

**D'ALESSANDRO, JACOVINO & GERSON**

Counselors at Law  
147 Columbia Turnpike  
P.O. Box 340  
Florham Park, NJ 07932  
Phone: 973-966-1910  
File No.: 65.19587  
Attorneys for Plaintiff, Dolores U. Kennedy

RECEIVED & FILED  
SUPERIOR COURT  
2008 SEP 10 PM 12:11  
CIVIL DIVISION

DOLORES U. KENNEDY,  
*Plaintiff,*

- vs -

OLYMPIA PROPERTIES, LLC, JOHN F.  
ROSELLINI, JR. and SETH DAVENPORT,  
ESQ.,  
*Defendant.*

**SUPERIOR COURT OF  
NEW JERSEY**  
Law Division : Morris County  
Docket No.: *L-2668-08*

**CIVIL ACTION**  
**COMPLAINT**

Dolores U. Kennedy, residing at 8990 S.E. Bayberry Terrace, Hobe Sound, Florida,  
says:

**COUNT ONE**

1. On or about August 25, 2005, Olympia Properties, LLC and John F. Rosellini, Jr., individually signed a mortgage note between Borrower, Olympia Properties, LLC and John F. Rosellini, Jr., Individually and Lenders, Ralph Avallone, Melissa Avallone and Plaintiff, Dolores U. Kennedy.

2. In order to secure payment of the note, the borrower provided the Plaintiff with a mortgage dated August 25, 2005 on a property which the borrower owns known as Block 160.2, Lot 19, on the Tax Map of Montville Township, County of Morris, State of New Jersey and commonly known as 323 Changebridge Road, Montville, New Jersey. The mortgage was recorded on September 19, 2005.

3. The terms of the note were as follows: the borrowers, Olympia Properties, LLC and John F. Rosellini, Jr. agreed to pay \$250,000.00 (principle) plus interest at a yearly rate of nine percent (9%) to be charged on that part of the principle which has not been paid. The borrowers, Olympia Properties, LLC and John F. Rosellini, Jr., Individually, agreed to pay principle and interest based on a one year payment schedule. Defendants agreed to pay on a one year note, payable on or before August 27, 2006.

4. Defendants also agreed that if they failed to make required payments on the note within ten days of the due date, the lender may declare that they are in default on the mortgage and the note. Upon default, the borrowers agreed that they must pay the full amount of all unpaid principle, interest and other amounts due on the mortgage and the note and the lender's costs of collection and reasonable attorneys fees.

5. Plaintiff, Dolores U. Kennedy, lent Defendants \$200,000.00 of the total \$250,000.00 note.

6. Defendants, Olympia Properties, LLC and John F. Rosellini, Jr., have defaulted on the loan. Demand has been made for payment. Defendants have not made the requirement payment.

**WHEREFORE**, Plaintiff, Dolores Kennedy, demands judgment on this Count of the Complaint including payment of the outstanding principle, together with interest, costs and attorney fees.

#### **COUNT TWO - FRAUD**

1. Plaintiff repeats each and every allegation contained in the previous Count(s) as if fully set forth herein at length.

2. On or about August 25, 2005, Plaintiff, Dolores U. Kennedy, entered into an agreement wherein Plaintiff was to lend Defendant \$250,000.00.

3. Defendant secured payment with a mortgage on a property located at 323 Changebridge Road, Montville, New Jersey.

4. At the time of entering into the loan agreement, Defendants, Olympia Properties, LLC and John F. Rosellini, Jr. represented that there was no other mortgage on the aforesaid property and that the subject mortgage was a first mortgage.

5. Defendants, Olympia Properties, LLC and John F. Rosellini, Jr. were aware that, at the time of the agreement, Lakeland Bank held a mortgage on the same property.

6. The representations by the Defendants were made with knowledge or belief by Defendants of the falsity of the representation.

7. Defendants, Olympia Properties, LLC and John F. Rosellini, Jr., made the material representation with the intent that the Plaintiff would rely upon it.

8. Plaintiff reasonably relied on the representation that there were no other mortgages on the property.

9. As a direct and proximate result of this reliance, Dolores U. Kennedy has been damaged.

**WHEREFORE**, Plaintiff, Dolores Kennedy, demands judgment on this Count of the Complaint together with interest, costs and attorneys fees.

**COUNT THREE**

**PROMISSORY ESTOPPEL AND NEGLIGENT MISREPRESENTATIONS**

1. Plaintiff repeats each and every allegation contained in the previous Count(s) as if fully set forth herein at length.

2. The Defendants, Olympia Properties, LLC and John F. Rosellini, Jr. negligently misrepresented to the Plaintiff that there was no other mortgage on the subject property and that the subject mortgage was a first mortgage.

3. The statement that there was no other mortgage on the subject property was made with the expectation that the Plaintiff would rely upon it.

4. Plaintiff relied upon this representation in entering into the loan agreement.

5. At all times relevant to this Complaint, Defendants were aware that there were other mortgages on the subject property.

6. As a direct and proximate result of the negligent misrepresentations of the Defendants, Plaintiff was damaged.

**WHEREFORE**, Plaintiff, Dolores Kennedy, demands judgment on this Count of the Complaint together with interest, costs and attorneys fees.

