

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
(Jury Demanded)

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

Defendants.)

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

Counter-plaintiffs,)

vs.)

ALFRED DiGREGORIO, personally and as)
an officer of Limited Edition)
Condominium Owners Association, Inc. ;)
JANET M. NEAL, personally and as an)
officer of Limited Edition)
Condominium Owners Association, Inc. ;)
and LIMITED EDITION CONDOMINIUM)
OWNERS ASSOCIATION, INC.,)

Counter-defendants.)

COUNTER-COMPLAINT

Comes now the original Defendants as Counter-plaintiffs, pursuant to Tennessee Code Annotated §28-1-114, and sue Alfred DiGregorio personally and in his capacity as an officer of the Limited Editions Condominium Owners Association, Inc., Janet M. Neal, personally and in her capacity as an officer of Limited Edition Condominium Owners Association, Inc., and Limited Edition Condominium Owners Association, Inc. ("Association"), a corporation and, for grounds, would show as follows:

1. In November or December of 1991, a geological phenomenon known as a "sinkhole" opened up or occurred between Units 16 and 18 on Sterling Court South in the Limited Edition development, Johnson City, Tennessee. The sinkhole had occurred in lesser form in months prior, and had been repaired by the Counter-plaintiffs as a courtesy to the Association. Subsequent to the late 1991 occurrence of the sinkhole, the Counter-plaintiffs agreed to again effect repairs as a courtesy to the Association subject to certain conditions to be agreed upon by the Counter-plaintiffs and the Association.

2. Counter-plaintiffs retained Attorney Walter Lee Davis of Johnson City, Tennessee for the purpose of negotiating an agreement acceptable to both parties whereby the sinkhole would be repaired. It is averred that the Association retained Attorney Jean A. Stanley of Johnson City, Tennessee for certain purposes including, but certainly not limited to, negotiating on their behalf an agreement with the Counter-plaintiffs.

Counter-plaintiffs aver that the objective of the negotiations contemplated the Counter-plaintiffs' making repairs to the sinkhole while not admitting any liability or responsibility for the existence of the sinkhole. Further, repairs would be made without cost to the Association. The Association would in consideration for the repairs execute a "Waiver of All Claims" whereby the Association agreed to forego past, present or future claims it might have against the Counter-plaintiffs with regard to the sinkhole.

3. Counter-plaintiffs aver that, at all times material to these negotiations, Counter-defendant DiGregorio was the Secretary of the Association and Janet M. Neal was the President of the Association. As such, these two individuals were not only officers of the Association, but were also

members of the Association and knew or should have known the status of the negotiations. Moreover, knowledge of the status of the negotiations by Counter-defendants DiGregorio and Neal is attributable to the Association.

4. It is averred that the negotiations initially resulted in a draft "Waiver of All Claims" prepared by Attorney Davis and submitted to Attorney Stanley on or about June 17, 1992. A copy of the proposal is attached as Exhibit 1 (Deposition exhibit 95).

The Association, by and through their counsel, Attorney Stanley, submitted on June 18, 1992 a counter-proposal that purported to be acceptable to the Association. A copy of the proposal is attached as Exhibit 2 (Deposition exhibit 96).

Counsel for the Counter-plaintiffs thereafter prepared some minor revisions by way of inked corrections on the Association proposal. As part of the negotiations, Counter-plaintiffs were willing to make repairs to the sinkhole in accordance with the recommendations of soils engineer Frank M. Castleberry as contained in his letter of June 16, 1992, a copy being attached hereto as Exhibit 3 (Deposition exhibit 146). While the Counter-plaintiffs were willing to make repairs according to the Castleberry recommendations, they were not willing to make repairs under Mr. Castleberry's supervision. Accordingly, a revised proposal was submitted by Attorney Davis to the Association's counsel.

Counter-plaintiffs aver that, as negotiations narrowed to one issue (the Castleberry supervision), Counter-plaintiffs DiGregorio and Neal knew or should have known the status. Further, the knowledge of the status of negotiations by then President Neal and then Secretary DiGregorio were attributable to the Corporation.

5. Counter-plaintiffs aver that the Board of Directors of the Association met at the home of Janet M. Neal on or about June 23, 1992. During the course of the meeting, consideration was given to terminating the services of Attorney Stanley, even as negotiations for repair of the sinkhole were on the verge of concluding. A copy of the minutes of the meeting is attached as Exhibit 4 (Deposition exhibit 89).

