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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING**

**JAYAKRISHNAN K. NAIR, A Single Person,**

**Plaintiff,**

**vs.**

**RICHARD J. SYMMES, Individually and on  
Behalf of the Marital Community Comprised of  
RICHARD J. SYMMES and JANE DOE  
SYMMES, and SYMMES LAW GROUP,  
PLLC, a Washington Professional Limited  
Liability Company,**

**Defendants.**

*NO. 17-2-16243-4 SEA*

**COMPLAINT FOR LEGAL  
MALPRACTICE**

The Complaint of Plaintiff JAYAKRISHNAN K. NAIR alleges as follows:

**I. PARTIES**

1.0 Plaintiff JAYAKRISHNAN K. NAIR, who is also known as “Jay” Nair, is a person of the full age of majority and permanent legal resident of the United States, who resides in Redmond, King County, Washington.

1.1 Defendant RICHARD J. SYMMES is a person of the full age of majority who, upon information and belief, resides in King County Washington. It is unknown whether Defendant SYMMES is married or a single person. Plaintiff thus refers to Defendant SYMMES’s unknown spouse as “JANE DOE SYMMES” pending discovery, as any acts and/or omissions relevant hereto may have been done on behalf of that marital community.

**Complaint for Legal Malpractice**

**BRIAN J. WAID  
ATTORNEY AT LAW  
5400 CALIFORNIA AVENUE SW, SUITE D  
SEATTLE, WA 98136  
206-388-1926**



1           3.1     In October 2014, Mr. Nair learned that First Tech Credit Union “FTCU,”  
2 which held a second-position deed of trust on one of Mr. Nair’s five investment  
3 properties, in the amount of \$100,000 and a then-current balance of approximately  
4 \$72,000, had initiated foreclosure proceedings against that one property.  
5

6           3.2     At that time, Mr. Nair subscribed to a prepaid legal insurance company  
7 known as “ARAG.” Mr. Symmes’ had contracted with ARAG to offer ARAG-paid  
8 and/or below-market legal fees to ARAG members. Mr. Symmes’ listing on the ARAG  
9 Legal Center for Members, appeared under the Legal Issue heading “Real Estate and  
10 Home Ownership” and Type of Issue heading “Foreclosure.” The website of Mr.  
11 Symmes’ law firm, Symmes Law Group, PLLC, markets itself with “Stop Foreclosure.  
12 Stop Collections. End Your Stress. BE DEBT FREE!” and “Seattle Bankruptcy  
13 Attorney Who Gets Debt Relief Fast.”  
14

15           3.3     When his personal attempts to resolve the non-judicial  
16 foreclosure proceeding failed, Mr. Nair found Mr. Symmes’ listing with ARAG. On or  
17 about April 15, 2015, Mr. Nair retained Mr. Symmes and the Symmes Law Group,  
18 PLLC, to assist him in resolving the foreclosure through the ARAG prepaid legal  
19 insurance plan, at a rate of \$187.50 per hour.  
20

21           3.4     Upon acceptance of representation of Plaintiff Nair, Defendant Symmes  
22 undertook a duty of competence to Nair, to meet or exceed the standard of care  
23 applicable to a reasonably prudent Washington attorney representing a client in the  
24 same or similar situation as Nair.  
25

1           3.5     At the time Mr. Nair first retained Mr. Symmes, Mr. Nair had  
2 approximately two weeks remaining in which to resolve the foreclosure and thus  
3 preserve Nair's ownership interest in the investment property. He also had ample cash  
4 resources readily available to pay off the FTCU debt in full, including \$20,000 in cash  
5 in liquid accounts, and \$100,000 in a 401k. Mr. Nair could have taken money out of the  
6 401k and re-deposited it within 60 days without any tax penalty. Mr. Nair also alerted  
7 Mr. Symmes to his (Nair's) financial circumstances, including the fact that he had  
8 approximately \$6,000,000 in real estate investments and privately held shares in the  
9 Ratner Biomedicl startup.  
10

11           3.6     Mr. Nair relied heavily on Mr. Symmes' professed expertise in  
12 defending foreclosures and representing clients in bankruptcy proceedings.  
13

14           3.7     Mr. Symmes was aware of Mr. Nair's lack of knowledge about  
15 bankruptcy and that Mr. Nair relied on Symmes' recommendations as to how he (*i.e.*,  
16 Nair) should proceed.  
17

18           3.8     Mr. Symmes advised Mr. Nair to file Chapter 13 bankruptcy, and  
19 advised him against using his 401k funds because of the potential 10% tax penalty.  
20

21           3.9     Defendant Symmes and Symmes Law Group, PLLC filed Mr. Nair's  
22 Chapter 13 bankruptcy petition on April 29, 2015.  
23

24           3.10    Mr. Nair was not eligible for relief under Bankruptcy Code §109(e),  
25 when Defendant Symmes filed Nair's Chapter 13 bankruptcy petition.  
26

