

IN THE SUPERIOR COURT OF PICKENS COUNTY
STATE OF GEORGIA

2018 NOV -2 AM 1:29

STEVEN J. PAPKE, PATRICIA A. PAPKE)
STEVEN T. BARCROFT, CATHERINE)
C. BARCROFT, CARL H. PETERSON and)
DIANNA M. PETERSON,)

Plaintiffs,)

v.)

BIG CANOE COMPANY LLC,)

Defendant.)
_____)

FILED IN OFFICE
JENNIFER E. JORDAN, CLERK
PICKENS COUNTY, GA

CIVIL ACTION FILE

NO. 2017SUCV212

AMENDED COMPLAINT

COME NOW Steven J. Papke, Patricia A. Papke, Steven T. Barcroft, Catherine C. Barcroft, Carl H. Peterson, and Dianna M. Peterson. Plaintiffs herein, who amend their Complaint as follows:

1.

Plaintiffs repeat, reallege and incorporate by reference as if fully stated herein, each and every allegation of Paragraphs 1 through 49 of the original Complaint.

Plaintiffs assert the following additional counts for relief:

COUNT IV

50.

Defendant owed a duty to Plaintiffs to ensure that the builder members of its Preferred Builders program were the "best of the best" and remained the "best of the best" while members of its Preferred Builders program.

51.

In addition to committing fraud, Defendant Big Canoe Company, LLC negligently maintained and operated its Preferred Builders program.

52.

For several years Defendant Big Canoe Company, LLC had a builder coordinator who worked with owners and builders as part of its Preferred Builders program.

53.

For the years 2012 through 2015 Defendant Big Canoe Company, LLC did not have a builder coordinator.

54.

During the years Chris Vann and Vann Custom Homes were part of the Defendant's Preferred Builders program, no one employed by Defendant Big Canoe Company, LLC proactively inquired into the financial stability of Chris Vann and Vann Custom Homes.

55.

During the years that Chris Vann and Vann Custom Homes were part of the Defendant's Preferred Builders program no one employed by Defendant Big Canoe Company, LLC proactively checked into liens related to the construction projects of Chris Vann and Vann Custom Homes.

56.

During the years that Chris Vann and Vann Custom Homes were part of the Defendant's Preferred Builders Program no one employed by Defendant Big Canoe Company, LLC proactively checked into judgments against Chris Vann and Vann Custom Homes.

57.

During the years that Chris Vann and Vann Custom Homes were part of the Defendants' Preferred Builders program no one employed by Defendant Big Canoe Company, LLC informed owners that Defendant would receive a fee or commission if they hired a member of the Defendant's Preferred Builder program as a result of the efforts of Big Canoe Realty.

58.

After Defendant Big Canoe Company, LLC no longer employed a building coordinator, no one employed by Defendant Big Canoe Company, LLC checked into home owner satisfaction regarding homes then under construction.

59.

During the years that Chris Vann and Vann Custom Homes were part of the Defendant's Preferred Builder program, no one employed by Defendant Big Canoe Company, LLC required Vann or Vann Custom Homes to submit financial statements of any kind.

60.

During the years that Chris Vann and Vann Custom Homes were part of the Defendant's Preferred Builders program no one employed by Defendant Big Canoe Company, LLC required agents and independent contractors of Big Canoe Realty to report whether they had received payments or received reduced or free services from members of the Defendant's Preferred Builders program.

61.

During the years that Chris Vann and Vann Custom Homes were part of the Defendant's Preferred Builders program Defendant Big Canoe Company, LLC required Chris Vann and Vann

Custom Homes to file with Defendant a copy of their building contracts that were obtained as a result of efforts by Big Canoe Realty.

62.

Besides signing an annual agreement with Defendant, the only other documents that Chris Vann and Vann Custom Homes was required to provide to Big Canoe Company, LLC were the contracts with owners that were obtained as a result of efforts by Big Canoe Realty. Said contracts were required to be furnished to Defendant in order for the Defendant to verify the fee or commission it was to be paid.

63.

During the years that Chris Vann and Vann Custom Homes were part of the Defendant's Preferred Builders program Defendant never informed owners that if they hired a member of its Preferred Builders program that a copy of their contract would be given to Big Canoe Realty..

64.

