

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

DEC 12 2012

M.E. Perez

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF RIVERSIDE
RIVERSIDE HISTORIC COURTHOUSE

DIANA J. JOHNSON,

Plaintiff,

v.

LLOYD G. COPENBARGER; LAURA
M. COPENBARGER; CABNELL, LLC;
and DOES 1 through 20, inclusive,

Defendants.

CASE NO.: RIC 536500

~~PROPOSED~~ JUDGMENT AFTER
JURY TRIAL

Complaint Filed: September 22, 2009

Trial Date: September 12, 2012

Dept: 7

Judge: Hon. John W. Vineyard

AND RELATED CROSS ACTION

 **COPY**

This cause came on regularly for jury trial on September 12, 2012, in Department 7 of the above-entitled court, the Honorable John W. Vineyard presiding. Plaintiff and Cross-Defendant DIANA JOHNSON appeared by her counsel, Scott A. McMillan and Evan Kalooky, of The McMillan Law Firm, APC. Defendants and Cross-Complainants LLOYD G. COPENBARGER, LAURA M. COPENBARGER, and CABNELL, LLC, appeared by their counsel, Paul D. Copenbarger and Elaine B. Alston, of Copenbarger & Associates.

1 **I. CLAIMS RESOLVED PRIOR TO THE JURY VERDICT**

2 Plaintiff Diana Johnson filed her Second Amended Complaint on July 6, 2012.
3 Defendants responded to the Second Amended Complaint with a Demurrer and Motion to
4 Strike. On July 27, 2012, the Court denied Defendants' Motion to Strike, and granted, in
5 part, Defendants' Demurrer, dismissing Plaintiff's thirteenth cause of action for Negligent
6 Infliction of Emotional Distress. Defendants filed their Answer to the Second Amended
7 Complaint on August 13, 2012.

8 On September 4, 2012, the Court addressed pre-trial matters. Pursuant to
9 Defendants' request, the Court dismissed without prejudice the sixth cause of action in
10 the Cross-Complaint for Money Had and Received.

11 As a result of a Trustee's Sale of the subject property on August 27, 2012, at a
12 hearing on September 11, 2012, Plaintiff dismissed without prejudice the following
13 claims: second cause of action for Injunctive Relief; third cause of action for Declaratory
14 Relief; fifth cause of action for Quiet Title; seventh cause of action for Imposition of
15 Constructive Trust; eighth cause of action for Partition; and fourteenth cause of action for
16 Declaratory Relief. Plaintiff also dismissed without prejudice the twelfth cause of action
17 for Intentional Infliction of Emotional Distress, but only as to Defendant Laura
18 Copenbarger. The Court ordered that Plaintiff sixth's cause of action for Cancellation of
19 Deed be stricken as moot, in light of the sale of the subject property.

20 On September 17, 2012, the Court heard Plaintiff's and Defendants' Motions for
21 Nonsuit, pursuant to Code of Civil Procedure section 581c. The Court denied all motions
22 apart from Defendants' Motion for Nonsuit as to Plaintiff's ninth cause of action for
23 Fraudulent in the Inducement and eleventh cause of action for Professional Negligence.

24 On October 10, 2012, the Court granted Plaintiff's Motion for Nonsuit for
25 Defendants' first cause of action for Breach of Oral Contract (2006 Agreement) as to
26 Cross-Complainant Cabnell, LLC.

27 The jury began deliberations on October 12, 2012, and reached a verdict on
28 October 17, 2012.

1 **II. THE JURY VERDICT**

2 On October 17, 2012, the jury answered the special verdict forms as follows¹:

3
4 **VF 300. Breach of Oral Contract -**

5 **Diana Johnson's Claim Against Lloyd Copenbarger**

6 1. Did Diana Johnson and Lloyd Copenbarger enter into a contract for a joint
7 investment into the Lone Tree Street property?

8 Yes No [12-0]

9 2. Did Diana Johnson do all, or substantially all, of the significant things that the
10 contract required her to do?

11 Yes No [11-1]

12 3. Was Diana Johnson excused from having to do all, or substantially all, of the
13 significant things that the contract required her to do?

14 Yes No [10-2]

15 Signed by Presiding Juror James Norwood on October 16, 2012.

16
17 **VF 300. Breach of Oral Contract -**

18 **Diana Johnson's Claim Against Laura Copenbarger**

19 1. Did Diana Johnson and Laura Copenbarger enter into a contract for a joint
20 investment into the Lone Tree Street property?

