

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHESAPEAKE

VALENCIA JONES, as Administrator of the
Estate for Lydia M. Somerville, Deceased,

Plaintiff,

v.

CHESAPEAKE CROSSING, INC., et al.,

Defendants.

*
*
*
*
*
*
*
*
*
*

Case No.: CL18-7913

FILED IN CLERK'S OFFICE
2018 DEC 26 PM 3:49
CHESAPEAKE CIRCUIT COURT
D.C.

DEMURRER TO COMPLAINT, OR, IN THE ALTERNATIVE, MOTION FOR BILL OF PARTICULARS

Boyd Corporation, by counsel, pursuant to Virginia Code § 8.01-273, files its demurrer to the Complaint, or, in the alternative, pursuant to Rule 3:7 of *The Rules of the Supreme Court of Virginia*, moves the Court to order Plaintiff to file a bill of particulars, and in support states as follows:

STANDARD ON DEMURRER

1. The standard for reviewing a demurrer has been long established in Virginia. While a court assumes on demurrer that all material facts, implied facts, and reasonable inferences from those facts in a complaint are true, *Assurance Data, Inc. v. Malyevac*, 286 Va. 137, 143, 747 S.E.2d 804 (2013), a court is not required to "accept the veracity of conclusions of law camouflaged as factual allegations or inferences," *AGCS Marine Ins. Co. v. Arlington Cty.*, 293 Va. 469, 473, 800 S.E.2d 159, 161 (2017). Moreover, a court is not bound by "conclusory allegations." *Ogunde v. Prison Health Servs., Inc.*, 274 Va. 55, 66, 645 S.E.2d 520, 527 (2007). When documents are incorporated into a complaint or attached to it, a court "may ignore a party's factual

allegations contradicted by the terms of authentic, unambiguous documents that properly are a part of the pleadings.” *Ward’s Equip., Inc. v. New Holland N. Am.*, 254 Va. 379, 382, 493 S.E.2d 516 (1997). Accordingly, “the sole question to be decided by the trial court is whether the facts thus pleaded, implied, and fairly and justly inferred are legally sufficient to state a cause of action against the defendant.” *Thompson v. Skate Am., Inc.*, 261 Va. 121, 128, 540 S.E.2d 123, 126 (2001).

STATEMENT OF CASE

2. This case arises from a fire that occurred on or about July 15, 2017, at Chesapeake Crossing, a senior-living apartment complex located at 1937 Robert Hall Boulevard in Chesapeake, Virginia. Compl. ¶¶ 1, 3. The complex is allegedly owned by nine different defendants: Chesapeake Crossing, Inc., Chesapeake Crossing Two, Inc., Chesapeake Crossing Three, Inc., Chesapeake Crossing Four, LLC, Chesapeake Crossing Five, LLC, Chesapeake Crossing Senior Community One, L.P., Chesapeake Crossing Seniors Community Two, L.P., Chesapeake Crossing Seniors Community Three, L.L.L.P., and Boyd Corporation, which collection of “owners and landlords” are grouped and referred to as the “Defendants” throughout the Complaint. *See generally id.*

3. Plaintiff alleges that the roof of Building A/1000 caught on fire and then spread from the roof to the attic and then to Building D/4000 and to the Decedent’s apartment. *Id.* ¶ 3. Defendant’s Decedent, who is alleged to have been a resident and tenant in Apartment 4308 in Building D/4000, died in the fire. *Id.* ¶¶ 2, 3.

PERTINENT ALLEGATION

4. Plaintiff’s sole allegation of negligence is found in Paragraph 5 of the Complaint wherein Plaintiff asserts, “Notwithstanding these duties [to use reasonable

care to maintain and repair the property and to keep areas in good repair and in compliance with the Virginia Uniform Statewide Building Code, Fire Prevention Code, and Property Maintenance Code], Defendants *negligently failed to maintain and repair* Chesapeake Crossing. This negligence rendered Chesapeake Crossing unsafe in the event of a fire and endangered the lives of all residents of Chesapeake Crossing, including Decedent.” *Id.* ¶ 5 (emphasis supplied).

ARGUMENT

5. There are two rules of pleading that are at issue. First, the general parameters of pleading are set out in Rule 1:4(d): “Every pleading shall state the facts on which the party relies in numbered paragraphs, and it shall be sufficient if it clearly informs the opposite party of the true nature of the claim or defense.” Second, with respect to allegations of negligence, Rule 3:18(b) provides: “An allegation of negligence or contributory negligence is sufficient without specifying the particulars of the negligence.” To the extent that a Complaint is found wanting but a demurrer is not appropriate, Rule 3:7 gives this Court the discretion to order a party “to amplify any pleading that does not provide notice of a claim or defense adequate to permit the adversary a fair opportunity to respond or prepare the case.”

6. In this case, Plaintiff has not pled any *facts* to support her assertion that “Defendants negligently failed to maintain and repair Chesapeake Crossing.” The Complaint is devoid of any facts alleging who did what or failed to do what and is devoid of any facts alleging when the negligent acts occurred. The sole allegation of negligence is not an allegation of fact, but is a legal conclusion premised on another legal conclusion that *all Defendants* had duties to the Decedent under the Virginia Uniform Statewide

Building Code, Fire Prevention Code, and Property Maintenance Code. In a complaint where a plaintiff asserted that landlords were negligent in performing repairs, the Supreme Court of Virginia observed, "The allegation that the Landlords were negligent in their repairs relative to lead paint is a legal conclusion," which legal conclusion was not taken as true on demurrer. *Steward v. Holland Family Props., LLC*, 284 Va. 282, 292, 726 S.E.2d 251, 257 (2012). There is no distinction that can be made between the legal conclusion identified by the Supreme Court in *Steward* and the legal conclusion in this Complaint. Without any facts, the Complaint fails to state a cause of action.

7. To be sure, Rule 3:18 does not require specification of the *particulars* of the alleged negligence, but it is beyond argument that Plaintiff is required to plead some *facts* to support a negligence claim against Boyd Corporation. As the Supreme Court of Virginia has stated, "[T]he party filing a civil action has an obligation to express the nature of the claim being asserted, and the identity of the party against whom it is asserted, in clear and unambiguous language so as to inform both the court and the opposing party of the nature of the claim being made." *Estate of James v. Peyton*, 277 Va. 443, 450, 674 S.E.2d 864, 867 (2009). Moreover, "Litigants may not make baseless accusations in a pleading and hope to 'have support after discovery.' Litigants are required to plead only those claims that have factual support." *N. Va. Real Estate, Inc. v. Martins*, 79 Va. Cir. 667, 680 (Fairfax Cnty. 2009) (citing and quoting *Ford Motor Co. v. Benitez*, 273 Va. 242, 639 S.E.2d 203 (2007)).

8. As it stands, Plaintiff has indiscriminately grouped nine different defendants, has asserted *all of the Defendants* had duties under building, fire, and maintenance codes, and has nakedly asserted that all of Defendants' unspecified negligent acts related


to repair and maintenance rendered Chesapeake Crossing “unsafe in the event of a fire.” As a result of Plaintiff’s unadorned negligence allegation, Boyd Corporation is left to guess and speculate as to what those acts of omission and/or commission were, when those acts occurred, and which of the nine different Defendants committed those acts. Because Plaintiff is under an affirmative obligation to plead based on a good faith belief as to the facts that support a claim, see Va. Code § 8.01-271.1, more than an undated, unattributed, and unspecified allegation of negligence is required.

