

STATE OF MINNESOTA

AFFIDAVIT OF SERVICE

COUNTY OF HENNEPIN

**METRO LEGAL SERVICES**

Stacy A. Steltzner, being duly sworn, on oath says:

that on September 4, 2020, at 3:20 PM she served the:

Summons, Complaint, & Exhibits upon:

John M. Miller, Esq., therein named, personally at:

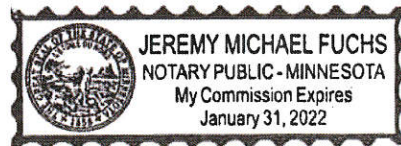
Suite 2626, 101 East 5th Street, St. Paul, County of Ramsey, State of Minnesota, by handing to and leaving with Patti Doornink, Administrative Assistant, an expressly authorized agent for said John M. Miller, Esq., a true and correct copy thereof.

Stacy A. Steltzner 9 / 7 / 2020  
Stacy A. Steltzner, Process Server

Subscribed and sworn to before me on

9 / 7 / 2020

[Signature]



2443311 - 3\*

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

XUAN-MAI TA,

Plaintiff,

v.

RAIMIS CONSTRUCTION, LLC AND  
SHIRZAD RAIMI; COUNSELOR REALTY,  
INC. AND LISA LAN M. THAI; AND WEST  
TITLE, LLC,

Defendants.

Case Type: Contract

Court File No: \_\_\_\_\_

Assigned Judge: \_\_\_\_\_

**COMPLAINT**

**JURY TRIAL DEMANDED**

**COMES NOW** Plaintiff XUAN-MAI TA (“**Plaintiff**” or “**Dr. Ta**”), an individual residing in the State of Minnesota, and for her cause of action against Defendants:

RAIMIS CONSTRUCTION, LLC AND SHIRZAD RAIMI (“**Raimis**” or “**Raimi**”);

COUNSELOR REALTY, LLC, (“**Counselor**”) and

LISA LAN THAI, Counselor’s agent (“**Thai**”), and

WEST TITLE, LLC (“**West Title**”),

states and alleges as follows:

#### **SUMMARY**

This action relates to the financial and emotional harm Defendants caused to Plaintiff Dr. Ta by their misrepresentations regarding known material defects, and negligence in failing to either identify or disclose other material facts and commercially unreasonable risks attendant to Dr. Ta’s purchase of **820 White Bear Avenue N., St. Paul, MN 55016** (the “**Property**”). Dr. Ta did everything right; she engaged a licensed real estate agent (Thai) with a well-known broker

(Counselor) to locate and represent her best interests in purchasing an office building for her optometry practice. She hired an inspector. She engaged the professional title company (West Title) that Thai referred, and bought title insurance. But none of Dr. Ta's reasonable and prudent actions protected her from Seller Raimis' misrepresentations, which Thai, Counselor and West Title had a duty to—and were paid to—identify, disclose and advise, but all of whom breached those duties to Dr. Ta. Therefore, Dr. Ta substantially overpaid for a property unfit for her use as a second optometry clinic, riddled with serial code violations and with no place to park for Dr. Ta or her patients. This result should never have occurred. One might expect such a result when acting alone, as a do-it-yourselfer, but not when one plays by the rules and hires professionals to protect one's interests at every stage of the transaction. Hence, all Defendants are jointly and severally liable for Plaintiff's damages as set forth below.

#### **PARTIES**

1. Plaintiff, **Dr. Xuan-Mai Ta**, is an optometrist and State of Minnesota resident, residing in Hennepin County, Minnesota at 9227 Gateway Lane, Eden Prairie, MN 55347.
2. Defendant **Raimis Construction, LLC** is a domestic Minnesota company with the registered address of 311 Concorde Place, Burnsville, MN 55337.
3. Defendant **Shirzad Raimi** is the Manager of Raimis Construction, LLC, and represents on the Minnesota Secretary of State website that his address is also 311 Concorde Place, Burnsville, MN 55337. Defendant Raimi is also a licensed real estate agent in the State of Minnesota (Lic. # 40459667) with RES Realty.
4. Defendant **Counselor Realty, Inc.** is a domestic Minnesota Corporation with the registered address of 1201 W County Rd E, Suite 103, Arden Hills, MN 55112.

5. Defendant **Lisa Lan Thai** is a licensed real estate agent in the state of Minnesota (Lic. # 91655), who maintains her agent affiliation with and is an agent of Defendant **Counselor Realty, Inc.** Defendant Thai's business address is 7300 France Ave. S., Suite 112, Edina, MN 55435.

6. Defendant **West Title, LLC** is a domestic Minnesota company with the registered address of 4301 Highway 7, Suite 100, St. Louis Park, MN 55416.

### **JURISDICTION, AND VENUE**

7. Minnesota Statutes § 484.01(1) vests this Court with subject-matter jurisdiction.

8. This Court has personal jurisdiction over all Defendants because they reside and conduct their businesses in Minnesota.

9. This matter is properly venued in Ramsey County, Minnesota, pursuant to Minnesota Statutes § 542.02 because the real estate at issue is situated in Ramsey County, and pursuant to Minnesota Statutes § 542.09 because Defendant **Counselor** presently resides in, and *some part of the cause of action arose in*, Ramsey County.

