

THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

VILLAS AT CYPRESS SPRINGS
HOMEOWNERS' ASSOCIATION, INC.

Plaintiff,

v.

TOLL ORLANDO LIMITED PARTNERSHIP, a
Florida Limited Partnership; COLLIS ROOFING,
INC., a Florida Corporation; BRANCO LATH &
STUCCO, INC., a Florida Corporation; and,
WEATHERMASTER BUILDING PRODUCTS,
INC., a Florida Corporation,

Defendants.

Case No.: _____

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, VILLAS AT CYPRESS SPRINGS HOMEOWNERS' ASSOCIATION, INC. ("Association"), by and through undersigned counsel, hereby sues TOLL ORLANDO LIMITED PARTNERSHIP ("Toll"), COLLIS ROOFING, INC. ("Collis"), BRANCO LATH & STUCCO, INC. ("Branco") and WEATHERMASTER BUILDING PRODUCTS, INC., ("Weathermaster"):

1. This is an action for damages arising from the defective construction and sale of the individual units and common areas of the Villas at Cypress Springs townhomes located in Orlando, Florida (the "Townhomes") caused by the parties responsible for the development and construction of the Townhomes.

2. The Association alleges claims for negligence, breach of applicable building codes, breach of warranties, and deceptive and unfair trade practices.

JURISDICTION AND VENUE

3. This is an action for monetary damages in excess of \$15,000.00, exclusive of interest, costs and attorney's fees, and this Court otherwise has jurisdiction over the subject matter hereof.

4. The property which is the subject of this action is located in Orange County, Florida.

5. The Association has an office for the transaction of its usual and customary business in Orange County, Florida.

6. At all times material, Defendants conducted business or resided in Orange County, Florida.

7. The acts and/or omissions giving rise to this complaint took place in Orange County, and each cause of action occurred in Orange County, Florida. Therefore, jurisdiction and venue are proper in this County. Further, this action is properly filed in Orange County, Florida under Ch. 47, Fla. Stat., because the cause of action sued upon herein accrued in Orange County, Florida.

8. All conditions precedent to bringing this action have occurred or have been waived, including, but not limited to, the requirements of Chapter 558, Florida Statutes and Chapter 720, Florida Statutes.

PARTIES

9. The Association is a corporation organized and existing under Chapter 720 of the Florida Statutes to provide a corporate entity pursuant to §720.302, Fla. Stat., for the operation of the Townhomes located in Orange County, Florida.

10. The Association brings this action in its own right and as a class action for defects and damages affecting the exterior walls and roofs, sidewalks, roadways, sidewalks, and landscaping, and other elements affecting the Association's matter of common interest. Pursuant to §720.303(1), Fla. Stat. and Fla. R. Civ. P. 1.221, the Association is the lawful, adequate, and appropriate representative of the class of unit owners of the more than 40 parcels comprising the Townhomes and all common areas, improvements, and appurtenances incident thereto.

11. Upon information and belief, Toll served as a developer for the subject property and as the licensed general contractor for the construction of the Townhomes and common areas, as that term is defined in §489.105(3)(a) Fla. Stat.. As such, Toll was exclusively responsible for the development, design and construction of the Townhomes and common areas.

12. Upon information and belief, Collis served as a subcontractor for the for the construction of the Townhomes and thus had responsibility for its entire scope of work, including, but not limited to, providing services and/or materials with respect to the roofs.

13. Upon information and belief, Branco served as a subcontractor for the construction of the Townhomes and thus had responsibility for its entire scope of work, including, but not limited to, providing services and/or materials with respect to the stucco, waterproofing, building wrap, lath, flashings, and related accessories.

14. Upon information and belief Weathermaster served as a subcontractor for the construction of the Townhomes and thus had responsibility for its entire scope of work, including but not limited to the windows, sliding glass doors, and peel and waterproofing.

15. The Defendants identified in paragraphs 12-14 will be collectively referred to herein as the "Subcontractors."

16. As a result of the Defendants' conduct, the Association has been required to retain the services of the undersigned counsel to represent its interests in this action and is obligated to pay a reasonable fee for their services.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

17. The Association's members are collectively the fee-simple owners of the units, common areas, and the real property, which comprise the Townhomes and the community.

18. The Association has the responsibility to maintain the exterior of the Townhomes and common areas, including, but not limited to, the building exteriors and roofs, landscaping, sidewalks, roadways, and other matters affecting common interest.

19. The Association also has the duty to maintain the Townhomes by making all proper expenditures, where possible, for the Townhomes' upkeep and management.

