

DISTRICT COURT, MESA COUNTY, COLORADO 125 N. Spruce Street, Grand Junction, CO 81501 Phone: (970) 257-3640	<COURT USE ONLY>
PLAINTIFFS: JOSEPH ARTHUR RYAN , an individual, and BARBARA ANN RYAN , an individual v. DEFENDANTS: CHRONOS BUILDERS, LLC , a Colorado limited liability company, and CODY DAVIS , an individual	
<i>Attorneys for Plaintiffs:</i> Coleman & Quigley, LLC Joseph Coleman #6856 Isaiah Quigley #46621 Stuart R. Foster #54092 2454 Patterson Road, Suite 210 Grand Junction, CO 81505 Phone: (970) 242-3311 Email: Joe@cqlawfirm.net ; Isaiah@cqlawfirm.net ; Stuart@cqlawfirm.net	Case No.: 2022CV30210 Division: 12
AMENDED COMPLAINT WITH JURY DEMAND	

The Plaintiffs, Joseph Arthur Ryan and Barbara Ann Ryan, by and through counsel of record, Coleman & Quigley, LLC, hereby file this Amended Complaint with Jury Demand against the Defendants, Chronos Builders, LLC and Cody Davis. In support thereof, Plaintiffs state as follows:

JURISDICTION AND VENUE

1. Venue is proper in this Court pursuant to C.R.C.P. 98(c)(1) as Mesa County is where Chronos Builders, LLC, and Cody Davis reside, operate their business; and also pursuant to C.R.C.P. 98(c)(5) as the conduct complained of took place in the same locale.

2. This Court has jurisdiction over Chronos Builders, LLC, and Cody Davis under C.R.S. § 13-1-124(1)(a) because Chronos Builders, LLC, and Cody Davis were transacting business in this state.

3. This Court has jurisdiction over the subject matter under Article VI, Section 9 of the Colorado Constitution because this is a civil action that is not excepted from the Court's jurisdiction.

THE PARTIES

4. Plaintiffs, Joseph Arthur Ryan and Barbara Ann Ryan (the “Ryan’s”) are individuals and Mesa County residents residing at 1390 Horseshoe Drive, Fruita, Colorado 81521 (the “Residence”).

5. Defendant, Chronos Builders, LLC (“Chronos”), is a Colorado limited liability company, whose legal address is 637 25 Road., Grand Junction, Colorado 81505, and whose Registered Agent is Cody Davis.

6. Defendant Cody Davis is an individual and resident of Mesa County, and employee and/or agent of Chronos.

7. The Ryan’s purchased the Residence from Chronos, who was also the builder of the Residence.

GENERAL ALLEGATIONS

8. At all relevant times prior to June 30, 2017, Chronos was the owner of the Residence.

9. During Chronos’ ownership of the Residence, Chronos caused for the construction of the Residence.

10. Chronos, by and through Cody Davis, was the general contractor and builder of the Residence.

11. At the time of construction of the Residence, Chronos and Cody Davis were aware of the nature and composition of the soils prevalent at the Residence and specifically at the location where the Residence was to be constructed.

12. At the time of construction of the Residence, Chronos and Cody Davis were provided with foundation options from a selected engineer aimed to offset the impact the soils would have on the Residence.

13. At the time of construction, Chronos and Cody Davis selected a foundation plan which was inferior to other options available, given the nature of the soils the Residence was located on.

14. On or about June 30, 2017, Chronos sold and conveyed title for the Residence to the Ryan's.

15. Neither Chronos nor Cody Davis disclosed the soils concerns; the type of foundation selected; or the risks associated with the same to the Ryan's.

16. Due to Chronos and Cody Davis' nondisclosure of the soils or the selection of a riskier foundation for the construction of the Residence, the Ryan's were precluded from considering the propriety of the selection and risky nature of the same given the nature of the soils at the Residence in their decision to purchase.

17. In good conscience, Chronos and/or Cody Davis should have disclosed the nature of the soils and selection of the foundation to the Ryan's.

18. Upon information and belief, Chronos and/or Cody Davis did not issue or make a disclosure because they knew the purchase price and/or transaction would be in peril or otherwise be negatively impacted as a result of the same.

19. The Ryan's are not in the construction industry and reasonably relied upon the non-disclosure as if no risks were at issue and certainly would have re-considered the purchase terms with such knowledge.

20. In 2019, the Ryan's began witnessing signs of the following defects (the "Defects") begin to present throughout the Residence:

- a. Cracking in the walls, ceilings and concrete.
- b. Wall and floor movement and deflection.
- c. Heaving and lifting of the garage floor.
- d. Detachment of the areas between the ceiling and walls.

