

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

CITY LIGHTS CONDOMINIUM
ASSOCIATION, INC.

Plaintiff,

v.

RUTLEDGE DEVELOPMENT, LLC,
THE R.G. ANDERSON COMPANY,
INC., JOE OWEN, RICHARD RHEA,
LARRY ELLIOT, DONALD MEEKS,
AND JOHN AND JANE DOE NOS. 1-50,

Defendants.

Civil Action No. _____

COMPLAINT

Plaintiff City Lights Condominium Association, Inc., for its Complaint against Defendants Rutledge Development, LLC, The R.G. Anderson Company, Inc., Joe Owen, Richard Rhea, Larry Elliot, Donald Meeks, and John and Jane Doe Nos. 1-50, alleges as follows:

I. SUMMARY OF THE CASE

1. This action arises from numerous substantial defects in the design and construction of the City Lights Condominiums (“City Lights”) which was developed by Defendant Rutledge Development, LLC and constructed by Defendant The R.G. Anderson Company, Inc.

2. This action also arises out of Defendant Rutledge Development, LLC’s intentional and/or negligent misrepresentations related to its marketing of residential units at City Lights based upon among other things the availability of a high-end restaurant at City Lights; full-time concierge service at City Lights; the deliberate understating of the monthly common expense assessments required to fund the operations of City Lights; and its failure to pay all common

expenses of Plaintiff City Lights Condominium Association, Inc. until such time as the Board of Plaintiff City Lights Condominium Association, Inc. made a common expense assessment as required by the Tennessee Condominium Act, Tenn. Code Ann. § 66-27-101, et seq.

3. Moreover, on or about November 5, 2020, Defendant Rutledge Development, LLC, at the direction of its the members/officers/directors Defendants Joe Owen, Richard Rhea, Larry Elliot and Don Meeks mortgaged Defendant Rutledge Development, LLC's only remaining holdings at City Lights for approximately \$2.4 million and upon information and belief, distributed all or substantially all the loan proceeds to Defendant Rutledge Development, LLC's investors, Defendants John/Jane Doe Nos. 1-50, which included members of Defendant Rutledge Development, LLC all the while knowing Plaintiff City Lights Condominium Association, Inc. and individual City Lights residential unit owners had outstanding claims against Defendant Rutledge Development, LLC related to negligent design, construction defects, and warranty claims and its failure to pay Plaintiff City Lights Condominium Association, Inc.'s common expenses as required by Tennessee law.

4. Plaintiff City Lights Condominium Association, Inc. brings this action against Defendant Rutledge Development, LLC to recover damages for its negligent design and defective construction of City Lights, its intentional and/or negligent misrepresentations, and its numerous violations of the Tennessee Condominium Act. Plaintiff City Lights Condominium Association, Inc. brings this action against Defendant The R.G. Anderson Company, Inc. to recover damages arising out of its negligent and defective construction of City Lights. Plaintiff brings this action against Defendant Rutledge Development, LLC for its fraudulent transfer of all or substantially all the loan proceeds received by mortgaging Defendant Rutledge Development, LLC's remaining holdings at City Lights which constitute the bulk of its assets; against Defendants Joe Owen,

Richard Rhea, and Larry Elliot for their breach of fiduciary duties; against Defendants Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks to pierce Defendant Rutledge Development, LLC's corporate veil and to hold them personally responsible for Defendant Rutledge Development, LLC's breaches of its obligations to Plaintiff City Lights Condominium Association, Inc. and residential unit owners at City Lights; and against John and Jane Does 1-50 to impose a constructive trust on the loan proceeds they received from Defendant Rutledge Development, LLC.

PARTIES

5. Plaintiff City Lights Condominium Association, Inc. ("Plaintiff CLCA") is a Tennessee not-for-profit corporation established on April 8, 2019. Plaintiff CLCA's principal office is located at 4521 Trousdale Drive, Nashville, Tennessee, 37204.

6. Defendant Rutledge Development, LLC ("Defendant Rutledge Development") is a Tennessee limited liability company. Its members include Defendants Joe Owen, Richard Rhea, and Larry Elliot, all of whom are Tennessee residents and citizens, and Donald Meeks who is a resident and citizen of Texas. Defendant Rutledge Development may be served through its registered agent of process, Richard Rhea, at 2112 Woodlawn Drive, Nashville, Tennessee, 37212.

7. Defendant The R.G. Anderson Company, Inc. ("Defendant R.G. Anderson") is a Tennessee corporation with its principal office located at 1801 West End Ave., Ste. 1800, Nashville, Tennessee, 37203. Defendant R.G. Anderson may be served through its registered agent of process, Robert Anderson, at 1801 West End Ave., Ste. 1800, Nashville, Tennessee, 37203.

8. Defendant Joe Owen is a Tennessee resident and citizen and member/officer/director of Defendant Rutledge Development. Mr. Owen may be served at 105 West Park Drive, Ste. 100, Brentwood, Tennessee 37027.

9. Defendant Richard Rhea is a Tennessee resident and citizen and a member/officer/director of Defendant Rutledge Development. Mr. Rhea may be served at 2112 Woodlawn Drive, Nashville, Tennessee, 37212.

