

1 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
2 TODD E. WHITMAN (BAR NO. 173878)
1901 Avenue of the Stars, Suite 1800
3 Los Angeles, California 90067-6019
Phone: (310) 788-2400
4 Fax: (310) 788-2410
E-Mail: twhitman@allenmatkins.com

5 Attorneys for Plaintiffs

FILED
LOS ANGELES SUPERIOR COURT

ORIGINAL
NOV 15 2007

JOHN A. CLARKE, CLERK

BY D.M. SWAIN, DEPUTY

6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

11 SAUL HUDSON, an individual; PERLA
HUDSON, an individual,

12 Plaintiffs,

13 v.

14 GREGORY HOLCOMB, an individual,
15 SOTHEBY'S INTERNATIONAL
REALTY, and Does 1 through 10, inclusive,

16 Defendants.

Case No.

BC380726

COMPLAINT FOR:

1. Fraud;
2. Negligent Misrepresentation;
3. Constructive Fraud;
4. Breach of Fiduciary Duty;
5. Negligence;
6. Breach of the Covenant of Good Faith and Fair Dealing;
7. Negligent Inflicting of Emotional Distress

17
18
19 Plaintiffs, Saul Hudson and Perla Hudson (collectively the "Hudsons"), for their
20 Complaint against the Defendant, Gregory Holcomb, an individual and Sotheby's
21 International Realty ("Defendants"), and DOES 1 through 10 inclusive, allege:

22
23 SUMMARY OF CLAIM

24 1. Plaintiff Saul Hudson is a high profile musician. As a result of his visibility,
25 in 2005 Plaintiffs were looking for a home that among other things, was both private and
26 one where they could entertain their friends. Plaintiffs thought they had found their dream
27 house when their real estate agent showed them a house with spectacular views, at the end
28 of a cul de sac, on what he purported to be a private street. Unbeknownst to Plaintiffs,

FILED
NOV 15 2007
RECEIVED
DATE PAID
PAYMENT
RECEIVED

1 however, Plaintiffs purchased a home on a public street, with severe parking restrictions,
2 essentially eliminating two of the main criteria they were looking for in their new home.
3 Had Plaintiffs' real estate agent fully and properly fulfilled his fiduciary duties to
4 Plaintiffs, Plaintiffs never would have purchased this home. Now they are stuck with a
5 residence that they never moved into, and which prospective purchasers have shied away
6 from based in part on the same encumbrances that Plaintiffs' agent failed to disclose to
7 them.

8
9 GENERAL ALLEGATIONS

10 2. At all relevant times mentioned herein, the Hudsons were individuals
11 residing in the County of Los Angeles, State of California.

12 3. The Hudsons are informed and believe, and based upon such information and
13 belief allege, that at all relevant times mentioned herein, Defendants Gregory Holcomb
14 was an individual, residing in the County of Los Angeles, State of California, and at all
15 relevant times was a sales agent for Defendant Sotheby's International Realty.

16
17 4. The Hudsons are informed and believe, and based upon such information and
18 belief allege, that at all relevant times mentioned herein, Defendant Holcomb was a real
19 estate salesperson duly licensed under and by virtue of the laws of the State of California
20 Department of Real Estate, License Number 01347788. As the real estate salesperson for
21 the Hudsons, Holcomb owed the Hudsons a duty of care to, inter alia, competently
22 represent the Hudsons, to conduct a reasonable, competent, diligent inspection of the
23 property and the documents effecting the use and enjoyment of the property that the
24 Hudsons ultimately purchased, to disclose information to the Hudsons that resulted from
25 that competent inspection and to disclose information of which he knew or reasonably
26 could have come into possession that materially affected the Hudsons' purchase of the
27 Property.

