

STATE OF MINNESOTA
COUNTY OF RICE

COPY

IN DISTRICT COURT
THIRD JUDICIAL DISTRICT
CIVIL DIVISION

Lesa Olson and Dwayne A. Olson,
Plaintiffs,

Court File No. 66-CV-07-2181

vs.

The Kuyper Group, Robert Kuyper,
Universal Title, First American Title
Insurance Company, La Vern K. Rippley
and Barbara J. Rippley,

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER FOR JUDGMENT

Defendants.

A Court Trial was held in the above matter before the Honorable Bernard E. Borene, Judge of District Court, on April 28, 2009, and June 29, 2009, at the Rice County Courthouse, Faribault, Minnesota. Plaintiffs Lesa Olson and Dwayne A. Olson (hereinafter "the Olsons"), were represented by David L. Ludescher, of Northfield, Minnesota. Defendants, The Kuyper Group and Robert Kuyper (hereinafter "Kuyper"), were represented by Adam J. Dowd, of Northfield, Minnesota. Defendants, Universal Title and First American Title Insurance Company (hereinafter "First American"), were represented by Bradley N. Beisel, of Minneapolis, Minnesota. Defendants La Vern J. Rippley and Barbara J. Rippley (hereinafter "the Rippleys"), were not represented by counsel and Mr. Rippley appeared pro se. Following the Trial, the Court gave the parties until July 10, 2009, to submit written final arguments.

The Court, having considered the testimony, exhibits and written final arguments, does hereby make the following:

FINDINGS OF FACT

1. La Vern J. Rippley is a retired St. Olaf College professor and is also a land developer, builder and owner of rental property in Northfield, Minnesota. He is a licensed builder and a licensed real estate agent and broker.
2. Dwayne A. Olson and Rippley have known each other for many years. Many years ago Olson and his father built the home that the Ripleys still occupy in Northfield, Minnesota. Olson and his first wife previously rented property from Rippley. Olson and Rippley have been good friends over the years. Rippley had previously loaned money to Olson so that he could take trips to Las Vegas, pay delinquent taxes and purchase a vehicle. Rippley also provided employment to Olson on many occasions.
3. In early 2001, Dwayne A. Olson and his current wife, Lesa Olson, ~~desired to purchase a home located at 1015 Truman Court, Northfield, Minnesota, hereinafter "the Truman Court property"~~ desired to purchase a home located at 1015 Truman Court, Northfield, Minnesota, hereinafter "the Truman Court property"), but they were unable to qualify for conventional financing. The Olsons approached Rippley and asked if he could finance the home for them. Rippley agreed to do so. In order to do so, Rippley purchased the Truman Ct property himself and sold it to the Olson's on a contract for deed dated April 30, 2001 (Exhibit 1). The contract was for \$176,000.00, no down payment, interest at 9.5%, and monthly payments of \$1,400.00, commencing June 1, 2001, with a balloon payment on April 1, 2003.
4. In early 2002, about a year later, the Olsons became aware of another home located at 1801 Eisenhower Court, Northfield, Minnesota (hereinafter "the Eisenhower Court property), owned by the Smiths, which was being foreclosed on and which was for sale for \$240,000.00. They desired to buy the Eisenhower property, because it was larger than the Truman Court property and because it had a swimming pool. Again, the Olsons

did not qualify for conventional financing, and they again approached Rippley and requested help in financing the purchase.

5. Rippley indicated that if the Truman Court property could be sold, he would finance their purchase by purchasing the Eisenhower Court property himself and selling it to them for \$240,000.00 on a contract for deed. It was agreed that the equity from the sale of the Truman Court property would be the down payment for the Eisenhower Court property contract for deed.
6. Thereafter, Olson and Rippley listed the Truman Court property for sale with Kuyper (the Kuyper Group – Re/Max Results) for \$195,000.00. Almost immediately Kuyper found a buyer. On or about April 10, 2002, the Olsons and Rippley entered into a Purchase Agreement to sell the property to Steven Fox and Robin Field Fox for \$195,000.00

~~(Exhibit 2). Since Steven and Robin Fox also did not qualify for conventional financing,~~

Rippley also agreed to finance their purchase of the Truman Court property by selling the home to them for \$195,000.00, with a \$15,100.00 down payment and \$179,900.00 contract for deed.

