

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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CHRISTIAN GRAY, : Index No.
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 Plaintiff, :
 :
 - against - : **VERIFIED**
 : **COMPLAINT**
 :
 AMERICAN PACKAGE CO., INC., :
 :
 :
 Defendant. :
 :
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Christian Gray, by his attorneys, Ween & Kozek, PLLC, as his complaint against Defendant, alleges as follows:

THE PARTIES

1. At all times hereto, Plaintiff has been a resident of the City of New York and County of Kings in the State of New York.
2. Upon information and belief, Defendant American Package Co., Inc. is a corporation that has owned premises 226 Franklin Street a/k/a 97 Green Street aka 100 Freeman Street, Brooklyn, New York (the “Premises”) since February 15, 1996.

BASIS FOR VENUE

3. The basis for venue in this action is Plaintiff’s residence and the location of the relevant events.

FACTUAL ALLEGATIONS

The Premises

4. The Building is a large Interim Multiple Dwelling (“IMD”) loft building subject to the Article 7-C of the Multiple Dwelling Law (“MDL”), §§ 280 *et seq.* (the “Loft Law”).

5. Plaintiff is the Loft Law-protected tenant of Unit G21 in the Building (“Premises”).

6. At all relevant times, the Premises has been Plaintiff’s home, and contained a recording studio that Plaintiff used for his work as a sound/music engineer.

7. Plaintiff expended significant sums over the years building out the Premises, including two (2) recording rooms/booths, built for optimal acoustics and sound attenuation, and with high-end professional recording equipment that Plaintiff used as a sound/music engineer.

8. Upon information and belief, at all relevant times, Defendant knew of Plaintiff’s use of the Premises as his home and location of his recording studio, from which Plaintiff derived income.

9. Pursuant to the Loft Law, Defendant was and is required to bring the Building into compliance with the requirements of, *inter alia*, the New York City Building Code, Multiple Dwelling Law, Housing Maintenance Code, and numerous other provisions of law, code and regulation applicable to multiple dwellings in New York City and State.

10. The Loft Law provides that Defendant was/is statutorily mandated to achieve such code compliance by statutory deadlines set forth in the Loft Law.

11. Defendant has failed to meet any of the foregoing legalization milestone deadlines, leaving the Building in an endless state of noncompliance and disrepair.

12. Pursuant to the Loft Board’s regulations, Plaintiff, along with the numerous other Loft Law covered and protected tenants in the Building, were/are entitled to participate in the legalization process for the Building, including, *inter alia*, coming to an agreement with Defendant on a legalization

plan for the Building and Premises that does not diminish services or unreasonably interfere with Plaintiff's use of his home.

13. During the Loft Board legalization and narrative statement process for the Building, Plaintiffs and Defendant reached an agreement for a plan to legalize the Premises, including a revised layout, which Defendant represented and agreed would be incorporated into Defendant's legalization plans for the Building in a "post-approval amendment" (the "PAA") and thereafter implemented to bring the Premises into code compliance.

14. Upon information and belief, Defendant intentionally made such oral representations knowing that they would not, in fact, incorporate them into their legalization plans through the PAA, in order to induce Plaintiff to forestall from filing Comments and/or Alternate Plans pursuant to the Loft Board's regulations, which it would then use to claim that Plaintiff had waived any right to have the legalization plans for the Premises revised after the Loft Board narrative statement process concluded.

15. In 2021, years after the Loft Board narrative statement process concluded, Plaintiff raised the issue of whether Defendant had and/or intended to amend its legalization plans to incorporate the revised layout for the Premises.

16. For the first time, Plaintiff learned that Defendant had no intention of abiding by its agreement to do so, as Defendant refused to incorporate the agreed-upon revised plans for the Premises into its legalization plans for the Building, claiming that Plaintiff waived any right to claim that Defendant were required to do so by virtue of Plaintiff relying on its misrepresentation in not filing Comments and/or Alternate Plans pursuant to the Loft Board's regulations.

