

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR MANATEE COUNTY, FLORIDA

MEAGAN BURKE,

Plaintiff.

v.

CASE NO.

KB HOME FORT MYERS, LLC,  
KB HOME TAMPA, LLC, and  
KB HOME ORLANDO, LLC

Defendants.

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**COMPLAINT**

Plaintiff, MEAGAN BURKE, (hereinafter referred to as "BURKE") sues Defendants KB HOME FORT MYERS, LLC, (hereinafter "KB HOME FORT MYERS") KB HOME TAMPA, LLC, (hereinafter referred to as "KB HOME TAMPA") and KB HOME ORLANDO, LLC (hereinafter referred to as "KB HOME ORLANDO") and alleges as follows:

**GENERAL ALLEGATIONS - JURISDICTION AND VENUE**

1. This is an action for damages that exceeds Fifteen Thousands Dollars (\$15,000.00) exclusive of interest, attorneys fees and costs.
2. KB HOME FORT MYERS is a Delaware corporation doing business in the State of Florida and Sarasota County, Florida; specifically constructing multi family and residential homes in Sarasota County, Florida.
3. KB HOME FORT MYERS was at all times material to the above-styled cause of action a Delaware corporation with offices located at 12535 New Brittany Boulevard, Building 28, Fort Myers, Florida 33907 doing business in the State of Florida and Sarasota County, Florida; specifically constructing multi-family residential homes in Sarasota County, FL.

4. KB HOME TAMPA is a Delaware corporation doing business in the State of Florida and Sarasota County, Florida; specifically constructing multi-family residential homes in Sarasota County, FL and listed in the contract as the owner, developer and seller of condominiums located in the Lakewood Ranch area of Manatee County, Florida..
5. KB HOME ORLANDO is a Delaware corporation doing business in the State of Florida and Sarasota County, Florida; specifically constructing multi-family residential homes in Sarasota County, FL.
6. BURKE was at all times material to the issues in the above-styled cause of action residents of Sarasota County, Florida.
7. The cause of action at issue in the above-styled cause of action arose out of the alleged construction of multi family structures at Willowbrook Condominium Association, Inc. (hereinafter referred to as "WILLOWBROOK"), specifically the Plaintiff's residence located at 8716 Spruce Hills Court, Lakewood Ranch, FL 34202.
8. KB HOME FORT MYERS, KB HOME TAMPA, and KB HOME ORLANDO were the developers and general contractors of WILLOWBROOK and specifically the developers and general contractors of the Plaintiff's residence located at 8716 Spruce Hills Court, Lakewood Ranch, FL 34202 before it was sold to BURKE.
9. KB HOME TAMPA entered into a contract for the sale of a condominium unit located at 8716 Spruce Hills Court, Lakewood Ranch, FL 34202 with BURKE.
10. KB HOME FORT TAMPA sold that condominium unit located at 8716 Spruce Hills Court, Lakewood Ranch, FL 34202 to BURKE.
11. Pursuant to the allegations set forth above, jurisdiction for the above-styled cause of action is appropriate for the Twelfth Judicial Circuit in and for Manatee County, Florida.
12. BURKE has performed all conditions precedent for filing this complaint or said conditions have been waived.

