

IN THE CIRCUIT COURT OF DUPAGE COUNTY
LAW DEPARTMENT

TRANSFERRED TO FEDERAL
COURT Case No. 1:18-cv-00047

Michael Stoller et al.

Northern District of Illinois

v.

**TRIAL BY JUDGE ON THE
ILLINOIS CONSUMER
FRAUD AND BUSINESS
PRACTICE ACT**

**TRIAL BY JURY ON ALL
OTHER COUNTS**

WARREN E. BUFFETT .
Berkshire Hathway, Inc.,
CMH Manufacturing, Inc.,,
Clayton Homes, Inc.,
Clayton Home Building Group,
CMN Manufacturing West, Inc.,
Berkshire Hathway Home Builders,
Kevin T. Clayton, individually and
as President, Tim Woods, Sales Manager
Larry Tompkins, Salesman,
Tim Kuhm, Manager
Simpson, McMahan, Glick & Burford, PLLC
Jonathan E. Beling
John Doe's 1-10, unknown attorneys, agents
Assigns, representatives, officers, directors
et al.,

Case No

Defendants.

PLAINTIFFS' COMPLAINT AND JURY DEMAND

COMES NOW, Plaintiffs Christopher Stoller, 69, a disabled person and Michael Stoller, 27, a disabled person and protected person pursuant, the laws of the State of Illinois, the Illinois Probate Act, under the Americans for Disability Act (ADA) and for their Complaint against the defendants now states as follows:

Introduction

1. Plaintiff Christopher Stoller purchased a manufactured home from CMH Manufacturing located at 437 N. Main Street, Middlebury, Indiana, 46540 on February 20th, 2017 pursuant to the attached operative construction contract agreement¹ (**Exhibit 1**) which the Defendants' breached. Michael Stoller has an equitable interest in the home that Christopher Stoller purchased from CMH Manufacturing.
2. The actions of the Defendants constitute violations of Illinois Law.
3. Plaintiffs bring this action individually, for restitution and/or to recover Plaintiffs' damages resulting from Defendants' unlawful and fraudulent actions

NATURE OF THE ACTION

4. This is an action brought against the Defendants for breach of contract, aiding and abetting, infliction of emotional distress, fraud, conspiracy et al.,.

VENUE

5. Venue is proper pursuant to 735 ILCS 5/2-101. The dispute at issue occurred to resident of Illinois. Plaintiffs are residents of Illinois.

JURISDICTION

6. This Court has jurisdiction over the parties. The Plaintiffs are residents of Illinois and the Defendants regularly conduct business within the State of Illinois.

PARTIES

¹ Pursuant to Paragraph 11 page 2 "This agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, understanding and agreement" **Exhibit 1.**

7. Plaintiffs Christopher Stoller, 69, a disabled person and Michael Stoller, 27, a disabled person and protected person pursuant, the laws of the State of Illinois, the Illinois Probate Act, under the Americans for Disability Act (ADA), residents of Illinois.

DEFENDANTS

8. CMH Manufacturing, Inc²., Clayton Homes, Inc., Clayton Home Building Group, CMN Manufacturing West, Inc., Berkshire Hathaway Home Builders, are wholly owned subsidiary of Berkshire Hathaway Inc., (herein after referred to as CHM or Clayton Homes) and the successor corporation Clayton Homes, Inc., a Tennessee corporation, is a foreign corporation, incorporated in the State of Delaware, doing business, engaging in business and transacting business in the State of Illinois.

9. Clayton Homes Inc.,, a Berkshire Hathaway company, is the leading manufactured homebuilder in the United States and has built over 1.5 million manufactured homes. CHM Homes Inc CMH operate a business enterprise of producing, selling, marketing, financing, and insuring manufactured houses. As a single enterprise, each of these companies has integrated resources and operations to achieve a common business purpose. As a single business enterprise, each company shares common officers, common name, centralized management, shared accounting, common

2 CMH Manufacturing, Inc. (CMH) offers homebuilding services. It builds single-section, multi-section, and modular homes; and commercial buildings. The company markets its products through independent and the company-owned retailers. The company was founded in 1987 and is based in Maryville, Tennessee. CMH Manufacturing, Inc. operates as a subsidiary of Berkshire Hathaway Inc. 5000 Clayton Road,

Maryville, TN 37804, Founded in **1987**, Chief Executive Officer, Mr. James L. Clayton Jr. Mr. Rick Strachan President. (CMH) does business in Illinois. A wholly owned subsidiary of Berkshire Hathaway, Inc

officers, common employees and shared allocation of profits and losses between each enterprise. As a single business enterprise, these companies have participated in, approved authorized, ratified and encouraged the unlawful conduct complained of herein. Each company as a single business enterprise has profited from the unlawful conduct complained of herein.

10. **Berkshire Hathaway Inc.** (NYSE: BRK.A, NYSE: BRK.B) a multinational conglomerate holding company . **WARREN E. BUFFETT**³, *Chairman and CEO* **CHARLES T. MUNGER**, *Vice Chairman*
MARC D. HAMBURG, *Vice President, Treasurer*, **DANIEL J. JAKSICH**, *Controller*
FORREST N. KRUTTER, *Secretary*, **REBECCA K. AMICK**,
Director of Internal Auditing, **JERRY W. HUFTON**, *Director of Taxes*,
MARK D. MILLARD, *Director of Financial Assets*, **REBECCA K. AMICK**, **DIRECTORS:**
WARREN E. BUFFETT, *Chairman, Chief Executive Officer of Berkshire*
CHARLES T. MUNGER, *Vice Chairman of Berkshire*, **SUSAN T. BUFFETT**
HOWARD G. BUFFETT, *President of Buffett Farms and BioImages, a photography and publishing company*. **MALCOLM G. CHACE**, *Chairman of the Board of Directors of BankRI, a community bank located in the State of Rhode Island*. **RONALD L. OLSON**, *Partner of the law firm of Munger Tolles & Olson, LLP*. **WALTER SCOTT, JR.**, *Chairman of Level 3 Communications, a successor to certain businesses of Peter Kiewit Sons' Inc. which is engaged in telecommunications and computer outsourcing*. All these parties are liable⁴, personally and in their official capacity, under the Doctrine of Respondent Superior, under the Civil Pinkerton Theory of Liability and the inequitable conduct of the agent theory of liability. All of them do business in the state of Illinois.