10. Defendant Larry Elliot is a Tennessee resident and citizen and a member/officer/director of Defendant Rutledge Development. Mr. Elliot may be served at 109 Lyon Street, McMinnville, Tennessee 37110.

11. Defendant Donald Meeks is a Texas resident and citizen and a member/officer/director of Defendant Rutledge Development. Mr. Meeks may be served at 16000 Memorial Drive, Ste. 100, Houston, Texas 77079-4007.

12. Defendants John and Jane Doe Nos. 1-50 are investors in Defendant Rutledge Development. Plaintiff CLCA will amend this Complaint once the identities of Defendants John and Jane Doe Nos. 1-50 are discovered.

II. JURISDICTION

13. This Court has subject matter jurisdiction over this action.

14. This Court has personal jurisdiction over all Defendants.

15. Venue is proper in this Court because the actions and property which give rise to this controversy are located in Davidson County, Tennessee and the causes of action arose in Davidson County, Tennessee.

III. FACTS

A. Background.

16. City Lights is a luxury condominium located in downtown Nashville. City Lights consists of seventy-one (71) residential units, one (1) common element apartment unit, one (1) commercial unit, and other improvements.

17. Defendant Rutledge Development designed, developed, and sold residential units at City Lights in collaboration with Crossgate Partners, LLC and Marty Dougan, its Operations Manager. Defendant R.G. Anderson was Defendant Rutledge Development's general contractor for the City Lights project.

18. Construction of City Lights was substantially completed in 2019.

19. Defendant Rutledge Development owns the still unimproved and vacant commercial unit together with the exclusive right to use 19 parking places in the City Lights garage. Defendant Rutledge Development also owns one City Lights residential unit which it re-acquired from an initial purchaser of such unit.

20. On April 8, 2019 Defendant Rutledge Development formed Plaintiff CLCA as a Tennessee not-for-profit corporation. On April 8, 2019, Defendant Rutledge Development filed the *Master Deed or Declaration of City Lights Condominiums* (the "Master Deed," a copy of which is in Defendant Rutledge Development's possession). The Master Deed identifies Defendant Rutledge Development as the "Declarant." The Master Deed includes the *Form of Bylaws of City Lights Condominium Association, Inc.* ("Bylaws"), the *Form of Charter of City Lights Condominium Association, Inc.* ("Charter"), and the *Rules and Regulations for City Lights Condominiums* ("Regulations").

21. Defendant Rutledge Development amended the Master Deed on May 1, 2019 (*Amendment to Master Deed or Declaration of City Light Condominiums*, Exhibit 2), on May 8,

2019, (*Second Amendment to Master Deed or Declaration of City Light Condominiums*, a copy of which is in Defendant Rutledge Development's possession), on July 17, 2019 (*Third Amendment to Master Deed or Declaration of City Light Condominiums*, a copy of which is in Defendant Rutledge Development's possession), and on January 8, 2020 (*Fourth Amendment to Master Deed or Declaration of City Light Condominiums*, "Amended Master Deed", a copy of which is in Defendant Rutledge Development's possession).

22. Pursuant to the Amended Master Deed, Plaintiff CLCA is the entity responsible for the operation of the City Lights condominiums and property (Amended Master Deed, p. 31). Plaintiff CLCA has the authority to bring this action on behalf of itself and the City Lights residential unit owners pursuant to Tenn. Code Ann. § 66-27-402(4) and the Amended Master Deed (Amended Master Deed, p. 32).

23. Upon information and belief, Defendant Rutledge Development consummated the first sale of a residential unit on May 10, 2019.

24. Upon information and belief, Rutledge Development consummated sales of at least 25% of the residential units on June 10, 2019.

25. Upon information and belief, Defendant Rutledge Development consummated sales of at least 75% of the residential units on November 8, 2019.

B. Defendant Rutledge Development Wrongfully Controlled Plaintiff CLCA and its Board of Directors until July 9, 2020.

26. Pursuant to Paragraph 5.1 of the Bylaws, the affairs of Plaintiff CLCA are governed by a Board of Directors consisting of three members.

27. Paragraph 5.16 of the Bylaws granted Defendant Rutledge Development, as the Developer, the authority to appoint all three members of the Board of Directors until such time as the Defendant Rutledge Development conveyed 80% of the City Lights residential units.

28. Defendant Rutledge Development retained control of Plaintiff CLCA and all members of Plaintiff CLCA's Board were appointed by Defendant Rutledge Development from inception of Plaintiff CLCA on April 8, 2019 until July 9, 2020.

29. The authority granted to Defendant Rutledge Development under Paragraph 5.16 of the Bylaws violated the Tennessee Condominium Act, Tenn. Code Ann. § 66-27-101, et seq. ("TCA"), for the following reasons:

- Tenn. Code Ann. § 66-27-403(d) provides: "[n]ot later than one hundred twenty (120) days after conveyance of twenty-five percent (25%) of the units that may be created to unit owners other than a declarant, at least one (1) member of the board must be elected by unit owners other than the declarant." Because Defendant Rutledge Development had consummated the sales of at least 25% of the City Lights residential units on June 10, 2019, at least one member of the City Lights Board of Directors had to be elected by the residential unit owners no later than October 8, 2019. However, Defendant Rutledge Development did not permit a residential unit owner to be elected to the Board of Directors until July 9, 2020.
- Tenn. Code Ann. § 66-27-403(c)(1)(A) provides: "[s]ubject to subsection (d), the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the board of directors. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of...One hundred twenty (120) days after conveyance of seventy-five percent (75%) of the units that may be created to unit owners other than a declarant ..." Because Defendant Rutledge Development had consummated the sales of at

least 75% of the City Lights units on November 8, 2019, Defendant Rutledge Development's control of Plaintiff CLCA terminated on March 7, 2020. However, Defendant Rutledge Development did not relinquish control of Plaintiff CLCA until July 9, 2020.