20. Upon information and belief, the Association was developer controlled until the legal "turnover" of the Association, which has occurred.

21. The causes of action alleged herein concern matters of common interest to the Townhomes and the Association's members.

22. Collectively, Toll and its Subcontractors undertook to plan, design, develop, construct, mass produce, and market the Townhomes and common areas of the community for sale to, and use of, the general public, including the Association, its members, and their predecessors in interest.

23. In so doing, Toll and its Subcontractors failed to reasonably and adequately plan, develop, design, or construct the Townhomes.

24. As a direct result of the collective and individual failures on the part of Toll and its Subcontractors, the Association and its members have suffered and continue to suffer

damages proximately caused by defects and deficiencies in the construction of the Townhomes, including, but not limited to the following: structural defects; waterproofing defects; defects in the framing systems, roofing systems, cladding (stucco) systems, windows, sealants, stone façade, and common area landscaping, sidewalks, brick wall, exterior fences, and roadways; and, the material and workmanship incident to their installation.

25. The defects and deficiencies are a violation of design, building, and construction practices, the approved architectural plans, industry standards, manufacturer requirements, product specifications, and various governmental codes and restrictions, including, without limitation, the Florida Building Code, as in effect at the time the Townhomes was constructed, as well as at the time it was inspected and sold to the public for residential use.

26. At all times material hereto, all of the defects, deficiencies, and building code violations were or should have been known to Toll and/or its Subcontractors.

27. The defects and deficiencies were not readily discoverable by the Association or its members through reasonable inspection at the time of purchase, and the Association and its members became aware of the defects and deficiencies only after inspections performed by expert consultants.

28. In compliance with §558.004, Fla. Stat., the Association has served upon Toll, notice that satisfies the requirements of Ch. 558, Fla. Stat.

29. The Association has complied with all requirements of §558, *et seq.*, Fla. Stat., save only to the extent the requirements have been waived by the parties.

COUNT I - VIOLATION OF BUILDING CODE

(Against Toll and Subcontractors)

30. The Association reasserts, re-alleges, and incorporates by reference all the allegations in paragraphs 1-29 above.

31. Pursuant to Florida Statutes §553.84, on behalf of its members, the Association has a private right of action for any damages resulting from a building code violation.

32. Toll served as both the general contractor and developer of the subject property and owed a statutory duty to the Association and the individual Unit Owners pursuant to the applicable building codes and §553.84, Florida Statutes, to construct all the common elements and units of the Townhomes in compliance with the applicable building codes.

33. The Subcontractors performed their various trades and scopes of work as set forth above and owed a statutory duty to the Association and the individual Unit Owners pursuant to the applicable building codes and §553.84, Florida Statutes, to perform their various trades and scopes of work in compliance with the applicable building codes.

34. The operative construction set of approved plans for the Subject Property were stamped and permitted by the building department as approved under the 2004 Florida Building Code with 2006 Supplements (“FBC”), and these approved plans were therefore incorporated by reference into the operative codes for construction of the Subject Property.

35. Toll and Collis violated the following FBC sections and their applicable successor code provisions pertinent to the roofs of the Townhomes:

- i. Improper installation of roof kick-out diverter flashings in violation of FBC R903.2.
- ii. Improper installation of parapet flashing in violation of FBC R903.2 and R093.3.
- iii. Improper installation of sidewall (confined rake) “L” flashing in violation of FBC R905.2.8.4.

- iv. Improper diverter flashings at termination of “L” metal flashing in violation of FBC R903.1; R903.2; R902.2.1; R905.2.8.1;
- v. Water stained/damaged roof sheathing in violation of FBC R903.1; R903.2.
- vi. Improperly installed crickets in violation of FBC R903.1 and R903.2.

36. The aggregate effect of the roofing defects set forth above has caused community-wide water-intrusion damage to other components of the roofs and other components of the building including, but not limited to the building exteriors, building framing, building sheathing, interior and exterior finishes, and undue risk of future damages throughout the Townhomes.

37. Toll, Branco, and Weathermaster violated the following FBC sections, and their applicable successor code provisions, pertinent to the Townhomes’ exterior walls and fenestration, as set forth below:

- i. Improper installation of weather protective flashing permitting water intrusion in violation of FBC R 703.
- ii. Improper installation of windows, doors, and related products permitting water intrusion in violation of FBC R703.1.
- iii. Lack of flashing over the top of stone veneer permitting water intrusion in violation of FBC R703.8.
- iv. Installation of torn/damaged moisture barrier and building wrap permitting water intrusion in violation of FBC R703.1.
- v. Insufficient/improper lap of paper back lath permitting water intrusion in violation of FBCR 703.1; R703.6.2; and R7.8.3 and ASTM 1063.