9. Because Plaintiff’s conclusory allegation against Boyd Corporation is devoid of any factual support, the Complaint does not state a cause of action and the Complaint must be dismissed. See *Bush v. Serco, Inc.*, 92 Va. Cir. 164 (City of Norfolk 2015) (sustaining a demurrer because the complaint failed to identify which named defendant committed each alleged act of negligence).

10. If the Court determines that Plaintiff’s Complaint is not subject to dismissal pursuant to demurrer, Boyd Corporation, in the alternative, moves the Court to require Plaintiff to file and serve a bill of particulars. Such a bill of particulars must amplify the factual basis for Plaintiff’s claim against Boyd Corporation in order to inform Boyd Corporation – and this Court – of the true nature of the claim.

WHEREFORE, Boyd Corporation respectfully requests that this Court enter an order sustaining its Demurrer, or, in the alternative, requiring Plaintiff to serve and file a bill of particulars amplifying the basis for its claim against Boyd Corporation, awarding costs and fees expended in the defense of this action, and providing such other and further relief as this Court deems appropriate and necessary.

BOYD CORPORATION

By: 
Counsel

Robert Wm. Best, Esq. (VSB No. 72077)
Midkiff, Muncie & Ross, P.C.
300 Arboretum Place, Suite 420
Richmond, Virginia 23236
Telephone: (804) 560-9600
Facsimile: (804) 560-5997
Email: rbest@midkiffllaw.com
Counsel for Defendant Boyd Corporation

CERTIFICATE OF SERVICE

I certify that on this 20th day of December 2018, the foregoing was mailed, first-class postage prepaid, to the Clerk of Court for filing with the papers of this matter, and that a copy was mailed, first-class postage prepaid to:

Ellen M. Porter, Esq.
The Joel Bieber Firm
6806 Paragon Place, Suite 100
Richmond, Virginia 23230
Counsel for Plaintiff



MIDKIFF, MUNCIE & ROSS, P.C.

ATTORNEYS AND COUNSELLORS AT LAW
300 ARBORETUM PLACE, SUITE 420
RICHMOND, VIRGINIA 23236

(804) 560-9600
FAX (804) 560-5997
HTTP://WWW.MIDKIFFLAW.COM

FILED IN CLERK'S OFFICE
2018 DEC 26 PM 3:49
CHESAPEAKE CIRCUIT COURT
BY _____ D.C.

December 20, 2018

Hon Alan P. Krasnoff
Clerk
Chesapeake Circuit Court
307 Albemarle Drive, Suite 300A
Chesapeake, Virginia 23322

Re: *Valencia Jones, as Administrator of the Estate for Lydia M. Somerville, Deceased v. Chesapeake Crossing, Inc., et al.*
Case No. : CL18-7913
Our File No. : 111.019

Dear Mr. Krasnoff:

Please file the enclosed Demurrer to Complaint, or, in the alternative, Motion for Bill of Particulars on behalf Defendant Boyd Corporation in the above-referenced matter.

Thank you for your assistance.

Very truly yours,



Robert Wm. Best

/lja

Enclosure

cc: Ellen M. Porter, Esquire

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

**VALENCIA JONES, as Administrator of
the Estate for LYDIA M. SOMERVILLE,
Deceased**

Plaintiff

v.

CASE NO. CL18-7913

CHESAPEAKE CROSSING, INC.

and

CHESAPEAKE CROSSING TWO, INC.

and

CHESAPEAKE CROSSING THREE, INC.

CHESAPEAKE CROSSING FOUR, LLC

and

CHESAPEAKE CROSSING FIVE, LLC

**CHESAPEAKE CROSSING SENIORS
COMMUNITY ONE, L.P.**

and

**CHESAPEAKE CROSSING
SENIORS COMMUNITY TWO, L.P.**

and

**CHESAPEAKE CROSSING
SENIORS COMMUNITY THREE, L.L.L.P.**

and

BOYD CORPORATION

Defendants

FILED IN CLERK'S OFFICE
2018 DEC 26 PM 3:13
CHESAPEAKE CIRCUIT COURT
BY _____ D.C.

DEMURRER TO COMPLAINT, OR, IN THE ALTERNATIVE, MOTION FOR BILL OF PARTICULARS

Defendant, CHESAPEAKE CROSSING SENIORS COMMUNITY ONE, L.P., by counsel, pursuant to Virginia Code § 8.01-273, files its demurrer to the Complaint, or, in the alternative, pursuant to Rule 3:7 of *The Rules of the Supreme Court of Virginia*, moves the Court to order Plaintiff to file a bill of particulars, and in support states as follows:

STANDARD ON DEMURRER

1. The standard for reviewing a demurrer has been long established in Virginia. While a court assumes on demurrer that all material facts, implied facts, and reasonable inferences from those facts in a complaint are true, *Assurance Data, Inc. v. Malyevac*, 286 Va. 137, 143, 747 S.E.2d 804 (2013), a court is not required to “accept the veracity of conclusions of law camouflaged as factual allegations or inferences,” *AGCS Marine Ins. Co. v. Arlington Cty.*, 293 Va. 469, 473, 800 S.E.2d 159, 161 (2017). Moreover, a court is not bound by “conclusory allegations.” *Ogunde v. Prison Health Servs., Inc.*, 274 Va. 55, 66, 645 S.E.2d 520, 527 (2007). When documents are incorporated into a complaint or attached to it, a court “may ignore a party’s factual allegations contradicted by the terms of authentic, unambiguous documents that properly are a part of the pleadings.” *Ward’s Equip., Inc. v. New Holland N. Am.*, 254 Va. 379, 382, 493 S.E.2d 516 (1997). Accordingly, “the sole question to be decided by the trial court is whether the facts thus pleaded, implied, and fairly and justly inferred are legally sufficient to state a cause of action against the defendant.” *Thompson v. Skate Am., Inc.*, 261 Va. 121, 128, 540 S.E.2d 123, 126 (2001).

STATEMENT OF CASE

2. This case arises from a fire that occurred on or about July 15, 2017, at a senior-living apartment complex located at 1937 Robert Hall Boulevard in Chesapeake, Virginia.

Compl. ¶¶ 1, 3. The complex is allegedly owned by nine different defendants: Chesapeake Crossing, Inc., Chesapeake Crossing Two, Inc., Chesapeake Crossing Three, Inc., Chesapeake Crossing Four, LLC, Chesapeake Crossing Five, LLC, Chesapeake Crossing Senior Community One, L.P., Chesapeake Crossing Seniors Community Two, L.P., Chesapeake Crossing Seniors Community Three, L.L.L.P., and Boyd Corporation, which collection of “owners and landlords” are grouped and referred to as the “Defendants” throughout the Complaint. *See generally id.*

3. Plaintiff alleges that the roof of Building A/1000 caught on fire and then spread from the roof to the attic and then to Building D/4000 and to the Decedent’s apartment. *Id.* ¶ 3. Defendant’s Decedent, who is alleged to have been a resident and tenant in Apartment 4308 in Building D/4000, died in the fire. *Id.* ¶¶ 2, 3.

PERTINENT ALLEGATION

4. Plaintiff’s sole allegation of negligence is found in Paragraph 5 of the Complaint wherein Plaintiff asserts, “Notwithstanding these duties [to use reasonable care to maintain and repair the property and to keep areas in good repair and in compliance with the Virginia Uniform Statewide Building Code, Fire Prevention Code, and Property Maintenance Code], Defendants *negligently failed to maintain and repair* Chesapeake Crossing. This negligence rendered Chesapeake Crossing unsafe in the event of a fire and endangered the lives of all residents of Chesapeake Crossing, including Decedent.” *Id.* ¶ 5 (emphasis supplied).

