

FILED
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CIVIL DISTRICT COURT

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 08-5417

DIV. K-5

LA MAISON LOUISIANE CONDOMINIUMS ASSOCIATION, INC., MONICA BUSSELL,
DIANE N KILLEEN, HERSHELL ABBOTT, MITSUKO TANNER, JOSEPH P O'DOWD

VS.

CARUBBA ENGINEERING, INC., ABC INSURANCE AGENCY, GRISH ROY PANDIT,
ROY P. INVESTMENTS, L.L.C.

FILED: _____

DEPUTY CLERK: _____

PETITION FOR BREACH OF CONTRACT AND BREACH OF WARRANTY

NOW INTO COURT, through undersigned counsel, comes Plaintiffs:

La Maison Louisiane Condominiums Association, Inc., a corporation formed under the laws of this State and at all relevant times herein doing business in this Parish of Orleans, who upon information and belief respectfully represents the facts and causes of action pled herein against the Defendants;

Monica Bussel, a person of the full age of majority maintaining a residence in this State and Parish, who upon information and belief respectfully represents the facts and causes of action pled herein against the Defendants;

Diane N Killeen, a person of the full age of majority maintaining a residence in this State and Parish, who upon information and belief respectfully represents the facts and causes of action pled herein against the Defendants;

Hershell Abbott, a person of the full age of majority maintaining a residence in this State and Parish, who upon information and belief respectfully represents the facts and causes of action pled herein against the Defendants;

Mitsuko Tanner, a person of the full age of majority maintaining a residence in this State and Parish, who upon information and belief respectfully represents the facts and causes of action pled herein against the Defendants;

Joseph P O'Dowd, a person of the full age of majority maintaining a residence in this State and Parish, who upon information and belief respectfully represents the facts and causes of action pled herein against the Defendants;

1.

Made Defendants herein are:

Carubba Engineering, Inc., a corporation formed under the laws of Louisiana, and at all material times doing business in this Parish (hereinafter "Contractor");

ABC Insurance Agency, an insurance agency doing business in this State and Parish, who upon information and belief provides general liability insurance coverage, errors and omissions insurance coverage or other relevant insurance coverage to Carubba Engineering (hereinafter "ABC").

GIRSH ROY PANDIT, a person of the full age of majority whose municipal address is 3500 Chateau Blvd, Kenner, LA 70065, and ROY P. INVESTMENTS, L.L.C., a Louisiana Limited Liability Company at all times doing business in this State and Parish (collectively "Pandit" or "Developer"). Upon information and belief, Girsh Roy Pandit perpetuated a fraud upon the Plaintiffs and therefore acted in violation of his duties to this Limited Liability Company. Furthermore, upon information and belief, Girsh Roy Pandit has disregarded the corporate entity such that the corporate veil should be pierced and he should be held liable individually for the debts to the Plaintiffs.

2.

Jurisdiction is proper in this Court because the Court maintains subject matter jurisdiction over the dispute based on the object of the demand and the amount in controversy.

3.

Venue is proper in this Court pursuant to Louisiana Code of Civil Procedure Article 76.1, which states that an action on a contract may be brought in the Parish where services were performed under the terms of the contract. This provision applies in these proceedings because

the contract was entered into in Orleans Parish as well as the bulk of the work and/or services were to be performed under the Contract in controversy in Orleans Parish.

BACKGROUND AND FACTS

4.

Developer contracted Contractor to perform design services and construction services in the renovation of property located at the municipal address of 3400 Magazine Street, New Orleans, LA 70115. The property is more fully described as follows:

A Certain Condominium Unit Described As:

The improvements thereon bear the municipal no 3400 Magazine Street, Condominium Unit # 1 - 18, New Orleans Louisiana, 70115, located on that certain tract of land which is described as follows, to wit:

A CERTAIN PORTION OF GROUND, together with all the buildings and improvements thereon, and all the rights, ways, privileges, servitudes, advantages and appurtenances thereunto belonging or in anywise appertaining, situated in the SIXTH DISTRICT of the City of New Orleans, Parish of Orleans, State of Louisiana, designated as LOT 9-B (being a portion of former LOT 9-A) on a plan of resubdivision of LOTS 9-A and 14-A into LOTS 9-B and 14-B in SQUARE No. 215 (OLD Square No. 6, Delachaise), by Gilbert, Kelley & Couturie, Inc. dated October 3, 1977, approved by the City Planning Commission on 11/03/1977, S.D. 157/77 (see CPC minutes 11/2/1977) and is described as follows to wit:

