

IN THE LAW COURT 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 KATHLEEN USARY, Widow,)
FRED M. GLASSFORD and wife, SUSAN J.)
J. GLASSFORD, WAYNE L. SPARKS, and)
wife, ANNA S. SPARKS, VERNA L. HAWNN,)
ROGER D. BROWN and wife, BRENDA K.)
BROWN, CHARLES H. RICH, SR. and wife)
WILLIE F. RICH, JANET M. NEAL,)
THELMA O. ROE, and THOMAS L. FLOYD)
and wife, SHEILA G. FLOYD,)

Plaintiffs,)

vs.)

Case No. 15010)

TITTLE CONSTRUCTION COMPANY, INC.,)
a Tennessee Corporation, and TITTLE)
and TITTLE, a Tennessee General)
Partnership,)

Defendants.)

ANSWER TO AMENDED COMPLAINT

The Defendants, Tittle Construction Company, Inc.
(denominated Tittle Construction Co., Inc., in the caption of
the Complaint), and Tittle and Tittle, a Tennessee General
Partnership, for Answer to the Complaint and Amended Complaint
filed against them, say:

1. Answering Paragraph 1 of the Complaint, the
Defendants are advised and verily believe that Limited Edition
Condominium Owners Association, Inc., hereinafter called the
"Association", is a corporation authorized to do business in
the State of Tennessee, with principle offices in Washington
County, Tennessee. The specific allegations with regard to the
thirteen named Plaintiffs including those named Plaintiffs in
the original Complaint and the named Plaintiffs in the Amended
Complaint are admitted. Tittle Construction Company, Inc.
admits that it is a developer of the Limited Edition

Condominium complex, but denies that Tittle and Tittle had anything to do with the development of the condominium complex.

2. Answering Paragraph 2 of the Complaint, it is denied that Tittle and Tittle was involved in the construction or the development of the condominium project known as Limited Edition Condominiums. With regard to the remaining allegations contained in Paragraph 2 of the Complaint, the various ownership interest referred to therein speak for themselves.

3. Answering Paragraphs 3, 4 and 5 of the Complaint, the allegations contained therein as they may pertain to the Defendants Tittle and Tittle are denied. It is admitted that Tittle Construction Company, Inc. was involved in the designing, planning, and supervision of site preparation and construction; however, it is denied that these functions were in the sole province of Tittle Construction Company, Inc. inasmuch as these functions involved other experts, subcontracting firms, municipal inspection and supervision, etc.

4. Answering Paragraph 6 of the Complaint, it is admitted that Tittle Construction Company, Inc. took steps to correct a standing water problem that was created by modifications to a certain unit or units. Further, that the standing water problems as existed then were corrected by Tittle Construction Company, Inc. The Defendants aver that the condominium project was sound and of workmanlike quality and deny all allegations contained in Paragraph 6 to the contrary.

5. Answering Paragraph 7 of the Complaint, the Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and are without sufficient knowledge or information to

ascertain what cracks or standing water problems may be included in Paragraph 7. However, it is admitted that some units had damp crawl spaces and that some limited number of units had cracks in the walls and foundations.

6. Answering Paragraph 8 of the Complaint, the Defendants admit that Tittle Construction Company, Inc. back filled the area between Units 16 and 18 upon the discovery of a small sinkhole.

7. Answering Paragraph 9 of the Complaint, the Defendants admit that Unit 36 has some cracks in the walls and foundation. It is averred that Unit 36 sustained a severe water problem as a result of a broken storm sewer which ruptured through no fault of the Defendants. It is averred that the water problems substantially undermined the foundation of Unit 36 and eventually led to cracks in the foundation. Otherwise, Walter E. Tittle, Sr. does not remember talking to Plaintiff King, but if he did he told him the truth and told him that as far as he knew, there was no problem with Unit 36. Walter E. Tittle, Sr. denies that he "unconditionally assured that Unit 36 was in good shape with no problems". The Defendants are without knowledge or information sufficient to form a belief as to the rationale employed by Plaintiff King in purchasing Unit 36.