ARGUMENT

5. There are two rules of pleading that are at issue. First, the general parameters of pleading are set out in Rule 1:4(d): “Every pleading shall state the facts on which the party relies in numbered paragraphs, and it shall be sufficient if it clearly informs the opposite party of the true nature of the claim or defense.” Second, with respect to allegations of negligence, Rule 3:18(b) provides: “An allegation of negligence or contributory negligence is sufficient without

specifying the particulars of the negligence.” To the extent that a Complaint is found wanting but a demurrer is not appropriate, Rule 3:7 gives this Court the discretion to order a party “to amplify any pleading that does not provide notice of a claim or defense adequate to permit the adversary a fair opportunity to respond or prepare the case.”

6. In this case, Plaintiff has not pled any *facts* to support her assertion that “Defendants negligently failed to maintain and repair Chesapeake Crossing.” The Complaint is devoid of any facts alleging who did what or failed to do what and is devoid of any facts alleging when the negligent acts occurred. The sole allegation of negligence is not an allegation of fact, but is a legal conclusion premised on another legal conclusion that *all Defendants* had duties to the Decedent under the Virginia Uniform Statewide Building Code, Fire Prevention Code, and Property Maintenance Code. In a complaint where a plaintiff asserted that landlords were negligent in performing repairs, the Supreme Court of Virginia observed, “The allegation that the Landlords were negligent in their repairs relative to lead paint is a legal conclusion,” which legal conclusion was not taken as true on demurrer. *Steward v. Holland Family Props., LLC*, 284 Va. 282, 292, 726 S.E.2d 251, 257 (2012). There is no distinction that can be made between the legal conclusion identified by the Supreme Court in *Steward* and the legal conclusion in this Complaint. Without any facts, the Complaint fails to state a cause of action.

7. To be sure, Rule 3:18 does not require specification of the *particulars* of the alleged negligence, but it is beyond argument that Plaintiff is required to plead some *facts* to support a negligence claim against this defendant. As the Supreme Court of Virginia has stated, “[T]he party filing a civil action has an obligation to express the nature of the claim being asserted, and the identity of the party against whom it is asserted, in clear and unambiguous language so as to inform both the court and the opposing party of the nature of the claim being made.” *Estate of James v. Peyton*, 277 Va. 443, 450, 674 S.E.2d 864, 867 (2009). Moreover,

“Litigants may not make baseless accusations in a pleading and hope to ‘have support after discovery.’ Litigants are required to plead only those claims that have factual support.” *N. Va. Real Estate, Inc. v. Martins*, 79 Va. Cir. 667, 680 (Fairfax Cnty. 2009) (citing and quoting *Ford Motor Co. v. Benitez*, 273 Va. 242, 639 S.E.2d 203 (2007)).

8. As it stands, Plaintiff has indiscriminately grouped nine different defendants, has asserted *all of the Defendants* had duties under building, fire, and maintenance codes, and has nakedly asserted that all of Defendants’ unspecified negligent acts related to repair and maintenance rendered Chesapeake Crossing “unsafe in the event of a fire.” As a result of Plaintiff’s unadorned negligence allegation, this defendant is left to guess and speculate as to what those acts of omission and/or commission were, when those acts occurred, and which of the nine different Defendants committed those acts. Because Plaintiff is under an affirmative obligation to plead based on a good faith belief as to the facts that support a claim, *see* Va. Code § 8.01-271.1, more than an undated, unattributed, and unspecified allegation of negligence is required.

9. Because Plaintiff’s conclusory allegation against this defendant is devoid of any factual support, the Complaint does not state a cause of action and the Complaint must be dismissed. *See Bush v. Serco, Inc.*, 92 Va. Cir. 164 (City of Norfolk 2015) (sustaining a demurrer because the complaint failed to identify which named defendant committed each alleged act of negligence).

10. If the Court determines that Plaintiff’s Complaint is not subject to dismissal pursuant to demurrer, this defendant, in the alternative, moves the Court to require Plaintiff to file and serve a bill of particulars. Such a bill of particulars must amplify the factual basis for Plaintiff’s claim against it in order to inform this defendant – and this Court – of the true nature of the claim.

WHEREFORE, the defendant, Chesapeake Crossing Seniors Community One, L.P., respectfully requests that this Court enter an order sustaining its Demurrer, or, in the alternative, requiring Plaintiff to serve and file a bill of particulars amplifying the basis for its claim against this defendant, awarding costs and fees expended in the defense of this action, and providing such other and further relief as this Court deems appropriate and necessary.

**CHESAPEAKE CROSSING SENIORS
COMMUNITY ONE, L.P.**

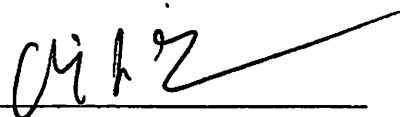
By: 
Counsel

Michael L. AtLee (VSB No: 43809)
HALL, FOX AND ATLEE, P.C.
One Manhattan Square
Hampton, Virginia 23666
Telephone: (757) 865-4364
Facsimile: (757) 865-4374
mike@hallfoxandatlee.com
*Counsel for Defendant Chesapeake Crossing
Seniors Community One, L.P.*

I hereby certify that on the 20th day of December, 2018, I mailed a true copy of the foregoing to:

Ellen M. Porter, Esquire
The Joel Bieber Firm
6806 Paragon Place, Suite 100
Richmond, Virginia 23230
Counsel for Plaintiff

Robert Wm. Best, Esquire
Midkiff, Muncie & Ross, P.C.
300 Arboretum Place, Suite 420
Richmond, Virginia 23236
Counsel for Defendant Boyd Corporation



LAW OFFICES
HALL, FOX AND ATLEE, P.C.
ONE MANHATTAN SQUARE
HAMPTON, VIRGINIA 23666

RICHARD Y. ATLEE
MICHAEL L. ATLEE
MICHAEL W. SMITH

ROY B. FOX, JR. (1920-1985)
LEWIS H. HALL, JR. (1907-1995)
AREA CODE 757
TELEPHONE: 865-4364
FACSIMILE: 865-4374

December 20, 2018

The Honorable Alan P. Krasnoff, Clerk
Circuit Court, City of Chesapeake
307 Albemarle Drive
Suite 300A
Chesapeake, Virginia 23322-5579

FILED IN CLERK'S OFFICE
2018 DEC 26 PM 3:12
CHESAPEAKE CIRCUIT COURT
BY _____ D.G.

Re: **Valencia Jones, as Administrator of the Estate for Lydia M.
Somerville, Deceased v. Chesapeake Crossing, Inc., et al**
Case No: CL18-7913
Our File: SF 14339

Dear Mr. Krasnoff:

Please file the enclosed Answer to Complaint and Demurrer to Complaint, or, in the alternative, Motion for Bill of Particulars with the other papers in the above captioned case on behalf of the defendant, Chesapeake Crossing Seniors Community One, L.P.

By copy of this letter I am sending copies of these pleadings to counsel of record herein.

Thank you for your courtesy.

Yours very truly,

HALL, FOX AND ATLEE, P.C.


Michael L. AtLee

MLA/ci
Enclosure

cc: Ellen M. Porter, Esquire
Robert Wm. Best, Esquire

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

**VALENCIA JONES, as Administrator of
the Estate for LYDIA M. SOMERVILLE,
Deceased**

Plaintiff

v.

