

June 17 2014 9:44 AM

KEVIN STOCK  
COUNTY CLERK  
NO: 14-2-08793-0

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

MAUREEN HAY, a Washington resident;  
IGOR SMAL, a Washington resident;  
HANNA SMAL, a Washington resident;  
JORDAN SMITH, a Washington resident;  
CAMERON SMITH, a Washington resident;  
ALEX KULIBABA, a Washington resident;  
NATALYA MANCHIK, a Washington  
resident; DAN HART, a Washington resident;  
SHAWNA HART, a Washington resident;  
PETER MANNING, a Washington resident;  
ADRIENNE MANNING, a Washington  
resident; JOHN BETHKE, a Washington  
resident; TAWNY CABRAL, a Washington  
resident; WHITNEY DeCORIA, a Washington  
resident; RYAN DeCORIA, a Washington  
resident; VASILIIY LYSYY, a Washington  
resident; TATYANA LYSYY, a Washington  
resident; JOSEPHINE PANGAN, a Washington  
resident; AUBREY BRADLEY, a Washington  
resident; OZNUR BRADLEY, a Washington  
resident; CODY WHITNEY, a Washington  
resident; YVONNE JOHNSON, a Washington  
resident; HAROON SAKHI, a Washington  
resident; ADELA SAKHI, a Washington  
resident; DARRYL JOHNSON, a Washington  
resident; CHRISTINE JOHNSON, a  
Washington resident; KEN EDWARDS, a  
Washington resident; SHERRI PENA, a  
Washington resident; YONG LIM, a  
Washington resident; AMBER LEE, a  
Washington resident; WHITNEY SARGENT, a  
Washington resident; YEVGENIY "JOHN"  
ZADNEPROVSKIY, a Washington resident;

NO. 14-2-08793-0

HIGHMARK HOMES LLC; TOM TOLLEN;  
AND JANE DOE TOLLEN'S ANSWER TO  
PLAINTIFFS' COMPLAINT FOR BREACH  
OF WASHINGTON CONDOMINIUM ACT,  
BREACH OF CONTRACT, BREACH OF  
EXPRESS WARRANTY, BREACH OF  
IMPLIED WARRANTY, and VIOLATION  
OF RCW 18.86

HIGHMARK HOMES LLC; TOM TOLLEN; AND  
JANE DOE TOLLEN'S ANSWER TO PLAINTIFFS'  
COMPLAINT - 1

LORBER, GREENFIELD & POLITO, LLP  
1000 Second Avenue, Suite 1700  
Seattle, Washington 98104  
Telephone (206) 832-4900 / Facsimile (206) 832-4901

1 MARINA ZADNEPROYSKIY, a Washington  
2 resident; EUN YOUNG LEE, a Washington  
3 resident; KURT BERG, a Washington resident;  
4 TRACY BERG, a Washington resident;  
5 PETE NITO, a Washington resident;  
6 JENELYN NITO, a Washington resident;  
7 WILLIAM DUNGER, a Washington resident;  
8 TANYA DUNGER, a Washington resident;  
9 ANTON OMELIN, a Washington resident;  
10 BANNY CHHOEUN, a Washington resident;  
11 SARETH CHHOEUN, a Washington resident;  
12 ADAM JACKSON, a Washington resident;  
13 SARA JACKSON, a Washington resident;  
14 LAYLA BUGADO, a Washington resident;  
15 BRAD BUGADO, a Washington resident;  
16 PHU DO, a Washington resident; HIEN TRAN,  
17 a Washington resident; JASON IHDE, a  
18 Washington resident; AND BETH IHDE, a  
19 Washington resident;

20 Plaintiffs,

21 v.

22 HIGHMARK HOMES, LLC, a Washington  
23 Corporation; TOM TOLLEN and JANE DOE  
24 TOLLEN, and the marital community  
25 composed thereof;

26 Defendants.

27 TO: THE CLERK OF THE COURT; and

TO: ALL PARTIES AND COUNSEL OF RECORD:

COME NOW Defendants Highmark Homes LLC, Tom Tollen and Jane Doe Tollen (collectively, "Defendants"), by and through their attorneys of record, and in response to Plaintiffs' Complaint for Breach of Washington Condominium Act, Breach of Contract, Breach of Express Warranty, Breach of Implied Warranty, and Violation of RCW 18.86 ("Plaintiffs' Complaint"), plead as follows:

HIGHMARK HOMES LLC; TOM TOLLEN; AND  
JANE DOE TOLLEN'S ANSWER TO PLAINTIFFS'  
COMPLAINT - 2

LORBER, GREENFIELD & POLITO, LLP  
1000 Second Avenue, Suite 1700  
Seattle, Washington 98104  
Telephone (206) 832-4900 / Facsimile (206) 832-4901

1 **PARTIES**

2 1. Defendants deny the allegations contained in Paragraph 1 of Plaintiffs' Complaint  
3 for lack of information sufficient to establish the truth of the matters asserted.