During the years that Chris Vann and Vann Custom Homes were part of the Defendant's Preferred Builders program Defendant never obtained the written consent of owners to the giving of their contract by a member of its Preferred Builders program to Defendant.

65.

Defendant Big Canoe Company, LLC negligently failed to include financial oversight of the members of its Preferred Builders program.

66.

Defendant Big Canoe Company, LLC negligently failed to include the gathering of owner input into its Preferred Builders program.

67.

Defendant Big Canoe Company, LLC negligently allowed Chris Vann and Vann Custom Homes to remain as a member of its Preferred Builders Program when no longer qualified to do so under Defendant's Preferred Builders Agreement.

68.

Defendant Big Canoe Company, LLC negligently failed to require Chris Vann and Vann Custom Homes to comply with the requirements of its Preferred Builders program during the years 2012, 2013 and 2014.

69.

Defendant Big Canoe Company, LLC negligently failed to remove Chris Vann and Vann Custom Homes as a member of its Preferred Builders program.

70.

Plaintiffs Steven J. Papke and Patricia A. Papke never consented to Chris Vann and Vann Custom Homes giving a copy of their contract to Defendant Big Canoe Company, LLC.

71.

Plaintiffs Steven J. Papke and Patricia A. Papke never authorized Defendant Big Canoe Company, LLC to obtain a copy of their contract with Chris Vann and Vann Custom Homes.

72.

As a direct result of the efforts of Defendant Big Canoe Company, LLC, Plaintiffs Steven J. Papke and Patricia A. Papke entered into a contract with Chris Vann and Vann Custom Homes for the construction of their home in Big Canoe.

73.

Due to the negligent promotion by Defendant Big Canoe Company, LLC of Chris Vann and Vann Custom Homes as a Preferred Builder, Plaintiffs Steven J. Papke and Patricia A. Papke were damaged as a direct result of Chris Vann and Vann Custom Homes being a member of Defendant's Preferred Builders program as they would have not otherwise entered into a contract with Chris Vann and Vann Custom Homes.

74.

Plaintiffs Steven J. Papke and Patricia A. Papke are entitled to recover damages from Defendant Big Canoe Company, LLC in an amount as proved upon the trial of the case but not less than \$133,000.00 and punitive damages to deter Defendant from similar conduct in the future in an amount as determined by the trier of fact but not less than \$500,000.00.

COUNT V

75.

Plaintiffs incorporate by reference the allegations of Paragraphs 50 through 69 of Count IV of the Complaint as if fully set forth herein.

76.

Plaintiffs Steven T. Barcroft and Catherine C. Barcroft never consented to Chris Vann and Vann Custom Homes giving a copy of their contract to Defendant Big Canoe Company, LLC.

77.

Plaintiffs Steven T. Barcroft and Catherine C. Barcroft never authorized Defendant Big Canoe Company, LLC to obtain a copy of their contract with Chris Vann and Vann Custom Homes.

78.

As a direct result of the efforts of Defendant Big Canoe Company, LLC, Plaintiffs Steven T. Barcroft and Catherine C. Barcroft entered into a contract with Chris Vann and Vann Custom Homes for the construction of their home in Big Canoe.

79.

Due to the negligent promotion by Defendant Big Canoe Company, LLC of Chris Vann and Vann Custom Homes as a Preferred Builder, Plaintiffs Steven T. Barcroft and Catherine C. Barcroft were damaged as a direct result of Chris Vann and Vann Custom Homes being a member of Defendant's Preferred Builders program as they would not have otherwise entered into a contract with Chris Vann and Vann Custom Homes.

80.

Plaintiffs Steven T. Barcroft and Catherine C. Barcroft are entitled to recover damages from Defendant Big Canoe Company, LLC in an amount as proved upon the trial of the case but not less than \$287,887.00 and punitive damages to deter Defendant from similar conduct in the future but not less than \$500,000.00.

COUNT VI

81.

Plaintiffs incorporate by reference the allegations of Paragraphs 50 through 69 of Count IV of the Complaint are if fully set forth herein.

82.

Plaintiffs Carl H. Peterson and Dianna M. Peterson never consented to Chris Vann and Vann Custom Homes giving a copy of their contract to Defendant Big Canoe Company, LLC.

83.

Plaintiffs Carl H. Peterson and Dianna M. Peterson never authorized Defendant Big Canoe Company, LLC to obtain a copy of their contract with Chris Vann and Vann Custom Homes.

