

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

GREGORY BENNETT, Individually and on
Behalf of all others similarly situated
11235 Oak Leaf Drive
Apt. 1707
Silver Spring, MD 20901

Case No.: 459397-V

- AND -

IGNACIA JOYNER, Individually and on
Behalf of all others similarly situated
8710 Cameron Street
Unit 718
Silver Spring, MD 20910

Plaintiffs,

v.

THE DONALDSON GROUP, LLC
15245 Shady Grove Road
Suite 160
Rockville, MD 20850

Serve:

The Corporation Trust, Inc.
2405 York Road
Suite 201
Lutherville Timonium, MD 21093

- AND -

ENCLAVE HOLDINGS, LLC
2329 Nostrand Avenue
Suite 500
Brooklyn, NY 11210

Serve:

VCORP SERVICES MD, INC.
2405 York Road
Suite 201
Lutherville-Timonium, MD 21093

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MAR 04 2019

Clerk of the Circuit Court
Montgomery County, Md.

- AND -

NONCONNAH HOLDINGS, LLC
2329 Nostrand Avenue
Suite 500
Brooklyn, NY 11210

Serve:
VCORP SERVICES MD, INC.
2405 York Road
Suite 201
Lutherville-Timonium, MD 21093

- AND -

HAMPSHIRE PROPERTIES, LLC
2329 Nostrand Avenue
Suite 500
Brooklyn, NY 11210

Serve:
Thomas Rosenthal
2329 Nostrand Avenue
Suite 500
Brooklyn, NY 11210

- AND -

BVF-II ENCLAVE, LLC
c/o Corporation Trust Service Company
Suite 400
2711 Centerville Road
Wilmington, DC 19808

Serve:
CSC—Lawyers Incorporating
Service Company
7 St. Paul Street
Suite 820
Baltimore, MD 21202

- AND -

AMAC II OAKS PS, LLC
d/b/a Realty Management Services, Inc.
d/b/a Ross Management Services
7910 Woodmont Avenue
Suite 350
Bethesda, MD 20814

Serve:
CSC—Lawyers Incorporated Service Co.
7 St. Paul Street
Suite 820
Baltimore, MD 21202

- AND -

REALTY MANAGEMENT SERVICES, INC.
7910 Woodmont Avenue
Suite 350
Bethesda, MD 20814

Serve:
The Corporation Trust, Inc.
2405 York Road
Suite 201
Lutherville-Timonium, MD 21093

Defendants.

AMENDED CLASS ACTION COMPLAINT

COME NOW Plaintiffs, by and through undersigned counsel, and make this Complaint against Defendant(s) and for their causes of action state the following:

PARTIES

1. Plaintiff Gregory Bennett is an adult resident of the State of Maryland. Mr. Bennett entered into a lease agreement with Defendants in which he agreed to pay monthly rent in exchange for a safe and habitable living domicile at 11235 Oak Leaf Drive, Apartment 1707, Silver Spring, MD 20901.

2. Plaintiff Ignacia Joyner is an adult resident of the State of Maryland. Ms. Joyner entered into a lease agreement with Defendants in which she agreed to pay monthly rent in exchange for a safe and habitable living domicile at 11235 Oak Leaf Drive, Apartment B 2002, Silver Spring, MD 20901. Ms. Joyner vacated her apartment on or about November 8, 2018 due to dangerous levels of toxic mold in her apartment which Defendants refused to inspect or remediate.
3. Defendant The Donaldson Group, LLC is a domestic corporation doing business in the State of Maryland and upon information and belief the property manager of the Enclave Silver Spring Apartment Complex in which Plaintiffs reside(d) since April 1, 2018.
4. Defendant Enclave Holdings, LLC is a foreign corporation and an owner of the relevant apartment complex known as “The Enclave” and located at 11225 Oak Leaf Drive, Silver Spring, MD 20901.
5. Defendant Nonconnah Holdings, LLC is a foreign corporation and an owner of the relevant apartment complex known as “The Enclave” and located at 11225 Oak Leaf Drive, Silver Spring, MD 20901.
6. Defendant Hampshire Properties, LLC is a foreign company which is the parent and sole owner of Defendant Enclave Holdings, LLC and upon information and belief also of Defendant Nonconnah Holdings, LLC.
7. Defendant BVF-II Enclave, LLC is a dissolved foreign corporation and the predecessor corporation to Enclave Holdings, LLC which was the owner of the property at issue in this case during portions of the relevant time.

