

IN THE CIRCUIT COURT OF GARLAND COUNTY, ARKANSAS
_____ DIVISION

STEVE FLETCHER and
VALERIE FLETCHER

PLAINTIFFS

v.

CASE NO. _____

JOEL C. WALKER, individually and
as the Trustee of the JOEL C. WALKER TRUST
and the JOEL C. WALKER TRUST

DEFENDANTS

COMPLAINT

COMES NOW, Plaintiffs, Steve and Valerie Fletcher (the “Fletchers”), by and through their attorneys, Gill Ragon Owen, P.A., and for their Complaint against Joel C. Walker, individually and as the Trustee of the Joel C. Walker Trust, and the Joel C. Walker Trust, state and allege as follows:

JURISDICTION & VENUE

1. This is an action for Breach of Contract and Fraud; the Plaintiffs seek money damages in an amount that exceeds that required for federal court jurisdiction in diversity of citizenship actions. This Court has jurisdiction over this action pursuant to Ark. Code Ann. § 16-13-201.

2. Venue is proper with this Court pursuant to Ark. Code Ann. § 16-60-10.

PARTIES

3. Plaintiff Steve Fletcher is a resident of Hot Springs, Garland County, Arkansas.

4. Plaintiff Valerie Fletcher is a resident of Hot Springs, Garland County, Arkansas.

5. Defendant Joel C. Walker is a resident of Tucson, Pima County, Arizona.

6. Upon information and belief, Joel C. Walker is trustee of the Joel C. Walker Trust.

7. The property at issue is located at 110 Bafanridge Street, Hot Springs, Garland County Arkansas (the "Property").

FACTS

8. On or about March 28, 2020, the Parties entered into a Residential Real Estate Contract, Form Serial Number 095931-900158-5432645 (the "Contract"), pursuant to which Walker, on behalf of the Joel C. Walker Trust, agreed to sell, and the Fletchers agreed to buy the Property. A copy of the Contract is attached hereto as **Exhibit A**.

9. Pursuant to Paragraph 18 of the Contract, Walker was required to provide to the Fletchers true and correct written disclosures about the Property.

10. These disclosures were provided to the Fletchers on April 20, 2020 in the Seller Property Disclosure, Serial Number 051106-300157-1752722 ("Walker Disclosure Form"). A copy of the Walker Disclosure Form is attached hereto as **Exhibit B**.

11. In the Walker Disclosure Form, dated October 28, 2019, Walker certified that he was obligated to disclose all "known conditions affecting the Property," and that all the information in the Walker Disclosure Form was "true and correct to the best of the seller's knowledge."

12. Also pursuant to the Walker Disclosure Form, Walker agreed to supplement his disclosures should any condition affecting the Property change and thus make the representations contained in the Walker Disclosure Form untrue or incorrect.

13. Despite these certifications, the information contained in the Walker Disclosure Form was not true and correct, Walker knew the information was not true and correct, and Walker failed to supplement his answers as required.

14. Since purchasing the Property, the Fletchers have experienced significant and continuous flooding and water intrusion at the Property, as well as, a bat infestation.

15. Walker unlawfully failed to disclose both the flooding and water intrusion and the bat infestation in the Walker Disclosure Form, despite his knowledge of the conditions.

16. In question number 11 of the Walker Disclosure Form, Walker was asked “[t]o your knowledge, has there been any flooding, drainage, grading problems, or has water ever stood on the Property or under any improvement constructed thereon,” to which Walker answered “no.”

17. Similarly, in question 52 Walker was asked “[t]o your knowledge, is there or has there ever been any past or present water intrusion,” to which Walker also answered “no.”

18. Yet, neither of these responses could have been true.

19. In 2017, Walker purchased the home from Cathy Caver (“Caver”).

20. Caver was required to provide a Seller Disclosure Form to Walker that was similar to the disclosure form that Walker was required to provide to the Fletchers. A copy of the Seller Disclosure Form, Serial Number 502831-000150-0929230 (“Caver Disclosure Form”) is attached hereto as **Exhibit C**.

21. Walker acknowledged receipt of the Caver Disclosure Form on November 16, 2017.

22. In the Caver Disclosure Form, Caver was asked the exact same question 11 as Walker, and Caver was asked the same question 52 as Walker (though the question was numbered question 51 on the Caver Disclosure Form). Contrary to Walker’s responses, Caver answered both questions in the affirmative.

23. Regarding Caver’s answer to question 51 (Walker Disclosure Form question 52), Caver went on to elaborate that “[w]e purchased the home in May 2011 [and] September 2011 due

to significant rain the basement flooded and we had to tear out carpet. We chose to stain floors. All French drains from house were replaced.”

24. Because of Caver’s disclosures, it was impossible for Walker to truthfully represent that he had no knowledge of any past flooding or water intrusion when he was explicitly told of flooding and water intrusion by Caver in a document to which Walker was a signatory, only two years prior from when the same information was intentionally misrepresented to the Fletchers.

25. The Fletchers have expended significant resources into investigating Walker’s misrepresentations and resulting damage therefrom.

26. On or about July 24, 2020, the Fletchers retained home inspector Anthony Utsey (“Utsey”) to investigate the Property and the water intrusion issues. A copy of Utsey’s inspection report dated July 30, 2020 (the “Inspection Report”) is attached hereto as **Exhibit D**.

