

631  
" ORIGINAL

FILED

FEB 2 2 51 PM '09

*E. D. Smith*  
CLERK OF THE COURT

1 **COMP**

2 Duane E. Shinnick, Esq.  
3 Bar No. 7176  
4 Eric Ransavage, Esq.  
5 Bar. No. 8876  
6 Megan M. Chodzko, Esq.  
7 Bar No. 8780  
8 SHINNICK RYAN & RANSAVAGE P.C.  
9 2881 Business Park Court, Suite 210  
10 Las Vegas, NV 89128  
11 Tel. (702) 631-8014  
12 Fax (702) 631-8024  
13 eransavage@sslplaw.com

14 Attorneys for Plaintiffs

15 DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 RICHARD A. ANAYA, individually; MEL and )  
18 MARI BAROSAY, individually; JAMES H. and )  
19 MELISSA R. BREAREY, individually; )  
20 ANDREW J. BURNETT, individually; HANK )  
21 and CINTHYA S. COOK, individually; JEAN )  
22 HANSON, individually; DAVID LEE, )  
23 individually; TRANQUILINO LOPEZ, )  
24 individually; MICHAEL S. PACHECO, )  
25 individually; DIMAS and NORMA RAMOS, )  
26 individually; MONICA D. RILEY, individually; )  
27 DONALD C. and MARY LOU RODINA, )  
28 individually; and the same on behalf of )  
29 themselves and on behalf of others similarly )  
30 situated, and ROES 1-600, inclusive )  
31 Plaintiffs,

32 v.

33 LEWIS HOMES OF NEVADA, a Nevada )  
34 General Partnership; KB HOME NEVADA, )  
35 INC., a Nevada Corporation; and DOES 1 )  
36 through 500, inclusive,

37 Defendants.

CASE NO. *A581562*

DEPT. NO. *XVI*

**ARBITRATION EXEMPTION CLAIMED:**  
Action seeking Extraordinary Relief

**CONSTRUCTION DEFECT  
CLASS ACTION COMPLAINT**

CLERK OF THE COURTS

RECEIVED  
FEB 9 2 2009

{00047496.DOC}

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**COMPLAINT FOR DAMAGES**

Come Now Plaintiffs, RICHARD A. ANAYA, individually; MEL and MARI BAROSAY, individually; JAMES H. and MELISSA R. BREAREY, individually; ANDREW J. BURNETT, individually; HANK and CINTHYA S. COOK, individually; JEAN HANSON, individually; DAVID LEE, individually; TRANQUILINO LOPEZ, individually; MICHAEL S. PACHECO, individually; DIMAS and NORMA RAMOS, individually; MONICA D. RILEY, individually; DONALD C. and MARY LOU RODINA, individually; and the same on behalf of themselves and on behalf of others similarly situated (hereinafter "Plaintiffs"), by and through their attorneys, Duane E. Shinnick, Esq., and Eric Ransavage, Esq. of the law firm of SHINNICK, RYAN & RANSAVAGE P.C., and for causes of action against Defendants, and each of them, allege and complain as follows:

**GENERAL ALLEGATIONS**

1. Plaintiffs are owners of individual residences within the housing development known as NAPA HILLS-SONOMA HILLS in Las Vegas, Nevada, more specifically described as residences in the subdivisions of NAPA HILLS BY LEWIS HOMES-UNIT 1; NAPA HILLS BY LEWIS HOMES-UNIT 2; NAPA HILLS BY LEWIS HOMES UNIT-3; SONOMA HILLS BY LEWIS HOMES-UNIT 1; SONOMA HILLS BY LEWIS HOMES-UNIT 1; SONOMA HILLS BY LEWIS HOMES-UNIT 2 as recorded with the Clark County Recorder in Plat Book 85, page 32; Plat Book 85, page 33; Plat Book 90, page 78; Plat Book 88, page 69 and Plat Book 93, page 60, and the materials and workmanship of their residences are substantially the same as the other 439 residences at NAPA HILLS-SONOMA HILLS.

