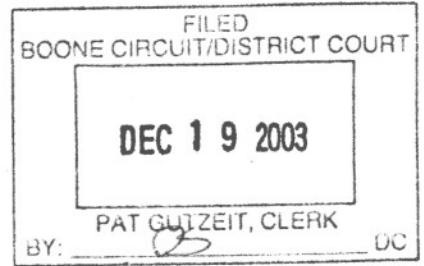


COMMONWEALTH OF KENTUCKY
BOONE CIRCUIT COURT
CASE NO. 03-CI-1570



STEPHEN NELSON
7728 Falls Creek Way
Burlington, Kentucky 41005

and

CHRISTY NELSON
7728 Falls Creek Way
Burlington, Kentucky 41005

PLAINTIFFS

v.

FINKE HOMES, INC.
3180 Burlington Pike
Burlington, Kentucky 41005

DEFENDANT

SERVE VIA CERTIFIED MAIL

AGENT FOR SERVICE OF PROCESS:

George Finke
3180 Burlington Pike
Burlington, Kentucky 41005

COMPLAINT WITH JURY DEMAND

Now come the Plaintiffs, Stephen and Christy Nelson, by and through counsel, and for their Complaint state as follows:

1. At all times relevant hereto, the Plaintiffs were residents of the Commonwealth of Kentucky.
2. At all times relevant hereto, the Defendant was a corporation organized and conducting business in the Commonwealth of Kentucky.

3. This Court has personal and subject matter jurisdiction over this claim in that the acts complained of herein were committed within this Commonwealth. Venue is proper in that the Defendant's conduct giving rise to Plaintiff's Complaint occurred within this county.

COUNT I - BREACH OF CONTRACT

4. On or about November 12, 2002, the Plaintiffs entered into a Sales Contract (Contract attached as Exhibit A.) with the Defendant wherein the Defendant was to construct a single family residential home at 7728 Falls Creek Way, Burlington, Kentucky 41005 (hereinafter "home") in exchange for payment by the Plaintiffs of \$145,795. Plaintiffs' home was to be constructed by the Defendant consistent with the Sales Contract, all applicable local and state building codes, and in a workman-like manner.

5. The Plaintiffs' home was constructed by the Defendant with the Plaintiffs obtaining occupancy on April 11, 2003.

6. Subsequent to their occupancy, the Plaintiffs notified the Defendant of deficiencies with the construction of their home. The Defendant has failed to take corrective remedial measures. Defendant is in breach of contract for failing to construct the Plaintiff's home consistent with the underlying Sales Contract, failing to satisfy all applicable local and state building codes, and by failing to construct the home in a workman-like manner. Said deficiencies include, but are not necessarily limited to, the following:

1. Garage floor slopes away from garage door opening in violation of applicable codes;
2. Water seepage in the basement;
3. Various cracks in concrete;
4. Sunken concrete walkway;
5. Front porch has pulled away from structure;
6. Fireplace lacks the required insulation;
7. Drywall patched improperly or not repaired;
8. Interior floors sag; and
9. Concrete in driveway and backyard slab is pitted.

7. As a result of Defendant's breach, the Plaintiffs have suffered a diminution of value of their property. The costs of repair of these deficiencies exceed the minimum jurisdictional requirement of this Court.

COUNT II - NEGLIGENCE

8. Plaintiffs reiterate each and every allegation contained in paragraphs 1 through 7 as if fully rewritten herein.

9. The deficiencies of Plaintiffs' home and damages incurred by the Plaintiffs outlined in Paragraphs 6 and 7 above is the direct and proximate result of Defendant's negligence in failing to construct the Plaintiff's home in an acceptable workman-like manner.

COUNT III - VIOLATION OF BUILDING CODES

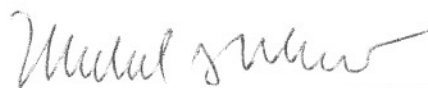
10. Plaintiffs reiterate each and every allegation contained in paragraphs 1 through 9 as if fully rewritten herein.

11. The Defendant's construction of Plaintiffs' home has failed to comply with all applicable local and state building codes including, but not necessarily limited to, improper drainage of the Plaintiff's garage floor which improperly slopes at a grade away from the garage door opening.

12. As a result of Defendant's failure to comply with the applicable building codes, the Plaintiffs have suffered a diminution of value of their property with the costs of repair exceeding the minimal jurisdictional requirement of this Court.

WHEREFORE, Plaintiffs demand judgment against the Defendant in an amount to be determined by a jury, attorney fees, costs, interest, and all other relief to which they may otherwise be entitled.