### **FACTS**

Based on information and belief, Plaintiff states as follows:

10. Plaintiff was referred to Counselor Realty Agent, Defendant Thai. At all times, Thai worked for and held herself out as agent acting pursuant to her authority for Defendant Counselor <https://lisathai.counselorrealty.com/?chome=1&odoor=>. Counselor as principal is vicariously liable for agent Thai's acts and omissions conducted within the scope of her authority. *Semrad v. Edina Realty, Inc.*, 493 N.W.2d 528, 535 (Minn. 1992).

11. Thai gained Plaintiff's trust due to Southeast Asian affinity marketing and promises of expertise. Based on Defendant Thai's representations, Dr. Ta retained Thai to find a

commercial building for Dr. Ta to open a second optometry clinic on the east side of St. Paul. Thai identified **820 White Bear Avenue, St. Paul, MN 55106**, advertised as having one parking space (the “Property”).

**Defendant Thai Discouraged Dr. Ta from Seeking Legal Advice and Thai Broke Her Promises to Protect Dr. Ta’s best interests.**

12. As Dr. Ta’s agent, Thai owed Dr. Ta a fiduciary duty to act in Dr. Ta’s best interests, including the duty to disclose material facts and to use reasonable care in performing Thai’s duties as Dr. Ta’s Agent (See Exh. 2, lines 27-34, and 65-72). Her most serious misconduct, however, was discouraging Dr. Ta from seeking the services of Dr. Ta’s attorney. MINN. STAT. § 82.81, SUBD. 11.

13. Thai proposed the sale to Dr. Ta by a Contract for Deed. Dr. Ta is very conservative; Dr. Ta told Thai that she was uncomfortable because she had no experience with contracts for deed. Thai assured Dr. Ta that Thai had extensive experience with contracts for deed and exhorted Dr. Ta not to worry, stating “I’ll advise you and take care of everything.” Thus, Thai persuaded Dr. Ta to let her handle everything, but Dr. Ta told Thai that once everything was ready to go, Dr. Ta wanted to have her attorney look it over. Thai discouraged Dr. Ta from seeking her attorney’s advice because “attorneys cost too much money and slow everything down.” Consequently, Thai persuaded Dr. Ta not to seek legal counsel and to let Thai perform all the actions that Dr. Ta’s attorney would otherwise provide.

**Raimis Fraudulently Concealed Mortgage and Known Material Defects to Induce Plaintiff to Overpay for and Complete Purchase of Property.**

14. *Concealed Moose Lake State Bank Mortgage.* At all times, Raimis Construction, LLC acted solely through its manager, Shirzad Raimi; accordingly, all references to Raimis Construction’s conduct are at the same time personal to Mr. Raimi. Dr. Ta and Raimis entered

into a Purchase Agreement (“PA”) and Addendum dated August 8, 2018, finally accepted on August 14, 2018 (Exh. 1). In the Addendum, Raimi represented there were no liens or mortgages on the property. Addendum expressly states if there is an existing mortgage to “seek competent legal advice.” Raimis’ no mortgage representation was knowingly false when made because Raimis gave Moose Lake State Bank a mortgage on the property for \$252,000 just 4 months prior on April 6, 2018 (Exh. 1.1). Dr. Ta relied on Raimi’s false representation and bought the Property that she never would have purchased had she known of the mortgage.

*Raimis Misrepresented that Property was Fully Compliant with all rules, regulations, statutes, laws, ordinances and codes.*

15. Raimis represented to Dr. Ta that the Property had no code violations (see Exh. 1.0, PA #s 62, 66, 71, 147-151, and especially 156-159). When in fact, at that time, the Property suffered from numerous code violations. On August 15, 2018—**20 days PRIOR TO the closing**—*Pat Cahanes* of the *City of St. Paul, Department of Public Works* mailed written notice to Raimis Construction’s registered address (Exh. 6) of the Property being in violation of St. Paul’s municipal code Section 41.03 (herein referred to as the “rain-leader” code violation):

**roof drain improperly connected to the sanitary sewer system, which must be modified and connected to the storm sewer, located underneath White Bear Avenue (Exh. 3).**

16. Raimis liable for all existing code violations at time of PA and Contract for Deed.
- a. *Purchase Agreement.* With the freshly inked PA accepted just the day before on 8/14/2018, Raimis concealed this known rain-leader code violation and proceeded with the closing on September 5, 2018. In so doing, Raimis breached the PA which holds Seller Raimis liable for assessments and code violations prior to date of PA, and imposes the ongoing duty to immediately report new notice of code violations prior to close (Exh. 1.0 #s 62, 66, 71, 147-151, especially 156-159).

- b. 9/5/2018: CONTRACT FOR DEED (Exh. 1.1). Paragraph 13 (seller is liable for all pre-sale conditions), which includes all violations the City has identified in their several correspondences.

*Raimis Misrepresented to Plaintiff that it obtained all necessary licenses, permits and approvals.*

17. *Raimis knew about and actively concealed the main level bathroom code violation.* Raimis knew the main level bathroom was in violation of the City Code. On February 20, 2018, Raimis pulled the “remodel” permit. On March 12, 2018, City Inspector Nelson inspected the site and advised Raimi to pull two additional permits, one for electrical and one for plumbing. Raimis ignored the City’s directive and instead finished the bathroom, without pulling the 2 additional permits and without closing out the initial permit since Raimis knew the City would never have closed it out due to Raimi’s disregard of the City’s directive. Worse, the bathroom is unfit for any use, and must be demolished and reconstructed to meet City Code.