2. Pursuant to NRS 40.600 through 40.695 inclusive, Plaintiffs seek recovery for damages suffered by each unit owner as to their separate interests as delineated by law.

1           2a. Pursuant to NRS 40.645 Plaintiffs have in good faith attempted to serve written notice  
2 on all defendants by certified mail at the addresses listed on the Nevada State Contractors Board  
3 records, or at their last known addresses. Plaintiffs have substantially complied with the notice and  
4 pre-filing requirements of NRS 40.645.  
5

6           3. The property and buildings thereupon will hereinafter sometimes be referred to as the  
7 “subject property.”

8           4. A class action is alleged pursuant to Nevada Rules of Civil Procedure Rule 23. The class  
9 consists of all owners of the subject property. Class Representative Plaintiffs bring this action as a  
10 class action, as representatives of all individuals who own one or more single family homes at the  
11 subject property in Clark County, Nevada.  
12

13           a) Plaintiffs allege that the class, consisting of the owners of approximately 439 units, is  
14 so numerous that joinder of all homeowners individually would be impractical and that  
15 disposition of their claims in a representative suit is a benefit to the court.  
16

17           b) Plaintiffs have a well defined community of interest or questions of fact and law  
18 common to each member of the class in that all members of the class have suffered  
19 injuries due to construction defects, the related stigma, diminution in value, lost rents,  
20 and personal property damage, as a result of expansive soils and other defects, relevant  
21 causes, and the claims herein alleged by Plaintiffs are representative of those claims  
22 which could be alleged by such members of the class.  
23

24           c) Plaintiffs allege that the relief herein sought is typical of the relief which could be  
25 sought by each of the class members.  
26

27           d) Plaintiffs allege that questions of law and fact common to the class predominate over  
28 questions affecting the individual class members, and that the interest of justice and

1 efficiency will be best served by bringing this action as a class action with regard to  
2 the aforementioned interests.

3  
4 e) Plaintiffs allege that the prosecution of separate actions by individual members of the  
5 class would create a risk of inconsistent or varying adjudications with respect to the  
6 individual members of the class which would establish incompatible standards of  
7 conduct by the parties opposing the class, and adjudication with respect to individual  
8 members of the class would be dispositive of the interest of other members not parties  
9 to the adjudication, or would substantially impair or impeded their ability to protect  
10 their interests.  
11

12 f) The Class Representative Plaintiffs have typical claims as the members of the class  
13 and were damaged by the acts and practices of the Defendants. They will fairly and  
14 adequately protect the interest of the class, as each is an owner of real property within  
15 the affected area identified below, and each was damaged by the acts and practices of  
16 Defendants, and each of them. Class Representative Plaintiffs have no conflicts with  
17 the other homeowners of the subject property single family homes, with respect to the  
18 claims alleged and have retained competent and experienced counsel to represent  
19 them.  
20

21  
22 g) The members of the class are easily located and identified as all individual  
23 homeowners at the subject property. The names and addresses of the individuals who  
24 own single family homes at the subject property are maintained as public records.  
25 There is no plain, speedy, or adequate remedy other than maintenance of this class  
26 action. Consequently, there would be a failure of justice and efficiency, but for the  
27 maintenance of this class action.  
28

1           5. The Defendants are identified as follows: Plaintiffs allege that Defendant LEWIS HOMES  
2 OF NEVADA, a Nevada General Partnership, authorized to do business in the State of Nevada and  
3 has conducted and/or now does conduct business within the County of Clark, State of Nevada,  
4 including but not limited to development, construction, improvement, conversion and/or sale of the  
5 subject property.

6           5a. Plaintiffs allege that Defendant KB HOME NEVADA, INC., a Nevada Corporation,  
7 authorized to do business in the State of Nevada and has conducted and/or now does conduct business  
8 within the County of Clark, State of Nevada, including but not limited to development, construction,  
9 improvement, conversion and/or sale of the subject property.

