

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
CIVIL DIVISION

STACY HARPER
And T.T., a minor,
by and through her next friend
and guardian, **STACY HARPER**

PLAINTIFFS

VS.

CASE NO. 72CV-24-____

MICHAEL COLLY, and
THE MICHAEL AND ANGELA COLLY JOINT REVOCABLE TRUST and
SEQUOYAH HOLDINGS LLC, a New Jersey limited liability company;
and **ELEVATION REAL ESTATE MANAGEMENT, LLC**

DEFENDANTS

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COMPLAINT

COME NOW Stacy Harper and T.T., by and through her next friend and Guardian, Stacy Harper (collectively Plaintiffs), and for their complaint against (Defendants) state:

Parties

1. Plaintiffs are a mother (“Ms. Harper”) and daughter (T.T.), and residents of Washington County, Arkansas, and were Washington County residents at all times pertinent to this action.

2. Defendant Michael Colly, both as an individual and as Trustee of the Colly Joint Revocable Trust (referred herein collectively as Defendant Colly), is upon reason and belief, resident of Washington County, Arkansas.

3. Defendant Sequoyah Holdings LLC is a New Jersey limited liability company doing business in Washington County, Arkansas. Defendant Elevation Real Estate and

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Management, LLC is an Arkansas limited liability company doing business in Arkansas, which upon reason and belief served as property manager for the Home and agent of Defendant Sequoyah.

4. That pursuant to Ark. Code Ann. §16-56-125, any person, for the purpose of tolling the statute of limitations, may file a complaint stating his or her cause of action in the appropriate court of this state, whenever the identity of a tortfeasor is unknown. Thus, in this case, John Does 1-3 are the official names of any individual person defendant or entity with which any individual person or defendant may be associated. That upon determining the identity of any current unknown tortfeasor person or entity, Plaintiff will amend this Complaint by substituting the real name for the pseudonym. The Plaintiff has attached an affidavit of Plaintiff's attorney providing that the identity of a tortfeasor is unknown, see Exhibit "A", made a part herein.

5. The incident and events giving rise to the cause of action occurred at 1452 E. Sequoyah Court, in Fayetteville, Washington County, Arkansas (the "Home").

6. Jurisdiction in this court is proper, and venue is proper.

Relevant Facts

7. The Plaintiffs were long time residents of the Home, from about 2015 through November 2023. Ms. Harper leased the Home from Defendant Colly.

8. Defendant Colly, and later Defendant Elevation, served as property manager for the Home with the responsibility of providing maintenance and providing necessary repairs.

9. Defendant Colly knowingly repaired the Home's HVAC in a manner inconsistent with proper maintenance and repair causing a buildup of moisture in the unit and ceiling and which caused the growth of toxic mold.

10. Over the years, Ms. Harper contacted Defendant Colly to make repairs on a faulty HVAC unit in the home. The unit would fail, Ms. Harper would call, and Defendant Colly would attempt repair.

11. The Defendant Colley, and later Defendants Sequoyah and Elevation, concealed the condition of the HVAC and surrounding ceiling from Plaintiffs and subsequently concealed an ongoing buildup of moisture and continuous water leak despite numerous maintenance calls and repair requests. Following a repair, Defendant Colly would report that the system was operating and did not report any further leaking or other moisture problems.

12. During Ms. Harper's time in the home, she was diagnosed with and treated for breast cancer. It was a surprising diagnoses given that Ms. Harper is young and was not genetically predisposed to the particular type of cancer. Her cancer was of a type related to hormone imbalance, also a surprise given Ms. Harper's healthy lifestyle. Mr. Colly was aware of Ms. Harper's health condition.

13. On November 9, 2023, following another repair request and notable water issue, the Home's ceiling became so saturated with moisture that it collapsed creating a hole over the Plaintiffs' living space. When the ceiling collapsed, a black substance spread through the household.