*City of St. Paul Fire Safety Inspector Huseby identifies serial additional code violations in her April 30, 2019 Fire Inspection Corrective Notice Letter.*

18. This notification identifies several additional code violations for work Raimis performed without required permits and inspections (Exh. 5). Because Dr. Ta performed no work on the Property, all code violations existed prior to closing and existed at the time Raimis misrepresented that the Property was fully compliant with all Codes.

**Knowing the Property was Landlocked with No Parking Space, Raimis Falsely Advertised the Building with One Parking Space.**

19. Raimis listed the property as having one parking space (Exh. 1.2). At the time, Raimis knew the property had no parking space. The building front, comprising addresses 814, 820 and 824, faces White Bear Avenue; there is no parking in front of the building on White Bear. The rear lot is modestly sized, but no space is allotted to 820.

20. Ronald and Marjorie Christensen formerly owned both 820 and 824. There are one or two parking spaces, but they both belong to 824. So, prior to selling 824, Christensens recorded on 8/4/2006 a Declaration of Easement of Ingress and Egress, permitting 820 to access the Property from the lot, but not to park there (Exh. 10). The Christensens explained this to Raimi before selling 820 to him in January 2018. Tamer, the owner of 814, confirmed that in having conversations with Raimi, Raimi knew that 820 had no parking space. Nevertheless, knowing the Property's lack of appeal without a parking space, Raimis falsely marketed the building with one parking space (Exh. 1.2).

21. Shortly after the closing, Raimi sent a text message to Dr. Ta in which he for the first time notified Dr. Ta that 820 had no parking, but only an easement to load/unload.

22. At no point prior to closing did any Defendant correct Raimis' misrepresentation about the one parking space, or disclose the easement or provide a copy of the recorded easement to Dr. Ta (See Exh. 1.3 West's File #17229864 document stating "No" apparent easements and leaving the Easement box unchecked).

**Defendants Counselor, Thai and West Title All Failed to Disclose these Material Defects and Material Facts to Plaintiff who Trusted and Paid Each of Them to Protect her Best Interests.**

23. Dr. Ta did everything right; Defendants knowingly or negligently did everything wrong. Dr. Ta hired licensed and trained professionals to protect her best interests, the same as every conscientious person who wishes to do things *by the book*. Dr. Ta reasonably believed she was taking no risks. She obtained an independent inspection which revealed no material defects. She trusted her agent and broker and title company to meet their duties to disclose all material facts. They all failed Dr. Ta. Thai, Counselor and West all failed to disclose to Dr. Ta: (1) 8/15/2018 Pat Cahanes Letter to Raimis about rain-leader code violation; (2) main level bath



open permit due to obvious code violation(s); (3) no parking available for the Property; and (4) the Moose Lake Bank mortgage on the Property.

24. Dr. Ta, trusting all of these professionals to fulfill their duties to her, believing the Property was in full compliance with all codes, had one parking space, and had no mortgages or liens superior to her rights to be obtained in the purchase, bought the building for \$250,000, paying \$79,067 down at closing (See Exh. 1.4).

**Plaintiff learns of material rain-leader code violation not from Raimis, but from the City almost two months after closing.**

25. Pat Cahanes sent Plaintiff a letter dated October 29, 2018, notifying Plaintiff of the rain-leader code violation (Exh. 4). Plaintiff called Mr. Cahanes to discuss because the letter erroneously stated that former owner Raimis Construction had forwarded the August 15, 2018 letter so that Plaintiff was aware of the code violation. Mr. Cahanes later stated that is what Raimis Construction told him during a phone call. Raimis lied to Mr. Cahanes in representing that Plaintiff was aware of the violation and in stating Raimis forwarded correspondence to Plaintiff. In fact, in an obvious attempt to cover up deceitful conduct, Raimis last asserted that he never even received the correspondences.

**Plaintiff hired counsel to address the matter.**

26. Only after Dr. Ta's counsel reviewed the Contract for Deed did Dr. Ta learn of the Moose Lake State Bank mortgage on the property. Raimis concealed the mortgage in the Purchase Agreement Addendum.

27. And neither Counselor, Thai nor West Title ever informed Plaintiff about the mortgage and its superior claim on the property. A mortgage is material to any Contract for Deed transaction because Purchaser could pay Seller in full and still lose the property if Seller defaults on mortgage. That is why the Addendum warns Buyer to "seek competent legal advice."

Defendants' failure to properly review title and city records and advise Dr. Ta of all these problems, coupled with their discouraging Dr. Ta from engaging her attorney to review prior to closing, effectively prevented Dr. Ta from learning the very truths Defendants had a duty to disclose and advise on.

28. The September 5, 2018 closing was a typical one: sign here, sign there, and then off with the documents to make copies for everyone. Though the mortgage was buried in the Contract for Deed, Dr. Ta never saw it, and no one verbally disclosed it or explained its ramifications to her, or why Raimis failed to disclose it in the Addendum. Rather than protecting Dr. Ta's best interests as they were all paid to do, Defendants acted in their own financial interests breaching their duties to Dr. Ta.

