

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

MARK LaROCCA and SILVIA
LaROCCA,

Case No.:

Plaintiffs,

v.

KB HOME ORLANDO, LLC,

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, Mark LaRocca and Silvia LaRocca, by and through their undersigned counsel, hereby sue Defendant, KB Home Orlando, LLC., and allege as follows:

JURISDICTION, PARTIES AND VENUE

1. This is an action for damages in excess of \$15,000.00, exclusive of interest, costs and attorneys' fees.
2. Plaintiffs, Mark LaRocca and Silvia LaRocca, are residents of Orange County, Florida.
3. Defendant KB Home Orlando, LLC, is a Delaware corporation authorized to conduct business in the state of Florida. Defendant builds homes in Orange County, Florida, and is operating, conducting, engaging in, and carrying on a business or business venture in Orange County, Florida, and has an office or agency in Orange County, Florida.
4. Venue for this action is properly in Orange County, Florida, pursuant to section 47.051, Florida Statutes, as Defendant has an agent or other representative in Orange County, Florida, the causes of action set forth herein accrued in Orange County, Florida, and the subject real property is located in Orange County, Florida.

GENERAL ALLEGATIONS

1. Plaintiffs own the home located at 14308 Golden Rain Tree Blvd., Orlando, Florida 32828 (the “Home”).

2. Plaintiffs entered into a contract (“the Contract”) with Defendant requiring defendant to construct a home for Plaintiffs. A copy of which is not attached, but true and correct copy of the Contract is attached, but is in the possession of Defendant and has been requested.

3. Pursuant to the Contract, Defendant agreed to construct the home in accordance with certain plans and specifications on file with the County which were incorporated into and were a part of the Contract. (“Incorporated Plans and Specifications.”)

4. Under the Contract and Incorporated Plans and Specifications, Defendant agreed to build the Home pursuant to all applicable Florida Building Code provisions including, but not limited to, those involving the exterior stucco system.

5. Defendant submitted a building application with plans and specifications for Plaintiff’s Home based upon which the County issued a building permit.

6. Defendant built the Home and Plaintiffs later closed on the Home.

7. Defendant violated the Florida Building Code, including the applicable ASTM Standards, by inadequately and improperly installing the stucco system on the Home.

8. All conditions precedent to the maintenance of this action have occurred, have been performed or have been waived, including but not limited to the requirements of section 558.004, Florida Statutes.

COUNT I – BREACH OF CONTRACT

9. Plaintiffs adopt, reallege and incorporate by reference the allegations contained in paragraphs 1 through 8 above as though fully set forth herein.

10. Defendant breached the Contract by violating the requirements of Florida Building Code in constructing the Home.

11. As a direct and proximate result of the construction defects and violations, the Home has suffered damages not only to the exterior stucco, but also to the underlying wire lath, paper backing, water resistive barriers, sheathing, interior walls, interior floors and/or other property.

12. As a direct and proximate result of the construction defects and violations, Plaintiffs have been damaged in that the defects and violations substantially reduce the value of the Home and/or require significant repairs and renovations to correct such defects and violations.

WHEREFORE, Plaintiffs respectfully request the Court to enter final judgment against Defendant for damages, together with interest, costs and such other and further relief as the Court deems just and appropriate.

COUNT II - VIOLATION OF SECTION 553.84, FLA. STAT.

13. Plaintiffs adopt, reallege and incorporate by reference the allegations contained in paragraphs 1 through 8 above as though fully set forth herein.

14. Section 553.84, Florida Statutes, expressly creates a statutory cause of action on behalf of any person damaged as result of a violation of the Florida Building Codes Act (sections 553.70, *et. seq.*, Florida Statutes), against the party or parties committing the violations.

15. Defendant was thus under a statutory duty to Plaintiffs, pursuant to the Florida Building Codes Act, to construct and deliver the Home in compliance will all applicable local, state, and national building codes and regulations.

16. Defendant in inspecting, constructing, and delivering the Home, failed to comply with all applicable local, state, and national building codes and regulations, including, but not limited to The Florida Building Code, in contravention of the Florida Building Codes Act.

17. Defendant in inspecting, constructing, and delivering the Home, failed to comply with all applicable local, state, and national building codes and regulations, and knew or should have known that the Home was in violation of The Florida Building Code and in contravention of the Florida Building Codes Act.