Respectfully submitted,



MICHAEL J. SCHULTE
127 E. Third Street
Covington, KY 41011
(859) 291-9181
Attorney for Plaintiffs

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

Finke Homes, Inc.

3180 Burlington Pike
Burlington, KY 41005
(606) 586-7583

A Kentucky Corporation



SALES AGREEMENT

AGREEMENT between Burlington Estates, Inc., hereinafter called "Seller" and

Stephen + Christy Nelson
of 3141 Wink Rd = 2
Cincinnati, OH 45211 hereinafter called "Buyer."

1. **Basis of Agreement.** For the considerations hereinafter set forth, Seller agrees to sell and convey and Buyer agrees to purchase, upon the terms and conditions set forth

in this Agreement. (a) the land described as follows: Lot # 374K

Block # _____ Subdivision Pebble Creek

as recorded on a plat filed among the records of Bloom

County, State of Ky, in Plat Book _____, Page _____

together with (b) a home to be built thereon by Seller according to

Seller's Plan

Plan, Set # 500 Alternate C

in a workmanlike manner substantially in accordance with plans and specifications which have been reviewed by Buyer (collectively called "property").

Model homes, if any, and any advertising or promotional materials used or displayed by Seller are for display purposes only and are not the basis of the bargain between Seller and Buyer. The obligations of Seller under this Agreement shall be determined solely by reference to the plans and specifications (referred to above) and the terms of this Agreement.

2. **Sales Price and Schedule of Payments.** The price of the house and lot including all

optional items listed below is \$ 145,795

The sales price is payable as follows:

(a) Cash earnest money due upon signing of this Agreement the receipt of which is hereby acknowledged \$ 1,000

(b) Additional cash payment on or before five days after receipt of loan approval \$ _____

(c) Other \$ _____

(d) Balance due upon settlement to be paid by a cashier's check or a check from a title company approved by Seller \$ 144,795

3. **Optional Items:** Optional items included in the sales price are:

1) Contingent on Buyer's Security Finance with the help of Selling Agent

2) Buyer is aware of HOA fees on Pebble Creek and have been given a copy of HOA bylaws for Pebble Creek.

shall be provided by Seller. Seller agrees that such uncompleted items shall be completed as soon as weather conditions permit.

(c) Any items determined to require corrective action as a result of the Pre-settlement inspection conducted by Seller and Buyer will be completed as soon as is practical, but is not cause for delaying settlement if all other conditions of this contract have been fulfilled.

(d) In the event that Seller is unable to obtain the materials specified on the plans or specifications or the items shown on the selection sheets through reasonable sources of supply, Seller shall have the right to substitute materials of similar pattern and design and substantially equivalent quality.

(e) The location and ground elevation of the home on the lot and the necessity, if any, to reverse the plan of the home to conform to the existing lot contours are to be determined by Seller at its sole discretion.

(f) Seller may remove such trees from the lot as it deems necessary to construct the home and it shall not be responsible for any damage to or destruction of remaining trees during or resulting from the process of construction.

(g) Seller reserves the right to make changes in plans and specifications solely for the purposes of mechanical installations, building code requirements, and normal architectural design improvements subsequent to the date of this Agreement.

6. **Closing Costs/Settlement Charges/Prepays.** All closing costs/settlement charges including but not limited to all conveyance fees, transfer taxes, recording fees, prepaid items (including but not limited to mortgage insurance premiums, prepaid fire and hazard insurance premiums, prepaid real estate taxes, and prepaid interest on the mortgage), and all other lender-required fees and charges shall be paid by Buyer except the following items, if any, to be paid by Seller:

Seller agrees to pay up to 2% of Loan Value towards Closing Costs, Prepaids and Buyer's Down Payment Note.

7. **Settlement.** After completion of construction in accordance with this Agreement settlement shall take place on a date and at a place to be selected by Seller on not less than ten (10) days notice to Buyer. Upon payment by Buyer of the balance due Seller and expenses of settlement and all proper fees and charges in connection with it, Seller shall convey the property to Buyer by general warranty deed, title to be good and marketable, free of liens, encumbrances, easements (except for utility easements and any other easements which may be observed by an inspection of the property, assessments, and restrictions running with the land and common to the subdivision). Possession shall be given to Buyer when Seller receives the balance of the purchase price and, prior thereto, Buyer shall have no right to enter upon or occupy the property without the written approval of Seller. In the event that Buyer refuses to settle at the date specified by Seller in accordance with this paragraph, Seller may, at its option, hold the Buyer in default under paragraph 9, or Seller may elect, at its discretion, to extend the time for settlement for successive periods of 30 days beyond the previously established date, provided that Buyer pays to Seller a fee of 1% of the sales price in advance for each such 30 day extension. Should Buyer not settle within an extension period, Buyer shall be in default of this Agreement under paragraph 9.

