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Attorneys For Plaintiff, ELLEN NEVINS

ELLEN NEVINS,

Plaintiff,

vs.

TOLL BROS. INC, and ESTATES AT
RIVERS EDGE, LP

Defendants,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION,
SOMERSET COUNTY
DOCKET NO. L-1102-01

CIVIL ACTION

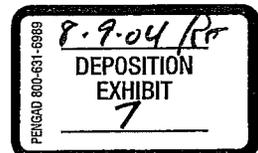
**FIRST AMENDED COMPLAINT
AND JURY DEMAND**

Plaintiff, Ellen Nevins, by way of First Amended Complaint, states that the defendants were incorrectly identified in the complaint and hereby corrects the caption and allegations to make proper reference to defendants.

COUNT ONE

BREACH OF CONTRACT

1. Plaintiff is a resident of Block 18017, Lot 6, in the Township of Montgomery, County of Somerset, and State of New Jersey.
2. Plaintiff is the sole owner of said residence which has a mailing address of 1 Silverthorn Lane, Belle Mead, NJ 08502-5551.
3. Defendant, Toll Bros. Inc, has offices located at 3103 Philmont Avenue,



Huntingdon Valley, PA 19006.

4. Defendant, Estates at Rivers Edge, LP., is a thinly capitalized limited partnership controlled by Defendant Toll Bros. Inc. with offices located at Montgomery Green, 100 Green Avenue, Belle Mead, NJ 08502.
5. On July 22, 1995, Plaintiff executed a purchase agreement with Defendant Estates at Rivers Edge (incorrectly identified as a corporate entity) for the 1 Silverthorn Lane, Belle Mead, property.
6. The agreement contains an endorsement expressly guaranteeing performance by Defendant Toll Bros., Inc.
7. Plaintiff was led to believe that she would receive a residence that was similar to a sales brochure describing a particular model home, but was provided with something that was inferior in quality and workmanship from the brochure and the model home on site at the project.
8. After executing the contract, moreover, Plaintiff was confronted with the results of various breaches, failures to act in good faith and negligent mistakes by Defendants, including but not limited, to grading deficiencies, septic design failures, framing errors, mislocation of another residence, resulting in numerous building code inspection failures causing prolonged, unreasonable delays in commencement and completion of construction, all of which cost Plaintiff money and time.
9. At time of closing Defendants demanded daily compensation for carrying costs in spite of their responsibility for delays, and otherwise pressured Plaintiff to close and take occupancy without sufficient opportunity to discover that the residence

was constructed in a nonworkmanlike manner.

10. Defendants subsequently failed to address deficiencies in the construction of the residence after Plaintiff's occupancy, such as, by way of example and not limitation, cracks and squeaks in the flooring, cracks and other deficiencies in the foundation and basement, improperly installed structural members causing dangerous irregularities deviating from acceptable standards in the elevations of the flooring on the first floor, inadequate grading and drainage, resulting in ponding water, poorly constructed stairs, both exterior and interior, creating trip hazards, and other dangerous conditions, all inconsistent with accepted standards, abandoned debris, and other deficiencies in the exterior and interior finishes and trim.
11. Plaintiff paid substantial sums of money to defendants but has not gotten the value of the bargain and, in fact, has been victimized by Defendants' failure to comply with their representations, failure to provide the necessary supervision and attention to detail, and failure to perform in a good and workmanlike manner.
12. Defendants' various omissions, commission, and other failures to perform in accordance with its contractual undertaking constitutes a breach of contract.
13. Plaintiff's repeated requests that defendants perform in accordance with its contractual undertaking have been ignored.
14. As a result of defendants' breach of contract, Plaintiff has been injured and caused to incur damages and other expenses related to defendants' breach.

WHEREFORE, Plaintiff demands that judgment be entered against defendants for compensatory damages, interest, costs of suit, attorneys fees, and such other relief as the Court

deems appropriate.

COUNT TWO

BREACH OF GUARANTEES

15. Plaintiff repeats and incorporates herein by reference the allegations of Count One of the Complaint as if full set forth herein at length.
16. Pursuant to the Agreement, Defendants expressly guaranteed that all material would be as specified and that the work would be completed in a good and workmanlike manner.
17. Defendants breached their guarantee.
18. Plaintiff sustained and will continue to sustain damages caused by Defendants.

WHEREFORE, Plaintiff demands that judgment be entered against defendants for compensatory damages, interest, costs of suit, attorneys fees, and such other relief as the Court deems appropriate.

COUNT THREE

CLAIM FOR CONSEQUENTIAL LOSS

19. Plaintiff repeats and incorporates herein by reference the allegations of the Complaint as if full set forth herein at length.
20. As a consequence of the breach of the Agreement by Defendants, Plaintiff has been and will be forced to retain the services of others to investigate, advise and remedy the numerous deficiencies.
21. The cost of retaining others to perform these services and to complete the work, when added to the amount already paid to Defendants, will exceed the price set in the Agreement.

22. As a result, Plaintiff will suffer damages equal to the differences between the cost of completion and the Agreement price.

WHEREFORE, Plaintiff demands that judgment be entered against defendants for compensatory damages, interest, attorneys fees, and such other relief as the Court deems appropriate.

