



COPY

BENNINGER LAW
PROFESSIONAL LIMITED LIABILITY COMPANY

February 18, 2016

Cathy S. Gatson
Circuit Clerk of Kanawha County
111 Court Street, Suite 216
Charleston, WV 25301

Re: *Soaring Eagle Lodge Master Association, Inc.; and Soaring Eagle Lodge Association, Inc. v. Soaring Eagle Development Company, LLC; GBBN Architects, Inc.; and Branch & Associates, Inc.*
Civil Action No. 15-C-2202

Dear Ms. Gatson:

Please file the enclosed Amended Complaint in the above-referenced civil action. I am providing the original and five (5) copies of the Amended Complaint; an original and one copy of a Civil Case Information Statement; an original and three copies of a Summons for Defendant GBBN Architects, Inc. (with a copy marked, "for return"); an original and three copies of a Summons for Defendant Branch & Associates, Inc. (with a copy marked, "for return"); a check made payable to the Circuit Clerk of Kanawha County in the amount of \$10.00 to cover the cost of forwarding the Amended Complaint to the Secretary of State; a check made payable to the Secretary of State in the amount of \$40.00 to cover the cost of service on Defendants GBBN Architects, Inc., and Branch & Associates, Inc.; and a "Request for Legal Process to be Served by the West Virginia Secretary of State" for both Defendants being served. Please return the extra copy of the Complaint, marked "filed," in the self-addressed, stamped envelope which I have also enclosed.

Should you have any questions or need further information, please do not hesitate to contact me. Thank you for your assistance.

Very truly yours,

J. Michael Benninger
mike@benningerlaw.com

JMB/hlk
Enclosures

cc: Shawn P. George, Esquire (w/enclosure)
John W. MacCorkle, Esquire (w/enclosure)

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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**SOARING EAGLE LODGE MASTER
ASSOCIATION, INC., a West
Virginia non-profit corporation;
and SOARING EAGLE LODGE
ASSOCIATION, INC. a West
Virginia non-profit corporation,**

Plaintiffs,

v.

CIVIL ACTION NO. 15-C-2202

**SOARING EAGLE DEVELOPMENT
COMPANY, LLC, a West Virginia
limited liability company;
GBBN Architects, Inc., an Ohio
corporation; and BRANCH &
ASSOCIATES, INC., a Virginia
corporation,**

Defendants.

AMENDED COMPLAINT

1. Plaintiff Soaring Eagle Lodge Master Association, Inc. ("SELMA") is a West Virginia non-profit corporation, which has its principal offices located in Beverly, Randolph County, West Virginia.

2. Plaintiff Soaring Eagle Lodge Association, Inc. ("SELA") is a West Virginia non-profit corporation, which has its principal offices located in Beverly, Randolph County, West Virginia.

3. Defendant Soaring Eagle Development, LLC ("SEDC") is a West Virginia limited liability company, which has its

principal offices located in Charleston, Kanawha County, West Virginia.

4. Defendant GBBN Architects, Inc. ("GBBN") is an Ohio corporation, registered and licensed to do business in the State of West Virginia, which has its principal offices located in Cincinnati, Ohio.

5. Defendant Branch & Associates, Inc. ("Branch") is a Virginia corporation, registered and licensed to do business in the State of West Virginia, which has its principal offices located in Roanoke, Virginia.

6. At all times relating to the relevant occurrences and claims made in this civil action, Defendant SEDC was the owner, developer, and declarant of the land and improvements which it submitted to establish and create a condominium named the Soaring Eagle Lodge at the Snowshoe Mountain Resort located in Snowshoe, Pocahontas County, West Virginia.

7. At all times relating to the relevant occurrences and claims made in this civil action, Defendant GBBN was the project architect retained by Defendant SEDC to design Soaring Eagle Lodge and to manage, and inspect its construction and building by the contactors retained by Defendant SEDC for that purpose.

8. At all times relating to the relevant occurrences and claims made in this civil action, Defendant Branch was the

general contractor retained by Defendant SEDC to construct and build Soaring Eagle Lodge, and Defendant Branch hired subcontractors to perform work required under its agreement with Defendant SEDC.

9. Soaring Eagle Lodge was established and created under the provisions of the West Virginia Uniform Common Interest Ownership Act ("Act"), *West Virginia Code* § 36B-1-101, *et seq.*

10. Upon information and belief Defendant GBBN, acting by and through its employee, agent, and registered architect, executed a "Certificate of Completion," on or about November 27, 2006, declaring, pursuant to the provisions of *West Virginia Code* § 36B-2-101(b) that "all structural components and mechanical systems of the building containing or comprising any units created by the Declaration Establishing Soaring Eagle Lodge at Snowshoe Mountain Resort . . . are substantially completed in accordance with the condominium plans for such buildings and units."

11. By applicable declarations, including the Certificate of Completion, Defendant SEDC formed Plaintiffs SELMA and SELA for the express purposes set forth therein and explicitly defined and authorized within the Act.

12. At all times relating to the relevant occurrences and claims made in this civil action, Defendant SEDC advertised,

offered, and sold residential and commercial units in the Soaring Eagle Lodge condominium to persons, who are now members of and represented by Plaintiffs SELMA and SELA.

13. While acting within the scope of their powers and for the purposes for which they were formed, Plaintiffs SELMA and SELA, by use of due diligence, timely discovered that a number of common and limited elements of Soaring Eagle Lodge contain substantial structural and material defects and the condominium was not constructed in accordance with the approved architectural, engineering and construction plans, drawings, specifications, and details and applicable existing construction standards.

