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Atty Brown

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FULTON COUNTY
COMMON PLEAS COURT
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MARY GYPE
CLERK

01-04-06

IN THE COMMON PLEAS COURT OF FULTON COUNTY, OHIO

Denise Drenning, Et al. : CASE NO. 04 CV 000003
Plaintiffs :
-vs- :
Blue Ribbon Homes, Inc., Et al. : **NUNC PRO TUNC JUDGMENT**
Defendants : **ENTRY**

Due to some errors in the previous Judgment Entry filed on December 28, 2005, and upon representation to the Court that the parties have mutually agreed upon the correction of said errors, this Court enters this Judgment Entry, Nunc Pro Tunc.

Coming on before the Court on December 22, 2005, are five issues:

1. Defendant's Motion to "set-off" against general damages the amount Plaintiffs already received from Defendant Commodore, filed December 13, 2005.
2. The proper format of the Judgment Entry based upon the Jury's Verdict rendered December 7, 2005.
3. The proper amount of Attorney Fees to be awarded.
4. Whether "treble damages" should be awarded.
5. Whether "prejudgment-post-judgment" interest should be awarded.

Plaintiff Denise Drenning appeared at a hearing held December 22, 2005, with her

Attorney Jennifer Brown, and Defendant appeared by its Attorney Andrew Ayers. Exhibits were thereupon introduced into Evidence, Testimony was received from the Plaintiff and her Expert Witness, and Arguments were made to the Court, whereupon the issues were deemed submitted for due adjudication.

Upon the Evidence the Court finds and rules as follows:

First, with regard to the issue of "set-off," the Court finds Defendant's position appears to be the legal one, and Defendant's Motion is granted. Upon representation of Counsel, Defendant is granted a "set-off" of \$5,000.00 received from Commodore.

IT IS SO ORDERED.

Second, with regards to the proper format of the Entry, the Court finds as follows:

- A. The Jury awarded Plaintiff "rescission" plus "damages."
- B. "Rescission" requires the Defendant to return to Plaintiffs to the position in which they were before the contract was executed.
- C. Plaintiffs expended significant funds, in addition to the moneys paid to Defendant to honor the contract price, in an attempt to correct and conform their home to the expected construction status as represented to them by Defendant.
- D. Plaintiffs will suffer additional damages and residual damages during the "removal" process to be performed by Defendant, which Plaintiffs' Expert testified amounted to an additional \$28,700.00, on top of the \$62,300.00 paid by Plaintiffs, with Plaintiffs to retain the poured basement walls. Thus the cost of rescission is \$91,100.00.
- E. Plaintiffs suffered additional damages, over and above the rescission, in the form

of inconvenience, landscaping, labor, and ancillary expenses, all of which the jury fixed at \$10,000.00.

Accordingly as and for an award of damages, Plaintiffs should be awarded \$91,100.00 (with the right to retain the basement walls), plus \$10,000.00, plus attorney fees, plus costs, plus interest, less the set-off of \$5,000.00 received from Commodore.

IT IS SO ORDERED.

Third, with respect to the request for "Attorney Fees," to be assessed at \$100.00 per hour, the Jury awarded "Attorney Fees" to Plaintiffs. Upon the evidence adduced at hearing, the opinion of Plaintiffs' Expert, the hours expended, the expenses advanced or accrued, and the outcome of the Trial, Plaintiffs' request appears to be more than "reasonable," and the Jury Award of "Attorney Fees" should be set at \$55,067.76, plus an additional \$500.00 for preparation and hearing held on December 22, 2005, plus an anticipated \$1,575.00 to be paid to Plaintiffs' Expert, Mr. Willis, for seven hours time at \$225.00 per hour.

IT IS SO ORDERED.

Fourth, the Jury clearly found, and the Court concurs, that Defendant's actions were egregious, and had Plaintiffs elected to proceed on a "damages" only claim, then treble damages would and ought to have been awarded. However, since Plaintiffs elected to proceed on their cause for "rescission," Plaintiffs are now limited to an Award, after setting off the \$5,000.00 received, and exclusive of interest, of rescission plus \$153,242.76.

IT IS SO ORDERED.

Fifth, upon the evidence, Plaintiffs should be awarded pre-judgment interest from the date

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of the contract through December 7, 2005, on the award of \$101,100.00, in the amount of \$36,986.00, plus post-judgment interest on the same award at the judgment rate of 5% AIR, from and after January 1, 2006.

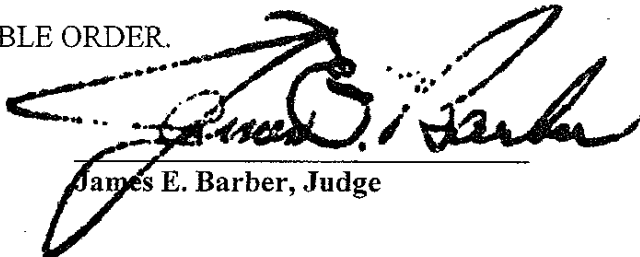
The Court ADOPTS its FINDINGS as its ORDER.

IT IS SO ORDERED.

Accordingly FINAL JUDGMENT is hereby awarded to Plaintiffs, and against Defendant Blue Ribbon, in an Order of Rescission and ancillary damages in the total amount of \$195,228.76, less the set-off of \$5,000.00, or **\$190,228.76, plus interest thereon at 5% AIR from and after January 1, 2006, plus costs.**

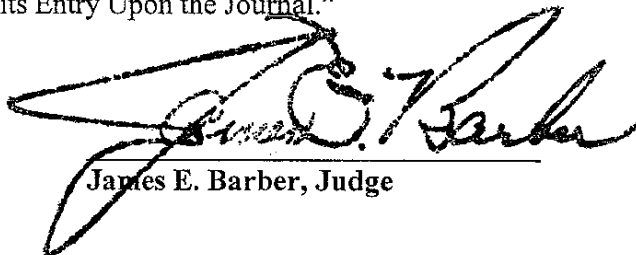
IT IS SO ORDERED.

THIS IS A FINAL, APPEALABLE ORDER.



James E. Barber, Judge

This is a Final Judgment Entry. To the Clerk: Serve all parties not in Default with "Notice" of this Judgment, and "Date of its Entry Upon the Journal."



James E. Barber, Judge

cc: Jennifer N. Brown
Andrew Ayers
Richard Carr
R. William Jonas, Jr.

Copies Served 1/6 06
Mary Gype, Clerk
By JMS