

2012 WL 5183735 (Or.Cir.) (Trial Pleading)  
Circuit Court of Oregon.  
Multnomah County

Zel M. RAMSEY, Plaintiff,

v.

Prigna Kanhukamwe MOSES; Loansource Funding, LLC.; American Brokers Conduit, an Assumed Business Name for American Home Mortgage Corporation; and Bank of America, N.A.; Deutsche Bank National Trust Company, as Trustee of American Home Mortgage Assets Trust, Series 2007-2; James C. Slight; and North American Specialty Insurance Company;, Defendants.

No. 080202316.  
May 9, 2012.

Claim not Subject to Mandatory Arbitration  
Jury Trial Demanded

**Second Amended and Supplemental Complaint (Elder Abuse, Fraud, Mortgage Broker Liability Per ORS 59.925, Breach of Contract, and Declaratory Relief (Quiet Title))**

Law Office of Erin Olson, P.C., [Erin K. Olson](#), OSB 934776, Attorney for Plaintiff, Trial Attorney:, [Erin K. Olson](#), OSB 93477, Law Office of Erin Olson, P.C., 2014 N.E. Broadway Street, Portland, OR 97232-1511, Phone: (503) 546-3150, Fax: (503) 548-4435, E-mail: [eolson@erinolsonlaw.com](mailto:eolson@erinolsonlaw.com).

Plaintiff alleges:

**PARTIES**

**1**

Plaintiff ZEL M. RAMSEY is a 68 year-old, widowed resident of Portland, Multnomah County, Oregon.

**2**

Defendant PRIGNA KANHUKAMWE MOSES (“MOSES”) is a 30 year-old female whose current residence is, on information and belief, San Diego, California.

**3.**

Defendant LOANSOURCE FUNDING, LLC, (“LOANSOURCE”) is a Washington limited liability corporation registered and doing business in Oregon as a duly-licensed mortgage broker pursuant to [ORS 59.840-59.980](#).

**4.**

Defendant AMERICAN BROKERS CONDUIT is a registered assumed business name for AMERICAN HOME MORTGAGE CORPORATION, a New York corporation registered and doing business in Oregon.

**5**

Defendant BANK OF AMERICA, N.A., is a national banking association organized under the laws of the United States and doing business in Oregon.

**6**

Defendant DEUTSCHE BANK NATIONAL TRUST COMPANY, as Trustee of AMERICAN HOME MORTGAGE ASSETS TRUST, SERIES 2007-2 (“DEUTSCHE BANK”), is an institutional investment manager located in California and doing business in Oregon.

**7.**

Defendant JAMES C. SLAIGHT (“SLAIGHT”) is a natural person residing in the State of Washington and the founding member of LOANSOURCE FUNDING, LLC.

**8.**

Defendant NORTH AMERICAN SPECIALTY INSURANCE COMPANY (“NASIC”) is a New Hampshire corporation. At all times relevant to the allegations in this complaint, NASIC was the mortgage broker bond carrier for LOANSOURCE, in accordance with [ORS 59.850](#).

**9.**

SLAIGHT was at all times relevant the sole, principal, and controlling member of LOANSOURCE.

**10.**

SLAIGHT should be held personally liable, jointly and severally, for PLAINTIFF's damages because:

(A) SLAIGHT was at all times relevant the sole member of LOANSOURCE and was solely responsible for supervising and controlling all of the business and affairs of LOANSOURCE;

(B) SLAIGHT personally and solely benefited financially from his own failure to provide adequate supervision of his employees and agents, at a risk to LOANSOURCE clients;

(C) SLAIGHT personally and solely benefited from his failure to protect LOANSOURCE by purchasing insurance to cover liability arising from actions or omissions of LOANSOURCE employees and agents;

(D) SLAIGHT personally and solely benefited from his noncompliance with Oregon statutes and regulations governing the obligations of mortgage brokers to screen and supervise loan originators in their employ or otherwise working under their state license, as further described in paragraph 31 herein;

(E) SLAIGHT personally and solely benefited from his failure to protect LOANSOURCE by purchasing insurance to cover liability arising from actions or omissions of LOANSOURCE employees and agents;

(F) SLAIGHT undercapitalized LOANSOURCE and LOANSOURCE is now insolvent, precluding LOANSOURCE's ability to make PLAINTIFF whole for actions done by LOANSOURCE employees and agents;

**11.**

As a result of SLAIGHT's improper conduct as alleged in paragraph 9, PLAINTIFF entered into the transaction with defendant MOSES as described in this complaint, which she would not otherwise have done.

