

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

IN THE MATTER OF DETERMINING) Order Number S-09-403-09-SC01
Whether there has been a violation of the)
Securities Act of Washington by:) STATEMENT OF CHARGES AND NOTICE
) OF INTENT TO ENTER ORDER TO CEASE
) AND DESIST, TO IMPOSE FINES, AND TO
Mill Creek Development LLC; John) CHARGE COSTS
Tomasello; John D'Arcy;)
)
Respondents

THE STATE OF WASHINGTON TO: Mill Creek Development, LLC;
John Tomasello;
John D'Arcy

STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondents, Mill Creek Development, LLC; John Tomasello; John D'Arcy have each violated the Securities Act of Washington and that their violations justify the entry of an order of the Securities Administrator under RCW 21.20.390 against each to cease and desist from such violations. The Securities Administrator finds as follows:

TENTATIVE FINDINGS OF FACT

Respondents

1. Mill Creek Development, LLC (Mill Creek) is a California limited liability company with its principal place of business at 13026 Tabeaud Road, Pine Grove, California 95665. For much of the period relevant to this Statement of Charges, Mill Creek's principal place of business was 516 Neely Court, Alamo, California 94507. Mill Creek is a real estate development firm.

1 2. John Tomasello (Tomasello) is a principal of Mill Creek.

2 3. John D’Arcy (D’Arcy) is a principal of Mill Creek.

3 Nature of the Offering

4 4. Mill Creek has funded a sizeable portion of its real estate development business
5 by selling notes to investors. Mill Creek has sold at least \$2,101,000 worth of notes to at least
6 seven individuals and businesses, at least two of whom were Washington residents at the time of
7 sale.
8

9 Offers and Sales in California

10 5. Prior to late 2004, Investors A and B (a married couple) resided in Monterey
11 County, California. D’Arcy is a cousin of Investor A and regularly visited Investors A and B in
12 their home and had regular phone contact with Investors A and B.

13 6. During these visits and phone calls, D’Arcy initiated discussion regarding the
14 possibility of Investors A and B investing in Mill Creek. D’Arcy told Investors A and B that they
15 would receive “regular income” from Mill Creek in the form of interest.

16 7. D’Arcy told Investors A and B that buying a promissory note from Mill Creek would
17 allow Mill Creek to take advantage of opportunities to acquire real estate for development and to
18 pay for expenses incidental to its real estate development business such as permits and
19 surveying. D’Arcy did not identify specific pieces of real estate that Mill Creek sought to
20 develop or was in the process of developing.
21

22 8. D’Arcy did not provide any information about Mill Creek’s financial state during
23 these solicitations. D’Arcy did not discuss how Mill Creek would return Investors A’s and B’s
24 money. D’Arcy did not reveal the existence of any creditor of Mill Creek.
25

1 9. In 2002, D'Arcy sold a promissory note made by Mill Creek for \$60,000 to Investors
2 A and B. The note provided for a deed of trust on property owned by Mill Creek to secure
3 payment. Investors A and B never received such a deed of trust.

4 10. In 2003, D'Arcy sold promissory notes made by Mill Creek in the amounts of
5 \$26,000 and \$50,000 to the Investors. The \$26,000 note was secured by a deed of trust on real
6 property called Amaral Ranch. The \$50,000 note provided for a deed of trust on real property
7 owned by Mill Creek to secure payment. Investors A and B never received such a deed of trust.
8

9 11. The three promissory notes described above were paid in full, with interest, by
10 Respondents. Investors depended upon the interest generated by the promissory notes for a
11 significant portion of their living expenses.

12 Offers and Sales in Washington

13 12. In late 2004, Investors A and B relocated to the State of Washington.

14 13. In the months preceding Investors A's and B's move to Washington, D'Arcy initiated
15 discussions by phone and in person concerning Investors A and B making another investment in
16 Mill Creek. Shortly after their relocation to Washington, Investors A and B were contacted by
17 D'Arcy by phone.

18 14. D'Arcy told Investors A and B that investment in Mill Creek would allow Mill Creek
19 to take advantage of opportunities to acquire real estate for development and to pay for expenses
20 incidental to its real estate development business such as permits and surveying. D'Arcy did not
21 identify specific pieces of real estate that Mill Creek sought to develop or was in the process of
22 developing.
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1 15. D'Arcy did not provide any information about Mill Creek's financial state during this
2 solicitation. D'Arcy did not discuss how Mill Creek would return Investors A's and B's money.
3 D'Arcy did not reveal the existence of any creditor of Mill Creek.

4 16. In December, 2004, D'Arcy offered and sold a \$200,000 promissory note made by
5 Mill Creek to Investors A and B. Payment was made by a cashier's check that Investors A and B
6 sent to Mill Creek via Federal Express. The note was due on December 31, 2005. The note
7 provided for monthly interest payments of \$3,000 and for a lump payment of twenty percent of
8 principal, less the amount of any interest payments previously made, upon return of the principal
9 invested. The note was signed by both D'Arcy and Tomasello.

10 17. D'Arcy told Investors A and B that the note would be secured in the same fashion
11 that the three previous notes had been secured. The note provided for a deed of trust to secure
12 payment. Investors A and B received no such deed of trust.

13 18. Investors A and B were motivated to purchase this note by the diminution of the
14 value of their retirement assets and their previous profitable investments with Mill Creek.

