

IN THE CIRCUIT COURT OF MARSHALL COUNTY, ALABAMA

KEITH A. KUBERT, an individual;
BRENDA C. KUBERT, an individual,

Plaintiffs

vs.

CIVIL ACTION NO: CV04-244

TOBYE SCHEER, an individual; THE
PREMIERE AGENCY, CENTURY
21 REALTY, et al,

Defendants

ANSWER

Comes now the defendants Joann Smith, an individual and The Premiere Agency-Century 21 Realty, a corporation, and for answer to the plaintiffs' complaint say as follows:

FIRST DEFENSE

1. The allegations of paragraph 1 are admitted.
2. The allegations of paragraph 2 are admitted.
3. The allegations of paragraph 3 are admitted.
4. The allegations of paragraph 4 are admitted.
5. The allegations of paragraph 5 are admitted.
6. The allegations of paragraph 6 are admitted.
7. The allegations of paragraph 7 are admitted.
8. The allegations of paragraph 8 are admitted.
9. The allegations of paragraph 9 are admitted.
10. The allegations of paragraph 10 are admitted.

11. The allegations of paragraph 11 are admitted.
12. The allegations of paragraph 12 are admitted.
13. The allegations of paragraph 13 are admitted.
14. The allegations of paragraph 14 are admitted.
15. This defendant does not have actual knowledge of the allegations of paragraph 15 and therefore denies the same.
16. This defendant does not have actual knowledge of the allegations of paragraph 16 and therefore denies the same.
17. This defendant does not have actual knowledge of the allegations of paragraph 17 and therefore denies the same.
18. This defendant does not have actual knowledge of the allegations of paragraph 18 and therefore denies the same.
19. This defendant does not have actual knowledge of the allegations of paragraph 19 and therefore denies the same.
20. This defendant does not have actual knowledge of the allegations of paragraph 20 and therefore denies the same.
21. This defendant does not have actual knowledge of the allegations of paragraph 21 and therefore denies the same.
22. This defendant does not have actual knowledge of the allegations of paragraph 22 and therefore denies the same.
23. The allegations of paragraph 23 are admitted.
24. The allegations of paragraph 24 are denied. This defendant further alleges that the plaintiffs viewed the property in question prior to entering into a purchase contract and knew the actual size of the lot in question.
25. The allegations of paragraph 25 are denied. This defendant further alleges that the plaintiffs viewed the property in question prior to entering into a purchase contract and knew the actual size of the rooms in question

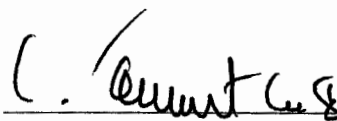
26. The allegations of paragraph 26 are denied.
27. The allegations of paragraph 27 are denied.
28. The allegations of paragraph 28 are either admitted or denied as aforesaid.
29. The allegations of paragraph 29 are denied.
30. The allegations of paragraph 30 are admitted or denied as aforesaid.
31. The allegations of paragraph 31 are denied.
32. The allegations of paragraph 32 are either admitted or denied as aforesaid.
33. The allegations of paragraph 33 are denied.
34. The allegations of paragraph 34 are either admitted or denied as aforesaid.
35. This defendant is not claimed to have been guilty of breach of contract and therefore does not provide an answer to paragraph 35.
36. The allegations of paragraph 36 are either admitted or denied as aforesaid.
37. This defendant is not claimed to have been guilty of breach of contract and therefore does not provide an answer to paragraph 37.
38. The allegations of paragraph 38 are either admitted or denied as aforesaid.
39. This defendant is not claimed to have been guilty of breach of contract and therefore does not provide an answer to paragraph 39.

SECOND DEFENSE

40. The plaintiffs' complaint for fraudulent suppression should be dismissed for failure to state a claim upon which relief may be granted as to Count Three of the Complaint claiming Fraudulent Suppression. Alabama law does not recognize a cause of action for fraudulent suppression of used residential property, such property being taken, as is, and the doctrine of caveat emptor applies.

THIRD DEFENSE

41. With regard to any representations concerning lot size or room size made prior to the entering into of a sales contract by the plaintiffs, such rooms were inspected by the plaintiffs and the dimensions of the lot were visible. The plaintiffs knew what they were purchasing and, therefore, could not reasonably rely upon any prior statements to the contrary.



L. TENNENT LEE, III (LEE014)

Attorney for defendants

Joann Smith and The Premiere

Agency-Century 21 Realty

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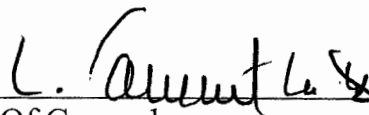
(256) 533-0202

(256) 533-1317 Fax

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all attorneys of record, on this the 21st day of July, 2004, by depositing same in the United States Mail, postage prepaid and addressed as follows:

Elisa Smith Rives
Elisa Smith Rives, LLC
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Guntersville, Alabama 35976



Of Counsel