7. The closing of the purchase of the Eisenhower Court property took place on May 28, 2002, prior to the closing of the sale of the Truman Court property, because the sale from the Smiths needed to be completed before the redemption period expired from the mortgage foreclosure. At the closing, the Ripleys entered into a contract for deed with Lesa Olson concerning the Eisenhower Court property with a purchase price of \$240,000.00, which is what Rippley paid the Smiths for the property (Exhibit 9). No down payment was stated in the contract for deed, because the Ripleys and Olsons agreed that the net proceeds from the sale of the Truman Court property would be rolled

into the contract for deed to reduce the initial contract amount when the sale of the Truman Court property closed in June. It was also agreed by the parties that only Lesa Olson would be listed as a vendee on the contract in an attempt to protect against tax liens against Dwayne A. Olson from attaching to the property.

8. The closing of the Olson/Ripley sale to the Foxes of the Truman Court property was scheduled for June 21, 2002. The Foxes had been allowed to move into the home prior to the closing. Kuyper retained First American to close the transaction at the Re/Max Results office in Northfield, Minnesota. It was suggested by Ripley's attorney, Adam Dowd, of Northfield, that the Olsons sign a quit claim to the Ripleys prior to the closing to avoid the expense and necessity of two closings. On the day of the scheduled closing, Lesa Olson and Dwayne Olson signed the quit claim deed, which had been prepared by

~~their attorney, in the presence of the other party. They did so with the understanding that~~
the Ripleys would be selling to the Foxes on a contract for deed and that the net proceeds of the sale would be applied to their contract for deed on the Eisenhower Court property.

9. The closing on the Eisenhower Court property did take place on June 21, 2002. The Olsons chose not to be represented by an attorney at the closing and chose not to attend the closing. Unfortunately, the Foxes arrived without the full down payment. This left Ripley in the dilemma of backing out of the sale or finding a way to accomplish it. If he had backed out, it would have resulted in him owning the Truman Court property and having to resell it to recoup his expenses. Since the Olsons were not at the closing, Ripley could not consult them. Ripley decided to proceed with the closing, by making adjustments, rather than have the transaction fall through.

10. At the time of the closing, the Olsons owed \$171,477.00 on their contract for deed with the Ripleys. From the sale price of \$195,000.00, real estate commission and closing costs of \$11,195.00, county taxes of \$77.00 and the contract payoff of \$171,477.00 was to be deducted, leaving a balance of \$12,151.00 to be applied to the contract for deed on the Eisenhower Court property. Because there was only net proceeds of some \$4,000.00, Rippley was unable to immediately credit \$12,151.00 for the Olsons.
11. After the closing on June 21, 2002, or shortly thereafter, Rippley met with the Olsons and explained what was done to complete the transaction. At that time Rippley calculated the starting amount for the contract for deed at \$237,117.00. He did this by adding to the \$240,000.00 purchase price amounts owed by the Olsons on other prior obligations totaling \$5,540.00, bringing the total to \$245,540.00. He then calculated the net gain on ~~the Truman Court property sale at \$0,125.00 and deducted that, resulting in a net gain~~ figure of \$237,117.00 (Exhibit 8, pages 5 and 9). It was later determined that the calculation of the gain was incorrect and should have been \$12,151.00. The Olsons fully understood what had taken place at the closing and Rippley's calculation of the starting contract amount; they voiced no concerns or objections.
12. On or about March 23, 2003, while going over figures, Rippley and Dwayne A. Olson did discover that the Olsons were entitled to an additional credit of \$3,728.00 from the Truman Court sale, and at the time Rippley made that credit on the amortization schedule (Exhibit 8, page 5). The Olsons agree that the \$3,728.00 credit was made.
13. Prior to the balloon payment coming due on January 1, 2005, the Olsons consulted a Larry Larson about financing to pay off the contract for deed. In an effort to determine the pay off figure on the Rippley contract for deed, Mr. Larson reviewed the closing

documents the Olsons had furnished to him. Mr. Larson advised the Olsons that he could not see where the Olsons ever got credit for the net sale proceeds from the Truman Court property sale toward the Eisenhower Court property contract. However, information was then provided to Mr. Larson to verify that the net proceeds had been credited.

14. On about January 1, 2005, the Olsons did pay off the Rippley contract for deed concerning the Eisenhower Court property, based on the figures contained on the Rippley amortization schedule. The pay off included current delinquency arrears, as well as all other obligations owed by the Olsons to the Ripples. At the conclusion of the closing, the Olsons expressed no complaints whatsoever, especially nothing concerning not getting credit for the net proceeds of the Truman Court property sale.

15. Shortly after that closing, the Olsons again questioned whether they had received credit

~~for the net proceeds of the Truman Court property sale.~~

counsel, David L. Ludescher. On March 2, 2005, with the assistance of Mr. Ludescher, the Olsons filed a Conciliation Court claim against the Ripples (Rice County file 66-SX-05-75). In their Statement of Claim they allege:

We owned the house at 1813 Truman Court, Northfield Minnesota. We had a Contract for Deed with the Ripples.

