

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ROBERT DePIPPo and THARON)
O'MALLEY,)
)
Plaintiffs,)
)
)
)
VS.)
)
MILT RADFORD and DEANNE)
RADFORD,)
)
Defendants.)
_____)

Case No. 3AN-01-8827Civil

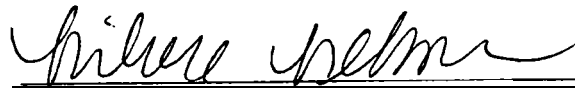
MOTION TO AMEND COMPLAINT

COME NOW the plaintiffs, Robert DePippo and Tharon O'Malley, by and through Alaska Legal Services Corporation ("ALSC"), and pursuant to Alaska Civil Rule 15(a), move the court for leave to amend the complaint filed in this action.

This motion is supported by the attached memorandum.

DATED this 13th day of August, 2001.

ALASKA LEGAL SERVICES CORPORATION



NIKOLE NELSON, Bar No. 9906033
Attorneys for Plaintiffs

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
ANCHORAGE AND STATEWIDE OFFICE
1016 WEST SIXTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1963
(907) 272-9431

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ROBERT DePIPPo and THARON)
O'MALLEY,)
)
Plaintiffs,)
)
)
vs.)
)
MILT RADFORD and DEANNE)
RADFORD,)
)
Defendants.)
_____)

Case No. 3AN-01-8827Civil

MEMORANDUM IN SUPPORT OF MOTION TO AMEND COMPLAINT

Plaintiffs Robert DePippo and Tharon O'Malley seek to amend their complaint to include four additional plaintiffs with claims identical to those alleged in the original complaint and arising from the same facts and conduct, as set forth in the original complaint. ¹

Alaska Civil Rule 15(a) states that once a responsive pleading has been filed, a party may amend its complaint "by leave of court" and that such "leave shall be freely given when justice so requires." Alaska Civ. Rule 15(a). Because the defendants have already filed an answer to the initial complaint, the plaintiffs now move the Court for leave to amend their complaint as indicated above.

The Alaska Supreme Court has interpreted Civil Rule 15 to mean that leave to amend a pleading should be liberally granted and that a party should be granted leave where there is no showing that the amendment will result in an injustice. See, Estate of Thompson v. Mercedes-Benz, Inc., 514 P.2d 1269 (Alaska 1973).

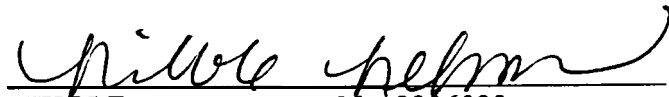
¹ A copy of plaintiffs proposed amended complaint is attached hereto.

Leave should be granted to amend the complaint in the present case because the new plaintiffs are asserting claims identical to those asserted in the original complaint and arising from the same facts and conduct as set forth in the original complaint. The defendants will suffer no prejudice from allowing additional plaintiffs to join the suit as this case is in the early stages of litigation and discovery has not yet begun.

For the foregoing reasons, the plaintiffs ask this court for leave to amend their complaint.

DATED this 13th day of August, 2001.

ALASKA LEGAL SERVICES CORPORATION



NIKOLE NELSON, Bar No. 9906033
Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ROBERT DePIPPPO and THARON)
O'MALLEY,)
)
Plaintiffs,)
)
)
vs.)
)
MILT RADFORD and DEAN-NE)
RADFORD,)
)
Defendants.)
_____)

Case No. 3AN-01-8827Civil

ORDER

Having considered the plaintiffs' Motion to Amend Complaint and all opposition and replies thereto, the motion is **GRANTED** and the plaintiffs are allowed to file and serve their first amended complaint.

Dated _____

STEPHANIE E. JOANN-IDES
SUPERIOR COURT JUDGE

LAW OFFICES OF
A LEGAL SERVICES CORPORA
ANCHORAGE AND STATEWIDE OFFICE
1016 WEST SIXTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1963
(907) 272-9431

I-N THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ROBERT DePIPPPO; THARON O'MALLEY;)
RUTH BOGART; WILLIAM BOGART;)
WANDA PETRICK; and GARY)
PETRICK,)
Plaintiffs,)

vs.)

MILT RADFORD and DEANNE)
RADFORD,)
Defendants.)

