



## **II. JURISDICTION & VENUE**

This Court has jurisdiction over this action because the amount in controversy exceeds the minimum jurisdictional limits of this Court. Venue is proper in Williamson County, Texas pursuant to Texas Civil Practice and Remedies Code Section 15.002(a)(1).

## **III. PARTIES AND SERVICE**

Plaintiff Karl A. Meyer is an individual residing in Hutto, Texas.

Plaintiff Kelli G. Meyer is an individual residing in Hutto, Texas.

Defendant Lennar Homes of Texas Land and Construction, LTD. is a Texas limited partnership licensed, authorized and doing business in Williamson County, Texas and may be served with citation by serving its registered agent, CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201.

Defendant Lennar Homes of Texas Sales and Marketing LTD. is a Texas limited partnership licensed, authorized and doing business in Williamson County, Texas and may be served with citation by serving its registered agent, CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201. Defendant Lennar Homes of Texas Sales and Marketing LTD was doing business in Williamson County, Texas under two assumed names: NuHomes of Texas, Inc. and Lennar Homes of Texas, Inc.

Defendant Lennar Texas Holding Company is a Texas corporation, licensed, authorized and doing business in Williamson County, Texas and may be served with citation by serving its registered agent, CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201.

## **IV. FACTS**

On or about November 19, 2002, Plaintiffs entered into a contract with Defendants to purchase real property in Williamson County, Texas. The real property was a newly constructed

home, built by Defendants and identified as 107 Brown Street, Hutto, Texas 78634. The home is part of a development entitled Hutto Parke Subdivision which is a 460 acre tract of land located East of County Road 119 and West of FM 1660 in Hutto, Texas. Plaintiffs agreed to a purchase price of \$122,990.00. On or about July 29, 2003, Plaintiffs closed the real estate transaction with Defendants.

Prior to the above real estate transaction with Plaintiffs, Defendants had actual knowledge that the soil in the Hutto Parke Subdivision was highly expansive and or collapsible. Moreover, prior to the above real estate transaction with Plaintiffs, Defendants had actual knowledge that arsenic was present within the soil in the Hutto Parke Subdivision in sufficient amounts to warrant remediation.

At no time prior to the execution of the real estate transaction with Plaintiffs did the Defendants disclose to the Plaintiffs that the soil in the Hutto Parke Subdivision was highly expansive and or collapsible. At no time prior to the real estate transaction with Plaintiffs did the Defendants disclose to the Plaintiffs that the soil in the Hutto Parke Subdivision contained arsenic and required remediation.

## **V. CAUSES OF ACTION**

### ***A. STATUTORY FRAUD***

Defendants are guilty of Statutory Fraud. Section 27.01 of the Texas Business and Commerce Code prohibits false representations of material fact in a transaction involving real estate.

Defendants made false representations of past or existing material facts to Plaintiffs. The false representations were made to the Plaintiffs for the purpose of inducing the Plaintiffs to enter into a real estate transaction. The Plaintiffs relied upon the false representations made by

Defendants when purchasing their home in the Hutto Parke Development. As a consequence of Defendants' fraud, Plaintiffs have been damaged.

The Defendants made the false representations with actual awareness of their falsity and as such Plaintiffs seek exemplary damages pursuant to Section 27.01 (c) of the Texas Business Code.

The Defendants had actual awareness of the misrepresentations, even if such misrepresentations were made by a third party or an individual Defendant. The Defendants failed to disclose the falsity of the representations to the Plaintiffs. The Defendants benefited from the false representations. As such, all of the Defendants are liable to the Plaintiffs for exemplary damages pursuant to Section 27.01 (d) of the Texas Business Code.

Plaintiffs seek reasonable attorney's fees, expert witness fees, costs for copies of depositions and costs of court pursuant to Section 27.01 (e) of the Texas Business Code.

#### ***B. NEGLIGENT MISREPRESENTATION***

Defendants are guilty of Negligent Misrepresentation. The Defendants entered into a real estate transaction with the Plaintiffs. The Defendants had a pecuniary interest in said transaction. During the course of the transaction, the Defendants supplied false information to the Plaintiffs. The Defendants did not exercise reasonable care or competence in communicating the false information to the Plaintiffs. As a proximate result, the Plaintiffs have been damaged.

### **VI. THE DISCOVERY RULE**

Plaintiffs invoke the Discovery Rule which states a cause of action for statutory fraud and also for negligent misrepresentation accrues on the date the client discovers or should have discovered through the exercise or reasonable care and diligence the facts establishing the cause of action.

## **VII. EXEMPLARY DAMAGES**

Plaintiffs further allege that Defendants knew that the misrepresentations described herein were false at the time they were made and Defendants had actual awareness of the falsity. Plaintiffs seek exemplary damages from the Defendants pursuant to Section 27.01 (c) of the Texas Business Code.

## **VIII. RESCISSION**

In the alternative, Plaintiffs seeks an order from this court against Defendants for rescission of the real estate transaction between the Plaintiffs and Defendants. Plaintiffs allege that there is no adequate remedy at law to fairly compensate them from the fraud committed by Defendants. Plaintiffs will sustain serious and irreparable pecuniary injury if this relief is not granted.

## **IX. DAMAGES**

As a direct and proximate result of the occurrences made the basis of this lawsuit, and Defendants' acts as described herein, Plaintiffs were caused to suffer damages more fully set forth below:

- a) The diminished value of Plaintiff's property;
- b) Consequential damages;
- c) In the alternative, Plaintiffs seek an order against Defendants for equitable rescission and restitution;
- d) Exemplary damages;
- e) Attorney fees; and
- f) Costs of court, copies of depositions and expert witness fees.

## X. JURY DEMAND

Plaintiffs request a trial by jury.

## XI. REQUEST FOR DISCLOSURES

Pursuant to Texas Rule of Civil Procedure 194, Defendants are requested to disclose to Plaintiffs, within fifty (50) days of service of this request, the information or material described in Texas Rule of Civil Procedure 194.2(a)-(l).

## XII. PRAYER

WHEREFORE, Plaintiffs pray that the Defendants be duly cited to appear and answer herein; and that upon a final trial of this cause, Plaintiffs recover:

- a. Judgment against Defendants for Plaintiffs' damages as set forth above, in an amount within jurisdictional limits of this Court;
- b. Pre-judgment interest on Plaintiffs' damages as allowed by law;
- c. Post-judgment interest at the highest legal rate allowed by law from the date of judgment until paid;
- d. All costs of court; and
- e. Such other and further relief, both general and special, either at law or in equity, to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

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