

16158-2



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial Law Division - Civil Part pleadings (not motions) under Rule 4:5-1.

Pleading will be rejected for filing, under Rule 1:5-6(c), if information above the black bar is not completed or if attorney's signature is not affixed.

FOR USE BY CLERK'S OFFICE ONLY

PAYMENT TYPE: CK CG CA

CHG / CK NO.

AMOUNT:

OVERPAYMENT:

BATCH NUMBER:

ATTORNEY / PRO SE NAME

David J. Byrne

TELEPHONE NUMBER

(609) 452-3800

COUNTY OF VENUE

Hudson

FIRM NAME (If applicable)

Herrick, Feinstein LLP

DOCKET NUMBER (When available)

62560-13

OFFICE ADDRESS

Herrick, Feinstein LLP

210 CARNEGIE CENTER

PRINCETON, NEW JERSEY 08540

DOCUMENT TYPE

COMPLAINT

JURY DEMAND

X YES ☐ NO N/A

NAME OF PARTY (e.g. John Doe, Plaintiff)

Grandview at Riverwalk Port Imperial
Condominium Association, Inc.

CAPTION

Grandview at Riverwalk Port Imperial Condominium Association, Inc. vs. K.
Hovnanian at Port Imperial Urban Renewal II, LLC, et al.

CASE TYPE NUMBER

(See reverse side for listing)

508

IS THIS A PROFESSIONAL MALPRACTICE CASE? ☐ YES ☒ NOIF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A-53A-27 AND APPLICABLE CASE LAW REGARDING
YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.

RELATED CASES

PENDING?

☐ YES ☒ NO

IF YES, LIST DOCKET

NUMBERS

DO YOU ANTICIPATE ADDING

ANY PARTIES (arising out of

same transaction or occurrence)?

X YES ☐ NO

NAME OF DEFENDANTS PRIMARY INSURANCE COMPANY, IF KNOWN

☐ NONE ☒ UNKNOWN

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

A. DO PARTIES HAVE A CURRENT,
PAST OR RECURRENT

RELATIONSHIP?

X YES ☐ NO

IF YES, IS THAT

RELATIONSHIP

☐ EMPLOYER-EMPLOYEE☐ FRIEND / NEIGHBOR☐ OTHER (explain) _____☐ FAMILIAL

X BUSINESS

B. DOES THE STATUTE GOVERNING THIS
CASE PROVIDE FOR PAYMENT OF FEES
BY THE LOSING PARTY?☐ YES ☐ NOUSE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS
THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION:DO YOU OR YOUR CLIENT NEED ANY
DISABILITY ACCOMMODATIONS?☐ YES ☒ NOIF YES, PLEASE IDENTIFY THE
REQUESTED ACCOMMODATION: _____

WILL AN INTERPRETER BE NEEDED?

☐ YES ☒ NO

IF YES, FOR WHAT LANGUAGE: _____

ATTORNEY SIGNATURE

Revised effective 3/1/04



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*.

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I – 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY
- 502 BOOK ACCOUNT
- 505 OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)

Track II – 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 602 ASSAULT AND BATTERY
- 603 AUTO NEGLIGENCE - PERSONAL INJURY
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 699 TORT - OTHER

Track III – 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLE BLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV – Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 613 REPETITIVE STRESS SYNDROME
- 701 ACTIONS IN LIEU OF PREROGATIVE WRIT

Mass Tort (Track IV)

- | | |
|----------------|--------------|
| 240 DIET DRUG | 264 PPA |
| 246 REZULIN | 601 ASBESTOS |
| 247 PROPULSID | 619 VIOXX |
| 248 CIBA GEIGY | |

999 OTHER (Briefly describe nature of action) Petition Pursuant to R. 4:11-4 for the Issuance of a Subpoena Duces Tecum In An Out-Of-State Action.

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category

☐ Verbal Threshold ☐ Putative Class Action ☐ Title 59

MAY 31 2013

SUPERIOR COURT OF NEW JERSEY
COUNTY OF HUDSON
CIVIL DIVISION #6

David J. Byrne, Esquire
HERRICK, FEINSTEIN LLP
210 Carnegie Center
Princeton, NJ 08540
Attorneys for Grandview at Riverwalk Port Imperial
Condominium Association, Inc.

-----X
GRANDVIEW AT RIVERWALK PORT
IMPERIAL CONDOMINIUM
ASSOCIATION, INC.,

PLAINTIFF,

VS.