11. **WARREN E. BUFFETT**, *Chairman, Chief Executive Officer of Berkshire*
Berkshire Hathaway Inc., has stated publicly that he has “never” received one complaint regarding the construction of one of his Clayton Manufactured houses,” **Exhibit 2** when

³ Where the acts or omissions involve a question of policy or business judgment, a director can be held liable with a showing of fraud, bad faith or negligence. *Findley v. Garrett*, (1952) 109 Cal.App.2d 166, 178.

⁴ *Buckley v. Abuzir*, 2014 Ill.App. 130469 (1st Dist., April 10, 2014) The *Buckley* case signifies an increasing willingness by Illinois courts to pull back the corporate curtain to determine what is really going on with an entity. Just because someone isn't in an

in fact it is public record that Clayton Homes has received hundreds of complaints and has been sued. See attached the class action law suit filed against Clayton Homes, Inc., CHH Homes Inc., marked as **Exhibit 3**, incorporated herein by reference in support of his complaint knowingly misleading the public regarding the quality of his Clayton Manufactured homes. Warren E. Buffett is liable personally⁵ and in his official capacity, under the Doctrine of Respondent Superior, under the Civil Pinkerton Theory of Liability and the inequitable conduct of the agent theory of liability. Warren E. Buffett does business in the state of Illinois.

12. Kevin T. Clayton, sue individually and in his official capacity, upon information and belief was President of Clayton Homes, that does business in Illinois, and was in charge of all of the officers, agents, servants and employees under his control. Kevin T. Clayton involved, conspired, and colluded with his office managers, and his attorneys to defraud the Plaintiffs' and knew or should have known of the relevant facts of the Plaintiffs' controversy and they acted with malice, fraud, gross negligence, oppressiveness, which was not a mistake of fact or law, honest error or judgments, overzealousness, mere negligence or other human failing. Kevin T. Clayton acted with willful and wanton misconduct in the course and scope of his employment and in furtherance of the unlawful business.. Kevin T. Clayton is individually liable⁶, and liable under the Doctrine of

official role does not mean they can be assured of no liability.

⁵ *Buckley v. Abuzir*, 2014 Ill.App. 130469 (1stDist., April 10, 2014)

⁶Under the Pinkerton Theory of Liability, a defendant may be found guilty of a substantive offence committed by a co-conspirator if the offence was committed in furtherance of the conspiracy at the time the defendant was a member of the conspiracy; this is true even if the defendant neither participated in nor had knowledge of the substantive offense. A principal seeking specific performance may be bound by an agent's inequitable conduct. *E.g.*, *Handelman v. Arquilla*, 95 N.E. 2d 910, 913 (Ill. 1951) (rejecting specific performance based on agent's material misrepresentation);

Respondent Superior, under the Civil Pinkerton Theory of Liability and the inequitable conduct of the agent theory of liability⁷. Kevin T. Clayton negligence, willful, malicious and wanton acts against the Plaintiffs were committed in the course and scope of Kevin T. Clayton 's employment. and in furtherance of the business of Berkshire Hathaway Inc .

13. Tim Woods, Sales Manager of CMH Manufacturing, Inc , sue individually and in his official capacity, who does business in does business in Illinois, and was in charge of all of the officers, agents, servants and employees under his control. Tim Woods involved, conspired, and colluded with his e managers, and his attorneys to defraud the Plaintiffs' and knew directly of the relevant facts of the Plaintiffs' controversy and acted with malice, fraud, gross negligence, oppressiveness, which was not a mistake of fact or law, honest error or judgments, overzealousness, mere negligence or other human failing. Tim Woods acted with willful and wanton misconduct in the course and scope of his employment and in furtherance of the unlawful business. Tim Woods is individually liable, and liable under the Doctrine(s)of Respondent Superior, under the Civil Pinkerton Theory of Liability and the inequitable conduct of the agent theory of liability. Tim Woods negligence, willful, malicious and wanton acts against the Plaintiffs were committed in the course and scope of Tim Woods employment. and in furtherance of the business of Berkshire Hathaway Inc .

Alexander v. Hughes, 472 P.2d 818, 819-20 (Or. 1970) (affirming the denial of specific performance when the agent misled the opposing party about the nature of the document signed). The restatement and the cited cases are consistent with the duties of both agents and principals owed to the third parties in the context of the sale of real property. See *Lombardo v. Albu*, 199 Ariz. 97, 100-01, §§13-15, 14 P.3d 288, 291-92 (2000) (noting common law and regulatory duties). In addition, the rule that the principal is bound by his agent's conduct is consistent with long-established principles of equity.

⁷ Agent's inequitable acts may be imputed to the principle whether or not the principle knew of
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14. Larry Tompkins, Salesman, at CMH Manufacturing, Inc., sue individually and in his official capacity, who does business in Illinois. Larry Tompkins involved, conspired, and colluded with his e managers, and his attorneys to defraud the Plaintiffs' and knew directly of the relevant facts of the Plaintiffs' controversy and acted with malice, fraud, gross negligence, oppressiveness, which was not a mistake of fact or law, honest error or judgments, overzealousness, mere negligence or other human failing. Larry Tompkins acted with willful and wanton misconduct in the course and scope of his employment and in furtherance of the unlawful business. Larry Tompkins is individually liable, and liable under the Doctrine(s) of Respondent Superior, under the Civil Pinkerton Theory of Liability and the inequitable conduct of the agent theory of liability. Larry Tompkins negligence, willful, malicious and wanton acts against the Plaintiffs were committed in the course and scope of Larry Tompkins employment. and in furtherance of the business of Berkshire Hathaway Inc .

