

IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS
CIVIL DIVISION

MATTHEW AND SARAH MCGRATH, Husband and Wife

PLAINTIFFS

VS.

CASE NO. _____

JUPITER RENTALS, LLC, and
MARRS CONSTRUCTION, INC

DEFENDANTS

COMPLAINT

COMES the Plaintiffs, Matthew and Sarah Mcgrath, by and through their attorneys, The Law Offices of Watson and Watson, PLLC and for their Complaint states:

JURISDICTION AND VENUE

1. The Plaintiffs are residents of Benton County, Arkansas.
2. Defendant Jupiter Rentals, LLC is an Arkansas Limited Liability Company with its principal place of business in Benton County, Arkansas.
3. Defendant Marrs Construction, Inc in as Arkansas Corporation with its principal place of business in Benton County, Arkansas.
4. The property which is the subject matter of this litigation is located in Benton County, Arkansas.
5. Jurisdiction is proper and venue is properly seated in this Court pursuant to A.C.A. § 16-60-101 (a)(1).

FACTUAL BACKGROUND

6. On or about May 22, 2022 the Plaintiffs and Jupiter Rentals, LLC (“Jupiter”), by and through its member, Dave Marrs, entered into a contract (“the Contract”) whereby the Plaintiffs would purchase certain real property located at 6 Itetbury Lane in Bella Vista, Arkansas (“the Property”) from the Defendant. (See attached Exhibit 1).
7. On information and belief, Dave Marrs Construction, Inc (“Marrs”), built the improvements located on the Property.
8. On information and belief, Dave Marrs, individually, has authority to control and direct the actions of both Jupiter and Marrs.
9. The original purchase price for the Property was \$559,000 and required that the Plaintiffs make an initial down-payment of \$15,000, which they paid shortly after the contract was fully executed.
10. The Contract contemplates that closing would occur on July 28, 2022. (Paragraph 12).
11. The Contract provides that Jupiter, by and through its member, Dave Marrs, would provide a one year seller’s warranty from the date of completion. (Paragraph 20).
12. Although the Contract suggests that building was completed at the time of execution of the Contract, the Plaintiffs requested specific upgrades to be performed by the Jupiter, by and through its agent Dave Marrs.
13. The Defendant agreed to perform upgrades to the Property prior to the Plaintiffs’ purchase and executed an addendum to the Contract (“First Addendum”) on June 16, 2022 reflecting the additional work. (See attached Exhibit 2).

14. The agreement for additional work outlined in the First Addendum increased the purchase price by \$10,125, which the Plaintiffs also timely paid.
15. The Contract provides that the Plaintiffs would have the right to inspection prior to closing, and on July 15, 2022, the Plaintiffs performed an inspection and submitted a list of repairs to Jupiter.
16. On July 28, 2022, the Plaintiffs and Jupiter entered into a final addendum (“Second Addendum”) prior to closing, in which Jupiter agreed to several items of performance in the home subsequent to the Plaintiffs’ purchase to be completed in 30 days, with the exception of installation of replacement windows, which would be completed 90 days from closing. (See attached Exhibit 3).
17. On July 28, 2022, the Plaintiffs purchased the home and acquired ownership of the Property.
18. The Plaintiffs were provided a builder’s warranty from Marrs Construction, Inc. (“Warranty”)(See attached Exhibit 4).
19. As of August 28, 2022, not a single item on the list of repairs set forth in the Second Addendum had been performed.
20. Since that time, the Defendants by and through David Marrs have attempted some of the repairs listed in the Second Addendum, but have failed to fully perform and several of the attempts to repair have caused more damage to the house.
21. In addition to the defects evidenced by the promises to repair set forth in the Second Addendum, soon after taking possession of the Property the Plaintiff discovered a multitude of additional defects in the construction of the home.

22. The Plaintiffs ultimately had their home inspected by a structural engineer and have learned that the deficiencies in the construction of their home are even more numerous than they were aware.
23. The Plaintiffs have attempted to seek an agreement from Marris Construction, pursuant to the warranty, for the repair of those defects, and based on their information and belief, Marris Construction has declined.
24. The Plaintiffs additionally attempted to seek an agreement from Jupiter Rentals for the repair and completion of the work on the home, and Jupiter Rentals has not responded.

COUNT I

Breach of Express Warranty

25. Marris Construction provided the Plaintiffs that certain Warranty attached hereto as Exhibit 4.
26. Under the terms of the Warranty, Marris Construction promised that any defects in workmanship or materials would be repaired at its expense.
27. The Plaintiffs have attempted to communicate with Mr. Marris directly, and again more formally through counsel, and the Defendant has refused to perform the repairs it warranted to repair.
28. Marris Construction has breached its express warranty.
29. The Plaintiffs ask this Court enter a judgment against Marris Construction for the breach of the express warranty.
30. The Plaintiffs are entitled to all costs associated with the repair of their Property stemming from the Defendant's failure to perform.