10           6. Plaintiffs allege that at all times herein mentioned, Defendants, and each of them, were the  
11 agents, servants and employees of each other and were acting in the course and scope of their agency  
12 or employment in doing the acts herein alleged.

13           7. Plaintiffs do not know the true names and capacities of defendants sued herein as Does 1 to  
14 500, including, and therefore sue these defendants by such fictitious names. Plaintiffs are informed  
15 and believe, and thereon allege, that each of the said fictitiously named defendants are responsible in  
16 some manner for the defective and negligent engineering, architecture, construction, supply of  
17 improper materials, and inspection of the subject property single family homes, or in some other  
18 actionable manner were an integral part of the chain of development, construction and marketing of  
19 the subject property single family homes, and that Plaintiffs damages as herein alleged were  
20 proximately caused by their conduct. Plaintiffs pray for leave to amend this Complaint when the true  
21 names and capacities of such defendants are ascertained.

22           8. Defendants Does 1 through 500, inclusive, whether individual, corporate, associate or  
23 otherwise are fictitious names of defendants whose true names and capacities, at this time, are  
24 unknown to Plaintiffs. Plaintiffs are informed and believe and thereupon allege that at all times  
25 herein mentioned each of the defendants sued herein as Does 1 through 500 was the agent, servant  
26  
27  
28

1 and employee of his or her co-defendants, and in doing the things hereinafter mentioned was acting in  
2 the scope of his or her authority as such agent, servant and employee, and with the permission and  
3 consent of his or her co-defendants; and that each of said fictitiously named defendants, whether an  
4 agent, corporation, association, or otherwise, is in some way liable or responsible to the Plaintiffs on  
5 the facts hereinafter alleged, and caused injuries and damages proximately thereby as hereinafter  
6 alleged. At such time as defendant's true names become known to Plaintiffs, Plaintiffs will ask leave  
7 of this Court to amend this Complaint to insert said true names and capacities.  
8

9  
10 9. Plaintiffs have discovered defects and damages within the periods of the applicable statutes  
11 of limitations that the subject property has and is experiencing defective conditions, in particular,  
12 there are damages stemming from, among other items, defectively built roofs, leaking windows, dirt  
13 coming through windows, drywall cracking, stucco cracking, stucco staining, water and insect  
14 intrusion through foundation slabs, and other poor workmanship.  
15

16 It was the result of the representations by Defendants that they would repair the defects and  
17 their conduct in so performing some works of repair, as well their proposals for correcting the defects  
18 that induced Plaintiffs to withhold conducting their own independent investigation and/or filing suit  
19 against said Defendants. By virtue of the fact that Defendants were the developers, contractors and  
20 sellers of the subject property and aware of the particular nature of the project, including its design,  
21 composition, and component parts, and when said Defendants represented that Defendants would  
22 repair the defects and, in fact, some works of repair were commenced, Plaintiffs were justified in  
23 relying on said representations and conduct by said Defendants in permitting them to investigate and  
24 repair the defects. As a result of Defendants' conduct, Plaintiffs' obligation to commence an action  
25 against Defendants for the defects and/or damages set forth above was tolled pursuant to NRS 11.190.  
26  
27  
28

1 On numerous occasions Defendants represented to Plaintiffs that the defective systems and  
2 materials were not inadequate, and that repairs had been successfully performed thereby inducing  
3 reasonable reliance thereupon by Plaintiffs that conditions were not in need of repairs, therefore,  
4 Defendants are estopped from asserting any potentially applicable statutes of limitations. Damage  
5 has also occurred at various times in the past, including progressive damage.  
6

7 10. Within the last year, Plaintiffs have discovered that the subject property has and is  
8 experiencing additional defective conditions, in particular, there are damages stemming from, among  
9 other items, defectively built roofs, leaking windows, dirt coming through windows, drywall  
10 cracking, stucco cracking, stucco staining, water and insect intrusion through foundation slabs, and  
11 other poor workmanship.  
12

13 **FIRST CAUSE OF ACTION**

14 **(Breach of Contract and Breach of Express Warranties as Against**

15 **All Defendants and Does 1 through 400)**

16  
17 11. Plaintiffs reallege and incorporate by reference paragraphs 1 through 10 of the Complaint  
18 as though fully set forth herein.