13. KB HOME TAMPA, KB HOME ORLANDO and KB HOME FORT MYERS were the general contractors and developers of the Willowbrook Condominiums located at Lakewood Ranch and entered into subcontract agreements for the construction of that project with the following entities: A&D Plus Construction Services, Inc., Air Advantage Heating and Cooling, Inc., Archer Exteriors, Inc., Artistic Aluminum, Inc., Avalon Flooring, LLC, Branco Lath and Stucco, Inc. Builders Firstsource-Florida, LLC Casmore Enterprises, Inc, Custom Site Works of Florida, Inc., DJ Kishman Enterprises, Inc., DriRite USA, Inc., 3G Air Conditioning & Heating, Inc., d/b/a Easy A/C, Fox Professional Coating, Inc., Gallo Building Service, Inc., H.F.S. Tampa, Inc., Hamway Flooring, Inc., J&E Specialities, Inc., Juan's Plastering, Inc., Division 15-HVAC, Incorporated, d/b/a Just Right Air Conditioning, Kenneth Taylor Services, Inc., Millard Roofing, Inc., Phil's Site prep Inc., Pro-Build East, LLC, Stinkerbug, Inc., d/b/a Progressive Painting Contractors, Inc., Regal Decks of Bradenton, Inc., Reliable Roofing and Gutters, Inc., S.E. Aluminum, Inc., S.W. Specialty Services of Southwest Florida, Inc., Southeast Framing, Inc., Sun State Landscaping of Bradenton, Inc., Total Fiberglass Services, Inc., Tri City Installations, LLC, Triad Building Products, Incorporated, Turlington Enterprises, Inc., d/b/a Turlington Custom Stucco & Plastering, SelectBuild Florida, LLC., f/k/a WBC Construction, Waters Edge Contracting of Florida, Inc., West Coast Property Consultants, Inc., Silcox Kidwell & Associates, Paul Kidwell, and Hurri-Bolt, Inc.
14. Pursuant to those agreements KB HOME TAMPA, KB HOME ORLANDO and KB HOME FORT MYERS, as the general contractors and developers had a responsibility to supervise those subcontractors and inspect their work to ensure that it was built according to the plans and specifications and code compliant.
15. The construction of the project was deficient with regard to the scope of all of the subcontractors work set forth in more detail above in Paragraph 13 as evidenced by the lawsuit filed by KB HOME TAMPA, KB HOME ORLANDO, and KB HOME FORT MYERS against these subcontractors in Manatee County, Florida and those

defects were identified both in a turnover inspection performed by Karins Engineering and KB HOME FORT MYERS, KB HOME TAMPA and KB HOME ORLANDO inspectors, engineers and investigators. It is acknowledged by KB HOME FORT MYERS, KB HOME TAMPA and KB HOME ORLANDO that those defects were latent and remained undiscovered and hidden for an extended period of time following the final completion of construction. KB HOME TAMPA, KB HOME ORLANDO and KB HOME FORT MYERS are in possession of the engineering reports and other documentation evidencing the construction defects and they have outlined those construction defects in their lawsuit against the subcontractors identified in more detail above.

16. The construction defects associated with the Willowbrook Condominiums led to water intrusion into the interior of BURKE's residence, causing personal property damage to the interior mold and related environmental contaminants, damage to other property, loss of use and other associated damages including but not necessarily limited to the loss and value of the individual units including BURKE's unit at Willowbrook.

#### COUNT I - RECISION

17. Plaintiff BURKE realleges and reincorporates Paragraphs 1 through 15 above as if fully stated herein.
18. KB HOME TAMPA and BURKE entered into a contract for sale of a condominium unit, BURKE is not possession of a copy of that contract, however her closing documents including the "Corporate Warranty of Deed" list KB HOME TAMPA as the seller and a copy of that document is attached hereto and made a part hereof as Exhibit "1". KB HOME TAMPA was the seller under the contract in question, therefore the owner/developer of the Willow brook Condominiums.
19. KB HOME TAMPA induced BURKE to enter into the contract by asserting that the condominiums would be constructed pursuant to the plans and specifications, as well as the applicable building code provisions and made other false representations with

regard to the quality of the condominiums when in fact they knew that the buildings were not constructed in accordance with the plans and specifications, the applicable code provisions and were not habitable because they suffered from structural deficiencies and water intrusion.

