

**IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS
CIVIL DIVISION**

**DANA CRADDOCK
TYLER CRADDOCK**

PLAINTIFFS

vs. **CASE NO.: _____**

**MARRS CONSTRUCTION INC.
MARRS DEVELOPING, LLC**

DEFENDANTS

COMPLAINT

Plaintiffs Dana and Tyler Craddock come before this Court and for their Complaint against Marrs Construction Inc. and Marrs Developing LLC state and allege:

PARTIES, JURISDICTION, & VENUE

1. Plaintiffs reside in Benton County and did so during all times relevant to this action.

The real property at interest herein (the "Home") is also located in Benton County, Arkansas.

2. Defendant Marrs Construction Inc. is a corporation registered to do business in the State of Arkansas with its principal place of business at 79 Mayfair Drive, Bella Vista, Arkansas 72715.

3. Defendant Marrs Developing LLC is a limited liability company organized and existing under the laws of the State of Arkansas that maintains its principal place of business in Benton County, Arkansas.

4. Given that the Plaintiff and Defendants are each residents and citizens of Benton County, Arkansas and that the subject-matter real estate giving rise to this litigation is located in Lowell, Benton County, Arkansas, jurisdiction is proper in this Court.

5. Venue is proper in this Court pursuant to Ark. Code Ann. § 16-55-213.

STATEMENT OF FACTS

6. At all times relevant the Plaintiffs have been the owner of the Home located in Lowell, Benton County, Arkansas.

7. In April 2018, Plaintiffs were presented an agreement by Marrs Developing LLC, which at the time was pitching a television show for production related to residential home remodeling and renovation. That show would later be called "Fixer to Fabulous" and air on HGTV. An unsigned copy of the agreement is attached hereto as Exhibit A (the "Contract"). It is unknown if the Defendants maintain a signed copy of the Contract.

8. Pursuant to that Agreement, Marrs Developing LLC was to act as the Contractor for the project.

9. During all times relevant, Marrs Developing LLC did not maintain an Arkansas Contractor's License, of course it did not disclose that to the Plaintiffs. Upon information, Marrs Developing, LLC, after notice of its failure to maintain a contractor's license by the Plaintiffs in 2018, obtained a license on January 23, 2019.

10. Thereafter Marrs Developing LLC acted as a contractor and undertook the project of remodeling many aspects of the Home.

11. Neither Marrs Developing, LLC nor Marrs Construction, Inc. (which is owned by a common owner, David Marrs, and which does maintain a contractors' license) obtained the required construction related permits from Benton County, Arkansas for the remodel to occur at the Home.

12. Marrs Construction, Inc. was not a party to any written agreement with the Plaintiffs but, in the instance Marrs Developing, LLC claims that Marrs Construction, Inc. was the contractor for the property, there is alleged to be an unwritten agreement between Marrs Construction, Inc. and the Plaintiffs for the scope of the construction project.

13. Over the course of Spring, 2018, the Defendants (through their common ownership) commenced the construction upon the property.

14. During that time, the Plaintiffs were not permitted to inspect the progress of construction. This withholding of information was part of the television show production.

15. Beyond the Plaintiffs, the Defendants also concealed the scope of the project from a Benton County Inspector who came upon the property on at least one occasion – informing said Inspector that no structural work was being performed and that no work was being undertaken which would require any construction permits.

16. Subsequent to the “reveal” (a moment recorded by the production crew where the Plaintiffs saw their renovated home for the first time), the following was learned about the scope, nature, and deficiency of the construction, with this list being non-exhaustive:

- a. The removal of the existing wrought iron balconies and replacement with new ones was not permitted, reviewed, or inspected by Benton County Risk Reduction. This action altered the structural integrity of the outside balconies and put them at risk of collapse. A structural engineer (PE) was not consulted on these modifications.
- b. The modifications to the kitchen required that numerous electrical circuits be modified to meet the current standards of the 2011 Arkansas National Electric Code. There are numerous open splices in the attic space, an improper ceiling fixture mounting, concealed junction boxes, and missing GFI circuits and receptacles. The modifications were in the ceiling and the floor of the kitchen and dining area. The modifications were not inspected by a Benton County Risk Reduction inspector.
- c. The relocation of appliances necessitated altering the plumbing waste, vents, and water supply lines. The modifications were not done in accordance with the 2006 Arkansas Plumbing Code. The modifications were not inspected by the appropriate inspector, which in the case of plumbing, would have been a representative of the Springdale Water.

