

IN THE CIRCUIT COURT OF FAIRFAX COUNTY - VIRGINIA

FILED
CIVIL INTAKE

2024 SEP 18 P 3:52

CHRISTOPHER J. FALCON
CLERK, CIRCUIT COURT
FAIRFAX, VA

JOSEPH M. HOFFMAN

River Towers Unit 211
6621 Wakefield Drive
Alexandria, Virginia 22307

Plaintiff,

versus,

**RIVER TOWERS CONDOMINIUM
UNIT OWNERS ASSOCIATION INC.**

SERVE: RESAGENTINC

c/o Whiteford Taylor & Preston LLP
Suite 800
3190 Fairview Park Drive
Falls Church, VA 22042

Defendant.

: Civil Action

: CL-2024 **2024 13305**

COMPLAINT

(Breach of Contract, Breach of Duty of Care & Maintaining a Nuisance)

COMES NOW the Plaintiff, Joseph M. Hoffman, in proper person, and
for his cause against the Defendant River Towers Condominium Unit
Owners Association Inc., says as follows:

Jurisdiction

1. This is a refiling of a non-suit in Civil Action CL-2023-0003372
which was a timely appeal of a denied counter-claim from the Fairfax
County General District Court (Upon information and belief Case Number

GV22010242-00).

Having contracted COVID coupled with other medical issues, regretfully Plaintiff elected to suffer a non-suit.

Parties

2. Plaintiff is a disabled veteran whose lungs were damaged from the Afghanistan burn pits. As such he is hyper sensitive to mold, mildew, dust, certain household chemicals, etc. Plaintiff's disability rating with the US Veterans Administration ("VA") is at 90%.

Using his VA benefits on or about April, 2009, Plaintiff acquired title to River Towers Unit 211 at 6621 Wakefield Drive, Alexandria (County of Fairfax), VA 2230. Deed Book 20372 at page 2062.

3. Defendant River Towers Condominium Unit Owners Association Inc. is a Virginia non-profit corporation which is the successor to the River Towers declarate. See Declaration at Book 5289 at page 274, *et seq.* (1979), as amended. Its obligations were also established per the bylaws exhibited starting at Book 5289 page 301, *et seq.*, as amended.

Background

4. Said instruments imposed obligations of the parties hereto. With respect to Plaintiff he is required to pay monthly condo fees based on the percentage of interest owned as more fully set forth in the Seventh Amendment to the Declaration recorded on January 6th, 1984 in Book

5884 at page 1536.

5. The Defendant is responsible for the repairs of the common elements as set forth below:

III5289 40322

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.

6. According to the Defendant's 1993 Amended Bylaws, the board may have its managing agent collect the monthly assessments. In pertinent part the amendment states at Book 8899 pages 502-3 as follows:

2. the due date for payment thereof. Any assessment, or installment thereof, not paid within ten days after due shall accrue a late charge in the amount of \$25.00, or such other amount as may be established from time to time by the Board of Directors. The Board of Directors in its discretion may also assess interest from the due date at the prevailing rate of interest in accordance with the provisions of Article IX, Section 1 (d) of the Bylaws. entirety to read as follows:

Section 3. Collection of Assessments

The Board of Directors, or the Managing Agent at the request of the Board of Directors, shall take prompt action to collect any assessments for common expenses due from any unit owner which remain unpaid for more than 30 days from

7. For the most part Plaintiff had his condo fee payments sent to the self-managed River Towers condo office which in turn would forward the payment to CFM Management in Alexandria, VA.

8. On or about October, 2020, the Defendant retained the Common Interest Community licensee FirstServices Residential ("FSR") to provide all management services. From then, and presently, FSR occupied the River Towers management office at suites 114-116 at 6621 Wakefield Drive.

9. Starting in May of 2021, Plaintiff started to have two issues with the Defendant's manager FSR.

10. Under the laws of agency the principal and Defendant River Towers Condominium Unit Owners Association, Inc. is liable for its agent's FSR's negligence, etc.

11. Under the doctrine of *respondeat superior*, the Defendant River Towers Condominium Unit Owners Association Inc. is responsible for the torts committed by FSR.

