

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

NEWPORT EAST INC.,

Plaintiff,

-against-

SVIBA FLORAL DECORATORS, INC.,
CATHERINE SVIBA a/k/a CATHERINE
KARLIN and BARRY KARLIN,

Defendants.

Index No. /2018

Date of Filing with
Clerk of the Court: 11/15/18

SUMMONS

Plaintiff designates New York
County as the place of trial.

The basis for such venue is the
residence of plaintiff at 370 East
76th Street, New York, New York

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on the Plaintiff's attorneys within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if the Summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, Judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
November 7, 2018

SCHWARTZ SLADKUS REICH
GREENBERG ATLAS LLP
Attorneys for Plaintiff

By: _____

Steven D. Sladkus

Milad Boddoohi

270 Madison Avenue, 9th Floor

New York, New York 10016

(212) 743-7000

To: Sviba Floral Decorators, Inc.
113 West 28th Street, 2nd Floor
New York, New York

Catherine Sviba a/k/a Catherine Karlin
1645 County Highway 10
East Meredith, New York 13757

Barry Karlin
1645 County Highway 10
East Meredith, New York 13757

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VERIFIED COMPLAINT

Plaintiff Newport East Inc. (“Plaintiff”), by its attorneys Schwartz Sladkus Reich Greenberg Atlas LLP, as and for its complaint, alleges as follows:

Nature of the Case

1. This is a classic case of a bait-and-switch. Defendants, Sviba Floral Decorators, Catherine Sviba a/k/a Catherine Karlin, and Barry Karlin (collectively, “Defendants”), promised to provide Plaintiff a custom, high-class, “museum-like,” landscape and sculpture design (the “Decorations”), as part of a six-figure renovation project to the lobby of the large luxury residential cooperative building owned by Plaintiff located at 370 East 76th Street, New York, New York (the “Building”).

2. Instead of the “sculpture of movement and beauty” or the “Victorian gardens” that were promised, Defendants delivered a final product that resembled a tombstone/graveyard setting that looked *nothing* like the design Defendants supplied and was of such poor workmanship and quality, that it had to be disassembled, removed, and is now in storage.

3. Plaintiff now seeks to hold Defendants responsible for their actions and the return of the \$32,662.50 that Defendants unlawfully collected for a job it failed to perform.

The Parties

4. Plaintiff is a cooperative housing corporation organized and existing under the laws of the State of New York, with its principal place of business located at 370 East 76th Street, New York, New York, *i.e.* the Building, which Plaintiff owns.

5. Defendant, Sviba Flora Decorators, Inc. (“Sviba”), is a corporation organized and existing under the laws of the State of New York, having its principal place of business at 113 West 28th Street, 2nd Floor, New York, New York.

6. Defendant, Catherine Sviba a/k/a Catherine Karlin (“C. Sviba”) is an individual residing at 1645 County Highway 10, East Meredith, New York.

7. Defendant, Barry Karlin (“B. Karlin”) is an individual residing at 1645 County Highway 10, East Meredith, New York.

8. Upon information and belief, C. Sviba and B. Karlin are the principals, owners, shareholders, and/or officers of Sviba.

Facts Common to All Claims

9. On December 6, 2017, Plaintiff had an initial meeting with Defendants to discuss the Decorations.

10. On or about December 18, 2017, Defendants provided a written proposal for the Decorations.

11. Pursuant to the Proposal, the Decorations were to be a “custom design,” with “rock gardens, landscapes, and [a] Victorian garden creating a sculpture of movement and beauty.”

12. Once completed, the Proposal provided that the Decorations would resemble “a museum like exhibit” made with “fine silks, assorted rocks, field stones, birch limbs, and branches of a garden of sort,” with a “water fall [sic] illusion...using LED’s for the illusion of water movement.”

13. The Proposal included a detailed drawing enclosed thereto, depicting how the finished Decorations *should* look (the “Drawing”).

14. The Proposal included a price of \$32,662.50 for the Decorations.

15. The Proposal included an invoice, also dated December 18, 2017, requesting payment in the amount of \$32,662.50, by check made out to “Cathy Sviba.” Payment was to be mailed to “Barry F. Karlin” at 1645 County Highway 10, East Meredith, New York (the “Invoice” and together with the Proposal and Drawing are collectively the “Agreement”).

16. Both the Proposal and Invoice contained a letterhead with “C. Sviba” written across the top.

17. The Proposal was purportedly authored by “Barry,” which, upon information and belief, was B. Karlin.

18. In accordance with the Invoice, Plaintiff mailed payment to Defendants through three checks: (i) \$12,000.00 on January 10, 2018; (ii) \$12,000.00 on February 5, 2018; and (iii) \$8,662.50 on May 30, 2018 for a total sum of \$32,662.50.

19. Plaintiff relied upon Defendants’ representations including those made in the Proposal, retained Defendants, and compensated them by payment of \$32,662.50 in connection with the Agreement.

20. Aside from approving the representations made in the Agreement, Plaintiff had no other involvement in the design, construction, and/or installation of the Decorations.

21. On June 8, 2018, Defendants completed the installation of the Decorations.

22. Once unveiled, it took one glance for Plaintiff to realize that it had been greatly deceived. The final product in no way resembled the Drawing—and the design, workmanship and quality were so abhorrent to Plaintiff, its Board of Directors, and its shareholders, that upon the

demand of Plaintiff, Defendants returned to the Building, disassembled the Decorations, and then Plaintiff stored them on site.

