

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

SAINT SOPHIA GREEK ORTHODOX)
CATHEDRAL OF WASHINGTON, D.C.)
by and through its BOARD OF TRUSTEES)

Plaintiff,)

v.)

RYAN ZINKE and LOLITA ZINKE)

Defendants.)
_____)

Case No.: 2016 CA-007772-B
Judge Brian Holeman

DEFENDANTS' ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS

Defendants Ryan Zinke and Lolita Zinke ("Defendants") hereby answer the Plaintiff's Complaint filed in the above-captioned matter and assert affirmative defenses and counterclaims as follows:

ANSWER

1. The allegations contained in paragraph 1 are hortatory and contain no allegations capable of being admitted or denied. To the extent a response is deemed required, the allegations are denied.

2. Defendants admit that Plaintiff purports to invoke the jurisdiction of this Court pursuant to D.C. Code § 11-921.

3. The allegations contained in paragraph 3 constitute legal conclusions to which no response is required. To the extent a response is deemed required, the allegations are denied.

4. The allegations contained in paragraph 4 constitute legal conclusions to which no response is required. To the extent a response is deemed required, the allegations are denied.

5. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5. To the extent a response is deemed required, the allegations are denied.

6. The allegations in paragraph 6 are admitted.

7. The allegations in paragraph 7 are admitted.

8. Defendants incorporate by reference their answers to the foregoing allegations.

9. The allegations in paragraph 9 are admitted.

10. The lease addressed in paragraph 10 speaks for itself and therefore no response is required. To the extent a response is deemed required, the allegations are denied.

11. The lease addressed in paragraph 11 speaks for itself and therefore no response is required. To the extent a response is deemed required, the allegations are denied.

12. The lease addressed in paragraph 12 speaks for itself and therefore no response is required. To the extent a response is deemed required, the allegations are denied.

13. The lease addressed in paragraph 13 speaks for itself and therefore no response is required. To the extent a response is deemed required, the allegations are denied.

14. Defendants admit that they took early possession of the Property. The remaining allegation in paragraph 14 is denied. Defendants paid a security deposit and monthly installments of rent from January through April 2015.

15. The allegations contained in paragraph 15 constitute legal conclusions to which no response is required. To the extent a response is deemed required, the allegations are denied. Prior to April 3, 2015, Defendants made numerous oral and written demands to Plaintiff to remedy dangerous conditions that rendered the Property uninhabitable for Defendants and their family. On March 22, 2015, Defendants informed Plaintiff in writing that the Property's uneven

floors and staircases rendered the Property unsafe for Defendants and Mrs. Zinke's elderly mother, Mrs. Consuelo Hand, who suffered from dementia. Mrs. Hand was listed in the Lease as an occupant of the Property along with the Defendants' children, and Plaintiff was aware of Mrs. Hand's condition.

16. The allegations in paragraph 16 are denied.

17. The allegation contained in paragraph 15 constitutes a legal conclusion to which no response is required. To the extent a response is deemed required, the allegation is denied.

18. The allegation contained in paragraph 18 is denied. Defendants paid rent for the month of April 2015.

19. The allegations contained in paragraph 19 constitute legal conclusions to which no response is required. Defendants admit that Plaintiff made a written demand to Defendants on June 10, 2016, but Defendants deny that letter was the second written demand. To the extent further response is deemed required, the allegations are denied.

20. The allegations contained in paragraph 20 constitute legal conclusions to which no response is required. To the extent a response is deemed required, the allegations are denied.

21. Defendants incorporate by reference their answers to the foregoing allegations.

22. The lease addressed in paragraph 22 speaks for itself and therefore no response is required. To the extent a response is deemed required, the allegations are denied.

23. The allegations in paragraph 23 are denied. Plaintiff breached the warranty of habitability by leasing the Property to Defendants with knowledge of the Property's dangerous conditions. Plaintiff's breach rendered the lease void and unenforceable.

24. The lease addressed in paragraph 24 speaks for itself and therefore no response is required. To the extent a response is deemed required, the allegations are denied.

25. The allegations contained in paragraph 25 constitute legal conclusions to which no response is required. To the extent a response is deemed required, the allegations are denied.