21 Yes No [12-0]

22 2. Did Diana Johnson do all, or substantially all, of the significant things that the
23 contract required her to do?

24 Yes No [11-1]

25 3. Was Diana Johnson excused from having to do all, or substantially all, of the
26 significant things that the contract required her to do?

27
28 ¹ The questions that were not answered by the jury are not included. The results of the jury polling as to each question are included in the brackets [] after each response.

1 Yes No [10-2]

2 Signed by Presiding Juror James Norwood on October 16, 2012.

3
4 **VF 303 and 301. Breach of Oral Contract 1 - Contract Formation at Issue -**
5 **Lloyd Copenbarger's Claim Against Diana Johnson**

6 1. Did Lloyd Copenbarger and Diana Johnson discuss entering into a contract for a
7 loan to allow the Johnsons to purchase the Lone Tree Street property for themselves?

8 Yes No [12-0]

9 Signed by Presiding Juror James Norwood on October 16, 2012.

10
11 **VF 303 and 301. Breach of Oral Contract 1 - Contract Formation at Issue -**
12 **Laura Copenbarger's Claim Against Diana Johnson**

13 1. Did Laura Copenbarger and Diana Johnson discuss entering into a contract for a
14 loan to allow the Johnsons to purchase the Lone Tree Street property for themselves?

15 Yes No [12-0]

16 Signed by Presiding Juror James Norwood on October 12, 2012.

17
18 **VF 303 and 301. Breach of Oral Contract 2 - Contract Formation at Issue -**
19 **Lloyd Copenbarger's Claim Against Diana Johnson**

20 1. Did Lloyd Copenbarger and Diana Johnson discuss entering into a contract
21 regarding two options she would have as to the Lone Tree Street property in the event that
22 Daryl Johnson died?

23 Yes No [11-1]

24 2. Were the contract terms clear enough so that the parties could understand what
25 each was required to do?

26 Yes No [10-2]

27 3. Did the parties agree to give each other something of value?

28 Yes No [9-3]

1 4. Did the parties agree to the terms of the contract?

2 Yes No [10-2]

3 5. Did Lloyd Copenbarger do all, or substantially all, of the significant things that
4 the contract required him to do?

5 Yes No [9-3]

6 6. Did all of the conditions occur that were required for Diana Johnson's
7 performance?

8 Yes No [10-2]

9 7. Did Diana Johnson fail to do something that the contract required her to do?

10 Yes No [10-2]

11 8. Was Lloyd Copenbarger harmed by that failure?

12 Yes No [9-3]

13 9. What are Lloyd Copenbarger's damages?

14 \$0.00 [9-3]

15 Signed by Presiding Juror James Norwood on October 16, 2012.

16
17 **VF 303 and 301. Breach of Oral Contract 2 - Contract Formation at Issue -**

18 **Laura Copenbarger's Claim Against Diana Johnson**

19 1. Did Laura Copenbarger and Diana Johnson discuss entering into a contract
20 regarding two options she would have as to the Lone Tree Street property in the event that
21 Daryl Johnson died?

22 Yes No [12-0]

23 Signed by Presiding Juror James Norwood on October 12, 2012.

24
25 **VF 303 and 301. Breach of Oral Contract 2 - Contract Formation at Issue -**

26 **Cabnell, LLC's Claim Against Diana Johnson**

27 1. Did Cabnell, LLC and Diana Johnson discuss entering into a contract regarding
28 two options she would have as to the Lone Tree Street property in the event that Daryl

1 Johnson died?

2 Yes No [12-0]

3 Signed by Presiding Juror James Norwood on October 12, 2012.

4
5 **Special Verdict Question Regarding the Quitclaim Deed**

6 1. Did Diana Johnson sign the Quitclaim Deed [Trial Exhibit 1502]?

7 Yes No [9-3]

8 2. Did Diana Johnson deliver the Quitclaim Deed to Cabnell, LLC?

9 Yes No [10-2]

10 Signed by Presiding Juror James Norwood on October 17, 2012.

11
12 **VF-1902. False Promise - Diana Johnson's Claim Against Lloyd Copenbarger**

13 1. Did Lloyd Copenbarger make a promise to Diana Johnson that was important to
14 the transaction?

15 Yes No [12-0]

16 2. Did Lloyd Copenbarger intend to perform this promise when he made it?

17 Yes No [12-0]

18 3. Did Lloyd Copenbarger intend that Diana Johnson rely on this promise?

19 Yes No [12-0]

20 4. Did Diana Johnson reasonably rely on this promise?