- d. The reconfiguration of the cooking area and larger commercial range created new ventilation and clearance requirements. The sizing and ducting of the range exhaust does not comply with the 2012 Arkansas Fire Prevention Code, Vol. III, Residential or 2010 Arkansas Mechanical Code. The range was installed without following the manufacturer's recommended clearance requirements for combustible surfaces and ventilation. Further, the back staircase behind the range should have been properly fire-proofed or removed, and thus the Plaintiffs have not been able to use their stove. The modifications were not inspected by a Benton County Risk Reduction inspector.
- e. The interior dining room tower was divided horizontally by removing the metal catwalks and installing a new wooden structural floor. Correct joist sizing and span requirements were not verified with Benton County Risk Reduction prior to constructing because the alterations were not designed and submitted for building permit. There were electrical modifications for this project item as well without proper inspections prior to closing in the cavities.
- f. Relocating the refrigerator to the other side of the kitchen required altering the water line for the icemaker and water dispenser. Instead of correcting the needle valve and tap for the existing refrigerator feed they piped a new water line connection. The shutoff valve for the refrigerator feed was placed in a concealed cavity with limited if any access.

17. While the Contract does contain an (ambiguous) arbitration clause, such clause is invalid in that Marrs Developing, LLC acted as the contractor of the Home without a license. See Ark. Code Ann. § 17-25-101 *et. seq.* Specifically, as a penalty for Marrs Developing, LLC's contractually recognized unlicensed performance of contracting services, the agreement between the Plaintiffs and Marrs Developing, LLC is unavailable to it for enforcement as, due to its actions

without a contractor's license, it is unable to maintain any action in law or in equity to enforce any provision of any contract entered into in violation of that chapter.

18. Upon the revelation of the Home's defects, which were concealed until after the "reveal", the Plaintiffs notified the Defendants of the issues, thereby providing an opportunity to cure.

19. The Plaintiffs have spent the last two years waiting on the Defendants an to cure their defective construction, and have requested the same in writing, but to date, the construction defects have not been remedied.

20. Instead, the Defendants have basked in the glory of publicity while, upon information and belief many of the other homes they constructed as part of their television series were also unpermitted and constructed unlawfully without Marrs Developing, LLC holding a valid contractor's license until they obtained one in January 2019.

21. As indicated above, the Plaintiffs have suffered damages including but not limited to the necessarily incurred, and to be incurred, costs associated with remedying the defective Home, the costs required to complete the Home through other contractors, and other associated costs related to the expectation that the Home would be completed in accordance with the agreement with the Defendants, in addition to attorneys' fees and costs.

**COUNT I: NEGLIGENCE AGAINST MARRS CONSTRUCTION, INC.
AND MARRS DEVELOPING, LLC**

22. Plaintiffs restate and incorporate the preceding paragraphs herein by reference.

23. Marrs Construction, Inc. (assuming it was in part the Contractor on the Home) and Marrs Developing, LLC (as the stated Contractor on the Home), was under a duty to exercise ordinary and reasonable care as contractors of the Home, or to otherwise avoid reasonably foreseeable injury to Plaintiffs with reasonable certainty that Plaintiffs would suffer monetary damages set forth herein when Marrs Construction, Inc. failed to perform their duty to cause the Home to be constructed and completed in a proper and workmanlike manner without defects.

24. Marrs Construction, Inc and Marrs Developing, LLC knew, or should have known, that the Home was constructed using substandard materials and methods that would cause the safety of the Home to be in question, yet they and their subcontractors left the Home incomplete and with defects.

25. Marrs Construction, Inc. and Marrs Developing, LLC each knew, or should have known, that if the Home was not adequately constructed and that Plaintiff would be damaged thereby.

26. The Defendants failed and neglected to perform the work, labor and/or services properly or adequately in that the Defendants negligently and carelessly renovated the Home.

27. The Defendants did not plan the construction of the Home with the care of a reasonably careful contractor.

28. Due to the Defendants' failure to use reasonable care, the renovations of the Home have caused those affected portions of the Home to be unusable, and they have suffered the responsibility to no incur damages of remediation and repair.

