

VENUE

6. Venue is proper in Denver County because one or more defendants is a resident of Denver County. C.R.C.P. 98(c).

GENERAL ALLEGATIONS

Background

7. William Gannon Sungar and Elizabeth Deborah Sungar (“**the Sungars**”) saw an advertisement for the sale of real property located at 758 S. Logan Street, Denver, Colorado 80209 (“**the Property**”).

8. According to the advertisement, the Property was a “stunning renovation” by Keith Nylund, who hosts an HGTV show called “Raise the Roof.” The public advertisement asserted that the Property contained a “Cozy Finished Basement” and “New Plumbing . . . [and] HVAC.”

9. Based on the advertisement and the representations of Mr. Nylund regarding himself, his company, and his HGTV show, the Sungars looked into purchasing the Property.

10. On April 8, 2016, the Sungars signed a contract with KGN INC to purchase the Property.

11. On April 12, 2016, Nylund signed a “Seller’s Property Disclosure” that represented that there were no current or prior “[m]oisture and/or water problems” with the Property and that there were no “Plumbing Problems.”

12. The purchase contract was subsequently assigned only to Mr. Sungar.

13. In reliance on the representations made by Defendants, including Defendants’ advertisement and “Seller’s Property Disclosure” signed by Mr. Nylund, Mr. Sungar purchased the Property on May 26, 2016.

The Sungars discover mold in and other problems with the Property

14. Less than three weeks after purchasing the Property, the Sungars discovered large-scale mold growth in the basement of the Property.

15. The Sungars had the mold professionally cleaned, but it returned shortly afterward.

16. The Sungars hired various experts to examine the Property. They discovered additional mold and determined that there were long-standing moisture and mold problems with the Property.

17. Shortly after moving into the Property, the Sungars also discovered that the water heater did not function correctly.

18. The Sungars hired a plumbing and heating specialist and discovered that the water heater had not been installed correctly.

19. The Sungars also discovered that the furnace and the AC units in the Property were defectively installed.

20. Because of the mold and other problems, the Sungars were forced to move themselves and their two small children out of the Property for just over three months.

21. As of the date of the filing of this Complaint, the Sungars have incurred tens of thousands of dollars in expenses attempting to remedy the undisclosed defects and problems with the Property and will be required to expend even more funds to finish the remediation process.

The Sungars learn about Defendants' history with the Property

22. KGN LLC purchased the Property on July 7, 2015, with the intent to renovate and sell the Property.

23. Upon information and belief, the previous owner of the Property experienced significant flooding in the basement of the Property and, as a result, Defendants were able to purchase the Property at a discount.

24. Upon information and belief, Defendants knew of the flooding in the Property.

25. During Defendants' renovation of the Property, the Property experienced another flood event, which was clearly documented in Defendants' television show, "Raise the Roof," on Season 1, Episode 2, "Third Floor's a Charm?," which premiered after July 21, 2016.

26. As recorded on his television show, Nylund witnessed this flooding first hand—he is shown on camera inspecting the water damage in the basement and heard stating, "I've run into a water leak that could add weeks to the project."

27. The Sungars learned about the flooding after they purchased the Property by watching the episode of Nylund's HGTV show in which the Property was featured.

28. Defendants also installed new sod and a sprinkler system at the Property, but failed to install proper drainage.

29. Defendants extensively watered the new sod, causing undrained excess water to leak into the basement area and to exacerbate the moisture problems in the Property.

The Sungars attempt to resolve the dispute with Defendants

30. The Sungars met with and exchanged messages with Nylund in an effort to resolve their dispute. But Nylund refused to remedy the problems with the Property.

31. The Sungars provided Defendants with written notice of the defects in the Property by certified mail on November 28, 2016.

32. Defendants did not respond to the letter.

33. The Sungars have incurred (and continue to incur) legal fees, inspection fees, and construction costs to remedy the undisclosed defects in the Property.

34. KGN INC is the alter ego of Nylund or KGN LLC or both, given that Defendants have not respected corporate formalities and have treated the assets of one as the assets of all.

COUNT ONE

(Violation of the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101 *et seq.*)

35. The Sungars re-allege and incorporate the allegations set forth in the preceding paragraphs.

36. Defendants knowingly made false representations as to the characteristics of the Property in violation of Colo. Rev. Stat. § 6-1-105(e).

37. Defendants represented that the Property was of a particular standard, quality, or grade when it knew or should have known it was of another in violation of Colo. Rev. Stat. § 6-1-105(g).

38. Defendants advertised the Property with the intent not to sell it as advertised in violation of Colo. Rev. Stat. § 6-1-105(i).

39. Defendants knowingly failed to identify the Property as flood-damaged or water-damaged in violation of Colo. Rev. Stat. § 6-1-105(o).

40. Defendants failed to disclose material information concerning the Property, which information was known at the time of an advertisement or sale, and such failure to disclose such information was intended to induce the Sungars to enter into the purchase contract in violation of Colo. Rev. Stat. § 6-1-105(u).

41. Defendants' violations significantly impacted the public as actual and/or potential consumers of their goods, services, and/or property. Alternatively, on information and belief, Defendants engaged in violations of the Colorado Consumer Protection Act substantially similar to those described above in transactions with other consumers.