15. Tim Kuhm, Manager , sue individually and in his official capacity, upon information and belief is General Manager of Clayton Homes, that does business in Illinois, and was in charge of all of the officers, agents, servants and employees under his control. Kevin T. Clayton involved, conspired, and colluded with his office managers, and his attorneys to defraud the Plaintiffs' and knew or should have known of the relevant facts of the Plaintiffs' controversy and they acted with malice, fraud, gross negligence, oppressiveness, which was not a mistake of fact or law, honest error or judgments, overzealousness, mere negligence or other human failing. Kevin T. Clayton acted with willful and wanton misconduct in the course and scope of his employment and in

furtherance of the unlawful business.. Kevin T. Clayton is individually liable, and liable under the Doctrine of Respondent Superior, under the Civil Pinkerton Theory of Liability and the inequitable conduct of the agent theory of liability. Kevin T. Clayton negligence, willful, malicious and wanton acts against the Plaintiffs were committed in the course and scope of Kevin T. Clayton 's employment. and in furtherance of the business of Berkshire Hathaway Inc .

16. Based upon information and belief Berkshire Hathaway Inc is at all time herein mentioned a an American multinational conglomerate holding company headquartered in Omaha, Nebraska, organized and existing under the laws of the United States of America, with its principal place of business located in **3555 Farnam Street Omaha, NE 68131** in., transacting business throughout DuPage County, Illinois. At all times pertinent to the Complaint, **WARREN E. BUFFETT** , individually and through its agents, members, Directors, alter egos, subsidiaries, divisions or parent companies materially participated directly or indirectly, conspired, assisted, encouraged and otherwise aided and abetted one or more of the other Defendants in the unlawful, misleading and fraudulent conduct alleged herein. Warren E. Buffett has stated publicly that he has never received one complaint regarding Clayton Homes . **Exhibit 2** instilling confidence in the plaintiffs and the general public to feel comfortable in purchasing manufactured homes from the Berkshire Hathaway Inc., Clayton Homes division.**8**

17. The pattern of unlawful conduct alleged here in to mislead and to cheat the Plaintiffs was not done by one or two rogue employees of the Clayton Homes, but was instead Warren E.

8 . Public statements of Warren E. Buffett, the second richest man in American have great influence on potential purchasers of Berkshire Hathaway products and stock including the plaintiffs.

Buffett's actual policy of the Berkshire Hathaway Inc., Clayton Homes enterprise and part of a racketeering scheme undertaken by the defendants to defraud the Plaintiffs and hundreds of other purchasers of Clayton manufactured Homes⁹ (**Exhibit 13**).

18. Simpson, McMahan, Glick & Burford, PLLC , at all times mentioned herein represents the Defendants in the current litigation and is liable under the Doctrine of Respondent Superior and under the Pinkerton Theory of Liability and the inequitable conduct of the agent. Agent's inequitable acts may be imputed to the principle whether or not the principle knew of the agent's misconduct.
19. Jonathan E. Beling, Managing Partner of the law firm of Simpson, McMahan, Glick & Burford, PLLC , individually and in his official capacity and at all times mentioned herein, advises/consults and is charged with being a co-conspirator, conspiring with the Defendants, aiding and abetting the Defendants to discriminate against the Plaintiffs, retaliating against the Plaintiffs and to defraud the Plaintiffs out of their CMH manufactured home, under the color of the law, thereby denying the Plaintiff his due process and equal protection rights. Jonathan E. Beling is liable under the Doctrine of Respondent Superior, the Pinkerton Theory of Liability and under the liability theory that principles may not benefit from the inequitable conduct of their agents. Agent's inequitable acts may be imputed to the principle whether or not the principle knew of the agent's misconduct. Jonathan E. Beling is also charged with violations of ARDC Rule 5.1 and 8.4(c) and (d).

20.

⁹ It has been public reported that over 337 purchasers of Clayton manufactures homes have complained to Clayton homes, claiming over 2.3 million in losses with the average loss of \$22.2 thousand dollars See **Exhibit 13**.

VENUE

21. Venue is proper pursuant to 735 ILCS 5/2-101. The dispute at issue occurred to resident(s) of Illinois. Plaintiffs are residents of Illinois.

JURISDICTION

22. The Court has personal jurisdiction over the Defendants pursuant to Illinois Law because the action arises out of a tort committed by the defendants in whole or part, in Illinois Defendants do business in Illinois, because the Defendants are authorized to do business in Illinois, because the Defendants maintain agents in Illinois for transacting business in Illinois, because the Defendants contacted by mail or otherwise with an Illinois residents, because the have sufficient minium contacts with this state and.or because the Defendants otherwise intentionally availed themselves of the markets in this state through promotion, marketing, and sale of its products or services in this state, to render the exercise of jurisdiction by this court permissible under traditionalnotions of fair play and substantial justice.

23. This Court has jurisdiction over the parties.

24. The Plaintiffs are residents of Illinois and conduct business in DuPage County.. This Court has subject matter jurisdiction over this action because the amount in controversy exceeds the minium jurisdictional limits of the Court. The Defendants are not Illinois citizens for purposes of federal court diversity analysis. As such there no diversity jurisdiction for this claim in federal court. However, no individual Plaintiffs' claim is equal to or greater than seventy-four thousand dollars (\$74,000), inclusive of damages, treble damages, restitution, costs and attorneys' fees. Move over, the total amount sought by the plaintiffs, inclusive of damages, treble damages, restitution, costs

and attorneys' fees, is less than \$75,000 each.

Ad Adamnum Declaration

25. Plaintiffs seek to recover no more than a total of \$74,000 ea inclusive of damages, treble damages, restitution, costs and attorneys' fees (**Exhibit 4**)
26. Michael Stoller, 27, a disabled "adult-child" a protected person as defined by the Americans for Disability Act (ADA) who has an equitable interest in the subject property and Christopher Stoller, 69, a senior disabled citizen is a protected person as defined by the ADA. Michael Stoller and Christopher Stoller ("Plaintiffs") hereby make the following allegations against the Defendants are over the age of 18 and all *sui juris* and state as follows:

INTRODUCTION

This is an action to recover damages resulting from Defendant's breach of contract, aiding and abetting and Intentional infliction of emotional stress, conspiracy, construction fraud, fraud on a senior citizen, deceptive trade practices, intentional infliction of emotional stress, et al.