CASE NO. CL18-7913

CHESAPEAKE CROSSING, INC.

and

CHESAPEAKE CROSSING TWO, INC.

and

CHESAPEAKE CROSSING THREE, INC.

CHESAPEAKE CROSSING FOUR, LLC

and

CHESAPEAKE CROSSING FIVE, LLC

**CHESAPEAKE CROSSING SENIORS
COMMUNITY ONE, L.P.**

and

**CHESAPEAKE CROSSING
SENIORS COMMUNITY TWO, L.P.**

and

**CHESAPEAKE CROSSING
SENIORS COMMUNITY THREE, L.L.L.P.**

and

BOYD CORPORATION

Defendants

FILED IN CLERK'S OFFICE
2018 DEC 26 PM 3:12
CHESAPEAKE CIRCUIT COURT
BY _____ D.C.

ANSWER TO COMPLAINT

Defendant, CHESAPEAKE CROSSING SENIORS COMMUNITY ONE, L.P., by counsel, now comes and says in response to the Complaint filed herein:

1. With respect to the allegations in paragraph 1 of the Complaint, it is admitted that the defendant, Chesapeake Crossing Seniors Community One, L.P., is the owner of the subject premises. It is denied that the remaining defendants own the premises.

2. With respect to the allegations in paragraph 2 of the Complaint, this defendant admits that Lydia M. Somerville was a tenant of Chesapeake Crossing Seniors Community One, L.P.

3. With respect to the allegations in paragraph 3 of the Complaint, this defendant admits that a lightning strike ignited a fire; however, this defendant is without sufficient knowledge so as to admit or deny the remaining allegations.

4. With respect to the allegations in paragraph 4 of the Complaint, they call for legal conclusions and do not require a response from this defendant.

5. This defendant denies the allegations in paragraph 5 of the Complaint.

6. This defendant denies the allegations in paragraph 6 of the Complaint.

7. Each and every allegation of negligence charged by the plaintiff to this defendant is particularly and specifically denied.

8. This defendant denies being guilty of any act which proximately caused the incident and death of which complaint is made.

9. This defendant denies having violated or breached any duty or duties owing to plaintiff's decedent in the premises.

10. This defendant denies that plaintiff's decedent sustained injuries resulting in death and will require strict proof in connection therewith.

11. This defendant denies being indebted to the plaintiff in any sum for the reasons set forth in the Complaint, or for any other reasons.

12. That as to the allegations of fact, this defendant does not know whether such fact or facts exist or existed and shall require strict proof of the plaintiff in all particulars pertaining to such allegations.

13. If plaintiff's decedent sustained injuries resulting in death, then such injuries and resultant death were due to the negligence of a person or persons other than this defendant.

14. Protesting its own negligence, this defendant states that even if it were guilty of any negligence, which is expressly denied, such negligence, if any, was not a proximate cause of the incident of which complaint is made, but a remote cause.

15. Any fact not specifically admitted is denied.

16. Any and all other defenses which may be assigned at or before trial, or which may be justified by the evidence upon trial.

17. Trial by jury of any and all issues triable of right by a jury is hereby demanded.

WHEREFORE, having fully answered, the defendant, CHESAPEAKE CROSSING SENIORS COMMUNITY ONE, L.P., by counsel, prays for judgment against the plaintiff for its costs expended in this action, with interest at the legal rate until paid, together with such further and general relief as this Court may find warranted.

**CHESAPEAKE CROSSING SENIORS
COMMUNITY ONE, L.P.**

By: _____


Of Counsel

Michael L. AtLee (VSB No: 43809)
HALL, FOX AND ATLEE, P.C.
One Manhattan Square
Hampton, Virginia 23666
Telephone: (757) 865-4364
Facsimile: (757) 865-4374
mike@hallfoxandatlee.com
*Counsel for Defendant Chesapeake Crossing
Seniors Community One, L.P.*

I hereby certify that on the 20th day of December, 2018, I mailed a true copy of the
foregoing Answer to Complaint to:

Ellen M. Porter, Esquire
The Joel Bieber Firm
6806 Paragon Place, Suite 100
Richmond, Virginia 23230
Counsel for Plaintiff

Robert Wm. Best, Esquire
Midkiff, Muncie & Ross, P.C.
300 Arboretum Place, Suite 420
Richmond, Virginia 23236
Counsel for Defendant Boyd Corporation



VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

**VALENCIA JONES, as Administrator of
the Estate for LYDIA M. SOMERVILLE,
Deceased**

Plaintiff

v.

CASE NO. CL18-7913

CHESAPEAKE CROSSING, INC.

and

CHESAPEAKE CROSSING TWO, INC.

and

CHESAPEAKE CROSSING THREE, INC.

CHESAPEAKE CROSSING FOUR, LLC

and

CHESAPEAKE CROSSING FIVE, LLC

**CHESAPEAKE CROSSING SENIORS
COMMUNITY ONE, L.P.**

and

**CHESAPEAKE CROSSING
SENIORS COMMUNITY TWO, L.P.**

and

**CHESAPEAKE CROSSING
SENIORS COMMUNITY THREE, L.L.L.P.**

and

BOYD CORPORATION

Defendants

FILED IN CLERK'S OFFICE
2018 DEC 26 PM 3:12
CHESAPEAKE CIRCUIT COURT
BY _____ D.C.

DEMURRER TO COMPLAINT, OR, IN THE ALTERNATIVE, MOTION FOR BILL OF PARTICULARS

Defendants, CHESAPEAKE CROSSING, INC., CHESAPEAKE CROSSING TWO, INC., CHESAPEAKE CROSSING THREE, INC., CHESAPEAKE CROSSING FOUR, LLC, CHESAPEAKE CROSSING FIVE, LLC, CHESAPEAKE CROSSING SENIORS COMMUNITY TWO, L.P. and CHESAPEAKE CROSSING SENIORS COMMUNITY THREE, L.L.L.P., by counsel, pursuant to Virginia Code § 8.01-273, file their demurrer to the Complaint, or, in the alternative, pursuant to Rule 3:7 of *The Rules of the Supreme Court of Virginia*, move the Court to order Plaintiff to file a bill of particulars, and in support states as follows:

STANDARD ON DEMURRER

1. The standard for reviewing a demurrer has been long established in Virginia. While a court assumes on demurrer that all material facts, implied facts, and reasonable inferences from those facts in a complaint are true, *Assurance Data, Inc. v. Malyevac*, 286 Va. 137, 143, 747 S.E.2d 804 (2013), a court is not required to “accept the veracity of conclusions of law camouflaged as factual allegations or inferences,” *AGCS Marine Ins. Co. v. Arlington Cty.*, 293 Va. 469, 473, 800 S.E.2d 159, 161 (2017). Moreover, a court is not bound by “conclusory allegations.” *Ogunde v. Prison Health Servs., Inc.*, 274 Va. 55, 66, 645 S.E.2d 520, 527 (2007). When documents are incorporated into a complaint or attached to it, a court “may ignore a party’s factual allegations contradicted by the terms of authentic, unambiguous documents that properly are a part of the pleadings.” *Ward’s Equip., Inc. v. New Holland N. Am.*, 254 Va. 379, 382, 493 S.E.2d 516 (1997). Accordingly, “the sole question to be decided by the trial court is whether the facts thus pleaded, implied, and fairly and justly inferred are legally sufficient to

state a cause of action against the defendant.” *Thompson v. Skate Am., Inc.*, 261 Va. 121, 128, 540 S.E.2d 123, 126 (2001).

