

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

ROGER GUESS

970 Walker Woods Lane
Marysville, OH 43040

and

ARLENE GUESS

5589 Mesa Falls Street
Dublin, OH 43016

Case No.

Judge

and

BARBARA GUESS

970 Walker Woods Lane
Marysville, OH 43040

Plaintiffs,

v.

**THE FALLS AT HAYDEN RUN
CONDOMINIUM ASSOCIATION**

5730 Silver Falls Street
Dublin, OH 43016

c/o Statutory Agent
West Street Statutory Agent Corporation
230 West Street
Suite 375
Columbus, OH 43215

and

**THE FALLS AT HAYDEN RUN
MASTER ASSOCIATION**

c/o Statutory Agent
West Street Statutory Agent Corporation
230 West St. Suite 375
Columbus, Ohio 43215

and

LIFESTYLE COMMUNITIES, LTD.
5603 Westerville Road
Westerville, OH 43081

c/o Statutory Agent
West Street Statutory Agent Corporation
230 West Street
Suite 375
Columbus, OH 43215

and

JOHN DOE NOS. 1-100
Address Unknown

Defendants.

**COMPLAINT
(JURY DEMAND ENDORSED HEREON)**

For their Complaint against The Falls at Hayden Run Condominium Association, The Falls at Hayden Run Master Association, Lifestyle Communities, LTD., John Doe Nos. 1-100 (collectively referred to herein as “Defendants”), Plaintiffs Roger Guess, Arlene Guess and Barbara Guess, allege as follows:

JURISDICTION AND PARTIES

1. Plaintiff Arlene Guess resides in Franklin County, Ohio.
2. Plaintiffs Roger Guess and Barbara Guess reside in Union County, Ohio
3. Upon information and belief, Defendant The Falls at Hayden Run Condominium Association (“Condo Association”) has a principal place of business located at 5730 Silver Falls St, Dublin, Ohio 43016.

4. Upon information and belief, Defendant The Falls at Hayden Run Master Association is an Ohio Non-Profit organization whose principal address is unknown but whose primary place of business is in Franklin County, Ohio.

5. Upon information and belief, Defendant Lifestyle Communities, LTD, (“Lifestyle”) has a principal place of business located at 5603 Westerville Road, Westerville, Ohio 43081.

6. Upon information and belief, John Doe Nos. 1-70 are the designers, architects, contractors, subcontractors, project managers, maintenance companies, property management companies and any other individual or company that was involved in the design, development, construction and maintenance of the residential development, including without limitation all structures and attachments thereto, commonly referred to as The Falls at Hayden Run in Dublin, Ohio, which includes the property located at 5589 Mesa Falls Street, Dublin, Ohio 43016 (hereinafter “Structure”) owned by Arlene Guess (collectively all apartments, condominiums, townhomes, and common areas of the facility will be referred to herein as “The Falls at Hayden Run”).

7. Upon information and belief, John Doe Nos. 71-100 are all of the board of directors and officers of the The Falls at Hayden Run Condominium Association, the board of directors and officers of The Falls at Hayden Run Master Association, the board of directors and officers of Lifestyles Communities, and any other individuals who approved the design, development, construction, and maintenance of The Falls at Hayden Run and made decisions that created and/or perpetuated the unsafe condition of the Property, including without limitation the exterior balcony attached thereto.

8. This Court has jurisdiction and venue over this matter, as the events giving rise to this case occurred entirely within the boundaries of Franklin County, Ohio.

STATEMENT OF FACTS

9. The Structure is a three level condominium, attached to several other condominiums in a row of units, which consists of a garage and full basement on the first level and primary living space on the second and third level. The Structure has an exterior balcony that is attached to the rear of the Structure on the second level and is situated directly over the entrance to the one-car garage on the first level.

10. The exterior balcony is approximately twelve (12) feet wide and eight (8) feet deep. There are two posts that are situated approximately six (6) feet away from the Property, which are purportedly attached to a support beam. Upon information and belief, the entire weight of the balcony rests upon the beam purportedly attached to the posts. The frame of the balcony includes a 2x10 header (approximate size), which is the sole point of contact between the balcony and the Structure. The joists for the balcony are allegedly attached to the header by way of u-brackets that are allegedly nailed into the header. There is no direct contact between any joist or other framing component of the balcony other than the header. The header is secured to the Structure by way of approximately 16 small nails.