COUNT FOUR

BREACH OF IMPLIED WARRANTY

23. Plaintiff repeats and incorporates herein by reference the allegations of the Complaint as if full set forth herein at length.
24. Defendants impliedly warranted the quality of the materials and workmanship.
25. Defendants breached this warranty.
26. Plaintiff sustained and will continue to sustain damages caused by Defendants.

WHEREFORE, Plaintiff demands that judgment be entered against defendants for compensatory damages, interest, attorneys fees, and such other relief as the Court deems appropriate.

COUNT FIVE

BREACH OF COVENANT OF GOOD WORKMANSHIP AND HABITABILITY

27. Plaintiff repeats and incorporates by reference the allegations of the Complaint as if full set forth herein at length.
28. Defendants are under an obligation to to perform in a good and workman like manner and to provide Plaintiff with a residence in compliance with the covenant of habitability.

29. Defendants breached this covenant by failing to perform in accordance with their obligations.
30. As a direct proximate result of Defendants' failures, and violations, Plaintiff has been denied the right to enjoy the property, and has been otherwise damaged.

WHEREFORE, Plaintiff demands that judgment be entered against defendants for compensatory damages, interest, attorneys fees, and such other relief as the Court deems appropriate.

COUNT SIX

NEGLIGENCE

31. Plaintiff repeats and incorporates by reference the allegations of the Complaint as if full set forth herein at length.
32. Defendants' omissions, commissions, and failures to perform in a good and workmanlike manner constitute negligence.
33. Defendants' negligence is the proximate cause of damages incurred by Plaintiff, in that Defendants and their agents and employees failed to properly supervise and to perform the work in a good and workmanlike manner.
34. Despite requests that defendants return and make repairs or otherwise remediate the incomplete, inadequate, and poor performance by defendants, their agents and employees, and otherwise complete the project in a good and workmanlike manner, defendants repeatedly responded in such a manner as to cause Plaintiff to lose time from gainful employment waiting for Defendants to appear, only to have them fail to appear, or to appear and refuse to perform, or otherwise to waste time without performing.

35. As the direct, proximate result of Defendants' failures, errors, omissions, and commissions, Plaintiff has been caused to lose the enjoyment of the property and to experience inconvenience, frustration and aggravation, including lost opportunities for gainful employment.

WHEREFORE, Plaintiff demands that judgment be entered against defendants for compensatory damages, interest, attorneys fees, and such other relief as the Court deems appropriate.

COUNT SEVEN

CONSUMER FRAUD

36. Plaintiff repeats and incorporates by reference the allegations of the Complaint as if full set forth herein at length.
37. Defendants' errors, omissions, commissions, and failures to perform in a good and workmanlike manner constitute an unconscionable practice in violation of the Consumer Fraud Act, N.J.S.A. 56:8-2.
38. Plaintiff was induced to execute the agreement by representations made by Defendant Toll Bros., Inc., in a sales brochure offering, "outstanding features at no extra cost." These features made references to "dramatic" ceilings, "grand" entrance foyer, "magnificent kitchens", "designer interiors with luxury features," "sumptuous baths," "professional cleaning prior to settlement," "graded and seeded homesites," multiple homebuyer inspections and a "300 item checklist to ensure that the work has been done," and a "quality assurance and warranty," to the effect that the work would be closely supervised by experienced project managers and construction superintendents in order to ensure that the Plaintiff's

residence, when completed, would conform to its precise construction drawings, specifying high quality materials.

39. Defendants' failures to perform in accordance with the representations of its sales brochures and other promises to provide a residence constructed in a good and workmanlike manner constitute an unconscionable practice in violation of the Consumer Fraud Act, N.J.S.A. 56:8-2.

WHEREFORE, Plaintiff demands that judgment be entered against defendants for compensatory damages, treble damages for the ascertainable loss, interest, attorneys fees, and such other relief as the Court deems appropriate.

JURY DEMAND

Please take notice that the plaintiff demands trial by jury as to all issues in this matter.

NOTICE OF TRIAL COUNSEL

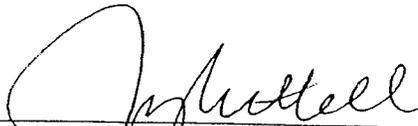
Pursuant to Rule 4:25-4, Roger S. Mitchell, Esq., is hereby designated as trial counsel in the above-captioned litigation on behalf of the firm of Rosen & Mitchell, LLC.

CERTIFICATION IN ACCORDANCE WITH RULE 4:5-1

1. I am an attorney at law of the State of New Jersey and a partner of the law firm of Rosen & Mitchell, LLC, and as such am familiar with the facts of the present case.
2. The matter in controversy is not, to my knowledge, the subject of any other civil action pending in any Court or of a pending arbitration proceeding nor is any other civil action or arbitration proceeding contemplated.
3. There are no other parties that should be joined in this action, and this matter represents the entire controversy.
4. I certify that the foregoing statements made by me are true. I am aware that if

any of the foregoing statements made by me are wilfully false, I am subject to punishment.

ROSEN & MITCHELL, LLC
Attorneys for Plaintiff



Roger S. Mitchell, Esq.

DATED: September 13, 2001