29. Dr. Ta has not moved into the Property or made any material improvements to the Property; it is essentially in the same material condition as it was at the time of closing on September 5, 2018.

30. Dr. Ta performed due diligence to identify potential contractors to remedy the rain-leader code violation. After obtaining two bids and learning of Inspector Huseby's fire code violations, on May 21, 2019 Dr. Ta served a demand letter on Raimis to rescind the transaction and refund her money.

#### **Raimis and Dr. Ta Settle.**

31. Raimis and Dr. Ta through their counsels engaged in several settlement communications. Raimis, after hiring his second lawyer, and Dr. Ta secured a settlement on December 17, 2019 for a payment of \$65,000, plus reimbursement for December taxes paid and for Raimis to take the Property back. "We have a deal." (Exh. 7).

#### **Raimis Breaches Settlement with Plaintiff.**

32. After the holidays, Plaintiff's counsel sent Raimis' counsel a settlement and release. After several conversations on standard terms, which included Dr. Ta's rights to pursue the remainder of her damages against the other named Defendants in this action, the parties were set to close on the settlement pending a basic inspection to be sure property was principally in the same condition as it was at closing. But on March 23, 2020, Raimis' attorney John Miller contacted Dr. Ta's attorney, Mark Czuchry, to inform him that Raimi was reneging on the deal because it was taking too long and Covid-19; and they asserted settlement was not enforceable because Raimis had not yet signed the agreement (Exh. 8).

**COUNT ONE**  
**FRAUDULENT MISREPRESENTATION**  
**(Against Raimis Defendants)**

33. Plaintiff realleges here all preceding paragraphs of the complaint as if fully set forth, and incorporates them herein by reference.

34. Defendant Raimis Construction, LLC is a company and can act only through its officers and employees. Shirzad Raimi is Raimis' only actor. The misconduct of an officer or employee acting within the scope of his or her employment or authority is the misconduct company. MINN. CIVJIG 30.60 CORPORATIONS--LIABILITY FOR CONDUCT OF EMPLOYEES; CORPORATE RESPONSIBILITY FOR EMPLOYEES.

35. Raimis is liable for Raimi's conduct irrespective of Raimi's motive for entering into the transaction. See *Marston v. Minneapolis Clinic of Psychiatry & Neurology*, 329 N.W.2d 306, 310 (Minn. 1983) (vicarious liability for intentional tort not dependent upon motive); see also Restatement (Second) of Agency Sec. 262 (1958) (principal's liability when agent acts for own purposes). Section 261 states the basis for this liability:

A principal who puts a servant or other agent in a position which enables the agent, while apparently acting within his authority, to commit a fraud

upon third persons is subject to liability to such third persons for the fraud. *Opatz v. John G. Kinnard and Co., Inc.*, 454 N.W.2d 471, 474 (Minn. App., 1990).

36. Accordingly, Raimis Construction, LLC is fully liable for all Shirzad Raimi's misrepresentations.

37. Shirzad Raimi misrepresented past and existing material facts susceptible of knowledge. He stated there was no mortgage on the Property when there was; that the Property came with one parking space when it did not, and that the Property was not in violation of any laws or codes, when it was.

38. Shirzad Raimi made these representations knowing they were false when made.

For example:

- a. **First Nat'l Bank of Moose Lake** recorded its (\$252,000) mortgage and Assignment of Rents and Leases on 4/20/2018; Shirzad Raimi signed them both on 4/6/2018, meaning he knew of their existence. Approximately 4 months later when he executed the PA on 8/14/2018, Shirzad Raimi represented that the Moose Lake Bank mortgage did not exist.
- b. **City of St. Paul** mailed notice of rain-leader code violation to Raimis on 8/15/2018. The mail was not returned and for more than a century, Minnesota imputes the contents of that letter to the addressee<sup>1</sup>. Therefore, Raimis Construction's continued representation from 8/16/2018 through closing on 9/5/2018 that the Property was not in violation of any codes or that it had no notice or knowledge of any code violation was false when made. See *Parkside Mobile Estates v. Lee*, 270 N.W.2d 758, 759 (Minn. 1978) (MN Supreme Court affirmed jury trial decision holding defendant liable for damages related to code violations the county notified defendant of after signing PA and before closing).
- c. False representation that bathroom was not in violation of code.
- d. False representation that 820 included one parking space was false when made. As to material easements, the Minnesota Supreme Court has already addressed this matter and voided a contract for deed pursuant to Seller's mischaracterization of

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<sup>1</sup> We start with the presumption, in the absence of proof to the contrary, that mail properly addressed and sent with postage prepaid is duly received by the addressee. *Nemo v. Local Joint Executive Board*, 227 Minn. 263, 266, 35 N.W.2d 337, 339, 811 (1948); 7A Durnell, Dig. (3 ed.) s 3445. *Nafstad v. Merch.*, 303 Minn. 569, 569-71, 228 N.W.2d 548, 550 (1975).

status of access road. See *Carpenter v. Vreeman*, 409 N.W.2d 258, 260-261 (Minn. App. 1987): “A contract is voidable if a party's assent is induced by either a fraudulent or a material misrepresentation by the other party, and is an assertion on which the recipient is justified in relying. Restatement of Contracts (Second) § 164(1) (1981).”