28

1 5. The Hudsons are informed and believe, and based upon such information
2 and belief allege, that Defendant Sotheby's is a brokerage duly licensed under and by
3 virtue of the laws of the State of California Department of Real Estate, License Number
4 00899496. As the real estate broker for the Hudsons, Sotheby's owed the Hudsons a duty
5 of care to, inter alia, competently represent the Hudsons, to conduct a reasonable,
6 competent, diligent inspection of the property that the Hudsons ultimately purchased, to
7 disclose information to the Hudsons that resulted from that competent inspection and to
8 disclose information of which he knew or reasonably could have come into possession that
9 materially affected the Hudsons' purchase of the Property.

10 6. At all relevant times mentioned herein, the true names and capacities,
11 whether individual or otherwise, of Defendants DOES 1 through 10 are unknown to the
12 Hudsons at this time, who therefore, sue them by such fictitious names. The Hudsons are
13 informed and believe, and based thereon allege, that each of the Defendants designated
14 herein as a DOE is legally responsible in some manner for the events and happenings
15 herein referred to, and caused injury and damages proximately thereby to Hudsons as
16 hereinafter alleged. The Hudsons will seek leave of court to amend this Complaint to
17 show the true names and capacities of the Defendants designated herein as DOES when the
18 same have been ascertained.

19 7. In 2005 Plaintiffs retained Defendants Holcomb and Sotheby's to help them
20 find and purchase a new house. After a long period of searching, In October 2005,
21 Holcomb sent Perla Hudson an e mail regarding the property, attaching the Multiple
22 Listing Service ("MLS") description of the property. The MLS listing listed the property
23 at 7,8000 square feet, and Holcomb's e mail state that the house was "on a gated private
24 street."
25

26
27
28

1 known of certain issues related to property, including, among other things, 1) the
2 existence of easements, covenants and other encumbrances of record that showed up on
3 title that affected both the property and the adjacent street, 2) the fact that the street leading
4 up to the residence, although gated at the bottom, was not in fact a "private street" as had
5 been represented to the Hudsons by Defendants (collectively, the "Title Defects.") and 3)
6 that the house was not in fact 7,800 square feet as set forth on the MLS listing, but rather
7 was substantially smaller than what was set forth in the actual listing.

8
9 14. Defendants and Does 1 through 10, inclusive, and each of them, knew that
10 the above-referenced defects in title were unknown to the Hudsons, particularly since
11 Defendants maintained custody and control of the preliminary title report at all relevant
12 times prior to the close of escrow and did not forward such report to the Hudsons until
13 after the Sale Transaction was consummated. Defendants and Does 1 through 10,
14 inclusive, and each of them, also knew that the Hudsons had no way of knowing whether
15 the street leading up to the property was not in fact a "private" street, or that the house was
16 substantially smaller than what was set forth on the MLS.

17 15. The existence of the Title Defects as well as the actual size of the house
18 materially affected the value and the desirability of the property to the Hudsons, which
19 facts were known by Defendants and Does 1 through 10, inclusive, and each of them.

20 16. Defendants and Does 1 through 10, inclusive, and each of them, failed to
21 disclose to Hudsons the existence of the Title Defects and the actual square footage of the
22 residence as set forth in Paragraph 13, with the intent to induce Hudsons to act in reliance
23 on the representations and to induce the Hudsons to complete the purchase of the Property.
24 Defendants and Does 1 through 10, inclusive, and each of them, affirmatively represented
25 to the Hudsons that there were no known defects in title to the property and that there were
26 no encumbrances of concern.
27
28

1 17. At the time that Defendants and Does 1 through 10, inclusive, and each of
2 them, made the representations set forth in Paragraph 13 hereof, the Hudsons were
3 ignorant of the falsity of the representations and believed them to be true. In reasonable
4 reliance on the representations of Defendants and Does 1 through 10, inclusive, and each
5 of them, the Hudsons were induced to and did close escrow of the purchase of the
6 Property. Had the Hudsons known the actual and true facts, the Hudsons would not have
7 closed escrow on the purchase of the Property.