STATEMENT OF CASE

2. This case arises from a fire that occurred on or about July 15, 2017, at a senior-living apartment complex located at 1937 Robert Hall Boulevard in Chesapeake, Virginia. Compl. ¶¶ 1, 3. The complex is allegedly owned by nine different defendants: Chesapeake Crossing, Inc., Chesapeake Crossing Two, Inc., Chesapeake Crossing Three, Inc., Chesapeake Crossing Four, LLC, Chesapeake Crossing Five, LLC, Chesapeake Crossing Senior Community One, L.P., Chesapeake Crossing Seniors Community Two, L.P., Chesapeake Crossing Seniors Community Three, L.L.L.P., and Boyd Corporation, which collection of “owners and landlords” are grouped and referred to as the “Defendants” throughout the Complaint. *See generally id.*

3. Plaintiff alleges that the roof of Building A/1000 caught on fire and then spread from the roof to the attic and then to Building D/4000 and to the Decedent’s apartment. *Id.* ¶ 3. Defendant’s Decedent, who is alleged to have been a resident and tenant in Apartment 4308 in Building D/4000, died in the fire. *Id.* ¶¶ 2, 3.

PERTINENT ALLEGATION

4. Plaintiff’s sole allegation of negligence is found in Paragraph 5 of the Complaint wherein Plaintiff asserts, “Notwithstanding these duties [to use reasonable care to maintain and repair the property and to keep areas in good repair and in compliance with the Virginia Uniform Statewide Building Code, Fire Prevention Code, and Property Maintenance Code], Defendants *negligently failed to maintain and repair* Chesapeake Crossing. This negligence rendered Chesapeake Crossing unsafe in the event of a fire and endangered the lives of all residents of Chesapeake Crossing, including Decedent.” *Id.* ¶ 5 (emphasis supplied).

ARGUMENT

5. There are two rules of pleading that are at issue. First, the general parameters of pleading are set out in Rule 1:4(d): “Every pleading shall state the facts on which the party relies in numbered paragraphs, and it shall be sufficient if it clearly informs the opposite party of the true nature of the claim or defense.” Second, with respect to allegations of negligence, Rule 3:18(b) provides: “An allegation of negligence or contributory negligence is sufficient without specifying the particulars of the negligence.” To the extent that a Complaint is found wanting but a demurrer is not appropriate, Rule 3:7 gives this Court the discretion to order a party “to amplify any pleading that does not provide notice of a claim or defense adequate to permit the adversary a fair opportunity to respond or prepare the case.”

6. In this case, Plaintiff has not pled any *facts* to support her assertion that “Defendants negligently failed to maintain and repair Chesapeake Crossing.” The Complaint is devoid of any facts alleging who did what or failed to do what and is devoid of any facts alleging when the negligent acts occurred. The sole allegation of negligence is not an allegation of fact, but is a legal conclusion premised on another legal conclusion that *all Defendants* had duties to the Decedent under the Virginia Uniform Statewide Building Code, Fire Prevention Code, and Property Maintenance Code. In a complaint where a plaintiff asserted that landlords were negligent in performing repairs, the Supreme Court of Virginia observed, “The allegation that the Landlords were negligent in their repairs relative to lead paint is a legal conclusion,” which legal conclusion was not taken as true on demurrer. *Steward v. Holland Family Props., LLC*, 284 Va. 282, 292, 726 S.E.2d 251, 257 (2012). There is no distinction that can be made between the legal conclusion identified by the Supreme Court in *Steward* and the legal conclusion in this Complaint. Without any facts, the Complaint fails to state a cause of action.

7. To be sure, Rule 3:18 does not require specification of the *particulars* of the

alleged negligence, but it is beyond argument that Plaintiff is required to plead some *facts* to support a negligence claim against these defendants. As the Supreme Court of Virginia has stated, “[T]he party filing a civil action has an obligation to express the nature of the claim being asserted, and the identity of the party against whom it is asserted, in clear and unambiguous language so as to inform both the court and the opposing party of the nature of the claim being made.” *Estate of James v. Peyton*, 277 Va. 443, 450, 674 S.E.2d 864, 867 (2009). Moreover, “Litigants may not make baseless accusations in a pleading and hope to ‘have support after discovery.’ Litigants are required to plead only those claims that have factual support.” *N. Va. Real Estate, Inc. v. Martins*, 79 Va. Cir. 667, 680 (Fairfax Cnty. 2009) (citing and quoting *Ford Motor Co. v. Benitez*, 273 Va. 242, 639 S.E.2d 203 (2007)).

8. As it stands, Plaintiff has indiscriminately grouped nine different defendants, has asserted *all of the Defendants* had duties under building, fire, and maintenance codes, and has nakedly asserted that all of Defendants’ unspecified negligent acts related to repair and maintenance rendered Chesapeake Crossing “unsafe in the event of a fire.” As a result of Plaintiff’s unadorned negligence allegation, these defendants are left to guess and speculate as to what those acts of omission and/or commission were, when those acts occurred, and which of the nine different Defendants committed those acts. Because Plaintiff is under an affirmative obligation to plead based on a good faith belief as to the facts that support a claim, *see* Va. Code § 8.01-271.1, more than an undated, unattributed, and unspecified allegation of negligence is required.

9. Because Plaintiff’s conclusory allegation against these defendants is devoid of any factual support, the Complaint does not state a cause of action and the Complaint must be dismissed. *See Bush v. Serco, Inc.*, 92 Va. Cir. 164 (City of Norfolk 2015) (sustaining a demurrer because the complaint failed to identify which named defendant committed each

alleged act of negligence).

10. If the Court determines that Plaintiff's Complaint is not subject to dismissal pursuant to demurrer, these defendants, in the alternative, move the Court to require Plaintiff to file and serve a bill of particulars. Such a bill of particulars must amplify the factual basis for Plaintiff's claim against them in order to inform these defendants – and this Court – of the true nature of the claim.

WHEREFORE, the defendants, CHESAPEAKE CROSSING, INC., CHESAPEAKE CROSSING TWO, INC. CHESAPEAKE CROSSING THREE, INC., CHESAPEAKE CROSSING FOUR, LLC, CHESAPEAKE CROSSING FIVE, LLC, CHESAPEAKE CROSSING SENIORS COMMUNITY TWO, L.P., and CHESAPEAKE CROSSING SENIORS COMMUNITY THREE, L.L.L.P., respectfully request that this Court enter an order sustaining their Demurrer, or, in the alternative, requiring Plaintiff to serve and file a bill of particulars amplifying the basis for its claim against these defendants, awarding costs and fees expended in the defense of this action, and providing such other and further relief as this Court deems appropriate and necessary.

**CHESAPEAKE CROSSING, INC.
CHESAPEAKE CROSSING TWO, INC.
CHESAPEAKE CROSSING THREE, INC.
CHESAPEAKE CROSSING FOUR, LLC
CHESAPEAKE CROSSING FIVE, LLC
CHESAPEAKE CROSSING SENIORS
COMMUNITY TWO, L.P.
and
CHESAPEAKE CROSSING SENIORS
COMMUNITY THREE, L.L.L.P.**

By:  _____
Of Counsel

Michael L. AtLee (VSB No: 43809)

HALL, FOX AND ATLEE, P.C.