4 2-29. Defendants deny the allegations contained in Paragraphs 2-29 of Plaintiffs'  
5 Complaint for lack of information sufficient to establish the truth of the matters asserted.

6 30. Paragraph 30 of Plaintiffs' Complaint does not call for an admission or denial, so  
7 no response is required. To the extent a response is required, Defendants deny the same.

8 31. Defendants admit that Highmark Homes LLC, at all pertinent times, did business  
9 in Fife, Pierce County, Washington. Defendants deny the remaining allegations contained in  
10 Paragraph 31 of Plaintiffs' Complaint.

11 32. Defendants admit that Highmark Homes LLC was involved in the construction of  
12 homes located within the Valley Haven development in Fife, Washington. Defendants deny the  
13 remaining allegations contained in Paragraph 32 of Plaintiffs' Complaint.

14 33. Defendants admit that Highmark Homes LLC sold homes located within the  
15 Valley Haven development in Fife, Washington. Defendants deny the remaining allegations  
16 contained in Paragraph 33 of Plaintiff's Complaint for lack of information sufficient to establish  
17 the truth of the matters asserted.

18 34. Defendants admit that Tom Tollen and Jane Doe Tollen, whose name is Tiffinie  
19 Clark-Tollen, are husband and wife. Defendants deny the remaining allegations contained in  
20 Paragraph 34 of Plaintiffs' Complaint.

21 35. Defendants admit that Tom Tollen is a member of Highmark Homes LLC.  
22 Defendants deny the remaining allegations contained in Paragraph 35 of Plaintiffs' Complaint.

23 36. Defendants admit that Tom Tollen is the managing member of Highmark Homes  
24 LLC. Defendants deny the remaining allegations contained in Paragraph 36 of Plaintiffs'  
25 Complaint.

26 37. Defendants admit that Tom Tollen is a licensed Real Estate Agent. Defendants  
27 deny the remaining allegations contained in Paragraph 37 of Plaintiffs' Complaint.

1 38. Defendants admit that Defendant Tom Tollen is a licensed Real Estate Broker.  
2 Defendants deny the remaining allegations contained in Paragraph 38 of Plaintiffs' Complaint.

3 39. The allegations contained in Paragraph 39 of Plaintiffs' Complaint call for a legal  
4 conclusion, which Defendants are not required to admit or deny. To the extent an answer is  
5 required, Defendants deny same for lack of information sufficient to establish the truth of the  
6 matter asserted.

7 40. Defendants admit that the Valley Haven development is located in Fife,  
8 Washington. The remaining allegations contained in Paragraph 40 of Plaintiffs' Complaint call  
9 for a legal conclusion, which Defendants are not required to admit or deny. To the extent an  
10 answer is required, Defendants deny same for lack of information sufficient to establish the truth  
11 of the matter asserted.

12 **VENUE/JURISDICTION**

13 41. Defendants admit that the subject real property is located in Pierce County and  
14 that Defendant Highmark Homes LLC, at all pertinent times, transacted business in Pierce  
15 County. Defendants deny the remaining allegations in Paragraph 41 of Plaintiffs' Complaint.

16 **CAUSES OF ACTION**

17 **VIOLATION OF WASHINGTON CONDOMINIUM ACT**

18 42. Defendants re-allege their answers to the foregoing Paragraphs as if fully set forth  
19 herein.

20 43. Defendants deny the allegations contained in Paragraph 43 of Plaintiffs'  
21 Complaint.

22 44. Defendants deny the allegations contained in Paragraph 44 of Plaintiffs'  
23 Complaint.

24 45. Defendants deny the allegations contained in Paragraph 45 of Plaintiffs'  
25 Complaint.

26 46. Defendants deny the allegations contained in Paragraph 46 of Plaintiffs'  
27 Complaint.

1 47. Defendants deny the allegations contained in Paragraph 47 of Plaintiffs'  
2 Complaint.

3 48. Defendants deny the allegations contained in Paragraph 48 of Plaintiffs'  
4 Complaint.

5 **BREACH OF CONTRACT**

6 49. Defendants re-allege their answers to the foregoing Paragraphs as if fully set forth  
7 herein.

8 50. Defendants deny the allegations contained in Paragraph 50 of Plaintiffs'  
9 Complaint for lack of information sufficient to establish the truth of the matter asserted.

10 51. The allegations contained in Paragraph 51 of Plaintiffs Complaint call for a legal  
11 conclusion, which Defendants are not required to admit or deny. To the extent an answer is  
12 required, Defendants deny same for lack of information sufficient to establish the truth of the  
13 matter asserted.

14 52. Defendants deny the allegations contained in Paragraph 52 of Plaintiffs  
15 Complaint.