Case No. 3AN-01-8827Civil

FIRST AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF

COME NOW plaintiffs, Robert DePippo, Tharon O'Malley, Ruth Bogart, William Bogart, Wanda Petrick, and Gary Petrick through counsel, alleging and requesting relief as follows:

INTRODUCTION

1. Mr. DePippo, Ms. O'Malley, Mr. and Ms. Bogart, and Mr. and Ms. Petrick ("plaintiffs") are mobile home owners and residents of the La Honda Mobile Home Park ("La Honda"). On April 27, 2001, the plaintiffs received written eviction notices from Milt and Deanne Radford (hereinafter "defendants" or "the Radfords") stating that La Honda was being sold to a developer and it would shortly be closed. Plaintiffs have lived in La Honda for only a few years and have invested the majority of their income and assets into the purchase and improvements of their mobile homes over the last several years. They now stand to lose all equity in their homes because La Honda is being sold and closed. If La Honda closes

LAW OFFICES OF
A LEGAL SERVICES CORPORATION
ANCHORAGE AND STATEWIDE OFFICE
1016 WEST SIXTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1963
(907) 272-9431

plaintiffs will be forced to abandon their homes or move them at great cost. Even though the defendants approve all mobile home purchases in La Honda (and thus approved of plaintiffs' purchases) and have known for several years that La Honda's water and sewer infrastructure was failing and that they would imminently need to close and/or sell the park, they failed to disclose this information to the plaintiffs at the time they purchased their mobile homes or when the plaintiffs made improvements to their mobile homes. The Radfords had a duty to disclose this material information to the plaintiffs and their failure to do so violates Alaska law. Plaintiffs bring this lawsuit to enjoin the closure of the park or in the alternative to compensate the plaintiffs for the defendants' breach of their duties.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this dispute pursuant to AS 22.10.020(g).
3. Venue is proper under AS 22.10.030 and Civil Rule 3(c).

PARTIES

4. Plaintiff Robert **DePippo** is a mobile home owner who leases space and infrastructure services at La Honda from the Radfords.

5. Plaintiff Tharon **O'Malley** is a mobile home owner who leases space and infrastructure services at La Honda from the Radfords.

6. Plaintiffs William and Ruth Bogart are mobile home owners who lease space and infrastructure services at La Honda from the Radfords.

7. Plaintiff Wanda and Gary **Petrick** are mobile home owners who lease space and infrastructure services at La Honda from the Radfords.

8. Defendants Deanne and Milt Radford own and operate La Honda.

GENERAL ALLEGATIONS

9. La Honda is located at 2907 La Honda Drive, Anchorage, Alaska. There are thirty-one mobile homes in La Honda, twenty-three of which are privately owned. The owners of the twenty-three privately owned mobile homes lease space and sewer, gas, water and electrical **infrastructure** services at La Honda from the Radfords. Before prospective mobile home buyers at LaHonda can purchase homes, the Radfords must approve of the prospective buyer and enter into lease agreements with the buyer for the lease of space and **infrastructure** services.

10. For several years and prior to 1998, the Radfords have been aware that La Honda's water and sewer systems were failing. They were also aware that fixing the park's infrastructure would be cost-prohibitive, so they planned to close park and/or sell it to developers who would close the park.

11. The Radfords knew or should have known that closing the park would greatly impact the residents of La Honda because most of the privately owned mobile homes in La Honda are very old and cannot survive the move to another park; other parks are not likely to accept the older mobile homes; many of the mobile homes have permanent additions to their homes which are permanently affixed to the land; and the expense of the moving the mobile home often outweighs the home's value.

12. Tharon O'Malley purchased a mobile home at La Honda in November of 1998. The Radfords approved this purchase and entered into a lease agreement with Ms. O'Malley by which she rented space and water, sewer and electrical infrastructure services at La Honda. At no time during the approval process or prior to entering the lease agreement did the

Radfords inform Ms. O'Malley about the precarious state of the park's infrastructure, or their plans to close and/or sell the park.

13. Ms. O'Malley is a single mother with very limited income. She has already invested \$14,000 into her mobile home and owes an additional \$5,000. Ms. O'Malley's mobile home represents the bulk of her family's assets. The mobile home is approximately 30 years old and is not likely to withstand moving to another location.

14. During February of 2001, Ms. O'Malley approached the Radfords to ask permission to build an addition to her mobile home. The Radfords approved this request without disclosing to Ms. O'Malley that they were about to sell the park. After gaining permission from the Radfords, Ms. O'Malley spent over \$3,000 to build the addition. Within weeks, on approximately February 28, 2001, the residents of La Honda received notice that their rent was being increased by up to \$40 per month and that the Radfords were selling the park to buyers who would redevelop the park.