**12.**

As a further result of SLAIGHT's improper conduct as alleged in paragraph 9, PLAINTIFF will be unable to recover against LOANSOURCE.

**13.**

Piercing LOANSOURCE's entity veil to reach SLAIGHT individually may be the only adequate and available remedy to repair PLAINTIFF's injury.

**FIRST CLAIM FOR RELIEF - ELDER FINANCIAL ABUSE (ORS 124.100 et seq.)**

**(Against Defendants MOSES, LOANSOURCE, and SLAIGHT)**

**14.**

PLAINTIFF realleges and incorporates herein paragraphs 1 - 3, 7, and 9 -13.

**15.**

At all times relevant, PLAINTIFF was a vulnerable person by virtue of being an **elderly** person as those terms are defined in [ORS 124.100](#).

**16.**

In March, 2006, PLAINTIFF contacted defendant LOANSOURCE in response to an advertisement placed in a local publication by LOANSOURCE offering assistance to homeowners needing financial assistance. At the time she contacted LOANSOURCE, PLAINTIFF was in default on her mortgage, having failed to make 3-4 payments, and was in fear of losing her home of more than 40 years.

**17.**

LOANSOURCE sent defendant MOSES, a loan originator employed by LOANSOURCE, to PLAINTIFF's home, where PLAINTIFF completed a loan application and related paperwork and presented it to MOSES, who at that time was acting within the course and scope of her duties as a loan originator employed by LOANSOURCE.

**18.**

MOSES, still acting within the course and scope of her duties as a loan originator employed by LOANSOURCE, opened an escrow account with Fidelity National Title Company of Oregon for the purpose of assisting PLAINTIFF in refinancing her mortgage loan.

**19.**

Knowing PLAINTIFF was an **elderly** person, defendant MOSES thereafter wrongfully took PLAINTIFF's residential real property at 1415 N.E. Going Street, Portland, Multnomah County, Oregon, by causing PLAINTIFF to believe PLAINTIFF was ineligible for refinancing or a reverse mortgage, by creating in PLAINTIFF a fear of imminent foreclosure and eviction, by leading PLAINTIFF to believe she had no feasible alternative to the sale of her residence to defendant MOSES, by promising PLAINTIFF she could continue to reside in the aforementioned residential real property in exchange for monthly payments of \$990.00, by promising PLAINTIFF orally and then later in writing that PLAINTIFF could repurchase the aforementioned residential real property at a later date, and by representing the aforementioned residential real property to be worth far less than its actual value.

**20.**

Defendant LOANSOURCE, through its agents and employees operating within the course and scope of their employment with LOANSOURCE, knowing PLAINTIFF to be an **elderly** person, aided, abetted, and facilitated the acts of defendant MOSES by facilitating the transfer of title to the real property identified in the preceding paragraph from PLAINTIFF to defendant MOSES by brokering loans to MOSES to purchase the property.

**21.**

When assisting MOSES, its employee, in purchasing PLAINTIFF's real property by arranging for mortgage loans for MOSES, LOANSOURCE knew that that the purchase was for substantially less than the property was worth because LOANSOURCE had ordered and obtained an appraisal for the property that showed its value as \$278,000 as-of March, 2006. LOANSOURCE further knew that PLAINTIFF was engaging in the transfer of her residence to MOSES under economic duress because PLAINTIFF had informed LOANSOURCE of her circumstances when contacting LOANSOURCE for assistance. LOANSOURCE further knew that PLAINTIFF was without the benefit of independent legal or other professional advice in making her decision to sell her property to MOSES for substantially less than its value.

