

M. L. AUST, JR., and
SALLY M. AUST,

Plaintiffs,
VS.

DAVID B. FULLER, ET AL.,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 5243

DEMURRER

Now come the defendants, separately and severally, and demur to the complaint heretofore filed in this cause and as grounds of such demurrer assign, separately and severally, the following:

1. It does not state a cause of action.
2. No facts are alleged on which the relief sought can be granted.
3. No facts are alleged to show the warranty which the defendants are alleged to have breached.
4. No facts are alleged to show whether the alleged warranty was oral or written.
5. The allegations of the complaint are vague, indefinite and uncertain in that the plans and specifications which are referred to in the complaint are not made a part thereof.
6. No facts are alleged to show when the alleged warranty was breached.
7. No facts are alleged to show on what part of the building the paint is peeling.
8. No facts are alleged to show in what way the sub-piers are not sufficient.
9. No facts are alleged to show in what manner the footing for the sub-piers was not properly constructed.
10. No facts are alleged to show in what manner the supporting structure for the house is too weak.
11. No facts are alleged to show to what extent the tile floor is uneven and loose.
12. No facts are alleged to show in what manner the sub-floors are uneven.

13. It does not allege when notice of the alleged breach of warranty was given to the defendants, or either of them.

14. The allegations of the complaint are conclusions of the pleader.

J. B. Tashburn
Attorney for Defendants

FILED

SEP 12 1923

ALICE J. DUCK, CLERK
REGISTER

5243
DEMURRER

M. L. AUST, JR., and SALLY M. AUST,

Plaintiffs,

VS.

DAVID B. FULLER, ET AL.,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. _____

STATE OF ALABAMA
BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon David B. Fuller, individually and George E. Fuller, individually; and David B. Fuller and George E. Fuller as Partners d/b/a Fuller Brothers; and Fuller Brothers, a Corporation, to appear within thirty days from the service of this writ in the Circuit Court, to be held for said county at the place of holding the same, then and there to answer the Complaint of M. L. Aust, Jr. and Sally M. Aust.

Witness my hand this the 10 day of August, 1962.

Alvin S. Tucker
Clerk

M. L. AUST, JR. AND SALLY
M. AUST,

Plaintiffs,

VS

DAVID B. FULLER, individually,
GEORGE E. FULLER, individually,
and DAVID B. FULLER and GEORGE
E. FULLER, as Partners d/b/a
FULLER BROTHERS and FULLER
BROTHERS, a Corporation,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 5243

Plaintiffs claim of the Defendants FIVE THOUSAND DOLLARS (\$5,000.00) damage for a breach of warranty in the sale of a house by them to the Plaintiffs on to-wit, the 18th day of August, 1962, which the Defendants warranted to be constructed in a workmanlike manner; where in fact, the drive-way was not properly compacted, the roof of the building sags, the paint is peeling off, the sub-structure of the house was not properly nailed together, the sub-piers are not sufficient and the footing for these piers were not properly constructed, the supporting structure for the house is too weak, the tile floor is uneven and is coming loose, the sub-floors are un-even, and is built of inferior material, the nail holes on the interior of the house were not properly filled, the joints on the inner walls are irregular and were not properly nailed, the ducts of the air-condition system are too small and are improperly insulated

and not properly supported.

2.

Plaintiffs claim of the Defendants FIVE THOUSAND DOLLARS (\$5,000.00) damage for a breach of implied warranty in the sale of a house by them to the Plaintiffs on to-wit, the 18th day of August, 1962, which the Defendants, by implication, warranted to be constructed in a workmanlike manner; where in fact, the driveway was not properly compacted, the roof of the building sags, the paint is peeling off, the sub-structure of the house was not properly nailed together, the sub-piers are not sufficient and the footing for these piers were not properly constructed, the supporting structure for the house is too weak, the tile floor is uneven and is coming loose, the sub-floors are uneven, and is built of inferior material, the nail holes on the interior of the house were not properly filled, the joints on the inner walls are irregular and were not properly nailed, the ducts of the air-condition system are too small and are improperly insulated and not properly supported.

3.

The Plaintiffs claim of the Defendants the sum of FIVE THOUSAND DOLLARS (\$5,000.00) for breach of the following warrant:

"WARRANTY OF COMPLETION OF CONSTRUCTION IN SUBSTANTIAL CONFORMITY WITH APPROVED PLANS AND SPECIFICATIONS

Property Location:	Purchaser(s)/Owner(s)
Confederate Drive, (Lot 15, Spanish Fort Estates)	Mart L. Aust, Jr.
Baldwin County, Alabama	Sally M. Aust

For good and valuable consideration, and in accordance with section 801 of the Housing Act of 1954, and Public Law 85-857 (38 U.S.C. 1805), the undersigned Warrantor hereby warrants to the Purchaser(s) or Owner(s) identified in the caption hereof, and to his (their) successors or transferees, that:

The dwelling located on the property identified in the caption hereof is constructed in substantial conformity with the plans and specifications (including any amendments thereof, or

changes and variations therein) which have been approved in writing by the Federal Housing Commissioner or the Administrator of Veterans Affairs on which the Federal Housing Commissioner or the Administrator of Veterans Affairs based his valuation of the dwelling: Provided, however, That this warranty shall apply only to such instances of substantial nonconformity as to which the Purchaser(s)/Owner(s) or his (their) successors or transferees shall have given written notice to the Warrantor at any time or times within 1 year from the date of original conveyance of title to such Purchaser(s)/Owner(s) or the date of initial occupancy of the dwelling, whichever first occurs: Provided further, however, That in the event the Purchaser(s)/Owner(s) acquired title to the captioned property prior to the completion of construction of the dwelling thereon, such notice of nonconformity to the Warrantor may be given at any time or times within 1 year from the date of completion or initial occupancy of such dwelling, whichever first occurs.