„ SUBSTANTIVE ALLEGATIONS

27. Plaintiff, Christopher Stoller purchased a Clayton manufactured home from defendant CMH pursuant to the terms and conditions contained in the attached construction contract agreement entered into on May 24, 2017.10 Marked as **Exhibit 1**. Christopher Stoller contacted Defendant Tim Woods, who agreed to ship the manufactured home pursuant to the terms and conditions **in** Plaintiff's Chicago Title

10 Pursuant to ¶ 11 at page two, "Entire Agreement. This agreement contains the entire agreement between the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, understandings and agreements

Company Paid Proceeds Commitment (Exhibit . Tim Woods agreed to wave the requirement that the Plaintiff would have to make full payment upon delivery of his manufactured home.

FACTUAL BACKGROUND

28. Christopher Stoller (CS) in May 29, 2015 contacted CMH and spoke to Defendant Tim Woods. Tim Woods asked if Christopher Stoller wanted to become a re-seller of CMH manufactured homes.**Exhibit 5.** Tim Woods said that would make Christopher Stoller, 69, a deal that he would not refuse, if he would be willing to become a CMH manufactured homes dealer in the Lake Geneva Area of Wisconsin. Tim Woods said, that he would give CS a specular deal on a new model manufactured home build and install it on Christopher Stoller's lot in Lake Geneva. Tim woods said CMH would supervise the installation of the foundation and the setting of the home by one of CHM local contractors, under the direct supervision of an employee of CHM in order for CS's first Model Home to be properly installed in order to be able to show it to customers in the Lake Geneva Area. Tim Woods spoke very fast and attempted to pressure Christopher Stoller to become a CMH dealer in 2015 and Christopher Stoller who was 66 years old at the time declined to accept Tim Woods pressure to become a CMH dealer because of his age and infirmities. .

29. In August 4, 2016 Christopher Stoller, 69 was involved in a car accident where he sustained a brain injury which has impaired Stoller inductive and deductive reasoning powers.

30. In January of 2017 Tim Woods contacted Christopher Stoller (now 68 years old) in Illinois and again pressured Christopher Stoller, who now was completely disabled person, a protected person under the Americans for Disability Act, to become a CMH manufactured home dealer in the Lake Geneva area of Wisconsin. Mr. Woods made another high pressured offer to Christopher Stoller, that if he agreed to become a CMH dealer, that he would receive a CMH

manufactured home, which could be installed on a lot that Stoller had in Lake Geneva Wisconsin. Mr. Woods said that he had some leftover materials from a larger job and could have a manufactured “model” home build very reasonably for Mr. Stoller. That CMH would supervise the construction of a foundation and supervise the setting of the home with their staff in order to assure Mr. Stoller that his first model home would be installed properly, that CMH would then supply business leads to Christopher Stoller and that the “money would just roll in” as Christopher Stoller sold the CMH manufactured homes. Mr. Woods demanded that Christopher Stoller send him gifts in the form of pre packaged Omaha Steaks¹¹ See **Exhibit 12**. That if Christopher Stoller send him these pre packaged Omaha Steaks he would consider “sweetening the deal.”

31. Mr. Woods pressured Christopher Stoller into signing CMH Manufacturing Retailer Sales and Sales and Service Agreement marked as **Exhibit 6**, prior to the time that Christopher Stoller had an Illinois State retailer’s license.

32. CMH never returned a copy of an executed Retailer Sales and Service Agreement (**Exhibit 6**) to Christopher Stoller.

33. Christopher Stoller sent CMH a Construction Contract Agreement which Tim Woods executed on behalf of CMH Manufacturing on May 25, 2017 which superseded “all prior negotiations, understandings and agreements.” See **Exhibit 1**.

34. Christopher Stoller sent a letter (**Exhibit 18**) to Tim Woods dated **July 28, 2017** which represented a amendment to ¶ 4 of the Construction Contract Agreement which provided that the “Contract Price of \$105,929.00 would be paid by the Chicago Title and Trust Escrow Account paid proceeds disbursements (**Exhibit 19**) and **not** upon delivery of the house.

¹¹ <https://www.omahasteaks.com/>

CMH BREACHED THE CONSTRUCTION CONTRACT AGREEMENT

35. CMI breached the written agreement (**Exhibit 1**) CMI failed to abide by paragraph 1 of the agreement, “Builder shall perform the work described in Exhibit A (the Work), in accordance with the attached confirmation order which is incorporated herein by reference”. At ¶ 1 **Exhibit 1**.

36. CMI failed to provide an arch above the stove see **Exhibit 8**. See a picture of the manufacturer’s plans¹².

37. CMH breached the agreement: Warranty ¶ 5 of the contract **Exhibit 1**. Warranty. Builder warrants that the work shall be in accordance with the contract Documents and free from material structural defects....” The CMH manufactured house sold to the Plaintiff was filled with massive material defects (Group Exhibit 20) which have rendered the house unlivable and unsaleable since the manufactured house was set on its foundation in August of 2017 see attached Engineers Report (**Exhibit 7**). Plaintiff is unable to get a Certificate of Occupancy from the Town of Geneva.

38. CMH has refused to correct its breaches of the contract and to repair the defects.

39. CMH breached the agreement ¶ 5 the provision that states: “Contractor shall redo or repair any Work not in accordance with the Confirmation Order and to fix any defects caused by faulty materials, equipment or workmanship for a period of 6 months from the date of completion of the work. CMH has refused to “redo or repair any Work” which was not in accordance with the Confirmation Order. See attached **Group Exhibit 10**.

