

FILED
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Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

SEWELL & MARSH, LLC, a Washington
limited liability company,

Plaintiff,

vs.

HANGMAN HILLS WATER DISTRICT #15,

Defendant.

No. **16204353-9**

COMPLAINT

COMES NOW the Plaintiff, SEWELL & MARSH, LLC, by and through its attorney,
Elizabeth A. Tellessen of Winston & Cashatt, Lawyers, a Professional Service Corporation, and
hereby complains and alleges as follows:

1.0 PARTIES

1.1 Plaintiff SEWELL & MARSH, LLC is limited liability company organized
under the laws of the State of Washington.

1.2 Defendant HANGMAN HILLS WATER DISTRICT #15 is a Washington
municipality existing under the laws of the State of Washington and doing business in Spokane
County, Washington.

COMPLAINT
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Winston & Cashatt
A PROFESSIONAL SERVICE CORPORATION
Bank of America Financial Center
601 West Riverside Avenue, Suite 1900
Spokane, Washington 99201-0695
(509) 838-6131

1 **2.0 JURISDICTION AND VENUE**

2 2.1 Plaintiff reaffirms and incorporates section 1 this complaint.

3 2.2 This Court has original jurisdiction over the above entitled matter pursuant to
4 RCW 4.12.025.

5 2.3 This Court has personal jurisdiction over the defendant and venue is proper in
6 Spokane County, Washington, pursuant to RCW 4.12.025.

7 2.4 Plaintiff served the standard tort claim form on Defendant on July 25, 2016, as
8 required by chapter 4.96 RCW. The requisite time period has passed, and Defendant has not
9 resolved the claim.
10

11 **3.0 FACTUAL BACKGROUND**

12 3.1 Plaintiff reaffirms and incorporates sections 1 and 2 of this complaint.

13 3.2 Plaintiff, SEWELL & MARSH, LLC, purchased real property located at 2620 E.
14 Player Drive (herein "Property") in Spokane, Washington on December 14, 2015.

15 3.3 In May of 2016, Matthew Sewell, agent of SEWELL & MARSH, LLC,
16 contacted HANGMAN HILLS WATER DISTRICT #15 to have the water turned on at the
17 Property. Mr. Sewell was instructed to contact Spokane County Water District # 3, which was
18 acting as a billing servicer for HANGMAN HILLS WATER DISTRICT #15.
19

20 3.4 Mr. Sewell was informed of an outstanding balance due from the previous
21 homeowners totaling \$5,730.39. Full payment of the past due balance was required before the
22 water would be turned back on. The water on the Property had been shut off since April of
23 2012.
24

1 3.5 On information and belief, and according to the billing statements, the
2 outstanding balance originates from a \$28.00 per month "Hangman-Single Family" charge, a
3 monthly Excise Tax, and multiple "Hangman Penalties" which had been compounded on each
4 billing cycle from March 2012 to April 2016. These charges are collectively referred to in this
5 complaint as the "Penalties."
6

7 3.6 SEWELL & MARSH, LLC was never billed for outstanding charges. SEWELL
8 & MARSH, LLC was informed that it did not receive a bill because Spokane County Water
9 District #3 was unsure of who owned the Property, despite SEWELL & MARSH, LLC's
10 information being listed on tax records.

11 3.7 SEWELL & MARSH, LLC was shocked by the excessive penalties, but was
12 compelled to pay the full balance in light of a pending sale of the property. Reluctantly,
13 SEWELL & MARSH, LLC paid the entire unpaid balance of \$5,730.39 on May 6, 2016.
14

15 3.8 On information and belief, and after a thorough review of the billing statements,
16 the Hangman Penalties result in an effective interest rate in excess of 530%, in extreme excess
17 of the statutorily allowed penalty of 10%, or the permitted interest rate.

18 3.9 On June 3, 2016, a demand letter was sent to HANGMAN HILLS WATER
19 DISTRICT #15 requesting reimbursement of the excessive penalty charges.
20

21 3.10 On July 26, 2016, a Standard Tort Claim form was served on registered agent
22 Ronald Cruse. SEWELL & MARSH, LLC brings this complaint after the mandatory 60-day
23 notice period required under RCW 4.96.020.
24

1 **4.0 FIRST CLAIM – VIOLATION OF 42 U.S.C. § 1983**

2 4.1 Plaintiff reaffirms and incorporates sections 1-3 of this complaint.

