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Your Dispute Resolution Forum

Case #05-2687

In the Matter of the Arbitration Between

Claimant: John Wieland Homes and Neighborhoods, Inc. Respondent: Gregory and Kimberly Cole

ARBITRATION AWARD (MODIFIED)

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the Arbitration Agreement entered into by the above-named parties, dated November 28, 1999 pertaining to the property located at 3290 Georgetown Bluff, Marietta Georgia and having been duly sworn and having duly heard the proofs and allegation of the parties Rule as follows based on full consideration of such allegations, proofs, and evidence:

The Claimant is entitled to have Respondents inform claimant of any other or further warrantable issues concerning the Subject Residence; to complete those repairs in accordance with the Wieland 5-10 Warranty; and to repair any warrantable items incident or casually related thereto.

Relative to Claimants Statement of Claims Item #17; Respondents past refusal to allow Wieland access to the Subject Residence for the purpose of inspecting and repairing warrantable concerns thereto and / or other actions may constitute a bar to Respondents' ability to demand certain work under the Wieland 5-10 Warranty or may otherwise bar Respondents from other relief, in whole or in part.

Relative to Claimants Statement of Claims Item #18; The Claimant is entitled to have Respondents inform Wieland of any other or further non-warrantable or potentially warrantable issues concerning the Subject Residence that Respondents believe may be in need of repair or other attention; inspect those items; make any repairs thereto; and make any repairs to items incident to casually related thereto.

Repairs shall be made to items designated as "Builder Responsibility" in accordance with the New Construction Purchase and Sale Agreement and Limited Warranty issued on the above referenced property. Where a specific reference is not made in the Limited Warranty, the standard of practice shall apply. The Claimant, John Wieland Homes and Neighborhoods, Inc. shall complete the work within sixty (60) days of the receipt of this Award. Because Awards are sent to the parties via Certified Mail, Construction Arbitration Associates, Ltd. considers the sixty (60) day time period to begin when the Claimant has signed the receipt for the Certified Mail. The Respondent shall fully cooperate with this schedule.

The fees of the Arbitration shall be split evenly and remain as per the administrator's March 30, 2007 invoice. All other fees and expenses incurred by the parties shall be borne by the party producing such.

The Respondent shall reimburse to the Claimant the \$705.00 in Arbitration fees due from the Respondent per the March 30, 2007 invoice but paid by the Claimant.

April 4, 2007

Signed


Arbitrator

Subscribed and sworn to before me, a Notary Public in and for said County and State
this 4th day of April, 2007.

Notary Public


ROBERT T. MERZ

Notary Public, Fulton County, Georgia
My Commission Expires Dec. 13, 2010

Claimant: John Wieland Homes & Neighborhoods, Inc. Respondent: Greg Cole & Kimberly Cole

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March 30, 2007

Claimed Defect

Builder Responsibility Y / N

U	An alleged crack over the circular window at the rear of the great room;	YES
V	Alleged corner board separation near the floor on the left wall of the great room;	NO
W	An alleged gap at the edge of the window near the rear stairwell;	NO
X	An allegedly out-of-adjustment door to the right rear bedroom on the second floor;	NO
Y	Alleged cracks in the drywall in the right rear bedroom on the second floor;	NO
Z	An alleged leak at the rear window in the right rear bedroom on the second floor;	YES
Aa	Possible (in)filtration staining near the baseboards in the right rear bedroom on the second floor;	NO
Bb	Alleged damage to the flashing on the window in the right front bedroom on the second floor;	NO
Cc	An alleged crack in the drywall on the blue wall in the closet of the right front bedroom on the second floor;	NO
Dd	An alleged leak near the window of the middle front bedroom on the second floor;	YES
Ee	An alleged crack in the ceiling of the middle front bedroom on the second floor;	NO
Ff	Alleged mold stains under the window in the middle rear bedroom on the second floor;	NO
Gg	An alleged crack in the drywall over the door to the master bedroom;	NO
Hh	Alleged squeaking of the subfloor in the master bedroom;	YES
Ii	An alleged crack in the drywall over the door from the master bedroom to the master bath;	NO
Jj	Alleged mold near the rear window over the tub in the master bath;	NO
Kk	Alleged mold around the ceiling register in the master bedroom.	NO

 Arbitrator

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Claimant: John Wieland Homes & Neighborhoods, Inc. Respondent: Greg Cole & Kimberly Cole

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Claimed Defect

Builder Responsibility Y / N

List of Items enumerated from the February 16, 2006 walk-through

A	Alleged leak over front entry step	NO
B	An alleged leak in the entry foyer over the front door	YES
C	An alleged leak in the lower corner of the window in the Formal living room	YES
D	Alleged mold growth at the exhaust vent in the ceiling of the half-bath	NO
E	Alleged settlement of certain areas of the driveway	NO
F	Alleged earth settlement near the retaining wall	NO
G	The alleged presence of construction items such as silt fence in at the rear edge of the lot;	NO
H	The alleged failure of the deck supports to pick up load;	NO
I	The alleged presence of a void under the basement foundation;	NO
J	An alleged leak above the French doors in the basement;	YES
K	An alleged crack over the lintel over the double garage door;	YES
L	Alleged cracks in the garage slab;	NO
M	An alleged stain on the ceiling of the great room under the upstairs bath;	YES
N	An alleged stain on the kitchen ceiling;	YES
O	Alleged caulk shrinkage at the wainscoting in the dining room;	NO
P	Alleged stains under the windows in the breakfast room;	YES
Q	Alleged binding of windows in the breakfast room;	YES
R	An alleged discrepancy in elevation in the transition from the hardwood floor area in the breakfast area to the carpeted great room;	NO
S	Alleged leak under the windows in the rear of the great room;	YES
T	An alleged stain on the rear wall of the great room;	YES