K. HOVNANIAN AT PORT IMPERIAL
URBAN RENWAL II, LLC; JOHN DOE
TRUSTEES 1-5 (A FICTITIOUS NAME);
JOHN DOES 1-20 (A FICTITIOUS NAME);
ABC SUBCONTRACTORS 1-25 (A
FICTITIOUS NAME); ABC
MANUFACTURERS 1-25 (A FICTITIOUS
NAME); ABC ARCHITECTS 1-25 (A
FICTITIOUS NAME); AND ABC
ENGINEERS 1-10 (A FICTITIOUS NAME),

DEFENDANTS.
-----X

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
HUDSON COUNTY

DOCKET NO.:

L 2560-13

CIVIL ACTION

COMPLAINT, DESIGNATION OF
TRIAL COUNSEL, JURY DEMAND
AND CERTIFICATION

Plaintiff, Grandview at Riverwalk Port Imperial Condominium Association, Inc. (the
"Association"), a New Jersey corporation, with its principal place of business located at c/ 22-20
Avenue at Port Imperial, West New York, NJ 07093, by and through its attorneys, Herrick,
Feinstein LLP, complaining of the above-referenced defendants, does hereby aver and allege as
follows:

PARTIES AND BACKGROUND

A. Plaintiff

1. The Association is a New Jersey non-profit corporation organized under Title 15A of the laws of the State of New Jersey (N.J.S.A. § 15A:1-1 et seq.) pursuant to a certificate of incorporation filed in the Office of the Secretary of State and as described in a certain Master Deed recorded with the Clerk's Office, Hudson County, New Jersey.

B. Defendants

2. Upon information and belief, Defendant, K. HOVNANIAN AT PORT IMPERIAL URBAN RENWAL II, LLC, is a New Jersey corporation which was the sponsor, developer and general contractor that created, designed, constructed and sold all of the units and common elements at the Association (hereinafter, the "Developer").

3. The Developer, through its own related companies, employees or through representatives or agents, supervised the design and construction of the Association's unit and common elements.

4. Defendants, John Doe Trustees 1-5, are those persons designated or appointed by the Developer to serve as Board members of the Association's Board of Trustees (the "Board") prior to transition of control of the Board to the owners.

5. Defendants, ABC Subcontractors 1-25, are fictitious names intended to represent those individual and/or corporate contractors or subcontractors whose identities are presently unknown to the Association who performed deficient work or supplied deficient or defective materials for the construction of the Association.

6. Defendants, ABC Manufacturers 1-25, are fictitious names intended to represent those individuals and/or corporate manufacturers whose identities are presently unknown to the Association who supplied deficient building components or defective materials for the construction of the Association.

7. Defendants, ABC Architects 1-25, are fictitious names intended to represent those individuals and/or corporate design professionals whose identities are presently unknown to the Association who provided services for the construction of the Association.

8. Defendants, ABC Engineers 1-10, are fictitious names intended to represent those individuals and/or engineering professionals whose identities are presently unknown to the Association who provided services for the construction of it.

C. Background Facts

9. The Developer is the sponsor and general contractor which designed and built all of the Association's units. It also designed and built the common elements at the Association (the "Common Elements"), as described in a certain Registration Statement and Public Offering Statement ("POS") filed by the Developer with the New Jersey Department of Community Affairs.

10. As provided in the Master Deed and the POS, the Developer established the Association to, inter alia, own, administer, manage and operate, maintain, repair and replace the Common Elements.

11. Association unit owners automatically became members of the Association upon acquisition of title to their units. The unit owners will hereinafter be collectively referred to as "the Members." Some of the Members are the original owners of units in the Association and will hereinafter be collectively referred to as the "Original Members." Some of the units have

been sold and the purchasers have succeeded to the rights and interest of the Original Members from whom they purchased their units. The term "Members" is hereby defined as including both the Original Members and all other Members.

12. The Association brings the claims asserted herein for itself and on behalf of its Members.

D. The Defendants' Wrongful Acts

13. At all times relevant to this action, the Developer was responsible for the design, construction and sale of the Common Elements. All of the Common Elements were developed, designed, constructed, installed, assembled or otherwise fabricated or purchased either by the Developer or other entities under the direct supervision and control of the Developer.

14. During the initial years of its existence, the Association was dominated and controlled by the Developer and had no independent existence.

15. The Association has discovered that, during the time of Developer control of the Board, it failed to discover and/or correct various defects and deficiencies in the Association's design and construction.

16. The members eventually took control of the Board after the Developer had closed on a certain percentage of the units.

17. The Association learned that the Developer, as well as ABC Subcontractors 1-25, collectively installed various exterior cladding without proper flashing and sealants and otherwise failed to install the balconies, decks, doors, windows, roofs, siding and/or other building components pursuant to manufacturers' installation specifications and standards in the industry (the "Deficiencies"). As a consequence of the Deficiencies, water has penetrated into and behind the exterior walls, causing consequential damage to other property, including, but not

limited to, damage to the sheathing and the framing on all of the units. The Deficiencies have also caused, and will continue to cause, water to penetrate behind the siding, damaging the sheathing and framing on the buildings.

