

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS.

SOUTHERN COURT DEPARTMENT
SOUTHERN DIVISION
C.A. NO. 0729-cv-159

ANDRE LEDOUX d/b/a LEDOUX
CONTRACTING,
Plaintiff

v.

JOHN R. AMATO and
ROBIN A. AMATO,
Defendants

ANSWER WITH COUNTERCLAIMS

John R. Amato and Robin A. Amato, Defendants under the above captioned matter ("The Defendants," hereinafter), answer the Complaint therein as follows:

1. The Defendants have insufficient knowledge or information to form a belief regarding the truth of the allegations of Paragraph 1 of the Complaint.
2. The Defendants admit the allegations of Paragraph 2 of the Complaint.
3. The Defendants state that the Plaintiff partially constructed a stone fireplace and chimney ("the Work," hereinafter) at their property located at 311 Woodmere Rd. in Beckett Massachusetts ("the Premises," hereinafter), but abandoned the work on July 13, 2007, well prior to its completion. The Defendants deny the remainder of the allegations contained in Paragraph 3 of the Complaint.
4. The Defendants deny the allegations of Paragraph 4 of the Complaint.
5. The Defendants admit only that they have paid the Plaintiff \$9,000.00, but deny each and every remaining allegation contained in Paragraph 5 of the Complaint.
6. The Defendants deny that the Plaintiff has a reasonable likelihood of success on the merits of his case. The remaining allegations contained in Paragraph 5 of the Complaint do not call for an admission or denial.

AFFIRMATIVE DEFENSES

- A The Complaint fails to state a claim or claims against The Defendants upon which relief can be granted. Accordingly, the Complaint should be dismissed.

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- B The action was not commenced within the time specified by law, and therefore the Plaintiff is barred from recovery. Accordingly, the Complaint should be dismissed.
- C Service of process in this action was insufficient; therefore this action should be dismissed. Accordingly, the Complaint should be dismissed
- D The Plaintiff has failed to complete the work he agreed to perform, and is thus not entitled to receive further compensation.
- E The Plaintiff has failed to perform his work in a workmanlike manner, and is thus not entitled to receive further compensation.
- F The Plaintiff is estopped by the payments he has received to assert that the Defendants owe him any monies.
- G The Plaintiff has breached contractual commitments to the Defendants and is therefore estopped to assert that the Defendants owe any further monies.

WHEREFORE, Defendants demands that the Plaintiff's Complaint be dismissed and that judgment thereon be entered in its favor together with costs and attorney's fees.

COUNTERCLAIM

COUNT I: BREACH OF CONTRACT

1. The Plaintiffs-in-Counterclaim, John R. Amato and Brenda R. Amato, reassert and reallege each and every allegation and statement made in their Answer and Affirmative Defenses as if fully set forth herein.
2. The parties entered into an Oral Contract ("the Agreement," hereinafter) during October of 2006 whereunder Defendant-in-Counterclaim was to construct a stone fireplace with full chimney in a residential building being constructed on the Premises.
3. The Agreement was that the Work would be completed in approximately 3 months, in a good and workmanlike manner.
4. The Agreement was that the Work would be completed for a fixed price of Twelve Thousand (\$12,000.00) Dollars.
5. The Plaintiffs-in-Counterclaim took a Construction loan to pay for both the Work and other related construction on the Premises, and the loan is accruing significant monthly interest.
6. The Work must be completed properly before the overall completion of the building in question may continue.

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7. The Defendant-in-Counterclaim undertook the Work sporadically, causing significant delays and breaching his contractual agreement to complete the Work in a timely fashion.
8. The Defendant-in-Counterclaim abandoned the Work without explanation on or about July 13, 2007, leaving it incomplete, and thereby breaching his contractual agreement.
9. The Defendant-in-Counterclaim's abandonment of the Work has caused significant related delays, as the Plaintiffs-in-Counterclaim have been unable, in spite of their efforts, to find a qualified contractor willing to complete the Work. Each month thus lost due to the Defendant-in-Counterclaim's breaches as described herein cause significant interest charges to accrue on the Plaintiffs-in-Counterclaim's construction loan.
10. Moreover, as the Defendant-in-Counterclaim's work was faulty and will require costly and timely reworking and rebuilds, the Defendant-in-Counterclaim has breached his contractual obligation to ensure that the work was performed in a workman-like manner.
11. Defendant-in-Counterclaim's said omissions constitute a breach of contract, including but not limited to, the implied covenant of good faith and fair dealing implicit in all contracts entered into in the Commonwealth of Massachusetts.
12. As a consequence of Defendant-in-Counterclaim's described actions, omissions and failure to remedy, the Plaintiffs-in-Counterclaim are obliged to expend money to remedy the defects and omissions at their further expense, and have thus have been damaged.

COUNT II: M.G.L.A. § 93A VIOLATION

13. The Plaintiffs-in-Counterclaim incorporate by reference the allegations set forth in paragraph 1 through 12 of the Counterclaim as if fully set forth herein.
14. The Defendant-in-Counterclaim is engaged in trade or commerce as defined in M.G.L. c. 93A.
15. The Defendant-in-Counterclaim agreed to perform the services described hereinabove for a total price of \$12,000.00, and now claims without explanation or support that in addition to the \$9,000.00 that the Plaintiffs-in-Counterclaim have already paid for the Defendant-in-Counterclaim's incomplete and faulty work, an additional \$11,500.00 is owing, for a total price of \$20,500.00.
16. The actions of the Defendant-in-Counterclaim complained of herein amount to unfair and deceptive practices, specifically, deceptive pricing, and they thereby constitute violations of Massachusetts General Laws Chapter 93A, and as such, they entitle the Plaintiff-in-Counterclaim to a treble damages award.

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WHEREFORE, the Plaintiffs in Counterclaim, respectfully request that they be awarded an amount to be determined against the Defendant-in-Counterclaim, together with interest, costs and its attorney's fees.

DEFENDANTS / PLAINTIFFS-IN-COUNTERCLAIM CLAIM A TRIAL BY JURY ON ALL ISSUES AND COUNTS.

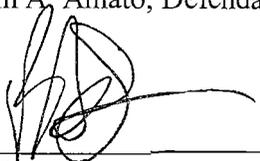
WHEREFORE, John R Amato and Robin A. Amato hereby respectfully request that the Court

- a. Enter judgment dismissing all claims against the Defendants / Plaintiffs-in-Counterclaim;
- b. Award damages to the Defendants / Plaintiffs-in-Counterclaim in an amount determined by the Court;
- c. Treble such amount as provided by General Laws, Chapter 93A;
- d. Award interest, costs, and attorney's fees to Defendants / Plaintiffs-in-Counterclaim;
- e. Award such other relief as the Court deems just and proper.

Respectfully submitted:

John R. Amato and Robin A. Amato, Defendants

By:



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Dated: October 11, 2007

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