

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

Brian K. Burns and Scott E. Burns,)	
)	
Plaintiffs,)	No. _____
v.)	
)	Honorable _____
GFGR, INC. ARCHITECTS ENGINEERS, an)	
Illinois corporation, PEDRO BARRERA and)	
AGUSTINA BARRERA, individually, OSCAR)	
GIL, a licensed real estate agent, and GIL & GIL)	
GROUP CORPORATION, an Illinois corporation,)	
)	
Defendants.)	

FILED-2
2009 MAR 20 PM 4:02
CLERK OF COURT

VERIFIED COMPLAINT AT LAW

Brian K. Burns & Scott E. Burns (“Plaintiffs”), by its attorneys, SULLIVAN & ASSOCIATES, LLC, and for its Complaint against GFGR, INC. ARCHITECTS ENGINEERS (“GFGR”), PEDRO BARRERA and AGUSTINA BARRERA (collectively “Barrera”), OSCAR GIL and GIL & GIL GROUP CORPORATION (collective ly “Gil”) states as follows:

NATURE OF THE ACTION

1. This is an action seeking compensatory and other relief for breaches of contract, professional negligence, consumer fraud and conspiracy arising out of a transaction for the purchase of real property.

PARTIES

2. Plaintiffs are real estate investors doing business in Cook County, Illinois.

3. Defendant GFGR is an Illinois corporation with its principal place of business located at 216 South Jefferson Street, Chicago, Illinois. GFGR is professional engineering and consulting firm doing business in Cook County Illinois.

4. Defendants Barrera, on information and belief, are individual Illinois residents and sellers in the relevant real estate transaction that took place in Cook County Illinois.

5. Defendant Oscar Gil, on information and belief, is a real estate agent licensed to do business in the state of Illinois.

6. Defendant Gil & Gil Group Corporation, on information and belief, is a real estate broker licensed to do business in the state of Illinois.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action because Plaintiffs and Defendants GFGR, Barrera, and Gil, at all times relevant, were residents of this state, transacted business in this State, committed a tortuous act within this State, owned, used or possessed real estate located within this State, and allegedly made or performed a contract or promise substantially connected with this State. *See, respectively*, 735 ILCS 5/2-209 (1), (2), (3), and (7).

8. Venue is proper in Cook County Illinois, pursuant to 735 ILCS §5/2-101 and §5/2-102, because the conduct of the parties that gave rise to this action took place in Cook County, Illinois, and the parties at all times relevant, were residents of this State.

FACTS COMMON TO ALL COUNTS

9. In the Spring of 2006, Plaintiffs identified a potential investment of real property, including the building thereon, commonly known as 1619 West Carmen, Chicago, Illinois 60640.

10. Upon visual inspection of the aforementioned property, Plaintiffs noted evidence of potential structural problems with the West side of the building, specifically, visual evidence of a sinking foundation and deficient structural integrity of the rear porch, located in the rear of the aforementioned building.

11. In light of Plaintiffs concerns, on or about March 1, 2006, Plaintiffs hired GFGR to perform a structural condition survey of the aforementioned real property and building located thereon.

12. On March 5, 2006, one of GFGR's principals, Joseph Farruggia, SE, AIA, conducted an inspection of 1619 West Carmen pursuant to the aforementioned contract. Mr. Farruggia's report stated that the building as observed on March 5, 2006 was "structurally sound." A copy of the report provided to Plaintiffs by GFGR is attached hereto as Exhibit "A".

13. On March 27, 2006, and in reliance upon the GFGR report, Plaintiffs agreed to purchase 1619 Carmen from the sellers, Barreras, through their agents Gil. A copy of the contract between the Barreras and Plaintiffs is attached hereto as Exhibit "B".

14. Incorporated into said contract with the Barreras, as required by law, is a Property Disclosure Report, in which the Barreras disavow knowledge of any structural defects at 1619 Carmen. A copy of the Property Disclosure Report tendered by Barreras to Plaintiffs is attached hereto as Exhibit "C".