18. The Association has also become aware of various other deficiencies in the design and construction of the Common Elements.

19. Because of the Developer's failings, as well as those of ABC Subcontractors 1-25, to construct the Common Elements pursuant to manufacturer's specifications and the applicable building code, and because of the failure to install proper flashings on the buildings Common Elements need to be completely removed, all consequential damage needs to be repaired and repairs to the Common Elements are necessary.

20. Because of the failure of ABC Manufacturers 1-25 to properly construct/manufacture the Common Elements, all of which were sold and distributed by ABC Manufacturers 1-25, water has, and will continue to, infiltrate into the wall cavities of the buildings causing damage to sheathing and framing and other building components.

21. ABC Architects 1-25 and ABC Engineers 1-10 owed a duty to exercise reasonable care in performing their services for the construction of the Association in accordance with standards in the industry and all applicable state and local building codes, regulations and ordinances. ABC Architects 1-25 and ABC Engineers 1-10 failed to do so and as a result water has, and will continue to, infiltrate into the wall cavities of the buildings causing damage to sheathing and framing.

22. The aforementioned design defects and construction deficiencies in the Common Elements have caused, and will continue to cause, direct and consequential damage to the

Common Elements and units and adversely affect the habitability of the buildings and the Members' ability to enjoy the use of their units and the Common Elements.

23. Many of the foregoing deficiencies constitute violations of the applicable building codes.

24. As a result of the Deficiencies, the Association has been severely damaged.

COUNT ONE
Negligence

25. The allegations of all of the preceding paragraphs are hereby incorporated by reference as though fully set forth at length herein.

26. The Developer, as builder and seller of the Members' units, owned a duty to exercise reasonable care in designing, constructing, and overseeing the construction of the Common Elements in accordance with approved plans, all applicable manufacturer's installation specifications, all reasonable commercial standards in the industry for residential construction, and all applicable state and local building codes, regulations and ordinances.

27. ABC Subcontractors 1-25, owed a duty to exercise reasonable care in installing the Common Elements and in supervising the work of its subcontractors in construction of the buildings and Commons Elements.

28. ABC Subcontractors 1-25, owed a duty to exercise reasonable care in performing their work on the buildings and Common Elements in accordance with approved plans, all applicable manufacturer's installation specifications, standards in the industry and all applicable state and local building codes, regulations and ordinances.

29. ABC Architects 1-25 and ABC Engineers 1-10 owed a duty to exercise reasonable care in performing their services for the construction of the Association in accordance

with standards in the industry and all applicable state and local building codes, regulations and ordinances.

30. ABC Manufacturers 1-25 had a duty to supply products used in the construction of the Association in accordance with all applicable state and local building codes, regulations and ordinances.

31. As a direct and proximate result of the repeated breaches of their duties of reasonable care to the Association, the Developer, ABC Subcontractors 1-25, ABC Manufacturers 1-25, and ABC Architects 1-25 and ABC Engineers 1-10, the Association has been damaged.

32. As a direct and proximate result of the foregoing breaches of the duties of reasonable care owed to the Association by the Developer, ABC Subcontractors 1-25, ABC Manufacturers 1-25, ABC Architects 1-25 and ABC Engineers 1-10, the Association has suffered, and will continue to suffer, severe direct and consequential damage because, inter alia, water is penetrating inside the buildings, causing mold and other damage to the sheathing and framing of the buildings and/or Common Elements.

WHEREFORE, the Association demands judgment against the Developer, ABC Subcontractors 1-25, ABC Manufacturers 1-25, ABC Architects 1-25 and ABC Engineers 1-10, jointly, severally, and in the alternative, for the following relief:

- (a) compensatory damages;
- (b) reasonable attorney's fees, interest and costs; and
- (c) such other and further relief as is equitable, appropriate and just.

COUNT TWO
Breach of Express Warranties

33. The allegations of the preceding paragraphs above are hereby incorporated by reference as though fully set forth at length herein.

34. Developer made certain express warranties in the individual Subscription and Purchase Agreements between it and the Members of the Association, and in the Public Offering Statement incorporated into those Agreements, that the Common Elements would be free from defects and fit for their intended purpose.

35. Upon information and belief, ABC Subcontractors 1-25 also made certain express warranties for the intended benefit of the Association that their work would be done in a good and workmanlike manner, free from defects.

