

Commonwealth of Massachusetts
TRIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT

PLYMOUTH, ss.

CIVIL ACTION NO.:

MICHAEL AVITABILE AS NEXT FRIEND FOR
LUIGI AVITABILE AND LINA AVITABILE,
Plaintiffs

v.

STEPHEN STRAZ, INDIVIDUALLY,
AND STRAZ CONSTRUCTION, INC.,
Defendant

COMPLAINT AND

JURY DEMAND
FILED
COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPT. OF THE TRIAL COURT
PLYMOUTH COUNTY

JUL 18 2018


Clerk of Court

LUIGI AND LINA AVITABILES' COMPLAINT

OVERVIEW OF CASE

1. This is an action against Stephen Straz, individually and his company, Straz Construction, Inc., to recover damages after defendant took two deposits from plaintiffs totaling \$118,800.00, to rebuild plaintiffs' home located in Hanson, Massachusetts, after the home was destroyed by fire in a July 2017, for which defendant received the significant deposits and failed to perform.

PARTIES

2. Plaintiff, Michael Avitabile, is plaintiffs Luigi and Lina Avitabile son and Next Friend.
3. The plaintiffs, Luigi and Lina Avitabile, are elderly individuals whose address is 572 Brook Street, Hanson, Massachusetts 02341.
4. Defendant, Stephen Straz, is an individual who resides at 22 Plymouth Street, Quincy, Massachusetts.
5. The defendant, Straz Construction Incorporated, is a Massachusetts Corporation with its principle place of business at 231 Southern Artery, Quincy, MA 02169.

FACTS

6. In July 2017, plaintiffs' home was destroyed by fire.
7. Plaintiffs received disbursements from their homeowner's insurance policy to cover costs of temporary housing and rebuilding of plaintiffs' home.
8. In October 2017, defendant presented plaintiffs with AIA Document A101, a document created by the American Institute of Architects (hereinafter AIA), that defendant used as the contract for the reconstruction of plaintiff's home.
9. To induce plaintiffs to enter into the contract with defendant, defendant told the plaintiffs he was a member or somehow associated with AIA to lead the elderly plaintiffs to believe defendant was an engineer or architect.
10. Defendant is not a member or associated with AIA and is not an engineer or architect.
11. The October 20017 contract between the parties provided that all work would be completed by defendant "with in [sic] 6-8 months" of receipt of the deposit.
12. Defendant received the first deposit on October 30, 2017.
13. Plaintiffs' insurer paid for alternative living accommodations up to the policy limits.
14. Defendant's excessive delay and continued refusal to perform under the contract caused plaintiffs to incur significant additional living expenses not covered by their homeowners' insurance policy.
15. On October 30, 2017, plaintiffs paid a deposit to defendant Stephen Straz individually, and not as Straz Construction, via check number 1562485 in the amount of \$20,000.00.
16. Defendant negotiated the checks received from the plaintiffs through Santander Bank account number 231372691 shortly thereafter.

17. Defendant did not commence construction of plaintiffs' home and demanded an \$98,800.000 additional deposit from plaintiffs before defendant would commence work on plaintiff's reconstruction project.
18. On December 6, 2017, plaintiffs paid defendant with check number 1685617, the demanded second deposit in the amount of \$98,800.00 totaling \$118,800.00 in deposits.
19. Defendant negotiated the checks received from the plaintiffs through Santander Bank account number 231372691 shortly thereafter.
20. To reconstruct plaintiff's home, defendant is required to possess a valid Massachusetts Construction Supervisor License.
21. Defendant represented himself to the plaintiffs and Hanson Building Department as an individual who possesses a valid Massachusetts Construction Supervisor license.
22. Massachusetts law requires the person who is rebuilding plaintiffs' home, to possess a valid Massachusetts Construction Supervisor license.
23. Defendant has never possessed a valid Massachusetts Construction Supervisor license.
24. On or about December 28, 2017, defendant submitted building permit application number R-176145 to the Town of Hanson Building Department to obtain a building permit to rebuild plaintiffs' home.
25. Defendant affirmed the information he provided on the building application was true and accurate "under the pains and penalties of perjury."
26. On December 28, 2017, defendant received building permit number R-17-0301, to rebuild plaintiffs' home.