21 Yes No [12-0]

22 5. Did Lloyd Copenbarger perform the promised act?

23 Yes No [11-1]

24 Signed by Presiding Juror James Norwood on October 16, 2012.

25
26 **VF-1902. False Promise - Diana Johnson's Claim Against Laura Copenbarger**

27 1. Did Laura Copenbarger make a promise to Diana Johnson that was important to
28 the transaction?

1 _____ Yes No [12-0]

2 Signed by Presiding Juror James Norwood on October 16, 2012.

3

4 **VF-1902. False Promise - Lloyd Copenbarger's Claim Against Diana Johnson**

5 1. Did Diana Johnson make a promise to Lloyd Copenbarger that was important to
6 the transaction?

7 Yes _____ No [12-0]

8 2. Did Diana Johnson intend to perform this promise when she made it?

9 Yes _____ No [12-0]

10 3. Did Diana Johnson intend that Lloyd Copenbarger rely on this promise?

11 Yes _____ No [12-0]

12 4. Did Lloyd Copenbarger reasonably rely on this promise?

13 Yes _____ No [12-0]

14 5. Did Diana Johnson perform the promised act?

15 _____ Yes No [10-1-1 abstention]

16 6. Was Lloyd Copenbarger's reliance on Diana Johnson's promise a substantial
17 factor in causing harm to Lloyd Copenbarger?

18 Yes _____ No [9-3]

19 7. What are Lloyd Copenbarger's damages?

20 a. Past economic loss \$104,000.00 [10-2]

21 b. Past non-economic loss, including physical
22 pain/mental suffering: \$0.00 [11-1]

23 TOTAL \$104,000.00 [11-1]

24 8. Has Lloyd Copenbarger demonstrated by clear and convincing evidence
25 that Diana Johnson acted with malice, oppression, or fraud?

26 _____ Yes No [9-3]

27 Signed by Presiding Juror James Norwood on October 16, 2012.

28

1 **VF-1902. False Promise - Laura Copenbarger's Claim Against Diana Johnson**

2 1. Did Diana Johnson make a promise to Laura Copenbarger that was important to
3 the transaction?

4 _____ Yes **X** No [10-2]

5 Signed by Presiding Juror James Norwood on October 16, 2012.

6
7 **VF-1902. False Promise - Cabnell, LLC's Claim Against Diana Johnson**

8 1. Did Diana Johnson make a promise to Cabnell, LLC that was important to
9 the transaction?

10 _____ Yes **X** No [12-0]

11 Signed by Presiding Juror James Norwood on October 16, 2012.

12
13 **VF-1600. Intentional Infliction of Emotional Distress -**

14 **Diana Johnson's Claim Against Lloyd Copenbarger**

15 1. Was Lloyd Copenbarger's conduct outrageous?

16 _____ Yes **X** No [11-1]

17 Signed by Presiding Juror James Norwood on October 16, 2012.

18
19 **VF-1600. Intentional Infliction of Emotional Distress -**

20 **Diana Johnson's Claim Against Cabnell, LLC**

21 1. Was Cabnell, LLC's conduct, through its agents Lloyd Copenbarger and/or
22 Laura Copenbarger, outrageous?

23 _____ Yes **X** No [11-1]

24 Signed by Presiding Juror James Norwood on October 16, 2012.

25
26 **Breach of Fiduciary Duty – Diana Johnson's Claim Against Lloyd Copenbarger**

27 1. Was Lloyd Copenbarger an agent for or co-tenant with Diana Johnson with
28 respect to the Lone Tree Street property?

1 Yes No [12-0]

2 2. Did Lloyd Copenbarger fail to act with the utmost good faith in the best
3 interests of Diana Johnson with respect to the Lone Tree Street property?

4 Yes No [10-2]

5 4. Did Lloyd Copenbarger fail to act as a reasonably careful co-tenant or agent
6 would have acted under the same or similar circumstances, with respect to Diana
7 Johnson's involvement in the Lone Tree Street property?

8 Yes No [10-2]

9 Signed by Presiding Juror James Norwood on October 16, 2012.

10

11 **Breach of Fiduciary Duty – Diana Johnson's Claim Against Laura Copenbarger**

12 1. Was Laura Copenbarger an agent for or co-tenant with Diana Johnson with
13 respect to the Lone Tree Street property?

14 Yes No [12-0]

15 2. Did Laura Copenbarger fail to act with the utmost good faith in the best
16 interests of Diana Johnson with respect to the Lone Tree Street property?

