

BOONE CIRCUIT COURT
CIVIL ACTION FILE NO. 97-CI-00575

BRADON H. HOUCK
and
TRACI L. HOUCK

PLAINTIFFS

FILED

JUN 04 1997

v.

COMPLAINT

PAT GUTZEIT, CLERK
BOONE CIRCUIT/DISTRICT COURTS
BY: CK D.C.

FINKE HOMES, INC. ^{RS}
(Serve: George Finke
3180 Burlington Pike
Burlington, KY 41005)

DEFENDANT



Come the Plaintiffs, Bradon H. Houck and Traci L. Houck, husband and wife, by and through counsel, and for their cause of action and Complaint, state as follows:

COUNT I

1. That the Plaintiffs, Bradon H. Houck and Traci L. Houck, hereinafter collectively referred to as "Houck", are, and were at all times herein relevant, individuals and residents of Boone County, Kentucky.
2. That the Defendant, Finke Homes, Inc., hereinafter referred to as Finke Homes, is, and was at all times herein relevant, a corporation duly organized and existing under laws of the Commonwealth of Kentucky, having its principal office in Boone County, Kentucky.
3. That the improved real estate which is the subject of the within Complaint, is located

in Boone County, Kentucky.

4. That the contract of sale, and all other transactions or occurrences pertinent to the transaction which is the subject matter of the within Complaint, occurred in and was to be performed, respectively, in Boone County, Kentucky.

5. That on or about the 31st day of March, 1994, Plaintiffs Houck and Defendant Finke Homes entered into a written contract for the construction of a single family residence at the premises known as Lot No. 35, Section 2, of Pebble Creek Subdivision as shown on Plat Slide 260-A in the Office of the Boone County Clerk at Burlington, Kentucky.

6. That pursuant to the terms thereof, and addenda thereto, the Houcks agreed to pay to Finke Homes the sum of \$122,560.00 in consideration of the construction of a new single family residence for the Houcks.

7. That Houck and Finke Homes closed the transaction on the 30th day of September, 1994, at which time Houck paid Finke Homes the full contract amount and incurred additional closing costs.

8. Subsequent to the time of closing, Houck has made substantial improvements to both interior and exterior of the residence at additional cost and expense.

9. Plaintiffs Houck have performed all obligations and conditions imposed upon them by virtue of the terms of the purchase contract with Finke Homes.

10. That pursuant to the terms of said contract, including addenda and plans and specifications attached thereto, Finke Homes expressly and/or impliedly agreed, inter alia, to construct the residence in a good and workmanlike manner, in accordance with the plans and specifications, in accordance with the applicable building codes, and in accordance with industry standards utilized by builders in the area.

11. That Finke Homes breached said contract by failing to construct said residence in a good and workmanlike manner and in accordance with the plans and specifications, the applicable building codes, and industry standards, thereby resulting in a residence constructed with substantial and material structural faults, some examples of which include, but are not limited to: cracking in the driveway, lack of adequate thickness of the driveway, buckling interior floors, radon infiltration into the residence in unacceptable levels, a leaking garage roof, a front door which leaks into the entry-way floor, water leaks into the first floor closet and also into the basement, improper installation of smoke detectors, and inferior or inadequate drywall work and painting.

12. That Houck has made demand upon Finke Homes to repair the defective workmanship, and that Finke Homes has either failed in its attempts to rectify the defects or has refused any or further attempts to fix said defects.

13. That as a result of said breach, Houck has been caused to suffer damages in an amount equivalent to the sum of the cost of his initial investment, closing costs, improvements, interest charges, repairs, and replacements; and that Houck's remedies at law are inadequate, and that they are entitled to a rescission of the contract and a restoration to the status quo in addition to their costs and damages as aforesaid, in excess of the minimum jurisdictional threshold of this Court, in such amounts as shall be proven at trial.

COUNT II

14. That Plaintiffs Houck are entitled to enjoy the use and benefit of new residence, free from the unwarranted and unnecessary interference therewith resulting from, and necessitated, by the breach of contract and breach of duties owed to them by Finke Homes,

and that the conduct of Finke Homes in relation to the construction of the residence and the refusal to properly repair known defects constitutes an oppressive and fraudulent transaction and an intentional infliction of emotional distress, directly and proximately resulting in damages to the Houcks in the form of emotional distress, and to such an extent that the Plaintiffs Houck are entitled to punitive damages against Finke Homes.