**22.**

LOANSOURCE further aided, abetted, and facilitated MOSES's financial **abuse** of PLAINTIFF by concealing MOSES's employment as a loan originator for LOANSOURCE and her true income when tendering MOSES's loan application to prospective lenders. In doing so, LOANSOURCE knew that prospective lenders would not approve a loan if the true facts and circumstances of MOSES's employment and income were known.

**23.**

The circumstances known to LOANSOURCE were such that a reasonable person should have known of MOSES's financial **abuse** of PLAINTIFF, and despite this knowledge, LOANSOURCE nonetheless assisted MOSES in the **abuse**.

**24.**

As a result of the actions of defendants MOSES and LOANSOURCE, PLAINTIFF has suffered inconvenience, mental suffering, emotional distress, humiliation, loss of comfort, interference with her normal and usual activities, and mistrust in the intentions of others, and she demands judgment in her favor against each defendant pursuant to ORS 124.100(2) for economic damages in an amount of \$177,145.36, the exact amount to be determined at trial; non-economic damages of \$50,000; treble damages for economic and non-economic damages; interest at the legal rate on economic and non-economic damages from the date(s) of abuse; reasonable attorney fees pursuant to ORS 124.100(2)(c); costs and disbursements incurred by PLAINTIFF; and equitable relief pursuant to ORS 124.120 including, but not limited to, a declaration that defendant MOSES has no rights, title, or interest in the residential property located at 1415 N.E. Going Street, in Portland, Multnomah Count Oreon

**SECOND CLAIM FOR RELIEF -FRAUD**

**(Against Defendant MOSES)**

**25.**

Plaintiff realleges and incorporates by reference paragraphs 1 and 2.

**26.**

Defendant MOSES made the following false representations, or failed to disclose the following material facts she was obligated to disclose, to PLAINTIFF to induce PLAINTIFF to transfer her interest in the real property located at 1415 N.E. Going Street, Portland, Multnomah County, Oregon, MOSES:

(A) PLAINTIFF was ineligible for a reverse mortgage without casf \$10,000

(B) PLAINTIFF was ineligible for refinancing of her real property;

(C) PLAINTIFF faced imminent foreclosure and eviction with no feasible alternative other than the sale of her residence to defendant MOSES;

(D) PLAINTIFF could continue to reside in the aforementioned residential real property in exchange for monthly payments of \$990.00;

(E) PLAINTIFF could repurchase the aforementioned residential real property pursuant to a written agreement entered into by PLAINTIFF and MOSES;

(F) The value of PLAINTIFF's residential real property was substantially less than its actual value; and

(G) MOSES was perpetrating a foreclosure rescue scam upon PLAINTIFF in order to defraud PLAINTIFF of her equity in her property.

**27.**

Defendant MOSES knew the representations alleged in paragraph 26 were false, and the omissions were material, and she made those representations and omitted those material facts in order to induce PLAINTIFF to transfer the property to her at far less than its actual value.

**28.**

PLAINTIFF relied on defendant MOSES's false representations and material omissions, and would not have engaged in the transaction in which she transferred title of her home to defendant MOSES had she known any one of the representations made by defendant MOSES as set forth in paragraph 26 were false or that MOSES was omitting the material facts set forth therein.

**29.**

As a result of defendant MOSES's fraudulent misrepresentations, she is liable to PLAINTIFF for:

(A) \$177,145.36, representing the difference in the current market value of the residential real property located at 1415 N.E. Going Street, Portland, Multnomah County, Oregon, which is \$349,000, and the \$195,000.00 consideration paid to PLAINTIFF, less the net amount received by PLAINTIFF in the transaction, \$24,907.81; plus \$21,780.00, representing the monthly payments made by plaintiff to MOSES from May 1, 2006 through February 1, 2008, in reliance on the false and fraudulent representations made by MOSES, for a total of \$198,925.36 in economic damages;

(B) Prejudgment interest on the amount alleged in the prior subparagraph from April 22, 2006 to the present;

(C) \$150,000 in general damages; and

(D) Statutory fees and costs, including an enhanced prevailing party fee.

