

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN) FOR THE SECOND JUDICIAL CIRCUIT
CASE NO. 2016-CP-02-0263

ROBIN NAPIER, individually and on behalf of)
all others similarly situated,)

Plaintiff,)

vs.)

ADIZ, LLC, ATC DEVELOPMENT CORP.,)
ATC DEVELOPMENT, LLC, d/b/a ATC)
DEVELOPMENT OF FLORIDA, ATC)
APARTMENT MANAGEMENT, LLC F/K/A)
ATC DEVELOPMENT CORP. OF FLORIDA,)
ATC CONSTRUCTION, LLC, HALLUM,)
LLC, TCA, LLC, JANE DOE 1-10, HOBBS)
HEATING AND AIR CONDITIONING, INC.,)
A-1 HOBBS, INC., EDWARD F. DINKINS)
D/B/A EDWARD DINKINS PLUMBING,)
MADDOX CONSTRUCTION, INC., MABUS)
BROTHERS CONSTRUCTION CO., INC,)
BUILDERS SERVICES GROUP, INC. D/B/A)
DAVIS INSULATION, INC., ROBERT)
RENEW D/B/A RENEW SIDING, BRUCE)
DOLFORD D/B/A B&D CEMENT)
FINISHING, MA MAGDALENA CASIANO)
BIBIVANO D/B/A MA ROOFING, AARON)
RIDGDILL, FRANK JOHNSON, WILLIE)
ROLLAND, KEITH NEWMAN D/B/A)
NEWMAN COMPANY, AND JOHN DOE 9-)
50,)

Defendants.)

AMENDED SUMMONS
(Defective Construction)

(Jury Trial Demanded)

COPY
ORIGINAL FILED

MAR 08 2016

AIKEN COUNTY
CLERK OF COURT

10:00
AM

TO: DEFENDANTS NAMED ABOVE:

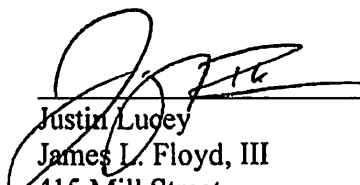
YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Amended Complaint upon the subscriber at his office at 415 Mill Street, Post Office Box 806,

Mount Pleasant, South Carolina within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer within the prescribed time, a judgment by default will be rendered against you for the amount or other remedy requested in the attached Amended Complaint plus interest and costs.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By:


Justin Lucey
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March 7 2016
Charleston, South Carolina

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RIDGDILL, FRANK JOHNSON, WILLIE)
ROLLAND, KEITH NEWMAN D/B/A)
NEWMAN COMPANY, AND JOHN DOE 9-)
50,)

Defendants.)

AMENDED COMPLAINT
(Defective Construction)

(Jury Trial Demanded)

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MAR 08 2016

AIKEN COUNTY
CLERK OF COURT

10:00
gm

The Plaintiff, Robin Napier, individually and on behalf of all others similarly situated, complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

1. Plaintiff Robin Napier (hereinafter "Plaintiff Napier" or "Plaintiff"), is a citizen of the State of South Carolina, residing in Aiken County. Plaintiff Napier is the owner of a piece of

real property known as 155 Bennington Lane, Aiken, South Carolina, which is a subject of this action.

2. At all times relevant herein, Plaintiff Napier is the owner of a residence located in the Spencer Drive Extension neighborhood in Aiken, South Carolina (hereinafter collectively referred to as “Residences”).

ATC Development Defendants

3. Defendant Adiz, LLC (hereinafter “Adiz”), is a limited liability corporation organized pursuant to the laws of South Carolina.

4. Defendant ATC Development Corp. (hereinafter “ATC Development”), is a corporation organized pursuant to the laws of Georgia.

5. Defendant ATC Development, LLC, d/b/a ATC Development of Florida (hereinafter “ATC Development of Florida”), is a limited liability company organized pursuant to the laws of Florida.