#### **COUNT FOUR - LEGAL MALPRACTICE**

1. Plaintiff repeats each and every allegation contained in the previous Count(s) as if fully set forth herein at length.

2. Seth Davenport is an attorney licensed to practice law in the State of New Jersey.

3. In or about August, 2005, Plaintiff, Dolores U. Kennedy, retained Seth Davenport, Esq. to represent her in reference to a loan agreement between Dolores U.

Kennedy, Melissa Avalon, Ralph Avalon (Lenders) and Olympia Properties, LLC and John -F. Rosellini, Jr. Individually (Borrowers).

4. In order to secure payment on the loan, Defendants provided the Plaintiff with a mortgage dated August 25, 2005 on property commonly known as 323 Changebridge Road, Montville, New Jersey 07045.

5. Defendant, Seth Davenport, Esq. failed to obtain the necessary title work so to inform his client, Dolores Kennedy, that her mortgage on the property was not a first mortgage.

6. In fact, Lakeland Bank had placed a first mortgage on the property which was recorded on October 30, 2002.

7. As a result of Seth Davenport's failure to ascertain that the mortgage which was securing the loan had a significant first mortgage on it, Plaintiff, Dolores Kennedy, has been damaged.

**WHEREFORE**, Plaintiff, Dolores Kennedy, demands judgment on this Count of the Complaint together with interest, costs and attorneys fees.

#### COUNT FIVE

##### PROMISSORY ESTOPPEL AND NEGLIGENT MISREPRESENTATIONS

1. Plaintiff repeats each and every allegation contained in the previous Count(s) as if fully set forth herein at length.

2. Defendant, Seth Davenport, Esq. specifically informed Plaintiff that her mortgage was the first mortgage on the subject property commonly known as 323 Changebridge Road, Montville, New Jersey.

3. Plaintiff's agreement to loan money to the Defendants, Olympia Properties, LLC and John F. Rosellini, Jr., was made with the expectation that the mortgage placed 323 Changebridge Road, Montville, New Jersey was a first mortgage.

4. Plaintiff relied on the promise and representation of Seth Davenport, Esq. that the mortgage placed on the property to secure her loan was a first mortgage.

5. As a direct and proximate result of this reliance, Plaintiff, Dolores U. Kennedy has been damaged.

**WHEREFORE**, Plaintiff, Dolores Kennedy, demands judgment on this Count of the Complaint together with interest, costs and attorneys fees.

**DEMAND FOR TRIAL BY JURY**

Please take notice that plaintiff hereby demands trial by jury as to all issues.

**D'ALESSANDRO, JACOVINO & GERSON**  
Attorneys for Plaintiff

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

  
FREDERICK E. GERSON

Dated: September 4, 2008

CERTIFICATION OF NO OTHER PROCEEDINGS

I hereby certify that, to the best of my knowledge, information and belief, this matter is not the subject of any other action or arbitration proceeding, and that, to the best of my knowledge, information and belief, no other action or arbitration proceeding is contemplated.


Dated: September 4, 2008

  
\_\_\_\_\_  
FREDERICK E. GERSON

DESIGNATION OF TRIAL COUNSEL

**PLEASE TAKE NOTICE** that the undersigned is hereby designated as trial counsel in the within action.

Dated: September 4, 2008

  
\_\_\_\_\_  
FREDERICK E. GERSON

LAW OFFICES  
D'ALESSANDRO, JACOVINO & GERSON

147 COLUMBIA TURNPIKE  
P.O. BOX 340  
FLORHAM PARK, NEW JERSEY 07932-0340  
(973) 966-1910  
FAX (973) 966-6774  
E-MAIL: ROE@DJGLAW.COM

321 BROADWAY  
NEW YORK, NEW YORK 10007  
(212) 608-7500

EDWARD G. D'ALESSANDRO\*†  
VIMEDEO C. JACOVINO  
(1923-2006)  
FREDERICK E. GERSON  
EDWARD G. D'ALESSANDRO, JR. ♦+  
ANTHONY J. BUANGIELLA

PLEASE REPLY TO  
P.O. BOX 340  
FLORHAM PARK

OF COUNSEL  
JAN D'ALESSANDRO ♦

MEMBER OF THE NEW YORK AND NEW JERSEY BAR  
♦MEMBER OF THE PENNSYLVANIA BAR  
◊MEMBER OF THE CALIFORNIA BAR  
+MEMBER OF THE COLORADO BAR  
† CERTIFIED CIVIL TRIAL ATTORNEY  
AND CERTIFIED CRIMINAL TRIAL ATTORNEY

September 8, 2008

65.19587

Morris County Superior Court  
Court House  
Washington & Court Streets  
Morristown, NJ 07963

Re: Kennedy v. Olympia Properties, et al.

Dear Sir/Madam:

Enclosed herewith please find an original and one copy of a Complaint and Civil Case Information Statement with regard to the above matter. Kindly file same and return the copy stamped "filed" in the envelope provided. My firm's check in the amount of \$200.00 is enclosed for the filing fee.

Thank you for your attention to this matter.

Very truly yours,

D'ALESSANDRO, JACOVINO & GERSON

  
Frederick E. Gerson

FEG/rr  
Enclosure  
cc: Mrs. Dolores Kennedy

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