6. It is averred that, when negotiations for the repair of the sinkhole were almost concluded, the Association elected to discharge Attorney Stanley. A copy of Attorney Stanley's confirmation and descriptive statement for professional services rendered is attached as Exhibit 5. Counter-plaintiffs aver that the description of time spent by Attorney Stanley indicates that Counter-defendants DiGregorio and Neal were in contact with Attorney Stanley during the course of the negotiations, that they personally and as officers of the Association knew or should have known the status of negotiations, and that they consciously elected to terminate Attorney Stanley's services. It is further averred that this conscious decision was made at a time when negotiations for repair of the sinkhole without cost to the Association were almost concluded. Counter-plaintiffs aver that all actions taken by Counter-defendants DiGregorio and Neal in terminating Attorney Stanley's services and, thus, terminating negotiations, are attributable to the Association.

7. Counter-plaintiffs aver that Counter-defendant DiGregorio, then and there, set upon either a negligent course of action or an intentional course of action which culminated in the humiliation and embarrassment of the Counter-plaintiffs by holding them up to public and professional ridicule. Counter-defendant DiGregorio, either through negligence or pursuant to calculations which were intentional, willful, wanton and malicious, thereafter took the following actions:

- (a) Erected a large red and white sign made by personnel at television station WJHL of Johnson City, Tennessee to reflect the following:

DANGER
SINKHOLES
IN AREA

Gas line disconnected
at these houses.

CONDITIONS
HAZARDOUS

The sign as described above was erected prominently near the street (away from the sinkhole) between Units 16 and 18 on Sterling Court South of the Limited Edition development;

- (b) Convinced the news director at WJHL to send a reporter and a camera crew to his home for the purpose of interviewing him and advertising to the public the existence of the sinkhole which he alleged was the responsibility of the Counter-plaintiffs;
- (c) Convinced the news editor of the Johnson City Press Chronicle to send a reporter to his home for the purpose of interviewing him and advertising to the public the existence of the sinkhole which he alleged was the responsibility of the Counter-plaintiffs. A copy of the newspaper article appearing in the Johnson City Press Chronicle on July 8, 1992 is attached as Exhibit 6 (Deposition exhibit 27);

- (d) Propounded a letter to Johnson City, City Manager John Campbell charging that Counter-plaintiffs "refused to fix" the sinkhole. A copy of Counter-defendant's letter of July 30, 1992 is attached as Exhibit 7 (Deposition exhibit 98);
- (e) Filed a complaint with the Division of Consumer Affairs, State of Tennessee;
- (f) Filed a complaint with the Federal Bureau of Investigation, United States Government; and,
- (g) Prepared, with the knowing help and assistance of Counter-defendant Janet M. Neal, and filed multiple complaints with the Division of Regulatory Boards, Department of Commerce and Insurance, State of Tennessee in an attempt to cause Counter-plaintiffs to lose the contractor's license which provided the very livelihood of the Tittle family.

8. Counter-plaintiffs aver that all of these actions as set forth in paragraph 7 were either negligent, grossly negligent, or were of a vindictive, intentional and malicious nature. Further, if said actions were intentional, that the objective was to financially ruin the Counter-plaintiffs while holding them up to public and professional humiliation, ridicule and embarrassment.

9. Counter-plaintiffs aver that Counter-defendant Janet M. Neal, personally and as President of the Association,

adopted and approved these actions of Counter-defendant DiGregorio. Further, that she not only approved, but was an active participant in the efforts to cause Counter-plaintiffs to lose the contractor's license which was so necessary to the livelihood of the Tittle family.

In addition, it is averred that Counter-defendant Neal, while acting as President of the Association, was charged with the responsibility of responding to the request of the Association members, and was further charged with the responsibility of preparing agendas for all Association board meetings and general meetings. Counter-plaintiffs aver that Counter-defendant Neal, acting for the Association as President and acting personally, elected (1) to go forward with the adverse publicity campaign against Counter-plaintiffs and (2) to decline to place the issue of the DiGregorio/Neal/ Association actions on the appropriate Association agenda for discussion despite a request to do so. It is averred that at least one Association member specifically objected to "the sign that was put up just to make Tittle mad", and that the same Association member then issued the following request: "I ask the Board to stop the ads in the paper and TV". A copy of Association member Roger D. Brown's letter of July 9, 1992, is attached as Exhibit 8 (Deposition exhibit 29).

10. It is averred that Counter-defendant Neal's actions as President including, but not limited to, the following are directly attributable to the Association:

- (a) Permitting, endorsing and adopting the negligent or vindictive campaign of Counter-defendant DiGregorio to bring public and professional humiliation, embarrassment and scorn upon the counter-plaintiffs;

- (b) Permitting, endorsing, adopting and participating in efforts to cause the loss of the contractor's license and, thus, the potential financial ruin of the Tittle family; and,
- (c) Declining to place on the appropriate agenda for discussion the decision of the President and the Secretary to go forward with the negligent or vindictive, malicious and extremely public campaign described above.