6. Defendant ATC Apartment Management, LLC f/k/a ATC Development Corp. of Florida (hereinafter “ATC Apartment Management”) is a limited liability company organized pursuant to the laws of Florida.

7. Defendant ATC Construction, LLC (hereinafter “ATC Construction”), is a limited liability corporation organized pursuant to the laws of Georgia.

8. Defendant Hallum, LLC (hereinafter “Hallum”), is a limited liability company organized pursuant to the laws of South Carolina.

9. Defendant TCA, LLC (hereinafter “TCA”), is a limited liability company organized pursuant to the laws of South Carolina.

10. Defendants Jane Doe #1-10, whose true names are unknown (hereinafter “Jane Doe Defendants”), are other ATC Development and/or construction/development/real estate entities

which were actual or *de facto* joint venturers and/or partners, control persons, and/or agents of each other in the designing, developing, constructing, repairing and/or selling the Residences.

11. The address and identity of each of the Jane Doe Defendants are unknown at this time.

12. At all times relevant herein, the above-named Defendants were engaged in the business of designing, developing, constructing, repairing and/or selling homes in Aiken County, South Carolina (hereinafter, the above-named Defendants are occasionally collectively referred to as “the General Contractor Defendants”).

13. At all times relevant herein, the General Contractor Defendants were actual and/or de facto joint venturers in the development, construction, sale, and attempted repair of the Residences.

14. At all times material hereto, the General Contractor Defendants operated a joint enterprise for the common, for-profit purpose of developing, constructing, and selling the residences.

15. General Contractor Defendants used, commingled, and combined their resources to design, develop, construct, market, and sell the Residences.

16. The General Contractor Defendants acted as agents of each other in connection with the residences.

17. The General Contractor Defendants have acted collectively and in such manner that the distinction between the General Contractor Defendants has been blurred and the General Contractor Defendants should be amalgamated as a single entity.

18. The General Contractor Defendants have failed to observe corporate formalities and their corporate shells should be disregarded and all General Contractor Defendants should be held liable for Plaintiffs’ damage.

19. The General Contractor Defendants all use the ATC Development and TCA trade names interchangeably.

Other Defendants

20. Defendants Hobbs Heating and Air Conditioning, Inc. and A-1 Hobbs, Inc. (hereinafter collectively referred to as “A-1 Hobbs”) are corporations organized and existing under the laws of the State of Georgia. At all times relevant to this action, A-1 Hobbs supplied materials, installed heating and air conditioning (“HVAC”) and/or performed repairs, among other work, at the Residences.

21. Upon information and belief, Defendant Edward Dinkins d/b/a Edward Dinkins Plumbing (hereinafter “Dinkins Plumbing”) is a citizen and resident of the State of Georgia. At all times relevant to this action, Dinkins Plumbing supplied materials, installed plumbing, condensate lines and/or performed repairs, among other work, at the Residences.

22. Defendant Maddox Construction, Inc., (hereinafter “Maddox Construction”) is a corporation organized and existing under the laws of the State of Georgia. Upon information and belief, at all times relevant to this action, Maddox Construction performed the site prep work at one or more of the Residences.

23. Defendant Mabus Brothers Construction Co., Inc. (hereinafter “Mabus Construction”) is a corporation organized and existing under the laws of the State of South Carolina. Upon information and belief, at all times relevant to this action, Mabus Construction performed the site prep work at one or more of the Residences.

24. Defendant Builders Services Group, Inc. d/b/a Davis Insulation, Inc., formerly identified as John Doe #1 (hereinafter “Davis Insulation”) is a corporation organized and existing under the laws of the State of Georgia. At all times relevant to this action, Davis Insulation installed insulation in one or more of the Residences.

25. Defendant Robert Renew d/b/a Renew Siding, formerly identified as John Doe #2 (hereinafter “Renew Siding”) was a citizen and resident of the State of Georgia. At all times relevant to this action, Renew Siding installed the siding on one or more of the Residences.

