

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.:

CHERYL JAKAB,

Plaintiffs,

v.

EVER APRIL APARTMENTS, INC.,

Defendant.

_____ /

COMPLAINT

COMES NOW, Plaintiff, CHERYL JAKAB, (hereinafter "Plaintiff"), by and through her undersigned legal counsel, and hereby sues Defendant EVER APRIL APARTMENTS, INC., (hereinafter "ASSOCIATION"), and in support thereof state as follows:

JURISDICTION AND PARTIES

1. Plaintiff Cheryl Jakab is an individual residing in Broward County, Florida, and is otherwise sui juris.
4. Defendant Ever April Apartment, Inc is a Florida Corporation which owns and operates a condominium complex wherein the Plaintiff owns one of the condominium units, #106. It is located at 8 Briny Avenue, Pompano Beach, Broward County, Florida.
5. All acts of Defendants material hereto occurred in Broward County, Florida.
6. This is an action for the recovery for personal injury and real and personal property damages to the Plaintiff.
7. Venue is proper in Broward County, Florida, pursuant to Florida Statutes § 47.011 as the Defendant reside and/or conduct business in Broward County, Florida.

8. All conditions precedent to the institution of the present action have occurred, been waived, performed, and /or excused.

9. The amount of damages sought, exclusive of interest, attorney's fees and costs, exceed \$30,000.00, which is the jurisdictional limit of this Honorable Court.

FACTUAL BACKGROUND

10. This is an Action for personal injury and real and personal property damage caused by water intrusion and elevated indoor relative humidity which has caused subsequent proliferation of microbes and microbial chemistries in Plaintiff's condominium unit and the common areas appurtenant to Plaintiff's unit in a Broward County, Florida condominium building known as Ever April in Pompano Beach, Florida. The water intrusion, including elevated relative humidity, as well as the inducement of the widespread growth and proliferation of microbes and microbial chemistry has been, and continues to be, caused by negligent maintenance, repair, and remediation in the condominium building by Defendant.

11. The management, repair/remediation and maintenance entities against whom this action is brought is the condominium Association responsible for managing, maintaining, and repairing/remediating the condominium and its common areas, Association which have negligently failed to meet the standard of care in performing their duties.

12. Defendant's lack of performance of its duties and obligations have Resulted in a building now established to have elevated moisture within its structural walls, indoor common areas and surface and airborne harmful microbes including fungi, molds, and bacteria resulting from that moisture source. Yet no adequate or professional repairs or remediation has been timely and fully performed to correct the damaged structure and the harmful conditions of microbial contamination.

13. As a result of defects and harmful conditions caused by the action and failure to act in the use of reasonable care by the defendant and its negligence and gross negligence in the management, repair, remediation and maintenance of the Condominium, for which the Defendant is responsible, the Plaintiff was living in a mold-infested and mold chemistry contaminated conditions, both within her apartment and in the common areas of the Condominium through which she traveled, and which continue to contaminate the property.

14. Plaintiff suffered, likely will continue to suffer, adverse health consequences after the harmful contact with the microbes and microbial chemistries which contaminate the unit and the common areas which also contaminate the Plaintiff's property. The death of Plaintiff life domestic partner, Joao Rodrigues, was caused or substantially caused by negligence of the Defendant as the exposures either caused his brain cancer, or undermined his immune system's ability to heal and cure. The contaminated Association property and units continue to cause new exposures resulting in inflammation and damage to Plaintiff Jakab's bodily organ systems including but not limited to her immune, pulmonary, and neurologic systems.

15. This condominium source of moisture and microbes/microbial chemistries contaminates the unit and affects the safe and quiet use of the unit and the appurtenant common area structural walls. These affects include the death of Joao Rodrigues, personal property contamination, real property damage and contamination, air contamination within her living space, real property diminution of property value in the marketplace, costs attendant with repairs and remediation which can only occur after Defendant stop the water intrusion, its high indoor relative humidity, and remediate the structure and Plaintiff's unit, and personal injury to Plaintiff's body.

16. Plaintiff brings this action to recover compensation for the damages which this water intrusion and microbial proliferation has caused and which it continues to cause unabated to the present day.

17. In or about March 16, 2020, Plaintiff noticed what appeared to be mold in their bedroom. There was no apparent showing of water leakage from sources which were unknown or ascertainable to Plaintiff and which were also outside of Plaintiff's control. On or about May 6, 2020, Defendant Association was doing wall restoration on exterior walls of the unit and water poured out. Water had been leaking from the outside through the unmaintained exterior walls, into Plaintiff's walls. This source of moisture intrusion has continued to cause many likely moisture intrusions from rainfall occurring on an ongoing basis up to the present time.