8. **Cancellation by Seller.** In the event Items 4(d) and 4(e) cannot be obtained in thirty days or in the event that Seller shall determine, in good faith, and for reasons beyond its control, including any cause specified in Paragraph 5(a) and including any pending or declared governmental moratorium, that the home purchased hereunder cannot be completed and made available for occupancy prior to the time provided for settlement hereunder or within a reasonable time thereafter, or if Seller shall be unable to deliver good and marketable title to the property, this Agreement may be cancelled at the option of the Seller, upon ten (10) days written notice to Buyer. In the event of cancellation as provided for in this paragraph, Seller's liability shall be limited to the return of all monies paid hereunder by Buyer, and upon such return, this Agreement shall be null and void and Seller shall be released from all obligations hereunder.

9. **Default by Buyer.** Default by Buyer shall be deemed to have occurred upon Buyer's failure (a) to make all cash payments on or before the dates specified herein; (b) to provide Items 4 (b) and 4(c) on the times specified; (c) on the date appointed, to tender at settlement the amounts called for herein and accept title, or (d) to comply with any other terms of this Agreement. In the event of Buyer's default under this Agreement, Buyer agrees that all sums of money paid hereunder prior to such default shall be retained by Seller as liquidated damages, or in the alternative, Seller may seek specific performance of this Agreement or any part thereof in any court of competent jurisdiction.

10. **Covenants and Easements.** The property purchased hereunder and certain other property in the area hereof may be subjected to certain restrictive covenants, agreements, charges and restrictions as contained in or provided for in certain instruments recorded among the land records of Bloom County. Without limiting any provision hereof, Buyer accepts title to the property subject to the matters thus identified and to any other similar provisions contained in instruments recorded among the appropriate land records prior to the transfer of title hereunder.

11. This Agreement shall be binding on the parties and their heirs, legal representatives and assigns.

12. This is the complete Agreement between the parties. There are no written or oral agreements or understandings directly or indirectly connected with this Agreement that are not incorporated herein unless they are put in writing, signed by the parties and attached hereto.

13. Assignment. Buyer's interest and obligation hereunder shall not be assignable

All additional extras must be evidenced in writing.

4. **Preconditions to Construction.** Construction by Seller shall begin as soon as possible after receipt by Seller of:

(a) Cash payments called for in 2(a) and (b) above within the time provided;

(b) Selection sheets completed and signed by Buyer within 7 days on forms furnished by Seller;

(c) Written mortgage commitment within 30 days by a lending institution for a mortgage loan secured by the property in the amount necessary to complete payment at settlement, or other evidence satisfactory to Seller of Buyer's ability

All additional extras must be evidenced in writing.

4. **Preconditions to Construction.** Construction by Seller shall begin as soon as possible after receipt by Seller of:

- (a) Cash payments called for in 2(a) and (b) above within the time provided;
- (b) Selection sheets completed and signed by Buyer within 7 days on forms furnished by Seller;
- (c) Written mortgage commitment within 30 days by a lending institution for a mortgage loan secured by the property in the amount necessary to complete payment at settlement, or other evidence satisfactory to Seller of Buyer's ability to complete payment at settlement;
- (d) Written approval of plans and specifications within 30 days by the Buyer.
- (e) All necessary government approvals and permits, if any, within 30 days.

Buyer shall provide items (a), (b) and (c). Seller and Buyer will cooperate in obtaining items (d) and (e).

5. **Schedule of Construction.** Construction by Seller shall be completed in accordance with Paragraph 1 and settlement shall take place in accordance with Paragraph 6 on or before one hundred twenty (120) days after commencement of construction, with

completion expected on or around February 1, 1989 except that:

- (a) In the event of delays resulting from any of the following causes, the time for completion of construction shall be extended for a period of time equal to the length of the delay, and Seller shall not be liable for any failure or delay in construction caused by:
 - (1) Acts or default of Buyer.
 - (2) Acts or defaults of any developer or contractor engaged in constructing or installing streets or utilities.
 - (3) Adverse weather conditions.
 - (4) Damage caused by fire, storm, earthquake or other casualty.
 - (5) Strike, lockout, or other labor trouble of any kind.
 - (6) Governmental controls, procedures, regulations, restrictions or moratoriums.
 - (7) Allocation of labor supplies or material by or under the authority of any government or government agency.
 - (8) Acts of subcontractors or their employees.
 - (9) Acts of suppliers of labor or material.
- (b) In the event that on the settlement date scheduled in accordance with this Agreement the home shall be otherwise habitable, but such items as landscaping, exterior concrete, driveways, final grading and exterior painting cannot be completed by reason of weather conditions, settlement shall be consummated on the date so scheduled so long as temporary access to the property

recorded among the land records of Franklin County. Without limiting any provision hereof, Buyer accepts title to the property subject to the matters thus identified and to any other similar provisions contained in instruments recorded among the appropriate land records prior to the transfer of title hereunder.