12. The first on these was the appearance of black mold in Plaintiff's River Towers condo bedroom in May of 2021.

Finally in September of 2021 Plaintiff finally received notice of a work order that the mold problem would be addressed as follows:

Work Order Third instance of flooding water damage, September 2021.
From: noreply.domstro@frsresidential.com <noreply.domstro@frsresidential.com>
Sent: Tuesday, September 28, 2021 8:30 AM
To: josephhoffmann@outlook.com <josephhoffmann@outlook.com>
Subject: Notification from your community software - Work order status update

FirstService Residential

9/28/2021

WORK ORDER

The following work order has been created:

Workorder No: 1120

Property / Department: River Towers Condominium UOA

Unit / Area: 6621 Wakefield Dr Apt 211

Alexandria, VA 22307

Requested By: JOSEPH HOFFMANN

(703) 765-7541

josephhoffmann@outlook.com

Progress Code: Received

Description: I noticed that the third instance of flooding occurred in my condo bedroom and living room in the same spot it occurred last time. Do Not Lock the Main Door Handle lock on the Unit 211 main door because there are no keys for this door handle lock.

Forwarded By: Lauren Herbert

Question:

Answer:

Professionally Managed by FirstService Residential

13. The work was not completed, and as such Defendant remained in breach of its duties to make repairs to the common elements, as aforesaid.

14. In addition to black mold being dangerous to anyone, it is deadly to Plaintiff whose lung functions have been damaged, and/or otherwise impaired.

15. As a result thereof, Plaintiff was forced to flee his condo abode in June of 2021.

16. Plaintiff suffered actual and/or consequential damages of Twenty Thousand Dollars to relocate as well as \$21,600 in lodging expenses.

17. Not only was Defendant and its agent FSR grossly and recklessly negligent in its failure to make workman like/professional repairs to his River Towers Condo but also fifty plus River Towers condos were stated to have suffered internal water leaking issues.

On or about February 24th, 2022, River Towers agent First Residential sent out the mass email as follows:

----- Original Message -----

From: FirstService Residential
<Communications@mc.fsresidential.com>
Date: 02/24/2022 5:33 PM EST
Subject: RT - Convactor Insulation Project

Good afternoon, residents:

We have 50+ units that are in need of insulation repairs to the loop system HVAC pipes. The insulation is failing, and these repairs must be completed prior to the cooling season.

Repairs will begin in 6621 on February 28th and continue through mid-April to include units all three buildings. Each affected unit will go through the following steps:

- 1) Reston Painting and Contracting will perform demolition around the convectors and supply lines.
- 2) Fairfax Insulation Inc. will insulate the supply lines.
- 3) Reston Painting and Contracting will return to repair the plaster damages and paint (2 days).

Demolition Hours: 9 am - 5 pm

Insulation Hours: 8 am - 5 pm

Painting and Plaster Hours: 8 am - 5 pm

Fairfax Insulation Inc. will need to access the unit above each unit being insulated 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.

Scheduling boards will be posted in each building lobby, along with notices and schedules in the bulletin boards. Onsite residents will receive a reminder phone call and email one (1) business day prior to their demolition start date. Door to door notices will be sent out tomorrow, February 25th.

On the day of your demolition is schedule, please arrange for five feet of clearance around the convector, as it will be necessary to perform work. Pets must be secured in a room that contractors do not need access to on all days we are scheduled to be in your unit. Demolition holes will be covered or tarped when not in use until repairs are complete. If you have custom paint, please provide the Association Office the paint code to provide to the contractors. If no code is available, the contractor will paint match.

Due to the size and intricacy of this project, scheduling accommodations are unfortunately not available. Attached to this email are two project notices, and schedules for all three buildings.

We thank you for your patience and understanding during this project, and we especially thank those who have been patiently waiting while we investigated how to best address the issue of the failing insulation. For questions related to this project, please email office@rivertowerscondo.org.

Have a nice day.

View Attachment(s)

If the above link is not clickable please copy and paste the link below into your browser's address windows

<https://portal.connectresident.com/masscommattachments?data=CfDJ8C%2FECTUPkWdOt6vOK%2Bs3Yj9z%2FZIdnWsne0uy1nwgNAZiiNV2Ay0GP4uIv3DHcsGk5ja5zQfGxh5ayu2bati8Gve%2FyXRVhgW9mMnpSssJ49zpjQBQR9ELyOnuzAha7%2Besa%2BK5DJ0ii6SIaRuW4t7GHd0%3D>

18. Although Plaintiff's condo was listed among the fifty plus condos to be repaired, nevertheless is as not repaired as once again promised. See below:

6621

Feb. 28	105, 211, 502, 518	Demolition
Mar. 1	510, 803, 802, 902	Demolition
Mar. 1	105, 205, 211, 311, 502, 518, 602, 618	Insulation
Mar. 2	510, 610, 802, 803, 813, 902	Insulation
Mar. 2	105, 211, 502, 518	Plaster
Mar. 3	105, 211, 502, 518	Paint

19. In July of 2022 Plaintiff received correspondence as well as telephone calls with FSR's River Tower's on-site office informing him that his condo had been repaired which included sheet rock repair and painting.

