

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS
CIVIL COURT DEPARTMENT

ZACHARY HUGO, M.D.,)	
)	
Plaintiffs,)	Chapter 60
)	
v.)	
)	Case No. _____
SECURITY BANK OF KANSAS CITY)	
)	
and)	
)	
M D MANAGEMENT INC.)	JURY TRIAL DEMANDED
)	
Defendants.)	

PETITION

1. Plaintiff brings this suit for damages against Defendants for personal injury, including serious physical injury, arising out the negligent and fraudulent conduct of Defendants in the ownership and management of the toxic water-damaged building they owned and controlled at 8201 Mission Road in Johnson County, Kansas.

2. This court has jurisdiction over Plaintiffs claim as a court of general jurisdiction. *Undrey Engine & Pump Co. V. Eufaula Enterprises, Inc.*, 22 6 Kan. 186, 190, 597 P.2d 246 (1979).

3. Venue is appropriate in Wyandotte County as this is the location of the Defendant Security Bank of Kansas City. K.S.A. §60-603.

4. Plaintiff is an individual who resides in Johnson County, Kansas.

5. Defendant Security Bank of Kansas City is a Kansas bank located in Wyandotte County and which may be served via registered agent at: James S. Lewis, One Security Plaza, Kansas City, KS 66117.

6. Defendant Security Bank owned the property at 8201 Mission Road in Johnson County, Kansas.

7. Defendant M D Management, Inc., is a Kansas corporation located in Johnson County that may be served via Registered Agent at: Spenserv, Inc., 6201 College Blvd., Suite 500, Overland Park, KS 66211.

8. Defendant M D Management controlled the property at 8201 Mission Road in Johnson County, Kansas.

BACKGROUND ALLEGATIONS

9. Plaintiff Hugo earned his M.D. from the University of Missouri, Columbia, School of Medicine in 2008; he subsequently completed an internal medicine internship and a residency in psychiatry at Mayo Clinic.

10. Plaintiff Hugo began working in 2012 as a psychiatrist in an office suite located at 8201 Mission Road owned and/or controlled by Defendants.

11. Plaintiff began to notice concentration and memory issues and other physical symptoms, including dizziness and loss of balance.

12. In Spring of 2018, Plaintiff's medical team ruled out Alzheimer's, Lewy Body Disease, frontotemporal dementia (FTD), chronic traumatic encephalopathy (CTE), concussions and other progressive neuro-degenerative diseases as causes for insidious cognitive deterioration.

13. In early Summer of 2018, Plaintiff's medical team diagnosed him with CIRS (Chronic Inflammatory Response Syndrome), a condition that can be caused by the toxic environment created in water-damaged buildings.

14. In the Fall of 2018 cardiopulmonary testing showed significant cardiopulmonary and mitochondrial impairments of Plaintiff.

15. Plaintiff developed sinus polyps while working at 8201 Mission Road that were surgically removed in July of 2019.

16. In 2019, Plaintiff discovered that the environment at 8201 Mission Road was and had contained extremely high levels of toxic water-damaged contaminants relative to any other exposure Plaintiff might have had.

17. In 2019, Plaintiff discovered that the toxic water-damaged environment at 8201 Mission Road was the major cause of his CIRS, cognitive decline, neurological and cardiovascular impairments, mitochondrial dysfunction, sinus disease, headaches, fatigue and other related symptoms and serious medical conditions.

18. Plaintiff ceased working altogether in 2019 due to the physical and cognitive conditions he developed as a direct result of the toxic water-damaged environment at his office at 8201 Mission Road.

19. Defendants knew that the building they owned and controlled at 8201 Mission Road was water-damaged, and that a toxic environment had been created, and that this environment was a dangerous condition of their property.

20. Defendants had been aware for years that the environment at 8201 Mission Road remained chronically contaminated with a toxic water-damaged environment.

21. Defendants knowingly and repeatedly misrepresented that 8201 Mission Road was safe and did not possess a dangerous condition.

22. Defendants knowingly failed to remedy the water-damaged materials and remediate the toxic environment.

23. In April of 2019, Defendants affirmatively represented that there was no water-damaged contamination in Plaintiff's offices at 8201 Mission Road.

24. Defendants' representations were not true.

25. Plaintiff relied upon Defendants representations, to his detriment.

26. Defendants further failed to stop the repeated water intrusions and concealed their failure to do so.

27. Defendants still have taken no action to address the toxic water-damaged environment at 8201 Mission Road, despite receiving outside expert reports and testing demonstrating an ongoing health danger.

28. Defendants' conduct was wanton and reckless.

29. As a result of Defendant's conduct, Plaintiff suffered medically significant and substantial physical injury, substantial and significant economic losses and substantial lost earning capacity, past and future medical bills, lost wages, past and future mental anguish and medically significant emotional distress.

30. As a result of Defendant's conduct, Plaintiff's spouse has suffered from loss of companionship, loss of services and loss of consortium, and will continue to incur such damages in the future.