LOT 9-B is bounded by Louisiana Avenue, Magazine Street, Constance Street, and Delachaise Street. Said LOT commences at a distance of 53 feet 0 inches 4 lines from the point of intersection of the southerly right of way line of Magazine Street and the westerly right of way line of Louisiana Avenue, the point of beginning; thence in a southerly direction along the westerly right of way line of Louisiana Avenue, measures a distance of 79 feet, 6 inches, 5 lines front on Louisiana Avenue, by a depth in a westerly direction of 140 feet 0 inches 0 lines (Constance Street Sideline), thence in a northerly direction by a distance of 133 feet 7 inches 1 line (Delachaise Street Sideline), thence on the southerly right of way line and front on Magazine Street by a distance of 20 feet 0 inches 0 lines, thence in a southerly line by a distance of 53 feet 0 inches 4 lines to a point, thence in an easterly direction by a distance of 120 feet 0 inches 0 lines to a point on the westerly right of way line of Louisiana Avenue, the point of beginning.

And further including the adjoining the LOT located and forming the corner of Magazine Street and Louisiana Avenue, with 53 feet 0 inches 4 lines front on Magazine, the same with in the rear, front on Magazine Street and between equal and parallel lines in a depth of 120 feet 0 inches 0 lines.

The improvements thereon bear the municipal no. 3400 Magazine Street, New Orleans, LA 70115 (formerly 1028 Louisiana Ave);

(hereinafter "Property" or "Condominium Complex").

5.

The Developer and Contractor undertook to renovate the space previously existing into a condominium complex with approximately eighteen (18) condominium units. As the project ensued, the Developer began selling condominiums to individual buyers and made certain representations about the condominium complex and the specific units.

6.

On or about August 15, 2005, the La Maison Condominium Association was formed as the association for all condominium owners and to control and manage the common elements (hereinafter the "Association").

7.

On or around January 18, 2006, Plaintiff Monica Bussell purchased condominium unit 9. On or around November 30, 2006, Plaintiff Diane N Killeen purchased condominium unit 8. On or around January 26, 2006, Plaintiff Hershell Abbott purchased condominium unit 11. On or around August 15, 2006, Plaintiff Mitsuko Tanner purchased condominium unit 4. On or around October 14, 2007, Plaintiff Joseph P O'Dowd purchased condominium unit 5.

8.

Advertising and promotional materials were provided to these Plaintiffs by the Defendants with representations about the quality of the condominium units and construction, the space of the respective condominium unit, the quality of materials used in the construction of the condominium units, the timeframe for completion of the condominium complex, the qualifications of the Developer, Contractor and other responsible parties, and other similar representations.

9.

Depending on the timeframe of the particular plaintiff's purchase of the condominium unit, while prospective buyers there was also made available to the Plaintiffs a demonstration condominium unit, represented to them to be a replica of the units they would purchase and a representation of the quality of workmanship and contents.

10.

Plaintiffs were instructed that the condominium unit purchased by them were ready for occupancy immediately upon sale. The Plaintiffs began to occupy their respective condominium units shortly thereafter.

11.

Upon information and belief, despite the representation that the property was ready for occupancy, a State Fire Marshall Inspection had not occurred, a Certificate of Occupancy had not been issued, and therefore, the construction work at the Property had not reached substantial completion.

12.

The Developer and Contractor knowingly misrepresented the condition of the Property and its readiness for occupancy to the Plaintiffs. Based upon these misrepresentations, the Plaintiffs began to occupy the property as provided in paragraph 10 of this Petition.

13.

Over the course of time, Plaintiffs began to notice that the quality of the materials, appliances, and workmanship was not as represented to them. In many instances, the quality of materials, appliances and workmanship was also flawed, defective, nonconforming or otherwise incorrect.

14.

For the following non-exhaustive list of reasons, the quality of materials, appliances, and workmanship was not as represented to the Plaintiffs:

- (1) The individual condominium units purchased by the Plaintiffs did not use the same quality of construction, materials and appliances as the demonstration unit;
- (2) The individual condominium units purchased by the Plaintiffs were not similar to the demonstration unit;
- (3) The individual condominium units purchased by the Plaintiffs were not in conformity with the promotional and advertising materials provided to them during the sales process;

- (4) The individual condominium units purchased by the Plaintiffs were not in conformity with the representations as to quality and workmanship made to them by the Defendants;
- (5) Any other reasons discovered during discovery or at the trial of this matter.

15.