**30.**

MOSES showed a reckless and outrageous indifference to a highly unreasonable risk of harm and acted with a conscious indifference to the welfare of others. PLAINTIFF may move to amend this complaint to seek punitive damages.

**THIRD CLAIM FOR RELIEF - BROKER LIABILITY (ORS 59.925)**

**(Against LOANSOURCE, SLAIGHT, and NASIC)**

**31.**

PLAINTIFF realleges paragraphs 8,14-23, and 26-29.

**32.**

LOANSOURCE, SLAIGHT, and NASIC are liable to PLAINTIFF pursuant to [ORS 59.925](#) on the following grounds:

(A) LOANSOURCE failed to account to PLAINTIFF, an interested person, for all money received in connection with the mortgage loans brokered for MOSES. PLAINTIFF was an interested person inasmuch as the loans brokered to MOSES to facilitate her purchase of PLAINTIFF's residence were the direct outgrowth of PLAINTIFF's contact with LOANSOURCE for mortgage brokering services;

(B) LOANSOURCE failed to supervise and diligently control the activities of defendant MOSES and of Deborah Roper, another loan originator employed by LOANSOURCE who acted within the course and scope of her duties as a loan originator in assisting MOSES to obtain the mortgage loan financing that enabled MOSES to purchase PLAINTIFF's property;

(C) LOANSOURCE further demonstrated negligence and incompetence in performing acts for which LOANSOURCE is required to hold a license as an Oregon mortgage broker, including the hiring and supervision of loan originators, the review of loan files to detect irregularities or **abuses**, and the presentation to lenders of loan applications containing reasonably accurate information;

(D) LOANSOURCE engaged in unfair and unethical practices in connection with its aiding, abetting, and facilitation of MOSES's purchase of PLAINTIFF's residence at substantially less than market value and through the presentation to lenders of loan applications containing materially false information about MOSES's employment, income, and residence; and

(E) LOANSOURCE, through its agents and employees and in connection with the conduct of its mortgage broker business:

(1) employed a scheme to defraud PLAINTIFF, as described in paragraphs 14-23 and 26-29;

(2) knowingly made untrue statements of material facts, or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, as described in paragraphs 14-23 and 26-27; and

(3) engaged in acts which operated as a fraud and deceit upon PLAINTIFF, as described in paragraphs 14-23 and 26-29.

**33.**

As a result of LOANSOURCE's acts and omissions as set forth in paragraph 32, LOANSOURCE and SLAIGHT are liable to PLAINTIFF for damages in the amount of \$177,145.36, representing the difference in the market value of the residential real property located at 1415 N.E. Going Street, Portland, Multnomah County, Oregon, at the time of the commencement of this lawsuit, which was \$349,000, and the \$195,000.00 consideration paid to PLAINTIFF, less the net amount received by PLAINTIFF in the transaction, \$24,907.81, plus PLAINTIFF's statutory fees and costs, including reasonable attorney fees pursuant to [ORS 59.925\(8\)](#).

**34.**

As a result of LOANSOURCE's liability to PLAINTIFF pursuant to [ORS 59.925](#) as alleged in paragraphs 31-33, NASIC is liable to PLAINTIFF for the full amount of LOANSOURCE's \$50,000 mortgage broker bond.

**FOURTH CLAIM FOR RELIEF -BREACH OF CONTRACT**

**(Against NASIC)**

**35.**

PLAINTIFF realleges and incorporates herein paragraphs 31-34.

**36.**

PLAINTIFF is the third-party beneficiary of the contract for a mortgage broker bond between LOANSOURCE and NASIC, which contract states in relevant part that if LOANSOURCE or its agents or employees violate any provisions of [ORS 59.840](#) through [59.980](#) and fail to pay all damages suffered by any person due to the violation(s) of [ORS 59.840](#) through [59.980](#), NASIC is obligated to pay any damages suffered as a result of the violations up to \$50,000.

37.