27. In the Inspection Report, Utsey opined that the flooding issues were in fact present before the Fletchers bought the Property from Walker.

28. It was also Utsey’s expert opinion Walker had knowledge of the flooding and water intrusion and was in fact experiencing the same problems themselves.

29. Thus, Walker’s representations that there was no flooding and water intrusion were patently false and constitute fraud and a breach of contract.

30. In addition to the misrepresentations regarding the ongoing flooding issues at the Property, Walker also failed to disclose the bat infestation at the Property prior to closing the sale of the Property, despite his knowledge of the infestation at such time.

31. Cyndi Walker, Joel Walker’s wife, revealed the Walkers’ knowledge of the bat infestation in a handwritten note to the Fletchers.

32. In her note, Cyndi Walker explained that there “may have been a bat or two in fireplace” evidenced by “what I think was guano... on the porch next to the fireplace.” Moreover, Cyndi explained that “we put the [fireplace] on, two nights in a row and the “guano” disappeared. (excellent fertilization, but not very good for human to inhale??).”

33. The bat infestation was not disclosed in the Walker Disclosure Form despite the representations in question 44 that Walker had no knowledge of any other defects on the Property and the representations in question 35 that Walker had no knowledge of other “facts, circumstances or events on or around the Property which, if known to a potential buyer, could adversely affect in a material manner the value or desirability of the Property.”

34. The failure to disclose the bat infestation constitutes fraud and a breach of contract.

35. The Fletchers have obtained various quotes for the services needed to repair the flood damage and restore the property to its represented condition.

36. These repairs include, but are not limited to, installing a new draining system and sealing the exterior of the property. Additionally, these repairs will require the removal and replacement of the porch and wall ways surrounding the Property.

37. The Fletchers have obtained various quotes from: Home Services, Inc., a copy of which is attached hereto as **Exhibit E**; John Cassey’s Crawl Space Solutions of Arkansas, a copy of which is attached hereto as **Exhibit F**; and Redeemers Group, a copy of which is attached hereto as **Exhibit G**.

38. The installation of the new drainage system and sealant around the exterior of the house is estimated to cost between \$42,000-\$48,000. This amount does *not* include the approximately \$50,000 required to remove and replace the porch and surrounding wall ways, nor does this amount include the additional funds necessary to remove the bat infestation.

39. Moreover, it is anticipated that the loss in value to the Property exceeds \$50,000.

COUNT I – BREACH OF CONTRACT

40. The allegations contained in Paragraphs 1 through 39 are incorporated herein by reference.

41. The signatures of the Parties on the Contract evidence a valid contract between such Parties.

42. Pursuant to the terms of the Contract, Walker was required to provide the Fletchers with true and correct disclosures about the condition of the Property.

43. However, the disclosures that Walker provided to the Fletchers in the Walker Disclosure Form were not true and correct.

44. Additionally, pursuant to the terms of the Contract, Walker was required to supplement their disclosures should the condition of the Property change as to make the initial disclosures no longer true and correct.

45. Walker did not supplement his disclosures to make his initial disclosures regarding the condition of the Property true and correct.

46. As a result of the Defendant's breach of contract, the Plaintiffs have suffered damages in an amount to be determined at trial including, but not limited to, the costs of installing the new drainage system, sealing the exterior of the Property, the removal and replacement of the porch and surrounding wall ways, and the removal of the bat infestation, as well as, the decrease in value to the Property.

47. Pursuant to Ark. Code Ann. § 16-22-308, Plaintiffs are entitled to recover their attorneys' fees for the Defendant's breach of the Contract.

COUNT II – FRAUD

48. The allegations contained in Paragraphs 1 through 47 are incorporated herein by reference.

49. Walker's representations that there were no flooding or water intrusion issues at the Property were patently false.

50. The presence or absence of such flooding and water intrusion was a substantial factor in influencing the Plaintiffs' decision to purchase the Property.

51. Moreover, Walker's representations that there were no other defects on the Property and that there were no other facts, circumstances or events on the Property that could adversely affect the value or desirability the Property was patently false in light of Walker's knowledge of the bat infestation.

52. The lack of such infestations was a substantial factor in influencing the Plaintiffs' decision to purchase the Property.

53. The Defendant knew of both the bat infestation and the water intrusion and flooding issues at the time that they made the representations.

54. The Defendant intended to induce the Plaintiffs to purchase the Property in reliance upon the disclosures, or lack thereof, in the Walker Disclosure Form.

55. The Plaintiffs were justified in relying upon the Walker Disclosure Form when purchasing the Property.

56. As a result of the Defendant's fraud, the Plaintiffs have suffered damages in an amount to be determined at trial including, but not limited to, the costs of installing the new drainage system, sealing the exterior of the Property, the removal and replacement of the porch

and surrounding wall ways, and the removal of the bat infestation, as well as, the decrease in value to the Property.

WHEREFORE, Plaintiffs, Steve and Valerie Fletcher, request that (1) judgment be entered against Defendant, Joel Walker, individually, and on behalf of the Joel C. Walker Trust, for Breach of Contract and Fraud; (2) damages be awarded to them in an amount to be determined at trial including pre-judgment interest and attorneys' fees; and (3) for all other just and proper relief to which they may be entitled.

Respectfully submitted,

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