11. Counter-plaintiffs aver that the intentional actions of Counter-defendants DiGregorio and Neal were conducted both personally and as officers of the Association. Accordingly, any such actions are also attributable to the Counter-defendant Association.

12. Alternatively, Counter-plaintiffs aver that the Counter-defendants DiGregorio and Neal acted in a negligent manner. Further, that some or all of the acts, errors or omissions of Counter-defendants DiGregorio and Neal as described above caused or contributed as a proximate cause to the damages sustained by the Counter-plaintiffs.

Counter-plaintiffs additionally aver that the negligent conduct of Counter-defendants DiGregorio and Neal, as officers of the Association, is attributable to the Counter-defendant Association.

Counter-plaintiffs alternatively aver that the acts, errors or omissions of Counter-defendants DiGregorio and Neal constitute gross negligence to the extent gross negligence may

be a viable assertion under the present law of this jurisdiction; further, that such gross negligence occurred while Counter-defendants DiGregorio and Neal were acting personally and as officers of the Association. Accordingly, any such gross negligence is attributable to the Counter-defendant Association.

13. Premises considered, Counter-plaintiffs aver that they are entitled to both compensatory and punitive damages pursuant to one or more of the following applicable counts:

COUNT I

NEGLIGENCE

(a) Counter-plaintiffs aver that Counter-defendants DiGregorio and Neal were guilty of negligence as set forth above, and that said negligence caused or contributed as a proximate cause to damages sustained by the Counter-plaintiffs. It is further averred that the negligent acts, errors or omissions of Counter-defendants DiGregorio and Neal renders them liable to the Counter-plaintiffs both personally and as officers of the Association. In addition, the negligent acts, errors or omissions of the Counter-defendants DiGregorio and Neal as officers of the Association are attributable to the Association so as to impose liability on the Association for damages to the Counter-plaintiffs.

(b) Counter-plaintiffs aver that the Counter-defendants DiGregorio and Neal were guilty of gross negligence to the extent that gross negligence is applicable or recognized in this jurisdiction. It is averred that said gross negligence caused or contributed as a proximate cause to

damages sustained by the Counter-plaintiffs. It is further averred that the grossly negligent acts, errors or omissions of Counter-defendants DiGregorio and Neal render them liable to the Counter-plaintiffs both personally and as officers of the Association. In addition, the grossly negligent acts, errors or omissions of the Counter-defendants DiGregorio and Neal as officers of the Association are attributable to the Association so as to impose liability on the Association for damages to the Counter-plaintiffs.

COUNT II

TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

Counter-plaintiffs aver that, prior to the incidents set forth in the counter-claim, they enjoyed an intangible right to their business, and under the law of this jurisdiction were entitled to protection from unlawful interference with the business. Counter-plaintiffs aver that the actions of Counter-defendants DiGregorio and Neal constituted intentional interference of existing business relations without justifiable cause or excuse. In addition, Counter-plaintiffs aver that the actions of Counter-defendants DiGregorio and Neal were of a vindictive nature reflecting malice or ill-will, and were carried out in knowing, willful fashion and in disregard of the Plaintiff's property rights.

Counter-plaintiffs aver that the intentional, willful acts of the Counter-defendants DiGregorio and Neal as set forth above caused or contributed as a proximate cause to damages sustained to the Counter-plaintiffs. It is further averred that these knowing, intentional and willful acts of Counter-defendants DiGregorio and Neal render them liable to the Counter-plaintiffs, both personally and as officers of the Association, for compensatory damages and punitive damages.

Furthermore, the intentional, knowing and willful acts of Counter-defendants DiGregorio and Neal as set forth above were carried out as officers of the Association so as to impose liability on the Association for both compensatory and punitive damages to the Counter-plaintiffs.

COUNT III

BUSINESS DEFAMATION

Counter-plaintiffs aver that Counter-defendant DiGregorio is guilty of making false and defamatory statements concerning the Counter-plaintiffs, and that his intentional publication of these statements resulted in the Counter-plaintiffs sustaining business defamation. It is averred that the false and defamatory statements made by Counter-defendant DiGregorio resulted in Counter-plaintiffs being held up to public contempt and ridicule.