20. The structural and construction deficiencies associated with the condominium unit and the fact that KB HOME TAMPA has been unable to properly rectify the deficiencies and defects, make performance under the contract impossible in that KB HOME FORT MYERS can not provide a condominium that is habitable as described under the contract between the parties.
21. BURKE demands rescission of the contract attached hereto and made a part hereof as Exhibit "A", compensatory damages incurred as a result of that rescission pre and post judgment, interest and cost from Defendant KB HOME TAMPA.
22. KB HOME TAMPA received the benefit of the contract in that it was paid in full pursuant to the contract provisions. Restoration of the parties rights is possible by the return of the contractual sum associated with the purchase of the unit, as well as closing costs and carrying costs so as to allow the underlying mortgage to be paid off so that the unit can be transferred back to KB HOME TAMPA .
23. BURKE purchased the unit as a condominium residence for personal use and as a long term investment into a home. Due to the structural defects and water intrusion and resulting damages, the intended use has been substantially frustrated, with the possibility of performance of the purpose of the purchase of the unit and the benefit of the bargain have become impossible to perform.
24. Due to the widespread notoriety of the condominiums and the related permanent diminution and the value of the units associated with the construction defects, structural defects, the water intrusion, whistle blower claims related to the construction made by KB HOME TAMPA employees and resulting public notoriety of the units, an accurate determination of the damages may be impossible giving BURKE no adequate remedy at law.

WHEREFORE, Plaintiff, MEAGAN BURKE demands that the contract between the parties be rescinded, compensatory damages associated with the purchase pursuant to the contract, closing costs, carrying costs and other compensatory damages related to this rescission, as well as pre and post judgment interest and costs from Defendant KB HOME TAMPA , LLC.

### **COUNT II - BREACH OF CONTRACT**

25. Plaintiff BURKE realleges and reincorporates Paragraphs 1 through 15 above as if fully stated herein.
26. BURKE entered into a contract with KB HOME TAMPA to purchase a condominium unit within a condominium project that KB HOME FORT MYERS, KB HOME TAMPA, and KB HOME ORLANDO developed. Pursuant to the contract between the parties a copy of which is attached here to and made a part hereof as Exhibit "A", KB HOME FORT MYERS promised to sell BURKE a condominium unit that was built pursuant to the applicable plans and specifications found with Manatee County and pursuant to the applicable building codes for permitting.
27. The buildings have construction defects as set forth in more detail above in Paragraphs 11 through 13.
28. The defects associated with the unit sold by KB HOME FORT MYERS to BURKE created a material breach of contract.
29. As a direct and proximate result of that material breach of contract, BURKE has suffered property damage to her residence, including but not limited to, the loss of use of her residence, environmental contaminants to her residence and a permanent diminution in the value of her residence.
30. BURKE is entitled to prejudgment interest on all liquidated damages.
31. The structural defects and other construction defects that damaged BURKE's unit and led to water intrusion and other related damages were latent in nature and were not until recently discovered by BURKE.

WHEREFORE Plaintiff, MEAGAN BURKE, demands compensatory damages, pre and post judgment interest and costs from Defendant KB HOME FORT MYERS, LLC.

**COUNT III - FRAUD IN THE INDUCEMENT**

32. Plaintiff BURKE realleges and reincorporates Paragraphs 1 through 15 above as if fully stated herein.
33. KB HOME FORT MYERS and BURKE entered into a contract for the sale of a condominium unit, a copy of that contract is attached hereto and made a part hereof as Exhibit "1". KB HOME FORT MYERS, KB HOME TAMPA, and KB HOME ORLANDO induced BURKE into entering the contract attached as Exhibit "1" by stating that the condominiums were constructed pursuant to the plans and specifications, as well as the applicable building code provisions that they were high quality condominiums and that they were structurally sound. However, KB HOME FORT MYERS, KB HOME TAMPA, and KB HOME ORLANDO were aware that the homes were not structurally sound, as constructed would suffer from water intrusion that they were not constructed in accordance with the plans and specifications or the applicable building code provisions had significant structural deficiencies that made the condominiums dangerous and were otherwise not habitable because they suffered from structural deficiencies and water intrusion.
34. KB HOME FORT MYERS, KB HOME TAMPA, and KB HOME ORLANDO failed to advise BURKE of the deficiencies identified in more detail above in an effort to fraudulently induce her to enter into the contract attached as Exhibit "1".
35. As a direct and proximate result of the inducements, BURKE entered into the contract which she otherwise would not have entered into had KB HOME FORT MYERS, KB HOME TAMPA, and KB HOME ORLANDO advised her of the structural deficiencies and construction deficiencies as identified in more detail above.
36. As a direct and proximate result of the actions on the part of KB HOME FORT MYERS, KB HOME TAMPA, and KB HOME ORLANDO, BURKE has suffered