36. Upon information and belief, ABC Manufacturers 1-25 made certain express warranties that the windows and sliding glass doors it sold and distributed for use at the Association were properly mulled and sealed and were otherwise free from defects and fit for their intended use.

37. By virtue of the failure of the Developer to design, construct and install the Common Elements in a good and workmanlike manner, free from defects, the Common Elements are not fit for their intended use, violate the applicable building codes in important respects and therefore present a public safety hazard.

38. The Developer has failed to remedy, replace, rectify, repair or otherwise cure the serious design and construction defects in the Common Elements.

39. By virtue of the failure of ABC Subcontractors 1-25, ABC Architects 1-25 and ABC Engineers 1-10 to perform their work in a good and workmanlike manner, free from defects, the Association has been damaged.

40. ABC Manufacturers 1-25 breached its express warranties because the windows and sliding glass doors it sold and distributed for use at the Association were and are defective and unfit for their intended use.

41. As a direct and proximate result of the breaches of the express warranties described above, the Association has sustained damages and will, in the future, continue to sustain direct and consequential damages, including, but not limited to, the cost of repairing the foregoing defects and deficiencies and/or replacing defective materials and deficient workmanship.

WHEREFORE, the Association demands judgment against the Developer, ABC Subcontractors 1-25, ABC Architects 1-25, ABC Engineers 1-10 and ABC Manufacturers 1-25, for the following relief:

- (a) compensatory damages;
- (b) consequential and incidental damages;
- (c) reasonable attorney's fees, interest and costs; and
- (d) for such other and further relief as is equitable, appropriate and just.

COUNT THREE
Breach of Implied Warranties

42. The allegations of the preceding paragraphs above are herein incorporated by reference as though fully set forth at length herein.

43. The Developer impliedly warranted to the Association and the Members that the Common Elements would be free from defects, built in a workmanlike manner and would be reasonably fit for their intended purpose.

44. The Developer, ABC Subcontractors 1-25, ABC Architects 1-25, ABC Engineers 1-10 and ABC Manufacturers 1-25 each impliedly warranted to the Association and the

Members that their respective workmanship and materials would be free from defects, built in a workmanlike manner and would be reasonably fit for its intended purpose.

45. The Developer, ABC Subcontractors 1-25, ABC Architects 1-25, ABC Engineers 1-10 and ABC Manufacturers 1-25 breached their implied warranties by performing workmanship and providing materials that are deficient.

46. The Developer impliedly warranted to the Members that the Common Elements would be fit for habitability.

47. Due to the Developer's breach of the implied warranty of habitability, the Common Elements contain latent and patent defects that have adversely affected and will, in the future, continue to adversely affect, the use of the Common Elements for residential purposes.

48. The Developer, ABC Subcontractors 1-25, ABC Architects 1-25, ABC Engineers 1-10 and ABC Manufacturers 1-25 have failed to remedy, replace, rectify, repair and cure the Deficiencies, despite their obligation to do so.

49. As a direct and proximate result of the breach of the implied warranties described above, the Association has sustained direct and consequential damages and will continue to sustain damages in the future.

WHEREFORE, the Association demands judgment against the Developer, ABC Subcontractors 1-25, ABC Architects 1-2, ABC Engineers 1-10 and ABC Manufacturers 1-25 for the following relief:

- (a) compensatory damages;
- (b) consequential and incidental damages;
- (c) reasonable attorney's fees, interest and costs; and

(d) such other and further relief as is equitable, appropriate and just.

HERRICK, FEINSTEIN LLP
Attorneys for Plaintiff,
Grandview at Riverwalk Port Imperial
Condominium Association, Inc.

By: 

David J. Byrne

Dated: May 31, 2013

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of R. 4:25-4, the Court is advised that David J. Byrne, Esq., is hereby designated as trial counsel.

HERRICK, FEINSTEIN LLP
Attorneys for Plaintiff,
Grandview at Riverwalk Port Imperial
Condominium Association, Inc.

By: 

David J. Byrne

Dated: May 31, 2013

DEMAND FOR JURY TRIAL

The Plaintiff demands a trial by jury as to all issues in accordance with the Rules of the Court.

HERRICK, FEINSTEIN LLP
Attorneys for Plaintiff,
Grandview at Riverwalk Port Imperial
Condominium Association, Inc.

By: _____

David J. Byrne

Dated: May 31, 2013

CERTIFICATION

Pursuant to R. 4:5-1, it is hereby stated that the matter in controversy is not the subject of any other action pending before any court. Also, to the best of my knowledge and belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading and the previous pleadings, if any, at the present time we know of no other parties who should be joined in the within action.

David J. Byrne

Dated: May 31, 2013