

IN THE LAW FOR WASHINGTON COUNTY,  
AT JOHNSON CITY, TENNESSEE

LIMITED EDITION CONDOMINIUM OWNERS  
ASSOCIATION, INC., ALBERTA CLYCE, ALFRED L.  
DIGREGORIO and wife, GENENE I. DIGREGORIO,  
NAT D. KING and wife, PATRICIA C. KING, HILDA T.  
COLLINS and WILBURN B. USARY and wife,  
KATHLEEN USARY,

Plaintiffs,

VS.

Case No. 15010

TITTLE CONSTRUCTION CO., INC., a Tennessee  
Corporation, and TITTLE and TITTLE, a Tennessee  
General Partnership,

Defendants.

**COMPLAINT**

Come the Plaintiffs and for cause of action, state:

1. Plaintiff, Limited Edition Condominium Owners Association, Inc., hereafter called **Association**, is a corporation authorized to do business in the State of Tennessee, with principal offices in Washington County, Tennessee. Alberta Clyce, hereafter called **Clyce**, is the owner of Unit 18 in Limited Edition, Section II. Alfred L. DiGregorio and wife, Genene I. DiGregorio, hereafter called **Gregory**, are the owners of Unit 16 in Limited Edition, Section II. Nat D. King and wife, Patricia C. King, hereafter called **King**, are the owners of Unit 36 in Limited Edition, Section I. Hilda T. Collins, hereafter called **Collins**, is the owner of Unit 34 in Limited Edition, Section I. WILBURN B. Usary and wife, Kathleen Usary, hereafter called **Usary**, are the owners of Unit 38 in Limited Edition, Section I. Tittle Construction Co., Inc., is a Tennessee corporation with principal offices in Johnson City, Washington County, Tennessee. Tittle and Tittle, is a Tennessee general partnership composed of Walter E. Tittle, Sr. and Walter E. Tittle, Jr., as partners. Tittle Construction Co., Inc., and Tittle and Tittle, the partnership, are sometimes hereafter referred to as **Developers**.

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2. During the year 1988, Tittle and Tittle, began construction and development of a Condominium project known as Limited Edition Condominiums, units in which the Plaintiffs subsequently became owners. Plaintiff, Association, is the owner of all general and limited common areas in the project and the Plaintiffs, Clyce, Gregory, King, Collins and Usary, are the owners of the interior boundaries of their units as described and defined in the Master Deed Establishing Horizontal Property Regime - Limited Edition Condominiums, hereafter called **Master Deed**, as recorded in the Register's Office for Washington County, Tennessee, in Deed Book 660, Page 639, as amended from time to time, reference to which is hereby made and which Master Deed and all amendments thereto are incorporated herein as if fully copied verbatim.

3. Defendant, Developers, either directly or through employees and/or workmen hired by the Developers for the purpose, were solely and principally responsible for designing, planning, supervision, clearing the land, grading the land, filling the land, compaction of the soil, changing the contours and topography of the land and generally responsible for all those things necessary to prepare the ground for construction of dwelling units, the condominium units, and all the infrastructure associated therewith.

4. Defendant, Developers, either directly or through employees and/or workmen hired by the Developers for the purpose, were solely and principally responsible for designing, supervising and constructing the condominium project infrastructure, including, but not limited to, streets, roadways, curbs, gutters, utility lines, drainage lines and drainage facilities, for construction of dwelling units/condominium units in Limited Edition.

5. Defendant, Developers, either directly or through employees and/or workmen hired by the Developers for the purpose, were solely and principally responsible for designing, supervising and constructing the dwelling units/condominium units in Limited Edition.

6. During the year 1989, it came to the attention of the Association that standing water from rainfall was noticeable in certain locations in the common area of

Limited Edition. Direct contact with Walter E. Tittle, Sr., of the Defendant, Developers, by representatives of the Association was met with promises and assurances by the Developers that the standing water problem would be repaired. Plaintiffs were assured by the Defendant, Developers that the design and construction of the condominium project were sound and of workmanlike quality. In reliance upon the promises and assurances of the Defendant, Developers, the Plaintiffs took no legal action against the Defendant, Developers.

7. Defendant, Developers were notified by the Association and by oral and written correspondence of and from the Plaintiffs, that water was standing underneath their dwelling units and that cracks were appearing in the foundation and walls of their dwelling units. Direct contact with Walter E. Tittle, Sr., of the Defendant, Developers, by the Plaintiffs and representatives of the Association was met with promises and assurances by the Defendant, Developers that the cracks in the walls and foundations and the standing water problems would be repaired. In reliance upon the promises and assurances of the Defendant, Developers, the Plaintiffs took no legal action against the Defendant, Developers.