40. CMH breached ¶ 3 of the said Construction Contract Agreement.(**Exhibit 1**)

“Certificate of Completion. Upon completion of the Work, Builder shall notify Owner that the Work is ready for final inspection and acceptance. When Owner finds the

¹² Exhibit 8(a) which is an actual picture of the stove in the current manufacture house’s kitchen which evidences that CMI did not abide by the contractual plans (**Exhibit 15**) and did not supply the Purchaser with an arch above the kitchen stove.

Work acceptable and this Agreement fully performed, pursuant to the confirmation Order attached marked as Exhibit 1. Builder shall issue Owner a “Certificate of completion” stating that the Work has been completed in accordance with the Confirmation Order.” CMH never notified the Plaintiff that the Work was ready for final inspection and acceptance. The Plaintiff never found the work acceptable. The agreement was never fully performed pursuant to the confirmation order attached to the said agreement **Exhibit 1**. CMH never completed the work or even made the manufactured house livable or saleable. CMH never issued a “Certificate of Completion” in accordance with the terms and conditions of the Construction Contract Agreement.

41. On August 11, 2017 the Clayton Manufactured Home was set on the defective foundation, without any supervision by a representative of Clayton Homes which manufactured was severally damaged during the setting of the home on the faulty foundation. See attached copy of the Engineering report marked as **Exhibit 7**
42. Plaintiff made a demand on CMH to make the necessary repairs to the Clayton Homes manufactured house See Attached letter of demand marked as **Exhibit 11**
43. CHM has refused to make the necessary repairs to the said home. The home remains defective, unlivable and unsaleable since it was installed in August of 2017 to the current date.
44. Plaintiffs has suffered damages and are **not** requesting more than \$74,000 ea, including attorney fees.

45. . Plaintiffs has faithfully and fully performed all of the conditions and covenants required of to be performed.

COUNT I—BREACH OF CONTRACT

46. Plaintiffs reallege and incorporate the allegations set forth the above in paragraphs above as if set forth herein in full.

47. Plaintiff Christopher Stoller and Defendant CMH Manufacturing , a subsidiary of *of Berkshire* Berkshire Hathaway Inc are parties to a Contracts. *See* Exhibit 1.

48. CMH Manufacturing , breached the Contract, and the breach is material.

49. CMH Manufacturing , breach of contract caused Plaintiffs to suffer damages.

WHEREFORE, Christopher Stoller and Michale Stoller, Plaintiffs demand damages against the defendants for breach of contract not to exceed \$74,000 ea including attorney fees, costs..

COUNT II

Illinois Consumer Fraud¹³ and Deceptive Business Practices Act.
815 ILCS 505/1 to 515/12 (West 1998).

Failure to Comply with Applicable Law

50. Plaintiffs adopt and restate the allegations contained in all previous as if the same were fully set forth herein.

51. Defendants sent the Plaintiff an catalog, an advertisement stating “Standard Features” that a consumer would get when he brought a Clayton manufactured home, which included a 1. Decorate Range Hood above the stove, in order to ventilate the cooking

¹³ ,Consumer fraud has only four elements to prove a violation of the Act: (1) a deceptive act or practice by defendant; and (2) defendant’s intent that plaintiff rely on the deception; and (3) the deception occurred in the course of conduct involving trade or commerce. *Cripe v Leiter*, 184 Ill 2d 185, 703 NE2d 100 (1998) and actual damage and actual damage to plaintiff as a result of defendant’s statement or defendant’s conduct

smoke. 2. Insulation: R-11 Fiberglass Insulation in Floors. 3. Outside shutters for the windows. In the manufactured house that the Defendants' provided the Plaintiff there was no "Decorate Range Hood" above the stove. There is no insulation in the floors and CMH did not provide shutters. See a copy of the CMH's 2016 Crest Heritage Adertisement..

52. On September 14, 2017 Tim Woods came out to physically inspect the Plaintiffs' manufactured home. Christopher Stoller told Mr. Woods that there was no "Decorate Range Hood" as advertised in CMH advertisement that Mr. Woods send to Christopher Stoller. Mr. Woods admitted that the manufactured home that CMH failed to conform to their advertisements of the standard materials contained in a CMH manufactured home. Mr. Woods apologized on behalf of CMH and stated that CMH would make good on their advertised claims and that CMH would immediately provide a lighted Decorate Range Hood with an lighted 1100 CFM external exhaust.fan. Mr. Woods admitted that the CMH home that was manufactured for the Plaintiff did not conform to the advertisements which stated that R-11 Fiberglass Insulation in the floors¹⁴ was not installed in the between the joists of the Plaintiffs' CMH home and that that CMH would immediately have the insulation for the Plaintiffs' CMH home installed in between the floor joists in the house. Mr. Woods also admitted that there were no shutters provided with the Plaintiffs' home, as advertised in CHM advertisements (**Exhibit 16**). The Defendants have failed and/or refused to provide the Plaintiff with a Decorate Rang Hood, insulation for the floor joists and shutters.

53. The defendants' advertisements of it CHM Laramie model manufactured home were

¹⁴ There was no floor insulation.

deceptive. The Plaintiffs' relied on the Defendants' advertisements (**Exhibit 16**) and the false representations of Defendant Tim Woods stating that the Plaintiff would receive all of the "standard features" which were listed in the CHM advertisement when he purchases a CHM home (Exhibit 16). Plaintiffs' reliance on The CHM advertisement and the false claims of Tim Woods were to the Plaintiffs' detriment.

54. Defendant Tim Woods told Christopher Stoller in January of 2017 in order to induce Christopher Stoller to purchase a CHM manufactured home and to become a re-saler of CHM homes, Tim Woods told Christopher Stoller that CHM would send a project site manager, to manage the installation of the foundation and the setting of the manufactured home on the foundation to insure that it was done properly. Then Christopher Stoller agreed to purchase a CHM manufactured home subject to a construction that Christopher Stoller would provide (**Exhibit 1**) and set up an escrow account at Chicago Title and Trust for pay outs (Exhibit 17) which is normal and customary when a party purchases a new home. The said escrow provided how CHM would be paid out on the house.
55. The CHM house was set on a defective foundation without the cite inspection CMH personnel on cite supervising as promised by Tim Woods.
56. Due to severe manufacturing defects and faulty instillation of the manufactured house on the 29th August of 2017, Tim Woods made representations to Christopher Stoller that CHM "would make right" and make all of the necessary repairs to the house. Christopher Stoller relied on these representations to his detriment. CHM never made any of the necessary repairs to the Plaintiffs' manufactured house as promised by Tim Woods.
57. .Proximate cause of injury to the Plaintiffs was foreseeable and the Plaintiffs have suffered and are still suffering damages resulting from the defendants to follow

applicable law.

