

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

ASBURY WOODS CONDOMINIUM)
ASSOCIATION)
BOARD OF DIRECTORS OF)
ASBURY WOODS CONDOMINIUM)
ASSOCIATION,)
Plaintiffs,)
v.) Case No.
LENNAR COMMUNITIES OF) JURY DEMANDED
CHICAGO LLC, CONCORD HOMES,)
INC., LENNAR CHICAGO, INC.,)
LENNAR CORPORATION, ASBURY)
WOODS, LLC,)
Defendants.)

COMPLAINT

NOW COME Plaintiffs, ASBURY WOODS CONDOMINIUM ASSOCIATION and BOARD OF DIRECTORS OF ASBURY WOODS CONDOMINIUM ASSOCIATION, by and through their attorneys, Esposito & Staubus LLP, and complaining of Defendants, LENNAR COMMUNITIES OF CHICAGO LLC, CONCORD HOMES, INC., LENNAR CHICAGO, INC., LENNAR CORPORATION, and ASBURY WOODS, LLC allege as follows:

GENERAL ALLEGATIONS

1. Plaintiff, ASBURY WOODS CONDOMINIUM ASSOCIATION ("Association"), is an Illinois not-for-profit corporation.
2. At all times herein, Plaintiff, BOARD OF DIRECTORS OF ASBURY WOODS CONDOMINIUM ASSOCIATION, was the governing body for the Association.
3. At all times herein, the Association was the governing body for all the owners and for the administration and operation of the buildings at Asbury Woods Condominium consisting of 252 units and 21 buildings, located in Justice, Cook County, Illinois.

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4. The Association was established by a Declaration of Condominium Ownership for Asbury Woods Condominium which said document was recorded as Document number 0030363045 with the Recorder of Deeds Office of Cook County.

5. 765 ILCS 605/9.1(b) states that “[t]he Board of Managers shall have standing and capacity to act in a representative capacity in relation to matters involving the common elements or more than one unit on behalf of the unit owners as their interests may appear.”

6. Article V, Section 5.01 of the By-laws for the Association states that, “[t]he affairs of the Association and the direction and administration of the Condominium Property shall be vested in the Board. . . .”

7. The Plaintiff, BOARD OF DIRECTORS OF ASBURY WOODS CONDOMINIUM ASSOCIATION, is the duly elected and qualified Board of Directors as described in the Declaration and 765 ILCS 605/9.1(b). Both the BOARD OF DIRECTORS OF ASBURY WOODS CONDOMINIUM ASSOCIATION and ASSOCIATION are the proper parties for and on behalf of the unit owners to institute the instant proceedings.

8. Defendant, CONCORD HOMES, INC., is a Delaware corporation which transacts business in the State of Illinois, County of Cook and its registered agent's office located in Chicago, Cook County, Illinois.

9. Defendant, LENNAR CHICAGO, INC., is an Illinois corporation which transacts business in the State of Illinois, County of Cook and its registered agent's office located in Chicago, Cook County, Illinois.

10. Defendant, LENNAR CORPORATION, is a Florida corporation that transacts business in the State of Illinois, County of Cook.

11. Defendant, LENNAR COMMUNITIES OF CHICAGO LLC, is an Illinois limited liability corporation that transacts business in the State of Illinois, County of Cook and its principal office located in Hoffman Estates, Cook County, Illinois.

12. Defendant, ASBURY WOODS, LLC, is an Illinois limited liability company that transacts business in the State of Illinois, County of Cook and its principal place of business located in Schaumburg, Cook County, Illinois.

13. At all times relevant hereto, LENNAR COMMUNITIES OF CHICAGO LLC, CONCORD HOMES, INC., LENNAR CHICAGO, INC., LENNAR CORPORATION, and ASBURY WOODS, LLC conducted business in Cook County, Illinois.

14. ASBURY WOODS, LLC was the owner and the seller of the units at Asbury Woods Condominium.

15. Upon information and belief, ASBURY WOODS, LLC retained the services of Defendants, LENNAR COMMUNITIES OF CHICAGO LLC, CONCORD HOMES, INC., LENNAR CHICAGO, INC., LENNAR CORPORATION, and ASBURY WOODS, LLC, ("Developers"), to develop the Asbury Woods Condominiums.