31. The Plaintiffs should additionally be awarded their attorney's fees and costs of litigation.

COUNT II

Breach of Express Warranty – Jupiter Rentals

32. Jupiter Rentals promised to provide the Plaintiffs a one year warranty for defects in the home pursuant to Paragraph 20 of the original Contract. (See Exhibit 1).

33. Jupiter Rentals promised to perform warranty work in a timely manner upon written request.

34. The Plaintiffs have attempted to communicate with Mr. Marrs directly, and again more formally through counsel, and Jupiter Rentals has refused to perform the repairs it warranted to repair.

35. Jupiter Rentals has breached its express warranty.

36. The Plaintiffs ask this Court enter a judgment against Jupiter Rentals for the breach of the express warranty.

37. The Plaintiffs are entitled to all costs associated with the repair of their Property stemming from the Defendant's failure to perform.

38. The Plaintiffs should additionally be awarded their attorney's fees and costs of litigation.

COUNT II

Breach of Implied Warranties

39. As a newly constructed residence, the Plaintiffs are granted certain implied warranties pursuant to the purchase of the Property.

40. The Plaintiffs are afforded the implied warranties of habitability, sound workmanship and proper construction.

41. The existence of the Contractor Warranty, or the warranty promised in the Contract, on their own, are insufficient to disclaim the implied warranties.
42. The Plaintiffs have given both Defendants notice of the deficiencies in the construction of the home.
43. The Property has serious defects in its construction that both Defendants have refused to repair.
44. The Defendants should be found liable for breach of the implied warranties, and the Plaintiffs are entitled to all costs associated with the repair of the Property at the Defendants' expense.
45. The Plaintiffs pray this Court find the Defendants liable for breach of implied warranties, and award the Plaintiff damages in an amount to be determined at trial.
46. The Plaintiffs should additionally be awarded their attorney's fees and costs.

COUNT IV

Breach of Contract – Jupiter Rentals

47. Jupiter Rentals contracted to perform the repairs referenced by the Second Addendum.
48. Jupiter Rentals failed to perform those repairs.
49. The Plaintiffs performed by purchasing the property.
50. Jupiter Rentals should be found liable in breach of contract for its failure to perform the repairs reflected in the Second Addendum.
51. The Plaintiffs should be awarded a judgment against Jupiter Rentals for the cost of the repairs outlined in the Second Addendum.
52. The Plaintiffs should be awarded all attorneys fees and costs associated with this litigation.

WHEREFORE, the Plaintiffs pray this Court find the Defendants liable as prayed herein, and award them all proper damages as prayed herein or otherwise appropriate; and for all other relief to which they may be entitled.

Matthew and Sarah McGrath
PLAINTIFFS

By: /s/ Tim Watson, Jr.
TIMOTHY F. WATSON
ABA #2011303
THE LAW OFFICES OF WATSON
& WATSON, PLLC
3729 N. Crossover, Ste. 111
Fayetteville, AR 72703
Phone: 479-435-9051
Fax: 479-521-7052
timothywatsonjrlaw@gmail.com

05/22/2022 3:11 PM CDT

George T. Brace

Matthew McGrath

Courtney E Long

Sarah McGrath

05/22/2022 3:09 PM CDT

May

22

2022

4:40



Eric Duca

Dave Marrs

Eric Duca

Jupiter Rentals LLC

EB00052722

bentonvillebroker@gmail.com

Joseph Hayes

SA00070228

479-871-8108

✓

Fiberglass 3.5" R-15

✓

Fiberglass 11.5" R-38

Dave Marrs

05/23/2022 4:10 PM CDT

Jupiter Rentals LLC

CNC Homes

014496

05/24/2022 1:59 PM CDT

George T. Brace

Matthew McGrath

Courtney E Long

Sarah McGrath

05/24/2022 4:21 PM CDT

General Addendum



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Page 1 of 2

Form Serial Number: 058852-500165-5236454

Regarding the Contract/Agreement (Form Serial Number 004738-000165-3249887), dated (month) May (day) 22, (year) 2022, between Buyer/Lessee, Matthew and Sara McGrath, and Seller/Lessor, Jupiter Rentals LLC, covering the real property known as 6 Itetbury Lane, Bella Vista, AR 72714

(the "Property"), the undersigned Buyer/Lessee and Seller/Lessor, in consideration for the covenants, agreements and promises made below and other good and valuable consideration, receipt and sufficiency being acknowledged, agree as follows:

Buyer and seller have agreed to the following upgrades:

Continue the hardwoods into the 2 upstairs bedrooms \$2375 for labor, materials and transition

10 x 25 concrete extension \$3400 includes labor and materials

Single basin kitchen sink \$675 includes labor and materials .

