

2013 WL 3580037 (Or.Cir.) (Trial Pleading)
Circuit Court of Oregon.
Clackamas County

Charles C. FERGUSON, Plaintiff,

v.

Kenneth HICK, Northwest Capital Funding LLC, an Oregon limited liability company; Equity Capital Group LLC, an Oregon limited liability company, and Resources Northwest, Inc, an Oregon corporation, Defendants.

No. CV13060889.
June 27, 2013.

[Abuse of an Elderly and Vulnerable Person (ORS 124.100); Breach of Oregon Trade Practices Act (ORS 646.608); Fraud; Breach of Contract]

Prayer: \$65,000

Not Subject to Mandatory Arbitration

Complaint

Kathryn Brooke OSB 982135, Jill Odell OSB 973581, Attorneys for Defendant, 10260 Sw Greenburg Rd, Suite 1180, Portland, OR 97223, T: 503.972.0400, F: 503.715.5704, E: kate@brookelawoffice.com, jill @gibsonlawfirm.org.

Plaintiff Charles C. Ferguson alleges as follows:

1.

At all times material herein, Plaintiff was and is domiciled in the Clackamas County, State of Oregon at 3020 Brookside Road, Lake Oswego, Oregon 97035 (the "Property").

2.

On information and belief, at all times material herein, Defendant Kenneth Hick ("Hick") was and is resident at 21462 SW St. James Place, West Linn, OR 97068.

3.

At all times material herein, Defendant Northwest Capital Funding LLC ("NW Capital") was an Oregon limited liability company located at 8415 SW Seneca #210, Tualatin, Oregon 97062 and Ken Hick was its managing member.

4.

At all times material herein, Defendant Equity Capital Group, LLC ("Equity Capital") was an Oregon limited liability company located at 15110 SW Boones Ferry Rd, Lake Oswego, Oregon 97035.

5.

At all times material herein, Defendant Resources Northwest, Inc. was and is an Oregon corporation located at 8415 SW Seneca #210, Tualatin, Oregon 97062 and Hick was and is its President and Secretary.

6.

Between 2005 and 2007, Plaintiff was suffering from and being treated for colon cancer. During that same period Plaintiff was, and still is, the sole caretaker for his wife, who was and is terminally ill. Plaintiff also was the sole caretaker for his father who died in January 2007 and his mother who died in December, 2009. In the fall of 2007, Plaintiff lost his job. As a result of his illness, loss of job and other obligations, Plaintiff was unable to meet all of his mortgage obligations to Countrywide Home Loans ("Countrywide").

7.

In early August, 2007, Plaintiff was introduced to defendant Kenneth Hick ("Hick") by a mutual friend. Hick advised plaintiff that Hick could refinance the mortgage on plaintiff's Property. Hick told plaintiff not to worry, Hick would take care of it.

8.

A mere four days later, on or about August 16, 2007, Plaintiff met with Hick, their mutual friend, Hick's attorney (Susan Snell), and one other person, unidentified. Hick requested that Plaintiff sign documents related to the refinance of the mortgage on his Property. Hick did not provide the documents to Plaintiff in advance. Hick did not give Plaintiff time to read the documents. Plaintiff asked if he needed to have an attorney present. Hick stated that he did not. No explanation was provided to Plaintiff regarding the meaning of the documents. Hick did not provide Plaintiff with copies of the documents Plaintiff signed. A copy of the final settlement statement is attached hereto at Exhibit A and incorporated herein by this reference.

9.

At the time of the Plaintiff's refinance, Plaintiff owed Countrywide and a private lender \$354,199.36 including accrued interest, penalties and fees. Plaintiff's principal balance of his NW Capital mortgage loan was \$419,337.27, a difference of \$65,137.91. As a part of the refinance, Plaintiff prepaid interest on his new loan in the amount of \$31,350.00, making the cost of refinancing his loan \$33,787.91.

10.

The Truth in Lending Disclosure Statement provided to Plaintiff from Equity Capital indicated an annual percentage rate of 507.652 percent and a total finance charge (cost of credit) of 442,500.31. On information and belief, NW Equity actually charged Plaintiff 15% interest and Plaintiff's payments were \$5,231.25. At all times herein, Plaintiff made his payment to Resources NW, Inc. ("Resources").

11.

On or about August 2007, Kenneth W. Hick was named as the mortgagee on Plaintiff's homeowner's insurance policy.

12

On or about August 14, 2008, Hick told Plaintiff that the “bank” needed Plaintiff to re-sign his loan documents. Plaintiff attended a meeting at the offices of attorney Susan Snell at which Hick, Snell and an unidentified male also were present. Plaintiff did not get the documents ahead of time, nor was he given time to review them. Hick did not provide Plaintiff with copies of the documents he signed. Plaintiff believed the documents were identical to those he signed one year earlier.

13.