property damage to her residence, loss of use of her residence, environmental contaminants to her residence, permanent diminution in the value of her residence, the loss of peaceful enjoyment of her residence and other related damages.

37. BURKE is entitled to prejudgment interest on all liquidated damages.
38. The structural defects and other construction defects that damaged BURKE's unit led to water intrusion and other related damages were latent in nature and were not until recently discovered by BURKE.

WHEREFORE Plaintiff, MEAGAN BURKE, demands compensatory damages, pre and post judgment interest and costs from Defendants KB HOME FORT MYERS, KB HOME TAMPA, and KB HOME ORLANDO.

#### COUNT IV - NEGLIGENCE

39. Plaintiff BURKE realleges and reincorporates Paragraphs 1 through 15 above as if fully stated herein.
40. KB HOME FORT MYERS, KB HOME TAMPA, and KB HOME ORLANDO had a duty to build, construct and develop the Willow Brook project pursuant to the project plans and specifications, the applicable building code and consistent with standard industry practices.
41. Pursuant to the defects set forth in paragraphs 13 through 15 above, KB HOME FORT MYERS, KB HOME TAMPA, and KB HOME ORLANDO failed to do so, specifically failing to meet the standards of good construction, design in failing to develop and build the homes in question pursuant to the plans, specifications, applicable building codes and industry standards. The foregoing would constitute negligence on the part of KB HOME FORT MYERS, KB HOME TAMPA, and KB HOME ORLANDO.
42. As a direct and proximate result of the negligence of KB HOME FORT MYERS, KB HOME TAMPA, and KB HOME ORLANDO, BURKE has sustained damages and incurred costs associated with the construction defects set forth above.



WHEREFORE Plaintiff, MEAGAN BURKE, demands compensatory damages, pre and post judgment interest and costs from Defendant KB HOME OF FORT MYERS, LLC, KB HOME TAMPA, LLC and KB HOME ORLANDO, LLC.

**COUNT V - BREACH OF EXPRESSED WARRANTY**

43. Plaintiff BURKE realleges and reincorporates Paragraphs 1 through 15 above as if fully stated herein.
44. Pursuant to the sale of the condominium unit by KB HOME TAMPA to BURKE, KB HOME TAMPA provided a ten (10) year expressed warranty to BURKE.
45. Based upon the allegations set forth in more detail in Paragraphs 13 through 15, BURKE made a warranty demand upon KB HOME TAMPA, which they failed to respond to or adequately address.
46. BURKE has made a warranty claim associated with the damages to her home which has been unsatisfied.
47. The failure to pay the damages associated with the warranty claim and to adequately and fully repair her condominium created a material breach of the express warranty on the party of KB HOME TAMPA.
48. As a direct and proximate result of that material breach of expressed warranty, BURKE has suffered property damage to her residence, loss of use of her residence, environmental contaminants to her residence, related economic damages and a permanent diminution in the value of her residence.
49. BURKE is entitled to prejudgment interest on all liquidated damages.
50. The structural defects and other related construction defects that damaged BURKE's condominium unit and led to water intrusion and other related damages were related in nature and were not until recently discovered by BURKE.

WHEREFORE Plaintiff, MEAGAN BURKE, demands compensatory damages, pre and post judgment interest and costs from Defendant KB HOME TAMPA, LLC.