11. This Agreement shall be binding on the parties and their heirs, legal representatives and assigns.

12. This is the complete Agreement between the parties. There are no written or oral agreements or understandings directly or indirectly connected with this Agreement that are not incorporated herein unless they are put in writing, signed by the parties and attached hereto.

13. Assignment, Buyer's interest and obligation hereunder shall not be assignable without written consent of Seller.

14. TIME IS OF THE ESSENCE OF THIS AGREEMENT. THIS IS A LEGALLY BINDING CONTRACT. READ AND UNDERSTAND ALL PROVISIONS PRIOR TO SIGNING. IF NOT UNDERSTOOD, SEEK LEGAL OR OTHER COMPETENT ADVICE.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as

of the 10 day of November 1988

Witness _____

Witness _____

Witness _____

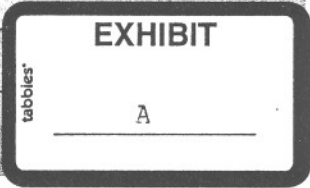
Buyer Shelley Holcomb

Buyer FINKE HOMES, INC.

FINKE HOMES, INC.

By _____
Vice President

By _____
Asst. Secretary



COMMONWEALTH OF KENTUCKY
BOONE CIRCUIT COURT
CASE NO. 03-CI-1770

Set

STEPHEN NELSON, ET AL.

PLAINTIFFS

V.

FINKE HOMES, INC.

DEFENDANT

ANSWER

Comes now the Defendant, FINKE HOMES, INC., through counsel, and for their Answer to the Complaint, state the following:

FIRST DEFENSE

Plaintiffs' Complaint fails to state a cause of action upon which relief may be granted.

SECOND DEFENSE

The Defendant hereby incorporates by reference and further would rely upon, all defenses which would become available during discovery and/or due to a change in the law.

THIRD DEFENSE

The Defendant specifically reserves the right, in accordance with Kentucky Rule of Civil Procedure 15.02, to amend her pleadings to conform with discovery or evidence at trial, or for purposes of asserting any counterclaim or crossclaim.

FOURTH DEFENSE

Defendant asserts the affirmative defense that Plaintiff has failed to mitigate their damages. Plaintiff cancelled an appointment whereby Defendant's agent was to make repairs to the home, and subsequently filed this lawsuit.

FIFTH DEFENSE

Defendant asserts the affirmative defense of Breach of Warranty. There is a warranty that covers the home, and Plaintiffs have failed to cooperate with Defendant to allow any necessary repairs to be made, and have thus breached their warranty, and are not entitled to any damages.

SIXTH DEFENSE

Breach of Warranty. Defendant states that Plaintiff has failed to follow the terms of their Warranty, namely that Plaintiffs failed to go through the "Conciliation Process" and the "Arbitration Process" as detailed and agreed to by Plaintiffs in the Warranty. This lawsuit is, thus, premature and in violation of the Warranty.

SEVENTH DEFENSE

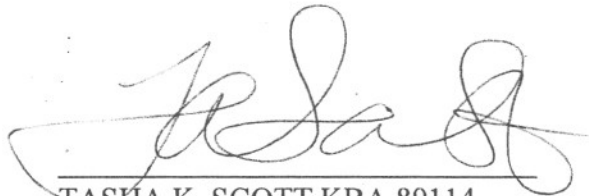
Without waiver of the foregoing, and in answer to the allegations contained in Plaintiffs' Complaint, Defendant states as follows:

1. Defendant admits the allegations contained in paragraphs 1, 2, 3, 4, and 5.
2. Defendant denies the allegations in paragraph 6, 7, 8, 9, 10, 11 and 12.

WHEREFORE, the Defendant prays as follows:

- A. For dismissal of Plaintiff's Complaint;
- B. For their costs expended herein; and
- C. For any and all relief to which Defendant may appear to be entitled.

Respectfully Submitted,



TASHA K. SCOTT KBA 89114

Attorney for Defendant

211 East Fourth Street

Covington, KY 41011

(859) 491-1011

fax (859) 491-0549

CERTIFICATION:

I hereby certify that a copy of the foregoing Answer was provided to counsel for Plaintiff, via fax and/or personal delivery to the Hon. Michael J. Schulte, 127 E. Third Street, Covington, KY 41011 on this the 30th day of January, 2004.



Tasha K. Scott