19 12. On or about various dates commencing in 1999, and continuing thereafter in the County  
20 of Clark, State of Nevada, the Plaintiffs and each of them or their predecessors in interest, entered  
21 into contracts in writing with Defendants for the purchase from said Defendants of one or more of the  
22 units in the subject property.  
23

24 13. At the time of negotiations of said contracts, but before said contracts were executed  
25 between the Plaintiffs and/or their predecessors in interest and said Defendants, as an inducement to  
26 the Plaintiffs and/or their predecessors in interest to purchase said units, and as a part of the basis of  
27 the bargain of the parties that culminated in the making of the contracts, said Defendants expressly  
28

1 warranted to Plaintiffs and/or their predecessors in interest that said units were constructed in  
2 conformity with the applicable building codes and the specific codes and regulations of Clark County,  
3 the approved plans and specifications, and that said structures were and are sound and safe, and  
4 would remain so.  
5

6 14. The Plaintiffs purchased said homes in reliance on the express warranties, affirmations of  
7 fact, and promises made by Defendants. Plaintiffs, and each of them, have duly performed all the  
8 conditions and covenants of said contracts on their part to be performed.  
9

10 15. Certain Plaintiffs and/or homeowners of the subject property, notified Defendants of said  
11 breach of contract and breach of warranties, and said Defendants have refused, and continue to refuse,  
12 to remedy these defects.

13 16. As a direct and proximate result of the breach of the express warranties (written and oral)  
14 by Defendants, and each of them, as herein above alleged, Plaintiffs suffered damages stemming  
15 from, among other items, defectively built roofs, leaking windows, dirt coming through windows,  
16 drywall cracking, stucco cracking, stucco staining, water and insect intrusion through foundation  
17 slabs, and other poor workmanship.  
18

19 17. Plaintiffs have suffered damages in an amount not fully known, but believed to be within  
20 the jurisdiction of this Court in that they have been and will hereafter be required to perform works of  
21 repair, restoration, and construction to portions of the structures to prevent further damage and to  
22 restore the structures to their proper condition. Plaintiffs will establish the precise amount of such  
23 damages at trial, according to proof.  
24

25 18. Plaintiffs are entitled to all damages set forth at NRS 40.655.  
26  
27  
28









1           33. Plaintiffs allege that, at all relevant times, Defendants, and each of them, owed to  
2 Plaintiffs and members of the general public, a duty to disclose all conditions potentially having  
3 adverse impact upon the subject properties, their value and their safety as well as stability. Plaintiffs  
4 allege that Defendants, and each of them, also owed Plaintiffs and members of the general public a  
5 duty to represent with reasonable accuracy the actual conditions, quality and significant factors  
6 concerning value, safety and stability of the subject properties. As the builders, developers and  
7 sellers of said subject properties, Defendants, and each of them, held a special relationship of trust  
8 and confidence with potential buyers such that duties of disclosure and accurate representations were  
9 incumbent upon Defendants, and each of them.  
10

11  
12           34. Plaintiffs allege that Defendants, and each of them, at all relevant times, in breach of the  
13 duties set forth above, negligently misrepresented and/or failed to disclose to Plaintiffs and members  
14 of the general public, facts and information regarding the defective conditions known to Defendants  
15 and affecting the subject properties, as described herein above.  
16

