

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202 (720) 865-8301	DATE FILED: September 25, 2018 12:08 PM FILING ID: E90096E5C8312 CASE NUMBER: 2018CV33560
Plaintiff: MARVIN RANDELL, an individual and PATRICIA TAYLOR-RANDELL, an individual v. Defendant: CITY AND COUNTY OF DENVER a political subdivision of Colorado a body politic, et al	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p style="text-align: center;">Case Number:</p> <p style="text-align: center;">Div.:</p>
Joseph G. Webb, Atty. No. 21425 Webb Law Group, LLC 925 S. Niagara St., #240 Denver, Colorado 80224-1604 Phone Number: 303-861-5500 Fax Number: 303-942-3682 joe@webblawllc.com	
VERIFIED COMPLAINT AND JURY DEMAND	

Marvin Randell and Patricia Taylor-Randell (collectively "Randell"), by and through counsel, Webb Law Group, LLC, files this its Complaint against Defendants, City and County of Denver, a political subdivision of Colorado a body politic, A. Lewis & Associates, Inc., d/b/a Re/Max Unlimited, Inc., a Colorado corporation, Tedla N. Sibhatu and Addis N. Habetmariam, individuals, Your Castle Real Estate, Inc., a Colorado limited liability company, Land Title Guarantee Company, a Colorado corporation, (referred to individually by name or collectively as "Defendants"), and for their claims and causes of action states as follows:

THE PARTIES & JURISDICTION

1. The City is a subdivision of the State of Colorado and a body politic and supervises manages a portfolio of 1,569 for-sale affordable housing units within the corporate boundaries of the City and County of Denver.

2. Randell is the purchaser of the real property located at 4357 Andes Street Denver, CO 80249 and legally described as LOT 20, BLOCK 1, GREEN VALLEY RANCH FILING NO. 41, CITY AND COUNTY OF DENVER, STATE OF COLORADO (the "Property").

3. Tedla N. Sibhatu and Addis N. Habetmarian, individuals, were the Sellers of the Property.

4. A. Lewis & Associates, Inc., d/b/a Re/Max Unlimited, Inc., a Colorado corporation is now and at all times mentioned in this complaint was a duly licensed Colorado real estate brokerage firm licensed under the law of the State of Colorado license number EC11100, with offices at 3300 South Parker Road #100 representing the Seller in the purchase and sale of the Property.

5. Your Castle Real Estate, Inc., a Colorado limited liability company is now and at all times mentioned in this complaint was a duly licensed Colorado real estate brokerage firm licensed under the law of the State of Colorado license number 40041405, with offices at 215 South Wadsworth Blvd, Lakewood, Colorado 80226 representing the Seller in the purchase and sale of the Property.

6. Land Title Guarantee Company, a Colorado corporation, is now and at all times mentioned in this complaint was a duly licensed title insurance company subject to the provisions of the Title Insurance Code of Colorado, Colo. Rev. Stat §§ 10-11-101-126, and regulated by the Colorado Division of Insurance (the "**Division**"), 3 Colo. Code. Regs. § 702-8 (2017) and conducted the closing and issued the General Warranty Deed to the Plaintiffs.

7. There are persons and/or entities who or which do or may have liability upon one or more of the claims asserted or to be asserted in this action and who or which are identified in this Complaint only as John and/or Jane Does and/or Doe Entities. Either their identities are not yet known to plaintiff or the facts concerning their liability and/or their amenability or capacity to be joined as defendants in this case are not yet sufficiently known to plaintiff to allow their joinder in this pleading. As additional facts concerning such matters are learned, plaintiff will move

promptly to amend this Complaint accordingly.

8. This court has subject matter jurisdiction over all claims asserted herein and personal jurisdiction over all parties. Venue is properly laid in this district pursuant to Colo. R. Civ. P. 98(c).

GENERAL ALLEGATIONS

9. Randell incorporates by reference the preceding paragraphs as if fully set forth herein.

10. This litigation arises from; inter alia, a series of wrongful and unjustified actions and inactions by the Defendants in their oversight and/or participation in the sale and resale of properties within the City and County of Denver's affordable housing program.

11. In or about the spring of 2014, Randell began a search to purchase a single-family residence. During this search, Randell became aware through the Multi-Listing Service ("MLS") that 4357 Andes Street, Denver, Colorado 80249 was for sale.

12. The MLS did not disclose the Property was subject to affordable housing restrictions from the City and County of Denver.