The term "dwelling" as used herein shall be deemed to include all improvements or appurtenances set forth in the plans and specifications upon which the Federal Housing Commissioner or the Administrator of Veterans Affairs has based his valuation of the property, excepting those constructed by a municipality or other governmental authority.

This warranty shall be in addition to, and not in derogation of, all other rights and privileges which said Purchaser(s)/Owner(s) may have under any other law or instrument, and shall survive the conveyance of title, delivery of possession of the property, or other final settlement made by the Purchaser(s)/Owner(s), and shall be binding on the Warrantor notwithstanding any provision to the contrary contained in the contract of purchase or other writing executed by the Purchaser(s)/Owner(s) heretofore or contemporaneously with the execution of this agreement or prior to final settlement.

IN TESTIMONY WHEREOF, the Warrantor has signed and sealed this warranty this 18th day of August, 1961.

<u>Fuller Brothers</u> Spanish Fort, Ala. Highway 90 at 31, (P.O. Box 398, Mobile) (Warrantor's Address)	<u>FULLER BROTHERS</u> By <u>/s/ David B. Fuller (SEAL)</u> WARRANTOR
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This warranty is executed for the purpose of inducing the Federal Housing Commissioner or the Administrator of Veterans Affairs to make, to guarantee or to insure a mortgage on the captioned property, and the person signing for the Warrantor represents and certifies that he is authorized to execute the same by the Warrantor and by his signature the Warrantor is duly bound under the terms and conditions of said warranty.

WARNING

Section 1010 of Title 18, U.S.C., "Federal Housing Administration transactions," provides: "Whoever, for the purpose of--influencing in any way the action of such Administration--makes, passes, utters, or publishes any statement, knowing the same to be false--shall be fined not more than \$5,000.00 or imprisoned not more than two years, or both." Other Federal Statutes provide severe penalties for any fraud as intentional misrepresentation made for the purpose of influencing the issuance of any guaranty or insurance or the making of any loan by the Administrator of Veterans Affairs.

NOTICE TO PURCHASER: ANY NOTICE OF NONCONFORMITY MUST BE DELIVERED TO THE WARRANTOR NO LATER THAN August 18, 1962 (Warrantor shall insert date 1 year from initial occupancy, date of conveyance of title or date of completion, whichever event is applicable.)

Receipt of this warranty is acknowledged this 18th day of August, 1961.

/s/ Mart L. Aust, Jr.

/s/ Sally M. Aust
Purchaser(s)/Owner(s)"

The Plaintiffs aver that this warranty has been breached because the building on said lot does not meet the plans and specifications for the house in that: The drive-way was not properly compacted, the roof of the building sags, the paint is peeling off, the sub-structure of the house was not properly nailed together, the sub-piers are not sufficient and the footing for these piers were not properly constructed, the supporting structure for the

for the house is too weak, the tile floor is uneven and is coming loose, the sub-floors are uneven, and is built of inferior material, the nail holes on the interior of the house were not properly filled, the joints on the inner walls are irregular and were not properly nailed, the ducts of the air-condition system are too small and are improperly insulated and not properly supported.

The Plaintiffs aver that notice of nonconformity has been given to the Defendants who are the Warrantors.

WILTERS & BRANTLEY

BY:

James M Brantley
Attorney for the Plaintiffs

The Plaintiff demands a trial by

jury.

James M Brantley

FILED

AUG 10 1962

ALICE J. DUCK, CLERK
REGISTER

Received 10 day of Aug 1962
and on 13th day of Aug 1962

I served a copy of the within St C

on David B. Fuller + Geo. E. Fuller ind.
David B. Fuller + Geo. E. Fuller d/b/a Fuller Brothers

By service on David B. Fuller +
George E. Fuller

TAYLOR WILKINS, Sheriff

By Fred Schubert D.S.
H. Fort

Received 10 day of Aug 1962
and on 13th day of Aug 1962

I served a copy of the within St C

on Fuller Brothers, a

Corporation -

By service on George E. Fuller

TAYLOR WILKINS, Sheriff

By Fred Schubert D.S.
Sp. Fort

Sheriff claims 220 miles at

Ten Cents per mile Total \$ 22.00
TAYLOR WILKINS, Sheriff

BY Schubert
DEPUTY SHERIFF

220
5
22.0

5243

July

M. L. Cust, Jr. &
Sally Cust,
Pltz

vs

David B. Fuller
ind & et al.

clerk

FILED

AUG 10 1932

ALICE J. DUCK, CLERK
REGISTER

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