17. Plaintiff reasonably relied upon Defendant's misrepresentations to his detriment, inasmuch as the Loft Board has found that Plaintiff has "waived" his right to claim he is entitled to the agreed-upon revised layout.

18. Plaintiff has been damaged as a result of such fraudulent scheme as a result; inasmuch as he forewent his right to file Comments and/or Alternate Plans, and now Defendant may be permitted to implement a legalization plan for the Building that result in a diminution of services and unreasonable interference with Plaintiff's use of his home.

The Flood

19. In October 2019, as a result of Defendant's negligent failure to legalize and maintain the conditions in the Building, a pipe located directly above the Premises burst, resulting in a catastrophic flood that left several feet of standing water present throughout the Premises.

20. Immediately thereafter, Plaintiff informed the Defendant's office about the flooding, its severity, and the urgent need for professional cleanup.

21. Notwithstanding the urgency and severity of the situation, Mr. Kofman, Defendant's principal, who was out of town at the time, mandated that no action would be taken by Defendant to address the flooding until the time of his return to New York City.

22. Mr. Kofman did not return to New York City for another four to six weeks.

23. During this extensive time period, Plaintiff acted on his own initiative—and at his own expense—in a desperate attempt to mitigate the damage to his Premises and his property therein.

24. This involved Plaintiff expending his own time and money locating and acquiring protective gear, fans, and other equipment in an attempt to save his possessions and his home.

25. Despite Plaintiff's efforts, as a result of Defendant's negligent, reckless, and intentional tortious misconduct, the Premises, including all of the fixtures and improvements therein, and a substantial portion of Plaintiff's personal property, were destroyed beyond repair.

Destruction of the Premises

26. By the time Mr. Kofman finally returned to New York City, the floors, walls, and ceilings had remained soaked for an extensive period.

27. At this time, an infestation of mold throughout the Premises was immediately apparent through sight and smell.

28. Further, Defendant did not initiate any professional remediation upon Mr. Kofman's return.

29. Rather, as discussed below, Defendant did not hire trained professionals to conduct any remedial work in the Premises until nearly two (2) years later, in July of 2021.

30. Plaintiff, as a Loft Law tenant, rented the Premises as raw space and installed, at his cost and expense, all the residential fixtures in the space: walls; floors; electrical system; washer/dryer; kitchen with stove, refrigerator, cabinets, counters, sink, and dishwasher; bathroom with toilet, sink, and bathing facilities; living areas; bedrooms; and a home occupation consisting of two recording studios—which had multiple layers of sound attenuation and insulation materials inside the floors, walls, and ceilings—used personally and professionally by Plaintiff.

31. On information and belief, Mr. Kofman reported the flood and the damage caused to his insurance carrier, and on information and belief, falsely represented that the fixtures belonging to Plaintiff in fact belonged to Defendant in order to fraudulently obtain the insurance coverage proceeds.

32. On information and belief, Defendant have fraudulently enriched themselves by collecting on this insurance claim.

33. Plaintiff has not received any of the monies collected under this insurance claim.

34. Plaintiff, at his own expense, hired an environmental hygienist with substantial training and experience in mold testing (Ed Olmsted of Olmsted Environmental Services).

35. On June 15, 2020, Olmsted inspected the Premises and took samples for laboratory testing for mold, based upon which he prepared a report (the “First Olmsted Report”).

36. The First Olmsted Report concluded that the moisture saturation within the Premises and presence of mold throughout was so pervasive that the two recording studios and the bathroom needed to be completely demolished and rebuilt and the ceilings, floors, and wall insulation in other rooms needed to be removed and replaced.

37. In the summer of 2020, Plaintiff commenced an HP proceeding in the Housing Court seeking an Order to Correct and a finding that Defendant harassed him pursuant to Section 27-2005[d] of the Administrative Code by their (i) delay in initiating a cleanup after the flood and (ii) extended failure to arrange demolition of the interior of the Premises and mold remediation.

