

OFFICE OF THE CIRCUIT CLERK

RECEIPT #: 31533

POCAHONTAS
900 D TENTH AVENUE
MARLINTON

DATE RECEIVED: 08/13/2014

RECEIVED FROM: BOWLES RICE- K. WEBB

TOTAL: \$200.00

STYLE OF CASE
BLACK BEAR CROSSING TOWN HOUSE ASSOCIATI
VS.
BLACK BEAR CROSSING, LLC

CASE #: 14-C-32

IN PAYMENT OF FILING FEES
BY Check 251109

CONNIE M. CARR
CLERK OF THE CIRCUIT COURT

BY CMC/DA

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

BLACK BEAR CROSSING TOWN HOUSE
ASSOCIATION, LLC, a West Virginia limited
liability company and on behalf of two (2)
or more unit owners,

Plaintiff,

v.

Civil Action No.: 14-C-32(RB)

BLACK BEAR CROSSING, LLC,
a terminated West Virginia limited liability company,
GKS DEVELOPMENT, LLC, a foreign corporation,
THOMAS C. SELLS, III, BRIAN KREIDER,
MATTHEW GLOD, JAMISON DESIGN, LLC,
a foreign corporation, TYGARTS VALLEY
CONSTRUCTION, INC., a West Virginia corporation,
and TREVE PAINTER,

Defendants.

To the above named Defendant: Black Bearing Crossing, LLC
c/o GKS Development, LLC
1899 Retreat Road
Boones Mill, Virginia 24065

SUMMONS

IN THE NAME OF THE STATE OF WEST VIRGINIA:

You are hereby summoned and required to serve upon Kenneth E. Webb, Jr., Plaintiffs' attorney, whose address is 600 Quarrier Street, Post Office Box 1386, Charleston, West Virginia 25325-1386, an answer, including any related counterclaim you may have, to the Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer to the Complaint within thirty (30) days after service of this Summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred for asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: 8/13/14

Circuit Clerk

Cmc/bua
Deputy Clerk

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

BLACK BEAR CROSSING TOWN HOUSE
ASSOCIATION, LLC, a West Virginia limited
liability company and on behalf of two (2)
or more unit owners,

Plaintiff,

v.

Civil Action No.: 14-C-32 (AR)

BLACK BEAR CROSSING, LLC,
a terminated West Virginia limited liability company,
GKS DEVELOPMENT, LLC, a foreign corporation,
THOMAS C. SELLS, III, BRIAN KREIDER,
MATTHEW GLOD, JAMISON DESIGN, LLC,
a foreign corporation, TYGARTS VALLEY
CONSTRUCTION, INC., a West Virginia corporation,
and TREVE PAINTER,

Defendants.

To the above named Defendant: GKS Development, LLC
c/o Thomas Sells, III
1899 Retreat Road
Boones Mill, Virginia 24065

SUMMONS

IN THE NAME OF THE STATE OF WEST VIRGINIA:

You are hereby summoned and required to serve upon Kenneth E. Webb, Jr., Plaintiffs' attorney, whose address is 600 Quarrier Street, Post Office Box 1386, Charleston, West Virginia 25325-1386, an answer, including any related counterclaim you may have, to the Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer to the Complaint within thirty (30) days after service of this Summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred for asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: 8/13/14

Circuit Clerk

Cmc 1007
Deputy Clerk

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

BLACK BEAR CROSSING TOWN HOUSE
ASSOCIATION, LLC, a West Virginia limited
liability company and on behalf of two (2)
or more unit owners,

Plaintiff,

v.

Civil Action No.: 14-C-32 (RR)

BLACK BEAR CROSSING, LLC,
a terminated West Virginia limited liability company,
GKS DEVELOPMENT, LLC, a foreign corporation,
THOMAS C. SELLS, III, BRIAN KREIDER,
MATTHEW GLOD, JAMISON DESIGN, LLC,
a foreign corporation, TYGARTS VALLEY
CONSTRUCTION, INC., a West Virginia corporation,
and TREVE PAINTER,

Defendants.