30. In addition to its clear violations of the TCA, Defendant Rutledge Development also violated Tenn. Code Ann. § 48-66-101, Paragraphs 5.14, 5.16 and 17(e) of the Bylaws, and the Amended Master Deed (Amended Master Deed, p. 34) during the period of its control of Plaintiff CLCA and its Board for the following reasons:

- Failing to hold required meetings of residential unit owners and the Board of Plaintiff CLCA;
- Failing to maintain Plaintiff CLCA's books and records;
- Failing to turn over books and records to Plaintiff CLCA;
- Failing to keep minutes of meeting of the Board of Plaintiff CLCA;
- Failing to prepare and approve an annual budget for Plaintiff CLCA; and
- Failing to cause the Board of Plaintiff CLCA to properly set and cause common expense assessments to be collected.

C. Design and Construction Defects at City Lights.

31. Residential unit owners at City Lights began to observe numerous design and construction defects soon after taking possession of their units. The design and construction defects affected both the common areas such as the garage, roof, and stairwells, and the individual residential units. The identified design and construction defects include significant structural and safety and security issues; lowered the quality of living at City Lights; and diminished the value of residential units.

32. Beginning in 2019, a group consisting of City Lights residential unit owners compiled a list of approximately 900 design and construction defects at City Lights and shared such list with Defendant Rutledge Development and Defendant R.G. Anderson.

33. After more than a year of meetings to discuss the list of issues, Defendant Rutledge Development and Defendant R.G. Anderson had addressed many of the issues on the list. However, many of the more significant design and construction defects remain unresolved, including but not limited to the following:

- Surface areas around the pool become too hot in the summer months creating safety issues;
- The retainer wall on garage Level 3 was designed and/or constructed improperly resulting in numerous accidents and several thousand dollars of repair costs;
- Roof areas retain rainwater resulting in dripping and glass streaking on windows of residential units;
- High humidity and condensation in the common areas and certain residential units;
- Exterior vents are stuck in the open position;
- The back-up generator did not support critical systems needed by residents during power outages creating unacceptable safety and security risks; and
- Inadequate security systems throughout the City Lights building.

34. After Defendants failed to address all the items on the list and to discuss other significant issues, Plaintiff retained Thornton Tomasetti, Inc. (“Thornton”), a leading engineering design, investigation, and analysis firm serving clients worldwide on projects of all sizes and complexity to assess design and construction issues at City Lights, to inspect the building for other issues, and to make recommendations to correct outstanding design and construction defects.

35. On July 22, 2021, Thornton delivered a report which identified 96 (subsequently amended to be 97) serious design and construction defects at City Lights, including but not limited to the following:

- Ceiling height in garage level 4.
- Concrete curb at Garage Level 3 entrance should be cast in concrete.
- Concrete wall in elevator pit #2 shows visible cracks, moisture stains, corrosion stains, efflorescence, and calcium carbonate deposits with moisture visible along the wall which appears to have migrated through cracks to cause corrosion of concrete wall reinforcement.
- Cooling units for corridors have insufficient capacity.
- Corroded trench drains at entrance to Garage Level 3.
- Corroded fire standpipe riser fittings and surface corrosion on piping in the stairwells.
- Corrosion observed on the sprinkler piping in the garage and exposed piping support clamps and hangers throughout the building.
- Cracks in concrete garage slab and walls.
- Cut metal flashing lacking overlap or welded seam/joint observed at exterior wall outside corner of pool deck.
- Door fasteners, hardware and finish issues observed in residential units, the business center, and the pool deck.
- Drainpipe serving the four floors drains at entrance to Garage Level 3 terminates directly onto the concrete slab on grade at level G1, rather than internally tying into the storm drainage system.

- Depressions and/or low areas observed on the roof which appears to be displacement or installation deficiency of building materials/insulation board below membrane.
- Dog Park area roof water leaks at the roof canopy.
- Exhaust vent caps for the bathroom and dryer exhaust systems are located less than 3 feet from an operable window which is not code compliant when adjacent to operable windows.
- Exposed rebar steel reinforcement is visible at concrete garage wall and column surfaces at isolated locations throughout the garage levels.
- Exterior entrance stair riser height varies due to walkway slope which exceeds maximum allowed by code.
- Exit stair #2's barrier gate is installed incorrectly at the wrong location within the stairwell.
- Exterior toilet and bathroom exhaust vents on the exterior of the building were partially or completely open. (These vents are intended to be closed, unless in operation, in order to prevent rain, wind, debris and noise from entering the building.)
- Fire Rating: Missing or painted UL label at fire rated doors and frames in stairwells, pump room in Garage Level 4, entry door from garage, fire command at Garage Level 4 and several other areas of the building.
- Finishes of concrete surfaces, voids, rusting and cracking present issues at many locations in the building.