18. Due to Defendant's failure in complying with the aforementioned statutes and codes, Plaintiffs have suffered from construction defects and deficiencies.

19. As a direct and proximate result of the construction defects and violations, the Home has suffered damages not only to the exterior stucco, but also to the underlying wire lath, paper backing, water resistive barriers, sheathing, interior walls, interior floors and/or other property.

20. As a direct and proximate result of the construction defects and violations, Plaintiffs have been damaged in that the defects and violations substantially reduce the value of the Home and/or require significant repairs and renovations to correct such defects and violations.

WHEREFORE, Plaintiffs respectfully request the Court to enter final judgment against Defendant for damages, together with interest, costs and such other and further relief as the Court deems just and appropriate.

COUNT III – NEGLIGENCE

21. Plaintiffs adopt, reallege and incorporate by reference the allegations contained in paragraphs 1 through 8 above as though fully set forth herein.

22. Defendant is the general contractor that provided labor, services and materials in the construction of the Home.

23. As the general contractor, Defendant owed Plaintiffs a duty to exercise reasonable care in constructing the Home in compliance with the Florida Building Code, the Incorporated Plans and Specifications and industry standards.

24. Defendant breached its duty to Plaintiffs by, among other ways:
- A. failing to construct the Home in compliance with the Florida Building Code;
 - B. failing to construct the Home in compliance with the Incorporated Plans and Specifications;
 - C. failing to construct the Home in accordance with industry standards;
 - D. failing to adequately supervise, monitor and oversee the construction of the Home; and
 - E. constructing the Home with defects and deficiencies caused by faulty workmanship or defective work performed by Defendant or Defendant's subcontractors.

25. As a direct and proximate result of Defendant's negligence, the Home has suffered damages not only to the exterior stucco, but also to the underlying wire lath, paper backing, water resistive barriers, sheathing, interior walls, interior floors and/or other property.

26. As a direct and proximate result of the Defendant's negligence, Plaintiffs have been damaged in that the defects and violations substantially reduce the value of the Home and/or require significant repairs and renovations to correct such defects and violations.

WHEREFORE, Plaintiffs respectfully request the Court to enter final judgment against Defendant for damages, together with interest, costs and such other and further relief as the Court deems just and appropriate.

COUNT IV – FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT
(FDUTPA)

27. Plaintiffs adopt, reallege and incorporate by reference the allegations contained in paragraphs 1 through 8 above as though fully set forth herein.

28. This is a claim for damages brought pursuant to Florida's Deceptive and Unfair Trade Practices Act, sections 501.201-.213, Florida Statutes.

29. FDUTPA proscribes businesses, including Defendant, from engaging in deceptive methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.

30. The purpose of FDUTPA is, among other things, to protect the consuming public from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.

31. Plaintiffs, as the owners of the Home, are consumers under FDUTPA.

32. Pursuant to the Contract, Defendant agreed to construct the Home in a manner that complied with the requirements of the Florida Building Code and in a manner consistent with the Incorporated Plans and Specifications prepared by Defendant for the construction of the Home.

33. Pursuant to section 489.119(2), Florida Statutes, a business organization, such as Defendant, that wishes to engage in construction contracting must apply for a certificate of authority to do so through a "qualifying agent."

34. For a business organization, such as Defendant, to receive a certificate of authority, it must designate a primary qualifying agent who has final approval authority for all construction work performed by the organization.

35. Section 489.105, Florida Statutes, defines qualifying agent as follows:

(4) "Primary qualifying agent" means a person who possesses the requisite skill, knowledge, and experience, and has the responsibility, to supervise, direct, manage, and control the contracting activities of the business organization with which he or she is connected; who has the responsibility to supervise, direct, manage, and control construction activities on a job for which he or she has obtained the building permit; and whose technical and personal qualifications have been determined by investigation and examination as provided in this part, as attested by the department.

(5) "Secondary qualifying agent" means a person who possesses the requisite skill, knowledge, and experience, and has the responsibility to supervise, direct, manage, and control construction activities on a job for which he or she has obtained a permit, and whose technical and personal qualifications have been determined by investigation and examination as provided in this part, as attested by the department.

36. A qualifying agent must be, among other requirements, a certified or registered contractor.

37. A qualifying agent has a non-delegable duty to oversee, supervise and monitor the organization's construction projects.