In addition to the condominium complex, common elements and units being misrepresented and not of sufficient quality as above-represented, the construction of the complex, common elements and units was poor, flawed, defective, substandard, improper, non-conforming, and/or in breach of applicable warranties or contract. For the following non-exhaustive list of reasons, the construction of the Condominium Complex, including the common elements and the property owned individually by the condominium unit owners, was poor, flawed, defective, non-conforming and in breach of warranties:

- (1) materials used in the construction was of low quality, non-conforming, flawed and/or defective;
- (2) Contractor did not finish work in the time required by its contract, or within a reasonable time;
- (3) Contractor failed to implement its services according to code, in full compliance with the local building codes and state and federal laws, using licensed workers and all the proper permits required;
- (4) Contractor failed to complete all work in a workmanlike manner according to standard practices where applicable, and otherwise according to the scope and specifications outlined by the its contract with the Plaintiffs, the Developer or other applicable parties.
- (5) The Condominium Roof was installed improperly and is defective, non-conforming, poor, flawed and/or in breach of applicable warranties. As a result of the defective roof and ancillary components of the roof, the condominium complex, common elements and units have experienced leaks that have damaged components of the building and movable property housed thereon and therein;
- (6) List other complaints by La Maison;

(7) Any other reasons discovered during discovery or at a trial of this matter.

16.

As a result of the aforementioned misrepresentations, defective workmanship, breach of warranties and breach of contract, fraud, and other actions of the Defendants, whether now known or discovery subsequently through discovery and trial, the Plaintiffs have been damaged as listed in the following non-exhaustive list:

- (1) Plaintiffs have been unable to occupy their condominium units as intended;
- (2) Plaintiffs have been denied peaceful possession of their property;
- (3) Property owned by the Plaintiffs have sustained damages;
- (4) Property owned by Plaintiffs have lost value;
- (5) Plaintiffs have been unable to sell their condominium units to third party buyers, resulting in
 - (a) the inability to live elsewhere;
 - (b) incurring of unnecessary or unwanted interests, property taxes and insurance costs;
 - (c) inconvenience;
 - (d) mental anguish;
 - (e) damages to their credit history;
 - (f) damages to their financial standing;
 - (g) loss of opportunities;
- (6) Plaintiffs have incurred unnecessary expenses in the unnecessary or unusual maintenance of their property;
- (7) Inconvenience;
- (8) Embarrassment;
- (9) Mental Anguish and/or Emotional Distress;
- (10) Any other damages that become known through discovery or a trial;
- (11) Delay in the inability to use the Property;
- (12) Any other damages known at the time of this filing but not well-pled.

17.

Contractor was required by contract and law to implement its services according to code, in full compliance with the local building codes and state and federal laws, using licensed workers and all the proper permits required.

18.

Despite being informed by Plaintiffs of the aforementioned misrepresentations, workmanship problems, quality of materials problems and other similar defaults, defects and complaints, Defendants did not remedy the deficiencies.

19.

At all relevant and material times herein, the Defendants represented themselves as being licensed, registered, insured and/or otherwise competent to perform the work and business that is made subject to this litigation.

20.

After finding no remedy elsewhere, Petitioners have initiated this action in order to recover its damages.

CAUSES OF ACTION

21.

The Plaintiffs assert the following causes of action, pled in the alternative where appropriate, against the Defendants.

22.

Plaintiffs claim actions as per the rights granted to them under La. R.S. 9:1121.101, et seq., and the Association as per its rights provided by the Louisiana Condominium Act, provision La. R.S. 9:1123.102, which provides that the Association may “institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of two or more unit owners on matters affecting the condominium.”

23.

Under La. R.S. 9:1124.102, the Developer shall as declarant under the offering, provide the disclosure of “the terms of any warranties expressly made or limited by the declarant.” As per the obligations provided by the Louisiana New Home Warranty Act, La. R.S. 9:3142, et seq., the

Developer shall provide the following warranties to any initial purchaser of a new residential structure:

“(1) One year following the warranty commencement date (the date in which legal title is provided to the owner), the home will be free from any defect due to noncompliance with the building standards or *due to other defects in materials or workmanship* not regulated by building standards.

(2) Two years following the warranty commencement date, the *plumbing, electrical, heating, cooling, and ventilating systems exclusive of any appliance, fixture, and equipment will be free from any defect* due to noncompliance with the building standards or due to other defects in materials or workmanship not regulated by building standards.

(3) Five years following the warranty commencement date, the home will be *free from major structural defects* due to noncompliance with the building standards or due to other defects in materials or workmanship not regulated by building standards.”
La. R.S. 9:3144(A). (parenthetic and emphasis added)

24.

