

FILED

KING COUNTY SUPERIOR COURT
BARBARA MINER
DIRECTOR & SUPERIOR CT CLERK
SEATTLE WA

FILED
08 DEC 11 PM 1:18
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

08-2-34857-1

Receipt/Item #	Tran-Code	Docket-Code
2008-02-24371/01	1118	\$FFR
Cashier: RCF		

Rcpt. Date	Acct. Date	Time
12/11/2008	12/11/2008	01:18 PM

Paid By: WOLFSTONE, PANCHOT
Transaction Amount: \$200.00

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

SEAWEST INVESTMENT ASSOCIATES,
LLC, a Washington limited liability
corporation,

Plaintiff,

vs.

LUIN LEISHER and SHIRLEY LEISHER,
husband and wife,

Defendants and Third-Party Plaintiffs,

vs.

COMMONWEALTH LAND TITLE
COMPANY OF PUGET SOUND, LLC

Third-Party Defendants

No. 08-2-34857-1 SEA

ANSWER, AFFIRMATIVE DEFENSES,
COUNTERCLAIM AND THIRD-PARTY
COMPLAINT OF DEFENDANTS
LUIN ANDSHIRLEY LEISHER

COME NOW the Defendants, LUIN AND SHIRLEY LEISHER, by and through their
attorneys, and submit their Answer, Affirmative Defenses, Counterclaim and Third Party
Complaint.

ANSWER, AFFIRMATIVE DEFENSES
COUNTERCLAIM AND THIRD-PARTY
COMPLAINT OF DEFENDANTS - 1

Law Offices of
Wolfstone, Panchot & Bloch, P.S., Inc.
1111 Third Avenue, Suite 1800
Seattle, Washington 98101
Phone: (206) 682-3840
Fax: (206) 340-8837

ORIGINAL

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

I. ANSWER

1.1. Answering Paragraph 1 of the complaint, Defendants admit the same.

1.2 Answering Paragraph 2 of the complaint, Defendants admit that Luin and Shirley Leisher are husband and wife, but deny that they reside in King County, Washington.

1.3 Answering Paragraph 3 of the complaint, Defendants admit that this matter pertains to a contract that was negotiated and executed in part in King County, Washington. Defendants also admit that jurisdiction and venue are proper in King County Superior Court.

1.4 Answering Paragraph 4 of the complaint, Defendants admit that a Real Estate Purchase and Sale Agreement was negotiated and signed on or about September 30, 2004, but deny any characterization of the sale as a residential real estate transaction.

1.5 Answering Paragraph 5 of the complaint, Defendants deny the same.

1.6 Answering Paragraph 6 of the complaint, Defendants deny that a seller disclosure statement ("Form 17") was required by RCW 64.06.020 or otherwise, and therefore deny Paragraph 6.

1.7 Answering Paragraph 7 of the complaint, Defendants admit that Seawest paid earnest money to Defendants, and made certain other payments pursuant to the RESPA, but Defendants are unable to admit or deny Paragraph 7 because it is not specific regarding the amounts paid, and therefore deny the same.

1.8 Answering Paragraph 8 of the complaint, Defendants deny the same.

1.9 Answering Paragraph 9 of the complaint, Defendants deny the same.

1.10 Answering Paragraph 10 of the complaint, Defendants deny the same.

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

II. AFFIRMATIVE DEFENSES

2.1 Plaintiff is barred from relief by the doctrines of waiver, estoppel, satisfaction, and ratification.

2.2 Plaintiff is barred from relief by its own unclean hands.

2.3 Plaintiff is barred from relief as a result of waiver through its own conduct.

2.4 Plaintiff is barred from relief by the doctrine of laches.

2.5 As to all causes of action based on contract, Plaintiff's recovery is barred in whole or in part under the principle of novation.

2.6 Plaintiff's recovery is barred in whole or part by its failure to protect its own interests or to mitigate any alleged damages.

2.7 Any alleged damage to plaintiff is the result of the fault of a non-party, who was also an agent of Plaintiff.

2.8 Plaintiff has failed to state a claim upon which relief can be granted.

2.9 The foregoing defenses are based on the facts currently known to Defendants.

Defendants reserve the right to amend or add defenses based on facts later discovered, pled, or offered.

III. FACTS RELEVANT TO COUNTERCLAIMS AND THIRD-PARTY CLAIMS

3.1 Defendants reallege the allegations set forth in paragraphs 1.1 through 2.9 above.

3.2 Commonwealth Land Title Company of Puget Sound, LLC ("Commonwealth") is a limited liability corporation organized and existing under the laws of the State of Washington, with its principal place of business in King County, Washington.

