally avoid any personal obligations on his loan; and (5) to attempt to  
24 secure an involuntary payment by other innocent persons through foreclosure of the Deed of  
25 Trust who were never a party to the defendants' transactions. Defendants' intentional silence  
26 continued through the closing of the Kirkland Property and the purchase by the plaintiffs.



1 Shortly thereafter, within hours of closing, the defendants' representatives demanded payment  
2 for the Judd loan as a condition of removing their Deed of Trust against plaintiffs' property.

3 17. Contemporaneous with the plaintiffs' closing, WLC and Windermere Real  
4 Estate restructured the original loan transaction with defendant Judd so that WLC could avoid  
5 accountability for its participation in the surrounding circumstances and so that Windermere  
6 Real Estate and/or its principals could avoid preexisting guaranty obligations of the  
7 antecedent debt and attempt to wrongfully realize payment against plaintiffs' property. The  
8 restructuring was consummated by an assignment of the Deed of Trust by WLC to  
9 Windermere Real Estate but the assignment was not recorded until weeks after the plaintiffs'  
10 transaction closed.

11 18. Within two weeks of the closing of plaintiffs' transaction, defendant Judd sold  
12 his Golden Gardens home, which also had a Deed of Trust against it purportedly securing the  
13 same loan obligations between Judd and WLC, guaranteed by Windermere Real Estate.  
14 Defendants released and reconveyed the Deed of Trust on the Golden Gardens home for the  
15 same underlying obligations in connection with that sale transaction in return for receipt of a  
16 fraction of the amount of Judd's underlying obligation.

17 19. Based upon the foregoing allegations, plaintiffs assert the following causes of  
18 action:

19 **III. FIRST CAUSE OF ACTION**  
20 **(AGAINST ALL REAL ESTATE PROFESSIONAL DEFENDANTS)**

21 **INTENTIONAL MISREPRESENTATION**

22 20. Plaintiffs reallege and incorporate by this reference paragraphs 1-19 above.

23 21. The Real Estate Professionals, individually and collectively, knew the Deed of  
24 Trust remained on the Kirkland Property at the time plaintiffs purchased the Kirkland  
25 Property.

26 22. The Real Estate Professionals, individually and collectively, knew plaintiffs



1 were acting under a mistake as to the removal of the Deed of Trust on the Kirkland Property.  
2 On information and belief, each Real Estate Professional defendant was aware that (1) this  
3 Deed of Trust had not been removed from the title to the Kirkland Property; (2) the title report  
4 had mistakenly omitted disclosure of the Deed of Trust; and (3) Mr. and Mrs. Repass would  
5 not consummate the purchase of the Kirkland Property unless the Deed of Trust was first  
6 removed from the title.

7 23. The Real Estate Professionals failed to inform the plaintiffs of the fact that the  
8 Deed of Trust remained on the Kirkland Property for the unlawful purposes of (1)  
9 fraudulently inducing the purchase and sale of the Kirkland Property to plaintiffs, (2)  
10 effecting commissions on the sale of Judd and Windermere Real Estate, (3) avoiding  
11 Windermere Real Estate's personal guaranty obligation, and (4) ensuring priority of payment  
12 to Washington Loan Company on the \$400,000 Deed of Trust to which it would not have  
13 otherwise received.

14 24. The knowing and intentional failure of the Real Estate Professionals to disclose  
15 the existence of the Deed of Trust resulted in a material impairment of the value of the  
16 Kirkland Property and a material impairment to Mr. and Mrs. Repass.

17 25. Under the circumstances, each of the Real Estate Professionals acted in concert  
18 to save their own interest at the expense of plaintiffs and are liable for all damage and loss  
19 proximately caused therefrom.

#### 20 **IV. SECOND CAUSE OF ACTION**

#### 21 **QUIET TITLE**

22 26. Plaintiffs reallege and incorporate by this reference paragraphs 1-25 above.