11. The nails used to secure the header are approximately 2.5 inches in length. The header that was the sole point of contact between the balcony and the Structure, and the sole means of securing the balcony to the Structure, was approximately 2 inches thick. Accordingly, the nails that penetrated the header were only sunk into the framing of the Structure by approximately ½”.

12. During the construction of the Structure, Defendants appear to have installed the vinyl siding before the balcony was erected. Defendants left an area approximately 14” in height for the 10” tall header. When the header was nailed into the structure, there remained a significant gap with no siding around the header, which allows for significant weather/water/moisture infiltration behind the siding. The gap appears to be evident at nearly every unit where a balcony exists at The Falls at Hayden Run.

13. Upon information and belief, a standard 8x12 wood deck weighs approximately 700 – 1000 pounds and can hold upwards of 6 to 8 people. Assuming the average weight per person, the balconies at The Falls at Hayden Run could be required at any given time to hold over 2,400 pounds, which as noted above is being supported exclusively by 16 nails sunk only ½” into the Structure.

14. Even the slightest shift in the structure will cause nail sunk at a shallow depth to move, which over time will eventually separate entirely from the Structure. As individuals walk on the balconies, the balconies will experience some degree of motion. As wind blows, the balconies will experience some degree of motion. Every motion the balcony experiences will cause the shallow nails to separate from the structure.

15. Defendants knew, or reasonably should have known, that the 16 nails used to secure the headers to the Structure were grossly insufficient and would inevitably result in a catastrophic collapse resulting in serious bodily injury or death, property damage, loss of use, and diminution of value.

16. Defendants knew, or reasonably should have known, that the header should have been secured to the structure by way of far more structural support. For example, and not by way of limitation, the header could have been bolted to the structure by way of carriage bolts.

17. In lieu of protecting the residents at The Falls at Hayden Run, Defendants elected to use vastly inferior means of construction in an effort to increase is profitably even if it meant residents could be gravely injured or killed.

18. In 2010, a Transition Study was completed that identified various defects associated with the The Falls at Hayden Run. The estimated cost to repair those defects, which included non-structural defects associated with the balconies, was \$972,800. The focus of the Transition Study was not to address structural integrity, code requirements, or latent or hidden defects. Rather, it was designed to identify the voluminous routine maintenance issues that Defendants has repeatedly ignored resulting in an overall run-down condition of the facility. Upon information and belief, Defendants did not make any repairs in accordance with the findings of the Transition Study.

19. Upon information and belief, prior to May 30, 2017 there was at least one (1) incident where a balcony collapsed at The Falls at Hayden Run.

20. Upon information and belief, Defendants attempted to “fix” the collapsed balcony by re-installing a header using lag bolts.

21. Upon information and belief, at the time of the earlier balcony collapse(s) other balconies showed signs of separation from the units thereby exhibiting a significant risk of imminent collapse.

22. Upon information and belief, Defendants did not repair the balconies sufficiently electing instead to only shove the balconies up against the units where they were pulling away and installed lag bolts in a few locations.

23. Defendants made no attempt to secure the vast majority of balconies at The Falls at Hayden Run, which included the balcony attached to Arlene Guess’s Structure.

24. Presently, the balconies at The Falls at Hayden Run are all showing signs of imminent collapse and likely need replaced in their entirety.

25. On February 18, 2010, Plaintiff Arlene Guess acquired the Condo from her father, Roger Guess.

26. On or about May 30, 2017, Plaintiffs Roger Guess and Arlene Guess were on the balcony attached to the Condo when it suddenly collapsed landing on top of Plaintiff Arlene Guess' car, which may have saved their lives.

27. Despite being aware of the prior collapse(s) and the inherently dangerous condition of the balconies in the Falls at Hayden Run development, Defendants made no effort to repair or further support the balconies in the community, which included the balcony attached to the Structure.

28. Despite being aware of the prior collapse(s) and the inherently dangerous condition of the balconies in the Falls at Hayden Run development, the Defendants made no effort to notify the residents of the dangerous and potentially life threatening condition associated with the balconies.