16. Upon information and belief, Asbury Woods, LLC and the Developers are one in the same entity.

17. The Developers had an obligation to construct the condominiums and the common elements so that they would be of reasonable workmanship and be fit for its intended purpose of habitation.

18. The common elements of the buildings and individual units have experienced numerous latent defects in the construction of the common areas, including but not limited to the following:

- A. Windows leaks due, in part, to: sealant failures; no end damages and drip edge in the cap flashing; improper flashing;
- B. Balcony/Deck: improper installation and joist hangers; improper flashing; lack of lateral stability due to improper columns and improper attachment to deck framing; deck boards were warped and pulling off of floor joists; railings were improper;
- C. Foundation Settlement due to improper underpinning;
- D. Fence monuments lean due to improper underpinning;
- E. Asphalt pavement issues due to improper sub-base;
- F. Concrete forms and wood posts supporting the wood fence around the property were not topped off with sufficient concrete;
- G. Insufficient insulation in the ventilation in the attic crawl spaces.

19. There were several other latent defects that the Developers agreed to pay for the repairs including but not limited to: issues with the fire control panel, attic bracing, and the settlement of certain foundations.

20. The parties entered into a tolling agreement on June 28, 2010.

21. On May 22, 2014, the Developers terminated the tolling agreement.

22. Pursuant to the tolling agreement, Plaintiffs have timely filed their complaint.

23. Daris R. Horn, is the agent for all the Defendants. Ms. Horn signed the tolling agreement on behalf of the Developers.

24. The Association retained several consultations to inspect the latent defects.

25. The Association has expended thousands of dollars to repair the latent defects.

26. The Developers received notice of the above defects, the consultants' reports, and the costs of repairs but have refused to pay for any of the repairs and/or do the repairs needed.

COUNT I
IMPLIED WARRANTY OF HABILITABILITY AGAINST DEVELOPERS

27. Paragraphs one through twenty-six (1-26) are incorporated herein by reference as paragraph 27.

28. Upon information and belief, the contract between Asbury Woods LLC and the Developers was a valid, enforceable contract for construction of Asbury Woods Condominium.

29. Under the doctrine of implied contractual indemnity, the Developers breach of the contract shifts their contractual liability to Plaintiffs. *Zielinski v. Miller*, 277 Ill. App. 3d 735, 740 (3rd Dist. 1995).

30. There are latent defects to the common elements and individual units of the Asbury Woods Condominium including but not limited to the following:

- A. Windows leaks due, in part, to: sealant failures; no end damages and drip edge in the cap flashing; improper flashing;
- B. Balcony/Deck: improper installation and joist hangers; improper flashing; lack of lateral stability due to improper columns and improper attachment to deck framing; deck boards were warped and pulling off of floor joists; railings were improper;
- C. Foundation Settlement due to improper underpinning;
- D. Fence monuments lean due to improper underpinning;
- E. Asphalt pavement issues due to improper sub-base;
- F. Concrete forms and wood posts supporting the wood fence around the property were not topped off with sufficient concrete;

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G. Insufficient insulation in the ventilation in the attic crawl spaces.

31. The Plaintiffs and other purchasers of the units at Asbury Woods Condominium were unaware of the latent defects prior to purchasing the units.

32. The latent defects have interfered with the Plaintiffs and other purchasers of the units at Asbury Woods Condominium legitimate expectation that the structure be reasonably suited for its use as a residence.

33. As a direct and proximate result of Defendants breach, Plaintiffs have suffered damages.

WHEREFORE, Plaintiffs request that they be awarded damages against the Defendants as follows:

- A. Damages in an amount equal to the total cost of repair or replacement of the aforesaid defects;
- B. Fees of its engineers, contractors, and consultants incurred to evaluate and repair the above-referenced defective conditions;
- C. Costs of suit;
- D. Interest
- E. Such other relief this Court deems just and proper.

COUNT II
CONSTRUCTIVE FRAUD AGAINST ALL DEFENDANTS

34. Paragraphs one through twenty-six (1-26) are incorporated herein by reference as paragraph 34.

35. The Defendants intentional failures and omissions resulted in an intentional constructive fraud and intentional breach of trust, loyalty, and confidence.