84.

As the direct result of the efforts of Defendant Big Canoe Company, LLC, Plaintiffs Carl H. Peterson and Dianna M. Peterson entered into a contract with Chris Vann and Vann Custom Homes for the construction of their home in Big Canoe.

85.

Due to the negligent promotion by Defendant Big Canoe Company, LLC of Chris Vann and Vann Custom Homes as a Preferred Builder, Plaintiffs Carl H. Peterson and Dianna M. Peterson were damaged as a direct result of Chris Vann and Vann Custom Homes being a member of Defendant's Preferred Builders Program as they would not have otherwise entered into a contract with Chris Vann and Vann Custom Homes.

85.

Plaintiffs Carl H. Peterson and Dianna M. Peterson are entitled to recover damages from Defendant Big Canoe Company, LLC in an amount as proved upon the trial of the case but not less than \$256,000.00 and punitive damages to deter Defendant from similar conduct in the future but not less than \$500,000.00.

WHEREFORE, Plaintiffs respectfully pray;

(a) That summons and process issue as provided by law;

(b) That, under Count One, that Plaintiffs Steven J. Papke and Patricia A. Papke recover from Defendant damages in an amount as proved upon the trial of the case, but not less than \$133,000.00 and punitive damages in an amount of no less than \$500,00.00;

(c) That, under Count Two, that Plaintiffs Steven T. Barcroft and Catherine C. Barcroft recover from Defendant damages as proved upon the trial of the case, but not less than \$287,887.03 and punitive damages in an amount of not less than \$500,000.00;

(d) That, under Count Three, that Plaintiffs Carl H. Peterson and Dianna M. Peterson recover from Defendant damages as proved up the trial of the case, but not less than \$256,000.00.and punitive damages in an amount of not less than \$500,000.00;

(e) That under Count Four that Plaintiffs Steven J. Papke and Patricia A. Papke recover from Defendant damages in an amount as proved upon the trial of the case, but not less than \$133,000.00 and punitive damages in amount of not less than \$500,000.00;

(f) That under Count Five that Plaintiffs Steven T. Barcroft and Catherine C. Barcroft recover from Defendant damages in an amount as proved upon the trial of the case but not less than \$287,887.00 and punitive damages in an amount of not less than \$500,000.00;

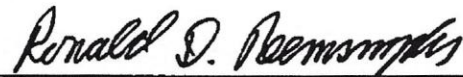
(g) That under Count Six that Plaintiffs Carl H. Peterson and Dianna M. Peterson recover damages in an amount as proved upon the trial of the case but not less than \$256,000.00 and punitive damages in an amount of not less than \$500,000.00;

(h) That this matter be tried and judgment issue in favor of the Plaintiffs and against Defendants as prayed for in the Complaint; and

(i) That the Court grant such other and further relief as it deems just and proper.



John J. Capo
Attorney for Plaintiffs
P.O. Box 2257
44 North Main Street
Jasper, Georgia 30143
(706) 253-2030
(706) 253-2031 fax
jcapo@mindspring.com
State Bar No. 108800



Ronald D. Reemsnyder
Attorney for Plaintiffs
135 Prominence Court, Suite 160
Dawsonville, GA 30534
Ph: (706) 216-1272
Fax: (706) 216-1278
Email: rreemsnyder@rbspag.com
Georgia Bar No. 597950
(SIGNED BY JJC WITH PERMISSION)

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STATE OF GEORGIA

STEVEN J. PAPKE, PATRICIA A.
PAPKE, STEVEN T. BARCROFT,
CATHERINE C. BARCROFT, STEVEN J.
PAPKE and DIANNA M. PETERSON,

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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing party to the foregoing matter with a copy of the attached *Amended Complaint* by depositing the same in the United States Mail, in a properly addressed envelope with adequate postage thereon. addressed to:

Shaun Daughtery
Sean C. Ryan
Freeman Mathis & Gary, LLP
100 Galleria Parkway
Suite 1600
Atlanta, Georgia 30339-5948

This 1st day of November, 2018.



John J. Capo
State Bar No. 108800
Attorney for Plaintiff
P.O. Box 2257
44 North Main Street
Jasper, Georgia 30143
(706) 253-2030
(706) 253-2031 (fax)
Email: jcapo@mindspring.com