

SUPREME COURT, STATE OF NEW YORK
COUNTY OF SUFFOLK

ROBERT O. LINK, JR and DORINA SPELMAN LINK,

Plaintiffs,

-against-

RICHARD SARCONA and DENISE SARCONA,

Defendants.

Index No. 07- 33774

COMPLAINT

OCT 30 2007

Judith A. Pascale
CLERK OF SUFFOLK COUNTY

Plaintiffs, by their undersigned attorneys, for their complaint alleges as follows:

FIRST CAUSE OF ACTION
(Breach of Housing Merchant Implied Warranty)

1. At all times relevant, Plaintiffs were and are residents of New York County, State of New York.
2. Upon information and belief, at all times relevant, Defendants are and were residents of both the State of New Jersey and of Suffolk County, State of New York.
3. On July 24, 2007, Plaintiffs and Defendants entered into a Residential Contract of Sale (the "Contract") for the conveyance by Defendants as owners and builders to Plaintiffs of a new home (the "Home") constructed on property located at 3 Halsey Path, Southampton, New York. A copy of the Contract is attached as Exhibit A.
4. On August 13, 2007, Defendants conveyed the Home and the land upon which it was built to Plaintiffs and Plaintiffs duly paid the Defendants the balance due, all in accordance with the Contract.

5. Plaintiffs, upon taking title to the Home and the land, became the owners thereof and the first persons to whom the Home was sold. Plaintiffs remain the owners of the Home at this time.

6. Plaintiffs took possession of the Home and remain in occupancy at this time.

7. Shortly after taking title and occupancy to the Home, Plaintiffs discovered the following construction defects:

(a) Main Deck. The main deck of the Home was improperly constructed on upright 4x4 posts resting on cinderblocks set upon the ground, and not on footings 36 inches below grade, in violation of the building code. None of the girders and joints for the deck were strapped with necessary fasteners, and at several places girders were floating with no support posts. In addition, the ground under the main deck was improperly graded towards the Home, instead of away from the Home, leading to a buildup of moisture and flooding, mold, and mildew problems in the basement of the Home.

(b) Master Bedroom Deck and Drainage. The drainage system for the master bedroom deck was improperly designed and defectively constructed. The diameter of the deck's drain was insufficient to accommodate the runoff of water from the roof above the deck, resulting in flooding of the deck, even in moderate rainfall. The drainpipe running along the side of the deck was defectively

designed and installed, lacking a necessary drywell to collect the runoff of water, a problem which exacerbated the buildup of water under the main deck arising from the improper grading of the ground under the deck, further contributing to flooding, seepage, and mold and mildew problems in the Home.

- (c) Pool. The in ground swimming pool at the Home leaks and the heating system for the pool was installed too close to the main structure of the Home. The filtration system installed with the pool had a broken skimming valve which caused the entire system to malfunction.

- (d) Other Plumbing System Problems. The gas fittings for the Home's hot water and heating systems were improperly designed and installed and had to be immediately repaired for safety reasons. The pump discharge and vents in the boiler room of the Home were improperly installed; the gas meter header installed by Defendants was inadequate to service the gas demands of the Home and the pool heater; the termination fitting on the gas supply line to the stove was defective; the gas pipe to the pool heater was improperly located; the water supply to the pool house was improperly positioned; the chimney connection from the Home's boiler was not properly installed or cemented; an automatic air vent on the supply header for the boiler was improperly installed; and the water service riser, irrigation and boiler water supply pipes

were improperly located. Because of these construction defects, Keyspan, the gas supplier, would not turn on the gas to the Home until the defects were corrected.

8. These construction defects resulted solely from the failure of Defendants to have constructed the Home in a skillful manner and to have installed plumbing, heating, cooling and/or ventilation systems in the Home a skillful manner, as required by General Business Law Art. 36-B, Housing Merchant Implied Warranty, and by the Contract.

9. None of these construction defects were apparent or revealed when Plaintiffs examined the Home prior to taking title.

10. Plaintiffs have performed all obligations under the Contract on their part to be performed.

11. In letters dated September 6, 2007, September 10, 2007, October 1, 2007, October 2, 2007 and October 17, 2007 and in accordance with the requirements of General Business Law Art. 36-B, Section 777-4(a), Plaintiffs, through their attorneys, served on the Defendants and their attorneys notices of claims for breach of the Housing Merchant Implied Warranty. Copies of these letters are annexed as Exhibit B.

12. The letter notices described in the preceding paragraph were served on Defendants and/or their attorneys by registered mail, return receipt requested. Copies of the return receipts duly signed by Defendants and/or their attorneys are annexed as Exhibit C.

13. Plaintiffs have given Defendants reasonable time to cure each of the defects and to make the repairs specified in the notice letters referenced in paragraph 11, but Defendants

have failed and refused to remedy the defects or to make the required repairs. Because of Defendants' failure and refusals to make all necessary repairs and to remedy the defects, Plaintiffs have had to retain the service of other contractors to perform the repair work and to remedy the defects in the Home and, in the case of the defective gas line, to make immediate emergency repairs.

14. The cost of the work performed by other contractors retained by Plaintiffs is in excess of \$60,000 which is the reasonable cost and value of such work.

SECOND CAUSE OF ACTION
(Breach of Contract)

15. Plaintiffs repeat and re-allege Paragraphs 1-14 of their Complaint as if fully set forth herein.

16. Pursuant to the Contract and Paragraph 5 of the Rider to the Contract, Defendants made representations and warranties as to the condition of the Home.

17. In paragraph 5 to the Rider to the Contract, Defendants expressly represented that "the heating, air conditioning, electric, plumbing, pool equipment and appliances shall be in good working order" as of the date of closing.

18. As a result of the defects in the construction of the Home and in the defective installation of the Home's plumbing, electrical, heating, cooling and/or ventilation systems, all as previously alleged, the heating, air conditioning, electric, plumbing, pool equipment and appliances were not in good working order at closing and Defendants have breached their representations and warranties.

19. As a result of Defendants' breach of their representations and warranties, Plaintiff has sustained damages in excess of \$60,000.

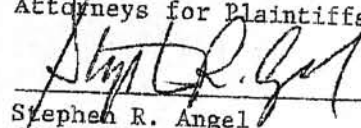
WHEREFORE, Plaintiffs demand judgment against Defendants:

- (1) on the first cause of action, in amount to be proven at trial but believed to be at least \$60,000, and;
- (2) on the second cause of action, in an amount to be proven at trial but believed to be at least \$60,000;
- (3) together with the costs and disbursements of this Action, and such other and further relief as the Court deems just and proper.

Dated: October 30, 2007
Riverhead, New York

Esseks, Hefter & Angel, LLP
Attorneys for Plaintiffs

By: _____


Stephen R. Angel
108 East Main Street
P.O. Box 279
Riverhead, New York 11901
(631) 369-1700

Of Counsel:
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281
(212) 504-6000