36. The aforesaid acts or omissions resulted in the common elements and units being

constructed in a defective manner and the Association having to expend its own funds and address the defects of the Asbury Woods Condominium as identified herein.

37. As a direct and proximate result of the foregoing acts and omissions by the Developer and Asbury Woods LLC, the Association has been damaged in an amount equal to the amount of repairs necessary, including but not limited to the cost to remediate defects at Asbury Woods Condominium as identified herein.

38. That the conduct of the Defendants is outrageous and must not be condoned or permitted to continue. These acts were done with a complete disregard of the rights of the Plaintiffs and unit owners and the duties that were owed to Plaintiffs, as well as, the trust and loyalty that the Association and its members placed in the Defendants.

WHEREFORE, Plaintiffs request that they be awarded damages against the Defendants as follows:

- A. Damages in an amount equal to the total cost of repair or replacement of the aforesaid defects;
- B. Fees of its engineers, contractors, and consultants incurred to evaluate and repair the above-referenced defective conditions;
- C. Costs of suit;
- D. Interest
- E. Punitive Damages; and
- F. Such other relief this Court deems just and proper.

COUNT III
CONSUMER FRAUD AGAINST ALL DEFENDANTS

39. Paragraphs one through twenty-six (1-26) are incorporated herein by reference as paragraph 39.

40. The Plaintiffs assert a claim under the Illinois Consumer Fraud Act, 815 ILCS 505/2 ("CFA").

41. At all relevant times herein, § 505/2 of the CFA provides in part:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretenses, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with the intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practices described in Section 2 of the "Uniform Deceptive Trade Practices Act" . . . in the conduct of any trade or commerce, are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby

42. § 505/10(a) of the CFA provides in part that:

(a) Any person who suffers damage as a result of a violation of this Act committed by any other person may bring an action against such person. The court, in its discretion may award actual damages or any other relief which the court deems proper.

43. The Defendants committed one or more unfair and/or deceptive acts or practices in violation of the CFA by concealing or omitting that there were several latent defects in the construction of the common elements and units of Asbury Woods Condominium.

44. The concealment and omissions by the Defendants was false and misleading to the Plaintiffs and unit owners.

45. The Defendants intended that Plaintiffs and unit owners rely on their deception.

46. The Defendants, seller and Developers, committed the above-referenced unfair and/or deceptive acts or practices in the conduct of trade or commerce involving consumers and with the intent that prospective purchasers rely upon their misrepresentations, promotions, concealment, suppression, and/or omissions.

47. The misrepresentations, omissions, suppressions, and concealment as set forth herein involved the kind of important information purchaser would be expected to rely upon in making their decision to purchase a unit at Asbury Woods Condominium.

48. As a direct and proximate result of Defendants violation of the CFA, the Plaintiffs were damaged in that they had to pay for the repairs for the construction defects.

WHEREFORE, Plaintiffs request damages against Defendants as follows:

- A. Damages in an amount equal to the total cost of repair or replacement of the aforesaid defects;
- B. Fees of its engineers, contractors, and consultants incurred to evaluate and repair the above-referenced defective conditions;
- C. Costs of suit;
- D. Interest;
- E. Such other relief this Court deems just and proper.

COUNT IV
IMPLIED WARRANTY OF WORK DONE IN A
REASONABLY WORKMANLIKE MANNER AGAINST DEVELOPERS

49. Paragraphs one through twenty-six (1-26) are incorporated herein by reference as paragraph 49.

50. Upon information and belief, the contract between Asbury Woods LLC and the Developers was a valid, enforceable contract for construction.

51. Under the doctrine of implied contractual indemnity, the Developers' breach of contract shifts their contractual liability to Plaintiffs. *Zielinski v. Miller*, 277 Ill. App. 3d 735, 740 (3rd Dist. 1995).

52. In contracting to perform construction work, Developers made an implied

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warranty to perform the construction work in a reasonably workmanlike manner.