8. Answering Paragraph 10 of the Complaint, the Defendants admit that sometime during November/December, 1991, a sinkhole appeared between Units 16 and 18 owned by Gregory and Clyce respectively. Defendants are advised and verily believe that the allegations contained in Paragraph 10 are no longer pertinent to the litigation, and specifically deny that the rear portions of the units are in any danger of collapse.

9. The allegations contained in Paragraph 11 of the Complaint are denied.

10. The allegations as contained in Paragraph 12 of the Complaint are denied subject to the averments of the Defendants as contained in their responses to Paragraphs 3, 4 and 5 as contained in the original Complaint.

11. The allegations contained in Paragraph 13 of the Complaint are denied.

12. Answering Paragraph 14 of the Complaint, the Defendants had no actual and/or constructive knowledge of any defective condition at the Limited Edition Condominium complex site. A reasonable inspection by Defendants using ordinary care could not have discovered alleged hidden defects such as the sinkhole described in Paragraph 10 of the Complaint. Defendants aver that representatives of Tittle Construction Company, Inc., the City of Johnson City, and others inspected the project on an ongoing basis and found no such defects as described in Paragraph 14 of the Complaint. Otherwise, the allegations in Paragraph 14 of the Complaint are denied.

13. The allegations contained in Paragraph 15 of the Complaint are denied.

14. Answering Paragraph 16 of the Complaint, the Defendants aver that they were aware of all design, planning, supervision, construction and drainage requirements and employed same without any negligence in a workmanlike fashion. The remaining allegations contained in Paragraph 16 of the Complaint are denied.

15. Answering Paragraph 17 of the Complaint, the Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

16. Answering Paragraph 18 of the Complaint, the Defendants are without knowledge or information sufficient to form a belief as to those allegations regarding the reputation of the Limited Edition Condominium complex, loss of value, community stigma, etc. as alleged in the Complaint. However, it is averred that any adverse publicity or "bad community reputation and stigma" that might currently be attached to the development is the result of the actions of various individual homeowners including, but not limited to Plaintiffs Alfred DiGregorio and Janet M. Neal. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 18 of the Complaint.

17. The allegations contained in Paragraph 19 of the Complaint are denied.

18. Answering Paragraph 20 of the Complaint, the Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein. Alternatively, and without clarification or additional explanation, the allegations are denied.

19. Answering Paragraph 21 of the Complaint, the Defendants deny the existence of any hidden, secret or latent defects in the design, planning, supervision, clearing, grading, filling, compaction, etc. as contained in Paragraph 21 of the Complaint.

20. For affirmative defense, and in response to those allegations contained in the Complaint that may allege negligence on the part of the Defendants, the Defendants aver that various non-parties were involved in the planning, grading, construction, inspection, etc. of the condominium complex. Any negligence on the part of these non-parties would be attributable to the non-parties and not the Defendants. Pursuant to the doctrine of modified comparative negligence, any judgment to which the Plaintiffs would otherwise be entitled would be reduced; said reduction reflecting the percentage of each non-party's negligence with the judgment being reduced on a pro-rata basis. The non-parties identified in accordance with the McIntyre requirements include, but may not be limited to, the following:

Mr. Floyd Perry
Route 6
Johnson City, TN 37601
(615) 926-1835
WORK: Drywall

Burleson & Son Investments
P.O. Box 4113 CRS
Johnson City, TN 37601
(615) 434-0678
WORK: Electrical

Eads Sheet Metal Co.
4106 Bristol Hwy.
Johnson City, TN 37601
(615) 282-8259
WORK: HVAC

Vent and Vac Sales & Service
Route 2, Box 286A
Blountville, TN
(615) 323-2216
WORK: Vacuum System

Williams Aluminum Company
Route 14, Box 545A
Jonesborough, TN 37659
(615) 753-6121
WORK: Alum. Siding

Mr. Burnis Wilson
1014 North Main Street
Erwin, TN 37650
(615) 743-4021
WORK: Framing

Ryans Concrete Works
Route 14
Jonesborough, TN 37659
(615) 753-6873
WORK: Finished Concrete