26. Defendant Bruce Dolford d/b/a B&D Cement Finishing, formerly identified as John Doe #3 (hereinafter “Dolford”) was a citizen and resident of the State of South Carolina. At all times relevant to this action, Dolford performed concrete work, among other work, on one or more of the Residences.

27. Defendant MA Magdalena Casiano Bibivano d/b/a MA Roofing, formerly identified as John Doe #4 (hereinafter “MA Roofing”) is a citizen and resident of the state of South Carolina. At all times relevant to this action, MA Roofing installed the roofs on one or more of the Residences.

28. Defendant Aaron Ridgill, formerly identified as John Doe #5 (hereinafter “Ridgill”) is a citizen and resident of the state of Georgia. At all times relevant to this action, Ridgill performed framing on one or more of the Residences.

29. Defendant Frank Johnson, formerly identified as John Doe #6 (hereinafter “Johnson”) is a citizen and resident of the state of Georgia. At all times relevant to this action, Johnson performed electrical work on one or more of the residences.

30. Defendant Willie Rolland, formerly identified as John Doe #7 (hereinafter “Willie Rolland”) is a citizen and resident of the State of Georgia. At all times relevant to this action, Willie Rolland performed framing, among other work, on one or more of the Residences.

31. Defendant Keith Newman d/b/a The Newman Company, formerly identified as John Doe #8 (hereinafter “Newman”) is a citizen and resident of the State of Georgia. At all times relevant to this action, Newman performed drywall/sheetrock installation on one or more of the Residences.

32. Defendants John Doe #9-50 (hereinafter “John Doe Defendants”) are other subcontractors, professionals and/or other entities involved in the design, development, marketing, construction, material manufacturing and/or supplying, repair, and/or sale of the residences, whose addresses and identities are unknown at this time.

33. The above-named designers, subcontractors, and suppliers are occasionally hereinafter referred to collectively as the “Subcontractor/Supplier Defendants.”

34. The General Contractor Defendants and Subcontractor/Supplier Defendants are hereinafter referred to collectively as “Defendants.”

35. This Honorable Court has jurisdiction over all subject matter alleged herein.

36. Venue is proper as the most substantial part of the alleged acts or omissions took place in Aiken County.

37. Plaintiff is informed and believes that well over two-thirds of the class and significant defendants are citizens of South Carolina.

38. The principle injuries to the class were incurred in South Carolina.

39. Plaintiff is informed and believes that no other class action has been filed against the Defendants for the claims in this class action, pursuant to 29 U.S.C. §1332(d)(4).

FACTUAL ALLEGATIONS

40. This matter arises out of the design, construction, and sale of the Residences.

41. At the time the Certificates of Occupancy were issued, the Residences contained latent building defects. These latent defects, in combination with storms and other fortuitous events, and regular and repeated exposure to harmful elements, including but not limited to water intrusion and differential settlement, have caused consequential damages to non-defective portions of the Residences.

42. Defendants knew or should have known of the existence of the building defects.

43. The latent building defects have since resulted in repeated water intrusion into the Residences and differential settlement and other damage and deterioration.

44. The repeated water intrusion and differential settlement has resulted in damage to the Residences' interior properties.

45. A preliminary inspection of the Residences evidences failure of one or more components of the exterior building envelopes and foundations. Inspection also reveals consequential damages relating to framing, walls, windows, doors, roofing, siding, flashing, trim, HVAC components, plumbing fixtures, foundations, and various other building components.

46. Defendants had a duty to design, construct, and repair the Residences in a workmanlike manner with suitable materials and free from latent defects.

47. Defendants breached their aforescribed duties to Plaintiff.

48. Said wrongful acts by Defendants have resulted in the above-referenced consequential damages and partial loss of use and enjoyment.