21. The Ryan's alerted Cody Davis, agent of Chronos, to the Defects and he on behalf of Chronos led Chronos' investigation into determining the damages and their cause.

22. Chronos made minor and cosmetic fixes but requested the benefit of additional time to figure out the true nature and cause of the Defects.

23. Upon information and belief, Chronos and Cody Davis did actually know the source of the defects as early as 2019 but did not disclose them to the Ryan's.

24. Despite Chronos' cosmetic fixes in 2019, the Defects persisted into 2020 and required further repairs.

25. At all times, Chronos and Cody Davis assured the Ryan's that the problems would be addressed and remedied, and that time was necessary to garner information sufficient to remediate the problems.

26. Upon information and belief, Chronos and Cody Davis knew time was irrelevant to the subject matter and intended to lead on and cause delay to the Ryan's.

27. The Defects only became more pronounced and in January 2021, Cody Davis informed the Ryan's as follows: "Spoke with Brandon about the movement last week. The movement, although worse, still seems minor and not to the level of getting them involved. Let's wait until the weather is a little better this spring, and I'll come out and repair all drywall cracks for you. From there we'll keep an eye on further movement. Hopefully soils have reached equilibrium and its done expanding."

28. Based on Cody Davis' representation and purported expertise on the matter, the Ryan's reasonably believed that the soils needed to merely "reach their equilibrium" to discover the true nature and extent of the damages. The Ryan's trusted and relied on Cody Davis' expertise and perceived attention he was paying to the issues.

29. The Ryan's also reasonably believed Chronos would remediate the Defects and the cause of the Defects once fully conceived and understood.

30. After hearing no plans for action and still witnessing the effects of the Defects, the Ryan's submitted additional requests for review, analysis and plan for correction in January 2022.

31. On this occasion, Chronos informed the Ryan's it would no longer be willing to look into or address the matter as a result of Chronos' belief that the warranty had expired.

32. The Defects persist and grow worse each day, are unsatisfactory to the Ryan's, diminish large portions of the Residence's value, create genuine safety issues and may preclude the future marketability of the Residence.

33. Upon information and belief, the Defects are the result of Chronos and/or Cody Davis electing to construct and install a cheaper, riskier shallow foundation system.

34. Prior to filing this Complaint, the Ryan's complied with the notice of claim

process outlined in C.R.S. § 13-20-801, *et. seq.*

35. To date, Chronos and/or Cody Davis has refused and failed to fully remedy the identified Defects and related problems.

FIRST CLAIM FOR RELIEF
(Negligence: Chronos)

36. The Ryan's hereby re-allege and incorporate the allegations in paragraphs 1-35 as though fully set forth herein.

37. Chronos owed a duty of care to the Ryan's, in the construction of the Residence, to do so in a non-negligent manner, without defects, and in accordance with reasonable standards of the construction industry.

38. Chronos breached its duties to the Ryan's because the work and construction provided by Chronos is defective and failed to comply with reasonable construction standards.

39. The Ryan's have been advised and certify that knowledgeable experts in the construction industry have advised that Chronos' work is defective.

40. As a direct and proximate result of the Defects and Chronos' breach of duty, the Ryan's have been damaged in an amount to be determined through experts and proven at trial, plus attorneys' fees and costs as permitted under Colorado law, and pre- and post-judgment interest on any amount so awarded.

SECOND CLAIM FOR RELIEF
(Fraudulent Misrepresentation: All Defendants)

41. The Ryan's hereby re-allege and incorporate the allegations in paragraphs 1-40 as though fully set forth herein.

42. At all relevant times Cody Davis was acting in his capacity as agent and representative of Chronos.

43. At all relevant times Chronos and Cody Davis possessed material information and knowledge as to the nature of the soils prevalent at the Residence and the specific but riskier type of foundation selected.

44. At all relevant times after 2019, when the Ryan's informed Chronos and Cody

Davis of the prevalence of the Defects, Chronos and Cody Davis possessed the knowledge and information necessary to inform the Ryan's of and remedy the Defects based on Chronos and Cody Davis' knowledge of the nature of the soils prevalent at the Residence and the specific but riskier type of foundation selected.

45. The nature of the soils prevalent at the Residence and the specific but riskier type of foundation selected were material to the Ryan's decision to purchase the Residence.

46. Chronos and Cody Davis made a misrepresentation of material fact by not disclosing or informing the Ryan's of the nature of the soils prevalent at the Residence and the specific but riskier type of foundation selected; by misrepresenting the extent of the problems associated with the nature of the soils prevalent at the Residence and the specific but riskier type of foundation selected; and that repairs or remediation of any issues would occur.