23. Despite numerous demands that Defendants return the \$32,662.50 they received for Decorations that were “apples to oranges” when compared with promises and representations made, Defendants have failed and refused to do so.

First Cause of Action
(Breach of Contract)

24. Plaintiff repeats and re-alleges the allegations contained in paragraphs “1” through “23” as if set forth fully herein.

25. Plaintiff performed all of its obligations in connection with the Decorations and the Agreement; Defendants did not.

26. Defendants breached the Agreement by failing to perform and/or inadequately performing the services they represented they would perform in connection with the Decorations and the Agreement.

27. By reason of the foregoing, Plaintiff is entitled to a money judgment against Defendants in the amount of \$32,662.50, together with interest thereon, for which sum Defendants are liable to Plaintiff.

Second Cause of Action
(Unjust Enrichment)

28. Plaintiff repeats and re-alleges the allegations contained in paragraphs “1” through “27” as if set forth fully herein.

29. Defendants received the benefit of \$32,662.50 in compensation from Plaintiff in connection with the Decorations and the Agreement.

30. Defendants failed to fulfill their obligations under the Agreement and/or in connection with the Decorations. The Decorations in no way resembled—either in design or in

quality—what Defendants promised. Defendants have refused to return the \$32,662.50.

31. Defendants will be unjustly enriched if they are permitted to retain the benefit of the \$32,662.50.

32. Plaintiff, in good faith, compensated Defendants the \$32,662.50 that Defendants requested.

33. Under the principles of equity and good conscience, Defendants should be required to return the entire sum of \$32,662.50 to Plaintiff.

34. By reason of the foregoing, Plaintiff is entitled to a money judgment against Defendants in the amount of \$32,662.50, together with interest thereon, for which sum Defendants are liable to Plaintiff.

Third Cause of Action
(Fraud in the Inducement)

35. Plaintiff repeats and re-alleges the allegations contained in paragraphs “1” through “34” as if set forth fully herein.

36. As alleged herein, Defendants, grossly misrepresented the quality and nature of the Decorations, by providing depictions and detailed descriptions of the Decorations, in order to induce Plaintiff to retain and compensate them.

37. Those representations were false when made and/or upon information and belief, Defendants should have known they were false when made.

38. Plaintiff reasonably relied on Defendants’ misrepresentations to its detriment and suffered a loss of \$32,662.50 for Decorations that were entirely worthless.

39. By reason of the foregoing, Plaintiff is entitled to a money judgment against Defendants in the amount of \$32,662.50, together with interest thereon, for which sum Defendants are liable to Plaintiff.

Fourth Cause of Action
(Promissory Estoppel)

40. Plaintiff repeat and re-allege the allegations contained in paragraphs “1” through “39” as if set forth fully herein.

41. In connection with the Agreement, Defendants made numerous clear and unambiguous promises as to the nature, quality, and design of the Decorations.

42. In reasonable and foreseeable reliance upon the promises made by Defendants, Plaintiff compensated Defendants a total of \$32,662.50.

43. As alleged herein, the Decorations delivered by Defendants were unmistakably different—and of grossly lesser quality—than that which Defendants promised.

44. As a result of Defendants outright failure to deliver on their promises and their deceit in connection with same, Plaintiff has been deprived both of its \$32,662.50 and of usable lobby decorations.

45. By reason of the foregoing, Plaintiff is entitled to a money judgment against Defendants in the amount of \$32,662.50, together with interest thereon, for which sum Defendants are liable to Plaintiff.

WHEREFORE, Plaintiff respectfully requests judgment against Defendants as follows:

- A. On the First Cause of Action, awarding monetary damages against Defendants in an amount to be determined at trial, but in no event less than \$32,662.50, together with interest thereon;
- B. On the Second Cause of Action, awarding monetary damages against Defendants in an amount to be determined at trial, but in no event less than \$32,662.50, together with interest thereon;
- C. On the Third Cause of Action, awarding monetary damages against Defendants in an amount to be determined at trial, but in no event less than \$32,662.50, together with interest thereon;

- D. On the Fourth Cause of Action, awarding monetary damages against Defendants in an amount to be determined at trial, but in no event less than \$32,662.50, together with interest thereon;
- E. Granting Plaintiff such other and further relief against Defendants as the Court deems just and proper, including Plaintiff's reasonable attorneys' fees and the costs and disbursements of this action.

Dated: New York, New York
November 7, 2018

SCHWARTZ SLADKUS REICH
GREENBERG ATLAS LLP
Attorneys for Plaintiff

By: _____
Steven D. Sladkus
Milad Boddoohi
270 Madison Avenue
New York, New York 10016
(212) 743-7000

/863703

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

KENNETH ZAKIN, being duly sworn, deposes and says:

I am the President of the Board of Directors of the Newport East Inc., the Plaintiff in the action herein. I have read the foregoing Complaint, know the contents thereof and the same are true to my knowledge, except as to those matters therein which are stated to be alleged on information and belief, and as to those matters, I believe them to be true.


KENNETH ZAKIN

Sworn to before me this
6th day of November 2018


Notary Public

MARIBEL RODRIGUEZ
Notary Public of New York
No. 01RO6049201
Qualified in New York County
Commission Expires November 26, 2018