38. Plaintiff also commenced a related Supreme Court proceeding seeking to recover money damages under several causes of action arising from Defendant’ negligent cause of the flood, continued failure to remedy the situation, and various conduct amounting to a deliberate pattern of harassment of the Plaintiff.

Defendant’ Breach of the HP Settlement

39. Subsequently, the parties reached a conditional settlement in the Housing Court HP proceeding, the terms of which are commemorated in the Stipulation of Settlement dated June 29, 2021 (“Stipulation”).

40. The Stipulation was expressly conditioned on the completion of all necessary work to remediate the hazardous mold issues in the Premises.

41. Specifically, Paragraph 9 of the Stipulation stated that the HP proceeding may “be restored for purposes of enforcing compliance with either Parties’ obligations stated in this Stipulation regarding the Remediation Work or for additional disputed work.”

42. “Remediation Work” was a defined term in the Stipulation and was defined as the scope of work attached thereto as Exhibit 1.

43. This scope of work enumerated ten (10) mold abatement procedures that American Package Co. was required to arrange for the completion of pursuant to the Stipulation.

44. “Additional disputed work,” as used in the Stipulation, referred to any additional work that only one of the parties’ mold inspection companies believed was necessary to eradicate the mold problem in the Premises.

45. Paragraphs 4 and 5 of the Stipulation further provided that Plaintiff’s and American Package Company’s mold inspection companies (Olmsted Environmental Services and ALC Environmental, respectively) would inspect the Premises following the scheduled Remediation Work.

46. Both inspection companies were to prepare post-inspection reports assessing whether the mold had been sufficiently remediated by American Package Co.’s designated mold remediation company (“ServPro”).

47. ServPro engaged in alleged remediation work from July 20 - 27, 2021.

48. During a subsequent visit to the Premises in or about July 2021, Olmsted and the Vice President of ALC Environmental verbally agreed that additional remediation work was required in the Premises.

49. Under Paragraph 8 of the Stipulation, in the case of such mutual agreement that further work was necessary, American Package Co. was obligated to arrange for the completion of the remediation work that was agreed to be necessary.

50. Notwithstanding this obligation, American Package Co. failed to arrange for any additional remediation work in the Premises.

51. On August 16-17, 2021, Olmsted conducted an inspection of the Premises following the remediation work done by ServPro.

52. Immediately thereafter, Olmsted prepared a post-remediation inspection report dated August 18, 2021 (“Second Olmsted Report”).

53. The Second Olmsted Report summarizes the findings of Olmsted’s inspection.

54. Notably, the air in the Premises contained elevated levels of mold spores, and there was visible mold within the various walls, ceilings, and floors.

55. The ultimate conclusion of the Second Olmsted Report is that further mold abatement work was necessary in order to restore the Premises to a condition that is acceptable for human habitation.

56. ServPro failed to complete several of the enumerated items that were required by the scope of work in Exhibit 1 of the Stipulation:

- a. Item 1 of the scope of work involved gut demolition of rooms 1, 2, and 3 in the Premises. This required the removal of the walls to the wood studs, but only one layer of sheetrock was removed. Additionally, visible mold was found behind the insulation on the sheetrock ceiling in room 1.
- b. Item 1 also provided for removing the wood flooring to the concrete slab. This was not done in room 1.
- c. Item 1 also provided for removing the ceilings to the deck above rooms 1, 2, and 3, and for cleaning of the deck. This was not done in rooms 1 and 2.
- d. Item 1 also provided for cleaning of the wood framing. This was not done, nor could it have been done, because the wallboard was never removed from the framing.
- e. Item 2 of the scope of work provided for removal of the raised floor in the bathroom under the tub and hot water heater as mold was trapped under the floor. This was not done.

- f. Item 3 of the scope of work called for removal of the sheetrock on the shared wall between the bathroom and kitchen. However, sheetrock was left in place with visible mold.
- g. Item 5 of the scope of work called for the removal of the sheetrock down to the cavity on the shared wall with the neighboring Premises. This was not done.
- h. Item 6 of the scope of work called for removing the lower four feet of the wall with the common hall. This was not done and there is visible mold on the wall.
- i. Item 8 of the scope of work called for cutting four two-by-two-foot probes into the wall cavity on the wall shared with the neighboring Premises, so as to inspect for mold growth. This was not done.
- j. Item 9 of the scope of work called for cutting probes into the living room ceiling to the wood deck and inspecting for mold. This was not done.

