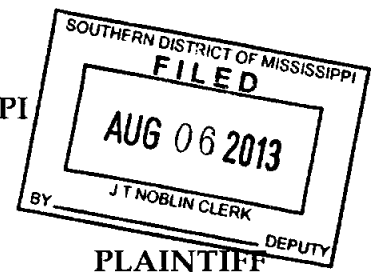


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION



MAGNOLIA GROUP, LLC

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:13cv31716-JMR

O'DWYER REALTY, LLC, MARY BUNCH,
AN INDIVIDUAL, LNG INVESTMENTS, LLC,
LLOYD NICAUD, AN INDIVIDUAL, AND
GERALD RIGBY, AN INDIVIDUAL

DEFENDANTS

COMPLAINT

JURY TRIAL REQUESTED

Comes now the Plaintiff, Magnolia Group, LLC, by and through its counsel, Owen, Galloway & Myers, P.L.L.C., and complaining of the Defendants O'Dwyer Realty, LLC, Mary Bunch, an Individual, LNG Investments, LLC, Lloyd Nicaud, an Individual, and Gerald Rigby, an Individual, and for cause would respectfully state unto the Court the following, to-wit:

I.

JURISDICTION

Jurisdiction is vested in this Court on the basis of diversity of citizenship in accordance with 28 U.S.C. 1332, the amount in controversy exceeds the sum of \$75,000.00, exclusive of interests and costs. The Court has jurisdiction of the parties and subject matter of this litigation.

II.

THE PARTIES

A. The Plaintiff, Magnolia Group, LLC, is a Limited Liability Company organized in the State of Illinois. The members of Magnolia Group, LLC are adult resident citizens of the State of Illinois

B. O'Dwyer Realty, LLC is a Limited Liability Company organized in the State of Mississippi. The members of O'Dwyer Realty, LLC are adult resident citizens of the State of Mississippi. This Defendant may be served with process of this court by service upon its registered agent Avra E. O'Dwyer, as follows: Avra E. O'Dwyer, 200 Menge Avenue, Pass Christian, MS 39571.

C. The Defendant Mary Bunch is an adult resident citizen of the State of Mississippi, who may be served with process by service as follows: Mary Bunch, 117 Highway 90, Bay St. Louis, MS 39520 or Mary Bunch, 35 Hickman Tower Road, Perkinston, Mississippi 39573.

D. The Defendant LNG, LLC is a Limited Liability Company organized under the laws of the State of Mississippi. The members of LNG, LLC are adult resident citizens of the State of Mississippi. This Defendant may be served with process by service upon its registered agent Rebecca Necaise as follows: Rebecca Necaise, 5304 Lower Bay Rd., Bay St. Louis, MS 39520, and by service upon Gerald Rigby, 724 Dunbar Avenue, Bay St. Louis, Mississippi 39520.

E. The Defendant Lloyd Nicaud is an adult resident citizen of the State of Mississippi who may be served with process by service as follows: Lloyd Nicaud, 7714 Moanalua Way, Diamondhead, MS 39525.

F. The Defendant Gerald Rigby is an adult resident citizen of the State of Mississippi who may be served with process by service as follows: Gerald Rigby, 724 Dunbar Avenue, Bay St. Louis, Mississippi 39520 or Gerald Rigby, 900 Chiniche Street, Bay St. Louis, Mississippi 39520.

III.

FACTUAL CONSIDERATIONS

A. At all material times, the Defendant Mary Bunch was an agent and employee of the Defendant O'Dwyer Realty, LLC.

B. At all material times, the Defendants Lloyd Nicaud and Gerald Rigby were principal members of the Defendant LNG Investments, LLC.

C. On or about June 1, 2011, the Plaintiff Magnolia Group, LLC entered into a commercial real estate listing agreement with the Defendant O'Dwyer Realty, LLC. The commercial real estate listing agreement related to a building and property referred to in this litigation as the Bay Tech property. The property is located on lots 449, 450, 451, 486, and 487, First Ward City of Bay St. Louis, Hancock County, Mississippi, and lots 1, 4, 5, and 6. Lots 6 Perkins Subdivision, First Ward City of Bay St. Louis, Hancock County, Mississippi. The listing price of the property was \$995,000.00.

D. On or about January 5, 2012, the Defendant LNG Investments, LLC agreed to purchase the Bay Tech property from the Plaintiff Magnolia Group LLC, for the sum

of \$325,000.00 with a due diligence provision to April 30, 2012. The closing date was later extended from April 30, 2012 to May 30, 2012, then later extended to June 8, 2012. The extensions were at the instance of the Defendant, Mary Bunch to effectuate the scheme subject of this litigation.

E. All communications concerning the sale of the Bay Tech property by the Defendant LNG, LLC from the Plaintiff Magnolia Group, LLC, were conducted by the Defendant O'Dwyer Realty LLC, through its agent and employee, Mary Bunch. Unknown to, and never disclosed to the Plaintiff Magnolia Group, LLC, the Defendant, Lloyd Nicaud is the adult son of the Defendant Mary Bunch.

F. At all material times, the Defendant O'Dwyer, LLC, through its agent and employee the Defendant Mary Bunch, was acting solely in the interest of the Defendants, and not in the best interests of the Plaintiff, Magnolia Group, LLC.