42. Defendants' actions in violation of the Colorado Consumer Protection Act constituted bad faith conduct and caused the Sungars' injuries, damages, and losses, entitling them to their actual damages and other recoveries allowed under the law, including three times the amount of their actual damages, plus costs and attorney's fees pursuant to Colo. Rev. Stat. § 6-1-113.

COUNT TWO

(Fraud)

43. The Sungars re-allege and incorporate the allegations set forth in the preceding paragraphs.

44. Defendants fraudulently induced the Sungars to enter the purchase contract.

45. Defendants made one or more false representations regarding the Property, or their representations regarding the Property were made with a reckless disregard of their truth or falsity.

46. Defendants knew that their representations regarding the Property were false, or Defendants were utterly indifferent to the truth or falsity of their representations.

47. Defendants concealed the true nature of the Property when it should in equity and good conscience have been disclosed.

48. Defendants knew they were concealing a material fact that in equity and good conscience they should disclose.

49. The Sungars were ignorant of the falsity of Defendants' representations and the existence of the facts Defendants concealed.

50. Defendants' representations and concealments were done with the intention that they be acted upon.

51. The Sungars relied on the representations and, ignorant of the true nature of the concealed facts, acted to their detriment.

52. The Sungars' actions on the representations and concealments resulted in damage to the Sungars in an amount to be proven at trial.

53. As a result of Defendants' fraudulent inducement, the Sungars are entitled to rescind the purchase contract and have returned to them all amounts they paid under the purchase contract or to recover damages resulting from the fraud.

54. As a result of Defendants' fraudulent inducement, the Sungars are entitled to their out-of-pocket damages and all legal damages they have suffered.

COUNT THREE

(Breach of Contract)

55. The Sungars re-allege and incorporate the allegations set forth in the preceding paragraphs.

56. Mr. Sungar and Defendants entered into the purchase contract.

57. Mr. Sungar performed all of his duties under the terms of the purchase contract.

58. Colorado law implies a covenant of good faith and fair dealing in every contract and requires that neither party to a contract act to impair the right of the other to receive the full benefits that flow from their contractual relationship.

59. Defendants' conduct, as set forth herein, constitutes a breach of the implied covenant of good faith and fair dealing, in that Defendants have deprived Mr. Sungar of his reasonably expected bargain.

60. Defendants failed to perform their duties under the purchase contract by, among other things, failing to deliver the real property they represented they were selling.

61. Defendants' conduct constitutes a breach of the purchase contract.

62. As a result of Defendants' breach, Mr. Sungar has suffered damages in an amount to be proven at trial.

COUNT FOUR
(Unjust Enrichment)

63. The Sungars re-allege and incorporate the allegations set forth in the preceding paragraphs.

64. As set forth above, the Sungars paid for the Property with the understanding that there were no mold, moisture, water heater, and HVAC problems with the Property.

65. Defendants received the Sungars' payment for the Property.

66. The Sungars have been unjustly impoverished by making payment to Defendants for, but not receiving, a defect-free and mold-free home.

67. Defendants have been unjustly enriched in an amount to be proven at trial.

COUNT FIVE
(Negligence)

68. The Sungars re-allege and incorporate the allegations set forth in the preceding paragraphs.

69. Defendants owed an independent and non-delegable duty to the Sungars to exercise care in performing construction work on the Property.

70. Defendants owed an independent and non-delegable duty to the Sungars to ensure their employees, agents, and subcontractors meet the reasonable and accepted standards for knowledge, skill, and care of prudent contractors working at the time and under the same or similar circumstances such that foreseeable damage and loss would be prevented.

71. Defendants breached their duties to the Sungars by failing to hire and supervise subcontractors to act consistently with the standards for knowledge, skill, and reasonable care expected of prudent contractors working at the time and under the same or similar circumstances such that foreseeable damage would be prevented.

72. The Sungars' damages were caused by, and are a direct and proximate result of, the negligence of Defendants, their employees, their agents, and their subcontractors.

73. As a result of Defendants' breach, the Sungars have sustained the damages and injuries described above, including but not limited to actual monetary damages in an amount to be proven at trial.

WHEREFORE, the Sungars request:

A. An award of treble damages, costs, and attorney's fees incurred as a result of Defendants' violation of the Colorado Consumer Protection Act;

B. Rescission of the purchase contract and return to the Sungars of any payments under the purchase contract, or damages resulting from Defendants fraudulently inducing the Sungars to enter into the purchase contract;

C. An award of their damages incurred as a result of Defendants' breach of contract;

D. An award of their damages incurred as a result of Defendants' unjust enrichment;

E. An award of damages equal to all compensatory damages suffered by the Sungars, including but not limited to diminution in the value of the Property and/or the costs of remediating the Property;

F. An award of pre- and post-judgment interest on the foregoing sums at the highest interest rate allowable at law, until paid in full; and

G. Such other and further relief as the Court may deem appropriate.

JURY DEMAND

Plaintiffs request a jury trial on all claims triable to a jury.

Dated this 28th day of December, 2016.

CHIPMAN GLASSER, LLC

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