One Manhattan Square

Hampton, Virginia 23666

Telephone: (757) 865-4364

Facsimile: (757) 865-4374

mike@hallfoxandatlee.com

Counsel for Defendants, Chesapeake Crossing, Inc.,

Chesapeake Crossing Two, Inc., Chesapeake Crossing

Three, Inc., Chesapeake Crossing Four, LLC,

Chesapeake Crossing Five, LLC, Chesapeake Crossing

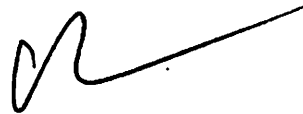
Seniors Community Two, L.P., and Chesapeake

Crossing Seniors Community Three, L.L.P.

I hereby certify that on the 20th day of December, 2018, I mailed a true copy of the foregoing to:

Ellen M. Porter, Esquire
The Joel Bieber Firm
6806 Paragon Place, Suite 100
Richmond, Virginia 23230
Counsel for Plaintiff

Robert Wm. Best, Esquire
Midkiff, Muncie & Ross, P.C.
300 Arboretum Place, Suite 420
Richmond, Virginia 23236
Counsel for Defendant Boyd Corporation



LAW OFFICES
HALL, FOX AND ATLEE, P.C.
ONE MANHATTAN SQUARE
HAMPTON, VIRGINIA 23666

RICHARD Y. ATLEE
MICHAEL L. ATLEE
MICHAEL W. SMITH

ROY B. FOX, JR. (1920-1985)
LEWIS H. HALL, JR. (1907-1995)

AREA CODE 757
TELEPHONE: 865-4364
FACSIMILE: 865-4374

December 20, 2018

The Honorable Alan P. Krasnoff, Clerk
Circuit Court, City of Chesapeake
307 Albemarle Drive
Suite 300A
Chesapeake, Virginia 23322-5579

FILED IN CLERK'S OFFICE
2018 DEC 26 PM 3:12
CHESAPEAKE CIRCUIT COURT
BY _____ D.C.

Re: **Valencia Jones, as Administrator of the Estate for Lydia M.
Somerville, Deceased v. Chesapeake Crossing, Inc., et al**
Case No: CL18-7913
Our File: SF 14339

Dear Mr. Krasnoff:

Please file the enclosed Answer to Complaint and Demurrer to Complaint, or, in the alternative, Motion for Bill of Particulars with the other papers in the above captioned case on behalf of the defendants, Chesapeake Crossing Inc., Chesapeake Crossing Two, Inc., Chesapeake Crossing Three, Inc., Chesapeake Crossing Four, LLC, Chesapeake Crossing Five, LLC, Chesapeake Crossing Seniors Community Two, L.P., and Chesapeake Crossing Seniors Community Three, L.L.L.P.

By copy of this letter I am sending copies of these pleadings to counsel of record herein.

Thank you for your courtesy.

Yours very truly,

HALL, FOX AND ATLEE, P.C.



Michael L. AtLee

MLA/ci
Enclosures

cc: Ellen M. Porter, Esquire
Robert Wm. Best, Esquire

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

**VALENCIA JONES, as Administrator of
the Estate for LYDIA M. SOMERVILLE,
Deceased**

Plaintiff

v.

CASE NO. CL18-7913

CHESAPEAKE CROSSING, INC.

and

CHESAPEAKE CROSSING TWO, INC.

and

CHESAPEAKE CROSSING THREE, INC.

CHESAPEAKE CROSSING FOUR, LLC

and

CHESAPEAKE CROSSING FIVE, LLC

**CHESAPEAKE CROSSING SENIORS
COMMUNITY ONE, L.P.**

and

**CHESAPEAKE CROSSING
SENIORS COMMUNITY TWO, L.P.**

and

**CHESAPEAKE CROSSING
SENIORS COMMUNITY THREE, L.L.L.P.**

and

BOYD CORPORATION

Defendants

FILED IN CLERK'S OFFICE
2018 DEC 26 PM 3:12
CHESAPEAKE CIRCUIT COURT
BY _____ D.C.

ANSWER TO COMPLAINT

Defendants, CHESAPEAKE CROSSING, INC., CHESAPEAKE CROSSING TWO, INC., CHESAPEAKE CROSSING THREE, INC., CHESAPEAKE CROSSING FOUR, LLC, CHESAPEAKE CROSSING FIVE, LLC, CHESAPEAKE CROSSING SENIORS COMMUNITY TWO, L.P. and CHESAPEAKE CROSSING SENIORS COMMUNITY THREE, L.L.L.P., by counsel, now come and say in response to the Complaint filed herein:

1. These defendants deny the allegations in paragraph 1 of the Complaint.
2. With respect to the allegations in paragraph 2 of the Complaint, these defendants deny that Lydia M. Somerville was a resident at any of these defendants' properties.
3. With respect to the allegations in paragraph 3 of the Complaint, these defendants deny that lightning struck any of these Chesapeake entities' properties.
4. With respect to the allegations in paragraph 4 of the Complaint, it is denied that these defendants owned or maintained the property where the incident occurred.
5. These defendants deny the allegations in paragraph 5 of the Complaint.
6. These defendants deny the allegations in paragraph 6 of the Complaint.
7. Each and every allegation of negligence charged by the plaintiff to these defendants is particularly and specifically denied.
8. These defendants deny being guilty of any act which proximately caused the incident and death of which complaint is made.
9. These defendants deny having violated or breached any duty or duties owing to plaintiff's decedent in the premises.
10. These defendants deny that plaintiff's decedent sustained injuries resulting in death and will require strict proof in connection therewith.

11. These defendants deny being indebted to the plaintiff in any sum for the reasons set forth in the Complaint, or for any other reasons.

12. That as to the allegations of fact, these defendants do not know whether such fact or facts exist or existed and shall require strict proof of the plaintiff in all particulars pertaining to such allegations.

13. If plaintiff's decedent sustained injuries resulting in death, then such injuries and resultant death were due to the negligence of a person or persons other than these defendants.

14. Protesting their own negligence, these defendants state that even if they were guilty of any negligence, which is expressly denied, such negligence, if any, was not a proximate cause of the incident of which complaint is made, but a remote cause.

15. Any fact not specifically admitted is denied.

16. Any and all other defenses which may be assigned at or before trial, or which may be justified by the evidence upon trial.

17. Trial by jury of any and all issues triable of right by a jury is hereby demanded.

WHEREFORE, having fully answered, the defendants, CHESAPEAKE CROSSING, INC., CHESAPEAKE CROSSING TWO, INC. CHESAPEAKE CROSSING THREE, INC., CHESAPEAKE CROSSING FOUR, LLC, CHESAPEAKE CROSSING FIVE, LLC, CHESAPEAKE CROSSING SENIORS COMMUNITY TWO, L.P., and CHESAPEAKE CROSSING SENIORS COMMUNITY THREE, L.L.L.P., by counsel, pray for judgment against the plaintiff for their costs expended in this action, with interest at the legal rate until paid, together with such further and general relief as this Court may find warranted.