To the above named Defendant: Thomas C. Sells, III
1899 Retreat Road
Boones Mill, Virginia 24065

SUMMONS

IN THE NAME OF THE STATE OF WEST VIRGINIA:

You are hereby summoned and required to serve upon Kenneth E. Webb, Jr., Plaintiffs' attorney, whose address is 600 Quarrier Street, Post Office Box 1386, Charleston, West Virginia 25325-1386, an answer, including any related counterclaim you may have, to the Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer to the Complaint within thirty (30) days after service of this Summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred for asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: 8/13/14

Circuit Clerk

Cmclova
Deputy Clerk

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

BLACK BEAR CROSSING TOWN HOUSE
ASSOCIATION, LLC, a West Virginia limited
liability company and on behalf of two (2)
or more unit owners,

Plaintiff,

v.

Civil Action No.: 14-C-32 (RR)

BLACK BEAR CROSSING, LLC,
a terminated West Virginia limited liability company,
GKS DEVELOPMENT, LLC, a foreign corporation,
THOMAS C. SELLS, III, BRIAN KREIDER,
MATTHEW GLOD, JAMISON DESIGN, LLC,
a foreign corporation, TYGARTS VALLEY
CONSTRUCTION, INC., a West Virginia corporation,
and TREVE PAINTER,

Defendants.

To the above named Defendant: Brian Kreider
Post Office Box 845
Hardy, VA 24101

SUMMONS

IN THE NAME OF THE STATE OF WEST VIRGINIA:

You are hereby summoned and required to serve upon Kenneth E. Webb, Jr., Plaintiffs' attorney, whose address is 600 Quarrier Street, Post Office Box 1386, Charleston, West Virginia 25325-1386, an answer, including any related counterclaim you may have, to the Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer to the Complaint within thirty (30) days after service of this Summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred for asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: 8/13/14

Circuit Clerk

cmclout
Deputy Clerk

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

BLACK BEAR CROSSING TOWN HOUSE
ASSOCIATION, LLC, a West Virginia limited
liability company and on behalf of two (2)
or more unit owners,

Plaintiff,

v.

Civil Action No.: 14-C-32 (RA)

BLACK BEAR CROSSING, LLC,
a terminated West Virginia limited liability company,
GKS DEVELOPMENT, LLC, a foreign corporation,
THOMAS C. SELLS, III, BRIAN KREIDER,
MATTHEW GLOD, JAMISON DESIGN, LLC,
a foreign corporation, TYGARTS VALLEY
CONSTRUCTION, INC., a West Virginia corporation,
and TREVE PAINTER,

Defendants.

To the above named Defendant: Matthew Glod
223 Point Drive
Hardy, VA 24101-3991

SUMMONS

IN THE NAME OF THE STATE OF WEST VIRGINIA:

You are hereby summoned and required to serve upon Kenneth E. Webb, Jr., Plaintiffs' attorney, whose address is 600 Quarrier Street, Post Office Box 1386, Charleston, West Virginia 25325-1386, an answer, including any related counterclaim you may have, to the Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer to the Complaint within thirty (30) days after service of this Summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred for asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: 8/13/14

Circuit Clerk

Cmclou
Deputy Clerk

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

BLACK BEAR CROSSING TOWN HOUSE
ASSOCIATION, LLC, a West Virginia limited
liability company and on behalf of two (2)
or more unit owners,

Plaintiff,

v.

Civil Action No.: 14-C-32 (RA)

BLACK BEAR CROSSING, LLC,
a terminated West Virginia limited liability company,
GKS DEVELOPMENT, LLC, a foreign corporation,
THOMAS C. SELLS, III, BRIAN KREIDER,
MATTHEW GLOD, JAMISON DESIGN, LLC,
a foreign corporation, TYGARTS VALLEY
CONSTRUCTION, INC., a West Virginia corporation,
and TREVE PAINTER,

Defendants.

To the above named Defendant: Jamison Design, LLC
52 Jamison Farm Lane
Troutville, Virginia 24175

SUMMONS

IN THE NAME OF THE STATE OF WEST VIRGINIA:

You are hereby summoned and required to serve upon Kenneth E. Webb, Jr., Plaintiffs' attorney, whose address is 600 Quarrier Street, Post Office Box 1386, Charleston, West Virginia 25325-1386, an answer, including any related counterclaim you may have, to the Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer to the Complaint within thirty (30) days after service of this Summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred for asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: 8/13/14

Circuit Clerk

Amclou
Deputy Clerk

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

BLACK BEAR CROSSING TOWN HOUSE
ASSOCIATION, LLC, a West Virginia limited
liability company and on behalf of two (2)
or more unit owners,

Plaintiff,

v.