8. Defendant AMAC II OAKS PS, LLC d/b/a Realty Management Services, Inc. d/b/a Ross Management (hereinafter "AMAC") is a foreign corporation doing business in the State of Maryland and the controlling parent corporation of Realty Management Services, Inc.
9. Defendant Realty Management Services, Inc. d/b/a Ross Management is a domestic corporation doing business in the State of Maryland via the registered trade name "Ross Management Services" and the management company of the relevant property known as "The Enclave" prior to April 1, 2018.

JURISDICTION

10. This Court has subject matter jurisdiction pursuant to Md. Code Ann., Cts. & Jud. Proc. § 1-501.
11. This Court has personal jurisdiction over each Defendant pursuant to Md. Code Ann., Cts. & Jud. Proc. § 6-102 and 6-103.
12. Venue lies in Montgomery County, Maryland as the cause of action arose therein.

FACTS COMMON TO ALL CLAIMS

13. Defendants collectively own and operate, owned and operated, manage or managed a three-tower apartment complex located at 11225 Oak Leaf Drive, Silver Spring Maryland. The three towers buildings are operated as a single apartment complex known as "The Enclave."
14. Defendants have received numerous complaints regarding mold and water intrusion throughout private units and concerns with public common areas for nearly two years.

15. Plaintiffs Gregory Bennett and Ignacia Joyner have each specifically made complaints to Defendants regarding the need for a mold inspection and remediation. Other tenants have made similar complaints to the managers and owners of “The Enclave” for at least the prior three years.
16. Mr. Bennett and Ms. Joyner each retained an industrial hygienist to conduct a mold inspection at their individual apartments.
17. The industrial hygienist found elevated levels of mold in each apartment that exposed each apartment uninhabitable, unsafe, and unhygienic.
18. The industrial hygienist further found a systemic problem in each of the three towers, and reasonably believes that every unit within the Enclave needs a qualified mold inspection to determine the presence of dangerous toxins in each apartment and common area.
19. Each of the three towers has demonstrated central air conditioning defects which cause elevated levels of relative humidity in all units and the common areas, and which further manifest as dangerous levels of toxic mold and other contaminants.
20. Defendants have refused to provide mold inspection and remediation for each unit that has requested it, or in the common areas.
21. Instead, Defendants have made attempts to insulate themselves from liability and to shield themselves from complying with the terms of their contracts by allowing tenants to “break their lease” without compensating them for moving costs, past damages—including repayment of past rental payments—or providing a mold inspection to determine the need to move out.

22. More recently, Defendants have attempted to force tenants to sign an addendum to their leases purportedly assigning responsibility for the systemic mold caused by defective problems throughout each of the three towers.
23. Upon information and belief, after a tenant requests to break his/her lease, Defendants allow the tenant(s) to move out, and then re-lease the unit without conducting testing or remediation.
24. Plaintiffs and other tenants have continued to discover several defects in the Enclave, including water intrusion along carpets, walls, and other property, elevated levels of humidity, all culminating in extensive mold growth.
25. Defendants have continued and repeatedly ignored these requests and have demanded that Plaintiffs and the members of the Class continue to pay rent while failing to inspect apartments for which they have a reasonable belief of mold and water intrusion and to remediate the unit defects.
26. Mold has the potential for serious health defects, especially in a senior community, and may directly and proximately result in serious respiratory injuries including:
 - a. Asthma;
 - b. Upper respiratory infections;
 - c. Allergic responses;
 - d. Rashes; and
 - e. Other injuries.

27. Tenants, such as Plaintiffs and members of the Class, have a right to be free from harmful and dangerous substances in their apartments and homes. These substances include toxic mold.

CLASS ACTION ALLEGATIONS

28. Plaintiffs bring this action as a class action pursuant to the Maryland Rules of Civil Procedure 2-231(a), 2-231(b)(1), 2-231(b)(2), 2-231(b)(3), and 2-231(d) on behalf of the class:

THE MOLD INSPECTION CLASS

All persons currently residing in any of the three towers at the Enclave.