1 3.3 Commonwealth was designated by the Plaintiff and Defendants as the closing
2 agent and escrow agent regarding the real estate purchase and sale which is the subject of this
3 action. Commonwealth employee Paula M. Magee was Commonwealth's certified closing
4 officer for the transaction. At all relevant times, Ms. Magee was a Limited Practice Officer,
5 No. 3151, admitted to practice in Washington pursuant to the provisions of the Admission to
6 Practice Rules, Rule 12, Limited Practice Rule for Closing Officers.
7

8 3.4 On October 1, 2008, Commonwealth scanned and forwarded to a notary in
9 Oklahoma several documents that needed to be signed before closing. The notary in turn
10 presented those documents to the Defendants in Oklahoma for signature the same day.
11 Defendants took all reasonable steps to sign all documents presented to them in preparation
12 for closing. However, Commonwealth mistakenly failed to scan and forward the statutory
13 warranty deed to the notary in Oklahoma on October 1, 2008. As a result of
14 Commonwealth's error, the statutory warranty deed was not forwarded by Commonwealth to
15 the Defendants for signature until the following day, October 2, 2008. As a result of
16 Commonwealth's error, the original statutory warranty deed, signed by Defendants on
17 October 2, 2008, did not reach Commonwealth's office until October 3, 2008.
18

19 3.5 On and after October 2, 2008, Plaintiff refused to close the transaction.
20

21 **IV. COUNTERCLAIM FOR BREACH OF CONTRACT**

22 4.1 Defendants reallege the allegations set forth above in paragraphs 1.1 through 3.5.

23 4.2 Plaintiff failed to close the real estate transaction pursuant to the contractual
24 agreements between Plaintiff and Defendants, and failed to act in good faith, thereby
25 breaching the terms of its contractual agreements with Defendants and violating its covenant
of good faith and fair dealing.

1 4.3 Plaintiff also failed to fulfill its other obligations under the terms of its
2 contractual agreements with Defendants, including but not limited to making necessary
3 payments for removal of all liens, otherwise satisfying all liens with the City of Sammamish,
4 returning all notes and reconveying all deeds trusts given against the subject property to
5 protect against seller's possible default, and fulfilling other of Plaintiff's contractual
6 obligations.
7

8 4.4 Defendants have been damaged by Plaintiff's breach of its contractual
9 agreements, and have been required to incur attorneys fees and costs in this lawsuit.

10 **V. THIRD-PARTY COMPLAINT FOR NEGLIGENCE AGAINST**
11 **COMMONWEALTH LAND TITLE COMPANY OF PUGET SOUND, LLC**

12 5.1 Third-Party Plaintiff realleges the allegations set forth above in paragraphs 1.1
13 through 4.4.

14 5.2 In the event the Court finds that the real estate transaction failed to close in
15 whole or part because of any act or omission of Defendants, any such acts or omissions were
16 the result of the negligence of Commonwealth, the closing and escrow agent for the
17 Defendants and Plaintiffs. Commonwealth is liable for all damages resulting from
18 Commonwealth's negligence in failing to forward the statutory warranty deed to Defendants
19 for signature on October 1, 2008, and for Commonwealth's breach of its duties as closing and
20 escrow agent for Defendants and Plaintiff on October 1, 2008. Defendants' damages include,
21 but are not limited to, that portion of the sale price not retained by sellers.
22

23 5.3 Equitable indemnity. Commonwealth's negligence has exposed Defendants to
24 litigation by Plaintiff, and Commonwealth is therefore liable to Defendants for their
25 reasonable expenses incurred in this litigation, including attorneys fees.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, the Defendant having answered the complaint, having asserted
3 affirmative defenses, counterclaims and a third-party complaint, pray for the following relief
4 against the Plaintiff and the Third-Party Defendants:

5 A. Dismissing Plaintiff's claims with prejudice;

6 B. Ordering that the \$750,000 in earnest money previously paid to Defendants will
7 remain the property of Defendants, and that Plaintiff is not entitled to a return of any earnest
8 money;

9 C. Ordering Plaintiff to return to Defendants all notes and reconvey all deeds of
10 trust against the subject property given to protect against seller's possible default;

11 D. Ordering Plaintiff to make all necessary payments and to take all other steps
12 needed for satisfaction and removal of City of Sammamish liens against the subject property,
13 and to fulfill all other of Plaintiff's contractual obligations;

14 E. Awarding Defendants damages pursuant to its Counterclaim and Third-Party
15 Complaint, in an amount to be proven at trial;

16 F. Awarding Defendants their reasonable attorneys' fees and costs;

17 G. Granting such other and further relief as the Court deems equitable in the
18 premises.

19 DATED: Dec. 10, 2008

20 WOLFSTONE, PANCHOT & BLOCH, P.S., INC.

21 By 

22 STEVEN N. ROSS, WSBA 10929
23 KENNETH A. BLOCH, WSBA #21252
24 Attorneys for Luin Leisher and Shirley Leisher
25 Defendants and Third-Party Plaintiffs