**CHESAPEAKE CROSSING, INC.
CHESAPEAKE CROSSING TWO, INC.
CHESAPEAKE CROSSING THREE, INC.
CHESAPEAKE CROSSING FOUR, LLC
CHESAPEAKE CROSSING FIVE, LLC
CHESAPEAKE CROSSING SENIORS
COMMUNITY TWO, L.P.
and
CHESAPEAKE CROSSING SENIORS
COMMUNITY THREE, L.L.L.P.**

By: 
Of Counsel

Michael L. AtLee (VSB No: 43809)
HALL, FOX AND ATLEE, P.C.
One Manhattan Square
Hampton, Virginia 23666
Telephone: (757) 865-4364
Facsimile: (757) 865-4374
mike@hallfoxandatlee.com
*Counsel for Defendants, Chesapeake Crossing, Inc.,
Chesapeake Crossing Two, Inc., Chesapeake Crossing
Three, Inc., Chesapeake Crossing Four, LLC,
Chesapeake Crossing Five, LLC, Chesapeake Crossing
Seniors Community Two, L.P., and Chesapeake
Crossing Seniors Community Three, L.L.L.P.*

I hereby certify that on the 20th day of December, 2018, I mailed a true copy of the foregoing Answer to Complaint to:

Ellen M. Porter, Esquire
The Joel Bieber Firm
6806 Paragon Place, Suite 100
Richmond, Virginia 23230
Counsel for Plaintiff

Robert Wm. Best, Esquire
Midkiff, Muncie & Ross, P.C.
300 Arboretum Place, Suite 420
Richmond, Virginia 23236
Counsel for Defendant Boyd Corporation

A handwritten signature in black ink, appearing to be 'R. Best', is written above a horizontal line.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

**VALENCIA JONES, as Administrator of the
Estate for LYDIA M. SOMERVILLE, Deceased,**

Plaintiff,

**CASE NO.: CL18-7913
JURY TRIAL DEMANDED**

v.

CHESAPEAKE CROSSING, INC.

**Serve: David S. Rudiger
544 Newtown Rd Ste. 128
Virginia Beach, Virginia 23462**

and

CHESAPEAKE CROSSING TWO, INC.

**Serve: David S. Rudiger
544 Newtown Rd Ste. 128
Virginia Beach, Virginia 23462**

and

CHESAPEAKE CROSSING THREE, INC.

**Serve: David S. Rudiger
544 Newtown Rd Ste. 128
Virginia Beach, Virginia 23462**

CHESAPEAKE CROSSING FOUR, LLC

**Serve: David S. Rudiger
544 Newtown Rd Ste. 128
Virginia Beach, Virginia 23462**

and

CHESAPEAKE CROSSING FIVE, LLC

**Serve: David S. Rudiger
544 Newtown Rd Ste. 128
Virginia Beach, Virginia 23462**

FILED IN CLERK'S OFFICE
2018 DEC -3 PM 2:24
CHESAPEAKE CIRCUIT COURT
BY _____ D.C.

**CHESAPEAKE CROSSING
SENIORS COMMUNITY ONE, L.P.**

**Serve: David S. Rudiger
544 Newtown Rd Ste. 128
Virginia Beach, Virginia 23462**

and

**CHESAPEAKE CROSSING
SENIORS COMMUNITY TWO, L.P.**

**Serve: David S. Rudiger
544 Newtown Rd Ste. 128
Virginia Beach, Virginia 23462**

and

**CHESAPEAKE CROSSING
SENIORS COMMUNITY THREE, L.L.L.P.**

**Serve: David S. Rudiger
544 Newtown Rd Ste. 128
Virginia Beach, Virginia 23462**

and

BOYD CORPORATION,

**Serve: David S. Rudiger
544 Newtown Rd Ste. 128
Virginia Beach, Virginia 23462**

Defendants.

COMPLAINT

COMES NOW the Plaintiff, Valencia Jones, as Administrator of the Estate of Lydia M. Somerville, Deceased, by counsel, and moves for judgment against the defendants, CHESAPEAKE CROSSING, INC., CHESAPEAKE CROSSING TWO, INC., CHESAPEAKE CROSSING THREE, INC., CHESAPEAKE CROSSING FOUR, LLC, CHESAPEAKE

FILED IN CLERK'S OFFICE
2010 DEC -3 PM 2:24
CHESAPEAKE CIRCUIT COURT
BY _____ D.C.

CROSSING FIVE, LLC, CHESAPEAKE CROSSING SENIORS COMMUNITY ONE, L.P., CHESAPEAKE CROSSING SENIORS COMMUNITY TWO, L.P., CHESAPEAKE CROSSING SENIORS COMMUNITY THREE, L.L.L.P., and BOYD CORPORATION (collectively "Defendants") on the grounds and in the amount set forth below:

1. Defendants are the owners and landlords of "Chesapeake Crossing," a senior-living apartment complex located at 1937 Robert Hall Boulevard, Chesapeake, Virginia. Chesapeake Crossing comprising five separate but connected structures containing apartment homes.

2. On or about July 15, 2017, Lydia M. Somerville ("Decedent") was a resident of Chesapeake Crossing and tenant of the Defendants. She lived in Apartment 4308 in Building D/4000.

3. That same day, the roof of Chesapeake Crossing Building A/1000 caught fire. The fire spread from the roof of Building A/1000 down to its attic, before spreading to Building D/4000 and the Decedent's apartment. The Decedent died in the fire.

4. Defendants, as owners and landlords of Chesapeake Crossing, had a duty to use reasonable care to maintain and repair the property in a reasonably safe condition for the use of tenants and to keep areas in good repair and in compliance with the Virginia uniform statewide building code, fire prevention code, and property maintenance code.

5. Notwithstanding these duties, Defendants negligently failed to maintain and repair Chesapeake Crossing. This negligence rendered Chesapeake Crossing unsafe in the event of a fire and endangered the lives of all the residents of Chesapeake Crossing, including Decedent. As a direct and proximate cause of Defendants' negligence, Decedent died in the July 17 fire.

6. Valencia Jones, as Administrator for the Estate of Lydia Somerville, is entitled by Virginia law to recover for the following on behalf of the statutory beneficiaries of the Estate:

- a. Sorrow, mental anguish, and solace including loss of society, companionship, comfort, guidance, kindly offices, and advice of the Decedent;
- b. Compensation for the reasonably expected loss of services, protection, care, and assistance provided by the Decedent;
- c. Compensation for the reasonably expected loss of income of the Decedent;
- and
- d. Reasonable funeral expenses.

WHEREFORE, Valencia Jones, as Administrator of the Estate of Lydia M. Somerville, moves this Court for judgment against Defendants, jointly and severally, in the amount of \$35,500,000 in compensatory damages, together with interest on such damages from July 15, 2017 until paid in full, her costs expended in this matter, and such other relief as is just and proper.

VALENCIA JONES, Administrator of the
Estate of LYDIA M. SOMERVILLE,
Deceased

By: 

Of Counsel

Jason M. Hart, Esquire (VSB#: 76818)
jhart@joelbieber.com
Ellen M. Porter, Esquire (VSB#71373)
eport@joelbieber.com
The Joel Bieber Firm
6806 Paragon Place, Suite 100
Richmond, VA 23230
Telephone: (804) 358-2200
Facsimile: (804) 385-2262

COVER SHEET FOR FILING CIVIL ACTIONS
COMMONWEALTH OF VIRGINIA

Case No. CL18-7913
(CLERK'S OFFICE USE ONLY)

CHESAPEAKE

Circuit Court

Valencia Jones, as Administrator of the Estate

v./In re:

Chesapeake Crossing, Inc., et al.,

PLAINTIFF(S)

DEFENDANT(S)

for Lydia M. Somerville, Deceased

I, the undersigned ☐ plaintiff ☐ defendant ☒ attorney for ☒ plaintiff ☐ defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL

Subsequent Actions

- ☐ Claim Impleading Third Party Defendant
 - ☐ Monetary Damages
 - ☐ No Monetary Damages
- ☐ Counterclaim
 - ☐ Monetary Damages
 - ☐ No Monetary Damages
- ☐ Cross Claim
- ☐ Interpleader
- ☐ Reinstatement (other than divorce or driving privileges)
- ☐ Removal of Case to Federal Court