16 53. Defendants deny the allegations contained in Paragraph 53 of Plaintiffs'  
17 Complaint.

18 54. Defendants deny the allegations contained in Paragraph 54 of Plaintiffs'  
19 Complaint.

20 55. Defendants deny the allegations contained in Paragraph 55 of Plaintiffs'  
21 Complaint.

22 **BREACH OF EXPRESS WARRANTY**

23 56. Defendants re-allege their answers to the foregoing Paragraphs as if fully set forth  
24 herein.

25 57. The allegations contained in Paragraph 57 of Plaintiffs' Complaint call for a legal  
26 conclusion, which Defendants are not required to admit or deny. To the extent an answer is  
27 required, Defendants deny same.

1 58. The allegations contained in Paragraph 58 of Plaintiffs' Complaint call for a legal  
2 conclusion, which Defendants are not required to admit or deny. To the extent an answer is  
3 required, Defendants deny same.

4 59. The allegations contained in Paragraph 59 of Plaintiffs' Complaint call for a legal  
5 conclusion, which Defendants are not required to admit or deny. To the extent an answer is  
6 required, Defendants deny same.

7 60. Defendants deny the allegations contained in Paragraph 60 of Plaintiffs'  
8 Complaint.

9 **BREACH OF IMPLIED WARRANTY**

10 61. Defendants re-allege their answers to the foregoing Paragraphs as if fully set forth  
11 herein.

12 62. The allegations contained in Paragraph 62 of Plaintiffs' Complaint call for a legal  
13 conclusion, which Defendants are not required to admit or deny. To the extent an answer is  
14 required, Defendants deny same for lack of information sufficient to establish the truth of the  
15 matter asserted.

16 63. Defendants deny the allegations contained in Paragraph 63 of Plaintiffs'  
17 Complaint for lack of information sufficient to establish the truth of the matter asserted.

18 64. The allegations contained in Paragraph 64 of Plaintiffs' Complaint call for a legal  
19 conclusion, which Defendants are not required to admit or deny. To the extent an answer is  
20 required, Defendants deny same.

21 65. Defendants deny the allegations contained in Paragraph 65 of Plaintiffs'  
22 Complaint.

23 66. The allegations contained in Paragraph 66 of Plaintiffs' Complaint call for a legal  
24 conclusion, which Defendants are not required to admit or deny. To the extent an answer is  
25 required, Defendants deny same.

26 67. Defendants deny the allegations contained in Paragraph 67 of Plaintiffs'  
27 Complaint.

1 **VIOLATION OF RCW 18.86/NEGLIGENCE**

2 68. Defendants re-allege their answers to the foregoing Paragraphs as if fully set forth  
3 herein.

4 69. The allegations in Paragraph 69 of Plaintiffs' Complaint call for a legal  
5 conclusion, which Defendants are not required to admit or deny. To the extent an answer is  
6 required, Defendants deny same.

7 70. The allegations in Paragraph 70 of Plaintiffs' Complaint call for a legal  
8 conclusion, which Defendants are not required to admit or deny. To the extent an answer is  
9 required, Defendants deny same.

10 71. The allegations in Paragraph 71 of Plaintiffs' Complaint call for a legal  
11 conclusion, which Defendants are not required to admit or deny. To the extent an answer is  
12 required, Defendants deny same.

13 72. Defendants deny the allegations contained in Paragraph 72 of Plaintiffs'  
14 Complaint.

15 73. Defendants deny the allegations contained in Paragraph 73 of Plaintiffs'  
16 Complaint.

17 74. Defendants deny the allegations contained in Paragraph 74 of Plaintiffs'  
18 Complaint.

19 **AFFIRMATIVE DEFENSES**

20 By way of further answer to Plaintiffs' Complaint, Defendants allege the following  
21 affirmative defenses:

22 1. Plaintiffs' claims are barred by the economic loss rule and/or independent duty  
23 rule.

24 2. Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of  
25 limitations including, but not limited to, RCW 4.16.040 and RCW 4.16.080.

26 3. Plaintiffs' claims are barred by the contract statute of limitations which expires,  
27 regardless of discovery, six years after substantial completion of construction, or during the

1 period within six years after the termination of services enumerated in RCW 4.16.300, whichever  
2 is later, pursuant to RCW 4.16.326(1)(g).

3 4. Plaintiffs' claims are barred by the statute of repose.

4 5. All or part of Plaintiffs' Complaint is barred by failure to comply with the  
5 provisions contained in RCW 64.50.

6 6. Plaintiffs' Complaint fails to state any claim upon which relief can be granted.

7 7. Plaintiffs' Complaint fails to join a party indispensable under CR 19.

8 8. Comparative fault as to Plaintiffs.

9 9. Comparative fault as to other persons or entities.

10 10. Plaintiffs have failed to mitigate their damages.