13. On April 23, 2014, JoAnn Patrick of Re/Max Unlimited prepared a Contract to Buy and Sell Real State (Residential) (the "RPA").

14. §8.3 of the RPA Off-Record Title, required the seller to deliver to the buyer copies of all existing liens or other matters not shown of the public record, of which Seller has actual knowledge.

15. Upon information and belief, Sellers had actual knowledge of a deed restriction and failed to disclose such restriction to the Randell's.

16. The certificate of title insurance failed to adequately disclose that the Property was subject to a deed restriction. The failure to bring this matter to the Randell's attention was further complicated by the issuance of a General Warranty Deed, which contained no such restriction.

17. On or about June 16, 2018, Randell purchased their primary residence located at 4357 Andes Street, Denver, Colorado 80249.

18. At the closing Land Title issued a Warranty Deed, executed by the Sellers (pursuant to

38-30-113, C.R.S.) (The "Deed").

19. The Deed contained no restrictions or references to the affordable housing program.

20. On information and belief, the Sellers and Land Title knew or should have known that the Warranty Deed the Sellers received when they purchased the property contained a deed restriction limiting the resale of the property to income qualified individuals.

21. On or about June 17, 2014, Randell's lender, US Mortgage sold the 1st mortgage to Sun West Mortgage.

22. As part of the sale of the 1st mortgage, Sun West Mortgage required an appraisal of the property. On information and belief, Your Castle Real Estate engaged Nash Appraisal Group, LLC to perform the appraisal. At an unknown date, Nash Appraisal Group completed the appraisal of the Property and on information and belief, failed to mention that the Property was subject to affordable housing restrictions.

23. In or about October 7, 2014 Randell's refinanced their mortgage loan through Sun West Mortgage to reduce the monthly payment as interest rates had decreased. Nothing in the refinancing of the Property indicate any limitations on the Property.

24. In or about October 2016 Randell's refinanced their mortgage loan through US Mortgage. On information and belief, an appraisal was conducted by Kenneth W. Gendill, Preferred Appraisal Group 6276 South Ash Circle East Centennial, Colorado 80121, Colorado License No. CR 40011286. At that time the Randell's received funds (\$29,000.00 +/-) to install upgrades to the Property. Nothing in the refinancing or the appraisal of the Property indicate any limitations on the Property.

25. In or about October 26, 2017 refinanced their mortgage loan through Freedom Mortgage. On information and belief, an appraisal was conducted by Royal Oaks Appraisal Group, PO 890 Fruitland, ID, 83619-0890 file 2816177213. At that time the Randell's received funds (\$17,000.00 +/-) to install upgrades to the property. Nothing in the refinancing of the Property indicate any limitations on the Property.

26. Notwithstanding and expressed need to maintain affordable housing, on information and belief, the City failed to implement procedures to ensure that all participants in the purchase and sale of affordable housing units within the City and County of Denver properly recorded and documented the affordable housing restrictions.

27. By all reports, Denver's population is growing much faster than the supply of housing. The result of which is higher home prices that far exceed the average home buyer's income qualifications. Forecasters predict that this trend will continue in the foreseeable future.

28. In May 2016, the City Office of Economic Development ("OED") released a study of the issues of gentrification and involuntary displacement of residents and businesses in Denver. The study looks at which area neighborhoods are particularly at risk and examines the array of tools that could be used to reduce the displacement while also preserving the beneficial effects of public and private investment.

29. The result of the OED study was the city embarked on a program to acquire affordable housing for moderate income individuals. A significant part of this program was a requirement that the city monitor the affordable housing inventory and restrict the resale of the affordable housing properties through deed restrictions so that it remained affordable in future years.

30. According to news reports, "Denver officials say as many as 300 of the city's 1,302 income restricted housing units are violating at least one city rule Eric Hiraga said of the situation, first reported by 9News. "Our hope is to have empathy for those who had no idea they were buying an affordable home and come to the best resolution that we can. But at the same time, we don't want to lose preservation of our affordable housing stock."

31. It is unfathomable that approximately 23% of the affordable housing inventory to be in violation without material negligence on the part of the City.

32. Through letters and demands the city now seeks to shift its failures onto the Randell's by demanding they surrender of the Property.

33. This complaint falls outside of the ambient of the Colorado Governmental Immunity Act CRS §24-10-109(1) as the claims herein are based upon the City of Denver's failure to properly fulfill its obligations to administer the Affordable Housing Program Contract related to the Property.