15. Robert DePippo purchased a 1952 historic log cabin mobile home at La Honda in approximately December of 1999. One half of the mobile home is a log cabin and permanently affixed to ground. The Radfords approved his purchase of the home and entered into a lease agreement with Mr. DePippo by which he rented space and water, sewer and electrical infrastructure services. At no time during the approval process or prior to entering the lease agreement did the Radfords inform Mr. DePippo about the precarious state of the park's infrastructure, or their plans to close and/or sell the park.

16. Mr. DePippo has several disabilities and is unable to work. His sole source of income is Social Security Disability benefits and Adult Public Assistance. He was homeless for five years prior to purchasing his home at La Honda. He was able to purchase the home with the money he received from Social Security as a one-time payment for benefits he should

have received during the five years while his application for benefits was pending approval. Mr. DePippo purchased his mobile home for \$7,100 and has since invested over \$800 in restoration. Mr. DePippo cannot afford to move his mobile home and even if he could, moving his mobile home will cost more than its value and will require cutting the roof in half. The Radfords were well aware, at all relevant times, of the immovability of Mr. DePippo's home. Mr. DePippo's mobile home is his only asset.

17. Ruth and William Bogart purchased a 1964 mobile home from the Radfords at La Honda in approximately May of 1996. The Radfords not only sold the **Bogarts** their mobile home but they also entered into a lease agreement with the **Bogarts** by which they rent space and water, sewer and electrical infrastructure services. At no time during the sale of the mobile home or prior to entering the lease agreement did the Radfords inform the **Bogarts** about the precarious state of the park's **infrastructure**, or their plans to close **and/or** sell the park.

18. The **Bogarts** are senior citizens both of whom have severe disabilities. At the time they purchased the mobile home, Ms. Bogart informed the Radfords of her ailing health and the need to find a permanent home. The Radfords assured her of the park's stability by stating that La Honda had been in the Radford family for many years. The **Bogarts** invested the bulk of their savings, \$6,800, into the purchase of the home. During the last few years that **Bogarts** have made many improvements to their home including adding a wheelchair ramp. The **Bogarts** cannot afford to move their mobile home and even if they could, moving the mobile home will cost more than its value. Moreover, the mobile home is approximately 40 years old and is not likely to withstand moving to another location.

19. Wanda and Gary **Petrick** purchased a 1957 mobile home at La Honda in 1997. The Radfords approved this purchase of the home and entered into a lease agreement with the

Petricks by which they rented space and water, sewer and electrical infrastructure services. At no time during the approval process or prior to entering the lease agreement did the Radfords inform the **Petricks** about the precarious state of the park's infrastructure, or their plans to close and/or sell the park.

20. The **Petricks** purchased this mobile home for approximately \$1,600. At the time of purchase the mobile home was in extremely poor condition and the **Petricks** purchased it for the express purpose of renovating the home. Since the purchase, the **Petricks** have committed the majority of their family's resources, in excess of \$8,000, to improving the mobile home. Within the last two years the **Petricks** have replaced the roof, skirting, sheetrock, and all appliances, as well as making other major repairs. The mobile home is not **moveable** as half of the structure is permanently attached to the ground. The Radfords were informed at all relevant times of the **Petricks'** intent to restore the mobile home, their on-going restoration and their continuing expenditure of money and labor on improvements as well as the immovability of the home.

21. On April 27, 2001, the residents of La Honda received written eviction notices stating that the Radfords had accepted an offer from a potential buyer who planned to redevelop the park. The notices also state that as part of the agreement with the potential buyer the Radfords were required to issue eviction notices to the mobile home owners requiring them to vacate the park by May 1, 2002.

COUNT I-MISREPRESENTATION-FAILURE TO DISCLOSE STATE OF LA HONDA'S INFRASTRUCTURE

22. Plaintiffs repeat and incorporate by reference the allegations of facts and law in paragraphs one through twenty-one.

23. Prior to the plaintiffs purchasing mobile homes in La Honda and entering lease agreements with the Radfords, the Radfords knew that La Honda's infrastructure was failing and they intended to close and/or sell the park.

24. The Radfords had an affirmative duty to disclose this information to the plaintiffs for several reasons: (1) the state of La Honda's infrastructure was basic to the transaction and an important part of the plaintiffs' benefit of the bargain; (2) mobile home owners are accorded special protections under Alaska law in recognition of the potential for abuse by park owners which could result in the loss of the mobile home's equity; and (3) the plaintiffs could not reasonably have been expected to know that the park's **infrastructure** was such that the closure and/or selling of the park was imminent unless this fact was disclosed by the Radfords. The Radfords' failure to disclose this information amounts to false material representation.