53. Developers breached the implied warranty to perform the construction work in a reasonably workmanlike manner by furnishing labor and materials that resulted in latent defects to the common elements and individual units at Asbury Woods Condominium, including but not limited to the following:

- A. Windows leaks due, in part, to: sealant failures; no end damages and drip edge in the cap flashing; improper flashing;
- B. Balcony/Deck: improper installation and joist hangers; improper flashing; lack of lateral stability due to improper columns and improper attachment to deck framing; deck boards were warped and pulling off of floor joists; railings were improper;
- C. Foundation Settlement due to improper underpinning;
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- E. Asphalt pavement issues due to improper sub-base;
- F. Concrete forms and wood posts supporting the wood fence around the property were not topped off with sufficient concrete;
- G. Insufficient insulation in the ventilation in the attic crawl spaces.

54. As a direct and proximate result of Defendants breach, Plaintiffs have suffered damages.

WHEREFORE, Plaintiffs request damages against Developers as follows:

- A. Damages in an amount equal to the total cost of repair or replacement of the aforesaid defects;
- B. Fees of its engineers, contractors, and consultants incurred to evaluate and

repair the above-referenced defective conditions;

- C. Costs of suit;
- D. Interest;
- E. Such other relief this Court deems just and proper.

ASBURY WOODS CONDOMINIUM
ASSOCIATION, and BOARD OF
DIRECTORS OF ASBURY WOODS
CONDOMINIUM ASSOCIATION
Plaintiffs,

By: /s/ Bradley K. Staubus
One of their attorneys

Bradley K. Staubus
Delia Di Venere
ESPOSITO & STAUBUS LLP
7055 Veterans Blvd., Unit B
Burr Ridge, IL 60527
(312) 346-2766
Attorney #: 42935

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SUMMONS

ALIAS - SUMMONS

(2/18/11) CCG N001

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

ASBURY WOODS CONDO

v.

LENNAR COMMUNITIES

(Name all parties)

No. 2014-L-006620

Defendant Address:

LENNAR COMMUNITIES
208 S. LASALLE STREET
STE 814
CHICAGO, IL 60604

Summons

To each Defendant:

SUMMONS

ALIAS - SUMMONS

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, and pay the required fee, in the Office of the Clerk of this Court at the following location:

Richard J. Daley Center, 50 W. Washington, Room 801, Chicago, Illinois 60602

District 2 - Skokie
5600 Old Orchard Rd.
Skokie, IL 60077

District 3 - Rolling Meadows
2121 Euclid
Rolling Meadows, IL 60008

District 4 - Maywood
1500 Maybrook Ave.
Maywood, IL 60153

District 5 - Bridgeview
10220 S. 76th Ave.
Bridgeview, IL 60455

District 6 - Markham
16501 S. Kedzie Pkwy.
Markham, IL 60426

Child Support
28 North Clark St., Room 200
Chicago, Illinois 60602

You must file within 30 days after service of this Summons, not counting the day of service.

IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF REQUESTED IN THE COMPLAINT.

To the officer:

This Summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this Summons shall be returned so endorsed. This Summons may not be served later than 30 days after its date.

Atty. No.: 42935
Name: BRADLEY K. STAUBUS MR.
Atty. for: ASBURY WOODS CONDO
Address: 7055 VETERANS BLVD., UNIT B
City/State/Zip: BURR RIDGE, IL 60527
Telephone: (312) 346-2766

WITNESS, Friday, 20 June 2014



Date of service: _____

(To be inserted by officer on copy left with defendant or other person)

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(Area Code) (Facsimile Telephone Number)

/s/ DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 COUNTY DEPARTMENT, LAW DIVISION

ASBURY WOODS CONDO

No. 2014-L-006620

v.

(Name all parties)

CONCORD HOMES

Defendant Address:

CONCORD HOMES
 208 S. LASALLE STREET
 SUITE 814
 CHICAGO, IL 60604

Summons

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 COUNTY DEPARTMENT, LAW DIVISION

ASBURY WOODS CONDO

v.

LENNAR COPORATION

(Name all parties)

No. 2014-L-006620

Defendant Address:
 LENNAR COPORATION
 1200 SOUTH PINE ISLAND ROAD
 PLANTATION, FL 33324

Summons

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 Atty. for: ASBURY WOODS CONDO
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ASBURY WOODS CONDO

v.

ASBURY WOODS LLC

(Name all parties)

No. 2014-L-006620

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 208 S. LASALLE STREET
 SUITE 814
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ASBURY WOODS CONDO

(Name all parties)

No. 2014-L-006620

v.

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