57. In filings in the HP Action, Defendant intentionally caused its representatives to file falsified affidavits and affirmations claiming that the foregoing work was performed; which they later recanted and admitted to the Court.

58. Both Olmsted and Plaintiff's counsel have repeatedly asked Defendant to arrange for the completion of the outstanding work needed to eliminate the mold in the Premises.

59. In the more-than-three-year period since Defendant's receipt of the Second Olmsted Report, Defendant have not arranged for further mold remediation in the Premises.

60. The Premises remains in a state of complete disrepair; a construction zone with open and destroyed walls, active leaks and mold, and no working bathroom and kitchen, all of which Defendant are aware of.

61. These conditions have resulted from Defendant's intentional and flagrant violation of their obligations, under, *inter alia* the Loft Law, Multiple Dwelling Law, statutory warranty of habitability, Loft Board's regulations, and the Stipulation, to remediate the mold conditions in the Premises and maintain it in a condition fit for human habitation.

62. Defendant's repeated refusals to address the ongoing mold issues in the Premises and to arrange for the mandated remediation work has occurred against this backdrop of the Defendant's broader efforts to coerce Plaintiff and other tenants to vacate the Premises.

63. Plaintiff has been unable to live in the Premises from the time of the flood in October 2019 to the present, a period spanning well over five (5) years.

64. As such, Plaintiff has been forced to find, live in, and pay for numerous alternate housing while remaining out of possession of the Premises.

65. Plaintiff has been forced to incur substantial unnecessary expenses as a result of being out of possession of his home and place of work, including, without limitation, costs related to relocation, housing, utilities, food, travel, and loss of employment and income.

66. Plaintiff has experienced extraordinary stress and anxiety due to loss of most of his belongings, loss of the ability to live in his home, loss of the ability to prepare meals in his home, and loss of income and security due to the destruction of his recording studios, all of which was compounded by the effects of the COVID-19 pandemic.

67. Plaintiff experienced loss of income due to (i) the need to spend time attempting to clean up the Premises and otherwise remedy the situation himself, (ii) the stresses experienced as described in paragraphs 45-48 above, and (iii) the loss of use of his recording studios in the Premises.

68. All of Plaintiff's financial and emotional injuries were proximately caused by Defendant's misconduct and were reasonably foreseeable at the time that the Stipulation was executed.

69. Accordingly, based upon the foregoing, Plaintiff seeks judgment against Defendant upon the following causes of action.

**FIRST CAUSE OF ACTION:
BREACH OF STATUTORY WARRANTY OF HABITABILITY**

70. Plaintiff repeats and realleges every allegation contained in paragraphs “1” through “69” of the complaint as if set forth here in their entirety.

71. Defendant’ continued, protracted failure to remediate the unlawful conditions in the Premises, to repair the Premises, and render it fit for human habitation, constitutes a breach of the warranty of habitability as provided for in Real Property Law § 235-b (1).

72. Pursuant to RPL § 235-b (1):

“In every written or oral lease or rental agreement for residential premises the landlord or lessor shall be deemed to covenant and warrant that the premises so leased or rented . . . are fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety.”

73. Pursuant to Multiple Dwelling Law §§ 282-a and 286 (13), and the Loft Board’s regulations, Plaintiff is entitled to the the protections of RPL § 235-b (1); creating an ongoing duty upon Defendant to maintain the conditions in the Premises in a habitable state to permit Plaintiff to occupy and enjoy it as his rent regulated home.

74. As a result of Defendant’ breach of the warranty of habitability, Plaintiff incurred damages, including foreseeable consequential damages, in an amount to be proven at trial, but at least \$500,000.00 in damaged property and out-of-pocket expenses, and \$1,000,000.00 in lost income, as well as prejudgment interest, costs and attorneys’ fees.