COUNT III

15. That the Houck's purchase from Finke Homes of goods and services was a purchase primarily for personal, family, and/or household purposes, and that the acts of Finke Homes were conducted with unfair, false, misleading, and/or deceptive acts or practices in the conduct of the trade or commerce; that the conduct of Finke Homes constitutes a violation of Kentucky Consumer Protection Act as codified at KRS 367.110 et seq; and that the Plaintiffs Houck have incurred, and are continuing to incur attorney's fees and costs as a result of the said conduct and are entitled to a reimbursement of their attorney fees and costs.

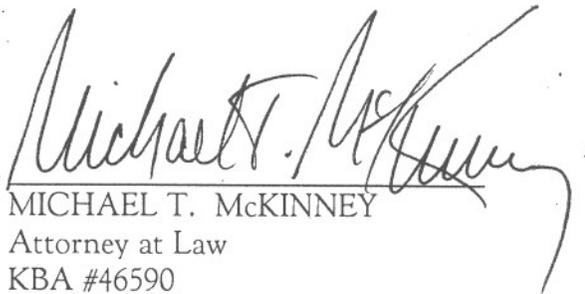
COUNT IV

16. That all of the actions complained of have damaged the Plaintiffs Houck, and all or some of the actions of Finke Homes constitute violations of KRS 198B.130 or the Kentucky Building Code.

17. In accordance with KRS 198B.130 Plaintiffs Houck are entitled to recover, in addition to damages a proven at trial, all of their costs of litigation, including reasonable attorney fees as a result of such violations.

WHEREFORE, Plaintiffs Bradon H. Houck and Traci L. Houck demand as follows:

1. For the entry of a judgment affording Plaintiffs Houck the equitable relief of rescission of the contract, and directing the payment of funds from the Defendant, Finke Homes, Inc., in an amount sufficient to restore Plaintiffs Houck to the status quo, all as the proof shall establish at trial;
2. For the entry of a judgment against the Defendants, jointly and severally, in such amount as will compensate the Plaintiffs in full for their damages as the proof shall establish;
3. For an award of punitive damages;
4. For a trial by jury;
5. For any and all other relief to which Plaintiffs Houck may appear entitled.



MICHAEL T. MCKINNEY

Attorney at Law

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P.O. Box 688

Burlington, Kentucky 41005

(606) 586-9955

Fax 586-6937

Counsel for Plaintiffs

Bradon H. Houck

Traci L. Houck

VERIFICATION

Come the Plaintiffs, Bradon H. Houck and Traci L. Houck, who, having read the foregoing Complaint, state that the allegations contained therein are true as they verily believe.



BRADON H. HOUCK



TRACI L. HOUCK

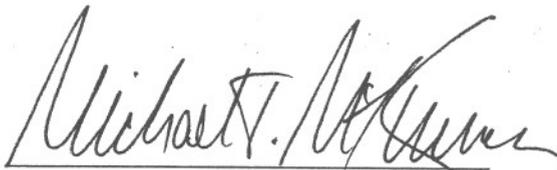
STATE OF KENTUCKY.....)

:Sct.

COUNTY OF BOONE.....)

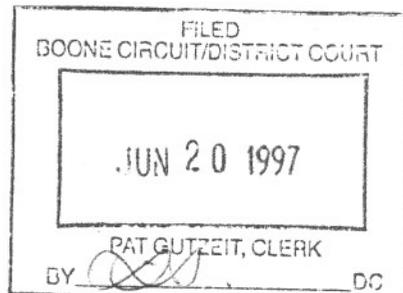
Subscribed, sworn to and acknowledged before me this 19th day of ^{May}~~April~~, 1997, by
Bradon H. Houck and Traci L. Houck.

My Commission Expires: January 19, 2001.



Notary Public
State at Large

COMMONWEALTH OF KENTUCKY
BOONE CIRCUIT COURT
CASE NO.: 97-CI-00575



BRADON H. HOUCK, et al

PLAINTIFFS

v.

FINKE HOMES, INC.

DEFENDANT

ANSWER

Comes now the Defendant, FINKE HOMES, INC., by and through Counsel, and for its Answer to Plaintiffs' Complaint filed herein, respectfully state as follows:

FIRST DEFENSE

1. Plaintiffs' Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

2. That this answering Defendant admits the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7 and 10 of the Complaint filed herein.