Plaintiffs aver that by way of its statements above concerning the multiple and specific damages occasioning the building and structure, Plaintiffs have a right of action against the Developer and any other builder, who may be named later and who qualifies as a “Builder” under the Louisiana New Home Warranty Act (the “Act”). The Developer’s failure to adhere to its obligations under this Act has caused the breach of these specific warranties and has led to substantial and major structural defects on the Property. Plaintiffs further aver that upon their information and belief these damages resulting from Developer’s breach were not in any manner caused by the Plaintiff’s (a) failure to minimize damages or provide notice of defect, as Developer was immediately notified of the damage; (b) normal wear and tear as the building is extremely new; (c) weather, war, accident or civil commotion; (d) soil or insect damage; or (e) other actions for which the Developer is not responsible. All of the damages incurred by way of the breach are of a nature covered by the act, as they are physical and relative to the structure of the Property.

25.

Plaintiffs have incurred considerable damages as described by the allegations of sections 14 and 15 of this Petition. Under La. R.S. 9:3149, Plaintiffs are entitled to recover the full extent of its actual damages, including attorney fees and court costs, which arose out the violation.

26.

In the alternative that this Court finds the provisions of La. R.S. 9:3142, *et seq.* to fail for applicability or to be limited by law or contract, Plaintiffs allege that the Developer's actions constitute a violation of La. C.C. Art. 2520, *et seq.* for Developer's breach of warranty against redhibitory defects. The law states that a "seller warrants against redhibitory defects, or vices in a thing sold." Furthermore, Plaintiffs allege that the condition of the Property violates their rights under La. CC. Art. 2524, because the Property is not fit for its ordinary use and/or the particular use the Plaintiffs intend for the Property. Plaintiffs also believe that the defects upon the Property have existed before delivery of legal title and therefore the Plaintiffs' damages are not preempted by La. C.C. Art. 2530. Due to the Developer's failure to properly construct the Property and satisfy its legally imposed warranties, Plaintiffs have incurred the damages stated within the Petition.

27.

Further, and in the alternative if necessary, the Defendants have failed to comply with the strict terms of the Contract with Plaintiffs by providing faulty and unsatisfactory workmanship, and for its misrepresentations and failures to perform as obligated in violation of the contract and La. Civil Code Article 2769. Defendants' failure to perform in the manner required by law has resulted in physical damages to the Property and economic damages to the Plaintiffs.

28.

Defendants have failed to perform the duties of which it contracted to assume in violation of law. La. Civil Code Art. 1994 states that an obligor is liable for the "damages caused by his

failure to perform a conventional obligation.” Defendants agreed and was obligated to perform services within a certain scope at a certain quality and in exchange to be paid for such services. Plaintiffs have performed their obligations but not received the benefit of the bargain because Defendants has failed to perform as pled in this Petition. Defendants’ breach of its obligations has resulted in physical damages to the Property and economic damages to the Plaintiffs.

29.

Additionally, Defendants have refused to make alterations, mend, remedy or cure the defects in construction, which they have caused at the Property, as well as continuously misled and defrauded Plaintiff in regards to the project status and progress, the code requirements, the Property’s compliance with the code, the quality of workmanship and materials provided, and for other reasons outlined in this Petition and as otherwise occurred. Because the Defendants have failed to perform its duties and obligations in an unacceptable manner and further agitated this arrangement by making an outright refusal to contact, fairly negotiate with, or give remedy to the Plaintiffs, their actions are performed in bad faith, as contemplated by La. Civil Code Article 1997. Therefore, the Plaintiffs request that this court grant it additional damages as against the Defendants.

30.

Alternatively, in the event that this Court does not believe that a valid contract exists between the parties or that any agreement has been dissolved or that consent to such an agreement was vitiated by fraud or other defense, Plaintiff avers that the Defendants have been unjustly enriched without cause in violation of La. Civil Code Article 2298. Due to this enrichment, Plaintiff has incurred economic damages and physical damages to his homes.

31.