29. Following the deck collapse on May 30, 2017, the City of Columbus performed an inspection, which upon information and belief encompassed every unit at the Falls at Hayden Run Community, and determined that every single balcony was condemned and could not be used by the residents. All residents have been ordered by the City of Columbus to make repairs to or replace the balconies.

30. As a direct and proximate result of the Defendants' intentional and negligent conduct with regard to the safety of the balconies in the Falls at Hayden Run Community, Arlene Guess suffered significant physical injuries including, without limitation, multiple fractured

vertebrae, a fractured hip and a fractured pelvis. She has had significant hospitalization and rehabilitation to date, and will require further care in the future. She has been unable to work and will have suffered significant loss of earnings and loss of earning capacity in the future. Furthermore, her injuries prevent her from being able to even live in her home as it requires her to climb steps to reach the residential areas of her home.

31. As a direct and proximate result of the Defendants' intentional and negligent conduct with regard to the safety of the balconies in the Falls at Hayden Run Community, Roger Guess suffered significant physical injuries including, without limitation, several fractures to both legs and has been unable to walk more than a few steps at a time since the collapse. He has had multiple surgical procedures to repair his shattered legs, has had significant hospitalization and rehabilitation to date, and will require further care in the future.

32. As a direct and proximate result of the Defendants' intentional and negligent conduct with regard to the safety of the balconies in the Falls at Hayden Run Community, the Plaintiffs have suffered significant economic losses, including without limitation, medical expenses, rehabilitation expenses, caregiver expenses, loss of support and companionship, loss of earnings, loss of earning capacity, loss of use of property, property damage to the Structure and to Arlene Guess's vehicle, and diminution in value.

33. As a direct and proximate result of the Defendants' intentional and negligent conduct with regard to the safety of the balconies in the Falls at Hayden Run Community, the Plaintiff Barbara Guess has suffered, and will continue to suffer in the future, loss of consortium, society, affection, assistance, and conjugal fellowship, all to the detriment of her marital relationship with Plaintiff Roger Guess.

COUNT I: NEGLIGENT DESIGN

34. Plaintiffs incorporate by reference each of the foregoing paragraphs as if fully restated herein.

35. Defendants owed the Plaintiffs a duty to design the Structure in accordance with all building codes, consistent with generally accepted principals of design and construction, and in a manner that insured the safety of every unit's occupants and guests.

36. The Defendants violated this duty when they designed the exterior balcony in a manner that violated municipal and state building codes, was not in accordance with generally accepted principals of design and construction, and failed to insure the safety of the occupants and guests.

37. Defendants knew or should have reasonably known that the design of the balconies, including without limitation the mechanism designed to secure the deck header to the Structure, was woefully inadequate and would almost certainly result in future separation of the header from the Structure thereby resulting in a catastrophic collapse.

38. As a direct and proximate result of Defendant's negligence, Plaintiffs have suffered, without limitation, serious bodily injury, property damage, loss of use, diminution in value, and loss of consortium, in an amount to be proven at trial but exceeding the minimum jurisdictional threshold of this Court.

COUNT II: NEGLIGENT CONSTRUCTION

39. Plaintiffs incorporate by reference each of the foregoing paragraphs as if fully restated herein.

40. Defendants owed the Plaintiffs a duty to construct the Structure in accordance with all building codes, consistent with generally accepted principals of design and construction, and in a manner that insured the safety of every unit's occupants and guests.

41. The balcony was defective due to Defendants' failure to perform in a workmanlike manner by properly securing the balcony to the Structure, and failing to use any additional braces, bolts, or support in accordance with standard industry practice.

42. Defendants were negligent in their oversight and management of the construction of the Falls at Hayden Run, including without limitation the Structure owned by Arlene Guess, by allowing and/or approving the method of attaching the balcony header to the Structure using only a handful of small nails.

43. Defendants knew or reasonably should have known that the balconies were attached to the Structure with only a few small nails and that it was likely if not certain that over time the balcony would gradually separate from the Structure and collapse to the ground resulting in serious bodily injury and property damage.

44. As a direct and proximate result of Defendant's negligence, Plaintiffs have suffered, without limitation, serious bodily injury, property damage, loss of use, diminution in value, and loss of consortium, in an amount to be proven at trial but exceeding the minimum jurisdictional threshold of this Court.