18. Plaintiff notified the Defendant of the mold growth on many occasions, through the time when Joao was dying, without any response to live up to their obligations to maintain, repair, and remediate. This continues to the present.

19. Defendant was in possession and control of the common elements and building infrastructure of the condominium complex, and its agents, servants, and/or employees jointly operated and managed the common elements and building infrastructure of the condominium complex.

20. Plaintiff hired an environmental testing professional to conduct analysis at the property. Results showed significant airborne concentrations of harmful mold spores. Defendant still did nothing.

21. The Defendant knew or should have known that the contaminated common areas of the Defendant Association must be remediated BEFORE any successful remediation can be achieved in the subject unit since the contaminated and water damaged common areas, including

wall voids and structural elements will serve as a continuous reservoir for the recontamination of the Plaintiff's unit.

22. There was nothing Plaintiff could have done to prevent this mold from growing in their unit. It was a situation outside Plaintiff's control.

23. At all times material hereto, Defendant, as the association of the condominium complex, has controlled the common elements thereof and it failed to make the proper remedies as mold continues to permeate in the subject Unit and common areas, causing damage therein.

24. Plaintiff Cheryl Jakab routinely and repeatedly notified Defendant Association that the unit was being damaged and contaminated.

25. It was the duty of the Defendant, as the condominium association and the Defendant management company, to maintain the premises in a reasonably safe manner so as to prevent property of owners of the individual units, such as the subject Unit, from being damaged and/or destroyed by water and mold permeating into the subject Unit from the outside and appurtenant common areas.

26. This known water intrusion and mold infestation in the building and the subject Unit has likely continuously existed invisible and hidden behind the interior wall finishings, and continued to be enlarged, as a result of Defendants' continuing tortious conduct, virtually daily from before March 2020 to the present as no exterior wall maintenance and repair has occurred for years.

27. At all times material, Defendants were in possession of the common elements and building infrastructure of the condominium complex and its agents, servants and/or employees operated the common elements and building infrastructure of the condominium complex.

28. It continued to be the duty of the Defendant as the condominium association and management company to maintain the premises in a reasonably safe manner so as to prevent property of owners of the individual units from being damaged and/or destroyed by water and mold.

29. At all times material hereto, Defendant was on notice of the damages being caused to the condominium complex and to the subject Unit, but at all times material hereto failed, or specifically chose, not to reasonably remedy the mold infestation growing within the condominium complex and subject Unit.

30. At all times material hereto, Defendant negligently failed and otherwise refused to prevent the intrusion of moisture through the exterior building envelope and of internal common areas and failed to remediate the resulting development of toxic mold. The unknowing Plaintiff continued residing in this Unit with untenable and dangerous conditions resulting from toxic mold of which the Defendant were aware or should have been aware...yet they gave no warning of the hazards presented to Plaintiff.

31. Plaintiffs developed significant and severe illness due to the prolonged exposure to high levels of toxic mold in this Unit and the common areas over the last three years, and have been required to seek the care of physicians for health conditions relating to mold exposures and Jakab continue to seek medical care. Rodrigues died due to the inability to fight his brain cancer which arose during the exposures. The exposures arose in substantial part due to exposures within the premises on goods and products intended for bodily consumption, including air, water, food, furniture and other exposure sources.

32. To date, the Unit and common areas still contain elevated levels of toxic mold. Plaintiff's personal property has been damaged by the toxic mold within the premises.

33. Due to the Defendant's negligent maintenance and repairs, the Plaintiff's Unit and the common areas have been and continue to be in an uninhabitable and unsafe condition.

MOLD AND ITS ENVIRONMENTAL CONSEQUENCES

34. Mold is a fungus which reproduces by creating spores or microscopic cells that generate in large numbers often in chains that easily disperse into the air. Mold spores are generally invisible to the human eye. If adequate moisture is present when a mold spore lands on a suitable food source, such as drywall, it begins to grow. Mold can grow with liquid water and even simply due to the presence of high relative humidity in the air.

35. The growing mold spore emits an extension known as a hypha, which signifies the beginning of a mold colony. As a hypha grows it elongates and splits, creating a network of hyphae known as a mycelium. Indoors, this growth likely commences within 72 hours under favorable moisture and temperature conditions.

36. Within days, a single spore can produce a mature mold colony containing millions of spores.

37. When certain species of mold grow and process nutrients, they produce chemicals called mycotoxins and excretory chemicals. Mycotoxins are used as chemicals in biological warfare.