WHEREFORE, Plaintiffs pray for judgment against each of the Defendants as follows, for compensatory damages for the maximum amount allowed by law, not to exceed \$74,000 per Plaintiff including attorney fees.

Plaintiff request that the Defendants be perminately enjoined from selling any manufactured houses in the state of Illinois..

COUNT V15

Common Law Fraud¹⁶

58. Plaintiffs adopt and restate the allegations contained in all previous Paragraphs as if the same were fully set forth herein.
59. Tim Wood made fraudulent representations to the Plaintiff in order to induce the plaintiff to become a CHM dealer and in order for Christopher Stoller to purchase a CHM manufactured home.
60. Tim Woods knew that these statements were false.
61. Tim Woods made these statements to induce the Plaintiff to become a CHM dealer and to purchase a CHM manufactured house.
62. Plaintiffs relied on the truth of the statements made by Tim Woods .
63. Plaintiffs' were damaged resulting from reliance on the statements of Tim Woods
64. Proximate cause of injury to the Plaintiffs was foreseeable and the Plaintiffs have

¹⁵Deceit, trickery, sharp practice or breach of confidence perpetrated for profit or to gain some unfair or dishonest advantage.

¹⁶ 10 Common law fraud has five elements: (1) a false statement of material fact; and (2) defendant's knowledge that the statement was false; and (3) defendant's intent that the statement induce plaintiff to act; and (4) plaintiff's reliance upon the truth of the statement; and (5) plaintiff's damages resulting from reliance on the statement. *Connick v Suzuki Motor Co., Ltd.*, 174 Ill 2d 482, 501, 675 NE2d 584 (1996). 11 *Id.*, 174 Ill 2d 482 at 496. See also Illinois

suffered an injury and are still suffering damages resulting from the Defendants' fraud on the Plaintiffs .

WHEREFORE, Plaintiffs pray for judgment against each of the Defendants as follows, for for no more than \$74,000 per plaintiff including attorney fees.

For the Defendants to be permanently enjoined from doing business in Illinois.

COUNT VI

Conversion¹⁷

65. Plaintiffs adopt and restate the allegations contained in all previous Paragraphs as if the same were fully set forth herein.

66. Defendants intentionally breached a foundation contract, exercising “dominion and control” .

67. Defendants deprived the Plaintiffs of possession or use of his home..

68. The interference caused damages to the Plaintiffs.

a. Proximate cause of injury to the Plaintiffs was foreseeable and the Plaintiffs have suffered and are still suffering damages resulting from the

Defendants' conversion

WHEREFORE Plaintiffs pray for judgment against each of the Defendants as follows, for no more than \$74,000 per plaintiff including attorney fees.

For the Defendants to be permanently enjoined from doing business in Illinois.

Pattern Jury Instructions, 800.02A (1995), dealing with fraud and deceit

¹⁷Conversion, elements: (1) defendant’s unauthorized and wrongful assumption of control, dominion, or ownership over plaintiff’s personal property; (2) plaintiff’s right in the property; (3) plaintiff’s right to immediate possession of the property, absolutely and unconditionally; and (4) plaintiff’s demand for possession of the property. Bill Marek’s The
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COUNT VII¹⁸

Intentional Infliction of Emotional Distress

69. Plaintiffs adopt and restate the allegations contained in all previous as if the same were fully set forth herein.
70. This cause of action for intentional infliction of distress is premised on the outrageous conduct of the Defendants engaging in an ongoing pattern of abuse and breach of contract, which has prevented the Plaintiffs, disabled persons, to take possession of their home.
71. The Defendants' conduct became so extreme and outrageous culminating by present the Plaintiffs from taking possession of their home, the peaceful enjoyment of their living quarters. Such conduct is so extreme and outrageous when considering that both Plaintiffs are disabled persons, protected persons, under the Americans for Disability Act and Christopher Stoller is over 68 years old and crippled..
72. Said conduct of the Defendants goes beyond all possible pound of decency. *Public Finance Corporation v. Davis*, 66 Ill. 2d 85, 90; with the culmination of leaving the disabled Plaintiffs unlawfully unable to occupy their new home to this very date..
73. Said conduct has caused the Plaintiffs to endure physical and emotional illness and as a result of Defendants' misconduct, the Defendants caused direct injury to the Plaintiffs.
74. Defendants recklessly or consciously disregarded the probability of causing

Competitive Edge, Inc. v. Mickelson Group, Inc., 346 Ill. App. 3d 996, 1003 (2004).

¹⁸Four elements must be present in order for intentional infliction of emotional distress to exist (1) defendants acted intentionally or recklessly; (2) defendants' conduct was extreme and outrageous; (3) defendants' act is the cause of the distress; and (4) plaintiff suffers severe emotional distress as a result of the defendants' conduct. All four of these elements are present in the case at bar.

emotional distress to Plaintiffs which are both disabled, and a direct injury and should not have to endure such conduct.

75. Plaintiffs suffered severe and extreme emotional distress and continue to suffer and endure it. They have suffered grief, worry, humiliation and shame which they should never have to endure.

76. Defendants' extreme and cruel behaviors go way beyond all possible bounds of decency.

77. Proximate cause of injury to the Plaintiffs was foreseeable and the Plaintiffs have suffered and are still suffering damages resulting from the Defendants' Intentional Infliction of Emotional Distress on the Plaintiffs .

