

PERKIN & FARIA, LLLC
JOHN F. PERKIN 1673-0
BRANDEE J.K. FARIA 6970-0
Davies Pacific Center
841 Bishop Street, Suite 2000
Honolulu, Hawaii 96813

VAN BUREN CAMPBELL & SHIMIZU
GEORGE W. VAN BUREN 3496-0
ROBERT G. CAMPBELL 3399-0
Hawaii Tower, Suite 1950
745 Fort Street
Honolulu, Hawaii 96813

Attorneys for Plaintiff

CYNTHIA NAKAMURA,
individually and on behalf
of all others similarly situated

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CYNTHIA NAKAMURA, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

HAWAII ESCROW & TITLE, INC.; DOE
DEFENDANTS 1-50,

Defendants.

Civil No. 07-1-0730-04 S S M
(Class Action)

COMPLAINT; SUMMONS

I do hereby certify that this is a full, true and
correct copy of the original on file in this office.


Clerk, Circuit Court, First Circuit

COMPLAINT

Plaintiff CYNTHIA NAKAMURA, individually and on behalf of all persons
similarly situated, alleges as follows:

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2007 APR 24 PM 2: 57

H. CHING
CLERK

Parties

1. Plaintiff CYNTHIA NAKAMURA ("NAKAMURA") is a resident of the State of Hawaii.

2. Upon information and belief, Defendant HAWAII ESCROW & TITLE, INC. ("Defendant") is a Hawaii corporation registered to do business in the State of Hawaii as an escrow in real estate transactions. At all times relevant to this action the Defendant did conduct business in the State of Hawaii.

3. Doe Defendants 1-50 are persons, partnerships, associations, corporations, governmental agencies or units, or entities whose names, identities, capacities, activities and/or responsibilities are presently unknown to Plaintiff or her attorneys, except that Doe Defendants 1-50 were and/or are connected in some manner with the Defendant and/or were the agents, principals, parents, subsidiaries, servants, employees, representatives, co-venturers, associates, consultants, owners, lessees, lessors, guarantors, assignees, assignors, licensees, and/or licensors of Defendant and were or are in some manner presently unknown to Plaintiff or her attorneys engaged, or involved in the activities alleged herein or responsible for the activities of which Plaintiff complains, or should be subject to the relief Plaintiff seeks. Plaintiff prays for leave to certify the true names, identities, capacities, activities and/or responsibilities of Doe Defendants 1-50 when, through further discovery in this case, the same are ascertained. Plaintiffs have made a good faith effort to identify said Doe Defendants prior to filing the Complaint, including interviewing witnesses and reviewing documents and records.

Factual Allegations

4. _____, 200_ Plaintiff NAKAMURA paid off her mortgage secured by real property in the State of Hawaii.

5. Defendant performed the escrow services for the transaction.
6. At closing, Defendant provided Plaintiff with a HUD-1 Settlement Statement ("HUD-1"), which summarized the transaction and itemized all of Defendant's settlement charges.
7. Defendant did not pay the Bureau of Conveyances for the recordation of the release of the mortgage (the "Recordation Fee").
8. Nevertheless, according to the HUD-1, Defendant charged Plaintiff the Recordation Fee.
9. Defendant had no right to charge Plaintiff for a Recordation Fee which it did not pay.
10. Defendant has a fiduciary duty to Plaintiff and the class to account for monies collected on their behalf, to return monies held on their behalf, and to not divert monies purportedly paid on their behalf to Defendant and for Defendant's benefit.
11. Defendant did not disclose, among other things, that Defendant was not going to and did not pay the Recordation Fee.
12. The HUD-1 falsely implies to the consumer that the Recordation Fee will be paid by Defendant to the Bureau of Conveyances.
13. As a result of Defendant's practices set forth above, Plaintiff and the Class have suffered actual damages.

Class Action Allegations

14. Plaintiff brings this action on her own behalf and, pursuant to Rule 23 of the Hawaii Rules of Civil Procedure, on behalf of all others who are similarly situated.

15. Plaintiff represents a class of mortgagors who have been damaged by the Defendant's unlawful and deceptive trade practices (the "Class"). The Class consists of mortgagors who, prior to the discovery of this practice in 2006, were damaged by the acts of the Defendant as set forth herein. Excluded from the Class are (a) the Defendant and its subsidiaries, parents and affiliates, including all directors, officers, and employees and (b) any entity in which any of the foregoing has a controlling interest.

16. The Class is so numerous that joinder of all members is impracticable.

17. Common questions of fact and/or law common to the Class exist and predominate over any questions affecting only individual Class members. The common questions of law and fact, include, but are not limited to:

- a. Each Class member paid off a mortgage.
- b. Each Class member was charged a fee purportedly for the payment to the Bureau of Conveyances for recording the release of mortgage.
- c. If Plaintiff proves that these fees were improperly charged then each Class member was damaged in the identical manner.
- d. A common question of fact and/or law is whether Defendant committed an unfair or deceptive trade practice in charging the fee.
- e. A common question of fact and/or law is whether the Defendant needed to disclose to the Class (and/or not to falsely imply otherwise) that the Defendant would not and did not pay the fee.
- f. A common question of fact and/or law is whether the Defendant should be enjoined from engaging in the alleged wrongful acts listed above.

g. A common question of fact and/or law is the total amount of money which the Defendant obtained from their wrongful acts and how Defendant should be required to disgorge.

18. Plaintiff NAKAMURA's claims are typical of the claims of the Class as a whole because each was charged a Fee as set forth above based on standard practices by Defendant that are common to the Class.

