

IN THE GENERAL DISTRICT OF FAIRFAX COUNTY - VIRGINIA

RIVER TOWERS CONDOMINIUM :
UNIT OWNERS ASSOCIATION INC. :
 :
Plaintiff/Counter-Defendant : Civil Action
 :
versus, : No. GV22006309-00
 :
 :
JOSEPH M. HOFFMAN :
 :
Defendant/Counter-Plaintiff :

**Defendant’s Motion to Vacate January 23rd, 2023 Judgment
Due to Plaintiff’s Fraud (Plaintiff concealed from both this
Court and Defendant that it had scheduled its permanent
water infiltration repairs in February, 2023)**

COMES NOW the Defendant JOSEPH M. HOFFMAN, in proper person,
and hereby moves this Court for an order vacating the January 23rd, 2023
judgment improperly entered against him with unreasonable attorneys’
fees¹.

For grounds therefor, Defendant says as follows:

1. Quid without quo. That is what the Plaintiff sought, i.e. turning

¹. Plaintiff sought judgment against Defendant for \$21,380.77 based on an accounting generated by its law firm which was NEVER the custodian of records. At the end of the “trial”, the Plaintiff made an oral motion for attorney’s fees for \$14,000 without any affidavit filed in support. The court found this an unreasonable amount and awarded unreasonable attorneys’ fees in the amount of \$8,000. This is patently a violation of case law. That under *Chawla v. BurgerBusters, Inc.*, 255 Va. 616, 623, 499 S.E.2d 829, 833 (1998) [and in its prodigy], River Towers was required to prove the reasonableness of its attorney's fees request during its *prima facie* case. It failed to do so. Once again Defendant’s procedural due process of law was violated.

bilateral agreement into a unilateral agreement.

2. Defendant has been an owner at River Towers Unit 211 at 6621 Wakefield Drive since April of 2009.

3. Defendant has never had any issues until Plaintiff retained First Services Residential to be its Common Interest Community managing agent.

4. Although not relevant to this motion, Defendant wants this Court to know that the amount demanded by the Plaintiff included at least sixteen bill payer payments sent to FirstServices Residential onsite office instead of their accounting office which were rejected by same, and the monies sought included a 2021 credit card payment of \$3,925.80 which was defalcated by it agent FirstServices Residential.

5. Since May of 2021, Plaintiff and its agent FirstServices Residential has refused, or failed to fix the internal water infiltration issue which caused mold and mildew thereby rendering Defendant's condo uninhabitable.

6. In pertinent part the Bylaws impose a duty upon the Plaintiff as follows:

continued on next page

impose a reasonable charge for the preparation of such statement to cover the cost of preparation to the extent permitted by the Condominium Act.

Section 5. Maintenance, Repair, Replacement and Other Common Expenses.

(a) By the Board of Directors. The Board of Directors shall be responsible for the maintenance, repair and replacement (unless, if in the opinion of not less than sixty percent of the Board of Directors such expense was necessitated by the negligence, misuse or neglect of a Unit Owner) of all of the Common Elements (including the Limited Common Elements) as defined herein or in the Declaration, whether located inside or outside of the Units, the cost of which shall be charged to all Unit Owners as a Common Expense, provided, however, that each Unit Owner shall perform normal maintenance on the Limited Common Elements appurtenant to his Unit and any portion of the remaining Common Elements which the Board of Directors pursuant to the Rules and Regulations has given him permission to utilize, including without limitation the items enumerated in subsection (b) hereof.

7. Defendant's continuing to make condo fee payments (in good faith believing that the Plaintiff and/or its agent would eventually make repairs), that this foregoing does NOT created any waiver whatsoever!

In *Remy Holdings International, LLC v. Fisher Auto Parts, Inc.*, Civil Action No. 5:19-cv-00021, WDVA, (Memorandum Opinion dated February 25, 2022).

"A material breach is a failure to do something that is so fundamental to the contract that the failure to perform that obligation defeats an essential purpose of the contract. If the initial breach is material, the other party to the contract **is excused from performing his contractual obligations.**" *Horton v. Horton*, 254 Va. 111, 487 S.E.2d 200, 204 (Va. 1997). [emphasis added].

The holding in *Horton, supra*, the Supreme Court noted, as follows:

A party claiming waiver must show a "knowledge of the facts basic to the exercise of the right [waived] and the intent to relinquish that right." *Stuarts Draft Shopping Ctr. v. S-D Associates*, 251 Va. 483, 489-90, 468 S.E.2d 885, 889 (1996) (citation omitted); *Stanley's Cafeteria v. Abramson*, 226 Va. 68, 74, 306 S.E.2d 870, 873 (1983). Acceptance of defective performance, without more, does not prove intent to relinquish the right to full performance. *Id.* at 74, 306 S.E.2d at 873; see 5 Samuel Williston Walter H.E. Jaeger, A Treatise on the Law of Contracts § 700 (3d ed. 1961).

In other words Defendant is excused from making his condo fee payments when the Plaintiff either refuses or fails to abate the mold and mildew causing issues arising from internal leaking behind the condo walls.

8. May the Plaintiff argue either intrinsic fraud perpetrated, or *res judicata*, as a bar to Defendant's Motion to Vacate? No simply because Defendant's Motion relies on the fact that the Plaintiff committed extrinsic fraud upon both this Court as well as Defendant.