14. Given Defendant Colly's representations or failure to disclose the severity of the moisture build-up the Plaintiffs had no reason to suspect or believe there were improper repairs

made or a dangerous condition in the Home until testing revealed that the black substance found was a toxic mold infestation.

15. Ms. Harper proceeded to receive medical testing which revealed that her body was infested with the same type of mold that was in her home.

16. T.T. also suffered from unusual skin conditions and breathing issues as result of the infestation.

17. With the realization that she had been exposed to toxic black mold, it was determined that the mold caused a hormone imbalance which developed into the cancer.

18. The mold exposure also caused a great deal of difficulty in her recovery from cancer treatment.

19. Given Ms. Harper's condition, she was advised by her medical professionals not to return to the home. She and her daughter have lost all of their worldly possessions. The mold condition resulted in a constructive eviction.

20. Adding insult to injury, Defendant Sequoyah purchased the property from Defendant Colly sometime in October 2023.

21. Upon reason and belief, Defendant Elevation was the property manager hired by Defendant Sequoyah to manager the Home.

22. Defendants Sequoyah and Elevation attempted to repair the hole in the home's ceiling.

23. When Ms. Harper inquired as to black substance in the home, the property manager for Defendant Elevation suggested that it was "just dirt" and not to worry. Defendants then completed the repairs further concealing the problem.

24. Adding insult to injury, Defendants have submitted Ms. Harper to collections for the failure to pay December 2023 rent, causing Ms. Harper further financial harm and embarrassment. This despite having knowledge that the substance was mold, not “dirt”.

25. The Plaintiffs have incurred significant medical and associated expenses as result of this toxic mold exposure, and will continue to suffer them in the future. Ms. Harper in particular, had her life completely altered and damaged as a result of this mold exposure.

COUNT 1- Fraudulent Concealment

26. Plaintiffs hereby incorporate the previous paragraphs above as if restated below, word for word.

27. Defendants falsely represented to the Plaintiffs that the HVAC and the Home was in correct working order and in good condition with no problems.

28. Defendants knew or should have known the HVAC was in poor working order and that the Home was subject to damage from the ongoing leak and poor maintenance.

29. Defendants’ intent was to induce inaction on the part of the Plaintiffs and to save money.

30. Plaintiffs, being the tenants, justifiably relied on the Defendants’ representations, being the landlords and owners, because the Defendants’ various declarations that the HVAC was repaired and functioning properly.

31. Plaintiffs suffered damages, as explained in greater detail below, as result of their reliance on the Defendants’ representations.

COUNT II- Toxic Tort

32. Plaintiffs hereby incorporate the previous paragraphs above as if restated below, word for word.

33. While living the Home, the Plaintiffs were exposed to the toxic mold that grew because of the negligent installation, maintenance, and repair of the HVAC unit and Home.

34. Because the Plaintiffs lived in the Home for an extended time, the Plaintiffs were exposed to the toxic mold with sufficient frequency and regularity to cause the medical ailments and infestation from the Home.

35. Plaintiffs lived in direct exposure to the toxic mold from the HVAC unit and related infestation of the rest of the Home.

36. Because medical testing revealed that the toxic mold infestation of the Plaintiff's body was the same mold found in the Home, it more likely than not that the toxic mold caused the Plaintiffs' medical injuries and loss of personal property.

COUNT III- Negligence

37. Plaintiffs hereby incorporate the previous paragraphs above as if restated below, word for word.

38. Defendants had a duty to properly repair and maintain the HVAC and home, and to report known ongoing moisture problems, especially upon undertaking such inspection and repairs and having knowledge of Ms. Harper's condition.

39. Defendants breached their duties to properly repair and maintain the Home.

40. As result direct result of Defendants' breach, toxic mold formed in the Home.

41. The toxic mold was the proximate cause of the Plaintiffs' damages to their persons and property.

COUNT IV- Breach of Contract

42. Plaintiffs hereby incorporate the previous paragraphs above as if restated below, word for word.

43. The Plaintiffs and Defendants have a written lease for the Home. The Plaintiffs are no longer in possession of a copy of said lease given the condition of the property and the wrongful eviction, but will disclose upon later discovery.