15 19. In late 2005, D'Arcy called Investors A and B to discuss another investment in Mill
16 Creek. D'Arcy stated that if Investors A and B bought another note from Mill Creek, Mill Creek
17 would increase the interest payments due Investors A and B on the outstanding Mill Creek notes
18 Investors A and B would be holding. D'Arcy discussed a \$20,000,000 development deal
19 involving Kaufman and Broad, a subsidiary of KB Homes, that Mill Creek hoped to finalize with
20 Investors A's and B's money. D'Arcy also told Investors A and B that they could make money
21 by taking a home equity loan and using those loan funds to buy another Mill Creek note that
22 would pay Investors A and B a higher rate of interest than the interest owed on the home equity
23 loan.
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1 20. D'Arcy did not provide any information about Mill Creek's financial state during this
2 solicitation. D'Arcy did not discuss how Mill Creek would return Investors A's and B's money.
3 D'Arcy did not reveal the existence of any creditor of Mill Creek.

4 21. In January, 2006, D'Arcy offered and sold a \$100,000 promissory note made by Mill
5 Creek to Investors A and B. The note was due on January 11, 2006. The note provided that Mill
6 Creek would make a single interest payment of \$25,000 upon full return of the principal to
7 Investors A and B. The note was signed by both D'Arcy and Tomasello.

8 22. The note provided for a deed of trust to secure payment. Investors A and B received
9 no such deed of trust.

10 23. In October, 2008, D'Arcy visited Investors A and B at their Washington home.
11 D'Arcy told Investors A and B that Mill Creek had found a "hot" property and wished to
12 purchase it. D'Arcy told Investors A and B that Mill Creek would be able to purchase this
13 property only if Mill Creek received an immediate investment of \$75,000 from Investors A and
14 B.
15 B.

16 24. D'Arcy promised to pay fifteen percent interest on the \$75,000 until Mill Creek had
17 repaid the full amount of Investors A's and B's notes, \$375,000.

18 25. D'Arcy did not provide any information about Mill Creek's financial state during this
19 solicitation. D'Arcy did not discuss how Mill Creek would return Investors A's and B's money.
20 D'Arcy did not reveal the existence of any creditor of Mill Creek.

21 26. Investors A and B wrote and delivered to Mill Creek a check for \$75,000, dated
22 October 1, 2008, and payable to Mill Creek. The check was deposited in Mill Creek's account at
23 Delta National Bank.
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1 27. Investors A and B did not receive a written document as evidence of their October,
2 2008 investment.

3 28. In connection with the offer and sale of at least one of the notes offered and sold in
4 Washington, D'Arcy told Investors A and B that other potential investors could profit from
5 interest paid on Mill Creek notes, but that D'Arcy would prefer to see a family member profit
6 from purchasing Mill Creek notes and that Investors A and B could "live off" the interest.
7

8 29. The \$375,000 invested in Mill Creek represents the substantial majority of Investors
9 A's and B's retirement funds.

10 30. To date, Investors A and B have received only a small percentage of the money owed
11 them under the three Mill Creek notes they purchased in Washington.

12 Misrepresentations and Omissions

13 32. D'Arcy made a false statement of material fact to Investors A and B in October,
14 2008 regarding the use of investors A's and B's funds as no property was purchased with the
15 \$75,000 received from Investors A and B.

16 33. In the offer and sale of Mill Creek notes, D'Arcy failed to disclose material
17 information which made the disclosed information misleading to Investors A and B as described
18 in paragraphs fifteen, twenty, and twenty-five of the Tentative Findings of Fact. D'Arcy failed to
19 provide investors with material information regarding Mill Creek's financial condition at the
20 time Investors A and B invested.
21

22 Registration Status

23 34. Mill Creek is not currently registered to sell its securities in the State of
24 Washington and has not previously been so registered nor has it filed a claim of exemption from
25 registration.

1 **NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST**

2 Based on the above Tentative Findings of Fact and Conclusions of Law, the Securities
3 Administrator intend to order, pursuant to RCW 21.20.390(1), that Mill Creek Development,
4 LLC; John Tomasello; John D'Arcy; their agents and employees each cease and desist from
5 violations of RCW 21.20.010, RCW 21.20.040, and RCW 21.20.140.

6 **NOTICE OF INTENT TO IMPOSE FINES**

7 Pursuant to RCW 21.20.395, and based upon the Tentative Findings of Fact and
8 Conclusions of Law, the Securities Administrator intends to order that Mill Creek Development,
9 LLC, John Tomasello, and John D'Arcy shall be liable for and pay a fine of .

10 **NOTICE OF INTENT TO CHARGE COSTS**

11 Pursuant to RCW 21.20.390, and based upon the Tentative Findings of Fact and
12 Conclusions of Law, the Securities Administrator intends to order that Mill Creek Development,
13 LLC, John Tomasello, and John D'Arcy each shall be liable for and each shall pay investigative
14 costs of .

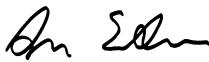
15 **AUTHORITY AND PROCEDURE**

16 This Statement of Charges is entered pursuant to the provisions of the Washington
17 Securities Act and is subject to the provisions of RCW 21.20 and RCW 34.05. The Respondents,
18 Mill Creek Development, LLC; John Tomasello; John D'Arcy; may each make a written request
19 for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND
20 OPPORTUNITY FOR HEARING accompanying this order.

21 If a respondent does not request a hearing, the Securities Administrator intends to adopt
22 the above Tentative Findings of Fact and Conclusions of Law as final and enter an order to cease
23 and desist permanent as to that respondent.

1 DATED AND ENTERED THIS 2ND DAY OF FEBRUARY, 2010

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SUZANNE SARASON
Chief of Enforcement

Presented by:



Edward R. Thunen
Financial Legal Examiner