14. As Soaring Eagle Lodge and its affected common and limited elements at issue in this civil action are not free from defective material and were not constructed in accordance with applicable law, the approved architectural, engineering and construction plans, drawings, specifications, and details, sound construction standards and in a good workmanlike manner, Defendants SEDC, GBBN, and Branch breached their contracts, express and implied, have breached their expressed and implied warranties of plans, construction, and quality, and have made material misrepresentations as to the quality of material and construction of Soaring Eagle Lodge, all to the detriment of and

loss to the unit owners belonging to and represented by Plaintiffs SELMA and SELA.

15. At all times relating to this civil action, Defendants SEDC, GBBN, and Branch acted in ways which are inequitable, and each of them have been unjustly enriched as a direct and proximate result of their individual and joint wrongful and unlawful conduct as generally described in this Amended Complaint, all to the detriment of the unit owners belonging to and represented by Plaintiffs SELMA and SELA.

16. For all times and purposes relating to the relevant occurrences and claims made in this civil action, Plaintiffs SELMA and SELA and the unit owners belonging to and represented by them were the sole intended and foreseeable third-party beneficiaries of all agreements, contracts, construction documents, and condominium plans prepared, exchanged, and entered into by each of the Defendants SEDC, GBBN, and Branch for the construction and building of Soaring Eagle Lodge.

17. At all times relating to the relevant occurrences and claims made in this civil action, Defendant Branch was negligent in the selection of materials and building techniques used by it and its subcontractors in the construction and building of Soaring Eagle Lodge, which materials and building techniques were not in conformity and compliance with the

construction documents and condominium plans submitted to it at the time it agreed to perform the work under its agreement with Defendant SEDC and within applicable construction standards and in a good, workmanlike manner within applicable construction industry standards.

18. At all times relating to the relevant occurrences and claims made in this civil action, Defendant GBBN was negligent in failing to manage and inspect the work performed by Defendant Branch and its subcontractors and, in failing to recognize that the work performed by Defendant Branch and its subcontractors and the building materials used by them were not performed and supplied in accordance with the approved architectural engineering construction documents, condominium plans, drawings, specifications, and details, and within applicable construction standards and in a good workmanlike manner within applicable construction industry standards and as represented in the Certificate of Compliance, when it knew or should have known of same.

19. As a direct and proximate result of Defendants SEDC's, GBBN's, and Branch's wrongful and unlawful conduct, jointly and severally, as generally described in this Amended Complaint, Plaintiffs SELMA and SELA, on behalf of the unit owners, have incurred and expended substantial sums to repair and restore the damage and losses caused by the defective

material used in constructing Soaring Eagle Lodge's common and limited common elements, and Defendants SEDC's, GBBN's, and Branch's failure to construct same, according to applicable law, the approved architectural, engineering and construction plans, drawings, specifications, and details, and within applicable construction standards and in a good workmanlike manner within applicable construction industry standards.

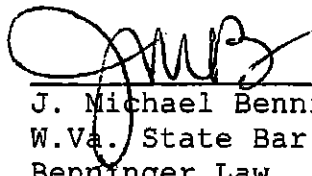
20. As a further direct and proximate result of Defendant SEDC's, GBBN's, and Branch's wrongful and unlawful conduct, jointly and severally, as aforesaid, and, to a reasonable certainty, Plaintiffs SELMA and SELA are now required to expend and will incur in the future, substantial sums for common expenses to repair, restore, and replace the roof, its sheathing, structural framing, insulation, soffit and fascia, and rainwater collection system along with unit deck railing and trim and Soaring Eagle Lodge's siding, flashing, and trim and to otherwise prevent water intrusion into all levels of Soaring Eagle Lodge and its plumbing and water heating and electrical systems.

WHEREFORE, Plaintiffs demand judgment from Defendant Soaring Eagle Development, LLC, Defendant GBBN Architects, Inc., and Defendant Branch & Associates, Inc., jointly and severally, in such amount that will fully and fairly compensate them for common expenses incurred and to be expended in the future,

together with prejudgment interest, post judgment interest, and expenses of litigation, attorney fees, and such other relief afforded by West Virginia law. In addition, Plaintiffs seek entry of an Order directing Defendant Soaring Eagle Development, LLC, to immediately take such steps to protect and preserve all common and limited elements of Soaring Eagle Lodge, in accordance with the *Limited Visual Intrusion Water Survey* prepared for Plaintiff Soaring Eagle Lodge Master Association, Inc., by Professional Service Industries, Inc., dated May 20, 2015, a copy of which is marked and attached hereto as Exhibit "A."

Plaintiffs Demand a Trial by Jury.

SOARING EAGLE MASTER ASSOCIATION
INC.; and SOARING EAGLE LODGE
ASSOCIATION INC.,
Plaintiffs,
By Counsel.



J. Michael Benninger, Esquire
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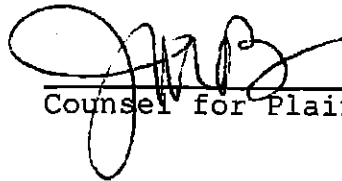
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, J. Michael Benninger, counsel for Plaintiffs, do hereby certify that on February 18, 2016, the foregoing **Amended Complaint** was duly served upon counsel of record by depositing a true and exact copy thereof in the regular course of the United States Mail, First Class, postage prepaid, addressed as follows:

Shawn P. George, Esquire
George & Lorensen, PLLC
1526 Kanawha Boulevard, East
Charleston, WV 25311

John L. MacCorkle, Esquire
MacCorkle Lavender PLLC
300 Summers Street Suite 800
Charleston, WV 25301



Counsel for Plaintiffs