COUNT III: NEGLIGENT MAINTENANCE AND REPAIR

45. Plaintiffs incorporate by reference each of the foregoing paragraphs as if fully restated herein.

46. Defendants owe a duty to Plaintiffs, and all other residents and guests of The Falls at Hayden Run, to properly maintain and repair the balconies attached to the units, including without limitation the balcony attached to Plaintiff Arlene Guess's Structure.

47. Defendants owe a duty to Plaintiffs, and all other residents and guests of The Falls at Hayden Run, to properly maintain and repair the exterior of all units, including without limitation the exterior of Plaintiff Arlene Guess's Structure.

48. Defendants owe a duty to Plaintiffs, and all other residents and guests of The Falls at Hayden Run, to properly maintain and repair all common areas within The Falls at Hayden Run.

49. Prior to May 30, 2017, Defendants were aware of the collapse of one or more other exterior balconies in The Falls at Hayden Run.

50. Upon becoming aware of the earlier collapse(s) of the other balcony, or balconies, the Defendants owed Plaintiffs, as well as all other occupants and guests at The Falls at Hayden Run, a duty to repair the known dangerous condition of the balcony attached to the Structure.

51. Defendants violated this duty by failing to make any repairs to the Plaintiffs' balcony. Upon information and belief, Defendants merely shoved other failing balconies back against the building and attached them using lag bolts in place of the woefully inadequate nails. Defendants negligently, willfully, maliciously, and/or with reckless disregard for the safety of the occupants and guests did not attempt to re-secure Plaintiffs' balcony to her Structure or the vast majority of other balconies at The Falls at Hayden Run.

52. As a direct and proximate result of Defendant's negligence, Plaintiffs have suffered, without limitation, serious bodily injury, property damage, loss of use, diminution in value, and loss of consortium, in an amount to be proven at trial but exceeding the minimum jurisdictional threshold of this Court.

**COUNT IV: GROSS NEGLIGENCE FOR FAILURE TO DISCLOSE A KNOWN
LATENT DEFECT**

53. Plaintiffs incorporate by reference each of the foregoing paragraphs as if fully restated herein.

54. Defendants knew that the exterior balconies in the Falls at Hayden Run community were attached to the buildings using inferior nails or other inferior methods of construction in violation of municipal and state code, generally accepted construction principals, and/or standard construction practice.

55. Defendants knew of many defects associated with property at The Falls at Hayden Run, including without limitation that the balconies were improperly secured to the buildings and had a significant if not imminent risk of collapse.

56. Defendants knew of one or more earlier collapses of balconies at The Falls at Hayden Run and concealed that fact from residents and/or guests.

57. Defendants owed Plaintiffs a duty to notify them of this known latent defect due to the inherently unsafe condition.

58. Defendants breached that duty by failing to notify Plaintiffs of the unsafe condition of the balcony when the Plaintiff's purchased the Structure and at all times thereafter.

59. Defendants further violated this duty by failing to notify Plaintiffs of this unsafe condition upon receiving notice that other balconies in the Falls at Hayden Run community, similarly attached, had previously collapsed.

60. As a direct and proximate result of Defendant's gross negligence, Plaintiffs have suffered, without limitation, serious bodily injury, property damage, loss of use, diminution in value, and loss of consortium, in an amount to be proven at trial but exceeding the minimum jurisdictional threshold of this Court.

**COUNT V: GROSS NEGLIGENCE FOR FAILURE TO REPAIR A KNOWN
LATENT DEFECT**

61. Plaintiffs incorporate by reference each of the foregoing paragraphs as if fully restated herein.

62. Defendants knew that the balconies in The Falls at Hayden Run were attached to the buildings using inferior nails or other inferior methods of construction in violation of municipal and state code, generally accepted construction principals, and/or standard construction practice.

63. Defendants knew of many defects associated with property at The Falls at Hayden Run, including without limitation that the balconies were improperly secured to the buildings and had a significant if not imminent risk of collapse.

64. Defendants knew of one or more earlier collapses of balconies at The Falls at Hayden Run and concealed that fact from residents and/or guests. They failed to take any action to properly construct and/or secure the balconies, including without limitation the balcony attached to Arlene Guess's Structure.

