

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

| | | |
|-------------------------------|---|----------|
| WILLIAM & PAMELA HATCHER, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Case No. |
| |) | Div. |
| WYSS HOME BUILDING, LLC; |) | |
| Serve: Peter Collins |) | |
| Hinkle Law Firm, LLC |) | |
| 6800 College Blvd., Suite 600 |) | |
| Overland Park, KS 66210 |) | |
| |) | |
| and |) | |
| |) | |
| ABI Corporation |) | |
| Serve: Daniel Bromley |) | |
| 1271 NE Delta School Road |) | |
| Lee's Summit, MO 64064 |) | |
| |) | |
| Defendants. |) | |

PETITION FOR DAMAGES

COME NOW Plaintiffs, William and Pamela Hatcher, by and through their attorneys of record, and for their cause of action against defendants, state and allege as follows;

1. William and Pamela Hatcher are individuals residing at [REDACTED] [REDACTED] Lee's Summit, Jackson County, Missouri.
2. Wyss Home Building, LLC is a Missouri entity operating in Jackson County, Missouri.
3. ABI Corporation is a Missouri corporation in good standing operating in Jackson County, Missouri.

4. Mr. and Mrs. Hatcher contracted with Wyss Home Building, LLC on or about November 9, 2013, for the construction and purchase of a new home at [REDACTED] [REDACTED] Lee's Summit, Jackson County, Missouri.
5. Defendant Wyss Home Building subcontracted with ABI Corporation for the foundation and concrete work for the residence.

Jurisdiction and Venue

6. Jurisdiction is proper based on the parties having entered into a contract for performance in the jurisdiction and for having performed negligent work on Mr. and Mrs. Hatcher's residence located in Jackson County, Missouri.
7. Venue is proper in Jackson County, Missouri as this is the location where the cause of action arose, defendant has a registered agent in Jackson County and defendants were transacting business in Jackson County.

Facts Common to All Counts

8. Wyss Home Building contracted to construct Mr. and Mrs. Hatcher's home in accordance with the contract between the parties.
9. Wyss Home Building agreed to construct the home in accordance with the plans and specifications dated October 31, 2013.
10. Wyss Home Building agreed to construct the home in a workmanlike manner.
11. Wyss Home Building was responsible for self-performing the construction work or retaining competent and qualified subcontractors to complete the construction.

12. ABI Corporation was responsible for self-performing the construction work or retaining competent and qualified subcontractors to complete its work on the project.
13. Wyss Home Building as general contractor for the construction of the home was responsible for coordinating and supervising the trade subcontractors.
14. Wyss Home Building is responsible for the inadequate work of its subcontractors.
15. ABI Corporation is responsible for the inadequate work of its subcontractors, designers and agents.
16. Shortly after moving into the home and within the warranty period, Mr. and Mrs. Hatcher notified Wyss Home Building of cracking in the walls and floors in the home.
17. Wyss Home Building notified ABI Corporation of the issues with the home.
18. Multiple investigations were performed with the participation by Wyss Home Building personnel and/or consultants and personnel, ABI Corporation and/or consultants and personnel, and personnel and/or consultants for the subcontractors.
19. The inspections revealed:
 - a. Foundation wall cracks
 - b. Cracks in the basement floor and garage floor
 - c. Separation in the vertical siding seams
 - d. Nail pops and sheetrock cracks
 - e. The basement slab did not meet specifications in thickness

- f. The reinforcing steel in the basement slab did not meet specifications
 - g. Distortion of the house structure
 - h. Drainage had been changed during construction
20. Additional investigations revealed:
- a. Inadequate piling of the home
 - b. Inaccurate information provided to the City of Lee's Summit, Missouri regarding piling
 - c. Inadequate structural support
 - d. Improper application and installation of a weather resistant barrier.
21. Additional defects and damages may be discovered as additional information becomes available.
22. Despite the identification of construction defects, Wyss Home Building and ABI Corporation has failed and refused to remedy the situation.
23. Due to the extensive damages, even if repaired, Plaintiff will be damaged in the decreased value of the property due to the stigma associated with the issues caused by Defendants.

Count I – Breach of Contract
Wyss Home Building

24. Plaintiffs reincorporate by reference the allegations in paragraphs 1-23 as if fully set forth herein.
25. Plaintiffs and Defendant Wyss Home Building, entered into a contract for the construction and purchase of a new home at [REDACTED] Lee's Summit, Jackson County, Missouri.

26. Defendant Wyss Home Building breached the contract with Plaintiffs in various manners, including the following:
 - a. Failed to exercise reasonable care, skill and judgment in the construction of the home;
 - b. Failed to build the home in accordance with the plans and specifications;
 - c. Failed to exercise reasonable care, skill and judgment to retain competent and qualified subcontractors;
 - d. Failed to exercise reasonable care, skill and judgment to supervise the work of subcontractors;
 - e. Failed to exercise reasonable care, skill and judgment to reject deficient work of its subcontractors;
 - f. Failed to exercise reasonable care, skill and judgment to correct defective conditions, workmanship or materials
27. The failure of Wyss Home Building to perform its obligations with respect to the contract constitutes a material breach.
28. Plaintiffs have performed all of their obligations under the contract.
29. Plaintiffs, in good faith, provided Wyss Home Building notice and the opportunity to correct its breach(es) of the contact, and the defective conditions, but Wyss Home Building failed refused and continues to refuse to correct the breach(es).
30. Plaintiffs have been damaged as a direct and proximate result of Wyss Home Building's breach of the contract and failure to remedy the defects in an amount to be determined at trial, for which Wyss Home Building is liable, including costs

associated with the following, but not limited to: investigation and correction of defective conditions, in the loss of value to the property, cost of repairs, attorneys' fees and expenses, moving expenses, alternative housing, and other related expenses.

