

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF BUNCOMBE

2007 OCT 22 PM 4: 08

SUPERIOR COURT DIVISION

FILE NO. 07 CVS 4914

BUNCOMBE COUNTY C.S.C.

Roger and Joellen Johnson,  
Plaintiffs,

BY \_\_\_\_\_

vs.

Tedd M. Pearce and Jeannie Pearce, individually

and d/b/a Regal Homes, Tedd Pearce, Inc.,

Edward T. Vogel and Karen K. Vogel, individually

and d/b/a Vogel Enterprises,

Defendants.

**COMPLAINT**

NOW COME the Plaintiffs, by and through undersigned Counsel, complaining of the Defendants say and allege as follows:

1. That the Plaintiffs are citizens and residents of North Carolina.
2. That the Defendants Tedd M. Pearce and Jeannie Pearce, individually and d/b/a Regal Homes, (hereinafter collectively referred to as "Pearce"), upon information and belief are citizens and residents of North Carolina.
3. That the Defendant Tedd Pearce, Inc., upon information and belief, is a lawfully formed corporate entity under the laws of North Carolina and is authorized to do business in the state of North Carolina.
4. That the Defendants Edward T. Vogel and Karen K. Vogel, individually and d/b/a Vogel Enterprises, upon information and belief, are citizens and residents of North Carolina.
5. That on or about October 1, 2004, the Plaintiffs purchased from Pearce a constructed home and lot located at 520 Red Fox Court, Hendersonville, NC 28792 and being referred to as Lot 32 of The Ledges of Hidden Hills (said home and lot hereinafter referred to as the "Property"). A deed for same being recorded in Deed Book 1200, Page 742, of the Hederson County Registry.
6. At the time of the sale and related contract to purchase, Pearce held himself out as a reputable builder and that this Property was a like-new construction spec house that he built. In the course of negotiations to purchase the home, Ted Pearce represented himself as a licensed and insured builder and provided the Plaintiffs a business card indicating that he is the president of Tedd Pearce, Inc.
7. At said time, Ted Pearce also held himself out as doing business under the name of Regal Homes.

8. As part of their inducement to purchase the Property, the Plaintiffs relied upon Ted Pearce's representations that he was the builder of the home, that there were no problems with the building and lot, and that he had a good reputation as a builder.
9. The Plaintiffs also relied upon a Residential Property Disclosure Statement provided by Pearce indicating that there were "no" "problems with drainage, grading or soil stability of lot" and further represented that there were "no" problems with Foundation, slab, fireplaces/chimneys, floors, windows, doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including modifications.
10. As part of the purchase price and as additional inducement to enter into the purchase of said Property, Pearce and Defendant Ted Pearce, Inc. agreed to construct and did in fact construct a garage in the basement and re-paved a portion of the side driveway to raise same to the level of the garage.
11. On or about mid-November, 2004, the Plaintiffs noticed that their fence along their side driveway had some distortion. At this time the Plaintiffs believed that they just missed same in their inspection of the property and assumed same was due to fence construction problems.
12. During the year of 2006, the Plaintiffs began to notice widening cracks in the driveway, which began to appear as if it were sinking or moving and noticed significant earth disturbance below the retaining wall.
13. The Plaintiffs contacted the builder and seller of the property, Ted Pearce, who came out to the property and brought a landscaper Todd Trace, who Ted Pearce said did some of the original work on the property for him. They suggested that an engineer look at the problem..
14. Day Engineering inspected the property on or about October 16, 2006 and initially believed the subsidence of the Property may be a result of an insufficient diversion of runoff from the cul de sac and possibly a failed drainage pipe and recommended alternative diversion for the drainage pipe and excavation to ascertain the cause of the subsidence.
15. The Plaintiffs sent Ted Pearce a copy of this information. Ted Pearce said to Plaintiffs that he had a problem with the drainage pipes failing previously.
16. The Plaintiffs used alternative diversion for the drainage pipes so that the water was diverted from the section of drainage pipe that ran through the subsidence area. Said subsidence area continued to worsen despite same.
17. On or about May, 2007, the Plaintiffs experienced a dramatic loss of water pressure and then a complete loss of all water. The Plaintiff's plumber determined

that the well had shifted with the land subsidence and damaged both the well pipe and the pump. The plumber was able to restore partial water pressure but will require extensive repairs once the subsidence has been corrected.

