

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
OHIO, WESTERN DIVISION AT DAYTON

Donald Kahut, et al. v. NVR, Inc., et al.

Kahut · No. 3:25-cv-112 · Decided January 16, 2026

SUMMARY

The United States District Court for the Southern District of Ohio denied NVR, Inc.’s Rule 12(b)(6) motion to dismiss claims arising from alleged defects in the plaintiffs’ basement floor. The court clarified that Counts 1, 2, 4, and 5 remained pending and referred the case for mediation.

CASE DETAILS

COURT	United States District Court for the Southern District of Ohio, Western Division at Dayton
WRITING FOR THE COURT	Michael J. Newman
JURISDICTION	United States District Court for the Southern District of Ohio
DECIDED	January 16, 2026
DOCKET	3:25-cv-112
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs brought an eight-count civil action concerning alleged defects in their basement floor. NVR moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss Counts 3, 5, 6, 7, and 8. Plaintiffs voluntarily dismissed Counts 3, 6, 7, and 8, leaving Count 5 for decision on the motion.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true, construes the complaint in the plaintiff's favor, and draws reasonable inferences for the plaintiff, but need not accept legal conclusions or unwarranted factual inferences. The complaint must contain sufficient factual matter to state a plausible claim for relief.
PRECEDENTIAL VALUE	unpublished district court order
PARTIES	Donald Kahut, Cindy Kahut v. NVR, Inc., doing business as Ryan Homes, John Does 1-10

TOPICS

motions to dismiss

mediation

construction defects

construction law

civil procedure

PRACTICE AREAS

civil procedure

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contracts

torts

mediation

QUESTIONS PRESENTED

1. Whether NVR's Rule 12(b)(6) motion to dismiss the fraudulent misrepresentation and fraudulent concealment claims in Count 5 should be granted.
2. Whether the court should permit discovery and defer consideration of the parties' arguments until summary judgment rather than resolve them at the pleading stage.
3. Whether the case should be referred for mediation under 28 U.S.C. § 636(c) and Southern District of Ohio Civil Rule 16.3(a)(1).

HOLDINGS

1. The court denied NVR's motion to dismiss Count 5.
2. A complaint must plead sufficient factual matter to state a plausible claim for relief; the court accepts well-pleaded factual allegations as true and draws reasonable inferences for the plaintiff, but does not accept legal conclusions or unwarranted factual inferences as true.
3. The court referred the case to Magistrate Judge Peter B. Silvain, Jr., as mediation coordinator, directed assignment to an appropriate magistrate judge for mediation, and ordered the parties to participate in good faith.

KEY QUOTATIONS

“A complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” (Section I)

“Accordingly, Defendant’s motion to dismiss (Doc. No. 11) is **DENIED**.” (Section IV)

FACTUAL BACKGROUND

Donald and Cindy Kahut alleged that NVR, doing business as Ryan Homes, failed to repair or replace alleged defects in the basement floor of their residence. They asserted claims arising from the construction and related transactions, including contract, warranty, negligence, statutory, fraud, and promissory-estoppel theories. The opinion did not resolve the factual merits of the alleged basement-floor defects or the fraudulent misrepresentation and concealment allegations.

PROCEDURAL HISTORY

Plaintiffs sued NVR and alleged Doe defendants for breach of contract, breach of express warranties, negligence, statutory violations, fraud, promissory estoppel, negligent hiring and supervision, and breach of implied warranties. Plaintiffs moved to voluntarily dismiss Counts 3, 6, 7, and 8, and the court granted that

request. The court denied NVR's remaining Rule 12(b)(6) challenge to Count 5, clarified that Counts 1, 2, 4, and 5 remained pending against all defendants, and referred the case for mediation.

DISPOSITION

other

CASES CITED

- JPMorgan Chase Bank, N.A. v. Winget, 510 F.3d 577, 581 (6th Cir. 2007)
- Royal Truck & Trailer Sales & Serv., Inc. v. Kraft, 974 F.3d 756, 758 (6th Cir. 2020)
- Jones v. City of Cincinnati, 521 F.3d 555, 559 (6th Cir. 2008)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 557, 570 (2007)
- Meriwether v. Hartop, 992 F.3d 492, 514 (6th Cir. 2021)
- Humphreys v. Bank of Am., 557 Fed. App'x 416, 422 (6th Cir. 2014)
- Grose v. Caruso, 284 Fed. App'x 279, 284 (6th Cir. 2008)
- Nuchols v. Berrong, 141 Fed. App'x 451, 453 (6th Cir. 2005)
- LRL Prop. v. Portage Metro Hous. Auth., 55 F.3d 1097, 1113 (6th Cir. 1995)