THE RENT-PAYER CLASS

All persons who entered into a lease agreement with Defendants in any of the three towers at the Enclave from the time of three years prior to the filing of the Class Action Complaint until the date of the filing and made payments to Defendants pursuant to the lease agreement.

Excluded from the Class are Defendants, the officers, members, and directors of Defendants, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest.

29. The proposed is believed to be so numerous that joinder of all members is impracticable. The exact number of members of the Class is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery. The proposed Class is believed to be ascertainable in that the names and addresses of all members of the Class can be identified in business records maintained by Defendants.

30. Plaintiffs' claims are typical of the claims of the members of the Classes because Plaintiffs' and all Class members' claims originate from the same conduct, practice and procedure on the part of Defendants and Plaintiffs possess the same interests and have suffered the same injuries as each member of the Classes they seek to represent.
31. Plaintiffs will fairly and adequately protect the interests of the members of the Classes and have retained counsel experienced and competent in class action litigation. Plaintiffs have no interests that are contrary to or in conflict with the members of the Classes that Plaintiffs seeks to represent.
32. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, as the damages suffered by individual members of the Classes may be relatively small, the expense and burden of individual litigation may make it impracticable for the members of the Classes to individually redress the wrongs done to them. There should be no difficulty in the management of this action as a class action.
33. Issues of law and fact common to the members of the Class predominate over any questions that may affect only individual members, in that Defendants have acted on grounds generally applicable to the entire Class. Among the issues of law and fact common to the Class are:
- a. Whether the Defendants are in breach of contract;

- b. Whether the Defendants failed to protect the current tenants from the dangers of mold inhalation;
 - c. Whether the Defendants violated the Maryland Consumer Protection Act by leasing properties known to have hazardous mold conditions;
 - d. Whether “The Enclave” has a central defect which has caused mold and water intrusion throughout the complex;
 - e. Whether the Defendants must reasonably and competently inspect and remediate the apartment units;
 - f. Whether the Defendants failed to implement and maintain reasonable procedures and practices to prevent the formation of mold within the apartment units and common areas;
 - g. Whether the Defendants breached the implied warranty of habitability;
 - h. Whether the Plaintiffs and the Classes are entitled to damages, statutory penalties, punitive damages, and/or injunctive relief; and
 - i. Other common question of fact and law.
34. Upon information and belief, absent a class action, Defendants’ violations will be allowed to proceed without a full, fair, and judicially supervised remedy.
35. Plaintiffs reserve the right to revise Class definitions and questions based upon facts learned in discovery.

BREACH OF CONTRACT – SPECIFIC PERFORMANCE
Count I

36. Each of the preceding paragraphs is incorporated by reference herein.

37. Plaintiff Gregory Bennett brings this claim individually and on behalf of the “Mold Inspection Class.”
38. Mr. Bennett and other members of the Class, and Defendants entered into a valid written contract for the lease of real property.
39. A material term of that contract was that the leased units be in clean, safe, and sanitary condition at all times and that Defendants maintain the common areas and each individual unit in a manner that is free from unhealthy indoor molds and water intrusion.
40. Defendants have breached the contract by failing to provide a clean, safe, and sanitary unit that is free from unhealthy indoor molds, water intrusion, microbial contaminants and other unsanitary conditions.
41. As a result of Defendants’ breach, Plaintiff and the Mold Inspection Class have suffered economic losses including, but not limited to, money paid for rent, and money paid to inspect and remediate unhealthy indoor molds and water intrusion.
42. Further, Defendants refuse to act in a manner consistent with the terms of the contract which they entered into by:
- a. Maintaining a clean and healthy living environment;
 - b. Inspecting the units and common areas for unhealthy indoor molds;
 - c. Remediating the units and common areas for mold that has been or reasonably should be discovered; and
 - d. Otherwise refused to act consistent with the terms of the lease.

43. As stated, instead of complying with the terms of the lease agreement between tenants and Defendants, Defendants have refused to provide mold inspections or remediations, will make efforts to conceal the mold, and then simply find new tenants who will not immediately complain of toxic mold.