Add stairs and handrail on back deck going down to yard \$2300 includes installation

Add top garage door panel to have windows. Square window panels \$800 for large door \$575 small door.

\$10,125 due and payable to Jupiter Rentals LLC by June 20, 2022.

General Addendum



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Page 2 of 2

This General Addendum, upon its execution by both parties, incorporates by reference all provisions of the above-referenced Contract/Agreement not expressly modified herein. This General Addendum may be executed in multiple counterparts each of which shall be regarded as an original hereof but all of which together shall constitute one in the same. Electronic signatures shall be deemed original signatures and shall be binding upon the parties.

EXPIRATION: This General Addendum shall not be effective unless signed by Buyer/Lessee and Seller/Lessor on or before (month) _____ (day) _____, (year) _____, at **5:00** (a.m.) (p.m.).

THIS IS A LEGALLY BINDING AGREEMENT WHEN SIGNED BY THE PARTIES BELOW. READ IT CAREFULLY. YOU MAY EMPLOY AN ATTORNEY TO DRAFT THIS FORM FOR YOU. IF YOU DO NOT UNDERSTAND THE EFFECT OF ANY PART, CONSULT YOUR ATTORNEY BEFORE SIGNING. REAL ESTATE AGENTS CANNOT GIVE YOU LEGAL ADVICE. THE PARTIES SIGNED BELOW WAIVE THEIR RIGHT TO HAVE AN ATTORNEY DRAFT THIS FORM AND HAVE AUTHORIZED THE REAL ESTATE AGENT(S) TO FILL IN THE BLANKS ON THIS FORM. THIS FORM IS PRODUCED AND COPYRIGHTED BY THE ARKANSAS REALTORS® ASSOCIATION. THE SERIAL NUMBER BELOW IS A UNIQUE NUMBER NOT USED ON ANY OTHER FORM. THE SERIAL NUMBER BELOW SHOULD BE AN ORIGINAL PRINTING, NOT MACHINE COPIED, OTHERWISE THE FORM MAY HAVE BEEN ALTERED. DO NOT SIGN THIS FORM IF IT WAS PREPARED AFTER DECEMBER 31, 2022.

The above General Addendum is executed on

(month) 06/16/2022 9:49 AM CDT (day) _____, (year) _____, at _____ (a.m.) (p.m.).

Selling Firm

Signature: George T. Brace

Signature: Matthew McGrath

Printed Name: George T Brace
Principal or Executive Broker

Printed Name: _____
Buyer/Lessee

Signature: Courtney E Long

Signature: Sarah McGrath
06/16/2022 11:21 AM CDT

Printed Name: _____
Selling Agent

Printed Name: _____
Buyer/Lessee

The above General Addendum is executed on

(month) _____ (day) _____, (year) _____, at _____ (a.m.) (p.m.).

Listing Firm

06/15/2022 9:32 PM CDT

Signature: Cameron LaGrone

Signature: Dave Marrs

Printed Name: _____
Principal or Executive Broker

Printed Name: _____
Seller/Lessor

Signature: Joseph Hayes

Signature: _____

Printed Name: _____
Listing Agent

Printed Name: _____
Seller/Lessor

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General Addendum



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Page 1 of 2

Form Serial Number: 028354-400165-9023516

Regarding the Contract/Agreement(Form Serial Number 004738-000165-3249887), dated (month) May (day) 22, (year) 2022, between Buyer/Lessee, Matthew McGrath & Sarah McGrath, and Seller/Lessor, Jupiter Rentals LLC, covering the real property known as 6 Itetbury LN, Bella Vista, AR 72714

(the "Property"), the undersigned Buyer/Lessee and Seller/Lessor, in consideration for the covenants, agreements and promises made below and other good and valuable consideration, receipt and sufficiency being acknowledged, agree as follows:

Builder to install wood range hood, replace top garage panels with window units, repair torn flashing, add backfill to create pitch away from house, repair soil too close to siding, install/repair window screens, repair exterior receptacle cover to be right side up, install door stops where missing, adjust garage door electric eyes to close, install missing cabinet hardware, repair hardwood floor in kitchen, repair/replace windows that are broken/inoperable, repair hole noted at cabinet, secure trim at top of stairs, replace damaged/missing plumbing cover, replace filters, repair/replace damaged trim in spare bedrooms.

All items to be repaired within 30 days of closing with exception of replacement of windows. Windows to be completed within 90 days of closing.

General Addendum



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Page 2 of 2

This General Addendum, upon its execution by both parties, incorporates by reference all provisions of the above-referenced Contract/Agreement not expressly modified herein. This General Addendum may be executed in multiple counterparts each of which shall be regarded as an original hereof but all of which together shall constitute one in the same. Electronic signatures shall be deemed original signatures and shall be binding upon the parties.