18. On or about May 21, 2007, Henderson County Code Enforcement Services inspected the subsidence area at the request of the Plaintiffs. The report issued indicates that there was approximately 40 to 50 feet of fill placed during the construction of the home that is caving in and has broken the water supply to the home.
19. Thereafter, the Plaintiffs contracted to have the area in question excavated to ascertain the problem and/or repair same. During the excavation, it was discovered that the land area of the subsidence consisted of wood, stumps, construction debris, and other degradable fill.
20. The Plaintiffs had the property again inspected by engineers during the excavation to determine how to repair the problem and document the material in the excavation. Geotechnical Engineers of Alpha Environmental Sciences, Inc and Alpha Engineering Services, PA confirmed that substandard fill was used that included logs, stumps, construction debris, topsoil and other organic materials unsuitable for use in a fill slope.
21. Said engineers made written recommendations as to how to properly repair the problem.
22. The Plaintiffs had received initial estimates to conduct the excavation and restore the property prior to the Engineer reports. Said initial estimates ranged from \$50,000.00 to \$82,000.00. The current contracted excavation work is likely to exceed the initial \$50,000.00 estimate and the Plaintiffs are currently in the process of obtaining new estimates for the repairs recommended by the geotechnical engineers. The Plaintiffs estimate that the completed excavation and recommended repairs will exceed \$100,000.00.
23. After being confronted about the problems, Ted Pearce indicated that the lot was prepared by the Vogels and provided Vogels contact information to the Plaintiffs.
24. The Plaintiffs contacted the Vogels about the problem and Edward T. Vogel came to the property during the excavation and told the Plaintiffs during one of his visits that Pearce filled in that portion of the property and that the subsidence area of the property was "treed" when Pearce began working on the property.
25. As a result of the subsidence and related excavation and repairs, the driveway and entire east side of the property has been unusable, the shed has been disassembled and removed, the landscaping and plants have been destroyed or otherwise removed.

**FIRST CAUSE OF ACTION**  
**NEGLIGENCE**

26. The Plaintiffs re-allege paragraphs 1-25 and incorporate same herein by reference.
27. That all or one of the Defendants and/or agents thereof negligently prepared the Property by using substandard fill which included organic materials, wood, and construction debris.
28. That the all or one of the Defendants and/or agents thereof negligently constructed structures, improvements, fixtures, and waterworks over and across said filled portions of the Property.
29. That the Defendants owed a duty of care to prospective purchasers and users and occupiers of the Property.
30. That the Defendants and/or agents thereof knew or should have known that the use of such fill would result in decomposition and eventual land subsidence.
31. That the Defendants and/or agents thereof should have recognized the substandard fill and not constructed thereon.
32. That the use of such fill and the Negligence of the Defendants did result in and proximately caused a subsidence of the Plaintiffs property.
33. That the Pearce and the Defendants held themselves out as residential builders or developers.
34. That as residential builders and/or developers the Defendants owe a duty of care commensurate with the standard of care in those industries to the Plaintiffs as prospective purchasers and owners/occupiers of the Property.
35. That the use of such fill and construction upon same is not is not an acceptable practice in the residential development and/or construction industries.
36. That the failure of the Defendants to use the industry standard of care proximately caused the subsidence and damages to the Plaintiffs.
37. That the subsidence of the property has damaged the Plaintiffs in an amount in excess of \$10,000.00.
38. That the Defendants' negligence has proximately cause the Plaintiffs property damages in an amount in excess of \$10,000.00.

**SECOND CAUSE OF ACTION**  
**FRAUD / NEGLIGENT MISREPRESENTATION**

39. The Plaintiffs re-allege paragraphs 1-38 and incorporate same herein by reference.
40. The Defendants Pearce, Ted Pearce, Inc., and/or agents thereof made false representations about the stability of the lot and construction thereon to the Plaintiffs in both person and in a written disclosure statement.
41. Pearce has specific knowledge of the Property and the soil fill thereon as the builder of same.
42. That Defendants Pearce, Ted Pearce, Inc., and/or agents thereof concealed material facts about the property when inducing the Plaintiffs to purchase same, to wit, that there had been problems with the water drainage pipes breaking, widening cracks in the driveway, and movement of the fence.
43. The Defendants Pearce, Ted Pearce, Inc., should have disclosed such facts as same are evidence of sub-terrain movement and subsidence. That as a residential builder, Pearce, should have known same and disclosed the problems. Pearce also concealed material facts about the fill used in the construction of the Property, as same was degradable fill.
44. That the Defendants Pearce, Ted Pearce, Inc., and/or agents thereof were under a duty to disclose such facts as the builder and seller of the Property and under the Residential Property Disclosure Act and related statement.
45. That the false representation and concealment was calculated to deceive the Plaintiffs. The false representation about the lot and soil stability by Pearce and/or Ted Pearce, Inc., was known to be false due to the breaking water pipes, driveway cracks, and moving fence with Pearce special knowledge as a builder and builder of the Property. That the Defendant Pearce and/or Ted Pearce, Inc. knew there was a duty to disclose same or was recklessly indifferent to a duty to disclose same.
46. That said false representation and concealment was done with thte intent to deceive.
47. That the Plaintiffs were, in fact, deceived by the false representation and concealed facts to purchase the Property believing same to be stable and built in accordance with industry standards.
48. That the Plaintiffs reliance upon the representations of Defendants Pearce and Ted Pearce, Inc. and/or agents thereof was reasonable.