15. On March 21, 2007, approximately one year after the sale of 1619 Carmen to Plaintiffs, the City of Chicago—as a result of a routine renovation inspection of said property—cited Plaintiffs with multiple City of Chicago Code Violations. Specifically, an unstable West wall structure, rotting columns, beams and insufficient structural support of the rear porch and a front balcony lacking sufficient structural support. A copy of the City of Chicago’s Administrative Complaint is attached hereto as Exhibit “D”.

16. In an effort to mitigate its damages and offer an opportunity to cure the subject contract with GFGR, Plaintiffs contacted Mr. Farruggia, to discuss the remediation of 1619 West Carmen. Mr. Farruggia and Brian K. Burns, had one in-person meeting regarding the subject property. Both Messrs. Farruggia and Burns participated in a joint site visit with Atlas Restoration, Inc. (“Atlas”), a third party structural restoration firm hired by Plaintiff to evaluate 1619 West Carmen.

17. In a continuing effort to remedy the structural issues, and by recommendation from Atlas Restoration, Inc., Plaintiffs contracted with Wiss, Janey, Elster & Associates, Inc (“Wiss-Janey”) to create all necessary structural technical drawings for the structural underpinning project permit(s). A copy of the Wiss-Janey report is attached hereto as Exhibit “E”. The Wiss-Janey report states, among other things, that “Several indications of settlement are readily apparent at this [1619 West Carmen] building.”

17. Despite the aforementioned mitigation efforts and cure opportunity arranged by Plaintiffs, and several subsequent attempts to contact GFGR by e-mail, Plaintiffs was unable to secure any compensation or mitigation activities from GFGR.

18. In a further effort to mitigate its damages and offer an opportunity to cure the subject real estate purchase contract with Barreras, Plaintiffs sent a letter to Barreras and their

listing agent Gil, demanding reimbursement for Plaintiffs costs to correct the previously undisclosed building code violations. There has been no response from Barreras or Gil to date.

19. Unable to mitigate its damages through GFGR, Barrera or Gil, Plaintiffs were forced to spend considerable monies to hire Wiss-Janey, a structural engineer firm and several additional contractors to correct the code violations identified by the City of Chicago.

20. Due to delays caused by the corrective actions required to correct the aforementioned code violations, Plaintiffs lost nine months of rental opportunity.

21. Plaintiffs were unable to reasonably market and sell its 1619 West Carmen investment in a then favorable real estate market because the aforementioned corrective actions were in progress. The property only became reasonably capable of sale in a subsequent and substantially unfavorable real estate market, creating a lost profit opportunity for Plaintiffs.

COUNT I
(Breach of Contract Against GFGR)

22. Plaintiffs re-allege and incorporate paragraphs 1 through 21 of its Verified Complaint at Law as if fully set forth herein.

23. Plaintiffs and GFGR entered into a valid structural inspection agreement.

24. Plaintiffs paid GFGR in full and otherwise fully complied with its obligations under said agreement.

25. GFGR breached its agreement with Plaintiffs in that it failed to evaluate 1619 West Carmen using the industry accepted standard of care and that said failure rendered GFGR's report of no value to Plaintiffs as contemplated by both the express and implied terms of said agreement.

26. Plaintiffs attempted to permit GFGR to cure its breach without substantive response or success.

27. Plaintiffs were actually damaged by the amount of monies necessary to correct the subsequently identified material structural deficiencies, lost rental income, and lost market opportunity in that Plaintiffs was unable to take advantage of selling 1619 West Carmen in a favorable real estate market due to the delays caused by remediation of the material structural deficiencies mandated by the City of Chicago.

28. Plaintiffs mitigated their damages by hiring a structural engineering firm, an architect and necessary contractors to correct the material structural damages identified as code violations by the City of Chicago.

WHEREFORE, Plaintiffs Brian K. Burns and Scott E. Burns pray that this Honorable Court enter judgment in their favor and against Defendant GFGR in an exact amount to be proven at trial, but estimated to exceed \$400,000 in compensatory damages, interest, attorneys' fees and other such relief this Court deems just and proper.

COUNT II
(Professional Negligence Against GFGR)

29. Plaintiffs re-allege and incorporate paragraphs 1 through 21 of its Verified Complaint at Law as if fully set forth herein.