- Unsealed/separating joints observed on the granite countertop of the bar table in the fitness room/Green terrace. Standing water observed on countertops. Water stains and weathering observed in the wood paneling below the countertops. Loose wall panel also observed.
- Holes and unsealed joints observed between unit partition walls and concrete slab at Garage Level 1.
- Cabling and conduits observed tucked between the storage unit wall and concrete floor slab adjacent to the pit cover at Garage Level 1.
- Generator does not have all emergency systems connected to that were originally specified.
- Exhaust flue for the diesel-fired generator discharges at the sidewall of the garage entrance at the Garage Level 3. The motorized exhaust and intake louvers were in the open position at the time of inspection and building representatives reported that these louvers have never been able to close. When the generator is in operation, the exhaust fumes from the generator recirculate into the garage via the open entrance and back to the generator room via the open louvers.
- A receptacle on the wall of storage unit 305 was not rated for wet or damp conditions such as those conditions typically found within a parking garage.
- Receptacles on the second-floor amenity space were not rated for wet or damp conditions such as those conditions typically found within a parking garage.
- Joint issues and staining observed at many locations in the building including the Balcony Slab between the sidewalk pavement and the commercial unit storefront, in many residential units, and the fitness center.

- Unsealed anchor penetrations observed thru roof membrane at Pipe supports adjacent to stair #3
- Missing roof drain at 1st floor roof. Also staining and discoloration observed on roof membrane at multiple locations.
- Moisture stains at the concrete wall corners (staircase) behind the business center with corrosion in the metal tracks of the Coat closet's partition wall and water stains at gypsum board partition and on the concrete floor in the business center's kitchen area.
- Water stains on balcony slab next to exterior wall and storefront system, indicative of insufficient slope to edges as shown on design drawings.
- Staining standing water along roof edge at gutter locations indicating an inadequate slope.
- Parapet coping issues with sealant observed at metal coping miter joint. (Design drawing shows a pre-formed mitered corner with a factory welded seam.)
- Exposed fire standpipes throughout the building are not painted red to designate the fire protection system. (Fire protection piping is required by NFPA to be painted red.)
- Ponding water observed at multiple locations above TPO roof membrane and under walkway pads; at roof drains in several locations indicative of blocked weeps; at floor in front of balcony entrance door and under guard railing in a residential unit; and under roof mounted RTUs.

- Rusting of railing post embedded into precast step; missing sleeve shown on design details which is welded to post that extend 2" above the concrete surface. Also missing flange/escutcheon.
- Sealant joint below coping stone at the parapet in a residential unit is separating and delaminating.
- The sidewalk slope on the Rutledge Street side of the building exceeds code requirements.
- Balcony walls have scuppers with open apertures in certain residential units.
- Staining at multiple slab edge locations, most notably at balcony slab edges, under pre-cast coping stone at 2nd floor unit balcony parapets, at transition between exterior IPE and stone cladding at restaurant entrance door, and with ponding water in front of Bullhead roof drain scupper.
- Water pipes routed above electrical panels in the electrical room on Garage Level 3 and directly above electrical equipment in the main electrical room on the second floor.
- Many issues with windows including multiple weep holes in window frames in residential units, fitness and yoga rooms on level 1; black sealant on interior face of IGU (between spacer and glass panel) is wavy and not evenly installed in several residential units; gasket between window frame and glazing does not extend to the corners producing gaps in many residential units; mild corrosion observed at the window frame in some residential units; missing sealant between window sub-sill and sill pan flashing. Sealant also not installed at joint between the sill pan flashing and EIFS finish; delaminating and separating sealant joint observed around the

window units in many residential units; excessive clear caulking in the windowsill, partially blocking the weep hole, in many residential units; scratched finish and damaged/dented window sub-sill frame in a residential unit; temperature differential between ambient air in the residential unit and the window glass.

36. Defendant Rutledge Development and Defendant R.G. Anderson have received a copy of the Thornton report. While Defendant Rutledge Development and Defendant R.G. Anderson have addressed some of the design and construction defects identified in the Thornton report, Defendant Rutledge Development and Defendant R.G. Anderson have failed to resolve numerous significant design and construction defects, such as improperly installed windows throughout the City Lights building, undersized HVAC systems creating excessive humidity and condensation throughout the City Lights building, and the negligently designed and/or constructed roof system.

37. In addition to the numerous items identified in the list and the Thornton report, individual unit owners also have been attempting to resolve warranty claims with Defendant Rutledge Development and Defendant R.G. Anderson since 2019.

38. The numerous negligent design and construction defects caused by Defendant Rutledge Development and Defendant R.G. Anderson have resulted in significant structural and security issues, lowered the quality of living at City Lights, and diminished the value of the residential units.

D. Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, Donald Meeks' Numerous Misrepresentations.

39. In addition to the numerous design and construction defects, Defendant Rutledge Development and its members Defendants Joe Owen, Richard Rhea, Larry Elliot, Donald Meeks, intentionally and/or negligently made several significant misrepresentations while marketing City

Lights residential units for the purpose of inducing prospective buyers to purchase City Lights residential units at inflated prices.