**COUNT VI - BREACH OF IMPLIED WARRANTY OF HABITABILITY**

51. Plaintiff BURKE realleges and reincorporates Paragraphs 1 through 15 above as if fully stated herein.
52. KB HOME FORT MYERS, KB HOME TAMPA, and KB HOME ORLANDO, by and through its own action and/or the actions of its design professionals, general contractors and/or subcontractors for whom it was responsible, construct the project at issue with latent issues identified in paragraphs 13 through 15 above.
53. KB HOME FORT MYERS, KB HOME TAMPA, and KB HOME ORLANDO, when they constructed, marketed and sold the condominium unit to BURKE, impliedly warranted that the structure and other improvements of the project and that ordinary, normal standards, reasonably to be expected for condominiums of comparable kind and quality and that they were habitable.
54. However, the structural and construction defects identified in more detail above establish that these structures and improvements developed and constructed by KB HOME FORT MYERS, LLC, KB HOME TAMPA, and KB HOME ORLANDO did not meet ordinary, common, normal standards, reasonably expected for condominiums of comparable kind and quality. Thereby KB HOME FORT MYERS breached the implied warranty of fitness associated with the condominium unit sold to BURKE located at 8716 Spruce Hills Court in Lakewood Ranch, Florida 34202.
55. As a direct and proximate result of KB HOME FORT MYERS, KB HOME TAMPA, and KB HOME ORLANDO's violation of the implied warranty of fitness associated with BURKE's condominium located at 8716 Spruce Hills Court in Lakewood Ranch, Florida 34202, BURKE has suffered damages.
56. BURKE is entitled to prejudgment interest on all liquidated damages.

WHEREFORE Plaintiff, MEAGAN BURKE, demands compensatory damages, pre and post judgment interest and costs from Defendant KB HOME OF FORT MYERS, LLC, KB HOME TAMPA, LLC and KB HOME ORLANDO, LLC.

**COUNT VIII - CHAPTER 553 CODE VIOLATIONS**

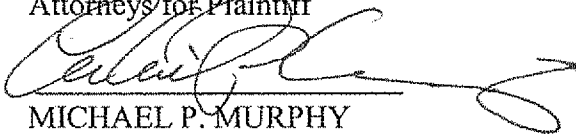
57. Plaintiff BURKE reasserts and realleges Paragraphs 1 through 15 above as if fully set forth herein.
58. This is an action pursuant to 553.84 Florida Statutes.
59. KB HOME OF FORT MYERS, KB HOME ORLANDO and KB HOME TAMPA as the general contractor associated with the Willowbrook Condominium project was obligated to perform its work in accordance with Chapter 553 and all laws, rules and codes and standards adopted thereby.
60. KB HOME FORT MYERS, KB HOME TAMPA and KB HOME ORLANDO breached their obligations to perform the work in accordance with Chapter 553 Florida Statutes.
61. KB HOME FORT MYERS, KB HOME TAMPA and KB HOME ORLANDO knew or should have known that the construction of the Willowbrook Condominiums was in violation of Chapter 553 Florida Statutes.
62. As a direct and proximate result of KB HOME FORT MYERS, KB HOME ORLANDO and KB HOME TAMPA's breach of Florida Statutes, BURKE has suffered property damage to her residence, loss of use of her residence, environmental contaminants to her residence a permanent diminution in value of her residence and the loss of recreational enjoyment of her residence and other related damages.
63. BURKE is entitled to pre-judgment interest on all liquidated damages.
64. The defects which form the basis of Chapter 553 Florida Statute violations relate in nature and were not until recently discovered by BURKE.

WHEREFORE, Plaintiff MEAGAN BURKE demands compensatory damages, pre and post judgment interest and costs from Defendants KB HOME FORT MYERS, KB HOME TAMPA and KB HOME ORLANDO.

**DEMAND FOR JURY TRIAL**

Plaintiff, MEAGAN BURKE hereby demands a jury trial on all issues triable by jury against Defendants KB HOME FORT MYERS, LLC, KB HOME TAMPA, LLC and KB HOME ORLANDO, LLC.

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