30. GFGR holds itself out to the public, and specifically Plaintiffs, as having the requisite education, licensing and experience in the field of structural engineering as applied to the evaluation of residential structures.

31. GFGR had a duty to disclose to Plaintiffs the structural deficiencies then existing at 1619 West Carmen.

32. GFGR knew, or through reasonable professional inquiry should have known, that material structural deficiencies existed when GFGR inspected the building located at 1619 West Carmen.

33. GFGR failed to disclose the aforementioned material structural defects to Plaintiffs.

34. Plaintiffs were actually damaged by the amount of monies necessary to correct the subsequently identified material structural deficiencies, lost rental income, and lost market opportunity in that Plaintiffs were unable to take advantage of selling 1619 West Carmen in a favorable real estate market due to the delays caused by the remediation of the material structural deficiencies mandated by the City of Chicago.

WHEREFORE, Plaintiffs Brian K. Burns and Scott E. Burns pray that this Honorable Court enter judgment in their favor and against Defendant GFGR in an exact amount to be proven at trial, but estimated to exceed \$400,000 in compensatory damages, interest, attorneys' fees and other such relief this Court deems just and proper.

COUNT III
(Consumer Fraud Against GFGR)

35. Plaintiffs re-allege and incorporate paragraphs 1 through 21 of its Verified Complaint at Law as if fully set forth herein.

36. GFGR held itself out to the public, and specifically Plaintiffs, as having the requisite education, licensing and experience in the field of structural engineering as applied to the evaluation of residential structures.

37. GFGR's report dated April 10, 2006 was deceptive in that said report led Plaintiffs to believe that 1619 West Carmen was structurally sound.

38. GFGR intended that Plaintiffs would rely on the expert report prepared by GFGR.

39. Plaintiffs actually relied on the GFGR report to its detriment in that material structural deficiencies were subsequently identified by the City of Chicago and confirmed by third-party structural engineering firm Wiss-Janey and said deficiencies were present on March 5, 2006 when GFGR inspected and evaluated the structural integrity of the building located at 1619 West Carmen.

40. Plaintiffs were actually damaged by the amount of monies necessary to correct the subsequently identified material structural deficiencies, lost rental income, and lost market opportunity in that Plaintiffs were unable to take advantage of selling 1619 West Carmen in a favorable real estate market due to the delays caused by remediation of the material structural deficiencies mandated by the City of Chicago.

41. The activities described herein constitute a violation of the Illinois Consumer Fraud Act and Deceptive Practices Act, 815 ILCS 505/1-12 *et.seq.*

WHEREFORE, Plaintiffs Brian K. Burns and Scott E. Burns pray that this Honorable Court enter judgment in their favor and against Defendant GFGR in an exact amount to be proven at trial, but estimated to exceed \$400,000 in compensatory damages, interest, attorneys' fees, punitive damages and other such relief this Court deems just and proper.

COUNT IV
(Breach of Contract Against Barreras)

42. Plaintiffs re-allege and incorporate paragraphs 1 through 21 of its Verified Complaint at Law as if fully set forth herein.

43. Plaintiffs and Barreras entered in to a valid real estate sales contact which included a Property Disclosure Statement.

44. Plaintiffs paid Barreras in full and otherwise fully complied with its obligations under the contract.

45. Barreras breached their agreement with Plaintiffs in that they failed to disclose structural defects that Barreras knew, or reasonably should have known, existed at time Barreras entered into a real estate sales contract with Plaintiffs.

46. Plaintiffs attempted to contact Barreras to cure their breach without substantive response or success.

47. Plaintiffs was actually damaged by the amount of monies necessary to correct the subsequently identified material structural deficiencies, lost rental income, and lost market opportunity in that Plaintiffs were unable to take advantage of selling 1619 West Carmen in a favorable real estate market due to the delays caused by remediation of the material structural deficiencies mandated by the City of Chicago.

48. Plaintiffs mitigated its damages by hiring a structural engineering firm, an architect and necessary contractors to correct the material structural damages identified as code violations by the City of Chicago.