31. Plaintiffs have been and continue to be damaged to an extent not yet fully determined.

Count II – Negligent Supervision
Wyss Home Building and ABI Corporation

32. Plaintiffs reincorporate by reference the allegations in paragraphs 1-31 as if fully set forth herein.
33. Defendants owed a duty to Plaintiffs to exercise reasonable care in the supervision and management of the subcontractors hired to perform work on Plaintiffs' home.
34. Defendants failed to adequately supervise the work performed by its subcontractors to construct Plaintiffs' residence.
35. Defendants' negligent supervision of its subcontractors' construction work and design work directly and proximately caused damage to Plaintiffs' home.
36. As a result of the damage to Plaintiffs' home, extensive demolition and reconstruction of portions of the home or complete demolition of the home will be required in order to repair the deficient work, which repairs are estimated to exceed \$550,000.
37. Plaintiffs have been damaged as direct and proximate result of Wyss Home Building's acts and omissions in the failure to remedy the defects in an amount to be determined at trial, for which Wyss Home Building and ABI Corporation

is liable, including costs associated with the following, but not limited to: investigation and correction of defective conditions, in the loss of value to the property, cost of repairs, attorneys' fees and expenses, moving expenses, alternative housing, and other related expenses.

Count III – Negligent Misrepresentation
Wyss Home Building

38. Plaintiffs reincorporate by reference the allegations in paragraphs 1-38 as if fully set forth herein.
39. Defendant Wyss Home Building owed a duty to Plaintiffs to exercise reasonable care in representing the quality of the work it would perform, the level of supervision it would provide and the future performance of repairs to defective work performed during construction.
40. Defendant Wyss Home Building failed to perform the construction work on Plaintiffs' home to the level of quality represented by Wyss Home Building by its statements and as represented in the specifications.
41. Defendant Wyss Home Building failed to supervise the subcontractors hired for the construction work on Plaintiffs' home as represented, and failed to detect improper or defective work during construction.
42. Defendant Wyss Home Building failed and refused to perform repairs to defective work discovered during construction or should have been discovered during construction of Plaintiffs' home.
43. Defendant Wyss Home Building's misrepresentations were made with the intention that Plaintiff would rely on them.

44. Defendant Wyss Home Building's representations made to Plaintiffs were materially false.
45. Defendant Wyss Home Building was negligent in ascertaining or verifying the truth of the representations made to Plaintiffs.
46. Plaintiffs reasonably relied on the representations of Defendant Wyss Home Building.
47. As a result of the damage to Plaintiffs' home, extensive demolition and reconstruction or complete demolition will be required to repair the defendants' negligent work, which repairs are estimated to exceed \$550,000.
48. Plaintiffs have been damaged as direct and proximate result of Wyss Home Building's acts and omissions in the failure to remedy the defects in an amount to be determined at trial, for which Wyss Home Building is liable, including costs associated with the following, but not limited to: investigation and correction of defective conditions, in the loss of value to the property, cost of repairs, attorneys' fees and expenses, moving expenses, mortgage changes, alternative housing, and other related expenses.

Count IV – Missouri Merchandising Practices ACT
Wyss Home Building and ABI Corporation

49. Plaintiffs reincorporate by reference the allegations in paragraphs 1-48 as if fully set forth herein.
50. Defendants engaged in deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression or omission of any material fact in connection with the sale or advertisement of property described herein.

51. Specifically, Defendants falsely reported the number of piers to the city, falsely represented the structural integrity of the home, falsely represented the inspection and approval of the piers, concealing the omission of reinforcing steel, concealing the improper application and installation of a weather resistant barrier, and concealing the inadequate structural support of the home.
52. As a direct result of Defendants' actions as described herein, Plaintiffs have suffered an ascertainable loss of money and/or property.
53. Each Defendant's actions as described herein constituted a violation of the Missouri Merchandising Practices Act, RSMo. § 407.020, et seq.
54. Pursuant to RSMo. § 407.025.1, the Court may award Plaintiffs their attorneys' fees and costs for this action.
55. Pursuant to RSMo. § 407.025.1, the Court may award punitive damages against Defendants.
56. The conduct of Defendants as described herein was wanton, reckless, and evidences an evil motive and disregard for the rights of others, such that an award of punitive damages is appropriate to punish and deter Defendants and others likewise situated from engaging in such conduct in the future.

WHEREFORE, plaintiff demands judgment against Defendants, jointly and severally, in an amount in excess of \$75,000, interest, costs of suit, attorneys' fees and expenses, punitive damages, and such other relief the Court deems just and appropriate.

Respectfully submitted,

McCORMICK GORDON BLOSKEY POIRIER, PA

/s/Michael L. Hughes

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ATTORNEY FOR PLAINTIFFS