



Patrick M O'Neill (0062519)  
Edward P Akin (0074357)  
Attorneys for Defendant Meyer Builders/Douglas Homes, Ltd

HAMILTON COUNTY  
COMMON PLEAS COURT

BRIAN OSWALD, et al.

Plaintiffs,

v.

MEYER BUILDERS/DOUGLAS HOMES,  
LTD.

Defendant.

CASE NO.: A 0508601

JUDGE DENNIS S. HELMICK

ANSWER

FILED  
2006 JAN 27 3:57  
GREGORY HARTMANN  
CLERK OF COURTS  
HAMILTON COUNTY, OH

For its Answer to Plaintiffs Brian Oswald, Angela Oswald and Constance Smith  
Complaint, Defendant Meyer Builders/Douglas Homes, Ltd hereby states as follows

- 1 Meyer Builders specifically denies any assertion implication that it sold a defective home to Plaintiffs or anyone else, denies Plaintiffs have been damaged in the amount of \$200,000 or any other amount, and denies for lack of knowledge any remaining allegations of paragraph 1, including any assertions with respect to Plaintiffs' state of mind
- 2 Meyer Builders admits it entered into a contract with Plaintiffs with respect to the dwelling identified in the Agreement of Sale attached to Plaintiffs' Complaint ("Agreement"), refers to the Agreement for the terms, contents, effective date and operant language of same, and otherwise denies the remaining allegations of paragraph 2 of Plaintiffs' Complaint for lack of knowledge
- 3 Meyer Builders denies the allegations of paragraph 3 for lack of knowledge as to Plaintiffs' residency
- 4 Meyer Builders specifically denies that it is an Ohio corporation It is a Limited Liability Company Meyer Builders admits its principal place of business is Hamilton County, and admits that it did business in Butler County, Ohio at the time it contracted with Plaintiffs Further

answering, Meyer Builders states that whether it did business in Butler County has no bearing on venue of an action premised on Civil Rule 3(B)(1), as is apparently the case here

5 Douglas Meyer has been dismissed from this case, but remaining defendant Meyer Builders expressly denies that he is the sole owner of Douglas Homes, or that he was expressly or implicitly a third party beneficiary to the Agreement Meyer Builders admits using Douglas Homes as a trade name

6 Meyer Builders admits that Plaintiffs paid the purchase price and closed on the property, but denies for lack of knowledge the exact dates thereof However, Meyer expressly denies Plaintiffs fulfilled all contractual obligations, because it believes they were legally obligated to arbitrate the present dispute

7 Meyer Builders admits it tendered a deed, refers to Exhibit B of Plaintiffs' Complaint for the terms and contents thereof, and expressly reserves any questions as to the authenticity of said deed, should these prove relevant to resolution of this dispute

8 Meyer Builders admits it furnished copies of a Limited Warranty and Warranty Policies at closing

9 Meyer Builders denies that Plaintiffs accurately state its use of the names Douglas Homes and Meyer Builders/Douglas Homes, LTD , points out that Plaintiffs' contracted with Meyer Builders/Douglas Homes, LTD , and not any other entity, and otherwise denies any remaining allegations of Plaintiffs' paragraph 9

10 Meyer Builders admits Plaintiffs participated in a final walk-through, but denies any allegations as to timing of same for lack of knowledge

11 Meyer Builders expressly denies any construction defects in the home it built for Plaintiffs

12 Meyer Builders denies the allegations of paragraph 12 of Plaintiffs' Complaint

13 Meyer Builders admits Brian Oswald contacted it regarding an alleged leak in his basement, and

other alleged defects, principally centering on the brick veneer and associated structures, including house wrap Meyer investigated, concluded house wrap was present, and recommended sealing the bricks, which recommendation Mr Oswald rejected

14 Meyer Builders incorporates its answer to Paragraph 13 of Plaintiffs' Complaint as if fully rewritten herein Further answering, Meyer states that after Oswald broached alleged warranty violations, it duly investigated, and made recommendations consistent with that investigation, which were seconded by an impartial Butler County Building Inspector Oswald specifically refused follow-up requests for alleged expert reports he secured regarding purported defects with the home

15 Meyer Builders denies the allegations of paragraph 15 of Plaintiffs' Complaint

16 Meyer Builders denies the allegations of paragraph 16 of Plaintiffs' Complaint

17 Meyer Builders denies the allegations of paragraph 17 of Plaintiffs' Complaint

18 Meyer Builders denies the allegations of paragraph 18 of Plaintiffs' Complaint Specifically, Meyer Builders denies Plaintiffs have suffered any damages , undetermined or not, which it has not already offered to fully remediate

19 Meyer Builders denies the allegations of paragraph 19 of Plaintiffs' Complaint

20 Meyer Builders incorporates its Answer to paragraphs 1-19 of Plaintiffs' Complaint as if fully rewritten here

21 Meyer Builders refers to the Agreement and its written warranty and any associated documents for the terms and content thereof, and otherwise expressly disclaims any unwritten or implied warranties

