

**IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE**

NINE 12 DESIGN INC.

Plaintiff

vs.

LAYTON HOMES 2 TN LLC

Defendant.

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NO. _____

COMPLAINT

I. PARTIES

1. Plaintiff Nine 12 Design Inc. ("Nine 12") is a Tennessee corporation with its principal office located in Davidson County, Tennessee.
2. Defendant Layton Homes 2 TN LLC ("Layton Homes") is a Tennessee limited liability company with its principal office located in Davidson County, Tennessee.

II. JURISDICTION AND VENUE

3. This court has personal jurisdiction over the Defendant because its principal office is located in the State of Tennessee.
4. This court has subject matter over this action pursuant to Tenn. Code Ann. § 16-11-101 & 102.
5. Venue is proper in Davidson County, Tennessee pursuant to Tenn. Code Ann. § 20-4-101(b) because Layton Homes principal office is located in Davidson County, Tennessee.

III. FACTS

6. Nine 12 is a Tennessee architecture and design firm holding active Tennessee license no. 104894 for Martin Wieck and Indiana license no. 11700084 for Kaitlyn Smous. Martin Wieck and Kaitlyn Smous are the owners and shareholders of Nine 12.
7. Upon information and belief Layton Homes is in the business of historic home remodels, new construction and building custom homes.
8. Upon information and belief Layton Homes holds Tennessee contractor license no. 72505. This license is expired.
9. Upon information and belief Layton Homes is contracted to build homes at 945 S Douglas Avenue Nashville, TN 37204 ("945 S Douglas").
10. Upon information and belief Layton Homes is contracted to build a home at 4110 Wyoming Avenue Nashville, TN 37209 ("4110 Wyoming").
11. Upon information and belief 945 S Douglas is split into nineteen (19) units.
12. In February 2021 Nine 12 entered into an agreement with Layton homes to design a 1.5 story house for Unit 5 of 945 S Douglas. A true and exact copy of the agreement ("Unit 5 Agreement") is attached hereto as **Exhibit A**.
13. Section 4(E) of the Unit 5 Agreement states that all payments are due and payable to Nine 12 within thirty (30) days of Layton Homes receipt of said invoice. *See* Exhibit A.
14. Section 9(G) of the Unit 5 Agreement states in the event of any legal or equitable proceeding (or mediation) arising out of or in connection with the parties' obligations under this Agreement, the prevailing party shall recover its reasonable attorneys' fees and costs, including reasonable costs for experts. The prevailing party shall be the party

who obtained substantially the same remedy requested, whether by judgment, appeal, settlement or award. *See* Exhibit A.

15. Nine 12 completed all work on Unit 5 of 945 S Douglas and submitted final invoice 0905 for \$5,000.00 to Layton Homes on June 10, 2022. To date Nine 12 has not received payment for this invoice. A true and exact copy of invoice 0905 is attached hereto as **Exhibit B.**

16. In May 2021 Nine 12 entered into an agreement with Layton Homes to design a 1.5 story house for Unit 6 of 945 S Douglas. A true and exact copy of the agreement (“Unit 6 Agreement”) is attached hereto as **Exhibit C.**

17. Section 4(E) of the Unit 6 Agreement states that all payments are due and payable to Nine 12 within thirty (30) days of Layton Homes receipt of said invoice. *See* Exhibit C.

18. Section 9(G) of the Unit 6 Agreement states in the event of any legal or equitable proceeding (or mediation) arising out of or in connection with the parties’ obligations under this Agreement, the prevailing party shall recover its reasonable attorneys’ fees and costs, including reasonable costs for experts. The prevailing party shall be the party who obtained substantially the same remedy requested, whether by judgment, appeal, settlement or award. *See* Exhibit C.