25. Although the Radfords knew that La Honda's infrastructure was failing and that the closure and/or selling of the park was imminent, the Radfords failed to inform the plaintiffs of this fact prior to approving the plaintiffs' purchase of mobile homes at La Honda and prior to entering lease agreements to rent space and **infrastructure** services.

26. The Radfords knew or should have known that the plaintiffs were unaware of the state of the infrastructure and the fact that closure and/or selling of the park was imminent when they requested approval from the Radfords to purchase mobile homes in the park and when plaintiffs entered agreements to rent space and infrastructure services from the Radfords.

27. The Radfords knew or should have known that the plaintiffs would reasonably rely on the Radfords to inform them that park's infrastructure was in such a state as to cause the imminent closure and/or sale of the park prior to the Radfords approving their purchase of mobile homes at La Honda and prior to entering lease agreements with the plaintiffs.

28. The plaintiffs would not have purchased mobile homes in La Honda had the Radfords informed them of the decrepit state of La Honda's infrastructure and the likelihood that the park would imminently be sold and/or closed.

COUNT II-MISREPRESENTATION-FAILURE TO DISCLOSE INTENT TO CLOSE AND/OR SELL LA HONDA

29. Plaintiffs repeat and incorporate by reference the allegations of facts and law in paragraphs one through twenty-eight.

30. Contemporaneously with the Radfords' approval of the plaintiffs' purchase of mobile homes in La Honda and to the plaintiffs entering lease agreements with the Radfords, the Radfords were planning to close and/or sell La Honda due to its infrastructure problems.

31. The Radfords had an affirmative duty to disclose this information to the plaintiffs for several reasons: (1) the continued existence and operation of La Honda was basic to the transaction and an important part of the plaintiffs' benefit of the bargain; (2) mobile home owners are accorded special protections under Alaska law in recognition of the potential for abuse by park owners which could result in the loss of the mobile home's equity; and (3) the plaintiffs could not reasonably have been expected to know that the Radfords were planning to close and/or sell the park unless this fact was disclosed by the Radfords. The Radfords' failure to disclose this information amounts to false misrepresentation.

32. Although the Radfords knew they were planning to close and/or sell La Honda due to the failure of its infrastructure, the Radfords failed to inform the plaintiffs of this fact prior to approving the plaintiffs' purchase of the mobile homes in La Honda and prior to entering lease agreements to rent space and infrastructure services from the Radfords.

33. The Radfords knew or should have known that the plaintiffs were unaware of their plans to imminently close and/or sell the park when they requested approval from the Radfords to purchase mobile homes in the park or when they entered lease agreements to rent space and **infrastructure** services from the Radfords.

34. The Radfords knew or should have known that the plaintiffs would reasonably rely on the Radfords to inform them that they were planning to close and/or sell the park prior to the Radfords approving their purchase of mobile homes in La Honda and prior to entering lease agreements with the plaintiffs.

35. The plaintiffs would not have purchased mobile homes in La Honda had the Radfords informed them of that they planned to close and/or sell the park imminently.

COUNT III-MISREPRESENTATION- FAILURE TO DISCLOSE INTENT TO SELL LA HONDA PRIOR TO PLAINTIFFS' IMPROVEMENTS TO THEIR HOMES

36. Plaintiffs repeat and incorporate by reference the allegations of facts and law in paragraphs one through thirty-five.

37. At or about the time Ms. O'Malley, the **Petricks** and the **Bogarts** were planning to make expensive improvements to their homes, the Radfords were planning to sell La Honda to a developer who would close the park.

38. Although the Radfords were aware that Ms. O'Malley, the **Petricks** and the **Bogarts** planned to make such improvements, the Radfords failed to disclose to the plaintiffs' their plan to sell La Honda to a developer who would close the park.

39. The Radfords knew or should have known that Ms. O'Malley, the **Petricks**, and the **Bogarts** were unaware of their plan to sell La Honda to a developer who would shortly close the park when they began making expensive improvements to their homes.

40. The Radfords knew or should have known that Ms. O'Malley, the Petricks and the Bogarts would reasonably rely on the Radfords to inform them that they planned to sell the park to a developer who would close park once the Radfords learned of their plans to improve their homes.

42. Ms. O'Malley, the Petricks and the Bogarts would not have made expensive improvements to their mobile homes had the Radfords informed them that they planned to sell the park to a developer who would close the park.

