

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

COUNTY OF GRANT

2 JENNIFER RALSTON, individually and as)
Personal Representative of the ESTATE OF) NO. 15-2-01064-2
3 TIMOTHY PATRICK McNAMARA,)
CALEB McNAMARA, individually,) DEFENDANT'S ANSWER TO SECOND
4 Plaintiffs,) AMENDED COMPLAINT,
5) AFFIRMATIVE DEFENSES AND
vs.) COUNTERCLAIM
6 TRACY NESSL, a/k/a TRACY)
McNAMARA, a/k/a TRACY NESSL)
McNAMARA,)
7)
8 Defendant.) CONSOLIDATED NO. 15-2-00170-8
9 JENNIFER RALSTON, Personal)
Representative of the Estate of TIMOTHY)
10 PATRICK McNAMARA, deceased)
11 Plaintiffs)
12 vs.)
13 TRACY NESSL a/k/a TRACY)
McNAMARA, and all other persons or parties)
14 unknown, claiming any right, title, estate, lien,)
or interest in the subject)
15 Property)
Defendant.)

**DEFENDANT'S ANSWER TO SECOND AMENDED COMPLAINT,
AFFIRMATIVE DEFENSES AND COUNTERCLAIM**

INTRODUCTION

2 Defendant, Tracy Nessl McNamara, through her attorneys, Jeffers, Danielson, Sonn
3 & Aylward, P.S., by Robert R. Siderius and H. Lee Lewis, hereby answers and defends
4 Plaintiffs' Second Amended Complaint for Wrongful Death, for Declaratory Judgment, and
5 for Equitable Relief (the "Complaint") and further asserts her affirmative defenses and
6 counterclaim. This document uses the same paragraph numbering used in the Second
7 Amended Complaint.

ANSWER

I. PARTIES

10 1.1 Defendant admits that Timothy Patrick McNamara was born on December
11 10, 1948 and died at the age of 66. Defendant admits, based on information and belief, that
12 Mr. McNamara was the father of Jennifer Ralston and Caleb McNamara. Defendant admits,
13 based on information and belief, that she is the niece of Mr. McNamara, and that he had
14 property in Grant County, Washington and a principal residence in Belize at the time of his
15 death. Defendant denies the remaining allegations in Paragraph 1.1.

16 1.2 Defendant admits that the Grant Count Superior Court's February 9, 2015
17 Order speaks for itself. Defendant is without sufficient knowledge as to whether Jennifer
18 Ralston resided in Franklin County, Washington, at all times material to these claims, and
19 therefore denies the same. The remainder of Paragraph 1.2 contains legal conclusions for
20 which no response is required. To the extent that a response is required, Defendant denies
21 the remaining allegations in Paragraph 1.2.

1 1.3 Defendant admits the allegations contained in Paragraph 1.3 based on
2 information and belief.

3 1.4 Defendant admits that she is 44 years old; that she is a U.S. Citizen; that she
4 and Mr. McNamara lived together as husband and wife, having been married on December
5 10, 2013; and that she resides in Grant County, Washington. Defendant admits based on
6 information and belief that she is the daughter of Mr. McNamara's brother, John Dennis
7 McNamara. Defendant currently resides in Grant County, Washington. Defendant denies
8 the remaining allegations in Paragraph 1.4.

II. JURISDICTION AND VENUE

10 2.1 Admit.

11 2.2 Defendant admits that she resides in the state of Washington and that
12 jurisdiction is proper on that basis pursuant to RCW 4.28.185.

13 2.3 Defendant admits that she resides in Grant County, Washington, and that
14 venue is proper in Grant County on that basis pursuant to RCW 4.12.025.

III. RESPONSE TO STATEMENT OF FACTS

3.1 Defendant denies the allegations in Paragraph 3.1.

17 3.2 Defendant is without sufficient knowledge as to whether Mr. McNamara
18 was a lifelong farmer and construction worker, whether Mr. McNamara farmed his family's
19 Grant County apple orchard and alfalfa fields since the time his children were very young,
20 whether Mr. McNamara also owned and operated a construction company to provide for his
21 family, and whether Mr. McNamara worked as a subcontractor for his son's company in the

1 years preceding his death, and therefore denies the same. Defendant denies the remaining
2 allegations in Paragraph 3.2.

3 3.3 Defendant is without sufficient knowledge as to all the allegations in
4 Paragraph 3.3, and therefore denies the same.