19. Nine 12 completed all work on Unit 6 of 945 S Douglas and submitted final invoice 0906 for \$5,000.00 to Layton Homes on June 10, 2022. To date Nine 12 has not received payment for this invoice. A true and exact copy of invoice 0906 is attached hereto as **Exhibit D.**

20. In September 2021 Nine 12 entered into an agreement with Layton Homes to design a 1.5 story house for Unit 7 of 945 S Douglas. A true and exact copy of the agreement (“Unit 7 Agreement”) is attached hereto as **Exhibit E**.
21. Section 4(E) of the Unit 7 Agreement states that all payments are due and payable to Nine 12 within thirty (30) days of Layton Homes receipt of said invoice. *See* Exhibit E.
22. Section 9(G) of the Unit 7 Agreement states in the event of any legal or equitable proceeding (or mediation) arising out of or in connection with the parties’ obligations under this Agreement, the prevailing party shall recover its reasonable attorneys’ fees and costs, including reasonable costs for experts. The prevailing party shall be the party who obtained substantially the same remedy requested, whether by judgment, appeal, settlement or award. *See* Exhibit E.
23. Nine 12 prepared drawings for Unit 7 of 945 S Douglas and submitted them to the Metro Historic Zoning Commission for approval. Unit 7 of 945 S Douglas was approved for permits by the Metro Historic Zoning Commission. Nine 12 started work on construction documents for Unit 7 of 945 S Douglas but stopped work when Layton Homes did not pay the invoice when due.
24. Nine 12 submitted initial invoice 0789 for \$5,000.00 to Layton Homes on September 17, 2021. To date Nine 12 has not received payment for this invoice. A true and exact copy of invoice 0789 is attached hereto as **Exhibit F**.
25. In October 2021 Nine 12 entered into an agreement with Layton Homes to design a 2 story house for Unit 8 of 945 S Douglas. A true and exact copy of the agreement (“Unit 8 Agreement”) is attached hereto as **Exhibit G**.

26. Section 4(E) of the Unit 8 Agreement states that all payments are due and payable to Nine 12 within thirty (30) days of Layton Homes receipt of said invoice. *See* Exhibit G.
27. Section 9(G) of the Unit 8 Agreement states in the event of any legal or equitable proceeding (or mediation) arising out of or in connection with the parties' obligations under this Agreement, the prevailing party shall recover its reasonable attorneys' fees and costs, including reasonable costs for experts. The prevailing party shall be the party who obtained substantially the same remedy requested, whether by judgment, appeal, settlement or award. *See* Exhibit G.
28. Nine 12 prepared drawings for Unit 8 of 945 S Douglas and submitted them to the Metro Historic Zoning Commission for approval. Unit 7 of 945 S Douglas was approved for permits by the Metro Historic Zoning Commission. Nine 12 started work on construction documents for Unit 8 of 945 S Douglas but stopped work when Layton Homes did not pay the invoice when due.
29. Nine 12 submitted initial invoice 0801 for \$5,000.00 to Layton Homes on October 13, 2021. To date Nine 12 has not received payment for this invoice. A true and exact copy of invoice 0801 is attached hereto as **Exhibit H**.
30. In November 2021 Nine 12 entered into an agreement with Layton Homes to design a 1.5 story house for Unit 9 of 945 S Douglas. A true and exact copy of the agreement ("Unit 9 Agreement") is attached hereto as **Exhibit I**.
31. Section 4(E) of the Unit 9 Agreement states that all payments are due and payable to Nine 12 within thirty (30) days of Layton Homes receipt of said invoice. *See* Exhibit I.
32. Section 9(G) of the Unit 9 Agreement states in the event of any legal or equitable proceeding (or mediation) arising out of or in connection with the parties' obligations

under this Agreement, the prevailing party shall recover its reasonable attorneys' fees and costs, including reasonable costs for experts. The prevailing party shall be the party who obtained substantially the same remedy requested, whether by judgment, appeal, settlement or award. *See* Exhibit I.