38. Several mold species, including *Stachybotrys*, *Aspergillus*, *Chaetomium*, and *Penicillium*, produce a wide variety of mycotoxins which are poisonous or toxic to virtually all persons who come in contact with them. Apart from being toxic, exposures to the microbes and chemistries are known to cause inflammation and immune system injury. Often times, due to the latency periods between exposure and disease, one may be harmfully exposed and contacted, but

the symptoms and disease may not be apparent for years. Medical monitoring is essential to deal with the effects of the chemical and microbial assault.

39. Mycotoxins attack the nervous, respiratory, immune, and muscular systems and can enter the body either via ingestion, inhalation or direct skin contact and can lodge in the digestive tract, lungs or brain. Inhalation is known to be an even more potent route of exposure than ingestion.

40. Initial symptoms of mycotoxin and microbe exposure can include upper respiratory infections, coughs, sore throats, headaches, nausea, fibromyalgia, fatigue, hemorrhaging, convulsions, skin irritation, cancer and organ and tissue damage including liver, kidney and neurological and immunologic disease.

COUNT I
BREACH OF CONTRACT AS TO ASSOCIATION

41. Plaintiff Cheryl Jakab reavers and realleges paragraphs 1 through 40 as though fully set forth herein.

42. The Condominium Declaration (the "Condominium Documents") governing the Association constitute a valid contract between Plaintiff and the Defendant. A copy of the Condominium Documents is attached as **Exhibit A** hereto.

43. Pursuant to the Condominium Documents, Defendant association owed a non-delegable, contractual duty to the Plaintiff to maintain the common elements owned by Defendant. See Vazquez v. Lago Grande Homeowners' Association, 900 So. 2d 587, 594 n.7 (Fla. 3d DCA 2004).

44. Defendant association materially breached the contract when it failed to carry out its non-delegable duties under the Condominium Documents (including, among other things, failure to maintain the common elements), and has caused damages thereby to Plaintiff, including

damage to the subject Unit requiring the need for repairs which cannot occur until the common area reservoir of moisture intrusion and microbial contamination has first been remediated, loss of value of the real property in the market place, the growth and presence of toxic mold at the Unit and appurtenant common areas, and damage to the Plaintiff's personal property.

WHEREFORE, Plaintiff Cheryl Jakab, demands judgment against the Defendant Ever April Apartments, Inc. for compensatory damages, both past and future, caused by the Association, plus an award of costs and reasonable attorney's fees, pursuant to the governing Condominium Documents. Plaintiff demands trial by jury of all issues so triable.

COUNT II
NEGLIGENCE AS TO ASSOCIATION

45. Plaintiff Cheryl Jakab reavers and realleges paragraphs 1 through 67 as though fully set forth herein.

46. Plaintiff is entitled to quiet enjoyment of her apartment, and Defendant, as the owner of the common elements, ensuring the quiet enjoyment of the same by reasonable and timely performance of maintenance and repair to common areas affecting her unit.

47. Defendant Association is charged by law and condominium rules and regulations with a duty to maintain conditions that would protect the Plaintiff from conditions of water and mold permeating through the walls, floors, air and ceilings of the common areas and affecting her unit, her body, and her possessions.

48. Defendant Association breached that duty continuously to the present when it permitted conditions to exist that allowed water and mold to permeate through the walls, floors, air, and ceilings of the common area and her Unit.

49. The Defendant was under a non-delegable duty to provide the Plaintiff with a reasonably safe and habitable condominium free from abnormal indoor moisture and microbial

and microbial chemistry contamination arising from its common areas. It had a duty to inspect the premises on a reasonable basis to assure that the common areas were safe and in good repair. It had a duty to timely test the premises for defects that may damage the property or harm the Plaintiff and her property due to common area defects. It had a duty to timely and completely repair the premises from water intrusion and to repair the moisture source(s) moving into the unit. It had a duty to hire competent licensed and certified repair personnel, in particular when it knew or should have known that the premises had contamination from microbes. Performing mold assessment and remediation without the use of certified professionals may rise to a felony offense under Florida law. It had a duty to supervise and to test the premises to assure that retained personnel or contractors had performed the repairs and remediation to a level which was safe and habitable and would not continue to damage Plaintiff's property or her person.