39. Raimis made these false representations intending to induce Dr. Ta to rely on them and to act by completing the purchase of the Property, which Dr. Ta did rely on Raimis' misrepresentations in purchasing the Property. Accordingly, this Court should void the contract for deed as procured by fraudulent misrepresentations and award Dr. Ta her full damages.

40. **Damages.** Dr. Ta has never used the property. She incurred closing costs and paid Raimis Construction \$79,067 as a down payment. Since then, Dr. Ta has paid the monthly amount, except for December 2019 through July 2020 during which the Parties agreed she could cease making payments pursuant to terms of agreed to settlement. She has since made up that amount, and now brings this action to mitigate her damages, which include her to date payment of taxes, utilities, insurance and attorneys' fees, all of which she should have never incurred and would not have incurred but for Shirzad Raimi's fraudulent misrepresentations.

**COUNT TWO**  
**NEGLIGENT MISREPRESENTATION**  
**(Against Raimis, Counselor and Thai Defendants)**

41. Plaintiff realleges here all preceding paragraphs of the complaint as if fully set forth, and incorporates them herein by reference.

42. Fraudulent and negligent misrepresentation are similar, the principle difference being that Plaintiff must establish a duty owed to the Plaintiff by the representor.

**Raimis Defendants.**

COMMERCIAL SELLER OWES BUYER A DUTY OF GOOD FAITH WHICH RAIMI-SELLER BREACHED BY NEGLIGENTLY MISREPRESENTING THAT THE PROPERTY WAS NOT IN VIOLATION OF ANY CODES WHEN IT WAS.

43. As one soliciting a commercial transaction, Raimis had an affirmative duty of objective good faith under the UNIFORM COMMERCIAL CODE; good faith requires honesty in fact and “observance of reasonable commercial standards of fair dealing.” MINN. STAT. 336.1-201(b)(20). *Webb Bus. Prom. Inc. v. American Elec. & Entertain. Corp.*, 617 N.W.2d 67, 73-74 (Minn. 2000). Sellers exhibit “bad faith” when they refuse to fulfill contractual obligations based not on mistake or inadvertence, but based on an ulterior motive. *Minnwest Bank Cent. V. Flagship Props., LLC*, 689 N.W.2d 295, 303 (Minn. Ct. App. 2004). Raimis failed to fulfill its Purchase Agreement contractual obligations by misrepresenting the Property had no code violations when Raimis knew or should have known of the rain-leader code violation and absolutely knew about the bathroom and other fire code violations. The same goes for luring Dr. Ta into believing there was one parking space and that the Property was mortgage-free. Shirzad Raimi’s knowingly false **representation of these material facts** for the purpose of inveigling an unsuspecting, innocent and *good faith* purchaser was *bad faith* on Raimi’s part and the opposite of *honesty in fact*. **Profiting nearly \$80,000 at the closing table** is demonstrable evidence of Raimi’s ulterior motive and bad faith in misrepresenting no code violations of which Raimi had actual and or imputed knowledge.

44. Because Dr. Ta was reasonable in relying on Raimi’s misrepresentations and she did so rely which caused her to suffer unfair and substantial financial damages, Raimis is liable to Dr. Ta for full reimbursement of all of her out of pocket costs to maintain the building sold to her pursuant to Raimi’s false representations.

#### **Counselor and Thai Defendants.**

45. Thai as Counselor’s agent and within the scope of her authority as Counselor’s agent, made intentional representations of her skills and specific expertise regarding Contract for

Deed transactions. Such representations were of past and existing material facts, made to convince Dr. Ta to hire and trust Thai to advise Dr. Ta on the transaction and take care of everything; everything included identifying and advising on material facts that might reasonably affect Dr. Ta's use and enjoyment of the property, which ostensibly included the existence of the Moose Lake Bank mortgage, no parking space and material code violations. Dr. Ta relied on Thai to advise her and take care of everything, even relying on Thai's advice not to seek the services of Dr. Ta's attorney. Dr. Ta incurred substantial damages in reasonably relying on Thai's representations, for which both Counselor and Thai are liable to Dr. Ta.

**COUNT THREE**  
**NEGLIGENCE**  
**(Against All Defendants)**

46. Plaintiff realleges here all preceding paragraphs of the complaint as if fully set forth, and incorporates them herein by reference.

47. **Duty.** All Defendants owed a duty to Dr. Ta.

- a. **Counselor and Thai** owed fiduciary duties to Dr. Ta to act in her best interests, in good faith with loyalty and care to disclose all material facts that might affect Dr. Ta's use and enjoyment of the property, and to use reasonable care in identifying those material facts and performing these duties as Dr. Ta's agent or to refer Dr. Ta to a title company that would satisfy this duty of care. In addition, Thai owed Dr. Ta the duty to not discourage her from seeking the services of Dr. Ta's attorney.
- b. **West Title** owed the duty to Dr. Ta to exercise reasonable care in carrying out its professional services, which included identifying material facts about the property to disclose those facts to Dr. Ta to inform her decision whether to purchase.
- c. **Raimis Defendants** owed duty not to misrepresent material facts about the property and to act in good faith, meaning fair dealing and acting with honesty in fact.