44. Plaintiffs rely upon the doctrines of actual and apparent agency where necessary.

45. **WHEREFORE**, Plaintiff Gregory Bennett demands, on behalf of himself and the members of the "Mold Inspection Class" that he seeks to represent, an injunction that Defendants comply with the material terms of the lease agreements, including implied terms to provide a clean, healthy and safe living environment, by performing a qualified mold inspection in his and each class members' apartment, as well as all necessary remediation, plus costs and interest.

BREACH OF CONTRACT – DAMAGES
Count II

46. Each of the preceding paragraphs is incorporated by reference herein.

47. Plaintiffs Ignacia Joyner, Gregory Bennett and members of the Rent-Payer Class entered into a valid written contract for the lease of real property with Defendants.

48. A material term of that contract was that the leased Unit be in clean, safe, and sanitary condition at all times and that Defendants maintain the common areas and each individual unit in a manner that is free from unhealthy indoor molds and water intrusion.

49. Defendants have breached the contract by failing to provide clean, safe, and sanitary units that are free from unhealthy indoor molds, water intrusion, microbial contaminants and other unsanitary conditions.

50. As a result of Defendants' breach, Plaintiff and the Rent-Payer Class have suffered economic losses including, but not limited to, money paid for rent, moving costs, and loss of personal property/contents of the units.
51. Further, Plaintiffs have suffered the cost of inspection of their respective units, and each tenant is similarly forced to bear the cost of mold inspection despite Defendants knowledge of chronic and consistent findings of elevated humidity, defective central air conditioning, water intrusion and unhealthy indoor molds.
52. Further, Defendants refuse to act in a manner consistent with the terms of the contract which they entered into by:
- a. Maintaining a clean and healthy living environment;
 - b. Inspecting the units and common areas for unhealthy indoor molds;
 - c. Remediating the units and common areas for mold that has been or reasonably should be discovered;
 - d. Otherwise refused to act consistent with the terms of the lease.
53. As stated, instead of complying with the terms of the lease agreement between tenants and Defendants, Defendants have refused to provide mold inspections or remediations, will make efforts to conceal the mold, and then simply find new tenants who will not immediately complain of toxic mold.
54. Plaintiffs rely upon the doctrines of actual and apparent agency where necessary.
55. **WHEREFORE**, Plaintiffs demand all damages allowable by law on behalf of themselves individually and the Rent-Payer Class and against Defendants including

damages in an amount that exceeds Seventy-Five Thousand Dollars (\$75,000.00), plus costs and interest.

BREACH OF THE IMPLIED WARRANTY OF HABITABILITY
Count III

56. Each of the preceding paragraphs is incorporated by reference herein.
57. Mr. Bennett and Ms. Joyner bring this cause of action on behalf of themselves and the Rent-Payer Class.
58. A reasonable inspection by Defendants would have revealed defective conditions related to defective central air conditioning, elevated levels of relative humidity, flooding, mold, and other defects.
59. Defendants either knew, or reasonably should have known, of these dangerous conditions.
60. Defendants thereby breached the implied warranty of habitability in that each knew or should have known of dangerous conditions upon the units which Plaintiff and members of the Class leased.
61. Defendants continued to collect monthly rent from Plaintiffs and members of the Class though the defective conditions of each Unit rendered it unfit for habitation and in violation of state and/or local housing codes which require, among other things, healthy conditions free of mold.
62. Plaintiffs and members of the Rent-Payer Class paid rent, and continue to pay rent, and have been subjected to physical eviction requests despite Defendants' knowledge of this breach of the implied warranty.
63. Plaintiffs rely upon the doctrines of actual and apparent agency where necessary.

64. **WHEREFORE**, Plaintiffs demand all damages allowable by law, on behalf of themselves individually and the Rent-Payer Class, and against Defendants including damages in an amount that exceeds Seventy-Five Thousand Dollars (\$75,000.00), plus costs and interest.