On or about July 2012, Plaintiff spoke with his neighbor who mentioned she had seen in the Clackamas County Property Records that Plaintiff had sold his home. The neighbor asked where Plaintiff was moving. Plaintiff responded that he had not sold his home and was not moving.

14.

Based on the neighbor's comments, Plaintiff approached Hick, mentioned that he understood that the Property was no longer in Plaintiff's name. Hick provided no clear answer other than to say that Hick could repurchase the home at any time.

15.

Over the course of the loan, Plaintiff made his payments to Resources. Plaintiff's income was not regular and so his payments were sometimes late but each time Plaintiff caught up. Plaintiff did not receive statements regarding his payments or loan status and was not notified that penalties, late fees or other charges may be accruing.

16.

After Plaintiff's inquiry to Hick regarding ownership of the home, Hick began to more aggressively pursue Plaintiff for regular loan payments. Hick began to call Plaintiff and scream at him using foul language. Hick would state that the “bank” needed a check, even if the check had to be held. Plaintiff would provide Hick with a check, asking Hick to hold it for a few days but Hick did not comply.

17.

On or about March 12, 2013 Plaintiff signed an agreement with Hick stating that he would purchase the Property on or before May, 2013. The agreement imposed financial obligations on Plaintiff for late fees, accrued interest and other charges that Plaintiff did not owe. Plaintiff was coerced into the signing the agreement by Hick. Plaintiff believed he had no choice but to sign the document or the “bank”, as Hick said, would kick Plaintiff out of the house.

18.

Plaintiff attempted to re-purchase the Property. He received a verbal loan commitment from a private lender for \$399,000. To move forward with his financing, Plaintiff required from Hick a document indicating Hick would sell the Property to Plaintiff for a specific price. Hick told Plaintiff one day that the purchase price would be \$370,000. The next day, Hick told Plaintiff the purchase price would be \$395,000. Plaintiff continued to request some kind of a document indicating the commitment to sell so Plaintiff could obtain financing. Hick never provided one.

19.

Hick told Plaintiff to go to Stewart Title to arrange for escrow for Plaintiff's repurchase. Plaintiff did so and Stewart Title told Plaintiff that he would have to provide them with a document indicating Hick's commitment to sell the Property. Hick continued to ignore Plaintiff's requests.

20.

Plaintiff went to Hick's office to pay his payment for May 2013 but Hick refused to accept it, stating that Plaintiff had had an opportunity for a short sale and missed the deadline. The price was now \$470,000, more or less. Hick told Plaintiff that "the bank is going to throw you out. This was the first time Plaintiff heard the term "short sale" in relation to his Property.

21.

Hick inadvertently told Plaintiff that the "bank" was Northwest Bank so Plaintiff went to Northwest Bank to discover his options. According to bank officials, Northwest Bank does not hold a mortgage on Plaintiff's Property. Rather, the Property was used as collateral for a "non-mortgage" loan to Hick. Northwest Bank would give Plaintiff no further information.

FIRST CAUSE OF ACTION

Abuse of an Elderly Person

22.

Plaintiff realleges and incorporates by reference all of the allegations set forth in paragraphs 1 through 21 as if fully set forth in full herein.

23.

Plaintiff was born in 1940. At all relevant times herein, Plaintiff was over 65 years of age.

24.

Defendants committed **elder abuse** pursuant to [ORS 124.100](#) against Plaintiff in the following ways:

(a) Using derogatory and inappropriate names, phrases and/or profanity, coercion, threats, cursing, and intimidation to compel Plaintiff into signing documents and paying money to Defendants.

(b) Defendants wrongfully appropriated money from Plaintiff by charging Plaintiff \$65,137.91 to refinance Plaintiff's mortgage of \$354,199.36 which included stripping equity to prepay interest at a rate of 15% with payments in an amount that no rational lender would believe Plaintiff could afford.

(c) In connection with Plaintiff's refinancing, Defendants secured Plaintiff's signature on a Lease and Purchase Offer, in effect leasing Plaintiff's own Property to Plaintiff, at a time when Plaintiff was the legal owner of the Property and just prior to Defendant's "refinance" of Plaintiff's loan. The Lease and Purchase Offer is attached hereto as Exhibit B and incorporated herein by this reference.

(d) Wrongfully appropriating Plaintiff's Property by securing Plaintiff's signature on a bargain and sale deed unbeknownst to Plaintiff under the guise of "re-signing" the refinancing documents one year after the original refinance. A copy of the bargain and sale deed is attached hereto as Exhibit C and incorporated herein by this reference.

25.

As a result of Defendants' actions, Plaintiff was damaged and is entitled to recover from Defendants the following:

- (a) Three times the amount of Plaintiff's economic damages, as defined in [ORS 31.710](#), resulting from the financial **abuse**, in an amount to be proved at trial.
- (b) An amount equal to three times all noneconomic damages, as defined by [ORS 31.710](#), resulting from the financial **abuse**, in an amount to be proved at trial.
- (c) Reasonable attorney fees incurred by the plaintiff.