65. Defendants owed Plaintiffs a duty to repair this latent defect associated with the balconies at The Falls at Hayden Run.

66. Defendants further violated this duty by failing to repair the unsafe condition upon receiving notice that other exterior balconies in the Falls at Hayden Run community, similarly attached, had previously collapsed.

67. As a direct and proximate result of Defendant's gross negligence, Plaintiffs have suffered, without limitation, serious bodily injury, property damage, loss of use, diminution in value, and loss of consortium, in an amount to be proven at trial but exceeding the minimum jurisdictional threshold of this Court.

COUNT VI: BREACH OF CONTRACT

68. Plaintiffs incorporate by reference each of the foregoing paragraphs as if fully restated herein.

69. Defendants entered into a contract with the owners of condominium units at The Falls at Hayden Run, including Plaintiff Arlene Guess, in which Defendants have a contractual duty to maintain the exterior of the Structure as well as all common spaces at The Falls at Hayden Run. Contract attached as **Exhibit A.**

70. Defendants breached this duty by failing to repair the dangerous condition of the balconies upon becoming aware that other balconies in the Falls at Hayden Run community, similarly attached, had collapsed.

71. Defendants have further breached this duty by failing to maintain other common areas of The Falls at Hayden Run Community. In 2010, the Transition Study revealed nearly \$1,000,000 in repairs required to be made to the exterior of the buildings and common areas at The Falls at Hayden Run. Upon information and belief, most if not all of those repairs were ignored by Defendants and have yet to be completed. Since 2010, Defendants have failed to maintain the exterior of the buildings and the common areas as well. The cost to repair and renovate the exterior of the buildings and the common areas, as required by the terms of the contract, may exceed \$1,000,000.

72. As a direct and proximate result of Defendant's breach of contract, Plaintiffs have suffered, without limitation, serious bodily injury, property damage, loss of use, diminution in value, and loss of consortium, in an amount to be proven at trial but exceeding the minimum jurisdictional threshold of this Court.

COUNT VII: VIOLATION OF CONSUMER SALES PRACTICES ACT, OHIO R.C. §1345, et seq.

73. Plaintiffs incorporate by reference each of the foregoing paragraphs as if fully restated herein.

74. Defendants obtained permits to build the Structure and the attached balcony.

75. Defendants designed, engineered, constructed, and/or maintained (or otherwise oversaw and/or participated in the design, engineering, construction, and/or maintenance of) the exterior balcony in violation of municipal and state building codes, generally accepted construction principals, and standard construction practice.

76. Defendants violated the Consumer Sales Practices Act by building the exterior balcony below municipal and state building codes, generally accepted construction principals, and standard construction practice, by failing to disclose to the Plaintiffs that the balcony was attached to the Structure using inferior and insufficient nails, and by failing to adequately repair the balcony after other balconies in The Falls at Hayden Run community, similarly attached, had collapsed.

77. To the extent not set forth above, Defendants have violated the Ohio Consumer Sales Practices Act by, without limitation, 1) making material misrepresentations regarding the design, engineering, construction, and/or maintenance of the balconies, 2) failing to disclose a known defect when the defect become known, 3) failing to repairs known defects when Defendant was obligated to make such repairs, and/or representing at all times that the balconies were of a particular standard, quality, grade, style, prescription, or model with knowledge that they were not.

78. As a direct and proximate result of Defendant's violation of the Consumer Sales Practices Act, Plaintiffs have suffered, without limitation, serious bodily injury, property

damage, loss of use, diminution in value, loss of consortium, treble damages, and attorney fees in an amount to be proven at trial but exceeding the minimum jurisdictional threshold of this Court.

COUNT VIII – BREACH OF THE IMPLIED WARRANTY OF HABITABILITY

79. Plaintiffs incorporate by reference each of the foregoing paragraphs as if fully restated herein.

80. At all times relevant to this Complaint, Defendants represented, whether by make known misrepresentations or by failing make representations when the duty to inform arose, was in a safe and habitable condition.

81. Defendants breached the warranty of habitability when they failed to repair the dangerous condition of the balcony attached to the Structure after being notified that other balconies in the Falls at Hayden Run community, similarly attached, had collapsed.