It is averred that the false and defamatory statements regarding the Counter-plaintiffs made by Counter-defendant DiGregorio, and to the extent that they were permitted, adopted or endorsed by Counter-defendant Neal, constitute business defamation which renders Counter-defendants liable to the Counter-plaintiffs both personally and as officers of the Association, for compensatory damages. Furthermore, it is averred that the actions of the Counter-defendants DiGregorio and Neal reflect actual malice which renders them liable to the Counter-plaintiffs, both personally and as officers of the Association, for punitive damages. It is additionally averred that the false and defamatory statements which constitute business defamation are attributable to the Association so as to impose liability on the Association for both compensatory and punitive damages to the Counter-plaintiffs.

COUNT IV

INVASION OF PRIVACY

Counter-plaintiffs aver that the actions of Counter-defendants DiGregorio and Neal as set forth above constitute invasion of privacy under the "false light" theory as adopted in this jurisdiction. It is averred that the Counter-plaintiffs were presented by the Counter-defendants DiGregorio and Neal in a misleading manner that was highly offensive to a reasonable and prudent person.

Counter-plaintiffs aver that this invasion of privacy by Counter-defendants DiGregorio and Neal render them liable to the Counter-plaintiffs both personally and as officers of the Association for compensatory damages, and to the extent allowed under the law of this jurisdiction, for punitive damages. In addition, the invasion of the privacy of the Counter-plaintiffs by Counter-defendants DiGregorio and Neal as officers of the Association is attributable to the Association so as to impose liability on the Association for compensatory damages and, to the extent permitted under the law of this jurisdiction, for punitive damages.

COUNT V

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Counter-plaintiffs aver that the actions of Counter-defendants DiGregorio and Neal as set forth above were so intentional, pre-meditated or reckless as to constitute outrageous conduct. Further, that the outrageous conduct of Counter-defendants DiGregorio and Neal caused the individual Counter-plaintiffs to suffer such severe emotional distress so as to be compensable pursuant to the Restatement Second of Torts §46.

Counter-plaintiffs aver that the outrageous conduct of Counter-defendants DiGregorio and Neal which resulted in intentional infliction of emotional distress on the individual Counter-plaintiffs render them liable to the Counter-plaintiffs, both personally and as officers of the Association, for compensatory and punitive damages. In addition, the outrageous conduct of the Counter-defendants DiGregorio and Neal as officers of the Association is attributable to the Association so as to impose liability on the Association for both compensatory and punitive damages.

14. Counter-plaintiffs demand a jury to try this action.

WHEREFORE, Counter-plaintiffs hereby seek damages from Counter-defendant Alfred DiGregorio personally in the amount of \$100,000 for compensatory damages and \$400,000 for punitive damages; Counter-plaintiffs further seek damages from Counter-defendant Janet M. Neal personally in the amount of \$100,000 for compensatory damages and \$400,000 for punitive damages; and, further, Counter-plaintiffs seek damages from Counter-defendants Alfred DiGregorio and Janet M. Neal as officers of the Association, and from the Association, in the amount of \$100,000 for compensatory damages and \$400,000 for punitive damages.

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

By Walter E. Tittle Sr
WALTER E. TITTLE, Sr.

STATE OF TENNESSEE
COUNTY OF WASHINGTON

I, Walter E. Tittle, Sr., after first being duly
sworn, according to law make oath that I am one of the
Counter-plaintiffs in the forgoing Counter Complaint and that
the facts set forth therein are true to the best of my
knowledge, information and belief.

Walter E. Tittle Sr.
WALTER E. TITTLE, Sr.

Sworn to and subscribed before me this the 2nd day
of September, 1994.

Dwan C. Elliott
NOTARY PUBLIC

My commission expires:

12/20/98

Edwin L. Treadway
EDWIN L. TREADWAY

W. T. Wray
WILLIAM T. WRAY, JR.
HUNTER, SMITH & DAVIS
P.O. Box 3740
Kingsport, TN 37664

Attorneys for Defendants/
Counter-plaintiffs

We acknowledge ourselves as sureties in this matter
not to exceed the amount of \$500.00.

HUNTER, SMITH & DAVIS

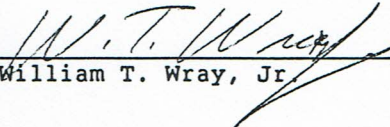
By W. T. Wray
William T. Wray, Jr.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Counter-Complaint has been served upon Plaintiffs/Counter-defendants, by hand-delivering a copy of same to the office of Samuel B. Miller, II, Esq., at WELER, MILLER, CARRIER, MILLER & HICKIE, 160 W. Springbrook Dr., Johnson City, TN 37602, Plaintiffs/Counter-defendants' 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/7734