Ed Laws Plumbing
Route 2, Box 334
Jonesborough, TN 37659
(615) 753-6968
WORK: Plumbing

Dockery's, Inc.
P.O. Box 5547 EKS
Johnson City, TN 37603
(615) 926-6134
WORK: Carpeting

Doors Unlimited
Mark Fitzgerald
1203 Flora Avenue
Johnson City, TN 37601
WORK: Garage Doors

Keller Glass Company
P.O. Box 3188 CRS
Johnson City, TN 37601
(615) 282-1210
WORK: Mirrors

Tri-City Maid Service
Route 20, Box 533
Gray, TN 37615
(615) 477-2209
WORK: Cleaning

Styles Pest Patrol
P.O. Box 486
Jonesborough, TN 37659
(615) 257-3339
WORK: Pest Treatment

R & W Roofing
Route 2, Box 23A
Piney Flats, TN 37686
(615) 538-4308
WORK: Roofing

Sell Backhoe Service
2416 Knob Creek Rd.
Johnson City, TN 37604
(615) 282-1235
WORK: Backhoe

Mr. James Nutter
No Known Address
No Known Telephone
WORK: Masonry

Allen Carpet & Interior
2908 E. Oakland Ave.
Johnson City, TN 37601
(615) 282-1350
WORK: Carpeting

A-Jay Electric Company
409 W. Highland Rd.
Johnson City, TN 37601
(615) 928-5857
WORK: Electrical

Furches & Lowe
Johnson City, TN 37601
(615) 477-7600
WORK: Backhoe Service

East Tennessee Plumbing
Johnson City, TN 37601
(615) 282-8987
WORK: Plumbing

Intermountain Insulation
485 Cherry Hill Road
Limestone, TN
(615) 753-5301
WORK: Insulation

Larry Foxx
215 Ridgeview Dr.
Gray, TN 37615
(615) 477-7626

Clark & Associates, Inc.
Surveyors/Engineers
P.O. Box 772
Johnson City, TN
WORK: Drainage, grading and sanitary sewer plan

21. For additional affirmative defense, the
Defendants rely upon the following:

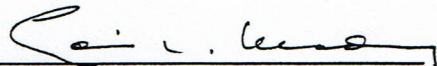
- (1) Independent, intervening cause including, but not limited to, other contractors working in the area, additions made to the units by the homeowners, alteration to the drainage system, and rupture of a storm sewer near Unit 36;
- (2) Act of God including, but not limited to, the opening of a sinkhole, the collapse of a cave, and some singular, inordinately heavy rains; and

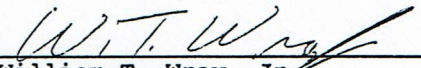
(3) All applicable statutes of limitation and repose including, but not limited to, those provided by Tennessee Code Annotated §§ 28-3-105, 28-3-202 and as contained in Watts v. Putnam County, 525 S.W.2d 488 (1975).

22. All allegations contained in the original Complaint or Amended Complaint not heretofore admitted or denied are hereby denied.

23. The Defendants demand a jury to try this action.

TITTLE CONSTRUCTION COMPANY,
INC. and TITTLE AND TITTLE,
a Tennessee General
Partnership

By 
Edwin L. Treadway

By 
William T. Wray, Jr.
HUNTER, SMITH & DAVIS
Post Office Box 3740
Kingsport, Tennessee 37664
(615) 378-8800

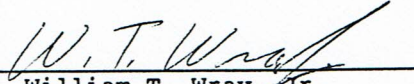
Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Answer to Amended Complaint has been served upon Plaintiffs, by hand-delivering a copy of same to the office of Samuel B. Miller, II, Esq., at WELLER, MILLER, CARRIER, MILLER & HICKIE, 160 W. Springbrook Dr., Johnson City, TN 37602, Plaintiffs' attorney of record, and by hand delivery service on all parties on this the 2nd day of September, 1994.

HUNTER, SMITH & DAVIS

By



William T. Wray, Jr.

HSWTW/7740