26. The allegations contained in paragraph 26 constitute legal conclusions to which no response is required. To the extent a response is deemed required, the allegations are denied.

27. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27. To the extent a response is deemed required, the allegations are denied.

28. The allegations contained in paragraph 28 constitute legal conclusions to which no response is required. To the extent a response is deemed required, the allegations are denied.

29. The allegations contained in paragraph 29 are hortatory and contain no allegations capable of being admitted or denied. To the extent a response is deemed required, the allegations are denied.

AFFIRMATIVE AND OTHER DEFENSES

Defendants respectfully give notice and assert the following defenses as a matter of law and/or supported by facts to be determined through discovery. By alleging the Affirmative and Other Defenses set forth below, Defendants are not in any way agreeing or conceding that they have the burden of proof or burden of persuasion that would otherwise rest with Plaintiff.

FIRST AFFIRMATIVE DEFENSE (Breach of the Implied Warranty of Habitability)

Plaintiff's claim for rent is barred due to the fact that it is based on a lease that is void due to substantial violations of the Housing Regulations of the District of Columbia that existed at or following the inception of the tenancy, which Defendants did not cause and of which Plaintiff knew or should have known, that caused the premises to be unsafe within the meaning of 14 D.C.M.R. § 302. These unsafe conditions included: uneven and severely bowed floors;

insufficient staircase railings; dangerously slippery front porch; and dangerously slippery sidewalk leading into the backdoor of the home. In addition, the Property had other substantial violations of the Housing Regulations, including, but not limited to, a lack of heat in the month of February 2015.

As a result of Plaintiff's breach of the implied warranty of habitability, Defendant is entitled to an abatement of rent.

**SECOND AFFIRMATIVE DEFENSE
(Good Faith)**

The claims asserted by Plaintiff in the Complaint are barred, in whole or in part because Defendants performed and discharged in good faith each and every obligation, if any, owed to Plaintiff.

**THIRD AFFIRMATIVE DEFENSE
(Failure to Mitigate)**

The claims asserted by Plaintiff in the Complaint are barred, in whole or in part, because Plaintiff failed to mitigate its damages. Upon information and belief, Plaintiff did not make a good faith effort to rent the Property from April 2015—when Plaintiff accepted Defendants' surrender of, and keys to, the Property—until January 2016.

**FOURTH AFFIRMATIVE DEFENSE
(Equitable Estoppel)**

The claims asserted by Plaintiff in the Complaint are barred, in whole or in part, by reason of the acts, omissions, representations, and course of conduct by Plaintiff, upon which Defendants relied to their detriment, thereby barring such claims under the doctrine of equitable estoppel.

**FIFTH AFFIRMATIVE DEFENSE
(Unclean Hands)**

The claims asserted by Plaintiff in the Complaint are barred, in whole or in part, by the doctrine of unclean hands.

**SIXTH AFFIRMATIVE DEFENSE
(Breach of Contract)**

The claims asserted by Plaintiff in the Complaint are barred, in whole or in part, because Plaintiff breached the Lease Agreement, if any existed, with Defendants and by reason of such breach of contract, Defendants have been excused of any duty they may have had to perform any obligations set forth in any alleged contract with Plaintiff.

**SEVENTH AFFIRMATIVE DEFENSE
(Excused Nonperformance)**

Any alleged breach by Defendants of the Lease Agreement was excused by Plaintiff's nonperformance.

**EIGHTH AFFIRMATIVE DEFENSE
(Illegal/Unlawful Contract)**

The claims asserted by Plaintiff in the Complaint are based on a Lease Agreement that is unlawful and/or contains unenforceable provisions that violate public policy and, therefore, cannot be enforced.

**NINTH AFFIRMATIVE DEFENSE
(Failure to State a Claim Upon Which Relief Can Be Granted)**

Upon information and belief, Plaintiff has failed to state a claim against Defendants upon which relief may be granted.

RESERVATION OF RIGHTS

Defendants' investigation and preparation for trial are ongoing and discovery has yet to begin. As such, Defendants reserve the right to amend their Answer to the Complaint when or if additional defenses become known to Defendants.