29. As a direct and proximate result of the foregoing negligence, the Plaintiffs have sustained damages in an amount not presently known, but in excess of the minimal jurisdictional limit of the United States District Court for diversity jurisdiction, \$75,000.00.

30. As a further direct and proximate result of the foregoing negligence of the Defendants, the interest of the Plaintiffs in the Home and the value thereof has been reduced and diminished in an amount presently unknown but will be established at the time of trial, according to proof.

COUNT II: BREACH OF IMPLIED WARRANTY OF SOUND WORKMANSHIP; PROPER CONSTRUCTION AGAINST MARRS CONSTRUCTION, INC.; MARRS DEVELOPING, LLC

31. Plaintiffs restate and incorporate the preceding paragraphs herein by reference.

32. The defects to the Home were not discoverable by the Plaintiffs by reasonable inspection in that they were disallowed from the property during the construction.

33. The defects in the Home became clearly apparent only after the Plaintiffs were able to move back into the (still incomplete) Home in June 2018.

34. Marrs Construction Inc. is a professional contractor who performed the renovations to the Home and delivered it in June 2018.

35. Marrs Developing LLC represented itself as is a professional contractor who performed the renovations to the Home and delivered it in June, 2018.

36. The Home failed to conform to the implied warranties that it was constructed using sound workmanship and that it should be properly constructed.

37. The Plaintiffs gave sufficient notice to the Defendants that defects and warranty claims were being asserted and gave them sufficient opportunity to inspect and correct the defects, which have not been cured.

38. As a direct and proximate result of the foregoing breaches, the Plaintiffs have sustained and continues to sustain damages in an amount presently unknown, but in excess of the minimal jurisdictional limit of the United States District Court for diversity cases (\$75,000.00) in that Plaintiffs will be (and have been) required to perform works or repair, restoration, and construction to portions of the Home to prevent further damage. The Plaintiffs will establish the amount of damages at trial, according to proof.

39. As a direct result of the foregoing breaches, the Plaintiffs have and will continue to incur attorneys' fees and costs, to which they are entitled pursuant to Ark. Code Ann. § 16-22-308.

**COUNT III: BREACH OF CONTRACT AGAINST MARRS CONSTRUCTION, INC.
AND MARRS DEVELOPING, LLC**

40. Plaintiffs restate and incorporate the preceding paragraphs herein by reference.

41. Plaintiffs and the Defendants entered into contracts, a written version of that between Plaintiff and Marrs Developing, LLC is attached hereto as an exhibit.

42. Plaintiffs did what was required of her under the Contract in that it paid Marrs Developing as required by the agreement.

43. Some but not all of the ways in which Defendants did not comply with the terms of the Contracts are that it failed to:

- a. Comply with the project plans as set forth by the Plaintiffs prior to construction.
- b. Honor any stated warranty of the contract.
- c. Complete the Home renovation in a workman like manner.
- d. Requiring, prematurely, final payment prior to the reveal of the home to the Plaintiffs.

44. As a direct and proximate result of the foregoing breaches, the Plaintiffs have sustained and continue to sustain damages in an amount presently unknown, but in excess of the minimal jurisdictional limit of the United States District Court for diversity cases (\$75,000.00) in that Plaintiffs will be (and have been) required to perform works or repair, restoration, and construction to portions of the Home to prevent further damage. The Plaintiffs will establish the amount of damages at trial, according to proof.

45. As a direct result of the foregoing breaches, the Plaintiffs have and will continue to incur attorneys' fees and costs, to which she are entitled pursuant to Ark. Code Ann. § 16-22-308.

46. The Plaintiffs reserve the right to liberally amend this Complaint and plead further if necessary pursuant to Rules 15 of the Arkansas Rules of Civil Procedure.

WHEREFORE, Plaintiffs Dana and Tyler Craddock respectfully request that they be awarded judgment against Defendants, jointly and severally, in an amount to be determined by the evidence in an amount in excess of the minimal amount required for jurisdiction of the US District Court in cases of diversity (\$75,000.00), court costs and attorney's fees, and for any other relief to which this Court may deem proper and just.