G. Through its own investigation, the Plaintiff Magnolia Group, LLC has determined the following events occurred:

1. On or about March 22, the Defendant Mary Bunch withdrew the Bay Tech property from the Multiple Listing Service without the Plaintiff's permission.

2. On or about May 1, 2012, the Defendant LNG Investments, LLC resolved to sell the Bay Tech property to the Bay Waveland School District. LNG did not own the property at the time of this resolution.

3. On or about May 4, 2012, the Bay Waveland School District commissioned the first of two appraisals of the Bay Tech property. The initial appraisal

secured by the Bay Waveland School District determined the Bay Tech property would be valued at \$580,000.00. The second appraisal valued the property at \$867,000.00.

4. On or about June 8, 2012, the Plaintiff Magnolia Group sold the Bay Tech property to LNG Investments for \$325,000.00.

5. On or about August 7, 2012, LNG Investment, LLC sold the Bay Tech property to the Bay Waveland School District for the sum of \$580,000.00.

6. At all material times, the Defendant O'Dwyer Realty, LLC through its agent and employee Mary Bunch advised the Plaintiff that as a result of the depressed economy and poor market values in Bay St. Louis, Mississippi, the property could only be sold in the range of \$300,000.00 to \$350,000.00. At no time did the Defendant O'Dwyer Realty, LLC, or its agent and employee Defendant Mary Bunch disclose the family relationship existing between the Defendant Mary Bunch, and the Defendant Lloyd Nicaud. At no time did any of the Defendants disclose to the Plaintiff Magnolia Group, LLC the pendency of the sale of the Bay Tech property from LNG Investments, LLC to the Bay Waveland School District.

7. On or about July 1, 2013, the Defendant, O'Dwyer Realty, LLC filed a Notice to Dissolve with the Secretary of State of the State of Mississippi.

8. On or about July 1, 2013, the Defendant, LNG Investments, LLC filed a Notice to Dissolve with the Secretary of State of the State of Mississippi.

9. No known notice of the proposed dissolutions were provided the Plaintiff Magnolia Group, LLC as required by § 79-29-806, *et. seq.* To date, the Secretary

of State of the State of Mississippi has not dissolved the Defendant O'Dwyer Realty, LLC or the Defendant LNG Investments, LLC.

IV.

LIABILITY

A. At all material times, the Defendant O'Dwyer Realty, LLC is responsible for the acts and omissions of its agent and employee, the Defendant Mary Bunch.

B. At all material times, the Defendant Mary Bunch, an agent and employee of the Defendant O'Dwyer Realty, LLC, acted in collusion with the Defendants LNG Investments, LLC, and its principal members, the Defendants Lloyd Nicaud and Gerald Rigby.

C. The Plaintiff charges the Defendant O'Dwyer Realty, LLC with negligently failing to supervise and monitor the actions of its agent and employee, the Defendant Mary Bunch. The Defendant O'Dwyer Realty, LLC knew Defendant Lloyd Nicaud was the son of the Defendant Mary Bunch, but this conflict was never communicated to the Plaintiff Magnolia Group, LLC.

D. At all material times, the Defendants O'Dwyer Realty, LLC, and the Defendant Mary Bunch were in the position of trust with the Plaintiff Magnolia Group, LLC. The Defendant O'Dwyer Realty, LLC, and the Defendant Mary Bunch owed the Plaintiff Magnolia Group, LLC fiduciary duties to act in the Plaintiff's best interest, but failed to do so. Instead the Defendant O'Dwyer Realty, LLC, and the Defendant Mary Bunch acted in the best interest of Defendant Mary Bunch's son, Lloyd Nicaud and his business partner Gerald Rigby.

E. Had the Plaintiff Magnolia Group, LLC been advised of the family relationship between the Defendant Mary Bunch and the Defendant Lloyd Nicaud, the Plaintiff would have terminated the listing agreement.

F. The Plaintiff Magnolia Group, LLC further charges the Defendants with collusion, misrepresentation, breach of the duties of fair dealing and good faith, and breach of contract.

V.

DAMAGES

A. As a result of the acts, omissions, misrepresentations, collusion, and negligence as herein above described, the Plaintiff Magnolia Group, LLC has suffered damages. The Plaintiff seeks actual damages in the sum of \$995,000.00.

B. The actions of the Defendants were in total disregard of the rights of the Plaintiff Magnolia Group, LLC, and evidenced wanton and reckless conduct justifying an award of exemplary or punitive damages. The Plaintiff seeks punitive damages in the sum of \$5,000,000.00. The Plaintiff further seeks attorneys fees, prejudgment interest, and post judgment interest, and all costs of this civil action.

RESPECTFULLY SUBMITTED this the 6th day of August, 2013.

MAGNOLIA GROUP, LLC, PLAINTIFF

BY: OWEN, GALLOWAY & MYERS, P.L.L.C.

BY: 
BEN F. GALLOWAY

Ben F. Galloway, MS Bar No. 4390
Owen, Galloway & Myers, P.L.L.C.
1414 25th Avenue (39501)
Post Office Drawer 420
Gulfport, MS 39502
228-868-2821 (Telephone)
228-868-2813 (Facsimile)
bfg@owen-galloway.com