27. Defendant fraudulently obtained a building permit to reconstruct plaintiffs' home by using license number CSFA-101680 on the building application, that belonged to Vladislav Tsisar.
28. Vladislav Tsisar is duly licensed in the Commonwealth of Massachusetts as a construction supervisor.
29. The Massachusetts Construction Supervisor license number defendant used to obtain the building permit is held by Vladislav Tsisar, operating as Victory Builders, LLC, of 65 Maverick Street, Dedham, MA 02026.
30. Vladislav Tsisar states he did not authorize defendant to use his license number and that defendant has used Mr. Tsisar's license number on other permit applications in Quincy.
31. When Hanson Commissioner of Buildings, Robert Curran, learned defendant perpetrated a fraud on the Town of Hanson and plaintiffs by using the construction supervisor license number issued to Vladislav Tsisar to obtain the building permit for the plaintiff's property, Mr. Curran rescinded the building permit.
32. As of June 1, 2018, defendant had not removed the existing broken foundation located on plaintiff's property, had not delivered any building materials, or commenced with the rebuilding of plaintiffs' home.
33. Defendant transported and dumped onto plaintiff's property truckloads of crumbled and broken concrete blocks covered with lead based paint.
34. By June 1, 2018, defendant abandoned plaintiffs' job by not returning to plaintiffs to perform construction of plaintiffs' home.
35. Defendant's abandonment required plaintiffs to make a commercially reasonable cover for the goods and services defendant was contracted to provide.

36. On May 29, 2018, plaintiffs sent defendant a demand letter pursuant to Mass. Gen. Laws ch. 93A, demanding return of the deposits paid defendant and removal of the hazardous lead materials defendant dumped onto plaintiffs' property.
37. Defendant was afforded 30 days to respond to the 93A demand letter.
38. Defendant did not respond to plaintiffs' 93A demand letter.
39. Defendant received monies from plaintiffs to pay for engineering.
40. Defendant hired engineer Robert Marini to perform plaintiffs' engineering.
41. Mr. Marini refused to perform the engineering stating defendant had not paid him and that he would not perform any work unless plaintiffs paid him directly.
42. Plaintiffs paid Mr. Marini via check \$1,620.00 to stake the lot.
43. Plaintiffs paid Mr. Marini via check \$1,600.00 to locate the new foundation location.
44. Mr. Marini did not complete the engineering for which plaintiffs paid the defendant.
45. Plaintiffs paid defendant to for the cost of engineering for the project.
46. Defendant did not pay the cost of engineering for plaintiff's rebuilding of their home which defendant he had received fund for by plaintiffs.
47. Plaintiffs were required to pay another engineer at their own expense to perform the work defendant had already been paid to perform.
48. Plaintiffs suffered pecuniary losses from paying defendant for engineering and then required to expend funds a second time for the engineering because of defendant's failure and refusal to facilitate the engineering for which defendant took plaintiffs' monies.
49. Defendant purposefully misrepresented himself to plaintiffs as a licensed construction supervisor to induce plaintiffs' to pay the defendant the significant deposits paid.

50. Defendant is in material breach of the contract for his failure and refusal to perform pursuant to the contract, and for his continued refusal to return deposits paid.
51. Where defendant took plaintiffs' monies under the false pretense that defendant was a licensed construction supervisor, defendant improperly converted plaintiffs' deposits.
52. Where defendant took plaintiffs' monies and did not perform or return plaintiffs' deposits, defendant has engaged in unfair and deceptive acts as defined by Mass. Gen. Laws ch. 93A.
53. Plaintiffs have been seriously harmed by defendant's actions.

COUNT ONE
BREACH OF CONTRACT

54. The plaintiffs repeat and reallege the averments contained in paragraphs 1 through 53 as though originally pleaded herein.
55. The parties entered into a contract for the construction of plaintiffs' home.
56. Plaintiffs' paid defendant deposits totaling \$118,800.00 as consideration for the contract.
57. Defendant did not reconstruct plaintiffs' home, and abandoned plaintiffs' job, and then refused to return plaintiffs deposits.
58. Where defendant failed to perform after being paid \$118,800.00 in deposits, defendant is in material breach of the contract.
59. Defendant's breach caused plaintiffs excessive delays in reconstructing their home.
60. Because of defendant's excessive delays, plaintiffs' homeowner insurance coverage for temporary housing has been exhausted, requiring plaintiffs to now pay for temporary housing until their home construction is completed.
61. Defendant is liable to plaintiffs for all incidental and consequential damages ancillary to defendant's breach.