17 Yes No [11-1]

18 4. Did Laura Copenbarger fail to act as a reasonably careful co-tenant or agent
19 would have acted under the same or similar circumstances, with respect to Diana
20 Johnson's involvement in the Lone Tree Street property?

21 Yes No [11-1]

22 Signed by Presiding Juror James Norwood on October 16, 2012.

23

24 **Breach of Fiduciary Duty – Diana Johnson's Claim Against Cabnell, LLC**

25 1. Was Cabnell, LLC an agent for or co-tenant with Diana Johnson with
26 respect to the Lone Tree Street property?

27 Yes No [12-0]

28 Signed by Presiding Juror James Norwood on October 16, 2012.

1
2 **Constructive Fraud – Diana Johnson’s Claim Against Lloyd Copenbarger**

3 1. Was Lloyd Copenbarger an agent for or co-tenant with Diana Johnson with
4 respect to the Lone Tree Street property?

5 Yes No [12-0]

6 2. Did Lloyd Copenbarger gain any advantage over Diana Johnson with
7 respect to the Lone Tree Street property?

8 Yes No [10-2]

9 Signed by Presiding Juror James Norwood on October 16, 2012.
10

11 **Constructive Fraud – Diana Johnson’s Claim Against Laura Copenbarger**

12 1. Was Laura Copenbarger an agent for or co-tenant with Diana Johnson with
13 respect to the Lone Tree Street property?

14 Yes No [12-0]

15 2. Did Laura Copenbarger gain any advantage over Diana Johnson with
16 respect to the Lone Tree Street property?

17 Yes No [10-2]

18 Signed by Presiding Juror James Norwood on October 16, 2012.
19

20 **Constructive Fraud – Diana Johnson’s Claim Against Cabnell, LLC**

21 1. Was Cabnell, LLC an agent for or co-tenant with Diana Johnson with
22 respect to the Lone Tree Street property?

23 Yes No [12-0]

24 Signed by Presiding Juror James Norwood on October 16, 2012.
25

26 ///

27 ///

28 ///

1 **III. POST-VERDICT RULINGS**

2 After the jury was released, the Court heard Plaintiff's Motion for a Directed
3 Verdict in favor of Plaintiff on Defendant Lloyd Copenbarger's third cause of action for
4 false promise. As the jury unanimously found that Plaintiff did intend to perform the
5 promise at the time it was made, the Court granted Plaintiff's Motion and entered a
6 verdict in Plaintiff's favor on Defendant Lloyd Copenbarger's third cause of action for
7 false promise.²

8 Based on the lack of recovery by any party against any adverse party, the Court
9 determined that there was no prevailing party under Code of Civil Procedure section
10 1032(a)(4). The Court then directed that Plaintiff's counsel draft, exchange, and submit a
11 Proposed Judgment.

12
13 **IV. ORDERS**

14 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- 15 1. Plaintiff and Cross-Defendant Diana Johnson shall recover nothing on her
16 claims in the operative Second Amended Complaint.
- 17 2. Defendant and Cross-Complainant Lloyd Copenbarger shall recover
18 nothing on his claims in the operative Cross-Complaint.
- 19 3. Defendant and Cross-Complainant Laura Copenbarger shall recover
20 nothing on her claims in the operative Cross-Complaint.
- 21 4. Defendant and Cross-Complainant Cabnell, LLC shall recover nothing on
22 its claims in the operative Cross-Complaint.

23
24 ///

25 ///

26 ///

27
28 ² On November 7, 2012, the Court entered an order, *nunc pro tunc*, correcting a Minute
Order from October 17, 2012, which identified that the directed verdict was granted in favor of
Defendant Lloyd Copenbarger.

1 5. The Court exercises its discretion under Code of Civil Procedure section
2 1032(a)(4) and determines that there is no prevailing party in this action.

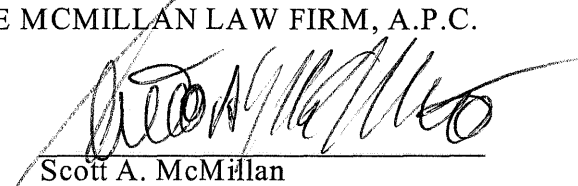
3
4 IT IS SO ORDERED.

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6
7 Dated: DEC 12 2012

John W Vineyard

Hon. John W. Vineyard
Judge of the Superior Court

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12 Respectfully submitted,
13 THE MCMILLAN LAW FIRM, A.P.C.

14
15 BY: 
16 Scott A. McMillan
17 Attorneys for Plaintiff
18 Diana J. Johnson
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