1. The Restaurant.

40. Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks marketed and promised that City Lights would have “an onsite restaurant [that] serves up delicious meals from talented chefs, placing fine dining at your fingertips. The vibrant, lively bar set alongside the eatery provides a social space to mingle with other City Lights residents.”

41. Despite announcements in 2017 and 2018 in several local publications that an upscale restaurant, The Rutledge, would open in the commercial space at City Lights, Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks knew for at least a year before Defendant Rutledge Development consummated the sale of the first residential unit that the agreement to open The Rutledge had fallen through and that it did not have arrangements with any other operator to open a restaurant in the commercial space.

42. Upon information and belief, Defendant Rutledge Development was under contract with the owners of The Rutledge to develop and open the restaurant in the commercial space at City Lights. However, Defendant Rutledge Development reportedly misled the owners of The Rutledge and altered the design and build-out of the commercial space in such a way that it was no longer suitable for The Rutledge (and perhaps any other full-service restaurant).

43. Upon information and belief, Defendant Rutledge Development and the owners of The Rutledge terminated their agreement approximately one year before Defendant Rutledge Development formed Plaintiff and consummated sales of residential units at City Lights.

44. Despite Defendant Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks' constant promotion and promise that there would be an onsite, high-end restaurant, Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks never disclosed to potential and actual purchasers that the deal to locate The Rutledge at City Lights had terminated and no alternative proposed restaurant facility was then or now to be available at City Lights. (The Rutledge will now be opening nearby in the Four Seasons in downtown Nashville.)

45. Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks misrepresented that there would be a restaurant at City Lights and concealed the fact that the deal to locate The Rutledge at City Lights had been abandoned.

46. The commercial unit remains vacant and unimproved and, based on Defendant Rutledge Development's alterations to the original design, it is questionable whether the space could support a full-service restaurant of the nature promoted and promised by Defendant Rutledge Development.

47. As a result of Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks' negligent and/or intentional misrepresentations and concealment related to its promise to locate a high-end restaurant at City Lights, City Lights residential unit owners paid inflated prices for their residential units, have suffered a lower quality of living at City Lights than the one promoted and promised by Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks, and have suffered diminished values of residential units.

2. Concierge and Security Services.

48. Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks also promoted in marketing materials and promised that City Lights would consist of “opulent residences [that] allow you to experience Nashville at its most divine, offering everything sophisticated urbanites need” including “a full-time concierge service on the building’s lobby level” and the safety and security of “a serene oasis within Nashville’s most thriving urban neighborhoods.”

49. Defendant Rutledge Development did not provide a full-time concierge service or establish a budget for the Plaintiff CLCA that would pay for such services.

50. Also, Defendant Rutledge Development negligently designed and installed security and life safety systems which, among other things:

- Resulted in numerous blind spots and areas around the City Lights building;
- Failed to support wireless network signals in the lower levels of the garage; and
- Did not connect carbon dioxide, exhaust fans, key fobs, door locks, and other life safety systems to the emergency or standby power.

51. As a result of Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks’ negligent and/or intentional misrepresentations and concealment related to its promise of a full-time concierge services and security and safety systems, City Lights residential unit owners paid inflated prices for their residential units; have suffered a lower quality of living at City Lights than the one promoted and promised by Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks; and have suffered diminished values of residential units.

3. Promotion of Inadequate Common Expense Assessments.

52. Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks also negligently and/or intentionally marketed and promoted unrealistically low monthly residential unit common expense assessments that would be required to fund Plaintiff CLCA's operations to induce purchasers to acquire residential units at City Lights. Specifically, the anticipated level of common expense assessments which Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks conveyed to potential and actual purchasers of City Lights residential units (which would have been the result of a common expense assessment that was never adopted by the Board of Directors under the control of Defendant Rutledge Development) was insufficient to fund full-time concierge services, reserve funding, window washing, and an annual audit, among many other items that are customary or required operating costs of a condominium and its association of condominium owners.

53. As a result of Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks' negligent and/ or intentional misrepresentation, the properly constituted Board of Plaintiff CLCA under the control of residential unit owners after Defendant Rutledge Development relinquished control was required to increase monthly assessments and levy a \$250,000 special assessment against the City Lights unit owners in part to cover unfunded operating costs and to remediate identified deficiencies in operating systems at City Lights.

E. Failure to Make an Assessment.

54. Defendant Rutledge Development controlled Plaintiff CLCA and appointed all members of its Board of Directors from April 8, 2019 to July 9, 2020.

55. During the time Defendant Rutledge Development controlled Plaintiff CLCA and its Board of Directors, the Board did not adopt a common expense assessment as required by the Amended Master Deed (Amended Master Deed, p. 34).

56. The first common expense assessment was made by the properly constituted Plaintiff CLCA Board of Directors on November 30, 2020.

57. The Declarant, Defendant Rutledge Development, is responsible for all common expenses incurred from April 8, 2019 until November 30, 2020, pursuant to Tenn. Code Ann. § 66-27-414(a), which provides:

Until the board of directors makes a common expense assessment, the declarant shall pay all Common Expenses. After any assessment has been made by the board of directors, assessments must be made at least annually, based on a budget adopted at least annually by the board of directors

58. Pursuant to Tenn. Code Ann. § 66-27-414(a), Defendant Rutledge Development, as the Declarant, is responsible for approximately \$800,000 in common expenses incurred by Plaintiff CLCA.

F. Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks' Fraudulent Transfer.

59. Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks knew as early as 2019 of numerous claims against it by Plaintiff CLCA and City Lights residential unit owners arising out of the negligent design and construction defects at City Lights and subsequently identified in the Thornton report and as discussed by Plaintiff CLCA and residential unit owners at City Lights with members of Defendant Rutledge Development on numerous occasions over more than a year long period; Defendant Rutledge Development's blatant disregard for its obligations under the TCA; Defendant Rutledge Development's numerous

misrepresentations in connection with the sale of residential units at City Lights; and Defendant Rutledge Development's obligation to pay City Light's common expenses.

60. With knowledge of numerous unresolved negligent design and construction defect claims related to City Lights and other claims asserted against Defendant Rutledge Development, on or about November 5, 2020, Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks mortgaged for at least \$2,390,000.00 the commercial unit and two residential units at City Lights then held for sale by Defendant Rutledge Development.

61. Upon information and belief, Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks distributed all or substantially all the loan proceeds to Defendants John and Jane Doe Nos. 1-50, investors in Defendant Rutledge Development.

62. As a result of the November 5, 2020 mortgage and distribution of all or substantially all the loan proceeds to Defendants John and Jane Doe Nos. 1-50, Defendant Rutledge Development has insufficient assets to pay for the repair of numerous design and construction defects, individual residential unit owner warranty claims, and other damages alleged in this action while Defendant Rutledge Development's investors have received almost \$2.4 million.

COUNT I – Negligent Design and Defective Construction (Defendant Rutledge Development and Defendant R.G. Anderson)

63. Plaintiff CLCA incorporates the previous allegations in this Count I.

64. Defendant Rutledge Development and Defendant R.G. Anderson owed Plaintiff CLCA and the City Lights residential unit owners a duty to design and construct City Lights in a workman like manner.

65. Defendant Rutledge Development and Defendant R.G. Anderson breached their duty of care when they negligently designed and defectively constructed City Lights as set out in

this Complaint, the list of defects shared with Defendant Rutledge Development and Defendant R.G. Anderson, the Thornton report, and otherwise.

66. As a direct and proximate result of Defendant Rutledge Development's and Defendant R. G. Anderson's negligence and defective construction, Plaintiff CLCA (and the City Lights residential unit owners) have suffered damages throughout the City Lights building for which they are entitled to compensation from Defendants Rutledge Development and Defendant R. G. Anderson.

COUNT II –Intentional and/or Negligent Misrepresentation (Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks)

67. Plaintiff CLCA incorporates the previous allegations in this Count II.

68. Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks intentionally and/or negligently misrepresented that City Lights would have a high-end restaurant and full-time concierge service.

69. Plaintiff CLCA and City Lights residential unit owners justifiably relied on Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks' intentional and/or negligent misrepresentation that City Lights would have a high-end restaurant and full-time concierge service.

70. Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks also intentionally and/or negligently understated and misrepresented the common expense assessment City Lights residential unit owners would be required to pay for the services and amenities promoted and promised by Defendant Rutledge Development.

71. Plaintiff CLCA and City Lights residential owners justifiably relied on Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks' intentional and/or negligent misrepresentation of the common expense assessment.

72. As a direct and proximate result of Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks' intentional and/or negligent misrepresentations, Plaintiff CLCA and the City Lights residential unit owners have suffered damages for which they are entitled to compensation from Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks.

COUNT III – Fraudulent Concealment (Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks)

73. Plaintiff CLCA incorporates the previous allegations in this Count III.

74. Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks had a duty to disclose to Plaintiff CLCA and City Lights residential unit owners the material facts that the agreement to locate The Rutledge restaurant at City Lights terminated almost a year before Plaintiff CLCA was formed; that City Lights did not have a full-time concierge service; and that the common expense assessments promoted by Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks would be insufficient for a full-time concierge service and other promoted and promised amenities and operational needs of City Lights.

75. Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks knew but concealed from Plaintiff CLCA and City Lights residential unit owners and remained silent about the material facts that the deal to locate The Rutledge restaurant at City Lights terminated almost a year before Plaintiff CLCA was formed; that City Lights did not have a full-time concierge; and that the common expense assessments promoted by Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks would be insufficient to fund a full-time concierge service and other promoted and promised amenities and operational needs of City Lights.

76. Plaintiff CLCA and the City Lights residential unit owners could not have discovered before purchasing their units that the deal to locate The Rutledge restaurant at City Lights terminated almost a year before Plaintiff CLCA was formed; that City Lights would not have a full-time concierge service; and that the common expense assessments promoted by Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks would be insufficient for a full-time concierge service and other promoted and promised amenities and operational needs and requirements of City Lights.

77. As a direct and proximate result of Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks' fraudulent concealment, Plaintiff CLCA and the City Lights residential unit owners have suffered damages for which they are entitled to compensation from Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks.

