

KING COUNTY SUPERIOR COURT
STATE OF WASHINGTON

GARY M. KRUGER, a single man,

Plaintiff,

vs.

DONALD R. CHAPPELL and JULIE C.
CHAPPELL, husband and wife, and their marital
community; GEORGE DILLOO and JANE DOE
DILLOO, husband and wife, and their marital
community, d/b/a Sound Look Inspection Service;
GEORGE and JANE DOE RUDIGER, husband
and wife, and their marital community;
WINDERMERE/NORTHEAST, INC., a
Washington Corporation; JOHN DOES 1 - 5;

Defendants.

No. 02-2-28184-2 SEA

SECOND AMENDED COMPLAINT FOR
FRAUD, NEGLIGENT MIS-
REPRESENTATION, BREACH OF
CONTRACT, NEGLIGENCE,
PROFESSIONAL NEGLIGENCE;
CONSUMER PROTECTION VIOLATIONS;
AND NEGLIGENT MISREPRESENTATION/
FRAUDULENT CONCEALMENT

COMES NOW the plaintiff, Gary M. Kruger, and alleges as follows:

1. Plaintiff. Plaintiff Gary M. Kruger currently resides in Washoe County, Nevada; and was
a King County, Washington resident at all times material hereto.

2. Defendants Chappell. Defendants, Donald R. Chappell and Julie C. Chappell, are a
married couple who have resided at all times material hereto in King County, Washington. All acts
were performed in furtherance of their marital community. Defendants sold plaintiff their house
located at 15648 5th Avenue NE, Seattle, King County, Washington ("the Property") in June, 2002.

1 3. Defendants Dilloo. Defendants George Dilloo and Jane Doe Dilloo, are a couple who
2 have resided at all times material hereto in King County, Washington. All acts were performed in
3 furtherance of their marital community. At all times material hereto defendants did business as
4 "Sound Look Inspection Service." Said defendants performed an inspection of the Property for the
5 plaintiff before plaintiff's purchase. Defendant Dilloo performed the inspection on behalf of Sound
6 Look Inspection Service, an alleged member of FREAA ("Foundation of Real Estate Appraisers").

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8 4. Defendants Rudiger and Windermere Northeast, Inc. GEORGE and JANE DOE
9 RUDIGER, are a married couple who have resided at all times material hereto in King County,
10 Washington. All acts were performed in furtherance of their marital community. George Rudiger
11 was the agent for the Chappells when they purchased the subject-property in 1997 (representing the
12 Chappells as purchaser) and was the listing agent for the subsequent sale from Chappell to Kruger in
13 2002. George Rudiger was, at all times material hereto, a real estate agent working for Windermere
14 Northeast, Inc.

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16 5. Defendants John Doe 1 through 5. Discovery is ongoing; should facts arise indicating that
17 other persons or entities may be liable to the Plaintiff, the Plaintiff reserves the right to name them at
18 a later time.

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20 6. Contract Between the Parties. On or about May 27, 2002, plaintiff and defendants
21 Chappell entered into a Purchase and Sale Agreement for plaintiff to purchase the property. A true
22 and correct copy of the Agreement is attached hereto as Exhibit 1.

23 7. Disclosure Statement. In connection with the sale to plaintiff, defendants Chappell
24 through the listing agent and plaintiff's agent Jeff Dilley, provided plaintiff with a "Real Property
25 Transfer Disclosure Statement" generally known as "Form 17." This five-page form was provided to
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1 defendants Chappell and signed by the Chappells on May 20, 2002. A copy of this form is attached
2 to this Complaint as Exhibit 2.

3 8. Misrepresentation by Defendants Chappell. Question No. 4(G) and 10(A) asked:

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5 4 (G) Since assuming ownership, has your property had a problem with wood destroying
6 organisms and/or have there been any problems with pest control, infestations or vermin?

7 "[X] No"

8 * * *

9 10 (A) Other conditions or defects: Are there any other material defects affecting this
10 property or its value that a prospective buyer should know about?

11 "[X] No"