PLAINTIFF suffered damages in excess of \$50,000 as a result of LOANSOURCE's violation of provisions of [ORS 59.840](#) through [59.980](#), as alleged in paragraph 32, and LOANSOURCE has failed to pay any of PLAINTIFF's damages.

38.

On or about April 9, 2008, PLAINTIFF sent a demand for payment in the amount of \$50,000 to NASIC. NASIC acknowledged receipt of PLAINTIFF's demand by letter dated June 14, 2008, but has failed to make payment.

39.

NASIC is liable to PLAINTIFF for \$5000.

**FIFTH CLAIM FOR RELIEF - DECLARATORY JUDGMENT ([ORS 28.010 et se.](#))**

**(Against MOSES, AMERICAN BROKERS CONDUIT, BANK OF AMERICA, N.A., and DEUTSCHE BANK)**

40.

PLAINTIFF realleges and incorporates herein paragraphs 1, 2, 4, 5, 6, 15-23, d 26-28

41.

PLAINTIFF'S agreement with MOSES was the product of fraud, and PLAINTIFF is entitled to set aside the deed purporting to transfer the property at 1415 N.E. Going Street, Portland, Multnomah County, Oregon, 97211 to defendant MOSES, which property is further described as East of Lots 4, 5, and 6, Block 11, HIGHLAND, in the City of Portland, County of Multnomah, and State of Oregon.

42.

On or about January 2, 2007, MOSES obtained a loan in the amount of \$285,000 from AMERICAN BROKERS CONDUIT which was memorialized by a promissory note secured by a deed of trust that purported to grant and convey to a trustee, with power of sale, the property described in paragraph 41.

43.

Upon information and belief, AMERICAN BROKERS CONDUIT subsequently assigned its rights and obligations under the note and deed of trust described in paragraph 42 to another party, who then assigned all rights and obligations under the note and deed of trust to DEUTSCHE BANK, who currently claims to hold and own all rights and obligations under the note and deed of trust described in paragraph 42.

44.



On or about June 8, 2007, MOSES obtained a \$30,000 home equity line of credit from BANK OF AMERICA, N.A., against the property described in paragraph 41. The Home Equity Line of Credit Agreement executed by MOSES and BANK OF AMERICA, N.A., was secured by a trust deed that purported to grant and convey to a trustee, with power of sale, the property described in paragraph 41, up to the amount owed to BANK OF AMERICA, N.A. The line of credit was fully advanced to MOSES by BANK OF AMERICA, N.A.

**45.**

MOSES defaulted on her obligations under her agreements with AMERICAN BROKERS CONDUIT and BANK OF AMERICA, N.A.

**46.**

In May, 2008, an agent purporting to act for the benefit of AMERICAN BROKER'S CONDUIT commenced foreclosure proceedings against the property described in paragraph 41.

**47.**

In early 2009, DEUTSCHE BANK contacted PLAINTIFF's counsel through agents and asserted that it, and not AMERICAN BROKERS CONDUIT, is the real party in interest as assignee and owner of all rights and obligations under the note and deed of trust described in paragraph 42.

**48.**

PLAINTIFF is entitled to set aside MOSES's transfers of interests in the property located at 1415 N.E. Going Street, Portland, Multnomah County, Oregon, to defendants AMERICAN BROKERS CONDUIT and BANK OF AMERICA, N.A., and any subsequent assignments or conveyances by those entities to others including DEUTSCH BANK, because the interests which MOSES purported to convey exceeded MOSES's interests in the property, and therefore were not hers to convey.

**49.**

PLAINTIFF is further entitled to set aside MOSES's transfers of interests in the property located at 1415 N.E. Going Street, Portland, Multnomah County, Oregon, to defendants AMERICAN BROKERS CONDUIT and BANK OF AMERICA, N.A., because those defendants had constructive notice of PLAINTIFF's interest in the property since PLAINTIFF had lived in the property openly and notoriously, making improvements and performing acts that would cause a reasonable and prudent person to investigate the title to the property prior to contracting to obtain an interest therein.