50. The Defendant breached all of its duties of care owed to Plaintiff. Those breached also included, more specifically:

(a) allowing moisture and humidity to accumulate in the common areas exterior walls and wall voids, causing abnormal levels of microbes to grow, metabolize and contaminate the common areas and the air within it, which affected the property, health and welfare of the Plaintiff. Such microbial contaminants which harmed Plaintiff were likely on or in goods and products intended for bodily consumption. The humidity and moisture within the premises, including the appurtenant common area structures were substantially above acceptable levels, which is known to cause the growth of microbes;

(b) failing to timely hire competent, trained, certified mold assessors and remediators to test, inspect, evaluate, repair and completely remediated all of the common areas and the Plaintiff's property affected by it;

(c) failing to hire competent management and failing to supervise and train those authorized by Defendant to manage and maintain the premises in a safe condition;

(d) failing to test the premises after any and all moisture and HVAC repairs and maintenance to verify that premises were safe and cleaned of microbes and microbial chemistry;

(e) failing to test the entire premises for its moisture content and microbial/microbial content after being aware that the premises were potentially moist and contaminated to assure that the premises were safe for human occupancy, including Plaintiff;

(f) failing to warn Plaintiff that the premises were unsafe for occupancy due to elevated moisture levels and contamination by microbes and microbial chemistries.

51. As a direct and proximate result of Defendant's negligence, Plaintiff suffered personal injuries. She has likely suffered permanent damage to various bodily systems, especially her pulmonary and immune systems. She has sustained chronic inflammation from chronic exposures and is now susceptible to such effects and symptoms with subsequent exposures in other locations, which sensitization did not exist before becoming damaged and sensitized at the subject condominium.

52. As a further and direct proximate result, Plaintiff expended or will expend monies on alternative living expenses, wasted rent on the uninhabitable rental unit, moving expenses, food, new clothing and bedding, she will have to replace all of her personal possessions or test, remediate and verify through testing that remediation was successful, as well as substantial medical payments, copayments and medications.

53. As a direct and proximate result of the foregoing, the Plaintiff has been damaged in an amount to be determined at trial, which amount includes, but is not limited to, personal injuries to Plaintiff who has suffered harmful physical exposure to and injury from the microbes and their

chemistries, which have caused or will likely cause illness, disease, pain and suffering, mental anguish, loss of capacity for enjoyment of life, aggravation or pre-existing condition and medical expenses. Her illness will likely affect her ability to earn money in the future and will likely cause absences from work causing wage losses. These losses are either permanent in nature or continuing in nature, and Plaintiff will likely suffer losses and injury in the future.

54. As a direct and proximate cause of the Defendant's failure to act in a reasonable and prudent manner under all the prevailing circumstances, the Plaintiff was caused to suffer loss to personal property and quiet enjoyment of his three condominium units.

55. Plaintiff was harmfully exposed to the contaminants caused by Defendant to proliferate within her condominium home when she inhaled the contaminated air in virtually every breath, and when she touched the contaminated surfaces, including but not limited to goods and products intended for bodily consumption. She will require medical monitoring over the remaining years of her life to ascertain and respond to likely potential organ system damage caused by the exposures as it appears over time. Upon information and belief, the Plaintiff will incur additional future medical expenses as a result of the Defendant's conduct, the exact amount of which is presently unascertained.

56. The foregoing breaches of duty were both the legal and factual cause of the aforementioned damages.

WHEREFORE, Plaintiff Cheryl Jakab respectfully requests that this Honorable Court enter a judgment for any and all damages that are recoverable under the law against Defendant, Ever April Apartments, Inc., plus court costs, and any such further and additional relief as the Court deems just, fair and proper. Plaintiff demands trial by jury of all issues so triable.

COUNT III:
GROSS NEGLIGENCE AS TO ASSOCIATION

57. Plaintiffs repeat and re-allege the allegations of Paragraphs 1-67 as if fully set forth herein.

58. The Defendant Association owed to Plaintiffs the duty to use due care, and to have performed in a competent and workmanlike manner all of the management, maintenance, repair and upkeep of the common area premises in a safe and occupiable condition, and, in so doing, owed Plaintiffs a duty imposed by law to avoid harm to the Plaintiffs, their Unit and the related common areas which affects Plaintiffs and their quiet and safe enjoyment of their residential property.

59. Defendant breached its duties of due care to the Plaintiffs by willfully choosing to not warn Plaintiffs of the defects and conditions of which it was aware or should have been aware;

60. Defendant willfully, wantonly, and flagrantly chose to make no repairs or to perform any maintenance to the leaking structural elements including the cracked walls and indoor moisture, even after it was aware of the deteriorating conditions including actual water intrusion occurring there for many months. Defendant had already observed, or should have already observed these conditions which has occurred throughout the premises over the past four years.

61. Defendant has willfully and flagrantly chosen to have no work performed which was adequate and appropriate for the purposes of maintenance and repair at the subject unit even after it knew of the defective dangerous conditions found there.

62. Defendant has willfully and flagrantly chosen not to perform, and refused to perform remedial and corrective work to the damaged premises, subjecting Plaintiff to contamination by moisture and microbe intrusion, which also likely will continue to contaminate Plaintiff's unit.