8. In approximately May, 1991, Plaintiff, Gregory and Ms. Abigail Cameron, the predecessor in title to Plaintiff, Clyce, discovered that a small sinkhole had formed between their two dwelling units. Upon notification, Defendant, Developers, brought construction equipment to the site and placed a large load of boulders underneath the dwelling unit of Ms. Cameron, now owned by Plaintiff, Clyce, and filled in the sinkhole. Plaintiffs relied upon Defendant, Developers, promises, assurances and expertise to properly, adequately, and in a workmanlike fashion, to repair the sinkhole.

9. In late 1989, Richard W. Hensley and his wife, Linda M. Hensley, predecessors in title to King, complained to the Defendant, Developers, of cracks in the walls and foundation of their dwelling unit and a large hole in their back yard. The Defendant, Developers sent construction personnel to the unit and filled in the cracks and the hole. Prior to the Plaintiff, Kings, purchasing the unit from the Hensley, and

due to the fact that the unit had been on the market, unsold, for many months, the Plaintiff, King, spoke directly to the Defendant, Developer, by and through Walter E. Tittle, Sr., and specifically asked the Defendant, Developer, whether there was anything wrong with the Unit 36, which Plaintiff, King, desired to purchase. Plaintiff, King, was unconditionally assured that the Unit 36 was in good shape with no problems. Based in part upon the assurances of the Defendant, Developer, the Plaintiff, King, purchased said Unit 36, later discovering that the Unit had problems as described hereinabove.

10. Between Thanksgiving and December 4, 1991, a large sinkhole appeared between the units of Plaintiffs, Clyce and Gregory, and the sinkhole continued to increase in size on regular basis. The sinkhole is now so large that it has undermined the dwelling units of the Plaintiffs, Clyce and Gregory, and rendered them unsafe and unfit for human habitation. The danger of collapse of the dwelling units is imminent and the City of Johnson City has ordered that the natural gas lines feeding the dwelling units to be cut off to prevent gas release in the event of pipe rupture. The only thing supporting the Clyce unit is a large boulder under the rear corner of her foundation. The cracking of the walls and foundation of the Gregory unit is very severe with the cracks going all the way through both the exterior brick and interior sheetrock walls. The entire rear ends of the Clyce and Gregory units are in danger of sinking into the ground.

11. Plaintiffs met with the Defendants at a meeting at the Defendant's offices and were assured that the Defendants would take immediate steps to remedy the sinkhole and drainage problem in the project. To date, the Defendants have taken no steps to repair the situation despite their promises and assurances to the Plaintiffs.

12. Plaintiffs have relied exclusively upon the design, supervision, construction and development knowledge and expertise of the Defendants. As previously alleged, all of the design, planning, supervision, clearing, grading, filling the land, compaction of the soil, changing the contours and topography of the land, construction of the condominium project infrastructure, including, but not limited to, streets, roadways, curbs, gutters, utility lines, drainage lines and drainage facilities, and

construction of dwelling units/condominium units in Limited Edition, was the sole and exclusive duty and responsibility of the Defendant, Developers. All such design, planning, supervision, development and construction was the result of a common scheme or plan for development selected by and implemented by the Defendant, Developers.

13. Plaintiffs aver that the Defendant, Developers, either intentionally or through gross negligence, created, or permitted to be created, hidden, secret and/or latent defects in the design, planning, supervision, clearing, grading, filling the land, compaction of the soil, changing the contours and topography of the land, design and construction of the condominium project infrastructure, including, but not limited to, streets, roadways, curbs, gutters, utility lines, drainage lines and drainage facilities, and construction of dwelling units/condominium units in Limited Edition. Defendant, Developers, knew or should have known of the design, planning, supervision, construction and drainage requirements and/or soil compaction requirements to construct safe units in a workmanlike fashion fit for human habitation.

14. Plaintiffs aver that the defects were of such a hidden, secret and latent nature, that they could not be discovered by the use of ordinary care. Plaintiffs have no special training, skills or expertise which would provide them notice of the hidden, secret and latent defects in the design, planning, supervision and construction of the project. Plaintiffs have reasonably relied to their detriment upon the promises and assurances of the Defendant, Developers, that any problems which arose in the Limited Edition project with design, planning and construction of the project and units would be corrected by the Defendant, Developers.