VIOLATION OF THE MARYLAND CONSUMER PROTECTION ACT
Count IV

65. Each of the preceding paragraphs is incorporated by reference herein.

66. Mr. Bennett and Ms. Joyner bring this cause of action on behalf of themselves and the Rent-Payer Class.

67. At the inception of the lease with Plaintiffs and members of the Class, Defendants had both actual and constructive knowledge of dangerous and defective conditions in the units.

68. Prior to entering into the lease, Defendants affirmatively showed the units to Plaintiffs and members of the Class and represented it to be free of any material defects, including unhealthy indoor molds and water intrusion defects.

69. The units, in fact, had design, construction and/or maintenance defects, including but not limited to central air conditioning defects, leading to severely elevated levels of relative humidity and extensive mold growth at the time the lease was entered into and these defects were omitted in the representations made by Defendants.

70. Defendants engaged in unfair and deceptive trade practices in the leasing of the units in the rental of consumer realty and in offering to rent consumer realty.

71. As such, Defendants are in violation of the Maryland Consumer Protection Act ("MCPA"), Md. Code Ann., Comm. Law §§ 13-301, *et seq.*, since it is an unfair and deceptive trade practice for a landlord to lease property that is not fit for habitation at the inception of the lease.

72. Defendants made material misrepresentations and omitted material facts related to:

- a. Air conditioning;
- b. Water intrusion
- c. Relative humidity within the buildings;
- d. The maintenance of relative humidity within the buildings;
- e. Mold growth; and
- f. Other material misrepresentations and omissions.

73. As a proximate and direct result of Defendants' unfair and deceptive trade practices in violation of the MCPA, Plaintiffs have suffered economic harm and loss, including, but not limited to, medical bills, rent paid to Defendants, and loss of personal property/contents of the units.

74. Plaintiffs rely upon the doctrines of actual and apparent agency where necessary.

75. **WHEREFORE**, Plaintiffs Mr. Bennett and Ms. Joyner demand all damages allowable by law against Defendants on behalf of themselves and the Rent-Payer Class including damages in an amount that exceeds Seventy-Five Thousand Dollars (\$75,000.00), plus costs, interest, and all reasonable attorneys' fees as allowed by law including pursuant to sec. 13-408(b) of the MCPA.

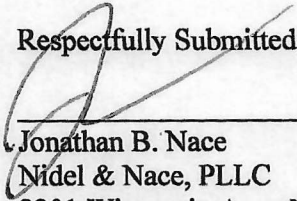
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court enter an order or judgment against Defendants as follows:

- A. Enter an Order pursuant to Maryland Rule 2-231 of the Maryland Rules of Civil Procedure permitting this action to be maintained as a class action, Plaintiffs as the representatives of the represented classes they each seek to represent and appointing Plaintiffs' counsel as counsel for the classes;
- B. Enter judgment against Defendants for compensatory damages; attorneys' fees, costs of suit as provided for by law; and such other relief as the Court may deem just and proper and in favor of Plaintiffs and the Class Members against Defendants for the cost of testing each individual unit and remediation;
- C. Enter an injunction commanding the prompt testing, assessment, excavation and removal of all unhealthy indoor molds, repair of defective air conditioning units, and addressing of water intrusion within individual apartment units and common areas resident Class Members' apartments and all common areas;
- D. Award prejudgment and post-judgment interest as provided by law;
- E. Award punitive damages; and
- F. Such other relief as this Court deems necessary, just and proper.

Date: February 28, 2019

Respectfully Submitted,

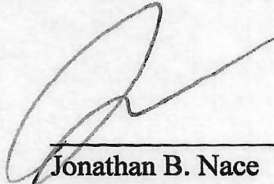

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Class*

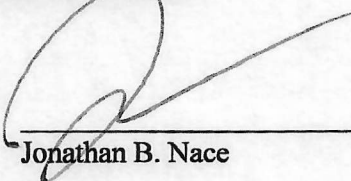
Rule 1-313 Certificate

This is to certify that I am a member of the bar of the State of Maryland with an office in Washington, DC.


Jonathan B. Nace

DEMAND FOR JURY TRIAL

Plaintiff, by her undersigned counsel, and pursuant to Maryland Rule 2-325, hereby demands a trial by jury on all triable issues in this action.


Jonathan B. Nace