48. **Breaches.** All Defendants breached their duties to Dr. Ta as alleged herein. It was reasonably foreseeable to all Defendants that if they were negligent in performing their services or if they breached their duties that Dr. Ta would be injured thereby. And the greater the risk, the

greater the quantum of care the law requires. *Domagala v. Rolland*, 805 N.W.2d 14, 28 (Minn. 2011). In contract for deed transactions in which the highly regulated commercial lender standards rarely apply, Counselor, Thai and West Title's duties to identify material facts through title, permit and code violation searches are heightened. Counselor, Thai and West miserably failed in exercising even reasonable care, let alone the greater quantum of care required for this transaction.

49. **Causation.** Dr. Ta, not knowing about the mortgage, the code violations or that no parking space came with the Property, reasonably relied on all Defendants' misrepresentations that such conditions did not exist. Dr. Ta followed Thai's negligent advice to complete the purchase of the Property, and to do so without seeking the services of her attorney.

50. **Damages.** Defendants' negligence caused or contributed to Dr. Ta's damages; therefore, Defendants are liable for all the natural and proximate consequences of their negligence, whether Defendants could have foreseen them or not. *Schmidt v. Beninga*, 285 Minn. 477, 490-91, 173 N.W.2d 401, 408-409 (1970). Those damages include all of Dr. Ta's payments to Raimis Construction, all tax, insurance and utilities payments to maintain the Property, and Dr. Ta's attorneys' fees, all of which have been prudent and necessary and for which Defendants are liable.

**COUNT FOUR**  
**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**  
**(Against Counselor, Thai and West Title Defendants)**

51. Dr. Ta realleges here all preceding paragraphs of the complaint as if fully set forth, and incorporates them herein by reference.

52. Defendants' conduct, in, *inter alia*, falsely and egregiously misrepresenting status of property as fit for Dr. Ta's prompt or immediate use as an optometry clinic has caused Plaintiff mental anguish.

53. Defendants had a duty to provide proper and accurate information to Dr. Ta as to



the condition of the property, which they failed to do.

54. Dr. Ta has sustained physical and emotional injuries as a result of Defendants' negligent infliction of emotional distress, which includes several interactions with the City threatening fines and even a present matter regarding the Property's status as vacant.

55. As a direct and proximate cause of Defendants' negligent infliction of emotional distress, Dr. Ta has been damaged in an amount not less than \$50,000.00.

**COUNT FIVE**  
**BREACH OF CONTRACT**  
**(Against Raimis, Counselor and Thai Defendants)**

56. Plaintiff realleges here all preceding paragraphs of the complaint as if fully set forth, and incorporates them herein by reference.

**Raimis Defendants.**

Purchase Contracts.

57. Dr. Ta and Raimis entered two contracts, the **PA** and the **Contract for Deed**.

58. Dr. Ta fully performed on the contracts.

59. Raimis breached the contracts as alleged herein, for which Raimis is liable for Dr. Ta's damages caused by Raimis' breaches.

Settlement Contract.

60. Dr. Ta and Raimis through their counsels settled Dr. Ta's dispute with Raimis (while preserving Dr. Ta's claims against other Defendants) on December 17, 2019 by reaching agreement on all material terms, including December 2019 as Dr. Ta's last contract for deed payment, Raimis reimbursement of December 2019 tax paid of \$507, payment to Dr. Ta of **\$65,000**, and transfer of Property back to Raimis pursuant to the Limited Warranty Deed drafted by Raimis' counsel.

61. On March 23, 2020, Raimis breached by repudiating settlement, asserting not enforceable because final agreement not signed. Minnesota law is clear that material terms of settlement are enforceable once agreed to and prior to signing a final settlement document<sup>2</sup>.

62. Dr. Ta's damages resulting from Raimis' breach of settlement include (a) all damages outlined in ¶ 61, plus (b) Dr. Ta's July 28, 2020 payment of \$11,466 to Raimis Construction for Contract for Deed payment arrearages, plus (c) all taxes, insurance and utilities payments since December 2019, plus (d) Dr. Ta's attorneys' fees since March 23, 2020.

**Counselor and Thai Defendants.**

63. Dr. Ta and Defendants entered a contract titled **Agency Relationship In Real Estate Transactions** which details their duties to Dr. Ta including the duty of disclosure of all material facts and the use of reasonable care. They also executed the **Commercial Buyer and/or Tenant Representation Contract: Exclusive**, in which Defendants obligated themselves to "at all times" act in Dr. Ta's best interests.

64. Thai either modified these contracts or entered an **oral contract** with Dr. Ta in which Thai pledged to advise Dr. Ta and take care of everything so that Dr. Ta did not need to seek the services of her attorney.

65. Dr. Ta performed her end of the bargain, but Defendants breached their contractual duties by representing to Dr. Ta that the building was fit to purchase for Dr. Ta's optometry clinic with no code violations and a parking space to boot. Taking care of everything included identifying and advising Dr. Ta about the ramifications of the mortgage, open permits reflecting code

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<sup>2</sup> Settlement of a lawsuit is contractual in nature, and to constitute a full and enforceable settlement, there must be a definite offer and acceptance with a meeting of the minds on the essential terms of the agreement." *TNT Prop., Ltd., v. Tri-Star Dev. LLC*, 677 N.W.2d 94, 101 (Minn. App. 2004). See *LaFave v. Nationstar Mortg.*, File No. 19-cv-1801 (ECT/LIB) (D. Minn. July 7, 2020), enforcing settlement even though agreement not signed.

violations and even the City's 8/15/2018 letter to Raimis. It also included a discussion as to where Dr. Ta and her patients could park. Defendants broke their promises related to all these issues and caused Dr. Ta to incur all her financial damages to date, for which Defendants are jointly and severally liable with Raimis as joint breachers and tortfeasors.