78. The Defendants have not even stopped inflicting severe emotional distress on the Plaintiffs'.

WHEREFORE, Plaintiffs pray for judgment no to exceed \$74,000.00 including attorney fees and costs. For the Defendants to be permanently enjoined from doing business in Illinois.

COUNT VIII

Equitable Estoppel¹⁹

¹⁹In *Vaughn v. Speaker*, 126 Ill. 2d 150, 533 N.E.2d 885 (1988), the Illinois Supreme Court listed six elements of equitable estoppel and gave guidance to Illinois courts on when estoppel can be applied in cases involving the statute of limitations. The six elements Plead by the Plaintiff include: (1) a misrepresentation or concealment of material facts through the words or conduct of the party to be estopped, (2) knowledge by the party against whom the estoppel is alleged that the representations were untrue, (3) no knowledge of the truth respecting the representations on the part of the party asserting equitable estoppel, (4) a reasonable expectation of the party estopped that his representations will be acted upon, (5) a good faith reliance to its detriment by the party asserting estoppel, and (6) prejudice to the party asserting estoppel if the other party is permitted to deny

79. Plaintiff adopts and restates all allegations contained in all previous as if the same were fully set forth herein.
80. Defendants, through its representative Tim Woods assured Christopher Stoller, in January 2017 that their company manufacture a home in their factory and that the manufactured home would not have any material defects, that the manufactured home would be as advertised and that Christopher Stoller had nothing to worry about because **WARREN E. BUFFETT**, and his company the Berkshire Hathaway Inc reputation was behind the CHM manufactured homes. the entrance to the home.
81. The Plaintiff relied upon the Tim Woods statements that the manufactured home would be free of defects and that if not CHM would make it right
82. The Defendants had actual and constructive knowledge of the true facts that the Defendant's never intended to abide by their agreement(s).
83. The Plaintiff made reliance upon the misrepresentations of the Defendants that caused the Plaintiff a disabled person, an innocent party, detriment of the Plaintiff.
84. Plaintiffs were damaged by the conduct of the Defendants.

WHEREFORE, Plaintiffs pray for judgment no to exceed \$74,000.00 including attorney fees and costs. For the Defendants to be permanently enjoined from doing business in Illinois.

COUNT IX

Tortious inducement of Breach of Fiduciary Duties²⁰

85. Plaintiff adopts and restates all allegations contained in all previous as if the same were fully set forth herein.
86. Tim breached of his fiduciary's duties to plaintiff.
87. Defendants. has breached and failed in its responsibilities to the Plaintiffs.
88. The named Defendants conspired with the Defendants law firm Simpson, McMahan, Glick & Burford, PLLC & Jonathan E. Beling for the **purpose of not abiding by the terms and conditions of the their agreement (Exhibit 21)**.
89. There is an actual connection between the Defendants. and Defendants law firm Simpson, McMahan, Glick & Burford, PLLC & Jonathan E. Beling refusal to abide by the terms and conditions of the contract **(Exhibit 21). Beling's Nov. 8th 2017 letter to the plaintiff.**
90. The Defendants law firm Simpson, McMahan, Glick & Burford, PLLC & Jonathan E. Beling are directly responsible for the proximate cause for the harm that Defendants

²⁰The Defendants' owed a fiduciary duty to the Plaintiff. *Ward Enters v. Banc & Olufsen Am.*, 2003 U.S. Dist. Lexis 21610, 2003 WL 22859793 at 2 (N.D. ILL. 2003) (citing *Bixby's Food Systems, Inc., v. McKay*, 985 F. supp. 802, 808 (N.D. ILL., 1997); *McGowan v. Pillsbury Co.*, 723 F. Supp. 530, 536 (W.D. Wash. 1989)). Special circumstances for the Plaintiff which created the breach of fiduciary duty because the Plaintiff reposed trust and confidence in the Defendants, who thereby gained a resulting influence and superiority over the Plaintiff. *Humana Health Plan, Inc. v. Heritage Ind. Med. Group P.C.*, 2001 U.S. Dist. Lexis 78, 2001 WL 8878 at 2 (N.D. ILL. 2001) (quoting *Oil Express National, Inc. v. Latos*, 966 F. Supp. 650, 651 (N.D. ILL. 1997). Plaintiffs' Count XX alleges all of the elements necessary to establish a valid claim for breach of fiduciary duty (1) the existence of a fiduciary duty; (2) a breach of that duty; and (3) an injury proximately resulting from that breach. *Bernstein & Grazian, P.C. v. Grasan and Volpe, P.C.*, 402 Ill. App.3d 961, 976 (1st Dist. 2010). A fiduciary relationship exists where one party the (Plaintiff) reposes trust and confidence in another (Fletcher Jones) who thereby gains a resulting influence and superiority over the subservient party. *Khan v. Deutsche Bank AG*, 2012 IL 112219 Paragraph 58.

inflicted and continue to inflict on the Plaintiffs due to their failure to their advise and counsel lawfully (Exhibit 21).

91. Defendants used their fiduciary relationship to benefit themselves.
92. Defendants law Simpson, McMahan, Glick & Burford, PLLC & Jonathan E. Beling, knowingly induced the contract breach (**Exhibit 21**) and Defendants. has accepted benefits from the breach.
93. Plaintiffs have been damaged by the said breach and by the conduct of the Defendants.

WHEREFORE Plaintiffs pray for judgment no to exceed \$74,000.00 including attorney fees and costs. For the Defendants to be permanently enjoined from doing business in Illinois.

COUNT X

Civil Conspiracy

94. Plaintiff adopts and restates all allegations contained in all previous Paragraphs as if the same were fully set forth herein.
95. Defendants are continuing to conspire, after this lawsuit was filed, with each other to accomplish by concerted action, the unlawful acts allege herein in order to defraud the Plaintiff out of the use of his subject property. Aided and Abetted²¹ by their lawfirm Simpson, McMahan, Glick & Burford, PLLC & Jonathan E. Beling
96. The Plaintiffs have been damaged by the Defendants.