33.Nine 12 prepared drawings for Unit 9 of 945 S Douglas. These drawings were ready to be submitted to the Metro Historic Zoning Commission. Layton Homes requested that Nine 12 stop work after Nine 12 submitted the drawings to Layton Homes for review because Layton Homes wanted to make revisions to the drawings.

34.Nine 12 submitted initial invoice 0815 for \$5,000.00 to Layton Homes on November 16, 2021. To date Nine 12 has not received payment for this invoice. A true and exact copy of invoice 0815 is attached hereto as **Exhibit J.**

35.In July 2021 Nine 12 entered into an agreement with Layton Homes to design infill for new construction at 4110 Wyoming. A true and exact copy of the agreement ("4110 Wyoming Agreement") is attached hereto as **Exhibit K.**

36.Section 4(E) of the 4110 Wyoming Agreement states that all payments are due and payable to Nine 12 within thirty (30) days of Layton Homes receipt of said invoice. *See* Exhibit K.

37.Section 9(G) of the 4110 Wyoming Agreement states in the event of any legal or equitable proceeding (or mediation) arising out of or in connection with the parties' obligations under this Agreement, the prevailing party shall recover its reasonable attorneys' fees and costs, including reasonable costs for experts. The prevailing party shall be the party who obtained substantially the same remedy requested, whether by judgment, appeal, settlement or award. *See* Exhibit K.

38. Nine 12 completed a set of concept drawings for 4110 Wyoming at the request of Layton Homes so Layton Homes could secure a loan for the [REDACTED] Wyoming project. The project for 4110 Wyoming did not move forward.
39. Nine 12 submitted initial invoice 0766 for \$3,000.00 to Layton Homes on July 26, 2021. To date Nine 12 has not received payment for this invoice. A true and exact copy of invoice 0766 is attached hereto as **Exhibit L**.
40. Layton Homes has breached the Unit 5-9 Agreements and the 4110 Wyoming Agreement by failing to pay invoices within thirty (30) days of receipt.
41. Nine 12 has fully performed all obligations under the Unit 5-9 Agreements and 4110 Wyoming Agreement and is entitled to payment in full of the invoices totaling \$28,000 plus reasonable attorney's fees and costs.
42. On November 2, 2022 counsel for Nine 12 sent a demand letter to Layton Homes' owner Brian Layton demanding payment in full by close of business November 11, 2022. Layton Homes did not respond to this correspondence. A true and exact copy of the November 2, 2022 demand letter is attached hereto as **Exhibit M**.

IV. CAUSE OF ACTION

43. Nine 12 sues Layton Homes for breach of contract. Layton Homes breached the contract by failing to make payment for invoices 0905, 0906, 0789, 0801, 0185 and 0766 within thirty (30) days of receipt as required under the Unit 5 Agreement, Unit 6 Agreement, Unit 7 Agreement, Unit 8 Agreement, Unit 9 Agreement and 4110 Wyoming Agreement. As a result the balance of \$28,000.00 is due immediately to Nine 12.

V. DEMAND

WHEREFORE, Nine 12 demands:

1. An award of compensatory, consequential and incidental damages in an amount to be determined at trial, exceeding \$28,000.00;
2. An award of reasonable attorney's fees, expenses and costs;
3. All relief authorized by the Settlement Agreement and Release; and
4. Such other relief to which Plaintiff may be entitled.

Respectfully Submitted,

/s/ Rachel Schaffer Lawson

Rachel Schaffer Lawson (BPR # 29376)

Attorney for Plaintiff

Dickinson Wright PLLC

424 Church Street, Suite 800

Nashville, TN 37219

(615) 620-1715

rlawson@dickinson-wright.com

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing COMPLAINT has been sent via U.S. mail postage prepaid to the following:

Layton Homes 2 TN LLC
618 Hamilton Avenue
Nashville, TN 37203

On this the 30th day of November, 2022.

/s/ Rachel Schaffer Lawson

Rachel Schaffer Lawson