Here is an email reflecting the foregoing:

From: FirstService Residential
<Communications@mc.fsresidential.com>
Sent: Monday, July 11, 2022 7:16 AM
To: josephqrt@hotmail.com <josephqrt@hotmail.com>
Subject: River Towers - Paint Schedule 6621-211

Good Morning Joseph,

I hope this email finds you well!

Our contractor Reston Painting is scheduled to make paint repairs in your bedroom on this Wednesday, July 13th and are expected to arrive at 9am. Please let me know if you will be home or if we can have access to complete the work.

Thank you!

20. Accordingly Plaintiff moved back to his River Towers condo and incurred expenses of \$10,000 to do so.

21. Plaintiff continually demanded that the Defendant's agent FSR repair his condo so that he would no longer suffer from water infiltration.

22. In response to Plaintiff's repeated demands, Plaintiff received an email as follows:

From: Janai Greenhill <Janai.Greenhill@fsresidential.com>
Sent: Thursday, September 8, 2022 11:15 AM
To: J H <josephqrt@hotmail.com>

Subject: River Towers - Unit Repair Update

Good Afternoon Joseph,

This is just an update in regards to the repairs in your unit. Reston Paint will be coming by your unit on Monday, September 12th at 9 am to install an access panel in your bedroom ceiling. When we switch over to from cooling to heat in October-November, the insulation for the piping will be easy to have applied for the contractor.

Thank you!

JANAI GREENHILL

Administrative Assistant

River Towers Condominium 6621 Wakefield Drive #114 |
Alexandria, VA 22307

Direct 703.768.3800 Property Fax: 703.768.2752

Email office@rivertowerscondo.org

RiverTowersCondominium.connectresident.com

24/7 Customer Care Center: 855.333.5149

Website | Facebook | LinkedIn | YouTube

23. When Plaintiff contacted the River Towers office to seek details, the response was that the Defendant's agents had no intentions whatsoever to correct the continual water infiltration into his condo.

Instead the Defendant's agent wanted to install a "drip pan" to collect the water infiltrating his condo which was installed without Plaintiff's permission. Naturally this would not eliminate the mildew and the dangerous mold threatening his well being.

24. In the winter of 2022 Plaintiff fled his condo again. NOTE: He was able to stay in his living room using a gas mask. As of a result of this third moving Plaintiff suffered actual and/or consequential damages of Ten Thousand Dollars to relocate as well as \$22,860 in lodging expenses.

25. Although the Defendant, directly or indirectly, was patently in first material breach of its duties to make repairs to address the common element water leaking/infiltration in his condo, nevertheless the Defendant herein, as the Plaintiff therein, initiated litigation in the General District Court against him asserting that he should make condo fee payments regardless of any circumstances.

26. Plaintiff's response was to protest to the River Towers community and solely due to public opinion, etc., finally permanently repaired Plaintiff's condo in the Spring of 2023 in a workman like manner. (As represented by the Defendant.)

27. As per the foregoing, Defendant was in continual breach of the by-laws, as aforesaid. from May, 2021 to about February, 2023.

28. That Plaintiff is entitled to compensatory and consequential damages due to Defendant's breaches, as aforesaid

29. The Defendant and its agents continual failure, or refusal, to make workman like manner repairs to his condo constitutes a breach of its duty of care.

Accounting Issues

30. The second issues that Plaintiff has/had against the Defendant and its managing agent FSR are accounting issues.

31. The first accounting issue this that from May, 2020 to May, 2021, Plaintiff continued with his practice of automatically sending bill payer checks from his Federal Credit Union account to the River Towers onsite condo office which then was occupied by FSR.

32. Defendant's agent FSR rejected Plaintiff's payments, and thereby violating multiple provision of 18 VA Admin Code 18VAC48-50-190, as follows:

- 8. Engaging in dishonest or fraudulent conduct in providing management services.
- 11. Failing to handle association funds in accordance with the provisions of § 54.1-2353A of the Code of Virginia or 18VAC48-50-160.
- 12. Failing to account in a timely manner for all money and property received by the regulant in which the association has or may have an interest.
- 17. Failing to act in providing management services in a manner that safeguards the interests of the public.

33. To this day Plaintiff asserts that this foregoing refusal constitutes payment, accord & satisfaction as well as waiver, nevertheless without waiving any rights, Plaintiff paid the then purported arrearage via credit card.