          3.11    Defendant Symmes knew, or reasonably should have known, that Mr.

1 Nair was not eligible for relief under Chapter 13 of the Bankruptcy Code.

2 3.12 On July 16, 2015, the Chapter 13 Bankruptcy Trustee objected to  
3 confirmation of Mr. Nair's Ch. 13 plan, citing among other problems, the fact that Mr.  
4 Nair did not qualify for Ch. 13. The Objection furthermore pointed out that Mr.  
5 Symmes had not served the Ch. 13 plan on Mr. Nair's creditors, and that the Ch. 13  
6 plan as submitted was not confirmable.  
7

8 3.13 Thereafter, on July 26, 2015, the Chapter 13 Bankruptcy Trustee moved  
9 to dismiss Mr. Nair's Chapter 13 bankruptcy petition, in part because Mr. Nair was not  
10 eligible for Ch. 13 relief. The Trustee also pointed out other defects, including the fact  
11 that Mr. Symmes' \$3,500 flat fee for Ch. 13 services was not reasonable.  
12

13 3.14 Upon service of the Chapter 13 Bankruptcy Trustee's motion to dismiss,  
14 Mr. Symmes could, and should, have advised Mr. Nair to agree to dismiss the  
15 bankruptcy case, rather than convert the case to either a Chapter 7 bankruptcy  
16 liquidation, or a Chapter 11 case. Defendants Symmes instead advised Mr. Nair to  
17 convert his case to Chapter 11 rather than Chapter 13. Mr. Nair followed Mr. Symmes'  
18 advice and Mr. Symmes thus filed a motion to convert Mr. Nair's bankruptcy case to a  
19 Chapter 11 case on August 11, 2015. The Court granted the Trustee's motion to  
20 convert to Chapter 11 on September 2, 2015.  
21

22 3.15 Defendant Symmes did not provide Mr. Nair with the material  
23 information necessary to enable Mr. Nair to give informed consent to the conversion  
24 from Ch. 13 to Ch. 11, particularly considering the risk to Mr. Nair that he might lose  
25

1 control of the Ratner Biomedical start-up company, as well as the administrative and  
2 other time-consuming and costly burdens imposed on the Debtor-in-Possession in a Ch.  
3 11 case.

4 3.16 After conversion of Mr. Nair's bankruptcy to a Chapter 11 business  
5 reorganization, Mr. Nair repeatedly asked Mr. Symmes to have the bankruptcy  
6 dismissed; however, Symmes told Nair that he (Nair) could not dismiss the bankruptcy  
7 and, if he were to file a motion to dismiss, the creditors and the US Trustee might move  
8 to convert the case to a Chapter 7 liquidation.

9  
10 3.17 On or about October 5, 2016, the Bankruptcy Court converted Mr. Nair's  
11 bankruptcy from a Chapter 11 case to a Chapter 7 case.

12  
13 3.18 Plaintiff Nair thereupon terminated his attorney-client relationship with  
14 Defendant Symmes effective on or about October 14, 2016.

15 3.18 On or about January 27, 2017, Plaintiff Nair retained Attorney Shashi  
16 Vijay to represent him as replacement counsel in the bankruptcy proceeding.

17 3.19 On April 5, 2017, Ms. Vijay succeeded in negotiating a settlement with  
18 the Bankruptcy Trustee, which allowed Nair to dismiss the bankruptcy proceeding filed  
19 by Defendant Symmes.

20  
21 **IV. CAUSE OF ACTION: LEGAL MALPRACTICE**

22 4.0 Defendant Symmes breached the duty of care he owed to Mr. Nair, in the  
23 following respects:

24 A. Advising Nair to file bankruptcy, because the extraordinary costs and  
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adverse consequences to Nair from filing bankruptcy were not warranted at the time;

B. Advising Nair to file bankruptcy rather than stop or delay the foreclosure by FTCU by other lawful means;

C. Advising Nair to file bankruptcy, thus placing Mr. Nair's control of the Ratner Biomedical start-up company, adequately communicating that risk to Mr. Nair and without having adequately investigated the company and the ramifications a bankruptcy would have on the company;

D. Advising Nair to file Chapter 13 bankruptcy, considering that Mr. Nair was quite obviously not eligible for relief under Chapter 13;

E. In response to the Chapter 13 Bankruptcy Trustee's motion to dismiss, advised Nair to convert the Chapter 13 case into a Chapter 11 reorganization, rather than have it dismissed;

F. Rejecting Nair's request that Symmes dismiss the Ch. 11 case, and advising Nair that he could not do that.

G. Charging an unreasonable \$3,500 flat fee for the Chapter 13 filing, particularly considering that: (i) Mr. Nair was not eligible for Chapter 13; (ii) Symmes did not submit a confirmable Ch. 13 plan on behalf of Nair, and; (iii) Symmes did not serve the creditors with the Ch. 13 plan.

H. Such other breaches of the standard of care as may be proven through discovery and/or at trial.