**FIRST CLAIM FOR RELIEF
(Declaratory Judgment)**

34. Randell incorporates by reference the preceding paragraphs as if fully set forth herein.

35. Randell contends, and the Defendants dispute, that (a) Randell is entitled to maintain his occupancy at the Property as a market rate property; (b) Randell is entitled to sell his Property

for full market value; (c) City and County of Denver and others failed to properly oversee the City and County of Denver's affordable housing program; (d) the listing broker failed to include affordable housing restrictions in the MLS; (e) Land Title Company failed to provide a Deed with a restrictive covenant for affordable housing; (f) the Purchase & Sale Contract failed to disclose an affordable housing restriction;

36. Randell request a declaratory judgment from the Court determining, amount other things, that Randell is a bona fide purchaser for value and took the property for value and without notice of any defect in title.

37. Randell reserves its right to request that the Court Conduct "a speedy hearing of [this] action for a declaratory judgment and ...advance it on the calendar." *See, e.g.* C.R.C.P. Rule 57(m). *See also*, C.R.S. §§ 13-51-101, *et seq.*, Uniform Declaratory Judgments Law.

SECOND CLAIM FOR RELIEF (Injunctive Relief)

38. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

39. Pursuant to **Colo. R. Civ. P. 65** and the common law, plaintiff are entitled to preliminary and permanent injunction relief because: (a) plaintiff has a reasonable probability of success on the merits; (b) there is a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief; (c) there is no other plain, speedy, and adequate remedy at law; (d) the granting of a preliminary injunction will not disserve the public interest; (e) the balance of equities favors the injunction; and (f) the injunction will preserve the status quo pending a trial on the merits.

40. Thus, to avoid irreparable injury, plaintiff requests that the Court issue a preliminary and permanent injunction enjoining the City from taking any action affecting the rights, title and interest of the Randell's in the Property.

THIRD CLAIM FOR RELIEF (Breach of Contract Failure To Disclose Adverse Material Facts, C.R.S. §12-61-804(3)(a) Re/Max Unlimited, Your Castle Real Estate and Land Title Company)

41. Plaintiff incorporates the preceding paragraph as if fully set forth herein.

42. Generally, a broker acting as a seller's or landlord's agent owes no duty or obligation to

the buyer or tenant; except that a broker shall, subject to the limitations of §38-35.5-101, C.R.S., concerning psychologically impacted property, disclose to any prospective buyer or tenant all adverse material facts actually known by such broker. Such adverse material facts may include but shall not be limited to adverse material facts pertaining to the title and the physical condition of the property, any material defects in the property.

43. On information and belief, Re/Max Unlimited acted as the Sellers representative and as such, knew or should have known that the Property was subject to deed restrictions by the City and County of Denver that would have prohibited the Randell's from purchasing the Property because their income exceeded the affordable housing limits.

44. On information and belief, Your Castle Real Estate acted as the Sellers representative and as such, knew or should have known that the Property was subject to deed restrictions by the City that would have prohibited the Randell's from purchasing the Property because their income exceeded the affordable housing program limits.

45. On information and belief, Land Title prepared the Warranty Deed. In their capacity as Closing Agent.

46. Land Title failed to include the affordable housing restrictions in the Deed.

47. The Randell's are senior citizens and intended for this to be their permanent residence through their retirement they made improvements to the property.

48. The improvements to the property exceeded forty thousand dollars and 00/100 (\$40,000.00).

49. Had the Randell's known about the affordable housing restrictions they would not have invested in improving the property.

FOURTH CLAIM FOR RELIEF
(Breach of Contract General Warranty Deed § 38-30-107 (1)(c), C.R.S.2007 Tedla N. Sibhatu and Addis N. Habetmarian)

50. Plaintiff incorporates the preceding paragraph as if fully set forth herein.

51. Tedla N. Sibhatu and Addis N. Habetmarian were the Sellers. When they purchased the property, they purchased it under the City and County of Denver Affordable Housing program that restricted the sale and/or rental of the property to persons that did not qualify for the

affordable housing program.

52. On information and belief, the Warranty Deed the Sellers received when they purchased the Property contained a specific deed restriction that Sellers were aware of and failed to disclose to the Randell's.

53. Conveyances of real estate are deemed to be in fee simple unless expressly limited. §38-30-107 (1)(c), commands that the Sellers warrants to the grantee and his heirs and assigns the quiet and peaceable possession of such property and will defend the title thereto against all persons who may lawfully claim the same.