**COUNT SIX**  
**BREACH OF FIDUCIARY DUTY**  
**(Against Counselor and Thai Defendants)**

66. Plaintiff realleges here all preceding paragraphs of the complaint as if fully set forth, and incorporates them herein by reference.

67. Agents and brokers are fiduciaries to their clients. In representing Dr. Ta, Defendants owed Dr. Ta a fiduciary duty of *undivided loyalty* to protect and act in Dr. Ta's best interests, and *to disclose any material facts that may affect Dr. Ta's use and enjoyment of the property as an optometry clinic.*

68. Defendants breached their fiduciary duty to Dr. Ta by acting in their own *undivided interest* to get paid rather than fulfilling their duties in representing Dr. Ta's best interests. What potential buyer of real estate would not want to know about a superior lien for the full value of the property? Or that the property has no convenient parking available; or that the Property is unfit for any use due to existing code violations that would cost more than \$30,000 to cure?

69. Defendants failed to take the time to obtain information necessary to identify and disclose these issues and properly advise Dr. Ta on them; if they had, the only competent advice for Dr. Ta would have been to run away from the closing table.

70. By these acts and omissions, Defendants breached their fiduciary duties to Dr. Ta for which Defendants are liable to Dr. Ta for all legal and equitable damages in an amount to be determined at trial.

71. **Constructive Trust for Defendants' commission.** Due to Defendants' breach of fiduciary duties, Defendants are not entitled to their commissions on this transaction paid from Dr. Ta's payment at closing and for which Dr. Ta is entitled to reimbursement.

**COUNT SEVEN**  
**PROMISSORY ESTOPPEL**  
**(Against All Defendants)**

72. Plaintiff realleges here all preceding paragraphs of the complaint as if fully set forth, and incorporates them herein by reference.

73. Plaintiff is permitted to plead alternative theories of recovery. To any extent any of Defendants' conduct is not otherwise actionable under the other Counts Dr. Ta pleads herein, she asserts damages and right to recovery pursuant to the doctrine of Promissory Estoppel.

**Counselor, Thai and West Title Defendants.**

74. As alleged herein, Defendants made clear and definite promises to competently represent Dr. Ta and take care of everything, discouraging Dr. Ta from seeking the services of her attorney. They failed to keep those promises to expertly advise Dr. Ta as her fiduciaries and surrogate or *de facto* attorneys on this transaction by not disclosing the problems with the Property and by not advising Dr. Ta to walk away or renegotiate the price if Dr. Ta were willing to tackle the material defects. Dr. Ta would have walked away had Defendants kept their promises.

75. Dr. Ta reasonably relied on Defendants' promises, just as any reasonable consumer would have. It was reasonably foreseeable to Defendants that Dr. Ta would and did rely on Defendants' promises because Dr. Ta never hired her attorney after Thai discouraged to do so.

**Raimis Defendants.**

76. To any extent Raimis Defendants' conduct is not otherwise actionable based on counts asserted, Raimis made clear and definite promises that the Property was otherwise

compliant with all city codes and fit for use as an optometry clinic complete with one parking space. Raimis concealed the easement because disclosing it would have exposed the lie about the parking space. In closing on the sale and paying Raimis nearly \$80,000, Dr. Ta reasonably relied on Raimis' promises. Dr. Ta would not have purchased the Property but for these promises.

77. Accordingly, all Defendants are liable for Dr. Ta's damages she incurred by relying on Defendants' promises, which they breached. Defendants must be estopped from denying their promises to Dr. Ta and ordered to compensate her to make her whole for their unkept promises.

**COUNT EIGHT**  
**UNJUST ENRICHMENT**  
**(Against All Defendants)**

78. Plaintiff realleges here all preceding paragraphs of the complaint as if fully set forth, and incorporates them herein by reference.

79. To prevail on a claim for unjust enrichment or the similar *quasi-contract*, Dr. Ta must prove Defendants knowingly received something of value to which they are not entitled, and that it would be unjust for them to retain the benefit. *Service Master of St. Cloud v. GAB Bus. Servs., Inc.*, 544 N.W.2d 302, 306 (Minn. 1996); see also, *Acton Constr. Co. v. State*, 383 N.W.2d 416, 417 (Minn. App. 1986). The elements of a quasi-contract are: (1) a benefit is conferred; (2) the defendant appreciates and knowingly accepts the benefit; (3) the defendant's retention of the benefit under the circumstances would be inequitable.

80. Dr. Ta paid all Defendants at the closing. All Defendants knowingly accepted the benefit of payment. However, since all Defendants made material misrepresentations to Dr. Ta to induce her to complete the transaction that resulted in financial damages in excess of \$120,000, under these circumstances it would be unjust and inequitable for any Defendant to retain the benefit they accepted. Accordingly, all Defendants should return all amounts they received from Dr. Ta.

**COUNT NINE**  
**COMMON LAW FRAUD**  
**(Against All Defendants)**

81. Plaintiff realleges here all preceding paragraphs of the complaint as if fully set forth, and incorporates them herein by reference.