Civil Action No.: 14-C-32(RR)

BLACK BEAR CROSSING, LLC,
a terminated West Virginia limited liability company,
GKS DEVELOPMENT, LLC, a foreign corporation,
THOMAS C. SELLS, III, BRIAN KREIDER,
MATTHEW GLOD, JAMISON DESIGN, LLC,
a foreign corporation, TYGARTS VALLEY
CONSTRUCTION, INC., a West Virginia corporation,
and TREVE PAINTER,

Defendants.

To the above named Defendant: Tygarts Valley Construction, Inc.
c/o James Weese
Post Office BOX 70
Slatyfork, WV 26291

SUMMONS

IN THE NAME OF THE STATE OF WEST VIRGINIA:

You are hereby summoned and required to serve upon Kenneth E. Webb, Jr., Plaintiffs' attorney, whose address is 600 Quarrier Street, Post Office Box 1386, Charleston, West Virginia 25325-1386, an answer, including any related counterclaim you may have, to the Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer to the Complaint within thirty (30) days after service of this Summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred for asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: 8/13/14

Circuit Clerk

Cmc/bur
Deputy Clerk

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

BLACK BEAR CROSSING TOWN HOUSE
ASSOCIATION, LLC, a West Virginia limited
liability company and on behalf of two (2)
or more unit owners,

Plaintiff,

v.

Civil Action No.: 14-C-321RA

BLACK BEAR CROSSING, LLC,
a terminated West Virginia limited liability company,
GKS DEVELOPMENT, LLC, a foreign corporation,
THOMAS C. SELLS, III, BRIAN KREIDER,
MATTHEW GLOD, JAMISON DESIGN, LLC,
a foreign corporation, TYGARTS VALLEY
CONSTRUCTION, INC., a West Virginia corporation,
and TREVE PAINTER,

Defendants.

To the above named Defendant: Treve Painter
Post Office Box 1
Slatyfork, WV 26291

SUMMONS

IN THE NAME OF THE STATE OF WEST VIRGINIA:

You are hereby summoned and required to serve upon Kenneth E. Webb, Jr., Plaintiffs' attorney, whose address is 600 Quarrier Street, Post Office Box 1386, Charleston, West Virginia 25325-1386, an answer, including any related counterclaim you may have, to the Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer to the Complaint within thirty (30) days after service of this Summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred for asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: 8/13/14

Circuit Clerk

Cmc/DA
Deputy Clerk

IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

BLACK BEAR CROSSING TOWN HOUSE
ASSOCIATION, LLC, a West Virginia limited
liability company and on behalf of two (2)
or more unit owners,

Plaintiff,

v.

Civil Action No.:

14-C-32(AA)

BLACK BEAR CROSSING, LLC,
a terminated West Virginia limited liability company,
GKS DEVELOPMENT, LLC, a foreign corporation,
THOMAS C. SELLS, III, BRIAN KREIDER,
MATTHEW GLOD, JAMISON DESIGN, LLC,
a foreign corporation, TYGARTS VALLEY
CONSTRUCTION, INC., a West Virginia corporation,
and TREVE PAINTER,

Defendants.

COMPLAINT

COMES NOW Plaintiff, Black Bear Crossing Town House Association, LLC
(hereinafter the "Homeowners Association"), by counsel, and for their Complaint unto this
Honorable Court states as follows:

Nature of Action

1. This action arises from the defective design, negligent construction and
poor workmanship of common elements, limited common elements and/or condominium units
by one or more of the Defendants for the Homeowner Association and the various condominium
unit owners who collectively make up the Homeowner Association. Plaintiff, on behalf of itself
and two or more condominium unit owners, seeks damages -- including incidental and

POCAHONTAS COUNTY
CIRCUIT FAMILY COURT
RECEIVED 8/13/14
By: cmcloun

consequential damages -- from Defendants based upon Defendants' breach of contract, breach of implied warranty, negligent development, and negligence.

The Parties

2. Plaintiff, Homeowner Association is a West Virginia limited liability company with its principal place of business at Snowshoe Mountain, Pocahontas County, West Virginia.

3. Defendant, Black Bear Crossing, LLC ("BBC, LLC"), was a West Virginia limited liability company, which listed its principal office address at Post Office Box 389, Boones Mill, Virginia 24065. The West Virginia Secretary of State terminated BBC, LLC on April 12, 2012.