63. Defendant has knowingly and willfully chosen to permit unremitting growth of toxigenic and allergenic microbes and their chemistries to proliferate in the Unit and its attendant common areas and creating an adverse health risk and effect and personal injury to the Plaintiffs. These breaches are all willful and wanton and show a clear willingness to subject Plaintiffs to physical harm and damage to their property. Such breaches contributed to and/or caused both the structural unit defects and the damages described herein.

64. The Defendant's gross negligence has resulted in chronic water and moisture intrusion from various outside sources into walls, columns, floors, beams, interstitial cavities and/or drywall and baseboard of the Unit and common areas which caused microbiological contamination in the form of the growth of toxic and allergenic fungi and bacteria which pose a serious health hazard to the Plaintiff. It has caused personal injury and property damage to the Plaintiff Jakab, and death or premature death to Rodrigues.

65. As a result of the aforementioned grossly negligent conduct and contamination, the Plaintiff's Unit and its attendant common areas were defective and otherwise not reasonably fit and dangerous for continued habitation or for their intended purpose, yet Defendant chose not warn Plaintiff of these risks of which the defendant Association knew or should have known.

66. All of the defects and conditions in the Unit described above were also latent to Plaintiff and yet in existence at all relevant times. Said damages were continuous and repetitious daily and progressively over time.

67. Upon information and belief, Defendant, through its Board, chose wrongfully and intentionally to not repair and remediate. The damages and defects were fully known and disclosed to the Board, including through the advice and opinions of experts if they had sought it, yet the Board chose to not perform the needed inspections, testing, repairs and remediation.

68. The above recital is not exhaustive. Plaintiff is continuing her investigation. Additional negligence may exist, and Plaintiff may amend this Complaint at such time as additional negligence becomes known.

69. No contractual limitation exists which, under the terms of any contract or under the economic loss rule, would preclude the assertion of the foregoing claim, and damage with respect to the Plaintiff.

70. To the extent any contractual limitation purported to limit, or preclude altogether, Plaintiff's ability to assert the foregoing claim, any such limitation would be voidable for failing to leave the Plaintiff with a cognizable remedy pursuant to Article I, Section 21 of the Florida Constitution and governing common law including *Holland v. Mayes*, 19 So.2d 709 (1944) and *Stewart v. Gilliam*, 271 So.2d 466 (4th DCA 1972).

71. As a direct and proximate result of the foregoing, the Plaintiffs have been damaged in an amount to be determined at trial, which amount includes, but is not limited to, personal injuries to Plaintiff Jakab who has suffered harmful physical exposure to the microbes and their chemistries, pain and suffering, mental anguish, loss of capacity for enjoyment of life,

aggravation or pre-existing condition and medical expenses. The losses are either permanent in nature or continuing in nature, and Plaintiff will suffer losses in the future.

72. As a direct and proximate cause of the Defendant's gross negligence and wanton and willful failure to act in a reasonable and prudent manner under all the prevailing circumstances, the Plaintiff Jakab is caused to suffer loss to her unit, repair and remediation costs, lost value in the market place for the unit, damages to her personal property, costs for storage of contents during reconstruction expenses, pack up and unpack expenses, and additional outside living expenses during reconstruction/remediation. Plaintiff was harmfully exposed to the contaminants caused by Defendant to proliferate in the common areas and within their own unit when she inhaled the contaminated air and when she touched the contaminated surfaces. A substantial source of her harmful exposures likely arose from goods and products intended for bodily consumption. She will require medical monitoring over the remaining years of her life to ascertain and respond to the organ system damage as it appears over time. Upon information and belief, the Plaintiff will incur additional future medical expenses as a result of the Defendant's conduct, the exact amount of which is presently unascertained. She will likely lose earnings in the future as well as incur a loss of earning capacity as she deals with the likely permanent injuries.

73. As a result of the foregoing, Plaintiff has been damaged in an amount to be determined at trial.

74. The foregoing breaches of duty were both the legal and factual cause of the aforementioned damages.

WHEREFORE, Plaintiff Cheryl Jakab respectfully requests that this Honorable Court enter a judgment for any and all damages that are recoverable under the law, against Defendant EVER APRIL APARTMENTS, INC. plus court costs, and any such further and additional relief as the Court deems just, fair and proper. Upon compliance and conformance with Florida law and a sufficient proffer of evidence, Plaintiff shall seek an award of punitive damages.

Plaintiffs demand trial by jury of all issues so triable.

DATED: This 4th day of April, 2022.

Respectfully submitted,

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