8 18. As a direct result of the fraudulent failure of Defendants and Does 1 through
9 10, inclusive, and each of them, to disclose these Title Defects to the Hudsons, and by
10 virtue of the fraudulent affirmative representations made by Defendants and Does 1
11 through 10, inclusive, and each of them, the Hudsons completed the purchase of the
12 property and have been damaged in a sum unknown but believed to be in excess of
13 \$1,000,000.

14 19. The representations of Defendants were, in fact, false, in that the Title
15 Defects alleged in Paragraph 13 hereof were existing at the time Defendants and Does 1
16 through 10, inclusive, and each of them, represented to the Hudsons that there were no
17 defects in title whatsoever on the Property. The fraudulent conduct of Defendants and
18 Does 1 through 10, inclusive, and each of them, in concealing the title defects of the
19 property alleged in Paragraph 13 hereof, was an intentional misrepresentation, deceit
20 and/or concealment of material facts known to Defendants and Does 1 through 10,
21 inclusive, and each of them, was made with the intention on the part of Defendants and
22 Does 1 through 10, inclusive, and each of them, to deprive the Hudsons of the property for
23 which they, in good faith, had bargained, thereby causing the Hudsons damage, and was
24 done by Defendants and Does 1 through 10, inclusive, and each of them, intentionally,
25 maliciously and wantonly, in conscious disregard of the Hudsons rights, thereby entitling
26 Hudsons to an award of exemplary and punitive damages.
27
28

1 **SECOND CAUSE OF ACTION**

2 **Negligent Nondisclosure**

3 **(Against Defendants and Does 1 through 10, inclusive)**

4 20. The Hudsons re-allege and re-incorporate Paragraphs 1 through 11,
5 inclusive, as though fully set forth herein.

6 21. In or about December 2005, Defendants represented to the Hudsons that they
7 had conducted a competent inspection of the title to the property and found no defects.
8 Defendants made this representation without a reasonable basis to believe that it was true.
9 In fact, Defendants had not conducted a competent and diligent title inspection of the
10 Property, as they failed to disclose to the Hudsons the existence of the Title Defects that
11 would have been discovered had they undertaken such an inspection. Defendants failed to
12 disclose these Title Defects with the intent to induce the Hudsons to complete the purchase
13 of the Property.
14

15 22. Prior to the execution of the Purchase Agreement and continuing through the
16 escrow period, Defendants became aware of certain defects in title to the Property,
17 including, without limitation, the defects alleged in Paragraph 13 hereof.

18 23. At all times mentioned herein, the Hudsons were unaware of the Title
19 Defects associated with the Property.
20

21 24. Defendants, and Does 1 through 10, inclusive, and each of them, made the
22 representations set forth above with the intention of inducing the Hudsons to act in reliance
23 on the representations, purchase the property and close escrow on the Sales Transaction.

24 25. At the time that Defendants and Does 1 through 10, inclusive, and each of
25 them, made the representations set forth in Paragraph 10, the Hudsons were ignorant of the
26 falsity of the representations and believed them to be true. In reasonable reliance on the
27 representations of Defendants and Does 1 through 10, inclusive, and each of them, the
28

1 Hudsons were induced to and did close escrow on the Sales Transaction and purchased the
2 Property. Had the Hudsons known the actual and true facts, Hudsons would not have
3 closed escrow on the Sales Transaction and would not have purchased the Property.

4
5 26. As a result of Defendants' failure to make the fullest disclosure of all
6 material facts that might affect the Hudsons' decision to purchase the property as set forth
7 in Paragraph 13 hereof, the Hudsons completed the purchase of the property and have been
8 damaged in an amount unknown at the present time but believed to be in excess of
9 \$1,000,000.

10
11 **THIRD CAUSE OF ACTION**

12 **Constructive Fraud**

13 **(Against Defendants and Does 1-10, inclusive)**

14 27. The Hudsons re-allege and re-incorporate Paragraphs 1 through 8, inclusive,
15 and Paragraph 18 through 23 inclusive, as though fully set forth herein.