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13 9. Rat Infestation Problem. Shortly after taking possession of the property, plaintiff
14 discovered that it is severely infested with rats. Rats' nests, carcasses, urine and feces were under
15 cabinets, in the wood sub-flooring, wall studs, insulation and connected construction materials.
16 Rodent droppings were present throughout the home. These areas were/are saturated with rat waste so
17 severely that intensive ozone treatment would not eliminate the noxious odors. Much of the home's
18 original wiring had been chewed bare of its insulation. Additionally, dry rot, mold and other wood
19 destroying organisms are present in the house.
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21 10. Defendants Chappells' Knowledge of Infestation. After taking possession of the
22 property, plaintiff learned that defendants Chappell were well aware of the continuing rat infestation
23 and organisms problem with the property. Defendants Chappell took affirmative steps to control the
24 rat problem and went so far as to live in the attic until the house sold.
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26 11. Defendant Rudiger's Knowledge of Wood Eating Organism, Vermin, Pest and Rat
27 Problems. Defendant Rudiger is an experienced real estate agent who was familiar with the property
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1 purchased by Plaintiff. Defendant Rudiger knew, or should have known, of the rat and vermin
2 problems on the property, but he did not inform the Plaintiff, or Plaintiff's real estate agent of these
3 problems. Defendant Rudiger's knowledge arose from an inspection report conducted in 1997 for the
4 Chappells as well as discussions with other parties associated with the 1997 transaction. Defendant
5 Rudiger personally negotiated repairs and prophylactic measures to limit the inundation of rats in the
6 subject-property. Because of his personal involvement and working knowledge of the recent vermin
7 problems with the property, Defendant Rudiger was especially well informed about the vermin
8 problems on Chappell's property.
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10 12. Defendant Rudiger's Knowledge of Failure to Disclose. Defendant Rudiger knew that the
11 Real Property Transfer Disclosure Statement provided by the Chappells (to Plaintiff) stated that there
12 were no wood destroying organisms and/or any problems with pest control, infestations or vermin.
13 According to the Chappells' Defendant Rudiger was present when the Chappells filled out their Real
14 Property Transfer Disclosure Statement.
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16 13. Professional Inspection. Defendant George Dilloo, doing business as "Sound Look
17 Inspection Service," performed an inspection in a negligent manner. Further, said defendant held
18 himself out as a fully trained, experienced and licensed inspector who stated in his promotional
19 materials and on his report that he was a member of FREA ("Foundation of Real Estate Appraisers").
20 On information and belief, this was untrue.
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22 14. Cost to correct Rat Infestation Problems. Plaintiff has been informed that it would likely
23 costs over \$100,000 just to restore the house to its as-represented condition. Other damages would
24 exceed this amount by a substantial margin.
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26 15. Improvements to Property. After plaintiff took possession of the property he spent
27 money repairing a carpet that had a stain that was not disclosed and was hidden during the inspection.
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1 He also spent money on nursery and yard items, a pest control expert, air quality expert, moving
2 expenses, remodeling expenses, utilities connections, storage fees, living expenses, and
3 miscellaneous expenses. These expenditures have added to the value of the property. Plaintiff would
4 not have undertaken these expenses had he known about the rat infestation problem or wood eating
5 organism problem.

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7 16. Attorneys Fees. The Purchase and Sale Agreement provides for the award of attorney's
8 fees to the prevailing party in case of litigation related to the Agreement.

9 FIRST CLAIM – FRAUD BY DEFENDANTS CHAPPELL

10 17. Misrepresentation by Defendants Chappell. For the reasons set forth below defendants'
11 misrepresentations to plaintiff constituted fraud:

- 12 a. Defendants Chappell knew that there was a rat infestation problem and wood
13 eating organisms problem with the property;
- 14 b. Defendants Chappell purposely misrepresented on the Form 17 that there was not
15 a rat infestation problem or wood eating organisms problem with the property;
- 16 c. The Chappells' representation was false;
- 17 d. The Chappell's representation was material to plaintiff's decision to purchase the
18 property;
- 19 e. Defendants Chappell intended for plaintiff to rely upon this representation;
- 20 f. Plaintiff did not know that the Chappells' representation was false;
- 21 g. Plaintiff had a right to rely upon the Chappells' representations;
- 22 h. Plaintiff relied upon the Chappells' representations to his detriment; and
- 23 i. Plaintiff has suffered significant damages, as a result of the Chappells' false
24 statements.
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SECOND CLAIM – NEGLIGENT MISREPRESENTATION

18. The Chappells' misrepresentations regarding the lack of a rat infestation or wood eating organisms problem was negligent since defendants knew or should have known of the continuing infestation and organisms problems with the property. Plaintiff relied upon the Chappells' misrepresentations to his detriment, and has suffered significant damages as a result of defendant Chappells' negligent misrepresentations.

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THIRD CLAIM – BREACH OF CONTRACT

19. Defendants Chappell had a contractual duty under the Purchase and Sale Agreement to disclose any problems at the property. The Chappells' failure to disclose the rat and organisms problems at the property constitute a breach of the Purchase and Sale Agreement between the plaintiff and the Chappells. In connection with this breach of contract, plaintiff is entitled to either rescission or to his damages. In either instance plaintiff is entitled to his costs and attorneys fees under the contract.

20. The Chappells' misrepresentations regarding the property constituted a breach of express and/or implied warranties. The warranties were a material inducement to encourage plaintiff's purchase of the property.

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FOURTH CLAIM – PROFESSIONAL NEGLIGENCE BY THE INSPECTOR

21. Plaintiff relied upon the inspection report prepared for him by George Dilloo and Sound Look Inspection Service prior to closing the purchase of the property. Mr. Dilloo's report gave no warning that the property was substantially infested with rats nor did he mention the stench or presence of wood eating organisms; and many other unacceptable conditions to the property. The report states that it was performed consistent with "stringent professional standards set forth by the Inspection Industry and the Washington State Department of Agriculture," which it was not.