82. As a direct and proximate result of Defendant’s breach of the implied warranty of habitability, Plaintiffs have suffered, without limitation, serious bodily injury, property damage, loss of use, diminution in value, and loss of consortium, in an amount to be proven at trial but exceeding the minimum jurisdictional threshold of this Court.

COUNT IX – INTENTIONAL MISREPRESENTATION

83. Plaintiffs incorporate by reference each of the foregoing paragraphs as if fully restated herein.

84. Defendants designed, engineered, constructed, and/or maintained (or otherwise oversaw and/or participated in the design, engineering, construction, and/or maintenance of) the exterior balcony in violation of municipal and state building codes, generally accepted construction principals, and standard construction practice.

85. Defendants knew that building the balconies below the requisite standards of care presented a safety risk to any future residents of the Structure.

86. Defendants intentionally misrepresented the safety of the balcony in order to sell the Structure.

87. As a direct and proximate result of Defendant's intentional misrepresentations, Plaintiffs have suffered, without limitation, serious bodily injury, property damage, loss of use, diminution in value, loss of consortium, punitive damages, and attorney fees in an amount to be proven at trial but exceeding the minimum jurisdictional threshold of this Court.

COUNT XI: LOSS OF CONSORTIUM

88. Plaintiffs incorporate by reference each of the foregoing paragraphs as if fully restated herein.

89. As a direct and proximate result of the collapse caused by Defendants' negligent, intentional, and willful and malicious acts set forth herein, Plaintiff Barbara Guess has suffered and will continue to suffer in the future, loss of consortium, society, affection, assistance, and conjugal fellowship, all to the detriment of her marital relationship with Plaintiff Roger Guess.

COUNT XI: DEFENDANTS WILLFUL AND RECKLESS DISREGARD FOR THE SAFETY OF OTHERS

90. Plaintiffs incorporate by reference each of the foregoing paragraphs as if fully restated herein.

91. Defendants actions set forth herein evince willful conduct and a reckless disregard for the safety and well-being of the residents and guests at The Falls at Hayden Run.

92. In addition to Defendants' negligent conduct set forth herein, Defendants knew of the substantial risk of serious bodily harm and elected to use shoddy construction practices on

structural components of the buildings at The Falls at Hayden Run to maximize their profit regardless of the safety issues and the risk of serious bodily injury or death.

93. Defendants exhibited a depraved heart by placing their profit and loss statement ahead of the safety and well-being of the residents and guests of The Falls at Hayden Run.

94. Defendants, including all Board of Directors individually, knew that balconies were improperly secured to the buildings and would collapse. In lieu of repairing or replacement the balconies to insure the safety and well-being of the residents and guests of The Falls at Hayden Run, Defendants, and their Board of Directors, desired to maximize their bottom line for their own profit.

95. Defendants collect nearly \$1,000,000 in annual dues and maintenance fees from the residents and owners of condominiums at The Falls at Hayden Run. However, Defendants have elected to retain those due and fees for their own profit rather than make the necessary repairs to insure the safety and well-being of the residents and guests.

96. As a direct and proximate result of Defendants' willful conduct and reckless disregard for the safety and well-being of the residents and guests, Defendants are liable for punitive damages and attorney fees in an amount to be proven at trial but exceeding the minimum jurisdictional threshold of this Court.

WHEREFORE, Plaintiffs Roger Guess, Arlene Guess, and Barbara Guess respectfully demand judgment against the Defendants, jointly and severally, as follows:

1. Compensatory damages, owed by the Defendants jointly and severally, in an amount greater than the \$25,000 jurisdictional threshold of this Court, to be proven more specifically at trial, for each of the past, ongoing, and prospective injuries suffered by Plaintiffs herein, as more fully described hereinabove;
2. Punitive damages in excess of \$1,000,000.00 for Defendants malicious and reckless disregard for the Plaintiffs' safety.

3. Prejudgment interest, costs fees and expenses associated with this action; and
4. All other relief this Court deems just and proper.

Respectfully submitted,

CARLILE PATCHEN & MURPHY LLP

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JURY DEMAND

Plaintiffs demand a trial of jury on all issues presented herein.

/S/ Carl A. Aveni II

Carl A. Aveni II (0070664)