WHEREFORE, Plaintiffs pray for judgment no to exceed \$74,000.00 including

²¹ Thornwood, Inc. v. Jenner & Block, 799 N.E.2d 756 (Ill. App. Ct. 2003)

attorney fees and costs. For the Defendants to be permanently enjoined from doing business in Illinois.

COUNT XI

Tortious interference with Contract

97. Plaintiff adopts and restates the allegations contained in all previous as if the same were fully set forth herein.
98. The Plaintiff had a valid and enforceable contract between the Plaintiff and the CMH **Exhibit 1** that was in full force and effect.
99. The Defendants law firm of Simpson, McMahan, Glick & Burford, PLLC & Jonathan E. Beling intentionally and unjustifiably induced the breach of the contract see (**Exhibit 21**).
100. The Defendants law firm of Simpson, McMahan, Glick & Burford, PLLC & Jonathan E. Beling intentionally and unjustifiably forced the breached of the Construction Contract, by the Defendants' wrongful conduct and advice to their client, the Defendants. (**Exhibit 1**)
101. The proximate cause of the harm to the Plaintiffs was foreseeable and the Plaintiffs have suffered and are still suffering damages resulting from the Defendants' tortuous interference with the Plaintiff's contract ("**Exhibit 1**").

WHEREFORE, , Plaintiffs pray for judgment not to exceed \$74,000.00 including attorney fees and costs. For the Court to order a disgorgement of fees 22 already paid (or forfeiture of fees owed) by Defendants to law the firm of Simpson, McMahan, Glick & Burford, PLLC as it relates to this matter. To be placed in an escrow account for the benefit of the claims of the plaintiff,

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which do not exceed \$74,000 each and for any additional funds, to be placed in a fund for the homeless. For the Defendants to be permanently enjoined from doing business in Illinois

COUNT XII

CONTRACT FRAUD, CONSPIRACY, WILLFUL AND WANTON CONDUCT

86. Plaintiffs adopt and restate the allegations contained in all previous as if the same were fully set forth herein.

87. Defendants law firm of Simpson, McMahan, Glick & Burford, PLLC & Jonathan E. Beling all colluded and conspired together acting with malice, fraud, gross negligence, oppressiveness, which was not a result of mistake of fact or law, honest error or judgment, overzealousness, mere negligence or other human failing, but that the said Defendants acted with willful and wanton misconduct in the course and scope of their employment and in furtherance of their respective business, individually and collectively agreed with a meeting of the minds, based upon the advice and counsel of the Defendants law firm of Simpson, McMahan, Glick & Burford, PLLC & Jonathan E. Beling . Plaintiffs” were damaged by the defendants.

WHEREFORE, , Plaintiffs pray for judgment not to exceed \$74,000.00 including attorney fees and costs. For the Court to order a disgorgement of fees 23 already paid (or forfeiture of fees owed) by Defendants to law the firm of Simpson, McMahan, Glick & Burford, PLLC as it relates to this matter. To be placed in an escrow account for the benefit of the claims of the plaintiff, which do not exceed \$74,000 each and for any additional funds, to be placed in a fund for the homeless. For the Defendants to be permanently enjoined from doing business in Illinois.

COUNT XIII²⁴

Aiding and Abetting

88. Plaintiffs adopt and restate the allegations contained in all previous Paragraphs as if the same were fully set forth herein.
89. **Defendants and their attorneys** and unknown attorneys, agents, officers, directors, JOHN DOES 1-10, owed a duty to the Plaintiffs and they failed on all accounts.
90. Defendants were aware of the duty that all of the Defendants owed the Plaintiffs and yet they all conspired to defraud and injure the Plaintiffs. By knowingly and unlawfully breaching the contract and their false and deceptive business practices breached a duty to the Plaintiff on all counts.
91. Defendants' law firm of Simpson, McMahan, Glick & Burford, PLLC & Jonathan E. Beling have directly assisted their clients in making misrepresentations and/or defrauding the Plaintiffs of their construction agreement (Exhibit 1) in denying the breach and refusing to make good on the contract to repair the damaged manufactured house. Falsely insisting that the Plaintiff was in breach of the contract and refusing to make the manufactured house livable..
92. Proximate cause of injury to the Plaintiffs was foreseeable and the Plaintiffs have suffered damages as a direct result of of Simpson, McMahan, Glick & Burford, PLLC & Jonathan E.

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²⁴The elements necessary to convict under aiding and abetting theory are (1) that the accused had specific intent to facilitate the commission of a crime by another; (2) the accused had the requisite intent of the underlying substantive offenses; (3) the accused assisted or participated in the commission of the underlying substantive offense and (4) that someone committed the underlying offense.

Being aiding and abetting.

WHEREFORE, Plaintiffs pray for judgment not to exceed \$74,000.00 including attorney fees and costs. For the Court to order a disgorgement of fees 25 already paid (or forfeiture of fees owed) by Defendants to law the firm of Simpson, McMahan, Glick & Burford, PLLC as it relates to this matter. To be placed in an escrow account for the benefit of the claims of the plaintiff, which do not exceed \$74,000 each and for any additional funds, to be placed in a fund for the homeless. For the Defendants to be permanently enjoined from doing business in Illinois.

Respectfully submitted,

/s/Michael Stoller

/s/Christopher Stoller, 99500
415 Wesley #1
Oak Park, IL 60303
(773) 746-3163
cns40@hotmail.com

Binding Stipulation

I do hereby swear and affirm that I do not now, and will not at any time during this case, whether it be removed, remanded, or otherwise, seek damages or restitution in excess of \$74,000 (inclusive of treble damages, costs and attorneys' fees) or seek damages or restitution in excess of \$74,000 per plaintiff or to seek punitive damages or exemplary damages. I understand that this stipulation is binding and it is my intent to be bound by it,

VERIFICATION

Under penalties as provided by law under Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct except as to matters therein stated to be on information and belief, and as such matters, the undersigned certifies as aforesaid that I verify believe the same to be true.

Michael Stoller

Christopher Stoller

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