 Arbitrator

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Claimant: John Wieland Homes & Neighborhoods, Inc. **Respondent:** Greg Cole & Kimberly Cole

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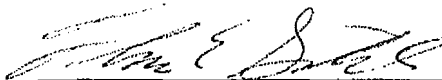
Claimed Defect

Builder Responsibility Y / N

Items respective to the September 4, 2003 of Jerry W. Hopkins

Basement Level

- | | | |
|----|---|----|
| 1 | The posts for the deck are not anchored to the concrete patio... | NO |
| 2 | Settlement of the patio has allowed the posts to be loose and not in contact with the patio... | NO |
| 3 | At the end of the step stringers, the stringers are in contact with the ground and do not have a proper footing under them... | NO |
| 4 | It appears that all of the posts for the deck and stairs rest on uncompacted fill soils. | NO |
| 5 | The risers for the steps do not meet the tolerances of the code for a variance of no more than 3/8"... | NO |
| 6 | The deck stairs does not have a code compliant handrail. | NO |
| 7 | A subwall appears to have been used at the rear of the house... | NO |
| 8 | The wood walls (interior) are not anchored to the slab per the code requirements. | NO |
| 9 | Either the slab has settled or the slab was not placed level... | NO |
| 10 | The slab elevation at the rear was out of level 3/4" at the rear offset. | NO |
| 11 | The floor joists span 18'-3" from the center load bearing wall to the rear wall... | NO |
| 12 | Additional joists are required to support the loads of the first floor walls... | NO |
| 13 | A double 2x10 is overstressed due to the imposed loads... | NO |
| 14 | A double 2x10 header at the center load bearing wall is overstressed... | NO |

 Arbitrator

Claimed Defect

Builder Responsibility Y / N

First Floor

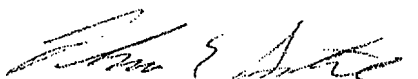
- 15 The drywall at the first floor has experienced numerous cracks which indicate movement of the structure... YES
- 16 The cathedral ceiling of the rear offset (breakfast room) is required to have a properly sized ridge beam... YES
- 17 A deflection of over ¼" was found at the beginning of the rear offset... YES
- 18 The floor at the load bearing center wall in the family room was found to be ¾" out of level with the left sidewall... YES

Second Floor

- 19 The rear wall of the hallway does not align over a load bearing wall below... YES
- 20 A deflection of ½" was measured relative to the stairs at the rear hallway wall. YES
- 21 A deflection of ¾" was measured at the doorway to the right bedroom relative to the stairs... YES
- 22 At the laundry room wall at the rear stairs, a stain exists which indicates a leak in the plumbing system. YES
- 23 The rear wall has pulled away from the handrail return at the rear stairs. YES
- 24 Significant deflections were found at the rear bedrooms that are over the family room. YES

Roof and Ceiling

- 25 A ridge has been used to splice the rafters... NO
- 26 A cluster of posts exist on the rear hall wall that is not a load bearing wall... NO
- 27 Posts supporting the roof purlins have many issues. NO

 , Arbitrator

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Claimed Defect

Builder Responsibility Y / N


- | | | |
|----|--|-----|
| 28 | All of the purlins are required to be at least the size of the rafters they support. | NO |
| 29 | Posts for the hips and valleys should be a box shape 2x6 post resting on a load bearing wall or beam. | NO |
| 30 | The same conditions exist for the posts for the roof apex where a valley rafter or a hip rafter intersect or at the ridge. | NO |
| 31 | Both hip and valley rafters for this house should have intermediate supports no more than 9'-0" on center. | NO |
| 32 | The posts are required to have at least 1-1/2" bearing for the hips and valleys. | NO |
| 33 | The drop stair requires additional nailing and shimming in order to be properly installed. | YES |

Other Items

- | | | |
|----|--|-----|
| 34 | The lintel for the support of the brick veneer over the garage door is undersized... | YES |
|----|--|-----|

Items respective to the November 29, 2004 letter by David Bennett

- | | | |
|---|---|-----|
| 1 | Brick veneer appears has not having been installed properly and not having all of the required flashings. | NO |
| 2 | Areas where brick and wood trim have not been sealed and allow water to enter behind the brick veneer. | YES |
| 3 | Close review of the windows installation indicates that the majority of all were installed improperly... | NO |
| 4 | Inverted condensate line on the attic unit causing slow running / stopped drainage of the evaporator pan drain... | YES |
| 5 | Large holes in the attic supply side duct were noted... | NO |
| 6 | Excessive water marks were noted having occurred in the kitchen ceiling and adjacent stairwell... | YES |
| 7 | Excessive deflection of the structural beams and second floor joist were noted... | NO |

