

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

FILED
U.S. DISTRICT COURT
SAVANNAH DIV.
2007 DEC 13 PM 3:17

UNITED STATES OF AMERICA)
)
Plaintiff,)
)
v.)
)
GENESIS DESIGNER HOMES, LLC;)
GENESIS REAL ESTATE GROUP, LLC;)
THOMAS & HUTTON ENGINEERING CO.;)
MALPHRUS CONSTRUCTION CO.; AND)
STONELAKE TOWNHOMES PROPERTY)
OWNERS ASSOCIATION, INC.,)
)
Defendants.)

CLERK E. Bacon
SG. DIST. OF GA.

CIVIL ACTION NO. 406-096
(Formerly Civil Action No. 407-139)

**THIRD-PARTY COMPLAINT OF THOMAS & HUTTON ENGINEERING, CO.
AGAINST RICHARD A. FITZER, II**

COMES NOW THOMAS & HUTTON ENGINEERING CO., Third-Party Plaintiff herein and within ten (10) days of service of its original Answer files its Third-Party Complaint against Third-Party Defendant Richard A. Fitzer, II, (hereinafter "Fitzer"), showing the Court the following:

1.

Third-Party Defendant Fitzer was an owner and a principal of Defendant Genesis Designer Homes, LLC. Third-Party Defendant Fitzer is the current owner and a principal of Defendant Genesis Real Estate Group, LLC. Jurisdiction over Fitzer is appropriate based on 28 U.S.C. § 1331 and 28 U.S.C. § 1367. Venue is appropriate as to Fitzer pursuant to 28 U.S.C. § 1391 and in light of the fact that Fitzer is a resident of this district and division. Fitzer may be served at his residence or his place of business within Chatham County, Georgia.

2.

In the action styled Savannah-Chatham County Fair Housing Council, Inc. v. Genesis Designer Homes, LLC, et al., Civil Action No. CV-406096 (hereinafter "Fair Housing Council Action"), consolidated with this case on November 7, 2007, the Savannah-Chatham County Fair Housing Council, Inc. has alleged that Fitzer was directly and personally involved in the development of Stonelake Townhomes and Highlands Crossings Townhomes, the two residential developments at issue in this lawsuit. See Second Amended Complaint of Savannah-Chatham County Fair Housing Council, Inc. at ¶¶ 18-19 (Dk. # 66).

3.

Genesis Designer Homes, LLC and Genesis Real Estate Group, LLC have been named as Defendants in this action brought by the United States of America.

4.

Fitzer is a named defendant to the Second Amended Complaint filed by Savannah-Chatham County Fair Housing Council, Inc. For whatever reason, the United States of America has chosen not to name Fitzer as a defendant as to the allegations asserted by the United States of America.

5.

It appears from the Chatham County public real estate records that Genesis Real Estate Group, LLC recently transferred 20 Taylor Street, Tybee Island, GA 31328 to Fitzer and his wife Kathryn L. Fitzer.

COUNT ONE

Alter Ego

6.

To the extent that the evidence should show that Fitzer has disregarded the corporate form of his corporations so as to make the corporations a mere sham or a business conduit for the shareholder personally or that Fitzer has manipulated the corporate form in order to avoid liability in this action, Fitzer should be held personally liable in this action as the alter ego of Defendant Genesis Designer Homes, LLC and/or Defendant Genesis Real Estate Group, LLC.

COUNT TWO

Contribution and Indemnity

7.

While Defendant and Third-Party Plaintiff Thomas & Hutton Engineering Co. denies that it has any liability in this action, to the extent that there should be a determination that this Defendant is in any way at fault, Defendant and Third-Party Plaintiff Thomas & Hutton Engineering Co. shows that its alleged fault is significantly less than other Defendants to this action and that any liability should be equitably apportioned. To the extent that this Defendant is not dismissed from this action and it is determined that any damages or other relief are not subject to equitable apportionment, Defendant and Third-Party Plaintiff Thomas & Hutton Engineering Co. shows that any alleged negligence on its part (any negligence being expressly denied) was merely passive while Fitzer was actively negligent or at fault so as to entitle Defendant and Third-Party Plaintiff Thomas & Hutton Engineering Co. to indemnity and/or contribution against Fitzer.

COUNT THREE

Negligent Representation

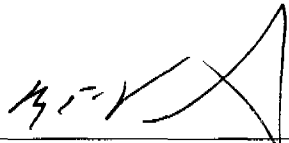
8.

The site plan work undertaken by Defendant and Third-Party Plaintiff Thomas & Hutton Engineering Co. in relation to the construction projects at issue in this lawsuit could have been utilized in conjunction with either single-story units or multi-story units. Third-Party Defendant Fitzer individually represented to Defendant and Third-Party Plaintiff Thomas & Hutton Engineering Co. that the accessibility requirements at issue would not apply to the projects giving rise to this lawsuit. Defendant and Third-Party Plaintiff reasonably relied upon representations made by Third-Party Defendant Fitzer regarding the applicability of accessibility requirements. To the extent that Thomas & Hutton Engineering Co. is held responsible in this action, it will suffer economic injury proximately resulting from its reasonable reliance on Fitzer's representations to the extent that Fitzer's representations are shown to have been false. Accordingly, to the extent that Fitzer's representations are shown to have been false, Fitzer is liable to Defendant and Third-Party Plaintiff Thomas & Hutton Engineering Co. for his negligent misrepresentations.

WHEREFORE, Defendant and Third-Party Plaintiff Thomas & Hutton Engineering Co. respectfully requests that it recover over and against Third-Party Defendant Fitzer to the extent of any liability imposed upon Defendant and Third-Party Plaintiff Thomas & Hutton Engineering Co. in this action.

This 13th day of December, 2007.

BOUHAN, WILLIAMS & LEVY LLP

By: 

ROY E. PAUL

Georgia State Bar No. 567675

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SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

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THOMAS & HUTTON ENGINEERING CO.;)	
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STONELAKE TOWNHOMES PROPERTY)	
OWNERS ASSOCIATION, INC.,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served upon all parties of record by depositing a copy of the same in the United States Mail, postage prepaid, and addressed as follows:

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This 13th day of December, 2007.



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