In addition to those violations which are stated above, in the alternative where necessary and accepted by this honorable Court, Plaintiffs aver that Defendants’ action(s) violate the

Louisiana Unfair Trade Practices Act, notably LA R.S. 51:1405 and LA R.S. 51:1409, because (a) Defendants' actions involved an awareness of the danger, (2) Defendants' faulty workmanship creating a great risk in physical and structural damages, economic loss, violation of state and local building codes, and further consequential damages (3) Defendants sought to fraudulently charge for non-existent services and materials, and/or lower quality materials and services than agreed, (4) Contractor's position as a professional in the construction field was detrimentally relied upon by the Plaintiffs, and (5) Developer's position as a professional in the applicable field was detrimentally relied upon by the Plaintiffs. These actions, which are in violation of these statutes have led to economic loss based upon fraud as well as severe mental stress as contemplated by La. R.S. 51:1409, and therefore Plaintiffs request damages in amounts which this court deems equitable.

32.

Also, Defendants' actions result in civil law fraud pursuant to La. C. C. Art. 1953. Defendants' numerous misrepresentations in response to direct questions pertaining to the status of code inspections, the ordering of materials, the quality of materials, and the quality of workmanship, as well as their failures to disclose defects in workmanship, resulted in physical damages to the Property and economic damages to the Plaintiffs. The circumstances indicate that the Defendants should have been and likely was knowledgeable about several flaws in the work, and other services which were required in order to ensure that the Property was built to code, as well as their failures to perform obligations owed to the Plaintiffs. Defendants' failure to adequately disclose these issues and failures to remedy these issues and blatant misrepresentations, constitute civil fraud and therefore Defendants are liable to the Plaintiff for damages resulting from his actions.

33.

Defendants' negligence in building caused damages to escalate by permitting the deterioration of the structure of the home. Defendants' inability to satisfy its duty to the Plaintiff

was a breach and was the proximate cause of damages to the Property's structure , exterior, and interior. As a result Defendants breached their duty to the Plaintiffs and Plaintiffs' Properties which has caused damages.

34.

As a result of the Defendants' actions, Plaintiff has been defrauded of and wrongfully required to make payments for the purchase of their condominium units, and for any other such purchases, rentals, or levies of any type and nature, the full amounts which the Plaintiffs have paid. The Defendants were obligated to perform the entirety of the contractual job scope, to the satisfaction of the Plaintiff, and to provide to the Plaintiffs the condominium unit in the condition bargained for. The Defendants are liable to the Plaintiffs for the full amount of their damages, as consideration for non-performance and negligence in causing damages to the Properties, and other damages as pled herein.

35.

Also, as a result of the Defendants' several violations of law and improper actions, the Plaintiffs have suffered additional damages, including but not limited to additional expenses, the inability to enjoy their homes for their purpose, fear from outside elements and consequential damages, compensation for unfair trade practices, loss of interest on its finances, finance charges, compensation for his time and effort, legal costs, attorneys fees, inconvenience, and any other damages allowed under Louisiana law which may be proven at the trial of his matter, and any other damages as further pled herein.

CAUSES OF ACTION ABC INSURANCE AGENCY

36.

Plaintiffs re-assert all the facts above-stated, and asserts the same causes of actions against the Insurers.

37.

Insurers are liable to the Plaintiff for Defendants' negligence in causing damages to the Property, and any other actions of the Defendants as pled herein as well as other damages caused by Defendants as pled herein. Defendants' lack of care, caution, and professionalism caused the structure to deteriorate and damages to be incurred by the Plaintiff.

38.

Plaintiffs request that this court grant it damages in the amounts which this court deem necessary to make the Plaintiff whole, including but not limited to amounts paid to Defendants, amounts for consequential damages due to the Defendants' faulty workmanship, non-performance and misrepresentations, interest on finances, finance charges, inconvenience and effort, legal costs and attorney fees.

39.

Plaintiffs also states any and all other causes of action may become known through a trial of this matter on its merits against any and all other parties which are herein named or which may be added later, and request any and all other damages or remedies which this court may deem equitable.

40.

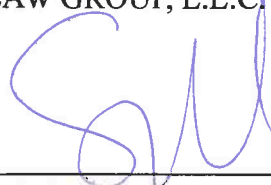
Plaintiffs reserve the right to notice of defect to this pleading and reserves the right to amend or supplement this Petition after discovery of any additional fact, law, or claim, the amendment of which to be performed by the filing of any subsequent pleading.

WHEREFORE, Plaintiffs pray that Defendants be served with process of this Petition for Damages and duly cited to answer same, that after all legal delays and due proceedings are complete that there be judgment in favor of Plaintiffs and against Defendants, jointly and in

solido for the full amount of Plaintiffs' damages, plus legal interest together with all costs incurred in this matter, and any other general or equitable relief that the court deems proper.

Plaintiff reserves his right to a trial by jury.

Respectfully Submitted,
WOLFE LAW GROUP, L.L.C.



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