4. Defendant, GKS Development, LLC ("GKS Development"), is a Virginia limited liability company which listed its principal office address at 1899 Boones Mill, Virginia, 24065 and was authorized to do business in West Virginia,. The West Virginia Secretary of State terminated GKS Development's authorization to do business in West Virginia on June 13, 2012.

5. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that GKS Development was a member of BBC, LLC.

6. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that defendant, Thomas C. Sells, III ("Mr. Sells"), is a resident of Roanoke County, Virginia.

7. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that defendant, Brian Kreider (“Mr. Kreider”), is a resident of Roanoke County, Virginia.

8. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that defendant, Matthew Glod (“Mr. Glod”), is a resident of Roanoke County, Virginia.

9. Defendant, Jamison Design, LLC (“Jamison Design”), is a Virginia limited liability company with its principal place of business located at 52 Jamison Farm Lane, Troutville, Virginia.

10. Defendant, Tygarts Valley Construction, Inc. (“Tygarts”), is a West Virginia corporation with its principal place of business located at 1 Fassifern Fields, Salty Fork, West Virginia.

11. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that defendant, Treve Painter (“Mr. Painter”), is a resident of Pocahontas County, West Virginia.

Jurisdiction and Venue

12. Jurisdiction and venue in this action are appropriate in the Circuit Court of Pocahontas County.

Operative Facts

13. On or around June 2, 2004, Mr. Sells, Mr. Kreider and Mr. Glod formed GKS Development, an organization specializing in land development.

14. On or around September 17, 2007, GKS Developments along with Mr. Sells, Mr. Kreider and Mr. Glod formed BBC, LLC.

15. The members of BBC, LLC declared its purpose as “sale and development of real estate including the construction of commercial buildings.”

16. Sometime prior to January 15, 2008, GKS Developments purchased a 4.2 acre parcel situated at the Snowshoe Mountain Resort in Edray Tax District of Pocahontas County.

17. On or around January 15, 2008, GKS Developments transferred its deed to the 4.2 acre parcel situated at the Snowshoe Mountain Resort in Edray Tax District of Pocahontas County to BBC, LLC for the development and creation of Black Bear Crossing, a common interest ownership community made up of the common elements, limited common elements and condominium units.

18. Jamison Design served as architect for Black Bear Crossing.

19. As architect, Jamison Design was charged with developing thermal and moisture protections for the common elements, limited common elements and condominium units at Black Bear Crossing.

20. BBC, LLC contracted with Tygarts to construct the units at Black Bear Crossing according to the plans of Jamison Design.

21. Tygarts subcontracted the roofing work at Black Bear Crossing to Mr. Painter.

22. Sometime between 2007 and 2008, Tygarts and Mr. Painter completed the construction on Black Bear Crossing.

23. Beginning in 2008, First Tracts Real Estate began negotiating purchase agreements between potential condominium owners and BBC, LLC for condominium units at Black Bear Crossing.

24. Beginning in 2008, the first unit owners moved in and began residing in the condominiums at Black Bear Crossing.

25. By Declaration effective June 2, 2008, BBC, LLC officially created the common interest ownership condominium called Black Bear Crossing.

26. This Declaration required BBC, LLC to form the Homeowners Association.

27. The Homeowner Association exists to, among other things, (i) manage operate, insure, improve, repair, replace and maintain Common Elements; (ii) to provide certain facilities, service and other benefits of the Owners; and (iii) to take any action that it deems necessary or appropriate to protect the general welfare of Owners.

28. By statute and declaration, the Homeowner Association may, *inter alia*, institute litigation in its own name on behalf of itself and on behalf of two (2) or more unit owners on matters affecting the common interest community.

29. Recently, the Homeowner Association discovered that the common elements, limited elements and condominium units that make up Black Bear Crossing were designed and constructed in a negligent fashion.

30. Recently, the Homeowner Association discovered that the common elements, limited common elements and condominium units that make up Black Bear Crossing were not designed or constructed in compliance with the standards of care owed by the architect, developer, contractor and sub-contractor.

31. Recently, the Homeowner Association discovered that the common elements, limited common elements and condominium units that make up Black Bear Crossing were not designed or constructed in accordance with applicable building codes.