49. That the Plaintiffs suffered damages as a result of their reliance upon the plaintiffs representations, as they would not have purchased property with soil stability and subsidence problems.
50. As a result of the fraud, misrepresentations and active concealment of the Defendants Pearce and Ted Pearce, Inc., the Plaintiffs have been damaged in an amount in excess of \$10,000.00.
51. Alternatively, that agents of the Defendants Pearce and Ted Pearce, Inc., negligently misrepresented or concealed the above alleged information resulting in the Plaintiffs' damages in excess of \$10,000.00.

**THIRD CAUSE OF ACTION**  
**UNFAIR AND DECEPTIVE TRADE PRACTICES**

52. The Plaintiffs re-allege paragraphs 1-51 and incorporate same herein by reference.
53. That the above allegation, as set forth herein, constitutes fraud on the behalf of Defendants Pearce. and Ted Pearce, Inc..
54. That such fraudulent conduct constitutes an unfair and deceptive trade practice under North Carolina Law and specifically under G.S. 75-1 *et seq.*.
55. That the Defendants Pearce and Ted Pearce, Inc., were engaged in the business of building and selling residential homes and in fact marketed the subject Property to the Plaintiffs.
56. The previously alleged fraudulent conduct was made in furtherance of the Defendants Pearce and Ted Pearce, Inc., business activities and business enterprise.
57. That such conduct of Defendants Pearce and Ted Pearce, Inc. proximately caused the Plaintiffs property injuries.
58. The Plaintiffs have been damaged by the Defendants Pearce and Ted Pearce, Inc. unfair and deceptive trade practices in an amount in excess of \$10,000.00.

**FOURTH CAUSE OF ACTION**  
**BREACH OF WARRANTIES AND CONTRACT**

59. The Plaintiffs re-allege paragraphs 1-58 and incorporate same herein by reference.
60. The Defendants Pearce and Ted Pearce, Inc. expressly and implicitly warranted

that the Property was built in a workmanlike quality, free from any major defects, and marketable.

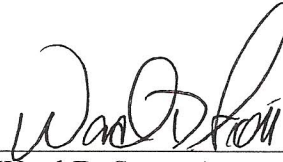
61. That when the Plaintiffs purchased the Property the Defendants Pearce and Ted Pearce, Inc. represented that they built the home.
62. That the Defendants Pearce and Ted Pearce, Inc. indicated they were in the business of building dwellings of that type, to wit, residential construction.
63. The Defendants Pearce and/or Ted Pearce, Inc. did not construct the home and related fixtures and improvements thereto in a workmanlike manner or quality as same was filled in with substandard fill and constructed thereon resulting in subsidence and other defects.
64. That the property with the subsidence and other defects is not marketable.
65. As a result of the Defendants Pearce and Ted Pearce, Inc. breach of warranties and contract, the Plaintiffs have been damaged in an amount in excess of \$10,000.00.

**WHEREFORE**, the Plaintiffs pray of the Court for the following relief:

1. That as a result the Defendants negligence, the Plaintiffs have and recover of the Defendants an amount in excess of \$10,000.00.
2. That as a result of the fraudulent acts of Defendants Pearce and Ted Pearce, Inc, the Plaintiffs have and recover of the Defendants an amount in excess of \$10,000.00.
3. That as a result of the unfair and deceptive trade practices of Defendants Pearce and Ted Pearce, Inc, the Plaintiffs have and recover of the Defendants an amount in excess of \$10,000.00 and that same be trebled in accordance with G.S. 75-16 *et seq.*
4. That as a result of the Defendants Pearce and Ted Pearce, Inc, breach of warranties and contract, the Plaintiffs have and recover of the Defendants an amount in excess of \$10,000.00.
5. That the costs of this action be taxed to the Defendants.
6. For attorney fees.
7. For such other and further relief as the Court may deem just and reasonable.

This the 22<sup>nd</sup> day of October, 2007.

LEAKE & SCOTT

A handwritten signature in black ink, appearing to read "Ward D. Scott", written over a horizontal line.

Ward D. Scott, Attorney for Plaintiffs  
501 BB&T Building  
Asheville, NC 28801  
828-253-3661  
NCBN: 24508