5 3.4 Defendant admits that starting on July 15, 2012, Mr. McNamara and
6 Defendant began spending time together, ultimately entered into a romantic relationship,
7 and were legally married on December 10, 2013. Defendant admits that she was a waitress.
8 Defendant admits based on information available to her that Mr. McNamara's divorce was
9 still pending when she began her romantic relationship with Mr. McNamara and that she is
10 the natural daughter of Mr. McNamara's brother. Defendant denies the remaining
11 allegations in Paragraph 3.4.

12 3.5 Defendant admits that she was 43 when she became romantically involved
13 with Mr. McNamara. Defendant denies the remaining allegations in Paragraph 3.5.

14 3.6 Defendant admits that in December 2012, Mr. McNamara quitclaimed three
15 properties to her and that Paragraph 3.6 accurately describes the three quitclaimed
16 properties. Defendant denies the remaining allegations in Paragraph 3.6.

17 3.7 Deny.

18 3.8 Deny.

19 3.9 Deny.

20 3.10 Defendant admits that Mr. McNamara and Defendant purchased property in
21 Belize; that the property is located at Old Northern Highway/Maskall Road, Boston Village,

1 Belize District; and that the property is registered as Belize Rural North 1, Block 11, Parcel
2 1120. Defendant denies the remaining allegations in Paragraph 3.10.

3 3.11 Deny.

4 3.12 Defendant admits that on December 25, 2014, Mr. McNamara exited the
5 home out of the back door. Defendant denies the remaining allegations in Paragraph 3.12.

6 3.13 Defendant admits that Mr. McNamara died on December 25, 2014.
7 Defendant denies the remaining allegations in Paragraph 3.13.

8 3.14 Deny.

9 3.15 Defendant admits that the neighbor called the police. Defendant denies the
10 remaining allegations in Paragraph 3.15.

11 3.16 Defendant is without sufficient knowledge as to whether the police did not
12 arrive for approximately two hours, and therefore denies the same. Defendant denies the
13 remaining allegations in Paragraph 3.16.

14 3.17 Defendant admits that she told police that Mr. McNamara heard the dogs
15 barking outside and that she told police that it was common for Mr. McNamara to take a
16 loaded gun outside when the dogs barked to check the property for large cats. Defendant
17 denies the remaining allegations in Paragraph 3.17.

18 3.18 Deny.

19 3.19 Defendant admits that she currently resides in Grant County, Washington.
20 Defendant denies the remaining allegations in Paragraph 3.19.

21

1 3.20 Defendant is without sufficient knowledge as to all the allegations contained
2 in Paragraph 3.20, and therefore denies the same.

3 3.21 Defendant is without sufficient knowledge as to all the allegations contained
4 in Paragraph 3.21, and therefore denies the same.

5 3.22 Defendant is without sufficient knowledge as to all the allegations contained
6 in Paragraph 3.22, and therefore denies the same.

7 3.23 Defendant is without sufficient knowledge as to all the allegations contained
8 in Paragraph 3.23, and therefore denies the same.

9 3.24 Defendant has seen a document which purports to be a Belize warrant but
10 has no information or belief as to its authenticity and therefore denies that such a warrant
11 was issued. Defendant is without sufficient knowledge as to all the allegations contained in
12 Paragraph 3.24, and therefore denies the same.

13 3.25 Deny.

14 3.26 Deny.

15 3.27 Defendant admits that a federal declaratory action has been filed by one
16 insurance company but has since been dismissed.

17 3.28 Defendant admits that after July 15, 2012, Mr. McNamara and Defendant
18 were intentionally engaged in a long-term, committed intimate relationship with the purpose
19 of being exclusive and committed partners; that Mr. McNamara and Defendant lived
20 together as husband and wife, having been legally married on December 10, 2013; and that
21 after July 15, 2012, Mr. McNamara and Defendant pooled resources together. Defendant

1 denies the remaining allegations in Paragraph 3.28.

2 3.29 Defendant admits that Mr. McNamara quitclaimed properties to Defendant
3 and that Paragraph 3.29 accurately describes the quitclaimed properties. Defendant denies
4 the remaining allegations in Paragraph 3.29.

5 3.30 Deny.

6 3.31 Deny.

7 3.32 Deny.

8 3.33 Defendant admits that Mr. McNamara and Defendant purchased a property
9 in Belize and that title was recorded in Mr. McNamara's and Defendant's names.
10 Defendant admits that Mr. McNamara and Defendant built a home and a bed-and-breakfast
11 resort upon the property. Defendant denies the remaining allegations in Paragraph 3.33.

12 3.34 Defendant denies that Mr. McNamara and Defendant were not married.
13 Defendant is without sufficient knowledge as to the remaining allegations in Paragraph 3.34,
14 and therefore denies the same.

15 3.35 Deny.

16 **IV. RESPONSE TO CAUSES OF ACTION**

17 4.1 Deny.