 Arbitrator

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Builder Responsibility Y / N

- | | | |
|---|--|-----|
| 8 | Brick veneer has cracked over the garage door... | YES |
| 9 | Approximately 6" of exposed #4 rebar was noted in the garage slab at the right hand side of garage door. | NO |

Items relative to the Claimants Statement of Claims section #8, #9 and #10, the Claimant is entitled to inspect the Subject Residence for any and further warrantable items; repair any warrantable items in need of repair; and any warrantable items incident or casually related thereto including the following: NOTE THAT NO DETERMINATION AS TO BUILDER RESPONSIBILITY IS MADE PERTAINING TO THESE ITEMS AS THEY FALL INTO CLAIMANT SECTIONS #8, #9, #10 AS THE CLAIMANT REQUEST HEREIN IS TO FURTHER INVESTIGATE FOR ANY ADDITIONAL WARRANTABLE ITEMS AS MAY BE APPLICABLE.

Items relative to the Claimants Statement of Claims section #8

- A The second story triple window over the front door.
- B The rear kitchen nook window
- C The rear double entry into the basement
- D The source of alleged water leakage around the rear double door entry into the basement.
- E The exposed reinforcing bar at the right rear corner of the garage slab;
- F The brick veneer and / or interior finishes above the garage entry door header;
- G The brick veneer and finishes incidental to the work described in Item (F) immediately above;
- H The gutters at the rear of the Subject Residence.

Items relative to the Claimants Statement of Claims section #10

- A The wall area below the second story triple window over the front door...
- B The wall area below the rear kitchen nook window...
- C The rear slope valleys to determine whether in the roof slope valleys is properly installed...
- D The roof edges and roof shingle rakes to verify and ensure that the shingle overhang is adequate in those areas.

 Arbitrator

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Claimed Defect

Builder Responsibility Y / N

- E The flashings and siding trim terminations to make sure these areas are not a source of moisture intrusion into the Subject Residence.
- F The Subject Residence generally for water intrusion.

Relative to Claimants Statement of Claims Item #12:

Do any structural defects exist as defined by the Wieland 5-10 Warranty? NO

Relative to Claimants Statement of Claims Item #13:

Is Wieland liable for any claim for breach of any implied warranty? NO

Relative to Claimants Statement of Claims Item #14:

Is Wieland responsible for any loss or damage resulting from either of respondent's failure to take appropriate action to minimize such damage as soon as practicable... NO

Relative to Claimants Statement of Claims Item #15:

Is Wieland responsible for some or all or Respondent's current and / or future items of concern and / or other future repairs with respect to provisions set in Paragraph IV of the Wieland 5-10 Warranty? NO

Relative to Claimants Statement of Claims Item #16:

Is Wieland responsible for some or all or Respondent's current and / or future items of concern and / or other future repairs with respect to provisions set in Paragraph V of the Wieland 5-10 Warranty? NO

Any and all other items identified or discussed during the Hearing. NO

END OF LIST

 Arbitrator

Additional notes for Arbitration Award:

Page 2 (Item 4) Deck not built to code & supports falling down which creates a hazard of it falling down, states that it will not be fixed.

Page 3 (Items Y,Cc,Ee) Notice that sheetrock cracks because of construction defects will not be repaired.

Page 3 (Item Aa) Carpet is ruined because of A/C unit infiltration problem, will not be fixed.

No mold problems addressed at all!

Page 3 (Item Ii) crack over master bathroom door (picture) will not be fixed.
(Item Kk) mold in master bath (picture) will not be fixed.

Page 4 (Item 1 & 2) Deck post not anchored and falling down (picture) will not be fixed.
(Item 3,4,5,6) Deck does not meet building codes (pictures).
(Item 8) No achore straps on rear of house to anchor structure to concrete (picture)
I don't know how this house is still standing!
(Items 11,12,13,14) according to engineers reports, these are undersized and overstressed,
therefore not meeting building code.

Page 5 (Item 15) They admitted the cracks came from movement of the house, but did not address
how to remedy the movement. Also in item #1 above, they say that the cracks will not be
fixed?
(Item 19) Major Deal here! The load bearing walls do not lign up. This will take some major
repairs and moving of interior walls. This could also be why items 11-14 are undersized and
overstressed!

Page 5 & 6
(Items 25-32) Again, critical here to support roof! Notice again "No" to be fixed!

Page 6 (Item 1) Engineer says that the brick weep holes have mortar in them and cannot drain
during rain, therefore water seeps inside the home. Flashing around windows is not properly installed. Suggest that all brick be removed and fixed correctly. Notice
again
"No" to be repaired!

Page 7 (Items for further investigation) Why do you need further investigation? If the engineer

says it is a problem, FIX IT!!!!

Page 8 I cannot believe that they say "No" to this items?

Again, they address no mold issues or health concerns for the family including damage to

household goods such as furniture, clothing etc. They don't even discuss how to protect

them from further damage when (if) the repairs are done!