Here is the receipt copy as follows:

ClickPay

Dear Joseph Hoffman,

Thank you for using ClickPay to make your payment!

Your payment of \$3,925.80 for 6621 WAKEFIELD Drive, #211, ALEXANDRIA, VA (ClickPay ID: 2031461512) is being processed.

Payment Details

Payment Date	05/11/2021
Total Amount	\$3,925.80 Amount Due: \$3,813.31 Service Fee: \$112.49
Confirmation Number	T2105111200_ZP0QC1
Payment Method	VISA ending with 4879

For any questions regarding your balance, please contact River Towers Condominium.

Note: Please allow a full business day from the time of the transaction (this excludes Saturday, Sunday, and Bank Holidays) for this payment to be reflected on your bank account and up to 3 business days for this payment to be credited by your landlord or management.

For Credit Card payments, the charges on your credit card statement will reflect a debit from ClickPay-RIVER TOWERS COND.

Click [here](#) to sign up for AutoPay! It is a fast and super-easy way to manage your payments!

Thank you,
Customer Service

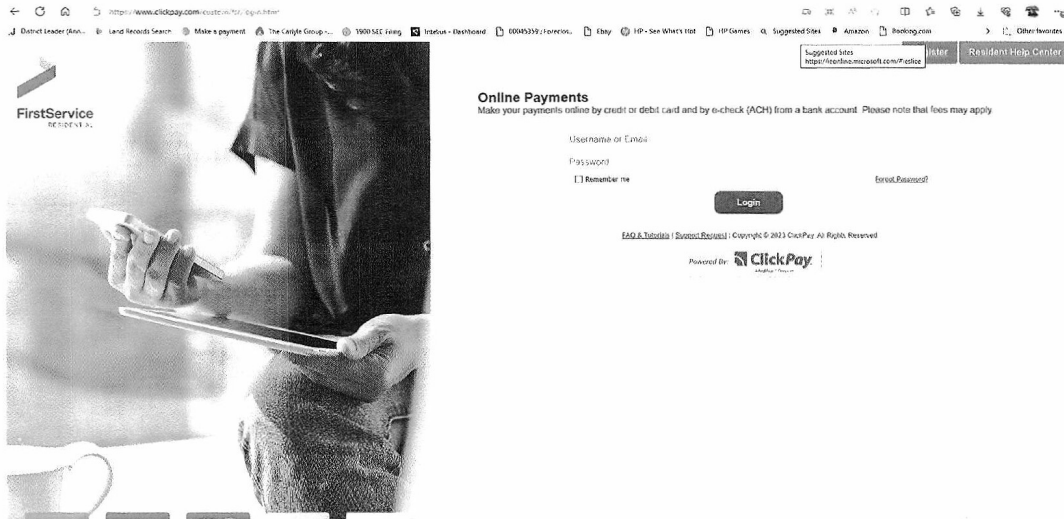
This email address cannot accept incoming emails.

If you have any questions, please click [here](#) or email support@clickpay.com.

This message is not intended for dissemination and its contents are confidential. If you are not the intended recipient of this message you are instructed to discard this message and notify the sender.

34. Plaintiff's card issuer confirmed payment of the foregoing payment.

35. Upon information and belief, FSR is still using ClickPay to collect from River Towers owners. See below:



36. As the entity which collects the Defendant's monthly condo fee payments on a regular basis is FSR. As such ONLY it is deemed to be the custodian of records and its accounting is exempt per the Business Records Exception. *Accord*, Virginia Rule of Evidence 2:803(6).

37. According the Defendant FSR never credited Plaintiff's account with this payment.

Logic dictates that FSR defalcated this payment.

38. That Plaintiff is entitled to recoup this payment against any condo fees presently owing.

39. Although Plaintiff has made demands for a FSR accounting of his payment history, both FSR and the Defendant refused to provide same.

40. In fact when the Defendant herein sought judgment for its alleged back condo fees below [Case Number: GV22006309-00], the Defendant's herein attorneys Whiteford & Taylor furnished its own accounting and had the then condo president execute an affidavit affirming that she was familiar with Whiteford & Taylor's accounting and that it was true (or words to that effect). Note: Said accounting as an entry for a \$1.53 NSF check and Plaintiff has not had checks for decades.

41. As the non-custodian of records, Whiteford & Taylor violated the Supreme Court Rules pertaining to evidence. Although Plaintiff herein filed below a motion in limine to exclude Whiteford & Taylor's hearsay accounting evidence, and although Plaintiff objected below that the Defendant failed to provide notice of an accounting as per § 8.01-390.3 Code of Virginia, nevertheless the GDC trial court denied Plaintiff's motion in limine and overruled his objections to the River Towers' attorney Whiteford & Taylor' seeking admission of its self-serving accounting.

