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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, NORTHERN DISTRICT

HORATIO AND BEATRICE
HOMEOWNER,

Plaintiffs,

vs.

ROBERT THEODORE BUILDER,

Defendant.

**COMPLAINT FOR NEGLIGENCE AND
BREACH OF CONTRACT, RESULTING
IN PERSONAL INJURY AND OTHER
DAMAGES**

(JURY DEMAND)

Case No.: _____

Judge: _____

Altiozem Legal Services files this Complaint on behalf of Addison Smith, counsel of record for plaintiffs Horatio and Beatrice Homeowner (hereinafter collectively referred to as “Plaintiffs,” and individually referred to by their respective first name), against Robert Theodore Builder (hereinafter referred to as “Defendant”), as follows:

PARTIES

1. Plaintiffs live in Preston, Idaho, and are the owners of the property located on 245 S. Ideal Neighborhood Road, Logan, Utah 84301.
2. Defendant is the building contractor whom Plaintiffs hired to build a house (hereinafter referred to as the “Project”), which has house was to be built upon the abovenamed property.

JURISDICTION AND VENUE

3. Pursuant to 28 U.S. Code § 1332, this court has subject-matter jurisdiction in this case because Plaintiffs are citizens of the state of Idaho, Defendant is a citizen of the state of Utah, and the amount in controversy is greater than \$75,000.00.

4. Pursuant to 28 U.S. Code § 1391(b), the venue in this court is proper because the events giving rise to this claim occurred within the boundaries of the District of Utah.

FACTS

5. Plaintiffs bought a property located at 245 S. Ideal Neighborhood Road, Logan, Utah 84301 in Logan, Utah, with the intent to build a house thereon.

6. Plaintiffs contacted Defendant to inquire about how much Defendant would charge them to build said house.

7. Defendant offered to build the house for half of the average cost of the other contractors.

8. Plaintiffs agreed to Defendant's offer, forming a contract, which contract is attached hereto as "Exhibit A" (Building Contractor Agreement).

9. During the construction process, Plaintiffs made several attempts to communicate with Defendant from time to time in order to obtain reports of the Project's progress.

10. Plaintiffs repeatedly emailed Defendant and left telephone messages, but Defendant failed to respond.

11. Plaintiff Horatio made several trips from Preston to Logan, which amounted to about an hour's drive each way, to check on the progress of the Project.

12. During these trips, Horatio observed that very little progress had been made on the Project and that the construction was behind schedule.

13. On August 25, 2016, Horatio drove his family to the Project site, and they inspected the premises.

14. As Horatio walked around the premises, he stumbled on a small pile of 2x4s and fell onto one of the newly poured concrete footings.

15. As he fell, Horatio impaled himself in the abdomen, just to the side of his spine, on an uncovered, precariously placed rebar.

16. The fall additionally caused for the footing to shift out of place.

17. Horatio's wife, Beatrice, called the paramedics, whom then quickly transported Horatio to the hospital.

18. After arriving at the hospital, Horatio was admitted into emergency surgery.

19. After several hours, Horatio was considered to be in stable condition, but was still considered vulnerable to the risk of infection.

20. During the recovery process, which took many months, Horatio was unable to work at his job as a pharmacist, as it required him to stand for extended periods of time, which he was unable to do because of his condition.

21. During this time, Defendant claimed to have been unaware that the footing had been shifted out of place.

22. Defendant moved forward in the construction process by pouring the foundation over the shifted footing.

23. Only after the foundation had dried and cured, Defendant, realizing the error and determining that the building process could not continue with a faulty foundation, reached out to Plaintiffs and explained that the foundation had to be torn out and replaced.

24. Defendant additionally told Plaintiffs that, due to his recent economic troubles, he could not afford to pay for the materials and labor required to repair the damage and finish the Project.

25. Defendant demanded extra funds and an extension on the deadline for completing the Project.

26. Defendant then stated that he would not complete any more work on the home until his demands were met.

FIRST CAUSE OF ACTION

(Negligence and Breach of Duty)

Defendant's Duties and Breach Thereof

27. Defendant owed a duty of good faith and performance to Plaintiffs, which duty he breached.

28. Said duties included keeping in touch with Plaintiffs on a regular basis, keeping the Project on schedule, and regularly inspecting the Project.

29. Defendant breached his duties to Plaintiffs by:

- a. failing to regularly communicate with Plaintiffs or respond to their several attempts of contacting him (in itself demonstrating his unreliability, bad faith, and a lack of good performance);

- b. not keeping the Project on schedule, as became more apparent every time Horatio visited the Project; and
- c. failing to regularly inspect the Project, which was made obvious by his delayed realization that the footing had shifted.

30. Defendant's breach of duty represents clear negligence on his part.

31. Pursuant to Chapter 33 of the International Building Code (IBC), which is used by the State of Utah as the "construction standards to be applied to building construction, alteration, remodeling, and repair, and in the regulation of building construction, alteration, remodeling, and repair,"¹ Defendant had the duty to keep the construction site safe.

32. Keeping the construction site safe included:

- a. storing the construction materials in a place "so as not to endanger the public";² and
- b. removing all waste material in a "manner that prevents injury or damage to persons."³

33. Defendant breached his duty to make the construction site safe in a manner that satisfied the requirements of the IBC, which demonstrates clear negligence on his part as well.

34. For example, Defendant failed to safely store the small (and, therefore, difficult to see) pile of 2x4s on which Horatio tripped over, causing Horatio to become impaled by the rebar.