19. Plaintiff will fairly and adequately represent and protect the interests of the Class and is willing to serve as a representative of the Class. Plaintiff has retained counsel with substantial experience in prosecuting class actions. Plaintiff and counsel are committed to prosecuting this action vigorously on behalf of the Class and have the financial resources to do so. Neither Plaintiff nor Plaintiff's counsel have any interest adverse to the interests of the Class.

20. A class action is appropriate in this case for one or more of the following reasons:

a. The damages suffered by the Class members are small compared to the burden and expense of prosecuting individual actions.

b. It is virtually impossible for Class members to obtain effective redress for the wrongs alleged in this Complaint without a class action.

c. In contrast, litigating this action as a class action will provide an efficient means of adjudicating the claims and provides the benefits of uniform adjudication, economies of scale, and overall supervision by one court.

d. Defendant may claim that there is a limited fund available to satisfy the claims of all Class members.

e. Questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

f. The Defendant has acted and/or refused to act on grounds generally applicable to the Class making appropriate final injunctive relief or declaratory relief with respect to the class as a whole as set forth below.

First Cause of Action - Unfair and Deceptive Trade Practices

21. Plaintiff incorporates the allegations contained in paragraphs 1 through 20 above.

22. The Defendant's conduct complained of above constitutes unfair or deceptive acts or practices in the conduct of commerce and is therefore unlawful pursuant to Haw. Rev. Stat. § 480-2.

23. Plaintiff and the Class are "consumers" as that term is defined in Haw. Rev. Stat. § 480-1 and therefore are authorized to bring this suit pursuant to Haw. Rev. Stat. § 480-13.

24. Defendant's unfair or deceptive acts or practices caused damage to Plaintiff and the Class.

25. Plaintiff and the Class are entitled to general and special damages, trebled and attorneys' fees and costs, in an amount to be proven at trial. In the alternative, Plaintiff and the Class are entitled to punitive damages because Defendant's wrongful acts were knowing, intentional, wilful, reckless, grossly negligent and/or done with deliberate indifference to the rights of Plaintiff and the Class.

Second Cause of Action – Unjust Enrichment

26. Plaintiff incorporates the allegations contained in paragraphs 1 through 25 above.

27. Defendant received a benefit in the form of a Recordation Fee to the detriment of Plaintiff and the Class.

28. Defendant has retained the benefit, and it would be unjust for the Defendant to fail to return the benefit to Plaintiff and the Class.

Third Cause of Action - Injunctive Relief

29. Plaintiff incorporates the allegations contained in paragraphs 1 through 28 above.

30. Defendant's violations are ongoing and continue to damage Plaintiff and the Class.

31. Plaintiff is therefore entitled to injunctive relief prohibiting the Defendant from continuing their unfair and deceptive practices.

Fourth Cause of Action – Breach of Fiduciary Duty

32. Plaintiff incorporates the allegations contained in paragraphs 1 through 31 above.

33. Defendant had a fiduciary duty to Plaintiff and the Class to, *inter alia*, place its interest subordinate to that of Plaintiff and the Class, properly account for monies received from Plaintiff and the Class, refrain from wrongfully charging Plaintiff and the Class, refrain from comingling Defendant's funds with the funds of Plaintiff and the Class, returning all of the monies of Plaintiff and the Class, and to refrain from diverting to itself monies belonging to Plaintiff and the Class.

34. Defendant has breached all of the foregoing duties and as such must, *inter alia*, return all funds held and must as a faithless fiduciary return all fees paid to Defendant by Plaintiff and the Class or received by it in connection with acting as escrow in transactions with Plaintiff and the Class, which fees include the Recordation Fee and the fee for serving as escrow agent.

WHEREFORE, Plaintiff, individually and on behalf of all those similarly situated, prays for relief as follows:

1. General damages against Defendant in an amount to be determined at trial, trebled;
2. Special damages against Defendant in an amount to be determined at trial, trebled;
3. Punitive damages against Defendant in an amount to be determined at trial;
4. Reimbursement of costs and expenses, including reasonable provision for attorneys' fees;
5. Prejudgment interest;
6. Disgorgement and/or restitution;
7. Appropriate injunctive relief; and
8. Such further and additional relief as the Court deems appropriate and just.

DATED: Honolulu, Hawaii, 04.24.07



JOHN FRANCIS PERKIN
BRANDEE J.K. FARIA
GEORGE W. VAN BUREN
ROBERT G. CAMPBELL
Attorneys for Plaintiff
CYNTHIA NAKAMURA, individually and on
behalf of all others similarly situated

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CYNTHIA NAKAMURA, individually and) Civil No. _____
on behalf of all others similarly situated,) (Class Action)
)
Plaintiff,) **SUMMONS**
vs.)
)
HAWAII ESCROW & TITLE, INC.; DOE)
DEFENDANTS 1-50,)
)
Defendants.)
_____)

SUMMONS

STATE OF HAWAII

To the above-named Defendant(s):

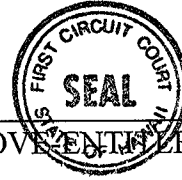
You are hereby summoned and required to serve upon PERKIN & FARIA, LLLC, attorneys for Plaintiff, whose address is Davies Pacific Center, 841 Bishop Street, Suite 2000, Honolulu, Hawaii 96813, an answer to the Complaint which is herewith served upon you, within ten(10) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

This Summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this Summons, personal delivery during those hours.

A failure to obey this Summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Honolulu, Hawaii, APR 24 2007

H. CHING



CLERK OF THE ABOVE ENTITLED COURT