REQUEST FOR RELIEF

WHEREFORE, Defendants ask this Court for the following relief:

- A. For Plaintiff's Complaint to be dismissed, with prejudice;
- B. For costs of suit herein incurred; and
- C. For any other relief that the Court may deem appropriate.

COUNTERCLAIMS

Mrs. Lolita Zinke and Mr. Ryan Zinke ("the Zinkes") incorporate by reference the allegations in the foregoing paragraphs and make such allegations a part hereof as if fully stated herein. The Zinkes hereby allege the following Counterclaims against Saint Sophia Greek Orthodox Cathedral ("the Landlord") as follows:

NATURE OF THE COUNTERCLAIMS

30. In this action, the Zinkes seek to recover for injuries proximately caused by the Landlord's negligence in leasing the Property to the Zinkes without notifying them of the dangerous conditions of the Property.

31. This action arises from the Landlord's conduct prior to, during, and following the execution of a Lease for real property on November 28, 2014. This action is based on the Landlord's negligent acts that proximately caused injuries to the Zinkes as well as Mrs. Consuelo Hand, Mrs. Zinke's recently deceased mother.

JURISDICTION

32. Jurisdiction is vested in this Court pursuant to D.C. Code § 11-921. Jurisdiction is also vested pursuant to the Survival Act, D.C. Code § 12-101.

33. This Court has personal jurisdiction over the Plaintiff pursuant to D.C. Code § 13-422 and § 13-323.

34. Venue is proper in this Court because a substantial part of the acts or omissions giving rise to this action occurred in the District of Columbia.

PARTIES

35. Ryan Zinke and Lolita Zinke are residents of the State of Montana. Mr. Zinke represents Montana in the United States Congress. He previously served as a U.S. Navy Seal for over twenty years.

36. Mrs. Zinke is the Personal Representative and Executor of the Estate of her deceased mother, Mrs. Consuelo Hand. Mrs. Hand lived with the Zinkes at the residential real property located at 3510 Garfield Street, N.W., Washington, DC 20007 (“the Property”) from January 2015 until April 2015.

37. Upon information and belief, Saint Sophia Greek Orthodox Cathedral (“the Landlord”) owns, leases out, and maintains the Property

FACTUAL BACKGROUND

38. In November 2014, the Zinkes sought to rent the Property after Mr. Zinke was elected to serve in the U.S. House of Representatives. Mrs. Zinke visited the Property and met with one of the Landlord’s representatives before entering into a lease. During Mrs. Zinke’s visit with the Landlord’s representative, they toured the Property together. At no point during the

visit did the Landlord's representative disclose any of the dangerous conditions on the Property, which are described in paragraphs 41 through 57.

39. In November 2014, the Zinkes informed the Landlord that Mrs. Hand, who suffered from dementia, would be staying with them in the home. The Zinkes sought to rent the Property from the Landlord in large part because they would be providing in-home care for Mrs. Hand.

40. After the Zinkes took possession of the Property in January 2015, they realized that the Property was uninhabitable for a number of reasons, including:

Uneven and Severely Bowed Floors

41. The floors throughout the home were uneven and severely bowed. As a result of these uneven and bowed floors, Mrs. Zinke fell and injured herself on the floor. Mrs. Hand also fell and injured herself multiple times.

42. The Zinkes notified the Landlord of these dangerous conditions in or around March 2015.

43. The Landlord responded that it would not make any repairs to remedy the dangerous conditions of the floors.

Uneven Staircases and Insufficient Staircase Railings

44. The staircases in the home were sloped and uneven, and they lacked sufficient support railings. As a result, Mrs. Hand fell and injured herself on the stairs.

45. The Zinkes notified the Landlord of these dangerous conditions in or around March 2015.

46. The Landlord responded that it would not make any repairs to remedy the dangerous condition of the staircases.

Dangerously Slippery Front Porch

47. The uncovered front porch of the Property was dangerously slippery during and after any snow, rain, or ice storms.

48. Upon information and belief, the Landlord applied an epoxy-like finish to the porch, which created a slick surface. Upon further information and belief, the porch used to be covered, which would have prevented such dangerous conditions on the porch.

