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4 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
5 IN AND FOR THE COUNTY OF CLALLAM

6 Actual Name Deleted and Actual Name
7 Deleted, husband and wife

8 Plaintiffs,

9 v.

10 Actual Name Deleted,
11 a single man,

12 Defendant.

No.

**COMPLAINT FOR MISREPRESENTATION
AND DAMAGES**

13 COME NOW Plaintiffs, by and through their Attorney, Chuck E. Marunde, and for
14 claims against Defendant allege and aver upon good information and belief the following:

15 **I. PLAINTIFFS - JURISDICTION**

16 1.1 Plaintiffs Actual Name Deleted and Actual Name Deleted are husband and wife,
17 and at all times relevant hereto have resided in Clallam County, Washington.

18 **II. DEFENDANT - JURISDICTION**

19 2.1 Defendant Actual Name Deleted is believed to be a single man, and at all times
20 relevant hereto has resided in Clallam County, Washington.

21 **III. BASIS OF COMPLAINT - REAL ESTATE TRANSACTION**

22 3.1 The Defendant signed a Purchase and Sale Agreement on August 10, 1996, for the
23 sale of real estate located in Clallam County, to-wit:

24 THE EAST HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST
25 QUARTER OF THE SOUTHWEST QUARTER, SECTION 22, TOWNSHIP 30
26 NORTH, RANGE 4 WEST, W.M., CLALLAM COUNTY, WASHINGTON; EXCEPT
27 THE NORTH 30 FEET THEREOF CONVEYED TO CLALLAM COUNTY, BY
28 INSTRUMENT RECORDED UNDER AUDITOR'S FILE NO. 194411, AND EXCEPT
A STRIP OF LAND OF VARYING WIDTH ALONG THE EAST LINE THEREOF
CONVEYED TO CLALLAM COUNTY BY INSTRUMENT RECORDED UNDER

1 AUDITOR'S FILE NO. 238104; SITUATE IN THE COUNTY OF CLALLAM, STATE
2 OF WASHINGTON.

3 A copy of said Purchase and Sale Agreement is attached as Exhibit "A" and incorporated herein
4 by this reference.

5 3.2 The Defendant as seller also completed a Real Property Transfer Disclosure
6 Statement ("Disclosure Statement") signed and dated by Defendant on August 10, 1996, a copy
7 of which is attached as Exhibit "B" and incorporated herein by this reference. That seller's
8 disclosure represented that there was no problem with the heating system. Section 5 of the
9 Disclosure Statement includes this question:

10 5. SYSTEMS AND FIXTURES

11 If the following systems or fixtures are included with the transfer, do they
12 have any existing defects:

13 G. Heating and cooling systems

14 The Defendant put an "x" in the box for "No." The Disclosure Statement includes and
15 emphasizes with capital letters this clause, "DISCLOSURES CONTAINED IN THIS FORM
16 ARE PROVIDED BY THE SELLER ON THE BASIS OF SELLER'S ACTUAL KNOWLEDGE
17 OF THE PROPERTY AT THE TIME OF DISCLOSURE."

18 3.3 The transaction closed on or about October 1, 1997. Immediately thereafter, the
19 Plaintiffs started having problems with the heating system. The boiler or heating unit ("boiler")
20 was running improperly, and it became necessary to call a serviceman to examine the boiler. On
21 or about November 7, 1997, a serviceman from Pettit Oil Company examined the boiler and
22 informed the Plaintiffs that the boiler was either in disrepair or needed to be replaced. A copy of
23 that inspection from Pettit Oil Company is attached as Exhibit "C" and incorporated herein by
24 this reference.

25 3.4 The serviceman also told Plaintiffs at that time that he had inspected the boiler at
26 the request of the previous owner, the Defendant in this action, on or about July 2, 1997, about
27 three months prior to closing and only about one month before the Defendant signed the sale
28 agreement with Plaintiffs. A copy of the July 2, 1997 Pettit Oil Company inspection and bill is

1 attached as Exhibit "D" and incorporated herein by this reference.

2 3.5 Included in that July inspection by Pettit Oil Company is the following language:

3 Boiler (overall) is in bad shape. Needs new combustion liner, blast tube & end
4 cone. Face plate warped and leaking small amount of flue gas. Boiler leaking
5 water when cold. Transformer weak. Needs replacement. Boiler was completely
6 plugged with suet (cleaned out). Leaking fitting on return lines tightened. Fuel
7 system extremely dirty (no call back). Recommend new boiler. Service Tech
8 R.M. Murphy.

9 It is apparent that Defendant had actual knowledge of the defective boiler at the time he signed a
10 sale agreement with Plaintiffs. Defendant concealed that knowledge and misrepresented it in the
11 Disclosure Statement. Defendant did not reveal his knowledge of the defective boiler to the
12 Plaintiffs.

13 3.6 Plaintiffs hired Pettit Oil Company to replace the boiler at a cost of \$3,977.79.
14 Plaintiffs' costs also include the first inspection by Pettit Oil Company in the amount of \$107.90.
15 Plaintiffs have incurred attorney's fees and costs in commencing this suit, because Defendant
16 refused to respond to written requests for reimbursement.

17 3.7 The Purchase and Sale Agreement provided for attorney's fees and costs to the
18 prevailing party of a suit for breach of contract. Plaintiff is entitled to reasonable attorney's fees
19 and costs against Defendant.

20 **IV. PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs, having asserted claims for relief now pray for judgment
22 against Defendant as follows:

- 23 1. For damages suffered by Plaintiffs as a result of Defendant's misrepresentation;
- 24 2. For reasonable attorney's fees and legal costs as authorized by paragraph 21 of the
25 Purchase and Sale Agreement; and
- 26 4. For such other and further relief as the Court may deem just and equitable in the
27 premises.

28 Dated this 11th day of February, 1998.