44. The lease required the Defendants to make repairs to the HVAC upon request.

45. The lease requires the Plaintiffs to pay rent.

46. The Plaintiffs did everything required of them in the lease. The Defendants failed to properly repair the HVAC, resulting in the damages in described above in an amount that may be proved at trial.

COUNT V- Unlawful Eviction

47. Plaintiffs hereby incorporate the previous paragraphs above as if restated below, word for word.

48. The Defendants, having knowledge of the toxic mold, wrongfully evicted the Plaintiffs and reported them to collections, causing damages as available under the lease and under Arkansas Landlord/Tenant law that may be proved at trial.

DAMAGES to Stacy Harper

49. Plaintiffs hereby incorporate the previous paragraphs above as if restated below, word for word.

50. As a direct result of the exposure to toxic mold proximately caused by the Defendants' conduct or willful behavior, Ms. Harper suffered the following:

- a. breast cancer and difficulty healing and while recovering from her cancer, and other mold-related injuries to her entire body in the past, the present, and will continue to suffer into the foreseeable future;
- b. all related medical conditions related to her breast cancer and mold exposure;
- c. past, present, and future medical expenses;
- d. past, present, and future pain, suffering, and mental anguish;
- e. future loss of earnings;
- f. loss of earning capacity;
- g. disfigurement, and other visible results, and
- h. other injuries.

DAMAGES to T.T.

51. Plaintiffs hereby incorporate the previous paragraphs above as if restated below, word for word.

52. As a direct result of the exposure to toxic mold proximately caused by the Defendants' conduct or willful behavior, T.T. suffered the following:

- a. Skin disorders, breathing problems, and other mold-related injuries to her entire body in the past, the present, and will continue to suffer into the foreseeable future;
- b. past, present, and future medical expenses;
- c. past, present, and future pain, suffering, and mental anguish;
- d. future loss of earnings;
- e. loss of earning capacity;
- f. disfigurement, and other visible results, and
- g. other injuries.

PUNITIVE DAMAGES

53. Plaintiffs hereby incorporate the previous paragraphs above as if restated below, word for word.

54. Defendants knew or ought to have known, in light of the surrounding circumstances, that its improper repair and maintenance of the HVAC would naturally and probably result in personal injury and property damage, and they continued such conduct in reckless disregard of the consequences from which malice may be inferred.

55. Further, Defendants Sequoyah and Elevation's conduct in unlawfully evicting a cancer patient and her daughter, then filing a report to collections, despite having knowledge of black mold in the Home, is egregious, and given the circumstances, is such intentional or reckless conduct from which malice may be inferred.

PRAYERS FOR RELIEF

56. Plaintiffs hereby incorporate the previous paragraphs above as if restated below, word for word.

57. As a direct and proximate result of the Defendants' conduct, Plaintiffs are hereby entitled to the damages specified above in an amount other than be determined by the trier of fact, but in excess of the minimum required for federal court jurisdiction in diversity of citizenship cases.

58. Plaintiffs respectfully request the cost of litigating this case as allowed by Arkansas Rule of Civil Procedure 54 and all other applicable laws, as well as attorney's fees pursuant to Ark. Codes Ann Sec. 16-22-308 and all other applicable laws.

59. Plaintiffs request a trial by jury.

60. Plaintiffs reserve the right to plead further in this matter, and to amend this Complaint freely as allowed by the Rules.

WHEREFORE, Plaintiffs respectfully request that this Court grant them judgment in the amounts sought herein, for their attorney's fees and costs, and for any and all other just and proper relief to which that may be entitled.

RESPECTFULLY SUBMITTED,
STACY HARPER and T.T.

BY: /s/ Darren A. Gibbs
Darren A. Gibbs, #2009255
MGW Law Partners
3729 N. Crossover Rd., Suite 111
Fayetteville, AR 72703
(479) 521-7050, (479) 521-7052-fax
darren@mgwfirm.com