9. As exhibited to the Warrant in Debt filed herein, *ab initio* the Plaintiff intended to use an accounting generated by its law firm which never was the custodian of records which this court would later admit into evidence over Defendant's Motion in Limine as well as objections. Faced with this and the total lack of procedural due process, Defendant sought the only court whereby he could prevail, i.e. the court of public opinion.

10. Defendant prevailed in the court of public opinion because the Plaintiff published a notice without sending copy to Defendant, that it intended to make what it called "permanent repairs" in February, 2023 which

is approximately one month after judgment was entered against Defendant.

Accordingly Plaintiff knew in advance that Defendant's condo was uninhabitable and knowingly concealed this fact from both this Court and Defendant.

11. Also Plaintiff intentionally and maliciously withheld notice of its intent to make "final repairs" as to toll the time period under Rule 1:1.

12. Copies of said notice coupled with the notice of repairs are attached hereto and made a part hereof.

13. Defendant asserts the foregoing constitutes extrinsic fraud by the Plaintiff enabling him to seek vacation of the judgment entered herein.

14. Plaintiff has suffered immense financial and other damages since he could not inhabit a mold and mildew infested condo while having to make mortgage payments for same.

WHEREFORE Defendant moves this Court for an order vacating the judgment previously entered herein, that the Plaintiff take nothing, and for such other and necessary relief deemed just and necessary.


DATED: December 2nd, 2023

POINTS AND AUTHORITIES

1. [T]he judgment of a court, procured by extrinsic fraud, ...is void and subject to attack, direct or collateral, at any time." *T.S.G. v. B.A.S.*, 52 Va.App. 583, 589n.3 (2008)(quoting *State Farm Mut. Auto. Ins. Co. v. Remley*, 270 Va. 209, 218.) [*dicta*]

2. The presence of mold in a property is so important that the Virginia legislature had enacted a mold notification notice that landlords must supply to their tenants. §55.1-1215 Code of Virginia.

Respectfully submitted,


Joseph M. Hoffman
Defendant in proper person

Joseph M. Hoffman
Defendant in proper person
6621 Wakefield Drive #211
Alexandria, VA 22307
Telephone (937) 582-5339

AFFIDAVIT OF SERVICE

I HEREBY AFFIRM that a true copy of foregoing Defendant's Motion to Vacate January 23rd, 2023 Judgment Due to Plaintiff's Fraud (Plaintiff concealed from both this Court and Defendant that it had scheduled its permanent water infiltration repairs in February, 2023) was sent via FAX, on this 2nd day of December, 2023, to as follows:

Kathryn G. Murphy - Attorney
Whiteford, Taylor & Preston, L.L.P.
3190 Fairview Park Drive - Suite 800
Falls Church, VA 22042-4510


Joseph M. Hoffman



RIVER TOWERS CONDOMINIUM

Convector Insulation Repair Project

(INITIAL NOTICE)

The project will commence on **February 21, 2023 at 9 AM**. Each affected unit will go through the following steps:

- 1) Reston Painting and Contracting will perform demolition around the convectors and loop system supply lines.
- 2) Fairfax Insulation Inc. will insulate the supply lines.
- 3) Building Mechanical will install drip pans that tie into the main condensate line for select units where 2022 insulation repairs have failed as necessary.
- 4) Reston Painting and Contracting will return to repair the plaster damages, paint, and install access panels as necessary.

Demolition Hours: 9 AM - 5 PM

Loop System Repair Hours: 8 AM - 5 PM

Painting and Plaster Hours: 8 AM - 5 PM

Fairfax Insulation Inc. requires access to the unit above each unit scheduled for insulation repairs to properly complete the installation. **Even if you have not experienced an insulation failure, access to your unit may be necessary.** Please review the schedules carefully to see if your unit will need to be entered.

Due to the size and intricacy of this project, scheduling accommodations are not available. Residents need not be at home during scheduled work days. Please contact the Association office at office@rivertowerscondo.org with questions.



RIVER TOWERS CONDOMINIUM Convector Insulation Repair Project

(SCHEDULING NOTICE)

Demolition Hours: 9 am - 5 pm

Loop System Repair Hours: 8 am - 5 pm

Painting and Plaster Hours: 8 am - 5 pm

6621 SCHEDULE

Feb. 21	211, 702, 805	Demolition
Feb. 22	211, 311, 702, 802, 805, 905	Loop System Repair
Feb. 23	211, 702, 805	Plaster
Feb. 24	211, 702, 805	Paint

Due to the size and intricacy of this project, scheduling accommodations are not available.

IMPORTANT MESSAGE

To _____

Address _____

6621-211

(6621-211)

We Came By For The Following:

- To change A/C filter
- To exterminate
- To repair plumbing
- For preventative maintenance
- For requested maintenance

Other Escorted Insulation Company

We Could Not Complete Work Because:

- No one home
- Contractor called
- Parts on order
- Will return

Contact The Office Below

See Message On The Back Of This Tag

If You Have Any Questions Call The Number Below

Name David Thank You!

Date 2-23-23 Time 9:00

Message

Escorted Fairfax Insulation
to insulate all convector
lines and drip pan -

David

2/24/23 - Escorted Contractors
to make wall and
ceiling repairs -

**MAINTENANCE
PERSONNEL
WORKING
INSIDE**

River Towers Condominiums
6621 Wakefield Dr.
Alexandria, Virginia 22307
(703) 768-3800

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