32. The common elements, limited common elements and condominium units that make up Black Bear Crossing uniformly suffer from an inadequate design and poor workmanship during construction.

33. The inadequate design and poor workmanship has led to failure of major building components including, but not limited to, the crawl spaces, basements, roofing, and attics.

34. The inadequate design and poor workmanship has led to moisture problems, mold growth, weakened structural materials, penetration of the building envelope and

created inhabitable conditions for the common elements, limited common elements and condominium units at Black Bear Crossing.

35. The inadequate design and poor workmanship of the common elements, limited common elements, and condominium units has damaged the Homeowner Association and its unit owners.

36. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that there is a unity of interest and ownership between BBC, LLC, GKS Development, Mr. Sells, Mr. Kreider and Mr. Glod so that the separate personalities of BBC, LLC and its members no longer exist.

37. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that BBC, LLC possessed inadequate capitalization when it began development of Black Bear Crossing so that an inequitable result will occur in this matter if BBC, LLC's corporate veil is not pierced.

COUNT I - Breach of Contract and Implied Covenant of Good Faith and Fair Dealing against BBC, LLC

38. The Homeowner Association realleges each and every allegation set out in paragraphs 1 through 37 of this Complaint as if set out fully herein.

39. The Homeowner Association and its unit owners contracted with BBC, LLC for the purchase of common elements, limited common elements and condominium units suitable for residential and recreational use in and around Snowshoe, West Virginia.

40. The Homeowner Association and its unit owners fully performed all their obligations in these contract relationships.

41. The First Tracts Real Estate Purchase Agreements also contained an implied covenant of good faith and fair dealing. Implicit in this implied covenant is that BBC, LLC would fully disclose any and all defects concerning the common elements, limited common elements and condominium units at Black Bear Crossing.

42. BBC, LLC breached their obligations under the contract and implied covenant of good faith and fair dealing by providing the Homeowner Association and its unit owners with common elements, limited common elements and condominiums with a defective design and poor workmanship.

43. BBC, LLC's failure to satisfy their contractual obligations were so important and central to the contract, their failure defeated the very purpose the Homeowner Association and its unit owners entered into the contracts.

44. As a foreseeable, direct and proximate cause of BBC, LLC's breach of contracts and their breach of the implied covenant of good faith and fair dealing, the Homeowner Association and its unit owners have suffered damages.

**COUNT II - Breach of Implied Warranty of Habitability, Fitness and/or Quality
against BBC, LLC**

45. The Homeowner Association realleges each and every allegation set out in paragraphs 1 through 44 of this Complaint as if set out fully herein.

46. BBC, LLC owed an implied warranty of habitability, fitness and/or quality to the Homeowner Association and its unit owners that the common elements, limited common elements and condominium units that were:

- a) suitable for the ordinary uses of real estate of the type contracted for;
- b) free from defective materials;
- c) constructed in accordance with applicable law, engineering and construction standards; and
- d) constructed in a workmanlike manner.

47. BBC, LLC breached its implied warranty of habitability, fitness and/or quality by failing to provide Homeowner Association and its unit owners with common elements, limited common elements and condominium units that were:

- a) suitable for the ordinary uses of real estate of the type contracted for;
- b) free from defective materials;
- c) constructed in accordance with applicable law, engineering and construction standards; and
- d) constructed in a workmanlike manner.

48. As a foreseeable, direct and proximate cause of BBC, LLC's breach of the implied warranty of fitness, habitability and/or quality, the Homeowner Association and its unit owners have suffered damages.

Count III - Negligent Development against BBC, LLC

49. The Homeowner Association realleges each and every allegation set out in paragraphs 1 through 48 of this Complaint as if set out fully herein.

50. As developer of Black Bear Crossing and declarant, BBC, LLC owed prospective purchasers of condominium units at Black Bear Crossing a duty of care to see that the common elements, limited common elements and condominium units that were:

- a) suitable for the ordinary uses of real estate of the type contracted for;
- b) free from defective materials;
- c) constructed in accordance with applicable law, engineering and construction standards; and
- d) constructed in a workmanlike manner.

51. BBC, LLC breached the duty of care owed by failing to provide the Homeowner Association and its unit owners with common elements, limited common elements and condominium units that were:

- a) suitable for the ordinary uses of real estate of the type contracted for;
- b) free from defective materials;
- c) constructed in accordance with applicable law, engineering and construction standards; and
- d) constructed in a workmanlike manner.