Respectfully submitted,
Dana and Tyler Craddock, Plaintiffs

By: /s/George M. Rozzell IV

George M. Rozzell, IV
AR Bar No. 2008032
MILLER, BUTLER, SCHNEIDER
PAWLIK, & ROZZELL PLLC
112 W. Center St. Suite 555,
Fayetteville, AR 72701
224 S Second St.
Rogers, AR 72756
479.621.0006
grozell@arkattorneys.com

EXHIBIT A - CONTRACT DOCUMENTS

CONTRACT AGREEMENT

1. This agreement is made by and between Marrs Developing LLC., an Arkansas Limited Liability Company with its principal place of business, 12626 Huber Road, Bentonville AR 72712 (hereinafter referred to as "Contractor, we, us or our") and Tyler and Dana Craddock, 15547 N J C Lane, Lowell, Arkansas (hereinafter referred to as "Owner or You") We both intend to be legally bound by this agreement as follows:

2. We will provide to you all of the material, tools and equipment and perform all of the labor for the construction of the following project (hereinafter referred as "The Work"): Provide and install material and work as described in Proposal list. We shall perform the work in a competent and workmanlike manner by skilled workmen. We will use materials of the kind and quality ordinarily used in Northwest Arkansas in the construction of that type designated in the plans and described in the specifications. Where a specific model, brand or manufacturer is specified, we reserve the right to propose as substitute an equal model, brand or manufacturer based on availability of the specified model, brand or manufacturer in a timely manner, subject to Owner approval, which approval shall not be unreasonably withheld.

3. You agree to pay us for this work, labor and materials the sum of \$83,450 which contract price shall be paid in two payments. Checks are due upon bank loan approval. Loan reimbursement check made out to RIVR Media, with payment balance check made out to Marrs Developing LLC.

Punch list form to be completed within one week of home reveal. Punch list work will commence within 30 business days.

4. You represent to us that you now have sufficient cash reserves or financing in place to pay the gross amount due under this contract. You acknowledge and agree that your representation of your ability to pay is material to inducing us to make this contract.

5. We both agree that time is of the essence to this contract. We shall begin the Work on or about April 15, 2018. We shall substantially complete the Work on or before June 10, 2018. These dates are subject to any change orders and the terms and conditions of this contract. We agree that this project will proceed uninterrupted from start to finish with no unexcused delays.

Several things will excuse our timely performance:

First, should you, through no fault of ours, delay in making stage payments for the work as called for in this contract, such delay may be considered by us to be a breach of the contract. In this case

Contractor _____

Owner _____

performance of the remaining work is excused, and we may elect all of the remedies provided by law for such breach.

Second, should we be delayed in the prosecution and completion of the Work by your act, neglect or default or that of any other contractor employed by you upon the Work, or by any damage caused by fire, lightning, earthquake, tornadoes, weather or other casualties? for which we are not responsible, or by strikes, walkouts, delay of common carriers, civil or military authorities, priority regulations, insurrection, riot, war, or acts of terrorism, or by our inability in good faith to purchase the necessary materials in an economically reasonable fashion, then the time fixed in this agreement for the completion of the Work shall be extended for a period equivalent to the time lost by reason of any or all of these causes. For the purposes of this contract, our inability to purchase the required materials in an economically reasonable fashion shall mean that the materials are either not available in Northwest Arkansas or that the wholesale price charged to us for such materials has increased by a factor of twenty-five percent (25%) or more since the date of the contract.

6. We shall be considered an independent contractor and not your agent, servant or employee. We shall obtain and keep in full force and effect personal injury and property damage liability insurance coverage against injury to persons or damage to property caused by reason of any act or omissions of us or our agents, employees, subcontractors or suppliers in the original amount of \$1,000,000.00. We have such insurance in place at the signing of this contract. We shall maintain the required Worker's Compensation insurance. We shall submit evidence of all such insurance to you, upon request naming you as an additional insured. You shall, at your own expense during the progress of the work, maintain insurance on the structure against loss or damage by fire and other hazards by a policy of homeowner's insurance. You will receive title to all materials and supplies purchased by us in the performance of this contract when such materials are delivered to the project and we will be responsible to protect all staged materials, as well as, in progress work, from weather.