82. To whatever extent Defendants' misrepresentations and breaches are not otherwise actionable based on other counts, they are actionable fraud because mortgages, existing code violations and parking arrangements are material facts in every real estate transaction. So, misrepresentations about them to induce others to rely and act on them are actionable under Minnesota law.

83. Accordingly, Defendants' fraud entitles Dr. Ta to all damages caused by her reliance on Defendants' false representations or consistent with Defendants' express representations, Dr. Ta's reliance on the fact that the suppressed facts did not exist.

**RESERVATION OF RIGHT**

Should Plaintiff learn in discovery grounds to amend this Complaint, including amending to include additional counts related to consumer fraud, Plaintiff reserves her right to do so.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff demands an order for judgment in her favor and against the Defendants, jointly and severally, as follows:

1. Judgment in favor of Plaintiff an amount more than \$50,000.00 upon her Causes of Action herein, as appropriate;
2. Awarding Plaintiff her actual costs, expenses and attorneys' fees herein, including without limitation, statutory and prejudgment interest and the costs and disbursements of this action as allowed by law; and

3. For such other and further relief as the Court may deem just and equitable.

**CZUCHRY LAW FIRM, LLC**

Dated: September 4, 2020

*The undersigned acknowledges that costs, disbursements and reasonable attorney fees and witness fees may be awarded to the opposing party or parties pursuant to Minn. Stat. § 549.211 if Plaintiffs are found to be acting in bad faith and/or asserting a frivolous claim to the party against whom the allegations in this pleading are asserted.*

By: 

Mark E. Czuchry, Esq.  
Minnesota State Atty Lic. #293672  
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Victoria, MN 55386  
(952) 443-4004 | General  
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[Mark@MecLawFirm.com](mailto:Mark@MecLawFirm.com)

**ATTORNEY FOR THE PLAINTIFF**

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

XUAN-MAI TA,

Plaintiff,

v.

RAIMIS CONSTRUCTION, LLC,

Defendant.

Case Type: Contract

Court File No: \_\_\_\_\_

Assigned Judge: \_\_\_\_\_

**SUMMONS**

**THIS SUMMONS IS DIRECTED TO RAIMIS CONSTRUCTION, LLC, by and through its Counsel, John M. Miller, HALLIDAY, WATKINS & MANN, PC, Ste. 2626, 101 East 5<sup>th</sup> Street, St. Paul, MN 55101.**

**1. YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this Summons.

**2. YOU MUST REPLY WITHIN 21 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this summons a **written response** called an Answer within 21 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this Summons located at:

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**4. YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS**



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**6. ALTERNATIVE DISPUTE RESOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

Dated: \_\_\_\_\_

9/4/2020

**CZUCHRY/LAW FIRM, LLC**

By: \_\_\_\_\_

Mark E. Czuchry, Esq. (#293672)

1750 Tower Blvd. Ste. 209/PO Box 73

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**ATTORNEYS FOR THE PLAINTIFF**

**ACKNOWLEDGMENT**

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\_\_\_\_\_  
Mark E. Czuchry, Esq.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

XUAN-MAI TA,	Plaintiff,	Case Type: Contract
v.		Court File No: _____
SHIRZAD RAIMI,	Defendant.	Assigned Judge: _____
		<b>SUMMONS</b>

**THIS SUMMONS IS DIRECTED TO SHIRZAD RAIMI, by and through his Counsel, John M. Miller, HALLIDAY, WATKINS & MANN, PC, Ste. 2626, 101 East 5<sup>th</sup> Street, St. Paul, MN 55101.**

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Dated: \_\_\_\_\_

9/4/2020

**CZUCHRY LAW FIRM, LLC**

By: \_\_\_\_\_

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**ATTORNEYS FOR THE PLAINTIFF**

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\_\_\_\_\_  
Mark E. Czuchry, Esq.



STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

XUAN-MAI TA,

Plaintiff,

v.

COUNSELOR REALTY, INC.,

Defendant.

Case Type: Contract

Court File No: \_\_\_\_\_

Assigned Judge: \_\_\_\_\_

**SUMMONS**

**THIS SUMMONS IS DIRECTED TO COUNSELOR REALTY, INC.** a domestic Minnesota Corporation with the registered address of 1201 W County Rd E, Suite 103, Arden Hills, MN 55112.

**1. YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this Summons.

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Dated: \_\_\_\_\_

9/4/2020

**CZUCHRY LAW FIRM, LLC**

By: \_\_\_\_\_

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\_\_\_\_\_  
Mark E. Czuchry, Esq.





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\_\_\_\_\_  
Mark E. Czuchry, Esq.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

<p>XUAN-MAI TA,  v.  WEST TITLE, LLC,</p> <p>Plaintiff,    Defendant.</p>	<p>Case Type: Contract Court File No: _____ Assigned Judge: _____</p> <p><b>SUMMONS</b></p>
---	---

**THIS SUMMONS IS DIRECTED TO WEST TITLE, LLC, 4301 Highway 7, Suite 100, St. Louis Park, MN 55416.**

**1. YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this Summons.

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Dated: \_\_\_\_\_

9/4/2020

**CZUCHRY LAW FIRM, LLC**

By: \_\_\_\_\_

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