**50.**

Had defendants AMERICAN BROKERS CONDUIT and BANK OF AMERICA, N.A. investigated the title to the property located at 1415 N.E. Going Street, Portland, Multnomah County, Oregon, they would have learned of the fraud perpetrated upon PLAINTIFF and PLAINTIFF's continued interest in the property, and further would have learned that MOSES had never resided in, nor intended to reside in, the property at 1415 N.E. Going Street, as she affirmatively stated in her loan application materials.

**51.**

If DEUTSCHE BANK is owner and assignee of AMERICAN BROKERS CONDUIT's interest in the property described in paragraph 41, then DEUTSCHE BANK has no greater rights or title to the property than AMERICAN BROKERS CONDUIT, and moreover, was on inquiry notice of PLAINTIFF's interest because had DEUTSCHE BANK investigated the title, they, too, would have learned of the fraud perpetrated upon PLAINTIFF and PLAINTIFF's continued interest in the property, and further would have learned that MOSES had never resided in, nor intended to reside in, the property at 1415 N.E. Going Street, as she affirmatively stated to AMERICAN BROKERS CONDUIT in her loan application materials.

**52.**

PLAINTIFF is entitled to a judgment declaring her to be sole owner in fee simple of the real property at 1415 N.E. Going Street, Portland, Multnomah County, Oregon, subject to an equitable lien in the amount of \$140,585.71, which was her mortgage balance as-of April 21, 2006.

**53.**

PLAINTIFF has no plain, speedy or adequate remedy at law.

**PRAYER**

WHEREFORE, PLAINTIFF prays for:

1. On the First Claim for Relief for **Elder** Financial **Abuse** against defendants MOSES, LOANSOURCE FUNDING, SLAIGHT, and each of them:

- (a) Economic damages in an amount of \$177,145.36, the exact amount to be determined at trial;
- (b) Non-economic damages of \$50,000;
- (c) Treble damages for economic and non-economic damages;
- (d) Interest at the legal rate on economic and non-economic damages from the date(s) of **abuse**;
- (e) Reasonable attorney fees pursuant to [ORS 124.100\(2\)\(c\)](#);
- (f) Costs and disbursements incurred by PLAINTIFF; and
- (f) Equitable relief pursuant to [ORS 124.120](#) including, but not limited to, a declaration that defendant MOSES has no rights, title, or interest in the residential property located at 1415 N.E. Going Street, in Portland, Multnomah County, Oregon.

2. On the Second Claim for Relief for Fraud against defendant MOSES:

- (a) \$198,925.36 in economic damages, the exact amount to be determined at trial;
- (b) Prejudgment interest on the item alleged in the prior subparagraph from April 22, 2006 to the present;
- (c) \$150,000 in non-economic damages;

(d) Statutory fees and costs, including an enhanced prevailing party fee; and

(e) Such other and further relief as the Court deems appropriate.

3. On the Third Claim for Relief for Mortgage Broker Liability ([ORS 59.925](#)) against defendants LOANSOURCE, SLAIGHT, NASIC, and each of them:

(a) \$177,145.36 in economic damages, except as to NASIC, from whom PLAINTIFF seeks \$50,000.00 in economic damages;

(b) Reasonable attorney fees pursuant to [ORS 59.925\(8\)](#); and

(c) Statutory fees, costs, and disbursements.

4. On the Fourth Claim for Relief for Breach of Contract against defendant NASIC:

(a) \$50,000.00 in economic damages; and

(b) Statutory fees, costs, and disbursements.

5. On the Fifth Claim for Relief for Declaratory Relief pursuant to [ORS 28.020](#) against defendants MOSES, AMERICAN BROKERS CONDUIT, BANK OF AMERICA, N.A., and DEUTSCHE BANK:

(a) Judgment declaring PLAINTIFF to be sole owner in fee simple of the real property at 1415 N.E. Going Street, Portland, Multnomah County, Oregon, subject to an equitable lien in the amount of \$140,585.71; and

(b) Such other and further relief as the Court deems appropriate.

Dated this 11<sup>th</sup> day of May, 2009.