REQUEST FOR RELIEF

WHEREFORE, the plaintiffs respectfully request this Honorable Court:

62. Enter judgment in favor of plaintiffs ordering defendant to return all of the deposits and other property defendant received from plaintiffs.
63. Enter a judgment in favor of plaintiffs ordering defendant make full restitution to compensate plaintiffs for all of their incidental and consequential damages.
64. Enter a judgment in favor of plaintiffs ordering defendant to fully compensate plaintiffs for all expenditures plaintiffs made to mitigate damages by making a reasonable cover to procure the goods and services plaintiff contracted for with defendant, that defendant failed to perform.
65. Enter a Judgment ordering defendant pay all plaintiffs reasonable attorney fees and costs necessary to prosecute this matter.
66. Enter a judgment in favor of plaintiffs for any other remedies at law or equity as the Court finds just and equitable.

COUNT TWO **VIOLATION OF MASS. GEN. LAWS CH. 93A**

67. The plaintiffs repeat and reallege the averments contained in paragraphs 1 through 66 as though originally pleaded herein.
68. Defendant induced plaintiffs to give him deposits in the amount of \$118,800.00 by falsely holding himself to be a Massachusetts licensed construction supervisor.
69. Defendant induced plaintiffs to give him deposits in the amount of \$118,800.00 by creating a deception that defendant was associated with AIA and possessed engineering and architectural abilities when defendant is not associated with AIA and does not possess engineering or architectural skills.

70. Defendant knowingly took plaintiffs' \$118,800.00 in deposits despite defendant's own personal knowledge that he does not possess a Massachusetts construction supervisor license.
71. A valid Massachusetts Construction Supervisor's license is condition precedent to performing the contracted work that defendant took plaintiff's deposits to perform.
72. Defendant perpetrated a fraud on the plaintiffs and Town of Hanson in connection with obtaining the building permit for plaintiffs property by providing on the application for the building permit, false and misleading information by use of the license number of an Vladislav Tsisar, operating as Victory Builders, LLC, of 65 Maverick Street, Dedham, Massachusetts, who is a duly licensed as a construction supervisor in the Commonwealth.
73. Defendant took two deposits from plaintiffs to secure defendant's performance of the contract between the parties, then refused to perform the contracted work for which defendant received funds from the plaintiffs, and refused to return the deposits.
74. Defendant transported used concrete blocks and debris which contained lead base paint on the surfaces thereof and dumped such onto plaintiffs' property.
75. Defendant is engaged in commerce as defined by Mass. Gen. Laws ch. 93A.
76. On May 29, 2018, plaintiff sent defendant a letter pursuant to Mass. Gen. Laws ch. 93A, demanding return of plaintiffs' deposits and removal of the toxic lead covered concrete blocks and debris defendant dumped onto plaintiffs' property.
77. Defendant was provided more than 30 days to respond to the 93A demand letter.
78. Defendant did not respond to plaintiff's 93A demand letter.
79. Defendant did not make any offer of settlement.

80. Defendant acted in an unfair and deceptive manner which has caused the plaintiffs significant damages.
81. Plaintiffs paid defendant for the cost of engineering.
82. Defendant did not pay or otherwise provide the engineering services for which defendant was paid funds from plaintiffs to provide as part of the contract.
83. Plaintiffs suffered damages as a result of defendant's failure to facilitate the required engineering to reconstruct plaintiff's home.
84. Defendant did not deliver any building materials to reconstruct plaintiff's home for which defendant received significant deposits.
85. Defendant unfairly and deceptively denied the elderly plaintiffs of the benefit of their bargain with defendant, where defendant employed the use of untruths and deceit to procure the \$118,800.00 deposits from the elderly plaintiffs and then refused to perform under the contract.
86. Defendant's actions denied plaintiffs the ability to move back into their home before insurance coverage for temporary housing from plaintiffs' homeowner's policy was exhausted.
87. Defendant acted willfully and purposefully to secure the two deposits defendant took from plaintiffs where it was impossibility for defendant to legally perform the contract because defendant never possessed the requisite Massachusetts Construction Supervisor license required to perform construction of plaintiffs home.
88. Defendant procured the contract between the parties by the use of fraud.
89. Defendant wrongfully converted the plaintiffs' monies.
90. Defendant wrongfully delayed and hindered plaintiffs ability to return to their home.