38. As required by Chapter 489, Florida Statutes, Defendant assigned a qualifying agent to oversee, supervise and monitor the construction of the Home.

39. During the time period between when Defendant obtained the initial permit and the time when Defendant obtained the certificate of occupancy for the Home, Defendant's assigned qualifying agent for the Home was responsible for overseeing, supervising and monitoring the construction of so many homes that the qualifying agent could not adequately oversee, supervise and monitor the construction of the Home.

40. For years prior to the Contract, Defendant had been involved in the deceptive and unfair act and practice of having a qualifying agent supervising the construction of more homes than the qualifying agent could possibly monitor at a single time.

41. Thus, prior to and including the time in which Defendant constructed the Home, Defendant developed and maintained a scheme whereby one person was responsible for overseeing, supervising and monitoring all aspects of the construction of homes knowing that one person could not possibly adequately oversee, supervise and monitor the construction of the homes.

42. As a consequence, prior to and including the time in which Defendant constructed the Home, Defendant did not adequately oversee, supervise and monitor the construction the Home.

43. Defendant violated the Florida Building Code in the construction of the Home.

44. Defendant violated the Contract and the Incorporated Plans and Specifications in the construction of the Home.

45. Defendant represented to Plaintiffs either expressly or implicitly that the Home complied with the Florida Building Code when it conveyed the home to Plaintiffs.

46. Defendant represented to Plaintiffs either expressly or implicitly that the Home complied with the Contract and Incorporated Plans and Specifications when it conveyed the home to Plaintiffs.

47. At the time Defendant conveyed the Home to Plaintiffs, Defendant either knew that the Home contained violations of the Florida Building Code, did not understand the Florida Building Code sufficiently to know that the Home contained violations of the Florida Building Code, and/or did not oversee, supervise and monitor the construction of the Home sufficiently to ensure that the Home complied with the Florida Building Code.

48. At the time Defendant conveyed the Home to Plaintiffs, Defendant knew either that the Home violated the Incorporated Plans and Specifications of the Home, did not understand the Incorporated Plans and Specifications sufficiently to know that the Home was built in contravention of the Incorporated Plans and Specifications, and/or did not oversee, supervise and monitor the construction of the Home sufficiently to ensure that the Home complied with the Incorporated Plans and Specifications of the Home.

49. But for Defendant's deceptive and unfair act and practice of improperly and inadequately supervising active construction projects, neither the Florida Building Code violations

in constructing the Home, nor the failure to build the Home pursuant to the Incorporated Plans and Specifications would have occurred.

50. But for Defendant's deceptive and unfair act and practice of improperly and inadequately supervising active construction projects, Plaintiffs would not have taken possession of a home containing latent Florida Building Code violations or built in violation of the Incorporated Plans and Specifications.

51. But for Defendant's deceptive and unfair act and practice of improperly and inadequately supervising active construction projects, Plaintiffs would not now have to repair the Home to bring the Home into compliance with the Florida Building Code and/or the Incorporated Plans and Specifications.

52. Plaintiffs have been aggrieved by Defendant's deceptive practices in that Plaintiffs purchased a home that they believed was free of violations of the Florida Building Code and was built pursuant to the Incorporated Plans and Specifications when the home was not.

53. Plaintiffs have been further aggrieved by damages not only to the exterior stucco, but also to the underlying wire lath, paper backing, water resistive barriers, sheathing, interior walls, interior floors and/or other property.

54. Plaintiffs have been further aggrieved because the Florida Building Code violations and failure to build the Home consistent with the Incorporated Plans and Specifications have decreased the market value of the Home by at least as much as it will cost to repair the Home to a state where it is free of these defects and resulting damages.

55. Plaintiffs have been damaged as a result of Defendant's deceptive and unfair acts and practices resulting in the Home being constructed in violation of the Florida Building Code.

56. Pursuant to Section 501.2105, Florida Statutes, Plaintiffs are entitled to recover their attorneys' fees and costs.

WHEREFORE, Plaintiffs respectfully request the Court to enter final judgment against Defendant for damages, together with interest, costs, attorneys' fees, and such other and further relief as the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished together with the Summons as of the date so indicated on the corresponding Return of Service.

/s/ Joshua M. Zudar

JOSHUA M. ZUDAR

Florida Bar No: 0059616

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