11 11. The applicable warranty period has expired.

12 12. Implied warranties were disclaimed and/or modified and/or waived by express  
13 warranties.

14 13. Plaintiffs have failed to comply with any and all pre-conditions of the express  
15 warranties.

16 14. Plaintiffs' claims are barred by the doctrines of waiver, estoppel, laches, accord  
17 and satisfaction, and/or completion and acceptance.

18 15. Repairs by Highmark Homes LLC or its agents, employees, subcontractors,  
19 independent contractors, or consultants corrected the alleged violation or defect.

20 16. Plaintiffs have released claims against Defendants.

21 17. Any damages were caused by homeowners' unreasonable failure to minimize or  
22 prevent those damages in a timely manner, including the failure of the homeowners to allow  
23 reasonable and timely access for inspections and repairs.

24 18. Any damages were caused by homeowners and/or their agents, employees,  
25 subcontractors, independent contractors, or consultants by failing to follow the builder's or  
26 manufacturer's maintenance recommendations or commonly accepted maintenance obligations.

27



1 19. Any damages were caused by homeowners and/or their agents' or independent  
2 third parties' alterations, ordinary wear and tear, misuse, abuse or neglect, or by the structure's  
3 use for something other than its intended purpose.

4 20. Any damages were caused by an unforeseen act of nature that caused, prevented,  
5 or precluded the activities defined in RCW 4.16.300 from meeting the applicable building codes,  
6 regulations or ordinances in effect at the commencement of construction.

7 21. Plaintiffs' injuries and damages, if any, were proximately caused by their own  
8 acts or omissions.

9 22. Plaintiffs' injuries and damages, if any, were otherwise caused by individuals and  
10 entities over whom Defendants had no control or which occurred after Defendants had fully  
11 performed any and all contracts.

12 23. The alleged conduct of Defendants was not the proximate cause of Plaintiffs'  
13 losses and/or damages alleged in Plaintiffs' Complaint, but said damages were caused by  
14 intervening and superseding proximate causes.

15 24. Plaintiffs lack standing to sue for consequential, special or punitive damages.

16 25. Plaintiffs voluntarily, knowingly, and expressly consented to the situation that  
17 caused the harm and/or assumed the risk of harm.

18 26. Plaintiffs have failed to plead ultimate facts showing that Defendant breached any  
19 contractual obligation owed to Plaintiffs.

20 27. Defendant further affirmatively asserts other defenses, either as presently  
21 available or which may become available as discovery in this matter progresses.

22 **RESERVATIONS**

23 The above defenses and affirmative defenses are based on the facts currently known to  
24 Defendants. Defendants specifically reserve the right to amend this Answer by way of additional  
25 affirmative defenses, counterclaims, cross-claims or by instituting additional third-party claims  
26 as additional facts are obtained through further investigation and discovery.

1 PRAYER FOR RELIEF

2 **WHEREFORE**, having answered Plaintiffs' Complaint and having asserted their  
3 affirmative defenses, Defendants request that this Court:

- 4 1. Dismiss all claims against Defendants, with prejudice and without fees and costs;  
5 2. Award Defendants their costs;  
6 3. Award Defendants such attorneys' fees as are permitted by statute, contract,  
7 equity or common law; and  
8 4. Award such other relief as the Court deems just and equitable.

9  
10 DATED this 16<sup>th</sup> day of June, 2014.

11 LORBER, GREENFIELD & POLITO, LLP

12  
13 By: 

14 William T. Cornell, WSBA # 18867  
15 Sommer B. Clement, WSBA # 31497  
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**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

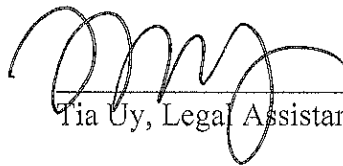
On the date given below I caused to be served the foregoing HIGHMARK HOMES, LLC; TOM TOLLEN; AND JANE DOE'S ANSWER TO PLAINTIFFS' COMPLAINT FOR BREACH OF WASHINGTON CONDOMINIUM ACT, BREACH OF CONTRACT, BREACH OF EXPRESS WARRANTY, BREACH OF IMPLIED WARRANTY, and VIOLATION OF RCW 18.86 on the following individuals in the manner indicated:

*Attorney for Plaintiff:*

Chris Casey  
Casey & Skoglund, PLLC  
1319 Dexter Avenue North, Ste. 370  
Seattle, WA 98109  
Tel: (206) 284-8165  
Fax: (206) 770-6427  
Email: [chris@casey-skoglund.com](mailto:chris@casey-skoglund.com)

- Via Facsimile
- Via Hand Delivery**
- Via U.S. Mail
- Via Email**

SIGNED this 17<sup>th</sup> day of June, 2014.

  
\_\_\_\_\_  
Tia Uy, Legal Assistant