16 28. Prior to the execution of the Purchase Agreement and continuing through the
17 escrow period, Defendants became aware of the Title Defects.

18 29. At all times mentioned herein, the Hudsons were unaware of the Title
19 Defects.

20
21 30. As a result of Defendants' failure to make the fullest disclosure of all
22 material facts that might affect Hudsons' decision to purchase the Property, including the
23 Title Defects, the Hudsons completed the purchase of the property and have been damaged
24 in an amount unknown at the present time but believed to be in excess of \$1,000,000.

1 **FOURTH CAUSE OF ACTION**

2 **Breach of Fiduciary Duty**

3 **(Against Defendants and Does I through 10, inclusive)**

4 31. The Hudsons re-allege and re-incorporate Paragraphs 1 through 27,
5 inclusive, as though fully set forth herein.

6 32. At all times mentioned herein, Defendants failed to conduct a reasonably
7 competent and diligent inspection of the title on the Property, which inspection would have
8 revealed the Title Defects. Defendants and Does 1 through 10, inclusive, and each of them,
9 breached their fiduciary duty to make the fullest disclosure of all material facts that might
10 affect the Hudsons' decision to purchase the property by failing to properly inspect the
11 Title and disclose the Title Defects to the Hudsons and to confirm the actual square
12 footage of the residence

13
14 33. At all times mentioned herein, the Hudsons were unaware of the existence of
15 these Title Defects and were unaware of the true facts with respect to the commitments
16 made by the seller of the property with respect to the street that was adjacent to the
17 Property, and were unaware that the actual square footage of the residence was
18 significantly less than that listed on the MLS.

19 34. As a result of the breach of fiduciary duty owed to the Hudsons by
20 Defendants and Does 1 through 10, inclusive, and each of them, to make the fullest
21 disclosure of all material facts that might affect the Hudsons' decision to purchase the
22 Property, to take the necessary investigative steps to insure the accuracy of the
23 representations they were making to the Hudsons, as well as their duty of honest and fair
24 dealing and good faith towards the Hudsons, the Hudsons completed the purchase of the
25 property and have been damaged in an amount unknown at the present time but believed to
26 be in excess of \$1,000,000.
27
28

1 **PRAYER**

2 WHEREFORE, the Hudsons pray for judgment as follows:

3 **On the First Cause of Action:**

- 4 1. For an award of compensatory damages, consequential and incidental
5 damages according to proof, but no less than \$1,000,000;
6 2. For an award of exemplary and punitive damages according to proof;
7 3. For an award of prejudgment interest allowed by law;

8
9 **On the Second Cause of Action:**

- 10 4. For an award of compensatory damages, consequential and incidental
11 damages according to proof, but no less than \$1,000,000;
12 5. For an award of prejudgment interest allowed by law;

13
14 **On the Third Cause of Action:**

- 15 6. For an award of compensatory damages, consequential and incidental
16 damages according to proof, but no less than \$1,000,000;
17 7. For an award of exemplary and punitive damages according to proof;
18 8. For an award of prejudgment interest allowed by law;

19
20 **On the Fourth Cause of Action:**

- 21 9. For an award of compensatory damages, consequential and incidental
22 damages according to proof, but no less than \$1,000,000;
23 10. For an award of exemplary and punitive damages according to proof;
24 11. For an award of prejudgment interest allowed by law;

25
26 **On the Fifth Cause of Action:**

- 27 12. For an award of compensatory damages, consequential and incidental
28 damages according to proof;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13. For an award of prejudgment interest allowed by law;

On the Sixth Cause of Action:

14. For an award of compensatory damages, consequential and incidental damages according to proof, but no less than \$1,000,000;

15. For an award of prejudgment interest allowed by law;

On All Causes Of Action:

18. Attorneys' fees, if applicable under California law;

19. Costs of suit; and

20. All such other and further relief to which the Hudsons may be entitled and as this Court deems just and proper.

Dated: November 14, 2007

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
TODD E. WHITMAN

By: 
Attorney for Plaintiffs,