COUNT IV – Tennessee Consumer Protection Act (Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks)

78. Plaintiff CLCA incorporates the previous allegations in this Count IV.

79. Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks intentionally misrepresented that City Lights would have a high-end restaurant and full-time concierge service and the amount of the common expense assessments necessary for a full-time concierge service and other promoted and promised amenities and operational needs and requirements of City Lights for the purpose of inducing the purchase of City Lights residential units.

80. Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks' misrepresentations were unfair and deceptive practices and violated the Tennessee

Consumer Protection Act, Tenn. Code Ann. §§ 47-18-101 et seq., including Tenn. Code Ann. § 47-18-104(b)(5), (7), (9), (21), (22).

81. As a direct and proximate result of Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks' violation of the TCPA, Plaintiff CLCA and the City Lights residential unit owners are entitled to recover damages, treble damages, and their attorney fees and costs from Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks.

COUNT V – Liability for Common Assessment Expense (Defendant Rutledge Development)

82. Plaintiffs incorporate the previous allegations in this Count V.

83. Defendant Rutledge Development controlled Plaintiff CLCA and appointed all members of its Board of Directors from April 8, 2019 to July 9, 2020.

84. During the time Defendant Rutledge Development controlled Plaintiff CLCA and its Board of Directors, the Board did not adopt a common expense assessment as required by Amended Master Deed (Amended Master Deed, p. 34). A duly constituted Board of Directors first adopted a common expense assessment on November 30, 2020.

85. Pursuant to Tenn. Code Ann. § 66-27-414(a), Plaintiff CLCA is entitled to recover from Defendant Rutledge Development approximately \$800,000 in common expenses incurred by Plaintiff CLCA through November 30, 2020. Plaintiff CLCA is also entitled to its reasonable attorney fees pursuant to Tenn. Code Ann. § 66-27-211.

COUNT VI – Breach of Fiduciary Duty (Defendants Owen, Rhea, and Elliot)

86. Plaintiffs incorporate the previous allegations in this Count VI.

87. From April 9, 2018 to July 9, 2020, Defendant Rutledge Development, as the Declarant, appointed Defendants Owen, Rhea, and Elliot, as the sole members of the Plaintiff

CLCA's Board of Directors. At the same time, Defendants Owen, Rhea, and Elliot were also members of Defendant Rutledge Development.

88. Because Defendants Owen, Rhea, and Elliott were appointed to Plaintiff CLCA's Board by Defendant Rutledge Development as the Declarant, they owed Plaintiff CLCA and the City Lights residential unit owners a fiduciary duty of care pursuant to Tenn. Code Ann. § 66-27-403(a)(1).

89. Defendants Owen, Rhea, and Elliot breached their fiduciary duty of care owed to Plaintiff CLCA and the City Lights residential unit owners when they failed to cause Plaintiff's Board of directors to:

- Hold required meetings;
- Keep minutes of meetings;
- Maintain books and records;
- Turn over books and records to Plaintiff CLCA;
- Prepare and approve an annual budget; and
- Properly set and collect common expense assessments.

90. As the Plaintiff CLCA's Board members appointed by Defendant Rutledge Development, Defendants Owen, Rhea, and Elliot breached their fiduciary duty of care owed to Plaintiff CLCA and the City Lights residential unit owners when they put their interests as members of Defendant Rutledge Development above the interests of Plaintiff CLCA and the City Lights residential unit owners and failed to cause Rutledge Development to pay common expenses as required by Tenn. Code Ann. § 66-27-414(a).

91. As a direct and proximate result of Defendants Joe Owen, Richard Rhea, Larry Elliot's breach of their fiduciary duties, Plaintiff CLCA and the City Lights residential unit owners

have suffered damages for which they are entitled to recover from Defendants Joe Owen, Richard Rhea, and Larry Elliot.

COUNT VII – Fraudulent Conveyance (Defendant Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks and John and Jane Doe Nos. 1-50)

92. Plaintiffs incorporate the previous allegations in this Count VII.

93. Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks knew since at least 2019 of numerous claims against it by Plaintiff CLCA and residential unit owners at City Lights arising out of the negligent design and construction defects as set out in this Complaint, the list of defects provided to them by residential unit owners at City Lights, and the Thornton report and as discussed on numerous occasions with the members of Defendant Rutledge Development; Defendant Rutledge Development's blatant disregard for its obligations under the TCA; Defendant Rutledge Development's numerous misrepresentations in connection with the sale of residential units at City Lights; and Defendant Rutledge Development's obligation to pay common expenses.

94. At the time Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks mortgaged the commercial unit and Defendant Rutledge Development's then owned residential units at City Lights and distributed all or substantially all the loan proceeds to Defendant Rutledge Development's investors, Defendant Rutledge Development was insolvent as defined by Tenn. Code Ann. § 66-3-303.

95. Further, Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks mortgaged the commercial unit and Defendant Rutledge Development's then owned residential units at City Lights with the actual intent to hinder, delay, and defraud Plaintiff CLCA and the City Lights residential unit owners.

96. Upon information and belief, Defendants John and Jane Does Nos. 1-50 are insiders or affiliates of Defendant Rutledge Development as those terms are defined in Tenn. Code Ann. § 66-3-302.

97. Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks' mortgage of the commercial unit and Defendant Rutledge Development's then owned residential units and the distribution of all or substantially all the loan proceeds to Defendants John and Jane Does Nos. 1-50 was a fraudulent conveyance in violation of the Tennessee Uniform Fraudulent Transfer Act, Tenn. Code Ann. §§ 66-3-201, et seq.

98. Pursuant to Tenn. Code Ann. § 66-3-308, Plaintiff CLCA is entitled to damages against Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, Donald Meeks, and Defendants John and Jane Doe Nos. 1-50, to avoid the mortgage and/or distribution of the loan proceeds an attachment against the loan proceeds and other property of Defendants John and Jane Doe Nos. 1-50, and any other relief which the Court deems necessary.

COUNT VIII – Piercing the Corporate Veil (Defendants Owen, Rhea, Elliot, and Meeks)

99. Plaintiffs incorporate the previous allegations in this Count VIII.

100. Defendant Rutledge Development, acting through Defendants Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks mortgaged the commercial unit and residential units at City Lights then held for sale by Defendant Rutledge Development and distributed all or substantially all the loan proceeds to Defendants John and Jane Doe Nos. 1-50 with actual intent to hinder, delay, and defraud Plaintiff CLCA and the City Lights residential unit owners.

101. Defendant Rutledge Development's only material assets were the commercial unit and its then owned residential units at City Lights held for sale.

102. As a result of Defendant Rutledge Development's mortgage of the commercial unit and residential units at City Lights and distribution of all or substantially all the loan proceeds to

Defendants John and Jane Doe Nos. 1-50, Defendant Rutledge Development has no material assets to meet its obligations to Plaintiff CLCA and the City Lights residential unit owners arising out of the negligent design and defective construction of City Lights, warranty claims made by individual unit owners, payment of common expenses incurred from April 8, 2019 through November 30, 2020, and the other claims asserted in this Complaint.

103. Because Defendants Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks caused Defendant Rutledge Development to be unable to pay its debts by mortgaging all or substantially all its only remaining assets and distributing all or substantially all the loan proceeds to Defendants John and Jane Doe Nos. 1-50, Plaintiff CLCA is entitled to pierce Defendant Rutledge Development's corporate veil, and Defendants Joe Owen, Richard Rhea, Larry Elliot, Donald Meeks are individually liable for any judgment entered against Defendant Rutledge Development.

COUNT IX – Constructive Trust (Defendants John and Jane Doe Nos. 1-50)

104. Plaintiffs incorporate the previous allegations in this Count IX.

105. Defendants John and Jane Doe Nos. 1-50 received all or substantially all the loan proceeds of approximately \$2.4 million when Rutledge Development, acting through Defendants Joe Owen, Richard Rhea, Larry Elliot, mortgaged the commercial unit and residential units at City Lights with actual intent to hinder, delay, and defraud Plaintiff CLCA and the City Lights residential unit owners.

106. At the time they received the loan proceeds, Defendants John and Jane Doe Nos. 1-50 knew Plaintiff CLCA and the City Lights residential unit owners had asserted numerous claims against Defendant Rutledge Development. Defendants John and Jane Doe Nos. 1-50 also knew that the commercial unit, residential units, and loan proceeds were Defendant Rutledge Development's only material assets and only source for paying claims related to City Lights.

107. Defendants John and Jane Doe Nos. 1-50 hold the loan proceeds in constructive trust for the benefit of Plaintiff CLCA and the City Lights residential unit owners.

WHEREFORE, Plaintiff CLCA prays:

1. That the Court enter judgment against Defendant Rutledge Development and Defendant R.G. Anderson under Count I for an amount to be determined at trial for the costs of repairs plus other damages;

2. That the Court enter judgment against Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks for damages under Count II for an amount to be determined at trial plus punitive damages;

3. That the Court enter judgment against Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks for damages under Count III for an amount to be determined at trial plus punitive damages;

4. That the Court enter judgment against Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks for damages under Count IV for an amount to be determined at trial, plus treble damages and reasonable attorney fees;

5. That the Court enter judgment against Defendants Rutledge Development under Count V for \$806,847.53 plus reasonable attorney fees;

6. That the Court enter judgment against Defendants Joe Owen, Richard Rhea, Larry Elliot under Count VII for their breach of fiduciary duties owed to Plaintiff CLCA and the City Lights residential unit owners;

7. That the Court enter judgment against Defendants Rutledge Development, Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks and Defendants John and Jane Doe Nos. 1-

50 under Count VII for \$2.4 million and that the Court avoid the transfers of any loan proceeds to and attach any loan proceeds received by Defendants John and Jane Does Nos. 1-50;

8. That the Court pierce Defendant Rutledge Development's corporate veil under Count VIII and hold Defendants Joe Owen, Richard Rhea, Larry Elliot, and Donald Meeks liable for any judgment against Defendant Rutledge Development;

9. That the Court impose a constructive trust against Defendants John and Jane Doe Nos. 1-50 under Count IX for any loan proceeds received by John and Jane Doe Nos. 1-50;

10. Pre-judgment and post judgment interest; and

11. Any further relief to which Plaintiff CLCA is entitled.

Respectfully submitted,

SHACKELFORD BOWEN MCKINLEY & NORTON

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