49. Remedying the above will result in additional consequential damages, including loss of use.

50. As a direct and proximate result of Defendants' violation of their legal duties, Plaintiff has been proximately damaged in an amount to be determined by the trier of fact, and have had to incur reasonable attorney's fees and costs for the retention of experts to determine the damage and the scope of work for repair.

51. Although Plaintiff did not learn of the latent conditions until recently, it is believed that the water intrusion, differential settlement, and other consequential damages commenced shortly after the certificates of occupancy were issued and have been occurring in each and every year since then and constitute "occurrences" and "property damage" under the standard and/or typical general liability policies.

52. Due to their supervision of the original construction at the Residences and their other activities herein described, it is believed that the Plaintiff has a reasonable basis to assert fault on each of the General Contractor Defendants and Subcontractor/Supplier Defendants.

53. Upon information and belief, in addition to the work described herein, many of the Subcontractor/Supplier Defendants participated in other aspects of the work at the Residences and thereby contributed to other construction deficiencies at the Residences.

CLASS ACTION ALLEGATIONS

54. Plaintiff brings this action individually and as representative of all those similarly situated pursuant to the common law of this state and Rule 23, SCRPC, on behalf of the class members ("the Class"). The Class is defined as follows:

An opt-out or mandatory class of all persons and entities that own structures constructed by Defendants and located on Amity Lane, Bennington Lane, Hillsborough Lane, and New Haven Lane in Aiken, South Carolina.

Plaintiff proposes that the class be divided into subclasses if and as necessary to align class interests.

55. Plaintiff is a member of the Class that she seeks to represent. The interests of Plaintiff are coincident with and non-antagonistic to those other members of the class Plaintiff seeks to represent.

56. Plaintiff's claims are typical of the claims of the other class members and Plaintiff will fairly and adequately represent the interests of the members of the class.

57. Plaintiff has retained counsel experienced and competent in construction litigation, product liability litigation, complex litigation, and consumer class actions.

58. The class members are so numerous that joinder of all members is impractical. It is estimated that there is in excess of eighty-seven (87) members of the class as defined.

59. The claims of the Plaintiff and the Class involve common questions of law and fact, including but not limited to:

- a) Whether Defendants were negligent in their design, construction and repair of the Residences;
- b) Whether Defendants breached their implied warranties;
- c) Whether the Plaintiff is entitled to prejudgment interest, attorneys' fees, and costs from the Defendants; and
- d) Whether Defendants' conduct was negligent, reckless, willful, wanton, intentional, fraudulent, or the like, entitling Plaintiff to punitive damages from the Defendants.

60. Common questions of law and fact herein predominate over any questions affecting only individual members of the Class. Common issues represent the most significant issues in the case and can be resolved for all members of the Class in one action.

61. The prosecution of separate actions by individual members of the class would create the risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the Defendants, the parties likely opposing the Class.

62. The prosecution of separate actions by individual members of the Class would create the risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications and/or substantially impair or impede their ability to protect their interests.

63. A class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

64. Prosecution of this matter as a class action would significantly reduce the possibility of repetitive litigation by providing redress to class members who would not or could not prosecute this litigation on an individual basis.

65. Plaintiff and the Class envision no unusual difficulty in the management of this action as a class action.

66. Each class member has an interest of more than \$100.00.

67. The amount of money at stake for each member is not sufficient for each member to hire their own counsel and engineers and bring their own action.

**ESTOPPEL FROM PLEADING AND TOLLING OF
APPLICABLE STATUTES OF LIMITATIONS**

68. Defendants are estopped from relying on any statutes of limitation or repose by virtue of their acts. Upon information and belief, Defendants should have known the Residences were defectively constructed and failed to alert the Plaintiff and the Class of the Residences' defective condition.

69. Defendants had a duty to inform Plaintiff and the Class of the defects described herein, which they should have known. Notwithstanding their duty, Defendants never disclosed the defects to Plaintiff or the Class.