17           35. Plaintiffs are informed and believe, and thereon allege, that Defendants, and each of them,  
18 knew or should have known that members of the public, including the Plaintiffs, would purchase the  
19 single family homes and that Defendants who have superior knowledge and expertise as builders,  
20 developers and sellers of the subject properties, were required to correct any such defects in the  
21 properties and were further required not to sell such defective properties, and were also required to  
22 make such defects in the properties known to Plaintiffs as prospective purchasers.  
23

24           36. Had Plaintiffs known the undisclosed facts, Plaintiffs would have either investigated the  
25 condition and integrity of said homes and common areas or would have declined to purchase the  
26 residences, nor would Plaintiffs have relied, as they did, upon Defendants, and each of their,  
27  
28

1 representations that the subject homes were generally in good condition and fit for their intended use  
2 and that all repair work and/or renovations had been successfully completed.

3  
4 37. Plaintiffs allege that as a direct and proximate result of the defects set forth herein,  
5 Plaintiffs have suffered damages in an amount not fully known, but believed to be within the  
6 jurisdiction of this Court in that they have been and will hereafter be required to perform works of  
7 repair, restoration, and construction to portions of the structures to prevent further damage and to  
8 restore the structures to their proper condition. Plaintiffs will establish the precise amount of such  
9 damages at trial, according to proof.  
10

11 38. Plaintiffs are also entitled to the damages set forth at NRS 40.655.

12 **FIFTH CAUSE OF ACTION**

13 **(Breach of Implied Warranty of Habitability as to All Defendants and Does 1 through 400)**

14 39. Plaintiffs reallege and incorporate by reference paragraphs 1 through 38 of the Complaint,  
15 as though fully set forth herein.  
16

17 40. All Defendants each impliedly warranted that said homes would be of good and  
18 merchantable quality, would be habitable, and would be completed in a workmanlike manner.  
19 Further, said Defendants impliedly warranted the quality of construction of the homes and common  
20 areas as provided in NRS 116.4114.  
21

22 41. The Plaintiffs purchased their homes in reliance on the implied warranties and promises  
23 made by Defendants, and each of them. Plaintiffs have duly performed all of the covenants and  
24 conditions of said contracts on their part to be performed.

25 42. Certain Plaintiffs and/or Homeowners at the subject property have notified Defendants of  
26 said breach of implied warranties and said Defendants have refused and continue to refuse to remedy  
27 these defects.  
28

1 43. As a direct and proximate result of the breach of the implied warranties by Defendants and  
2 each of them as herein above alleged, Plaintiffs suffered damages stemming from, among other items,  
3 defectively built roofs, leaking windows, dirt coming through windows, drywall cracking, stucco  
4 cracking, stucco staining, water and insect intrusion through foundation slabs, and other poor  
5 workmanship. Plaintiffs are presently unaware of the precise amount of damages, but will establish  
6 the same at trial according to proof.  
7

8 **WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as**  
9 **follows:**

- 10 1. For general and special damages in excess of \$10,000.00 including but not limited to,  
11 costs of repair, loss of market value, loss of use, loss of financing, loss of investment  
12 and out-of-pocket expenses to be determined at time of trial;
- 13 2. For damages in an amount according to proof;
- 14 3. For reasonable attorneys fees and costs according to proof.
- 15 4. For prejudgment and post-judgment interest on all sums awarded, according to proof  
16 at the maximum legal rate;
- 17 5. For all damages pursuant to NRS 40.600 through 40.695; in particular 40.650 and  
18 40.655;
- 19 6. For costs of suit incurred;
- 20 7. For such other and further relief as the Court may deem just and proper.  
21

22 DATED this 2 day of February, 2009

23 SHINNICK, RYAN & RANSAVAGE P.C.

24 By   
25 \_\_\_\_\_

26 Duane E. Shinnick, Esq.  
27 Bar No. 7176  
28 Megan M. Chodzko, Esq.  
Bar. No. 8780  
Eric Ransavage, Esq.  
Bar. No. 8876  
2881 Business Park Court, Suite 210  
Las Vegas, NV 89128  
Attorneys for Plaintiffs