47. The Ryan's were right and justified in relying on Chronos and Cody Davis' misrepresentation as Chronos and Cody Davis are construction professionals and were responsible for constructing and building the Residence in the first place before selling the Residence to the Ryan's.

48. The Ryan's relied on Chronos and Cody Davis' misrepresentations and have been damaged in an amount to be determined through experts and proven at trial, plus attorneys' fees and costs as permitted under Colorado law, and pre- and post-judgment interest on any amount so awarded.

THIRD CLAIM FOR RELIEF
(Fraudulent Concealment: All Defendants)

49. The Ryan's hereby reallege and incorporate the allegations in paragraphs 1-48 as though fully set forth herein.

50. At all relevant times Cody Davis was acting in his capacity as agent and representative of Chronos.

51. At all relevant times Chronos and Cody Davis possessed material information and knowledge as to the nature of the soils prevalent at the Residence and the specific but riskier type of foundation selected.

52. Chronos and Cody Davis concealed the material information regarding knowledge as to the nature of the soils prevalent at the Residence and the specific but riskier type of foundation selected.

53. By making the decision not to disclose or otherwise inform the Ryan's of their knowledge as to the nature of the soils prevalent at the Residence and the specific but riskier type of foundation selected, Chronos and Cody Davis knew that said facts were being concealed from the Ryan's.

54. The Ryan's were ignorant of the fact regarding the nature of the soils prevalent at the Residence and the specific but riskier type of foundation selected.

55. Chronos and Cody Davis had the intention that their concealment of their knowledge as to the nature of the soils prevalent at the Residence and the specific but riskier type of foundation selected be acted upon by the Ryan's so the Ryan's would purchase the Residence.

56. The Ryan's acted on the concealment by purchasing the Residence and have been damaged in an amount to be determined through experts and proven at trial, plus attorneys' fees and costs as permitted under Colorado law, and pre- and post-judgment interest on any amount so awarded.

FOURTH CLAIM FOR RELIEF
(Negligent Misrepresentation: All Defendants)

57. The Ryan's hereby reallege and incorporate the allegations in paragraphs 1-56 as though fully set forth herein.

58. At all relevant times Cody Davis was acting in his capacity as agent and representative of Chronos.

59. At all relevant times Chronos and Cody Davis in their respective business, profession, or employment as builders, construction professionals, and the sellers of the Residence made a misrepresentation of material fact without reasonable care regarding their knowledge as to the nature of the soils prevalent at the Residence and the specific but riskier type of foundation selected for the guidance of the Ryan's in the transaction involving the Ryan's purchase and sale of the Residence.

60. Chronos and Cody Davis as the builders, construction professionals, and the sellers of the Residence knew that their representations regarding the state and condition of the Residence and any issues relating to the defect free nature thereof would be relied upon the Ryan's.

61. The Ryan's justifiably relied on Chronos and Cody Davis' misrepresentations

regarding the state and condition of the Residence and any issues relating to the defect free nature thereof as the builders, construction professionals, and the sellers of the Residence to their detriment.

62. The Ryan's have been damaged by Chronos and Cody Davis misrepresentation in an amount to be determined through experts and proven at trial, plus attorneys' fees and costs as permitted under Colorado law, and pre- and post-judgment interest on any amount so awarded.

WHEREFORE, AND FOR THE FOREGOING REASONS, the Ryan's respectfully request that the Court grant the following forms of relief:

A. That the Court enter judgment for damages in favor of the Ryan's and against Chronos on the Ryan's claim of negligence;

B. Under the general law regarding tort liability and the doctrine of Respondent Superior, that the Court enter judgment for damages in favor of the Ryan's and against Chronos and Cody Davis, jointly and severally, on the Ryan's claims of fraudulent concealment; fraudulent misrepresentation; and negligent misrepresentation;

C. That the Court award the Ryan's their reasonable attorneys' fees and costs;

D. That the Court award pre- and post-judgment interest on any amount so awarded at the legal rate; and

E. That the Court grant such other and further forms of relief as it deems necessary and just under the circumstances.

JURY DEMAND

The Ryan's request a jury and have previously paid the required jury fee.

Respectfully submitted by,

COLEMAN & QUIGLEY, LLC

Dated: June 16, 2022.

By: /s/Isaiah Quigley
Isaiah Quigley (#46621)
Counsel for Plaintiffs

Plaintiffs' Address:
1390 Horseshoe Drive Fruita, CO 81521