49. The Zinkes notified the Landlord in or around January 2015 of the dangerous conditions on the front porch.

50. In response to the Zinkes' request to repair the dangerous conditions on the front porch, the Landlord placed rubber mats on the porch in an apparent effort to create traction for those entering and exiting the Property's front door. The Landlord indicated that no other actions would be taken during the winter.

51. Upon information and belief, the Landlord also owns the home located next door to the Property. Upon information and belief, the Landlord provided an electric deicing machine to the tenants of that home for the front porch to prevent dangerously icy conditions. The Landlord did not provide any such machine for the Zinkes at the Property.

52. The rubber mats provided by the Landlord did not improve the conditions on the front porch. Both Mr. and Mrs. Zinke slipped and fell on the mats provided by the Landlord, as the mats slid along the slick porch surface when stepped upon by the Zinkes. Each of them suffered physical injuries and emotional distress as a result of their falls.

Dangerously Slippery Sidewalk Leading into the Backdoor of the Home

53. The sidewalk leading into the rear entry of the home was often dangerously slippery, as the garage roof over the sidewalk did not have a gutter. Drainage from the roof fell onto the sidewalk as opposed to a gutter.

54. Mr. Zinke asked the Landlord to install a gutter to prevent the dangerous accumulation of rain, snow, and ice on the sidewalk.

55. The Landlord did not install a gutter or attempt to remedy the dangerous conditions on the sidewalk while the Zinkes occupied the Property.

Loss of Heat During the Winter

56. The Property's furnace broke in or around February 2015, which resulted in a loss of heat for a full week in the winter month of February.

57. The Zinkes informed the Landlord of the lack of heat in the home, but it took the Landlord a full week to restore the heat during the winter month of February.

The Zinkes' Surrender of the Premises to the Landlord

58. The conditions of the Property described in paragraphs 41 through 57 were too dangerous for the Zinkes and Mrs. Hand. Mr. and Mrs. Zinke both fell and were injured multiple times due to the dangerous conditions on the front porch and rear walkway. Mrs. Hand fell and was injured multiple times on the uneven floors and staircases in the home. Mrs. Hand had lived with the Zinkes for four years, but these falls contributed to their decision to place Mrs. Hand in a nursing home facility.

59. As a result of these dangerous conditions, on March 22, 2015, the Zinkes informed the Landlord in writing of their intention to surrender the uninhabitable property.

60. The Landlord did not respond to the Zinkes' March 22, 2015 letter, so the Zinkes sent a follow-up letter on April 3, 2015.

61. Following the Zinkes' April 3, 2015 letter, the Zinkes and the Landlord agreed to conduct an inspection of the Property before the Zinkes vacated the Property.

62. During a joint inspection of the Property in late April 2015, the Zinkes and the Landlord's representative walked through every room in the home. The Zinkes pointed out the dangerous conditions to the Landlord's representative during this joint inspection. The Zinkes gave the house keys to the Landlord's representative and surrendered the premises. The Landlord's representative did not give any indication to the Zinkes that they were expected to pay rent beyond April 2015.

63. At no point between the Zinkes' April 3, 2015 letter to the Landlord, and June 10, 2016, did the Landlord or any of its representatives make a written demand to the Zinkes to pay rent for April 2015, May 2015, or any month leading up to January 2016. The Landlord did not make such a demand until June 10, 2016.

COUNT I - NEGLIGENCE

64. The Zinkes hereby incorporate by reference the foregoing allegations.

65. The Landlord had a contractual duty to maintain the Property in a safe condition.

66. The Landlord owed the Zinkes a duty of care to warn them of the dangerous conditions on the Property and to make repairs of those conditions.

67. The Zinkes' injuries occurred as a result of and were proximately caused by the Landlord's negligence as to the following:

A. Failing to repair and maintain the Property's floors in a safe manner;

B. Failing to repair and maintain the Property's staircases in a safe manner;

- C. Failing to repair and maintain the Property's front porch in a safe manner;
- D. Failing to repair and maintain the Property's rear sidewalk in a safe manner; and
- E. Failing to warn the Zinkes about these dangerous conditions before the Zinkes entered the Lease Agreement and took possession of the Property.