91. Defendant transported and dumped concrete blocks and debris containing the hazardous substance lead.
92. Plaintiff demanded in a formal 93A letter that defendant return plaintiff's deposits and remove and clean up the hazardous materials dumped onto plaintiffs' property.
93. Defendant did not respond to the 93A demand letter, return plaintiffs' deposits, or remove the toxic materials defendant dumped onto plaintiffs' property.
94. Defendant's intentional deceptive and unfair actions in dealing with the plaintiffs has caused the plaintiffs the inability to rebuild their home, where plaintiff's remaining insurance proceeds after deposits taken by defendant, are insufficient to cover the cost of rebuilding plaintiff's home.
95. Defendant's actions have denied the plaintiffs the ability to reconstruct their home where plaintiffs must borrow significant funds to cover the monies converted by defendant.
96. Plaintiffs are elderly, retired individuals who do not have current streams of earned income, creating great difficulties for plaintiffs to borrow funds to rebuild their home.
97. Defendant improperly converted plaintiffs' deposits.
98. Defendant's actions have seriously harmed plaintiffs because plaintiffs are facing homelessness as a result of defendant's improper conversion of plaintiffs deposits which precludes plaintiffs from reconstructing their home.

REQUEST FOR RELIEF

WHEREFORE, the plaintiffs respectfully request this Honorable Court:

99. Enter judgment in favor of plaintiffs ordering defendant to return all monies and other property defendant received from plaintiffs.
100. Enter a judgment ordering defendant pay all of plaintiffs actual damages.

101. Enter a judgment ordering defendant to fully compensate plaintiffs for all of their incidental and consequential damages.
102. Find defendant acted intentionally and with knowledge in his dealing with the elderly plaintiffs in violation of Mass. Gen. Laws ch. 93A.
103. Enter Judgment for plaintiffs ordering defendant pursuant to Mass. Gen. Laws ch. 93A to pay plaintiffs treble damages in addition to all reasonable attorney fees and costs in connection with the prosecution and execution of this matter.
104. Enter a judgment in favor of plaintiffs for any other remedies at law or equity as the Court finds just and equitable.

COUNT THREE
CONVERSION

105. The plaintiffs repeat and reallege the averments contained in paragraphs 1 through 104 as though originally pleaded herein.
106. In October and December 2017, plaintiffs paid defendant \$118,800. as deposits to rebuild plaintiffs home after it was destroyed by fire.
107. Defendant did not rebuild plaintiffs' home or otherwise perform pursuant to a contract between the parties.
108. Defendant abandoned plaintiffs' job without performing the work that defendant was paid by plaintiffs to perform.
109. Defendant did not return the \$118,800.00 deposits to plaintiffs.
110. Plaintiffs' made several demands upon defendant, including a letter sent pursuant to Mass. Gen. Laws ch. 93A demanding defendant return plaintiffs' deposits.
111. Defendant intently defrauded plaintiffs by use of false pretence with the intent to convert property of plaintiffs.

112. Defendant converted plaintiffs' money where defendant took monies from the plaintiffs on the false pretense that defendant is a Massachusetts licensed construction supervisor who would rebuild plaintiffs' destroyed home.
113. Defendant does not possess a Massachusetts construction supervisor's license.
114. Defendant did not perform the work for which defendant took plaintiffs' \$118,800.00. 00.
115. Defendant has not returned plaintiffs' deposits.
116. Defendant has improperly converted plaintiffs' deposit.

REQUEST FOR RELIEF

WHEREFORE, the plaintiffs respectfully request this Honorable Court:

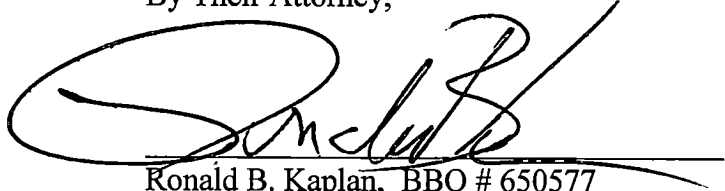
117. Enter judgment for plaintiffs, ordering defendant to return all monies and other property received from plaintiffs.
118. Enter a judgment in favor of plaintiffs ordering defendant make full restitution to compensate plaintiffs for all of their incidental and consequential damages.
119. Enter a judgment in favor of plaintiffs ordering defendant to fully compensate plaintiffs for all expenditures plaintiffs made to mitigate damages by making a reasonable cover to procure the goods and services plaintiff contracted for with defendant, that defendant failed to perform.
120. Enter a Judgment ordering defendant pay all plaintiffs reasonable attorney fees and costs necessary to prosecute this matter.
121. Any such other relief that this Honorable Court finds just and equitable.

JURY DEMAND

122. Plaintiff demands all relevant matters be tried to a jury.

Dated: July 17, 2018

Respectfully Submitted,
Michael Avitabile as Next friend for
Luigi and Lina Avitabile,
By Their Attorney,

A handwritten signature in black ink, appearing to read "Ronald B. Kaplan", written over a horizontal line.

Ronald B. Kaplan, BBO # 650577

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