The GDC trial judge stated that if River Towers says that Plaintiff herein owes that amount as per the warrant in debt **\$21,380.77**, then this amount is owed and rendered judgment lacking any admissible

accounting. To add insult to injury, Whiteford & Taylor' attorney made an oral motion for "reasonable" attorney's fees of \$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.

42. Via a request for production of documents, Plaintiff sought from Defendant the FSR accounting and it was not produced.

43. That Plaintiff is entitled to his accounting from FSR.

COUNT I

(Breach of Contract)

1. Plaintiff hereby incorporates the allegations of paragraphs 1 through 43, inclusive, and makes the same hereof.

2. River Towers has caused the Plaintiff's condo to be uninhabitable for either occupation or uninhabitable for any tenant's occupation since May of 2021.

3. Defendant River Tower's failure to do so constitutes a breach of its duties as per the Bylaws as aforesaid.

4. As set forth above Plaintiff had to seek alternative housing at cost of \$21,600 and \$22,860.

5. As set forth above Plaintiff had to move three times at at cost of \$40,000.

WHEREFORE, Plaintiff demands as follows:

1. \$21,000 (Twenty-one Thousand Dollars) in compensatory damages ; and,
2. Plus leave to amend his *ad damnum* demand in accordance with § 16.1-77; and,
3. For such other relief deemed just and proper by this Court.

COUNT II

(Breach of Duty of Care)

1. Plaintiff hereby incorporates the allegations of paragraphs 1 through 43, inclusive, and makes the same hereof.
2. Defendant River Towers has caused and/or rendered Plaintiff's condo to be uninhabitable since May of 2021 to purportedly February of 2203 in spite of Plaintiff's repeated demands for repairs.
3. Defendant River Tower's failure to do either directly, or indirectly, to abate the mold & mildew causing conditions constitutes a reckless as well as a wanton breach of its duty of care especially considering Plaintiff's lung condition.
4. Defendant's and/or its agents failure to abate as aforesaid had/has placed Plaintiff's life and health in serious danger.

WHEREFORE, Plaintiff demands as follows:

1. \$21,000 (Twenty-one Thousand Dollars) in compensatory

damages ; and,

2. Plus leave to amend his *ad damnum* demand in accordance with § 16.1-77; and,

3. For such other relief deemed just and proper by this Court.

COUNT III

(Maintaining a Nuisance)

1. Plaintiff hereby incorporates the allegations of paragraphs 1 through 43, inclusive, and makes the same hereof.

2. By its failure and/or refusal to address the long time internal water issues damaging Plaintiff's condo, Defendant River Towers has maintained a nuisance¹.

3. Plaintiff has suffered as a result of the Defendant River Towers maintaining a nuisance against Plaintiff.

4. Plaintiff is entitled to damages *ex delicto* due to River Towers misconduct, malfeasance, etc.

¹. In *Virginian Railway Co. v. London*, 114 Va. 334, 76 S.E. 306 (1912), the court stated: 'A private nuisance is the using, or authorizing the use of one's property, or of anything under one's control, so as to injuriously affect an owner or occupier of property (1) by diminishing the value of that property; (2) by continuously interfering with his power of control or enjoyment of that property; (3) by causing material disturbance or annoyance to him in his use or occupation of that property

WHEREFORE, Plaintiff demands judgment against the Defendant as follows:

1. Twenty-seven Thousand (\$27,000) in compensatory damages; and
2. Plus leave to amend his *ad damnum* demand in accordance with § 16.1-77; and,
3. For such other relief deemed just and proper by this Court.

COUNT IV

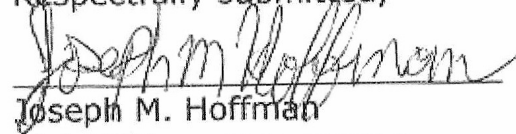
(Accounting)

1. Plaintiff hereby incorporates the allegations of paragraphs 1 through 43, inclusive, and makes the same hereof.
2. By virtue of having had made payments to Defendant's agent FSR. Plaintiff is entitled to have an accounting reflecting all debits and credits to his account.

WHEREFORE, the premises considered, Plaintiff prays for a decree ordering the Defendant to obtain an accounting from FSR and deliver same to Plaintiff as well as such other relief deemed just and proper by this Court.

DATED: September 16th, 2024

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Joseph M. Hoffman", is written over a horizontal line.

Joseph M. Hoffman
Plaintiff in proper person

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