There was an agreement to sell the house to Steven W. Fox and Robin Field Fox. Ripples agreed to finance the Foxes by another Contract for Deed.

We received a profit from the house, after paying the Ripples and all settlement costs, of \$12,445. Ripples credited \$3,728 to an existing Contract for Deed on our present home. The Ripples have not paid the remaining \$8,717 owed to us.

On September 7, 2005, Mr. Ludescher dismissed the Conciliation Court proceeding against the Ripples in order to bring a District Court proceeding against the Ripples

and other parties and bring claims in excess of the Conciliation Court jurisdictional limits.

16. On June 18, 2007, the Olsons commenced this District Court proceeding requesting judgment for \$23,526.00 against the Rippleys (for not giving them the net proceeds of the Truman Court property sale) against Kuyper (the realtor for not insuring that they receive the net sale proceeds) and First American (the closer for not insuring that they received the net proceeds).

17. The net sale proceeds was actually \$12,445.00 (as shown by the evidence, as well as the Olson's Conciliation Court claim petition). The \$23,526.00 figure used by the Olsons in District Court fails to deduct the closing costs of \$11,195.00, which includes the \$10,725.00 real estate commission, all of which were clearly to be paid by the Olsons.

~~18. The Olsons have received credit for the full \$12,445.00 net proceeds of the sale.~~

intended by everyone that all of the proceeds would be applied to the new contract for deed on the Eisenhower Court property; the Olsons never expected to receive cash from the sale.

19. Following the closing, adjustments were made to the \$240,000.00 contract for deed on the Eisenhower Court property to credit the \$12,445.00 net proceeds. Although the Olsons question it, the greater weight of the evidence supports that they received a credit of about \$8,717.00 at the beginning of the amortization schedule. This is supported by Rippley's credible testimony and his documentation (Exhibit 8). The Olsons agreed that in March of 2003, they received an additional credit of \$3,728.00.

20. Since the Olsons have received credit for the net proceeds of the Truman Court property sale, they also have no claim against Kuyper or First American for failing to protect their

right to receive or get credit for the net proceeds. Moreover, since the Olsons were not to receive cash at the closing, Kuyper and First American had no duty to insure that the Olsons would subsequently receive the proper credit on their new contract for deed for the Eisenhower Court property. Neither Kuyper nor First American had anything to do with the Eisenhower Court property transaction.

21. The Olsons have also requested that Kuyper forfeit the \$10,725.00 real estate commission and be required to refund it to them for failure to protect their interest. The property was listed with Kuyper for \$195,000.00. He found a buyer for that amount and the transaction closed for that amount. Kuyper did what he was required to do under the agreement. Again, Kuyper had no duty to insure that Rippley properly credit the net sale proceeds to the contract for deed on the Eisenhower Court property.

~~22. First American was hired by Kuyper to close the transaction. At the time of the closing,~~

hired to do. The Olsons were not to receive cash from the sale, and First American had no duty to insure that Rippley credited the net proceeds to the Olsons. Moreover, the Olsons have received what they were entitled to.

CONCLUSIONS OF LAW

1. Plaintiffs have not established by a greater weight of the evidence that they were not properly credited with the net sale proceeds from the sale of the Truman Court property.
2. Plaintiffs have not established by a greater weight of the evidence that Kuyper breached any duty owed to the Plaintiffs.
3. Plaintiffs have not established by a greater weight of the evidence that First American breached any duty owed to the Plaintiffs.

4. Defendants are all entitled to judgment against the Plaintiffs dismissing all of their claims with prejudice.
5. Each of the Defendants is entitled to judgment against the Plaintiffs for their costs and disbursements to be taxed herein.
6. Entry of judgment is stayed until August 15, 2009.

LET JUDGMENT BE ENTERED ACCORDINGLY.

RICE COUNTY, MN
FILED

JUL 17 2009

Dated this 16th day of July, 2009.

BY THE COURT:

MR
COURT ADMINISTRATOR

Bernard E. Borene

Bernard E. Borene

JUDGE OF DISTRICT COURT

I hereby certify the above order dated July 16, 2009 constitutes the judgment of this court

Dated August 17, 2009

Mae Ross

Sr Deputy Clerk

RICE COUNTY, MN
FILED

AUG 17 2009

MM
COURT ADMINISTRATOR

~~COURT ADMINISTRATOR~~
~~AUG 17 2009~~
~~RICE COUNTY, MN~~
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