¹ Utah Code § 15A-2-103(1)(a).

² IBC § 3301.2.

³ Id. at § 3302.

35. Said rebar was also not satisfactorily kept in a manner so as to prevent the foreseeable risk of injury.

36. Defendant's negligence and breach of duty are, therefore, the proximate cause of Horatio's injuries. Moreover:

- a. Had Defendant not breached his duties to regularly communicate with Plaintiffs, keep the Project on schedule, supervise the Project, and make the Project site safe, Horatio would not have needed to visit the Project on multiple occasions, and would, consequently, not have suffered the horrific injuries he indeed suffered.
- b. If a reasonable person hires a building contractor to build their home, and said contractor fails to communicate with them, the reasonable person would take a course of action substantially similar to the one taken by Horatio.
 - i. In other words, it was reasonable for Horatio to visit the Project on multiple occasions, considering that Defendant failed to communicate with him for a considerable amount of time.

37. Defendant had a duty to offer a responsible bid⁴ to Plaintiffs.

38. Defendant breached his duty to offer a responsible bid to Plaintiffs.

39. Some of the economic damages done to the Project could have been avoided had Defendant initially offered a responsible bid to Plaintiffs.

⁴ See MUJI 2d CV CV2204 (stating that "a 'responsible bid' is a bid made by a party who has the capability, integrity and reliability to fully perform the contract requirements in good faith.").

- a. Had Defendant offered a responsible bid to Plaintiffs, it would have prevented Defendant from finding himself with insufficient funds to finish the project.
- b. Preventing this lack of funds would have prevented additional damages from coming upon Plaintiffs and the Project.

40. In addition to Horatio's bodily injuries, other damages were caused due to Defendant's abandonment of the Project and the consequential costs associated thereto.

41. Defendant, in fact, had a duty to mitigate the damages his actions caused to Plaintiffs and the Project,⁵ which duty he breached.

42. Defendant caused additional damages to the Project—and by extension, to Plaintiffs—by refusing to do any more work until his demands for more funds were met.

43. Defendant's refusal to work on the Project (which represented a blatant display of poor faith) directly breached his duty to mitigate the damages that his actions caused to Plaintiffs.

44. Defendant's refusal to continue working on the project has added additional economic and emotional strain to Plaintiffs.

Damages Caused by Defendant's Breach of Duty

45. Horatio's physical injuries included becoming vulnerable to infection, the months of recovery he underwent, and the permanent physical and emotional damages caused by the injuries he sustained.

46. Horatio suffered lost wages due to being unable to work his job as a pharmacist.

⁵ See *id.* at CV2243 (stating that “a defendant has a duty to mitigate . . . the damages caused by [his actions].”). (Defendant owed Plaintiffs the duty to mitigate the damages caused by his actions.).

- a. Horatio's job required him to stand for extended periods of time, which became impossible for him to do while recovering from the impalement.

47. The medical bills Horatio has had to incur have taken an additional toll on his economic stability.

48. Horatio has undergone significant pain and suffering, both physical and mental, as well as loss of consortium, among other things.

49. Defendant's negligence and breach of duty have caused significant damages to the Project, to Horatio, and to Plaintiffs' property.

SECOND CAUSE OF ACTION

(Breach of Contract)

50. Plaintiffs and Defendant entered into a Building Contractor Agreement.

51. Plaintiffs did what the contract required of them.

52. Defendant breached the following contract provisions:

- a. § 4: "On the first business day of every month, [Defendant] shall inform [Plaintiffs] of the percentage of completion of the Project that was completed during the previous month."

- i. Defendant failed his duty to inform Plaintiffs of the percentage of the Project's completion.

- b. § 5: "If [Plaintiffs] fail[] to pay [Defendant] . . . [Defendant] may, upon providing seven (7) days written notice to [Plaintiffs], suspend the work on the Project . . ."

- i. Defendant did not provide Plaintiffs with a seven days' written notice of his intention to suspend the project.
- c. § 6: “[Defendant] will diligently pursue and substantially complete all work within a reasonable time.”
 - i. Very little progress was done on the Project.
 - ii. The Project was significantly behind schedule.
 - iii. Defendant did not attend to the project until several days after Horatio had the accident.
 - iv. The foregoing factors compel the conclusion that Defendant breached this contract provision.

53. Pursuant to Utah Code § 58-55-502(4)(a), Defendant’s unprofessional conduct constitutes a breach of his contractual duties, as his conduct displayed a “willful, deliberate, or grossly negligent departure from or disregard for plans or specifications, or abandonment or failure to complete a project without the consent of the owner.”

54. Plaintiffs suffered significant damages due to Defendant’s breach of the contract.

55. Therefore, there was a breach of contract on the part of Defendant.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues triable by a jury in the above-entitled action.

Plaintiffs have submitted the required fees for such.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that judgement be entered against Defendant for:

- A. Special Damages in an amount to be proven at trial and determined by the trier of fact;
- B. General Damages in an amount to be proven at trial and determined by the trier of fact;
- C. reasonable attorney fees;
- D. costs of suit incurred herein; and
- E. any other relief as the Court deems just and proper under the circumstances.

Respectfully submitted,

DATED: this 30th day of May of 2018

Smith & Associates, PLLC

/s/ Addison Smith

Addison Smith,

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2018, I served, by U.S. mail, a true and correct copy of the foregoing upon:

Robert Builder, Defendant
1248 Hammer Avenue, Apt. B
Logan, UT 84323

/s/ Altioirem Legal Services