54. Sellers conveyance of the Property to the Randell's did not meet the requirements of §38-30-107 (1)(c) as it did not convey good title in fee simple, that is, free and clear of all claims, liens, and encumbrances whatsoever.

55. Because the Sellers failed to disclose the restrictions on the sale of the Property, the Randell's have been damaged in an amount to be proven at trial.

FIFTH CLAIM FOR RELIEF

(Breach of Real Estate Purchase Contract Tedla N. Sibhatu and Addis N. Habetmarian)

56. Plaintiff incorporates the preceding paragraph as if fully set forth herein.

57. Tedla N. Sibhatu and Addis N. Habetmarian were the Sellers as defined in the RPA.

58. On information and belief, the RPA was a Colorado Real Estate Commission approved form.

59. Section 8 of the RPA compels the Sellers to disclose specific property exceptions related to title. On information and belief, the RPA did not disclose specific affordable housing restrictions on the Property.

60. Because the Sellers failed to disclose the restrictions in the RPA, the Randell's have been damaged in an amount to be proven at trial.

SIXTH CLAIM FOR RELIEF

(Failure to Manage the Affordable Housing Program City and County of Denver)

61. Plaintiff incorporates the preceding paragraph as if fully set forth herein.

62. This complaint falls outside of the ambit of the Colorado Governmental Immunity Act CRS §24-10-109(1) as the claims herein are based upon the City of Denver's failure to properly fulfill its obligation under ordinance to administer the Affordable Housing Program.

63. The City developed a strategic plan to address a shortage of affordable housing. This plan had three main goals: creating new housing in economically vulnerable and gentrifying neighborhoods as well as places with opportunity; preserving affordably priced housing that's at risk of steep market-based rent hikes or being bought by developers; and accomplishing the first two objectives in ways that help city residents across the spectrum, from the homeless to renters to homeowners, and from a range of income levels.

64. The City Council for the City and County of Denver passed Ordinance Article V Dedicated Funding for Affordable Housing Section 27-150(b)(2) to increase the supply of Affordable Housing units in the City of Denver.

65. To ensure that those properties acquired through the affordable housing program would be preserved and remain compliant, the City was required to hire staff and implement procedures to accomplish the intent of Article V described above.

66. On information and belief, the City failed to hire staff and implement procedures to accomplish the intent of Article V described above and has placed the Randell's at risk of losing their investment.

67. Posted 4:36 pm, April 12, 2018, by Rob Low, updated at 06:14PM, April 12, 2018 Fox reported that the city's "Office of Economic Development has sent letters offering affected homeowners until May 31 to tell it if they want to come into compliance with the affordable housing program, then giving them until Dec. 31 to do so."

68. If they don't, the city's director of housing compliance, Rick Padilla, writes the city could require "the owner to sell the affordable home to an income eligible household." By Charlotte West | Aug. 1, 2018 The Movement.¹

69. The City's failure is the proximate cause of harm and injury to the Randell's including economic damage in an amount to be proven at trial.

¹ This article also noted that the City also hired a new chief housing officer, Britta Fisher, an 18-year-veteran of the nonprofit sector who joined the administration in May 2018.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, respectfully prays for judgment against each and all of the defendants upon each and all of the claims for relief asserted herein above, including and without limitation:

(1) Claims for relief, a money judgment for all economic loss, including damages for unpaid income, lost past and future income and other damages sufficient to afford plaintiff the benefit of his bargains with defendants and to make him whole from and against all breaches of duties owed by defendants to plaintiff;

(2) an award of reasonable attorney fees, costs, and expenses incurred in this action;

(3) prejudgment or moratory interest in accordance with law; and

(4) such other and further relief as the Court deems just and proper under the circumstances.

PLAINTIFF REQUESTS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

DATED this 25th day of September 2018.

Respectfully submitted,

Webb Law Group, LLC

By: /s/ Joseph G. Webb

Joseph G. Webb, Atty. No. 21425

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Denver, Colorado 80224-1604

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Original signature of Joseph G Webb is on file with the law offices of Webb Law Group, LLC pursuant to C.R.C.P. 121, §1 – 26 (7).

VERIFICATION OF COMPLAINT

We, **MARVIN RANDELL, an individual and PATRICIA TAYLOR-RANDELL, an individual** do hereby state that the facts asserted in this Complaint are true and correct to the best of my personal knowledge.

/s/ Marvin Randell

/s/ Patricia Taylor-Randell