3 4.2 Defendant is a local government unit or municipality, thereby constituting a
4 “person” for the purposes of 42 U.S.C. § 1983.

5 4.3 Defendant had a duty to provide, and Plaintiff had a fundamental right to obtain,
6 essential water services from Defendant, and to not have that fundamental right impeded
7 without due process of law.

8 4.4 Defendant had a duty to provide, and Plaintiff had a fundamental right to obtain,
9 essential water services from Defendant, and to not have that fundamental right impeded
10 without equal protection under the laws.

11 4.5 Defendant deprived Plaintiff of that fundamental right under color of law.

12 4.6 Application of the Penalties constitutes a violation of RCW 57.08.081(3),
13 thereby depriving Plaintiff of its fundamental rights.
14

15 **5.0 SECOND CLAIM – UNJUST ENRICHMENT**

16 5.1 Plaintiff reaffirms and incorporates sections 1-4 of this complaint.

17 5.2 Plaintiff claims that the repeated application of the Penalties to the total of every
18 monthly billing cycle results in compounding interest in violation of the statutorily mandated
19 10% limit pursuant to RCW 57.08.081(3), resulting in unjust enrichment.
20

21 5.3 Defendant benefitted from application and collection of the Penalties.

22 5.4 Defendant received this benefit at the Plaintiff's expense.
23
24

1 5.5 The circumstances surrounding Defendant’s application of the Penalties make it
2 unjust for Defendant to retain the benefit.

3 **6.0 THIRD CLAIM – VIOLATION OF CONSUMER PROTECTION ACT**

4 6.1 Plaintiff reaffirms and incorporates sections 1-5 of this complaint.

5 6.2 Plaintiff claims the compounded penalties result in a usurious interest rate.

6 6.3 Plaintiff claims the application of the Penalties constitutes an unfair practice in
7 violation of chapter 19.86 RCW due to its egregious rate.

8 6.4 Defendant’s actions have the capacity to deceive a substantial portion of the
9 public.

10 6.5 Defendant’s actions were committed in trade or commerce.

11 6.6 Defendant’s actions affect the public interest, and have a high likelihood of
12 being repeated.

13 6.7 Defendant’s unfair or deceptive act caused injury to the Plaintiff’s property.

14 **7.0 FOURTH CLAIM – DECLARATORY JUDGMENT**

15 7.1 Plaintiff reaffirms and incorporates sections 1-6 of this complaint.

16 7.2 Plaintiff claims that the application of penalty charges are unfair and
17 unreasonable, thereby creating a result that is outside the purpose of RCW 57.08.081(3), and
18 warranting a court to determine whether the enactment and its application are arbitrary and
19 capricious in nature.
20

21 7.3 Plaintiff requests a judgment declaring the Penalties to be arbitrary and
22 capricious under chapter 7.24 RCW.
23
24

1 **8.0 DAMAGES**

2 8.1 Plaintiff reaffirms and incorporates sections 1-7 of this complaint.


3 8.2 Plaintiff has suffered damages, including overpayment of Penalties and delay in
4 selling the Property, up to \$10,000.00.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for judgment against the Defendant as follows:

- 7 1. For an award of actual and compensatory damages against HANGMAN HILLS
- 8 WATER DISTRICT #15 in an amount to be proven at trial;
- 9 2. For an award of treble damages under chapter 19.86 RCW;
- 10 3. For a judgment declaring the Penalties to be usurious, in violation of
- 11 Washington law, and arbitrary and capricious;
- 12 4. For an award of pre- and post-judgment interest as allowed by law;
- 13 5. For an award of attorneys' fees and costs as allowed under chapter 19.86 RCW,
- 14 chapter 4.84 RCW, and 42 U.S.C. §§ 1983, 1988; and
- 15 6. For such other and further relief as the Court deems just and equitable.

16 DATED this 14th day of November, 2016.

17 
 18 ELIZABETH A. TELLESSEN, WSBA No. 36732
 19 WINSTON & CASHATT, LAWYERS, P.S.
 20 Attorneys for Plaintiff