FIFTH CLAIM – CONSUMER PROTECTION VIOLATION
BY DEFENDANT DILLOO

22. Misrepresentation of George Dilloo Constituted a Deceptive Act or Practice. Defendant Dilloo's intentional misrepresentation of his qualifications, licensure and membership in a professional organization, which he knew were untrue, and upon which plaintiff relied, constituted an unfair and deceptive act by defendant Dilloo. Defendant's action was committed in the course of his business and plaintiff was a general member of the public to whom defendant Dilloo marketed himself and his d/b/a company Sound Look Inspection Service, and plaintiff, who was not a sophisticated home buyer, occupied unequal bargaining position compared to the defendant Dilloo. The well settled law in Washington is that material false statements on promotional materials, reports, and communications with customers or prospective customers which are known to be false by the defendant constitute deceptive acts in violation of the Consumer Protection Act, RCW 19.86.

SIXTH CLAIM – NEGLIGENT MISREPRESENTATION AND/OR
FRAUDULENT CONCEALMENT BY LISTING AGENT

23. Defendant Rudiger knew or should have known of the rat and vermin problems on Plaintiff's property. As the listing agent, Defendant Rudiger had an affirmative duty to inform Plaintiff of the rat and vermin problems on the property.

24. Defendant Rudiger is an agent with Windermere Northeast, Inc. Defendant Windermere Northeast, Inc. is liable for the negligent misrepresentations and fraudulent concealments of its agent.

25. Defendant Rudiger knew that there was a rat infestation problem and wood eating organisms problem with the property.

26. Defendant Rudiger purposely concealed the rat infestation problem and/or wood eating organisms problem with the property.

1 27. The facts not disclosed (rat infestation and wood eating organisms) were dangerous to the
2 property, health or life of the Plaintiff.

3 28. The rat infestation and wood eating organisms were unknown to the Plaintiff and his
4 careful, reasonable inspection did not disclose the defects.

5 29. The presence of rat infestation and wood eating organisms substantially affected,
6 adversely, the value of the property, or operated to materially impair or defeat the purpose of the
7 transaction.
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9 SEVENTH CLAIM – CONSUMER PROTECTION VIOLATION
10 BY DEFENDANTS WINDERMERE NORTHEAST, INC. AND GEORGE RUDIGER

11 30. Agent's Failure to Disclose Rat Infestation Constituted a Deceptive Act or Practice.
12 Defendant Rudiger's intentional failure to disclose the material facts which he knew regarding the
13 substantial infestation of rats and wood eating organisms, constituted an unfair and deceptive act by
14 defendants Rudiger and his broker Windermere Northeast, Inc.. Defendants' action was committed
15 in the course of their business, the property purchased by Plaintiff was advertised to the public in
16 general, and Plaintiff, who was not a sophisticated buyer (this was his first home purchase), occupied
17 unequal bargaining position compared to defendants Rudiger and Windermere Northeast, Inc. The
18 well settled common law of this state requires a real estate agent to disclose material facts within the
19 agent's knowledge to a perspective buyer. Failure to do so is a deceptive act in violation of the
20 Consumer Protection Act, RCW 19.86. The provisions of RCW 64.06.060 that make the Consumer
21 Protection Act in inapplicable to sellers' disclosures do not limit the deceived buyer's remedies
22 against the real estate agent who has failed to disclose material facts learned independently of the
23 Seller's Disclosure Statement.
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2 ADDITIONAL POSSIBLE DEFENDANTS

3 31. As discovery is continuing, the plaintiff reserves the right to name additional defendants,
4 as yet unidentified and unknown.

5 REQUEST FOR RELIEF
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7 WHEREFORE, the Plaintiff prays for judgment against the defendants, jointly and severally,
8 individually and as a community, as follows:

- 9 A. For damages in an amount to be proven at trial, but estimated to be no less than \$200,000 for
10 damage to his property, for the cost of correcting the rat and organisms problems, for the lost
11 value of the property of the rat and organisms problems, for loss of use, lost wages, and for
12 damage to ability to sell property.
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14 B. For plaintiff's costs and attorneys fees under the terms of the Purchase and Sale Agreement, the
15 Consumer Protection Act, RCW 19.86, and as otherwise provided by contract or statute.
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17 C. For rescission of transaction.
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19 D. For treble damages, attorney's fees and litigation costs under Washington law, including under
20 RCW 19.86.
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22 E. For such additional relief as the Court deems just and proper.

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24 DATED this day of April, 2003.

25 _____
26 Jeffrey C. Mirsepasy
27 Attorney for Plaintiff
28 W.S.B.A. #17,247