75. By virtue of the wanton and intentional nature of Defendant' misconduct, Plaintiff is entitled to punitive damages against Defendant in an amount to be determined at trial, but no less than \$5,000,000.00.

76. Plaintiff is additionally entitled to a judgment directing Defendant to comply with its statutory obligations to restore the Premises to a habitable state in accordance with, *inter alia*, MDL § 282-a, 286 (13), RPL § 235-b, Admin. Code §§ 27-2001, *et seq.*, 29 RCNY §§ 2-04 (b) and (c), in order to restore Plaintiff to possession and occupancy of the Premises.

**SECOND CAUSE OF ACTION:
BREACH OF CONTRACT – THE STIPULATION**

77. Plaintiff repeats and realleges every allegation contained in paragraphs “1” through “76” of the complaint as if set forth here in their entirety.

78. The Stipulation constituted a binding contract between the parties.

79. As set forth above, Defendant breached the Stipulation by failing to perform their obligations thereunder, including, without limitation, by virtue of their continuing failure to arrange for the completion of all additional work necessary to remediate the mold in the Premises.

80. Under well-established New York case law, a breach of stipulation of settlement is actionable under general breach of contract principles.

81. As a result of Defendant' breach of the Stipulation, Plaintiff incurred damages, including foreseeable consequential damages, in an amount to be proven at trial, but at least \$500,000.00 in damaged property and out-of-pocket expenses, and \$1,000,000.00 in lost income, as well as prejudgment interest, costs and attorneys' fees.

**THIRD CAUSE OF ACTION:
BREACH OF CONTRACT – LEGALIZATION**

82. Plaintiff repeats and realleges every allegation contained in paragraphs “1” through “81” of the complaint as if set forth here in their entirety.

83. During the legalization process at the Loft Board, Defendant agreed to incorporate a revised layout for legalizing the Premises into its legalization plans for the Building.

84. Defendant failed and has refused to do so, in breach of such agreement.

85. Plaintiff has suffered damages as a result of Defendant’s breach of its agreement and promise to incorporate the revised layout into its legalization plans for the Building.

86. Accordingly, Plaintiffs are entitled to damages in an amount to be determined at trial, as well as prejudgment interest, costs and attorneys’ fees.

**FOURTH CAUSE OF ACTION:
SPECIFIC PERFORMANCE/PERMANENT INJUNCTION**

87. Plaintiff repeats and realleges every allegation contained in paragraphs “1” through “86” of the complaint as if set forth here in their entirety.

88. As set forth above, Plaintiff and Defendant agreed that Defendant would incorporate the revised layout for the Premises into its legalization plans for the Building through a PAA.

89. Plaintiff, as a result of such promise and agreement, forestalled from filing any Comments or Alternate Plan with the Loft Board.

90. Defendant has breached its promise to do so.

91. It is and would be inequitable to permit Defendant to get away with breaching such agreement; inasmuch as the Premises is Plaintiff’s home and the purpose of the legalization process under the Loft Law is to ensure that the Premises is legalized in a manner that protects Plaintiff’s rent regulatory Loft Law covered tenancy.

92. Accordingly, Plaintiff is entitled to a judgment, upon a finding that Defendant breached such agreement, directing specific performance of such contract, including directing Defendant to incorporate the revised layout for the Premises into its legalization plans for the Building through the PAA; as well as a permanent injunction enjoining Defendant from performing any work in the Premises that is inconsistent with the revised plans and would therefore made implementation of such revised plans impossible, and/or physically and/or financially infeasible.

**FIFTH CAUSE OF ACTION:
FRAUD/FRAUDULENT INDUCEMENT - LEGALIZATION**

93. Plaintiff repeats and realleges every allegation contained in paragraphs “1” through “92” of the complaint as if set forth here in their entirety.

94. Defendant knowingly and intentionally misrepresented to Plaintiff that it would incorporate the revised plans for the Premises into its legalization plans through the PAA.