SECOND CAUSE OF ACTION

(Violations of Oregon's Trade Practices Act ([ORS 646.608](#)))

26.

Plaintiff realleges and incorporates by reference all of the allegations set forth in paragraphs 1 through 25 as if fully set forth in full herein.

27.

Defendants have breached the Oregon Trade Practices Act to Plaintiffs detriment in the following ways:

- (a) Using deceptive representations in connection with the refinancing, resigning of financing instruments and ownership of Plaintiff's Property;
- (b) Making false or misleading representations to Plaintiff concerning the nature of his "refinancing" and "resigning" of his mortgage on the Property.
- (c) Making false or misleading representations relating to the compensation received by Defendants in connection with Plaintiff's "refinance."
- (d) Making false or misleading representations relating Plaintiff's cost to "refinance" his Property.

28.

As a result of Defendants' actions, Plaintiff has been damaged in the following ways:

- (a) Plaintiff suffered an ascertainable loss of money and is entitled to the return of the same in amounts to be proved at trial.
- (b) Plaintiff has further suffered a loss of his Property and is entitled to the return of the same, subject to reasonable interest and principal payments over the term of the "loan".

(c) Plaintiff is entitled to his reasonable attorney's fees pursuant to [ORS 646.638](#).

THIRD CAUSE OF ACTION

(Fraud)

29.

Plaintiff realleges and incorporates by reference all of the allegations set forth in paragraphs 1 through 28 as if fully set forth in full herein.

30.

Defendants materially misrepresented the nature of their agreement with Plaintiff as a “refinance” of Plaintiff's mortgage on his Property.

31.

At the time that Defendants told Plaintiff that Defendants would refinance the mortgage of his property, they had already entered into a lease to purchase with Plaintiff for the Property and, therefore, Defendants were aware that the statement was false.

32.

Given that Defendants had already entered into a lease purchase agreement with Plaintiff for the Property at the time of the refinance, the representation was false.

33.

Defendants intended that Plaintiff rely on Defendants' statements, or acted with reckless disregard with respect to the same, that they were “refinancing” Plaintiff's property and that the “bank required” that Plaintiff “re-sign loan documents” when, in fact, in connection with the resigning, Defendants had Plaintiff sign a bargain and sale deed transferring ownership of the Property to Hick.

34.

Plaintiff relied on Defendant's representation.

35.

As a result of Defendants' actions, Plaintiff has suffered damages and is entitled to the following:

(a) Money damages in an amount to be proved at trial;

(b) Rescission of the lease purchase agreement and the return of Plaintiff's Property, less reasonable principal and interest payments.

(c) Prejudgment interest.

FOURTH CAUSE OF ACTION

Breach of Contract

36.

Plaintiff realleges and incorporates by reference all of the allegations set forth in paragraphs 1 through 35 as if fully set forth in full herein.

37.

Without admitting the legality of the Lease and Purchase Offer Agreement between Hick and Plaintiff, that agreement provides that Hick will resell the Property to Plaintiff. Although Plaintiff requested the documents from Hick that would allow Plaintiff to repurchase the Property and Hick failed to provide them. Such failure is a violation of the duty of good faith and fair dealing inherent in every Oregon contract.

38.

As a result of Hick's failure to act, Hick breached the Lease and Purchase Offer Agreement between Hick and Plaintiff which precluded Plaintiff from being able to exercise his right to repurchase the Property.

39.

As a result of Hick's failure to act, Plaintiff was damaged in amounts to be proved at trial. Plaintiff was further damaged by the loss of his Property and requests that the Court order Hick to sell the Property to Plaintiff at the price of \$395,000.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. That the Court find that Defendants **abused** Plaintiff in violation of [ORS 124.100](#)
- B. That the Court find that Defendants violated [ORS 646.638](#)
- C. That the Court award Plaintiff his monetary losses in an amount to be proved at trial and three times his economic and noneconomic damages as provided in [ORS 31.710](#).
- D. That the Court order a rescission of the Lease and Purchase Offer Agreement between Hick and Plaintiff.
- E. That the Court award Plaintiff ownership of the Property subject to a mortgage in the amount of \$395,000 at a reasonable rate of interest.
- F. That the Court award Plaintiff his reasonable attorney's fees.
- G. That the Court award Plaintiff prejudgment interest on his money damages.
- H. That the Court award Plaintiff his costs of suit; and

I. For such other and further relief as the Court may determine to be just and proper.

DATED this 26th day of June, 2013.

By:

Kathryn Brooke OSB 982135

Jill Odell OSB 973581

Attorneys for Defendant

10260 SW Greenburg Rd, Suite 1180

Portland OR 97223

T: 503.972.0400

F: 503.715.5704

E: *kate@brookelawoffice.com*

jill@gibsonlawfirm.org

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.