18 4.2 Deny.

19 4.3 Deny.

20 4.4 Deny.

21 4.5 Deny.

1 4.6 Deny.

2 4.7 Defendant admits that Defendant is a U.S. Citizen, that Mr. McNamara was

3 a U.S. Citizen, that Mr. McNamara owned several properties in Washington, that Mr.

4 McNamara quitclaimed those properties to Defendant while in Washington, and that

5 Defendant owns several properties in Washington. Defendant is without sufficient

6 knowledge as to whether the state of Washington has the most significant relationship to the

7 occurrence and parties alleged in the Complaint, whether Mr. McNamara maintained a

8 permanent residence in Washington, and whether Mr. McNamara maintained Washington

9 State as his permanent residence, and therefore denies the same. Defendant denies the

10 remaining allegations in Paragraph 4.7.

11 V. RESPONSE TO CLAIMED DAMAGES

12 5.1 Deny.

13 5.2 Deny.

14 5.3 Deny.

15 VI. DEFENSES AND AFFIRMATIVE DEFENSES

16 Having fully answered the Plaintiffs' Second Amended Complaint, and without

17 assuming the Plaintiffs' burden of proof on any issue, Defendant raises the following

18 defenses and affirmative defenses to the Plaintiffs' claims:

19 6.1 Plaintiffs' Second Amended Complaint fails to state a claim upon which

20 relief can be granted.

1 6.2 Plaintiffs' Second Amended Complaint alleges injuries and damages for
2 which Plaintiffs are not entitled to recover pursuant to RCW 4.20 *et seq.*

3 6.3 The injuries and damages, if any, as alleged in the Second Amended
4 Complaint, were caused by the intentional acts or the sole and/or contributory negligence of
5 the decedent, and, therefore, the requested relief should be denied.

6 6.4 The injuries and damages, if any, as alleged in the Second Amended
7 Complaint, were not proximately caused or contributed to by Defendant.

8 6.5 Plaintiffs' causes of action are barred by the doctrines of waiver, estoppel,
9 and/or laches.

10 6.6 Plaintiffs' damages, if any, were caused by their own acts or omissions.

11 6.7 Plaintiffs have failed to mitigate their damages, if any.

VI. COUNTERCLAIM

13 7.1 The Plaintiffs filed a lis pendens on property owned by the Defendant and
14 located in Grant County.

15 7.2 Under RCW 4.28.328, the owner of property subject to a lis pendens filed
16 without substantial justification is entitled to recover actual damages, plus reasonable
17 costs and attorneys' fees in defending against the action giving rise to the filing of the lis
18 pendens.

19 7.3 The lis pendens filed by the Plaintiffs upon the Defendant's property was
20 filed without substantial justification.

1 7.4 The Defendant is entitled to recover against the Plaintiffs for her actual
2 damages caused by the wrongful filing of the lis pendens, plus her reasonable attorney
3 fees and costs in defending against this lawsuit.

RELIEF REQUESTED

5 WHEREFORE, having fully answered Plaintiffs' Second Amended Complaint
6 and having asserted defenses and affirmative defenses thereto, and having asserted
7 counterclaims against the Plaintiffs, Defendant prays for relief as follows:

8 1. That Plaintiffs' Second Amended Complaint be dismissed with prejudice
9 and Plaintiffs recover nothing thereby.

10 2. That Judgment be entered in favor of Defendant and against Plaintiffs for
11 damages and reasonable costs, including attorney's fees, pursuant to RCW 4.28.328 and
12 4.84 *et seq.* or any other applicable law.

13 3. For such other and further relief as the Court deems just and equitable.

14 DATED this 18TH day of April, 2016.

15 JEFFERS, DANIELSON, SONN & AYLWARD, P.S.

By H. LEE LEWIS, WSBA #4647
ROBERT R. SIDERIUS, WSB
Attorneys for Defendant

DEFENDANT'S ANSWER TO SECOND AMENDED COMPLAINT,
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CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on April 18, 2016, the foregoing was delivered to the following persons in the manner indicated:

<p>Ms. Karen K. Koehler Mr. Andrew N. Ackley Stritmatter Kessler Whelan 200 Second Avenue West Seattle, WA 98119 karenk@stritmatter.com Andrew@stritmatter.com anner@stritmatter.com; Elodie@stritmatter.com</p> <p><i>Attorneys for Plaintiffs</i></p>	<p>[] U.S. Mail [] Hand Delivery – Messenger Service [] Overnight Courier [] Facsimile [X] Email</p>
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<p><i>Associated Counsel for Defendant Tracy McNamara</i></p>	

Camilla Lilquist

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