COUNT IV - VIOLATION OF ALASKA'S UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT

43. Plaintiffs repeat and incorporate by reference the allegations of facts and law in paragraphs one through forty-two.

44. The Radfords are engaged in the trade or commerce of selling a combination of goods and services i.e., mobile home space and infrastructure services.

45. The Radfords knowingly omitted various material facts about La Honda's infrastructure and their plans to close and/or sell the park when they contracted with the plaintiffs to provide goods and services under their lease agreements.

46. The Radfords knowingly omitted various material facts about La Honda's infrastructure and their plans to close and/or sell the park with the intent that the plaintiffs rely on such omissions in connection with entering the agreements to purchase goods and services under their lease agreements.

WHEREFORE, plaintiffs pray the Court to order a speedy hearing and advance this matter on the calendar, pursuant to Civil Rule 57(a), and award the following relief:

A. A declaratory judgment stating that the defendants had a duty to disclose the status of the park's infrastructure to potential purchasers of mobile homes in La Honda prior to approving and entering into a lease agreements for space and infrastructure services and that defendants' failure to so disclose constitutes misrepresentation;

B. A declaratory judgment stating that the defendants had a duty to disclose to potential purchasers of mobile homes in La Honda prior to approving and entering lease agreements that the defendants intended to close and/or sell the park and that the defendants' failure to so disclose constitutes misrepresentation;

C. A declaratory judgment stating that the defendants had a duty to disclose to Ms. O'Malley, the **Petricks** and the **Bogarts** that the defendants intended to close and/or sell the park once the Radfords' learned of their plans to make expensive improvements to their mobile homes;

D. A declaratory judgment stating that the defendants violated Alaska's Unfair Trade Practices and Consumer Protection Act by knowingly omitting **the material** facts that La Honda's **infrastructure** was failing and the defendants planned to close and/or sell the **park**;

E. An order enjoining defendants **from** closing La Honda **and/or** selling La Honda to a purchaser who would close the park;

F. An order awarding plaintiffs incidental and consequential damages incurred as result of defendants' failure to disclose the state of the park's infrastructure and their plan to close and/or sell the park, the amount to be specified at trial;

G. An order awarding plaintiffs treble their incidental and consequential damages for each of the defendants' misrepresentations and violations of the Alaska's Unfair Trade Practices and Consumer Protection Act, the amount to be specified at trial;

H. The costs and expenses of litigation, and such other and further relief as may be just and necessary. Because federal law precludes plaintiffs' counsel from claiming or collecting attorney's fees on their behalf, plaintiffs reserve their right to recover attorney's fees, should they prevail in this action, and to assign that claim to a third party.

DATED: August 13, 2001

ALASKA LEGAL SERVICES CORPORATION

NIKOLE M. NELSON, BAR NO. 9906033
JAMES J. DAVIS, JR., BAR NO. 9412140
1016 West 6th Avenue, Suite 200
Anchorage, Alaska 99501

Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ROBERT DePIPPPO and THARON)
O'MALLEY,)
)
Plaintiffs,)
)
)
vs.)
)
MILT RADFORD and DEANNE)
RADFORD,)
)
Defendants.)
_____)

Case No. 3AN-01-8827Civil

CERTIFICATE OF SERVICE

I, NIKOLE NELSON, certify that:

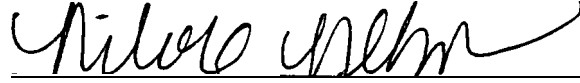
1. I am a staff attorney with Alaska Legal Services Corporation, counsel for plaintiff in this proceeding.
2. On August 13, 2001, I served counsel for defendants, Lawrence Hartig with the following documents by sending them via first class mail to his business address:
 - a) Motion to Amend Complaint;
 - b) Memorandum in Support of Motion to Amend Complaint;
 - c) Plaintiffs Proposed First Amended Complaint;
 - d) Proposed Order Granting Leave to Amend Complaint;
 - e) Certificate of Service.

///
///
///
///

LAW OFFICES OF
LASKA LEGAL SERVICES CORPORATION
ANCHORAGE AND STATEWIDE OFFICE
1018 WEST SIXTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1963
(907) 272-9431

DATED this 13th day of August, 2001.

ALASKA LEGAL SERVICES CORPORATION



NIKOLE NELSON, Bar No. 9906033
Attorneys for Plaintiffs

LAW OFFICES OF
LASKA LEGAL SERVICES CORPORATION
ANCHORAGE AND STATEWIDE OFFICE
1016 WEST SIXTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1963
(907) 272-9431