COUNT I: NEGLIGENCE – PREMISES LIABILITY

31. Plaintiff hereby adopts and incorporates the allegations set forth above as though fully set forth herein.

32. Plaintiff was an invitee onto Defendants' property.
33. By virtue of a business lease, Plaintiff was also a licensee on Defendants' property.
34. Defendants owed Plaintiff an affirmative duty to provide a reasonably safe, uncontaminated environment while Plaintiff was present and conducted business at Defendants' property.
35. Defendants owed Plaintiff a duty to warn him of unsafe, dangerous conditions of the property.
36. Defendants' property contained a dangerous condition – a toxic water-damaged contaminated environment – that was not open and obvious.
37. Defendants had actual knowledge of the dangerous condition.
38. The unsafe, dangerous condition of the property had existed for a length of time such that in the exercise of reasonable care, Defendants should have known of it.
39. Defendants failed to warn Plaintiff of the dangerous condition.
40. Defendants intentionally sought to conceal the dangerous condition from Plaintiff.
41. Damage to Plaintiff as a result of the dangerous condition was reasonably foreseeable to Defendants given the extent of the contamination.
42. Defendants possessed actual knowledge that Plaintiff faced a substantial risk of exposure and harm.
43. Defendants breached their duties to Plaintiff when they:

a. Failed to adequately repair and/or mitigate the toxic water-damaged environment.

b. Concealed the existence and/or extent of the toxic water-damaged environment.

c. Failed to warn Plaintiff regarding the toxic water-damaged environment.

d. Breached the implied warranty of habitability.

44. Defendants' conduct was grossly negligent and/or committed with reckless indifference to the rights and safety of Plaintiffs.

45. As a result of Defendants' conduct, Plaintiff suffered medically significant and substantial physical injury, substantial and significant economic losses and substantial lost earning capacity, past and future medical bills, lost wages, past and future mental anguish and medically significant emotional distress.

46. As a result of Defendant's conduct, Plaintiff's spouse has suffered from loss of companionship, loss of services and loss of consortium, and will continue to incur such damages in the future.

COUNT II: BREACH OF IMPLIED WARRANTY

47. Plaintiff hereby adopts and incorporates the allegations set forth above as though fully set forth herein.

48. Plaintiff, as a member of a partnership, entered into a lease with Defendants for an office suite at 8201 Mission Road.

49. Plaintiff was, in the alternative, a third-party beneficiary of the lease.

50. The lease carried an implied, general warranty that the property would be kept in habitable condition.

51. Defendants breached the general warranty of habitability by permitting a toxic water-damaged environment to persist at 8201 Mission Road.

52. Defendants' conduct resulted in the property at 8201 Mission Road to be contaminated, toxic, defective and unsafe for Plaintiff and all other tenants, customers and employees at the property.

53. As a result of Defendants' conduct, Plaintiff suffered medically significant and substantial physical injury, substantial and significant economic losses and substantial lost earning capacity, past and future medical bills, lost wages, past and future mental anguish and medically significant emotional distress.

54. As a result of Defendant's conduct, Plaintiff's spouse has suffered from loss of companionship, loss of services and loss of consortium, and will continue to incur such damages in the future.

COUNT III: KANSAS CONSUMER PROTECTION ACT VIOLATION

55. Plaintiff hereby adopts and incorporates the allegations set forth above as though fully set forth herein.

56. Plaintiff is a consumer under the Kansas Consumer Protection Act (KCPA), K.S.A. §50-623, et seq.

57. Defendants are a supplier of goods and services under the KCPA.

58. Plaintiff engaged in a consumer transaction with Defendants when Defendants leased the premises at 8201 Mission Road to Plaintiff.

59. Defendants represented on numerous occasions that the premises were habitable, safe, clean and free from water damage.

60. Defendants' representations were false, in that the premises were not habitable, safe, clean and free from water damage.

61. Defendants knew these representations were false.

62. Plaintiff relied on Defendants representations.

63. Defendants' conduct was wanton.

64. As a result of Defendants' conduct, Plaintiff suffered medically significant and substantial physical injury, substantial and significant economic losses and substantial lost earning capacity, past and future medical bills, lost wages, past and future mental anguish and medically significant emotional distress.

65. As a result of Defendant's conduct, Plaintiff's spouse has suffered from loss of companionship, loss of services and loss of consortium, and will continue to incur such damages in the future.

COUNT IV: NEGLIGENT MISREPRESENTATION

66. Plaintiff hereby adopts and incorporates the allegations set forth above as though fully set forth herein.

67. Defendants represented on numerous occasions that the business premises were habitable, safe, clean and free from water damage.

68. Defendants' representations were false, in that the premises were not habitable, safe, clean and free from water damage.

69. Defendants failed to exercise reasonable care or competence in obtaining or communicating the false information to Plaintiff.

70. Defendants knew these representations were false.

71. Plaintiff relied on Defendants representations.

72. Defendants' conduct was wanton.

73. As a result of Defendants' conduct, Plaintiff suffered medically significant and substantial physical injury, substantial and significant economic losses and substantial lost earning capacity, past and future medical bills, lost wages, past and future mental anguish and medically significant emotional distress.

74. As a result of Defendant's conduct, Plaintiff's spouse has suffered from loss of companionship, loss of services and loss of consortium, and will continue to incur such damages in the future.

COUNT V: LOSS OF CONSORTIUM

75. Plaintiff hereby adopts and incorporates the allegations set forth above as though fully set forth herein.

76. Plaintiff's spouse, as a result of Defendants' conduct, suffered the loss of and will continue to suffer the loss of her husband's care, comfort, companionship, income and services.

WHEREFORE, Plaintiff respectfully request the following relief:

- (1) For judgment against Defendant for his personal injuries, loss of consortium, and other economic and non-economic damages in a sum in excess of \$75,000.00;
- (2) For his costs of this action; and
- (3) For such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/Dan Curry

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