

2013 WL 1346466 (Or.Cir.) (Trial Pleading)
Circuit Court of Oregon.
Multnomah County

Virginia SHADWICK, Plaintiff(s),

v.

JAMES ROYCE INVESTMENTS, LLC, a domestic limited liability company, and Denny J. Miller, Defendant(s).

No. 130303608.
March 12, 2013.

Claims of \$201,763.35

Fee authority: ORS 21.160(1)(c)

Complaint Breach of Contract Elder Abuse Specific Performance

Kerry Chipman OSB 79024, Attorney for Plaintiff.

Plaintiff alleges as follows:

COMMON FACTS

1.

At all times material herein, plaintiff was and is an adult resident of Multnomah County, Oregon: Defendant James Royce Investments, LLC ("JRI") was and is a domestic limited liability company, authorized to do business in the State of Oregon and defendant Denny J. Miller ("Miller") was, at the time of the transactions herein, an adult resident of Washington County, Oregon and is now an adult resident of Clark County, Washington. **All of the transactions alleged to have occurred herein took place in Multnomah County, Oregon. At all times material herein, defendants James Royce Investments, LLC and Denny J. Miller were acting jointly and severally.**

2.

On or about May 11, 2005, defendant JRI, acting through defendant Miller, its managing member, purchased real property known as 2905 SE 57th Ave, Portland OR 97206 from plaintiff, promising to pay to plaintiff the sum of \$198,339.37.

3.

On or about November 16, 2005, defendant JRI, acting through defendant Miller, its managing member, executed a promissory note and trust deed in favor of plaintiff in the sum of \$90,495.72, with interest at 5% per annum and payments of \$850 per month from the date of the note until paid in full. The trust deed granted plaintiff a security interest in the property known as 2905 SE 57th Ave, Portland OR 97206 which plaintiff had previously conveyed to defendants, to secure the payment of part of the purchase price referenced above. The note was payable in full by May 10, 2017. On information and belief, the note provided for an attorney fee award to the prevailing party in the event of litigation over the note.

4.

On or about November 8, 2006, defendant JRI, acting through defendant Miller, its managing member, executed a promissory note and trust deed in favor of plaintiff in the sum of \$83,192.02 with interest at 5% per annum and payments of \$850 per month from the date of the note until paid in full. The trust deed granted plaintiff a security interest in property known as 1605 18th Street NE, Salem, Oregon, 97301 and described as lot 22, block 2, North 17th Street Addition, City of Salem, County of Marion, State of Oregon, to secure the payment of the note. The note was payable in full by May 10, 2035. On information and belief, the note provided for an attorney fee award to the prevailing party in the event of litigation over the note.

5.

On information and belief, defendant Miller told plaintiff he would record the second trust deed. In reliance on that representation, plaintiff did not record that instrument. Plaintiff was not given the original instrument to record. Defendant Miller did not record that trust deed in the Marion County property records.

6.

On or about March 10, 2010, defendant Miller provided an amortization schedule to plaintiff showing a principal amount owed to plaintiff as of that date of \$67,254.45. Thereafter, defendants paid plaintiff \$450 per month until January 2013, when they paid \$250. No payments have been made since then.

7.

On information and belief, the notes referenced above allow acceleration of the debt in the event of default. Plaintiff has declared the debt in default and exercised her option to accelerate the debt.

FIRST CLAIM FOR RELIEF-BREACH OF CONTRACT

8.

Defendants owe plaintiff the sum of \$67,254.45, less credit for any payments made since March 10, 2010. Plaintiffs have been damaged in that amount as a result of defendants breach of contract alleged above.

9.

As a result of defendant's breach of the contract alleged above, plaintiff has been damaged in the amount of \$67,254.45, less credit for any payments made since March 10, 2010. plus interest at 5% per annum from the date of the last payment until repaid in full.

10.

Plaintiff is entitled to her reasonable attorney fees pursuant to the promissory note.

SECOND CLAIM FOR RELIEF-SPECIFIC PERFORMANCE

11.

Because she lacks the original instrument, plaintiff is unable to record the Marion County trust deed referenced above. Plaintiff has fully complied with the terms of the contract outlined above. Plaintiff has no adequate remedy at law.

12.

Defendant should be required to provide plaintiff with a recordable original trust deed so that she may record her interest in the property or, alternatively, a judgment declaring plaintiffs security interest in that property.

THIRD CLAIM FOR RELIEF-ELDER ABUSE

13.

Plaintiff was over 65 years old at the time the transactions alleged above occurred. Defendants' failure to record the Marion County trust deed and the other actions of defendants alleged above constitute a wrongful taking of plaintiffs property.

14.

Defendants have told plaintiff that they will be filing bankruptcy. Because plaintiff is currently the holder of an unsecured debt, her debt will be discharged and she may receive no distribution. Defendants' wrongful and intentional failure to secure this debt as they had promised will result in plaintiff suffering economic damages in the amount of \$67,254.45, less credit for any payments made since March 10, 2010, plus interest at 5% per annum from the date of the last payment until repaid in full.

15.

Plaintiff is entitled to three times her economic damages pursuant to [ORS 124.100\(2\)\(a\)](#) or \$500, whichever amount is greater, and her reasonable attorney fees pursuant to [ORS 124.100\(2\)\(c\)](#).

WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, as follows:

First Claim for Relief: the sum of \$67,254.45, less credit for any payments made since March 10, 2010; interest at 5% per annum from the date of the last payment until repaid in full; her reasonable attorney fees; and her costs and disbursements herein.

Second Claim for Relief: a judgment requiring defendants to provide an original trust deed on the Marion County property or, alternatively, a judgment declaring plaintiffs security interest in that property; and her costs and disbursements herein.

Third Claim for Relief: three times the sum of \$67,254.45, less credit for any payments made since March 10, 2010, or \$500, whichever is greater; interest at 5% per annum from the date of the last payment until repaid in full; her reasonable attorney fees; and her costs and disbursements herein.

DATED: March 11, 2013