23 27. Based upon the foregoing and the conduct of the Real Estate Professionals,  
24 plaintiffs are entitled to have title to their property quieted, free and clear of the Deed of Trust  
25 recorded under King County Recording No. 20070330002740.

26 28. This Deed of Trust is of doubtful validity and is additionally, unenforceable



1 under the circumstances.

2 29. Defendants always intended to remove the Deed of Trust prior to the sale of  
3 the Kirkland Property because it had no priority or value against the subject property.  
4 Defendants' inequitable conduct in connection with this transaction effected an equitable  
5 forfeiture or foreclosure of the Deed of Trust as a result of their silence in failing to disclose  
6 to plaintiffs the continued encumbrance of the Deed of Trust in the face of a known mistake  
7 and knowing reliance by plaintiffs that it had been removed.

8 **V. THIRD CAUSE OF ACTION**  
9 **(AGAINST JUDD)**

10 **BREACH OF WARRANTY**

11 30. Plaintiffs reallege and incorporate by this reference all allegations contained in  
12 paragraphs 1-29 above.

13 31. Judd conveyed the subject property to plaintiffs free and clear by a Statutory  
14 Warranty Deed filed under King County Recording No. 20080327002203. Judd's  
15 conveyance of the property free and clear by Statutory Warranty Deed to plaintiffs in the face  
16 of the Deed of Trust constitutes a breach of his warranty obligations of title under the  
17 Statutory Warranty Deed for which the plaintiffs are entitled to resulting monetary damages  
18 and attorney fees and costs, in an amount to be proven at trial.

19 **VI. FOURTH CAUSE OF ACTION**  
20 **(AGAINST ALL DEFENDANTS)**

21 **DECLARATORY RELIEF**

22 32. Plaintiffs reallege and incorporate by this reference all allegations contained in  
23 paragraphs 1-31 above.

24 33. Pursuant to RCW 7.24.010 *et seq.*, plaintiffs are entitled to a judgment of  
25 declaratory relief decreeing that the subject Deed of Trust is of no force and effect against  
26 plaintiffs' property and/or that the subject Deed of Trust was equitably foreclosed as a result  
of the actions and conduct of the Real Estate Professional defendants.



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2 **VII. FIFTH CAUSE OF ACTION**  
3 **(AGAINST WINDERMERE REAL ESTATE AND TRUSTEE HAIG)**

4 **INJUNCTIVE RELIEF**

5 34. Plaintiffs reallege and incorporate by this reference all allegations contained in  
6 paragraphs 1-33 above.

7 35. Plaintiffs would be irreparably and wrongfully harmed by any action  
8 undertaken to foreclose the subject Deed of Trust under the surrounding circumstances.

9 36. Plaintiffs are entitled to a preliminary and permanent injunction restraining  
10 defendant Windermere Real Estate as assignee of the subject Deed of Trust and Trustee Haig,  
11 from undertaking any action to foreclose the Deed of Trust or adversely effect the title to  
12 plaintiff's property or their right to peaceful enjoyment thereof.

13 WHEREFORE, plaintiffs pray for judgment against defendants as follows:

14 1. Quiet title. A decree quieting title in their property free and clear of that Deed  
15 of Trust dated March 29, 2007 and recorded under King County Recording No.  
16 20070330002740;

17 2. Misrepresentation. Judgment jointly and severally against the Real Estate  
18 Professionals (Judd, Windermere Real Estate and WLC) for all damages resulting from their  
19 intentional and material misrepresentations and unlawful acts;

20 3. Breach of Warranty. For monetary damages in an amount to be proven at trial  
21 against defendant Judd for breach of his warranty of title under the Statutory Warranty Deed  
22 dated March 19, 2008 and recorded under King County Recording No. 20080327002203,  
23 including attorneys' fees;

24 4. Declaratory Relief. Declaratory judgment declaring and decreeing that the  
25 Deed of Trust, filed under King County Recording No. 20070330002740, no force or effect  
26 against plaintiffs' property; or in the alternative, that the subject Deed of Trust was equitably  
forfeited or foreclosed as a result of the wrongful conduct of the defendants.