22 Meyer Builders denies the allegations of paragraph 22 of Plaintiffs' Complaint

23 Meyer Builders denies the allegations of paragraph 23 of Plaintiffs' Complaint

24 Meyer Builders incorporates its Answer to paragraphs 1-23 of Plaintiffs' Complaint as if fully

rewritten here

25 Meyer Builders denies the allegations of paragraph 25 of Plaintiffs' Complaint Specifically, Meyer Builder is in the business of selling homes, not information On information and belief, this cause of action is more properly directed at a financial broker, analyst or other person or entity providing information intended to guide business decisions Meyer Builders admits it provided information to Plaintiffs, but states that any pecuniary interest lay in the sale of the home—bricks and mortar, not “information ”

26 Meyer Builders denies the allegations of paragraph 26 of Plaintiffs' Complaint

27 Meyer Builders denies any allegations relating to how Plaintiffs actually used any information which it provided, for lack of knowledge sufficient to admit or deny same Meyer specifically denies that it furnished any false information, either knowingly, negligently or otherwise

28 Meyer Builders specifically denies providing any false information, and denies for lack of knowledge any allegation as to how the Plaintiffs' used any information it provided

29 Meyer Builders denies the allegations of paragraph 29 of Plaintiffs' Complaint

30 Meyer Builders denies the allegations of paragraph 30 of Plaintiffs' Complaint Specifically, Meyer Builders has no knowledge, nor does it believe that Plaintiffs actually relocated from the premises Their Complaint expressly indicates otherwise Meyer Builders specifically denies Plaintiffs suffered any other legitimate damages cognizable at law as a result of any act or omission of Defendant

31 Meyer Builders incorporates its Answer to paragraphs 1-30 of Plaintiffs' Complaint as if fully rewritten here

32 Meyer Builders states that its duties herein were memorialized in written contract and warranty documents, and denies any extra-contractual duties for lack of knowledge sufficient to admit or deny same

33 Meyer Builders denies the allegations of paragraph 33 of Plaintiffs' Complaint

34 Meyer Builders denies the allegations of paragraph 34 of Plaintiffs' Complaint, as to any express  
allegation or tacit implication of negligence, and as to any alleged damages

35 Meyer Builders incorporates its Answer to paragraphs 1-34 of Plaintiffs' Complaint as if fully  
rewritten here

36 Meyer Builders refers to Title 1345 of the Ohio Revised Code and any applicable, controlling  
case law for definitions memorialized therein, and otherwise denies the allegations of Plaintiffs'  
paragraph 36 for lack of knowledge sufficient to admit or deny same

37 Meyer Builders refers to the Title 1345 of the Ohio Revised Code and any applicable,  
controlling case law for definitions memorialized therein, and otherwise denies the allegations  
of Plaintiffs' paragraph 36 for lack of knowledge sufficient to admit or deny same Meyer  
Builders further denies that it acted unfairly, deceptively or unconscionably by any definition,  
legal or otherwise

38 Meyer Builders denies the allegations of paragraph 38 of Plaintiffs' Complaint

39 Meyer Builders incorporates its Answer to paragraphs 1-38 of Plaintiffs' Complaint as if fully  
rewritten here

40 Meyer Builders specifically denies Plaintiffs are entitled to rescission Further answering, Meyer  
Builders states that rescission claims are not triable by jury under Ohio law

41 Plaintiffs dismissed their claims against Douglas Meyer individually Accordingly, the only  
remaining claims are those pled against Meyer Builders/Douglas Homes, LTD

**FIRST AFFIRMATIVE DEFENSE:**

42 Plaintiffs fail to state a claim upon which relief can be granted, pursuant to Ohio Civ R 12  
(B)(6)

**SECOND AFFIRMATIVE DEFENSE:**

43 Plaintiffs' Complaint is governed by and subject to a valid and binding arbitration agreement, requiring the present litigation to be either dismissed, or stayed pending arbitration Meyer Builders has appealed the Common Pleas Court's Entry of January 11, 2006, and does not, by filing this Answer, waive any rights to arbitration

**THIRD AFFIRMATIVE DEFENSE:**

44 Plaintiffs' Complaint is barred, in part or in whole, by the doctrines of laches, waiver and/or estoppel

**FOURTH AFFIRMATIVE DEFENSE:**

44 Plaintiffs' Complaint is barred, in part or in whole, by the doctrines of laches, waiver and/or estoppel

**FIFTH AFFIRMATIVE DEFENSE:**

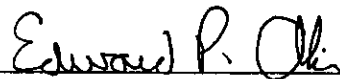
45 Plaintiffs' Complaint is barred, in part or in whole, by their own failure to mitigate their damages

**SIXTH AFFIRMATIVE DEFENSE:**

46 Plaintiffs' Complaint is barred by their own willful breach of Contract, namely their refusal to honor the arbitration clause

Respectfully submitted,

ARONOFF, ROSEN & HUNT



Patrick M O'Neill (0062519)

Edward P Akin (0074357)

2200 U S Bank Tower

425 Walnut Street

Cincinnati, Ohio 45202

Telephone (513) 241-0400

Facsimile (513) 241-2877

*Attorneys for Defendant Meyer Builders/ Douglas Homes LTD*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of Defendant Meyer Builders/Douglas Homes, LTD 's Answer been served upon Courtney Caparella, Esq , *Attorney for Plaintiffs, Brian L. & Angela M Oswald and Constance Smith*, Lyons & Lyons, 8310 Princeton-Glendale Road, West Chester, Ohio 45069, via U S Ordinary Mail, on this 27<sup>th</sup> day of January, 2006

Edward P. Akin  
Edward P Akin

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