68. Upon information and belief, the Landlord had knowledge of the unsafe conditions listed in the foregoing paragraphs. The Zinkes notified the Landlord of the dangerous conditions of the floors, staircases, front porch, and rear sidewalk. In the case of the floors, staircases, and rear sidewalk, the Landlord told the Zinkes that it would not make repairs to the dangerous conditions.

69. Regarding the front porch, the Landlord had knowledge of the dangerous conditions. Upon information and belief, the Landlord's negligent actions created these dangerous conditions. Upon information and belief, the home next door to the Property, which was also owned and maintained by the Landlord, had similar dangerous conditions on the front porch. The Landlord provided a heated deicing machine for that home, but provided only flimsy rubber mats to the Zinkes. Moreover, upon information and belief, the Property previously had a cover over the front porch. The Landlord's actions in painting the porch with a slick epoxy-like finish contributed to the dangerously slippery conditions in the winter months. Finally, the Landlord's negligent acts in placing rubber mats on the front porch caused the Zinkes to slip and fall on the mats.

70. It was reasonably foreseeable that tenants in the Property would slip and fall as a result of the dangerous conditions described above.

71. As a direct and proximate cause of the Landlord's negligence, the Zinkes and Mrs. Hand suffered injuries and damages at no fault of their own. The Zinkes also incurred

expenses by placing Mrs. Hand in a nursing facility after her falls on the Landlord's Property. The nursing facility cost \$7,000 per month up until Mrs. Hand's death in October 2016.

72. As a direct and proximate cause of the Landlord's negligence, the Zinkes suffered emotional distress as a result of their falls. The injuries suffered by Mrs. Hand furthered the Zinkes' emotional distress.

73. The amount of damages is to be proven at trial.

COUNT II – SURVIVAL ACT CLAIM

74. The Zinkes hereby incorporate by reference the preceding allegations.

75. Pursuant to the District of Columbia's Survival Act, Mrs. Zinke, who is Executor of Mrs. Hand's estate, brings this claim on behalf of Mrs. Hand, who passed away in October 2016.

76. The Landlord had a contractual obligation to render and maintain the Property in safe condition for the tenants.

77. The Landlord owed a duty of care to all residents of the Property, including Mrs. Hand, to render and maintain the Property in safe condition for the tenants.

78. The Landlord had knowledge of the dangerous conditions on the Property.

79. The Landlord breached its duty of care by failing to notify the Zinkes of the dangerous conditions on the Property and by failing to repair the dangerous conditions described in the preceding paragraphs.

80. The Landlord's breach proximately caused Mrs. Hand to fall and suffer injuries on the uneven floors and staircases. Moreover, due to the dangerously slippery conditions on the front porch and rear sidewalk, Mrs. Hand could not enter or exit the home during the winter without falling and suffering injuries.

81. As a result of the dangerous conditions on the Property, Mrs. Hand suffered physical injuries at no fault of her own. Additionally, Mrs. Hand had to be moved to a nursing home facility to provide care for her. The cost of the nursing facility was \$7,000 per month. Mrs. Hand also suffered emotional distress as a result of her falls on the Property. The amount of damages is to be proven at trial.

82. It was reasonably foreseeable to the Landlord that Mrs. Hand would fall as a result of the dangerous conditions on the Property.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Superior Court Rules of Civil Procedure, the Zinkes hereby demand a trial by jury on these Counterclaims.

REQUEST FOR RELIEF

WHEREFORE, the Zinkes ask this Court for the following relief:

- A. For their Counterclaim for damages for the injuries they suffered, including physical injuries and emotional distress as a result of the Landlord's negligence, to be granted in an appropriate amount;
- B. For Mrs. Zinke's Counterclaim, as Personal Representative and Executor of the estate of her mother, Mrs. Consuelo Hand, for damages for the injuries Mrs. Hand suffered, including physical injuries and emotional distress as a result of the Landlord's negligence, to be granted in an appropriate amount;
- C. For costs of suit herein incurred; and
- D. For any other relief that the Court may deem appropriate.

Dated: November 17, 2016

Respectfully Submitted,

/s/ Stephen M. Ryan

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November, 2016, I have caused to be served, by electronic filing, a true copy of this document on:

Valerie J. Edwards, Esq.
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/s/ Sam C. Neel
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