52. BBC, LLC's failure constitutes negligent development of Black Bear Crossing.

53. As a foreseeable, direct and proximate cause of BBC, LLC's negligent development, the Homeowner Association and its unit owners have suffered damages.

COUNT IV - Piercing the Corporate Veil of BBC, LLC

54. The Homeowner Association realleges each and every allegation set out in paragraphs 1 through 53 of this Complaint as if set out fully herein.

55. West Virginia Code § 31B-3-303 permits the equitable remedy of piercing the corporate veil to be asserted against a West Virginia limited liability company.

56. BBC, LLC is a former West Virginia limited liability company that filed for termination on April 12, 2012.

57. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that there is a unity of interest and ownership between BBC, LLC, GKS Development, Mr. Sells, Mr. Kreider and Mr. Glod so that the separate personalities of BBC, LLC and its members no longer exist.

58. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that BBC, LLC possessed inadequate capitalization when it began development of Black Bear Crossing so that an inequitable result will occur in this matter if BBC, LLC's corporate veil is not pierced.

59. Upon information and belief, the Homeowner Association is informed, believes and therefore avers that BBC, LLC's members, GKS Development, Mr. Sells, Mr. Kreider, and Mr. Glod, knew, or should have known, of BBC, LLC's inadequate capitalization, so that a unity of interest and ownership existed between the members of BBC, LLC and BBC, LLC.

60. As a foreseeable, direct and proximate cause of GKS Development, Mr. Sells, Mr. Kreider, and Mr. Glod's abuse of the corporate form of BBC, LLC, the Homeowner Association and its unit owners have suffered damages.

61. Fraud, injustice or an inequitable result will occur if the corporate veil of BBC, LLC was not pierced.

COUNT V - Negligence against Tygarts and Mr. Painter

62. The Homeowner Association realleges each and every allegation set out in paragraphs 1 through 61 of this Complaint as if set out fully herein.

63. From 2007 through 2008, Tygarts and Mr. Painter provided work, construction and renovation services to Black Bear Crossing.

64. Tygarts and Mr. Painter had a duty to perform all this work in a reasonably prudent manner.

65. Tygarts and Mr. Painter breached this duty by failing to perform this work in this manner.

66. As a foreseeable, direct and proximate cause of Tygarts and Mr. Painter's breach of duty and negligent work, the Homeowner Association and its unit owners have suffered damages.

COUNT VI - Professional Negligence against Jamison Design

67. The Homeowner Association realleges each and every allegation set out in paragraphs 1 through 66 of this Complaint as if set out fully herein.

68. As architect of Black Bear Crossing, Jamison Design owed the Homeowner Association and its unit owners a duty of care to render its professional services with the ordinary skill, care and diligence commensurate with that rendered by members of his or her profession in the same or similar circumstances.

69. Jamison Design breached the duty of care owed to the Homeowner Association and its unit owners and was professionally negligent by failing to adequately design and engineer Black Bear Crossing.

70. As a foreseeable direct and proximate cause of Jamison Design's professional negligence, the Homeowner Association and its unit owners have suffered damages.

COUNT VII - Joint Venture

71. The Homeowner Association realleges each and every allegation set out in paragraphs 1 through 70 of this Complaint as if set out fully herein.

72. Defendants have associated for the purpose of developing, constructing and selling residential condominium units at Black Bear Crossing.

73. By associating, Defendants have combined their property, money, profit, skill and knowledge in an attempt to carry out a single business enterprise for profit.

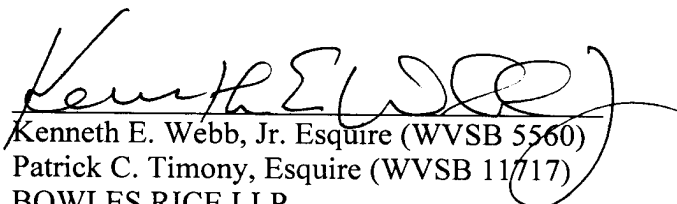
74. As a foreseeable, direct and proximate cause of the joint venture, the Homeowner Association and its unit owners have suffered damages.

WHEREFORE, Plaintiff, Black Bear Crossing Town House Association, LLC, demands judgment against the Defendants, jointly and severally, in an amount to be determined, for - compensatory damages -- including incidental and consequential damages -- together with interest (both pre and post judgment), costs, reasonable attorneys' fees, and such other relief as the Court deems just and appropriate.