3. That this answering Defendant denies the allegations contained in paragraphs 9, 11, 12, 13, 14, 15, 16 and 17 of the Complaint filed herein.

4. That this answering Defendant denies for lack of knowledge the allegations contained in paragraph 8 of the Complaint filed herein.

THIRD DEFENSE

5. That this answering Defendant specifically raises and relies upon the affirmative defenses of accord and satisfaction, contributory negligence, estoppel, failure of consideration,

laches, payment, release, statute of fraud, statute of limitations and waiver.

6. That this answering Defendant expressly reserves the right to raise and rely upon additional affirmative defenses, should same be known to exist through ongoing discovery and investigation conducted herein.

FOURTH DEFENSE

7. That Plaintiffs' claim for breach of contract is expressly barred by the Doctrine of Merger.

FIFTH DEFENSE

8. That Plaintiffs' claims based upon alleged violations of the applicable building code are expressly prohibited, inasmuch as Plaintiffs have refused and continue to refuse to permit Defendant the opportunity to enter the premises, inspect the purported building code violations and to repair and/or replace said alleged violations.

SIXTH DEFENSE

9. That the Plaintiffs herein have relied upon and asserted alternative remedial rights, inconsistent and not reconcilable with each other, by virtue of conflicting claims for recovery of damages, as well as for rescission of the Purchase Contract. Therefore, Plaintiffs should be directed to elect one (1) of these inconsistent remedies under which to proceed herein.

SEVENTH DEFENSE

10. That at no time relevant hereto did this answering Defendant act, either intentionally or with willful disregard for

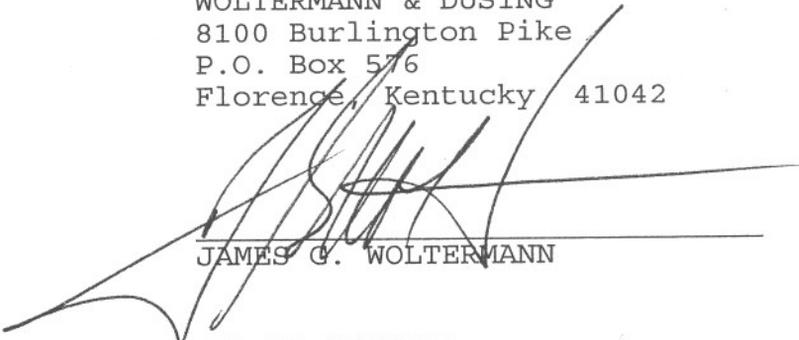
the well-being of the Plaintiffs, in such a manner as to cause Plaintiffs emotional harm and/or distress, nor did this answering Defendant act with such negligence so as to cause such emotional harm and/or distress. Therefore, Plaintiffs' cause of action for emotional distress should be dismissed.

WHEREFORE, this answering Defendant prays as follows:

- 1) That the Plaintiffs' Complaint be dismissed, with prejudice.
 - 2) For all of its costs and attorneys fees incurred herein;
- and
- 3) For any and all other relief to which it may appear entitled.

Respectfully submitted,

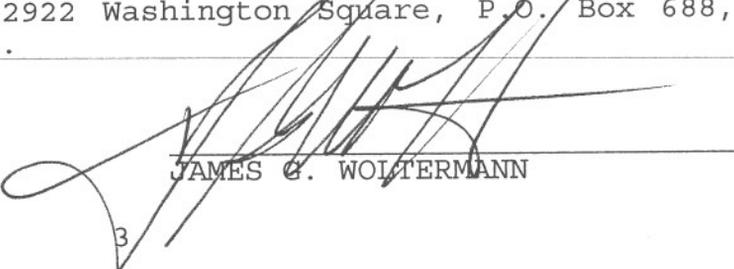
ADAMS, BROOKING, STEPNER,
WOLTERMANN & DUSING
8100 Burlington Pike
P.O. Box 576
Florence, Kentucky 41042



JAMES G. WOLTERMANN

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of June, 1997, a true and correct copy of the foregoing was mailed, by regular U.S. Mail, postage pre-paid to the following counsel: Michael T. McKinney, Attorney for Plaintiffs, 2922 Washington Square, P.O. Box 688, Burlington, Kentucky 41005.



JAMES G. WOLTERMANN