Business & Contract

- ☐ Attachment
- ☐ Confessed Judgment
- ☐ Contract Action
- ☐ Contract Specific Performance
- ☐ Detinue
- ☐ Garnishment

Property

- ☐ Annexation
- ☐ Condemnation
- ☐ Ejectment
- ☐ Encumber/Sell Real Estate
- ☐ Enforce Vendor's Lien
- ☐ Escheatment
- ☐ Establish Boundaries
- ☐ Landlord/Tenant
 - ☐ Unlawful Detainer
- ☐ Mechanics Lien
- ☐ Partition
- ☐ Quiet Title
- ☐ Termination of Mineral Rights

Tort

- ☐ Asbestos Litigation
- ☐ Compromise Settlement
- ☐ Intentional Tort
- ☐ Medical Malpractice
- ☐ Motor Vehicle Tort
- ☐ Product Liability
- ☒ Wrongful Death
- ☐ Other General Tort Liability

ADMINISTRATIVE LAW

- ☐ Appeal/Judicial Review of Decision of (select one)
 - ☐ ABC Board
 - ☐ Board of Zoning
 - ☐ Compensation Board
 - ☐ DMV License Suspension
 - ☐ Employee Grievance Decision
 - ☐ Employment Commission
 - ☐ Local Government
 - ☐ Marine Resources Commission
 - ☐ School Board
 - ☐ Voter Registration
 - ☐ Other Administrative Appeal

DOMESTIC/FAMILY

- ☐ Adoption
 - ☐ Adoption - Foreign
- ☐ Adult Protection
- ☐ Annulment
 - ☐ Annulment - Counterclaim/Responsive Pleading
- ☐ Child Abuse and Neglect - Unfounded Complaint
- ☐ Civil Contempt
- ☐ Divorce (select one)
 - ☐ Complaint - Contested*
 - ☐ Complaint - Uncontested*
 - ☐ Counterclaim/Responsive Pleading
 - ☐ Reinstatement - Custody/Visitation/Support/Equitable Distribution
- ☐ Separate Maintenance
 - ☐ Separate Maintenance Counterclaim

WRITS

- ☐ Certiorari
- ☐ Habeas Corpus
- ☐ Mandamus
- ☐ Prohibition
- ☐ Quo Warranto

PROBATE/WILLS AND TRUSTS

- ☐ Accounting
- ☐ Aid and Guidance
- ☐ Appointment (select one)
 - ☐ Guardian/Conservator
 - ☐ Standby Guardian/Conservator
 - ☐ Custodian/Successor Custodian (UTMA)
- ☐ Trust (select one)
 - ☐ Impress/Declare/Create
 - ☐ Reformation
- ☐ Will (select one)
 - ☐ Construe
 - ☐ Contested

MISCELLANEOUS

- ☐ Amend Death Certificate
- ☐ Appointment (select one)
 - ☐ Church Trustee
 - ☐ Conservator of Peace
 - ☐ Marriage Celebrant
- ☐ Approval of Transfer of Structured Settlement
- ☐ Bond Forfeiture Appeal
- ☐ Declaratory Judgment
- ☐ Declare Death
- ☐ Driving Privileges (select one)
 - ☐ Reinstatement pursuant to § 46.2-427
 - ☐ Restoration - Habitual Offender or 3rd Offense
- ☐ Expungement
- ☐ Firearms Rights - Restoration
- ☐ Forfeiture of Property or Money
- ☐ Freedom of Information
- ☐ Injunction
- ☐ Interdiction
- ☐ Interrogatory
- ☐ Judgment Lien-Bill to Enforce
- ☐ Law Enforcement/Public Official Petition
- ☐ Name Change
- ☐ Referendum Elections
- ☐ Sever Order
- ☐ Taxes (select one)
 - ☐ Correct Erroneous State/Local
 - ☐ Delinquent
- ☐ Vehicle Confiscation
- ☐ Voting Rights - Restoration
- ☐ Other (please specify)

☒ Damages in the amount of \$ 35,500,000.00 are claimed.

DATE

Ellen M. Porter, Esq.

PRINT NAME

The Joel Bieber Firm

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

6806 Paragon Place, Suite 100, Richmond, VA 23230

EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

*"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

THE
JOEL BIEBER
FIRM

ATTORNEYS AND COUNSELORS AT LAW

John D. Ayers *
Courtney V. Bassani *
Joel D. Bieber ♦♦
Scott J. Bradley ♦■☆
James M. Brazas *
Christopher L. Daughtry **
Michael B. Eller ♦■
Andrea J. Geiger *
S. Michael Glass *
S. Geoffrey Glick ♦♦♦
Jason M. Hart *
Miranda G. James *▲

Robert K. Jenner ●♦▲
Thomas M. Konvicka *
Jenny E. Mattingley *
J. Miles Morgan **
Gregory T. O'Halloran *
Michelle A. Paul *
Joseph J. Perez *♦
Ellen M. Porter *
Paul C. Rathke ♦■♦
Caitlin P. St. Clair *
Trenita J. Stewart *
Richard W. Zahn, Jr. *

November 28, 2018

LICENSED TO PRACTICE IN:

*VA ♦NC ♦SC ■GA ▲PA ★LA ♦DC ♦WV ●MD ★MA
▲of Counsel

Alan P. Krasnoff, Clerk
Chesapeake Circuit Court
307 Albermarle Drive, Suite 300A
Chesapeake, VA 23322

Re: *Valencia Jones, as Administrator of the Estate of Lydia M. Somerville, Deceased v. Chesapeake Crossing, Inc., and Chesapeake Crossing Two, Inc., and Chesapeake Crossing Three, Inc., and Chesapeake Crossing Four, Inc., and Chesapeake Crossing Five, Inc., and Chesapeake Crossing Seniors Community One, L.P., and Chesapeake Crossing Seniors Community Two, L.P., and Chesapeake Crossing Seniors Community Three, L.L.L.P., and Boyd Corporation.*

Dear Mr. Krasnoff:


I am enclosing for filing the original along with one service copy of the Complaint on behalf of the Plaintiff, Valencia Jones, as Administrator of the Estate of Lydia M. Somerville, Deceased, and the Civil Cover Sheet.

Please prepare the Complaint, for service on Chesapeake Crossing, Inc., and Chesapeake Crossing Two, Inc., and Chesapeake Crossing Three, Inc., and Chesapeake Crossing Four, Inc., and Chesapeake Crossing Five, Inc., and Chesapeake Crossing Seniors Community One, L.P., and Chesapeake Crossing Seniors Community Two, L.P., and Chesapeake Crossing Seniors Community Three, L.L.L.P., and Boyd Corporation. I have enclosed our firm's check in the amount of \$349.00 to cover the cost of filing the Complaint. We will have the documents served by a private process server, the Marston Agency. Please notify my paralegal, Connie Kotula, at (804) 358-2200 when the Complaint and discovery have been prepared.

In addition, I have enclosed an extra copy of the Complaint to be retained for my records; please stamp this copy "Filed" and return it to me in the self-addressed envelope provided.

Thank you for your assistance. If you have any questions, please call me.

Sincerely yours,


Ellen M. Porter /ek

MGJ/ckk
Enclosures

12/3/18 Extra copy of
Complaint mailed in JARE w/receipt @

FILED IN CLERK'S OFFICE
2018 DEC -3 PM 2:23
CHESAPEAKE CIRCUIT COURT
D.C.