- vi. Insufficient embedment length and attachment locations of lath staples into framing in violation of FBC R7.03.6.2; R7.10.2.2 and ASTM 1063.
- vii. Insufficient length of wire staples permitting water intrusion in violation of FBC R703.6.2, ASTM 1063.
- viii. Lack of sealant at window sill and stucco bands around window perimeters permitting water intrusion in violation of FBC R703.1 and R703.6.1; and ASTM 926.
- ix. Improper installation of waterproofing and flashing at windows permitting water intrusion in violation of FBC R703.1; R703.6.2 and ASTM 1063.
- x. Improper installation of decorative window bands permitting water intrusion in violation of FBC 703.1.

38. The aggregate effect of the exterior wall and fenestration defects set forth above has caused community-wide damage, including, but not limited to the building framing, building sheathing, to other components of the building, to work of other Subcontractors, and interior and exterior finishes throughout the Townhomes.

39. Toll violated the following FBC sections, and their applicable successor code provisions, pertinent to the Townhomes' slab on grade as set forth below:

- i. Uncontrollable slab cracks causing damage to the slabs and tile floors in violation of FBC R 506.2.4 and ACI-224.3R.

40. Toll violated the following FBC sections, and their applicable successor code provisions, pertinent to the Toll Building's construction of the brick walls surrounding the community:

- i. Wire reinforcement not properly embedded in the mortar bed damaging the brick wall throughout in violation of FBC R 606.1.

41. As the developer and general contractor of the Townhomes, Toll knew or should have known that all of the violations alleged and described above existed.

42. As Subcontractors familiar with their respective trades and scopes of work as set forth above, the Subcontractors knew or should have known that all of the violations alleged and described above existed.

43. As a result of the foregoing code violations, the Association and its members have been damaged and injured as set forth above. Damages, in an amount to be determined at trial, are in excess of \$15,000.00 and continuing.

44. The foregoing Code violations were both the legal and factual cause of the aforementioned damages.

45. As a result of the conduct of Toll and its Subcontractors, the construction of the subject property was performed in violation of applicable building and construction codes and ordinances and the Association has been compelled to retain the services of legal counsel to comply with statutory requirements and to institute and prosecute these proceedings, and to retain expert consultants and witnesses as reasonably necessary to prove its case.

WHEREFORE the Association demands judgment against Toll and Subcontractors for damages including but not limited to those pursuant to Fla. Stat. §553.84, the cost of repairing the building code violations, the resulting damages from the building code violations, incidental and consequential damages caused thereby, costs incurred in the prosecution of this lawsuit, pre-judgment interest, and trial by jury.

WHEREFORE Association prays for any other relief the Court deems just and proper.

COUNT II-Negligence and Vicarious Liability

(Against Toll and Subcontractors)

46. The Association reasserts, re-alleges, and incorporates by reference all the allegations in paragraphs 1-29 above.

47. At all times material hereto, Toll and its Subcontractors, by themselves and through their agents, servants and employees, designed and constructed the Townhomes and common areas.

48. Toll had a non-delegable duty to the Association and its members to use reasonable care when constructing the Townhomes and common areas, including, but not limited to, designing and constructing the Townhomes to at least the minimum requirements of the applicable building codes, standards, plans and specifications, contract documents, manufacturer's recommendations and standards in the industry.

49. The Subcontractors owed a duty to the Association to non-negligently perform their respective trades and scopes of work as set forth above, including, but not limited to constructing the Townhomes and common areas to at least the minimum requirements of the applicable building codes, standards, plans and specifications, contract documents, manufacturers recommendations and standards in the industry.

50. Toll and its Subcontractors breached their duty to the Association by negligently developing, designing, constructing, and selling the Townhomes and common areas which has caused damage to the Townhomes and common areas, including, but not limited to, water damage, property damage, and damages to the work and property of other persons or entities, necessitating the need for repairs.

51. Toll and its Subcontractors further breached their duty to the Association by failing to comply with at least the minimum requirements of the applicable codes and standards, and by failing to construct the Townhomes and common areas in accordance with the approved plans and specifications, contract documents and manufacturers recommendations for the Townhomes, thereby resulting in damages including, but not limited to, water damage, property damage, and damages to the work and property of other persons or entities, necessitating the need for repairs.

52. Further, to the extent Toll utilized subcontractors to construct, plan and design the Townhomes and common areas, Toll is vicariously responsible for the negligent acts of its subcontractors as Toll.

