



Mark DeCoursey <mhdecoursey@gmail.com>

Re: 8d admissions text

1 message

Mark DeCoursey <mhdecoursey@gmail.com>

Sat, Jun 14, 2008 at 4:52 PM

To: "Volbeda, M. Bruce" <VolbedaB@lanepowell.com>

Bruce, this material should appear in our reply to their response to our motions next week. That should weigh heavily in our SJM and bring a permanent change in the case.

On Sat, Jun 14, 2008 at 3:13 PM, Volbeda, M. Bruce <VolbedaB@lanepowell.com> wrote:

Mark,

This 8d material looks great--great catch!

Could you supply the missing titles of pleadings highlighted below? I don't see them on our electronic system and I'd prefer not to dig through CJ's office when she's not here, if I can help it.

(If you already have scans or PDFs of the highlighted docs, I'd welcome those, too. You already sent me the "Windermere...Answer.")

Bruce

A. Facts Admitted by the Windermere Defendants Pursuant to CR 8(d)

In Windermere Real Estates/S.C.A., Inc., Stickney, Bacon and Connolly's Answer and Affirmative Defenses to Third Amended Answer to Plaintiff, Counterclaim, Cross-Claim, and Third Party Claims, the Windermere Defendants failed to deny the following averments in the DeCourseys' Complaint (((need actual title))) ("DeCourseys' Complaint"), and have therefore admitted the following facts pursuant to CR 8(d) ("Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading.").

- "Third party defendant Windermere and its brokers, third party defendants Bacon and Connolly, knew or should have known about Stickney's activities, and they derived benefit therefrom. They are liable for the acts and omissions of their agent Stickney through established the legal principle respondeat superior, through corporate responsibility RCW 9A.08.030(2), and through the specific statutes applicable to real estate, RCW 18.85 and 18.86." DeCourseys' Complaint at ¶ 220.
- "Brokers Connolly and Bacon had general and specific statutory and other duties to monitor and know of Stickney's activity. DeCourseys were third party beneficiaries of the proper discharge of those duties. DeCourseys were damaged by said third party defendants' breach of those duties in amounts to be proved at time of trial." Id. at ¶ 221.
- "Third party defendants Windermere and its Bacon and Connolly knew or should have known of Stickney's marketing approach and activities and are, jointly and severally, vicariously liable for the

acts and omissions of Stickney which resulted in damages to DeCourseys." Id. at ¶ 225.

- "Windermere actively promoted Stickney as a real estate agent and his relationship to [REDACTED] by providing referrals to Stickney from the Windermere web page." Id. at ¶ 226.

Similarly, in _____ (((need title of Stickney's Answer))), Paul Stickney failed to deny the following averments in the DeCourseys' Complaint, and has therefore admitted the following facts pursuant to CR 8(d) ("Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading.").

- "As hired fiduciary, Stickney is liable to DeCourseys for damages they suffered through Stickney's deliberate or negligent breach of duty in the exercise of his role as a licensed real estate agent, some of which are enumerated in RCW 18.86.030." DeCourseys' Complaint at ¶ 217.
- "Third party defendant Stickney violated real estate statutes by failing to disclose his conflict of interest and committed adverse and/or detrimental acts as a buyer's agent to DeCourseys, in violation of RCW 18.86.050(1) (a) and (b)." Id. at ¶ 218.
- "Stickney, as a buyer's agent, wrongfully induced trust and detrimental reliance upon Plaintiff VEMIS, crossclaim defendant [REDACTED], and third party defendant [REDACTED] which entities harmed DeCourseys." Id. at ¶ 219.
- "On information and belief, Stickney's direct [involvement] with [REDACTED] and activities undertaken to promote business for and on behalf of [REDACTED] and/or Windermere, breached duties owed to third party Plaintiffs DeCoursey, resulting in damages to the DeCourseys in amounts to be proved at time of trial." Id. at ¶ 223.
- "On information and belief, Stickney's improper activities, undisclosed relationship and agency in promoting [REDACTED], and use of his relationship with [REDACTED] as a means to sell real property extended over years and concerned multiple transactions having a public impact." Id. at ¶ 224.

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