95. Defendant did so in order to induce Plaintiff into relying upon such misrepresentation such that Plaintiff would forestall from filing any Comments and/or Alternate Plan with the Loft Board, which would have protected Plaintiff’s interest in having the revised plans approved.

96. Plaintiff reasonably relied upon such misrepresentations, and was induced into such agreement and forestalling from filing Comments and/or Alternate Plans upon his reasonable belief that Defendant had a good faith intention of proceeding with the PAA.

97. Plaintiff has suffered damages as a result of Defendant’s fraudulent misrepresentation that it would incorporate the revised layout into its legalization plans for the Building, including, *inter alia*, by being induced into losing the opportunity to file Comments and/or Alternate Plans objecting to Defendant’s proposed legalization plans, and to having his home legalized in a manner required by law that does not cause a diminution of services and/or unreasonable interference with his use of his home.

98. Accordingly, Plaintiff is entitled to damages in an amount to be determined at trial, as well as prejudgment interest, costs and attorneys' fees.

**FIFTH CAUSE OF ACTION:
UNJUST ENRICHMENT**

99. Plaintiff repeats and realleges every allegation contained in paragraphs "1" through "98" of the complaint as if set forth here in their entirety.

100. Upon information and belief, using a false claim that the damage to Plaintiff's personal property and possessions, Defendant unlawfully claimed and received funds from its insurance coverage.

101. By retaining such funds, Defendant were enriched at Plaintiff's expense, as Plaintiff was entitled to such funds.

102. Defendant receipt and retention of such funds was/is against equity and good conscience.

103. Through such scheme, Defendant were unjustly enriched.

104. Accordingly, Plaintiffs are entitled to damages in an amount to be determined at trial, as well as prejudgment interest, costs and attorneys' fees.

**SIXTH CAUSE OF ACTION:
FRAUD/FRAUDULENT INDUCEMENT**

105. Plaintiff repeats and realleges every allegation contained in paragraphs "1" through "104" of the complaint as if set forth here in their entirety.

106. Defendant knowingly and intentionally misrepresented to Plaintiff that they intended to obtain financial insurance coverage under its liability insurance policy for the damages to Plaintiff and Plaintiff's home and personal property.

107. Defendant did so in order to induce Plaintiff to rely upon such misrepresentation.

108. Plaintiff reasonably relied upon Defendant's misrepresentation to his detriment.

109. As a result of Defendant's misrepresentations, Defendant engaged in a scheme to deny Plaintiff financial compensation for the damages that he suffered as a result of Defendant's breach of their legal obligations.

110. Accordingly, Plaintiffs are entitled to damages in an amount to be determined at trial, as well as prejudgment interest, costs and attorneys' fees.

**SEVENTH CAUSE OF ACTION:
ATTORNEYS' FEES**

111. Plaintiff repeats and realleges every allegation contained in paragraphs "1" through "110" of the complaint as if set forth here in their entirety.

112. Pursuant to Plaintiff's most recent lease with respect to the Premises, "If Tenant shall default in the observance or performance of any term . . . [or] If Owner in connection . . . with any default by Tenant in the covenant to pay rent hereunder makes any expenditures or incurs an obligation for the payment of money including reasonable attorneys' fees in instituting or prosecuting or defending any action or proceeding, . . . then Tenant will reimburse Owner for such sums paid."

113. A landlord's entitlement to legal fees and related expenses is reciprocal pursuant to RPL § 234, where, as here, Defendant has defaulted thereunder by failing to comply with its obligations, by law, to maintain the conditions in the Building and Premises.

114. Accordingly, upon Plaintiff prevailing in this action, he is entitled to an award of attorneys' fees in an amount to be determined at such time, along with associated statutory interest and costs.

WHEREFORE, Plaintiff respectfully requests judgment in accordance with the foregoing;
along with attorneys' fees, costs and disbursements, and such other and further relief as is just and
proper under the circumstances.

Dated: Brooklyn, New York
May 7, 2025

Respectfully submitted,

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