**BLACK BEAR CROSSING TOWN HOUSE ASSOCIATION, LLC
DEMANDS A JURY TRIAL.**

BLACK BEAR CROSSING TOWN HOUSE
ASSOCIATION, LLC, a West Virginia limited
liability company and on behalf of two (2) or more
unit owners,

By Counsel,


Kenneth E. Webb, Jr. Esquire (WVSB 5560)
Patrick C. Timony, Esquire (WVSB 11717)
BOWLES RICE LLP
600 Quarrier Street
Post Office Box 1386
Charleston, West Virginia, 25325

**CIRCUIT/FAMILY COURT
POCAHONTAS COUNTY, W.VA.**

Filed in this office this the 13th day
of August, 20 14

Connie M. Carr, Clerk
By Deane S. Culbertson, Jr.

CIVIL CASE INFORMATION STATEMENT
In the Circuit Court of Pocahontas County, West Virginia

I. CASE STYLE:

Plaintiff:

BLACK BEAR CROSSING TOWN HOUSE
ASSOCIATION, LLC

v.

Defendant:

BLACK BEAR CROSSING, LLC

GKS DEVELOPMENT, LLC

THOMAS C. SELLS, III

BRIAN KREIDER

MATTHEW GLOD

JAMISON DESIGN, LLC

TYGARTS VALLEY CONSTRUCTION, INC.

TREVE PAINTER

Case #: 14-C-32

Judge: Robert E. Richardson
Filed 8/13/14

Days to
Answer

Type of Service

30

Secretary of State

30

Secretary of State

30

Secretary of State

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Personal

Original and 1 copy of Complaint furnished herewith.

POCAHONTAS COUNTY
CIRCUIT COURT
RECORDED: 8/13/14
BY: amc/bua

PLAINTIFF: BLACK BEAR CROSSING TOWN HOUSE ASSOCIATION, INC.

CIVIL ACTION NO.: _____

DEFENDANT: BLACK BEAR CROSSING, LLC, GKS DEVELOPMENT, LLC, THOMAS SELLS, III, BRIAN KREIDER, MATTHEW GLOD, JAMISON DESIGN, LLC, TYGARTS VALLEY CONSTRUCTION, INC., AND TREVE PAINTER

II. TYPE OF CASE:

TORTS	OTHER	CIVIL
Asbestos	Adoption	Appeal from Magistrate
Professional Malpractice X	Contract/Collection X	Petition for Modification of Magistrate Sentence
Personal Injury	Real Property	Miscellaneous Civil
Product Liability	Mental Health	Other:
Other Tort X	Appeal of Administrative Agency	

III. JURY DEMAND: YES

CASE WILL BE READY FOR TRIAL BY (Month/Year): 10-15

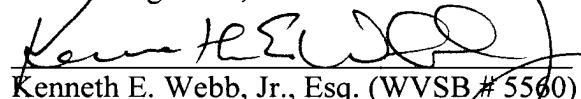
IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? ☐ YES ☒ NO

IF YES, PLEASE SPECIFY:

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter of another auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: _____

Attorney Name: Kenneth E. Webb, Jr. (WVSB 5560) Representing: Plaintiff
Firm: Bowles Rice LLP
Address: P. O. Box 1386, Charleston, West Virginia 25325-1386

Date: August 12, 2014


Kenneth E. Webb, Jr., Esq. (WVSB # 5560)

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August 12, 2014

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Connie Carr, Circuit Clerk
Circuit Court of Pocahontas County
Pocahontas County Courthouse
900 Tenth Avenue
Marlinton, WV 24954

Re: Black Bearing Crossing Town House Association, Inc.
v. Black Bear Crossing, LLC, et al.
Civil Action No. 14-C-

Dear Ms. Carr:

Please find enclosed for filing, an original ***Complaint, Summonses and Civil Case Information Statement***. I have enclosed the required \$200.00 filing fee.

Also enclosed is an extra copy of the Complaint, Summonses and Civil Cover Sheet. Please date-stamp and sign the copies and return to me for service of process in the self-addressed, postage-paid envelope.

Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kenneth E. Webb, Jr.', with a large, stylized flourish at the end.

Kenneth E. Webb, Jr.

/cls
Enclosures