53. Toll and its Subcontractors' acts and omissions were a direct, proximate, and legal cause of the damages suffered by the Association.

54. As a direct and proximate result of Toll and the Subcontractors' negligence, the Association has been and will be required to expend significant sums of money to remedy the defects and deficiencies, the resulting damages from the construction deficiencies, and the incidental and consequential damages as alleged herein and in an amount in excess of \$15,000.00 to be proven at trial.

WHEREFORE the Association demands judgment against Toll and Subcontractors for damages including but not limited to the cost of repairing the construction deficiencies, the resulting damages from the construction deficiencies, the incidental and consequential damages, costs incurred in the prosecution of this lawsuit, pre-judgment interest, and trial by jury.

WHEREFORE the Association prays for any other relief the Court deems just and proper.

COUNT III - BREACH OF WARRANTIES

(Against Toll)

55. The Association reasserts, re-alleges, and incorporates by reference all the allegations in paragraphs 1-29 and 35-40 above.

56. As the developer and general contractor of the Townhomes and common areas, Toll warranted to the Association and the unit owners that each parcel of the Townhomes was designed and constructed free from defect or deficiency in materials or workmanship in accordance with the plans and specifications filed as a matter of public record, the applicable building codes and all applicable local and national codes, ordinances and industry standards, and good design, engineering, and construction practices. These warranties are those generally described as warranties of fitness, merchantability, habitability, and/or workmanlike construction.

57. The Association and its members relied upon the warranties, skill, and judgment from Toll to ensure the condition of the Townhomes and common areas were free from defect or deficiency in materials or workmanship in accordance with the plans and specifications filed as a matter of public record, the applicable building codes, ordinances and industry standards, and good design, engineering, and construction practices and free from water intrusion and related damages.

58. Toll breached the warranties by negligently constructing the Townhomes and common areas as set forth above and for failing to remedy same.

59. The aggregate effect of the defects and deficiencies set forth above has led to community-wide damage and water intrusion.

60. As a proximate cause of Toll's conduct and omissions, the Association and its members have and continue to suffer damages which include, without limitation, the cost to

repair the defects and deficiencies in the Townhomes and common areas, which are now and will continue to pose a threat to the health, safety, and welfare of the Association and its members, their guests, and the general public until such repairs are effectuated, as well as damages incident to, and consequences of Toll' breach. Damages, in an amount to be determined at trial, are in excess of \$15,000.00 and continuing.

61. As a direct and proximate result of Toll's breach of the above mentioned warranties, the Association through assessment of its members has expended and will be required to expend additional large sums of money to remedy the defects and deficiencies, and to pay consequential damages to or on behalf of its members.

62. As a result of Toll's breaches of warranties, the Association has been compelled to retain the services of attorneys to comply with statutory requirements prior to litigation, to institute and prosecute these proceedings, and to retain expert consultants and witnesses as reasonably necessary to prove its case.

WHEREFORE Association demands judgment against Toll for damages including, but not limited to, the cost of repairing the construction deficiencies, the resulting damages from the construction deficiencies, the incidental and consequential damages caused thereby, costs incurred in the prosecution of this lawsuit, pre-judgment interest, and trial by jury.

WHEREFORE Association prays for any other relief the Court deems just and proper.

COUNT IV – DECEPTIVE AND UNFAIR TRADE PRACTICES

(Against Toll)

63. The Association reasserts, re-alleges, and incorporates by reference all the allegations in paragraphs 1-29 and 35-40 above.

64. Association's members are consumers as that term is defined in §501.203(7), Fla. Stat.

65. Toll was involved in "trade or commerce" at all times relevant herein, as that term is defined in §501.203(8), Fla. Stat., when developing, designing, constructing and selling the individual dwelling units and common areas of the Townhomes to the members of the Association.

66. Toll employed unfair or deceptive acts on purchasers in violation of Florida Statutes §501.204(1), Fla. Stat. that were likely to mislead consumers. This included express and implied representations that the Townhomes and common areas were developed, constructed, designed and built in a good and workmanlike manner, in accordance with the plans and specifications, and in accordance with at least the minimum standards of the applicable building codes and other industry standards and free from water intrusion and related damages.

67. Toll knew that the Subject Property was developed, constructed, designed and built cheaply and without regard for the plans, specifications and applicable codes and was littered with construction deficiencies, water intrusion issues, structural issues, and other substantial defects that if known to the Association's members, they would either not have purchased a unit or not have purchased the unit for the full purchase price.

68. Toll negligently, recklessly, and/or intentionally concealed the defects identified above.