70. Despite exercising reasonable diligence, Plaintiff and the Class could not have discovered the defective condition of Residences.

71. Given Defendants' failure to disclose this non-public information about the defective nature of the Residences – information over which they had exclusive control – and because Plaintiff and the Class could not reasonably have known of the Residences' defective nature, Defendants are estopped from relying on any statutes of limitations or repose that might otherwise be applicable to the claims asserted herein.

72. Defendants are further estopped from relying upon any statute of limitations as they have repeatedly represented to Plaintiff and the Class that they had or were correcting the work.

**FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to all Defendants)**

73. Plaintiff repeats and re-alleges the allegations contained in the above paragraphs as if more fully set forth herein.

74. At all times relevant hereto, the Defendants, their agents, servants, employees, and/or subcontractors undertook and had a duty to Plaintiff and the Class to exercise and use due care in the design, construction, and repair of the Residences in a good workmanlike manner and with suitable materials, in accordance with the applicable building codes, state law, good design, and in conformance with the prevailing industry standards.

75. Defendants breached their duties to Plaintiff and the Class in a manner that was negligent, careless, reckless, grossly negligent, willful, and wanton in the following particulars:

- a. In designing, constructing, selling and tendering the Residences and development with construction deficiencies including those previously identified;
- b. In failing to properly design sufficient plans and/or provide adequate details and information for the construction of the Residences;
- c. In failing to properly select, install, or construct various building components and materials;
- d. In failing to hire competent subcontractors and specialty contractors;
- e. In failing to properly supervise the work and construction of the homes;
- f. In failing to properly coordinate and sequence the work;
- g. In failing to repair and/or correct damage caused to the building components;
- h. In failing to ensure each area was properly prepared before installing additional components;
- i. In covering up improper or incomplete components with additional components;
- j. In failing to construct the homes in accordance with due care and in accordance with standard building practices;
- k. In failing to construct the homes in accordance with the building code;
- l. In placing defective products into the stream of commerce;
- m. In failing to act as reasonable persons would in the circumstances then and there prevailing; and

- n. In such other acts and omissions that will be shown during discovery and at trial.

76. Plaintiff and the Class have been damaged as a direct and proximate result of the negligence, carelessness, recklessness, gross negligence, willfulness, and wantonness of the Defendants.

77. If it is shown said failures were committed with gross negligence, negligence *per se*, and/or reckless disregard for the rights of others, Plaintiff and the Class are entitled to an award of punitive damages against the Defendants.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

78. Plaintiff repeats and re-alleges the allegations contained in the above paragraphs as if more fully set forth herein.

79. The design, construction, repair, and sale of the Residences came with express and implied warranties that the work would be performed in a careful, diligent and workmanlike manner and that the Residences would be constructed with suitable materials and components and free from latent defects.

80. The design, construction, repair, and sale of the Residences, and the components used therein, came with implied warranties of fitness, merchantability, and workmanship. Additionally, as to the General Contractor Defendants, a warranty of habitability.

81. Defendants have breached their warranties by constructing and/or repairing the Residences in a defective manner as set forth above.

82. As a direct and proximate result of the Defendants' breach of the express and implied warranties, Plaintiff and the Class have suffered actual and consequential damages.

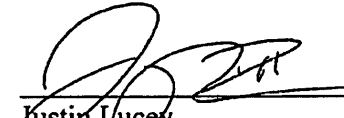
83. Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff and the members of the Class pray that this Court certify a class, and for joint and several judgment against the Defendants, for:

- 1) Plaintiff and the class members' actual and consequential damages as found by the jury; statutory or punitive damages against the Defendants; reasonable attorneys' fees; costs of suit; and prejudgment interest; and
- 2) For such other and further relief at law or equity, both in general and special, as to which Plaintiff and members of the Class by this Amended Complaint show themselves to be entitled.

Respectfully submitted,

By:


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James L. Floyd, III ("Lee")
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