EXPIRATION: This General Addendum shall not be effective unless signed by Buyer/Lessee and Seller/Lessor on or before (month) _____ (day) _____, (year) _____, at **5:00** (a.m.) (p.m.).

THIS IS A LEGALLY BINDING AGREEMENT WHEN SIGNED BY THE PARTIES BELOW. READ IT CAREFULLY. YOU MAY EMPLOY AN ATTORNEY TO DRAFT THIS FORM FOR YOU. IF YOU DO NOT UNDERSTAND THE EFFECT OF ANY PART, CONSULT YOUR ATTORNEY BEFORE SIGNING. REAL ESTATE AGENTS CANNOT GIVE YOU LEGAL ADVICE. THE PARTIES SIGNED BELOW WAIVE THEIR RIGHT TO HAVE AN ATTORNEY DRAFT THIS FORM AND HAVE AUTHORIZED THE REAL ESTATE AGENT(S) TO FILL IN THE BLANKS ON THIS FORM. THIS FORM IS PRODUCED AND COPYRIGHTED BY THE ARKANSAS REALTORS® ASSOCIATION. THE SERIAL NUMBER BELOW IS A UNIQUE NUMBER NOT USED ON ANY OTHER FORM. THE SERIAL NUMBER BELOW SHOULD BE AN ORIGINAL PRINTING, NOT MACHINE COPIED, OTHERWISE THE FORM MAY HAVE BEEN ALTERED. DO NOT SIGN THIS FORM IF IT WAS PREPARED AFTER DECEMBER 31, 2022.

The above General Addendum is executed on

(month) 07/28/2022 10:58 AM CDT (day) _____, (year) _____, at _____ (a.m.) (p.m.).

Selling Firm

Signature: George T. Brace

Signature: Matthew McGrath

Printed Name: _____
Principal or Executive Broker

Printed Name: _____
Buyer/Lessee

Signature: Courtney E Long

Signature: Sarah McGrath

Printed Name: _____
Selling Agent

Printed Name: _____
Buyer/Lessee

The above General Addendum is executed on

(month) _____ (day) _____, (year) _____, at _____ (a.m.) (p.m.).

Listing Firm

Signature: Cameron LaGrone

Signature: Dave Marrs

Printed Name: Cameron LaGrone
Principal or Executive Broker

Printed Name: Jupiter Rentals LLC
Seller/Lessor

Signature: Joseph Hayes

Signature: _____

Printed Name: _____
Listing Agent

Printed Name: _____
Seller/Lessor

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Exhibit 4

LIMITED
NEW CONSTRUCTION BUILDER WARRANTY

MARRS CONSTRUCTION, INC., AGREES TO REMOVE, REPLACE OR REPAIR AT ITS EXPENSE ANY FAULTY OR DEFECTIVE WORK, MATERIALS, OR EQUIPMENT IN THE PROPERTY DESCRIBED BELOW FOR A PERIOD OF ONE YEAR FROM THE DATE OF THIS LIMITED NEW CONSTRUCTION BUILDER WARRANTY SET FORTH BELOW.

Written notice of any requested warranty work shall be given to MARRS Construction, Inc. prior to the expiration date of the Warranty. MARRS Construction, Inc. reserves the first right of remedy and shall be given reasonable access to the property at reasonable times to perform its obligations under this Warranty.

This Warranty is given in lieu of all other warranties, express or implied, including a warranty of merchantability, which are disclaimed. The extent of liability for MARRS Construction, Inc. for any defect covered by this Warranty is limited to repair or replacement of the defective item. This Warranty is Buyer's exclusive remedy. Incidental and consequential damages are expressly excluded.

This Warranty does not apply to:



1. Cracks in concrete, masonry, wood, and drywall that do not materially affect the structural integrity of the house.
2. Shrinkage of wood molding and hardwood flooring.
3. Ordinary wear and tear including, but not limited to, surface damage to countertops, cabinets, ceramic tile, wood flooring, vinyl, plumbing fixtures, carpeting, windows, screens, mirrors, and light fixtures.
4. Damage to materials and equipment caused by abuse or neglect occasioned by anyone other than MARRS Construction, Inc., its agents, its employees, or its subcontractors.
5. Touchup painting after Buyer takes possession of the property.
6. Trees, shrubs, sod, and any live plant material once installed.
7. Acts of God.

Owner acknowledges that Owner has inspected the premise and agrees all repairs and cosmetic issues have been corrected. Future cosmetic issues are responsibility of the homeowner.

All workmanship shall conform to the guidelines found in the publication *Residential Construction Performance Guidelines – For Professional Builders and Remodelers*, National Association of Home Builders, 1996. If an item is not covered in that publication, then the standard industry practice shall govern.

Property: 6 Itetbury Ln. Bella Vista, AR 72714

Effective Date: 7/28/22

Buyer's Acknowledgement of Receipt:  

Builders Acknowledgement of Receipt: _____