15. Plaintiffs aver that they have been defrauded by the Defendant, Developers, through promises and assurances of repairs, and by actual repair actions and/or misrepresentations of repairs work done by the Defendant, Developers. Plaintiffs aver that the Defendant, Developers, knew, or by the exercise of reasonable care, should have discovered the defects in the design, planning, supervision, clearing,

grading, filling the land, compaction of the soil, changing the contours and topography of the land, construction of the condominium project infrastructure, including, but not limited to, streets, roadways, curbs, gutters, utility lines, drainage lines and drainage facilities, and construction of dwelling units/condominium units in Limited Edition.

Plaintiffs aver that as a result of such fraudulent actions by the Defendant, Developers, they have been delayed from taking action against the Defendant, Developers, and been otherwise delayed in exercising their legal rights.

16. Plaintiffs aver that the Defendant, Developers, negligently created, or permitted to be created, hidden, secret and/or latent defects in the design, planning, supervision, clearing, grading, filling the land, compaction of the soil, changing the contours and topography of the land, design and construction of the condominium project infrastructure, including, but not limited to, streets, roadways, curbs, gutters, utility lines, drainage lines and drainage facilities, and design and construction of dwelling units/condominium units in Limited Edition. Defendant, Developers, knew or should have known of the design, planning, supervision, construction and drainage requirements and/or soil compaction requirements to construct safe units in a workmanlike fashion fit for human habitation.

17. Plaintiffs, Association, Clyce and Gregory, have now been forced to hire an outside contractor to come upon the premises and effect repairs to the Clyce and Gregory units where the sinkhole has developed. At the present time, the Plaintiffs aver that a condominium wide drainage system may have to be built and installed in the Limited Edition in order to permanently relieve the drainage problems.

18. Plaintiffs all allege that the values of their real property ownership interests in and to the Limited Edition Condominium Project have been decreased and devalued by the conditions of the project. The Limited Edition Condominiums now suffer from a reputation of problems in design and construction of the project and the units therein, generally, in the community, and as a result have lost considerable value, all as a result of the actions, commissions and omissions of the Defendants. Plaintiffs are embarrassed and distraught over the living conditions which they are now forced to

endure and by the bad community reputation and stigma which the Limited Edition Condominium Project now has. Plaintiffs, Clyce and Gregory, have been forced to suffer through hot days with no air-conditioning, they have no hot water, they are unable to cook and must eat out many of their meals, all to their increased expense, detriment and embarrassment.

19. Plaintiffs aver that the gross negligence of the Defendant, Developers, is such that punitive damages are appropriate and necessary to make the Plaintiffs whole and properly compensate them.

20. Plaintiffs aver that any purported agreement with the Defendant, Developers, to indemnify or hold them harmless from liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Defendant, Developers, is against public policy, void and unenforceable pursuant to § 62-6-123, Tenn. Code Ann.


21. Due to the hidden, secret and latent nature of the defects in the design, planning, supervision, clearing, grading, filling the land, compaction of the soil, changing the contours and topography of the land, construction of the condominium project infrastructure, including, but not limited to, streets, roadways, curbs, gutters, utility lines, drainage lines and drainage facilities, and construction of dwelling units/condominium units in Limited Edition, the Plaintiffs do not yet know of all the defects. Plaintiffs reserve to right to request further damages and court relief in the event any more such defects come to light.

WHEREFORE, Plaintiffs request the following relief:

1. That this case be filed and the Defendants be served with process.
2. That the Plaintiffs be granted judgment against the Defendants and each of them, for compensatory damages, as alleged and described in the Complaint hereinabove, in the sum of \$1,450,000.00.
3. That the Plaintiffs be granted punitive damages against the Defendants and each of them, as alleged and described in the Complaint hereinabove, in the sum of \$500,000.00.

4. That the Plaintiffs have a jury trial.
5. That the Plaintiffs have general relief.

LIMITED EDITION CONDOMINIUM OWNERS  
ASSOCIATION, INC., ALBERTA CLYCE,  
ALFRED L. DIGREGORIO and wife, GENENE  
I. DIGREGORIO, NAT D. KING and wife,  
PATRICIA C. KING, HILDA T. COLLINS and  
WILBURN B. USARY and wife, KATHLEEN  
USARY,

BY:   
Samuel B. Miller II, Attorney  
for Plaintiffs

OF COUNSEL:

Weller, Miller, Carrier, Miller & Hickie  
160 West Springbrook Drive  
Johnson City, TN 37601  
615-282-1821

**COST BOND**

We, Weller, Miller, Carrier, Miller & Hickie, Attorneys at Law, hereby  
guarantee costs in this case not to exceed \$500.00.

Weller, Miller, Carrier, Miller & Hickie

BY: 