7. Any change orders shall be in writing, executed by both of us prior to commencement of the changed work. Compensation for all change orders which require an increase in the contract price shall be made when the change order is approved.

8. We shall pay all of our employees, materials suppliers and subcontractors in a timely manner, such that it does not affect you or the timely performance of this agreement.

Contractor _____

Owner _____

9. We shall provide all necessary government permits for the work, at our expense, unless otherwise stated. You shall provide at your expense any survey necessary to the prompt and proper completion of the work. You shall inform the Contractor in a timely manner of any materially adverse conditions on or about the premises of which you have actual knowledge; this shall include the location of underground utility lines, sewers and easements, if any. We shall use the services of Arkansas One Call to require that utility suppliers mark their lines prior to the start of work. We shall be solely responsible for protection of, and repair of damage to, all underground utilities disclosed to us.

10. We hereby warrant our work against defects in materials and workmanship for a period of one (1) year following substantial completion of this contract. However, we shall not be liable for defects in materials if the manufacturer's warranty is applicable. We hereby expressly disclaim any and all other warranties expressed or implied including, by way of example and not limitation, the implied warranty of habitability, implied warranty of fitness for particular use and the implied warranty of merchantability. These warranties are expressly excluded. Our warranty given hereunder shall be a limited warranty under applicable law.

11. You acknowledge that any attempt to match new materials to existing materials will necessarily be inexact; you hereby release and discharge us of and from any and all liability which arises in any manner out of our inability to obtain a match between new material and existing material.

12. Our obligation under this Agreement does not include the identification, abatement or removal of asbestos, mold or any other toxic or hazardous substances, hazardous wastes or hazardous materials. If such substances, wastes and materials are encountered, we shall have the right thereafter to suspend our work until such substances, wastes or materials and the resultant hazards are removed. The time for completion of the work shall be extended to the extent caused by the suspension. You and we shall equitably adjust the contract price. You shall hold us harmless for any claims, liabilities, damages, losses and expenses related to asbestos, mold or any other toxic or hazardous substances, hazardous wastes or hazardous materials located on the property. We shall have no obligation to treat, identify or remove such conditions.

13. We both acknowledge that construction disputes can be expensive and time-consuming. With that fact in mind, we both agree that we shall try, wherever possible, to meet and discuss any differences which may arise between us concerning the progress of the work, the quality of the work and the completion of the contract. If we

Contractor _____ Owner _____

are unable to resolve a good faith dispute following a "meet and discuss" session, we both agree to submit such dispute to binding arbitration as set forth on the attached Arbitration Agreement, which is made a part of our contract.

14. This contract consists of this agreement and the incorporated proposals if applicable; the Proposals and signed by both of us. These documents constitute the entire agreement between the parties concerning the completion of the work and the prompt payment thereof. These replace and supersede any and all oral agreements between the parties and any prior written agreements. This agreement may be modified only in writing signed by all of the parties.

15. This Contract is entered into and shall be interpreted and enforced according to Arkansas law, without giving effect to that state's conflict of laws principles. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way.

IN WITNESS WHEREOF, the parties have hereunto set their signatures and tend to be legally bound hereby the date set forth below.

Signed this _____ day of _____, 2018

ATTEST

David J. Marrs, Owner

Signed this _____ day of _____, 2018

Witness

Contractor _____

Owner _____

ARBITRATION AGREEMENT:

Any dispute under this contract will be settled by binding arbitration before the American Arbitration Association pursuant to the construction arbitration rules. This arbitration shall be considered to be common law arbitration under Arkansas law. This arbitration shall not be appealable to common pleas court. The arbitration shall take place in Benton County, Arkansas. Judgment on the arbitration award may be entered in any court of jurisdiction. Cost of arbitration, including reasonable attorney's fees, will be allocated by the arbitrator.

This arbitration agreement is hereby agreed to:

Signed this _____ day of _____, 2018

ATTEST

David J. Marrs, Owner

Signed this _____ day of _____, 2018

Witness

Contractor _____ Owner _____

Notice of Cancellation

Project:

Customer: _____

Date: _____

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to Marrs Developing, LLC., 12626 Huber Road, Bentonville, Arkansas 72712 not later than midnight of _____
(date third full day after today).

Cancellation

I hereby cancel this transaction.

Contractor _____ Owner _____