WHEREFORE, Plaintiffs Brian K. Burns and Scott E. Burns pray that this Honorable Court enter judgment in their favor and against Defendant Barreras in an exact amount to be proven at trial, but estimated to exceed \$400,000 in compensatory damages, interest, attorneys' fees and other such relief this Court deems just and proper.

COUNT V
(Negligent Misrepresentation and Statutory Failure to Disclose Against Barreras)

49. Plaintiffs re-allege and incorporate paragraphs 1 through 21 of its Verified Complaint at Law as if fully set forth herein.

50. Barreras knew, or through reasonable lay inquiry should have known, that structural defects existed in the building known as 1619 West Carmen at the time Barreras and Plaintiffs entered into a real estate sales contract for said property.

51. Barreras had a duty to disclose to Plaintiffs on Barreras' Property Disclosure Statement, and otherwise notify Plaintiffs, of the aforementioned material structural deficiencies then existing at 1619 West Carmen.

52. Barreras failed to disclose the material structural deficiencies then existing at 1619 West Carmen at the time of sale from Barreras to Plaintiffs.

53. Plaintiffs were actually damaged by the amount of monies necessary to correct the subsequently identified material structural deficiencies, lost rental income, and lost market opportunity in that Plaintiffs were unable to take advantage of selling 1619 West Carmen in a favorable real estate market due to the delays caused by remediation of the material structural deficiencies mandated by the City of Chicago.

54. The activities described herein constitute both common law negligence and a violation of the Residential Real Property Disclosure Act, 765 ILCS 77/35.

WHEREFORE, Plaintiffs Brian K. Burns and Scott E. Burns pray that this Honorable Court enter judgment in their favor and against Defendant Barreras in an exact amount to be proven at trial, but estimated to exceed \$400,000 in compensatory damages, interest, attorneys' fees and other such relief this Court deems just and proper.

COUNT VI

(Consumer Fraud Against Barreras)

55. Plaintiffs re-allege and incorporate paragraphs 1 through 21 of its Verified Complaint at Law as if fully set forth herein.

56. Barreras committed a deceptive act by representing through an executed Property Disclosure Statement that 1619 West Carmen did not have any known material structural deficiencies that Barreras knew, or reasonably should have known, existed at the time Barreras entered into a real estate sales contract with Plaintiffs.

57. Barreras intended that Plaintiffs rely on the aforementioned Property Disclosure Statement.

58. Plaintiffs actually relied on the aforementioned Property Disclosure Statement to their detriment in that Plaintiffs purchased 1619 West Carmen and subsequent material structural deficiencies were identified by the City of Chicago and confirmed third-party structural engineering firm Wiss-Janey and said deficiencies were present when Barrera entered into a sales contract with Plaintiffs for said building.

59. Plaintiffs were actually damaged by the amount of monies necessary to correct the subsequently identified material structural deficiencies, lost rental income, and lost market opportunity in that Plaintiffs were unable to take advantage of selling 1619 West Carmen in a favorable real estate market due to the delays caused by remediation of the material structural deficiencies mandated by the City of Chicago.

60. The activities described herein constitute a violation of the Illinois Consumer Fraud Act and Deceptive Practices Act, 815 ILCS 505/1-12 *et.seq.*

WHEREFORE, Plaintiffs Brian K. Burns and Scott E. Burns pray that this Honorable Court entered judgment in their favor and against Defendant Barreras in an exact amount to be proven at trial, estimated to exceed \$400,000 in compensatory damages, interest, attorneys' fees and other such relief this Court deems just and proper.

COUNT VII
(Negligent Misrepresentation Against Gil)

61. Plaintiffs re-allege and incorporate paragraphs 1 through 21 of its Verified Complaint at Law as if fully set forth herein.

62. Gil knew, or through reasonable professional inquiry should have known, that material structural defects existed in the building known as 1619 West Carmen at the time Barreras and Plaintiffs entered into a real estate sales contract for said property.

63. Gil had a duty to disclose to Plaintiffs that the Property Disclosure Statement failed to disclose the aforementioned structural deficiencies then existing at 1619 West Carmen.

64. Gil failed to disclose known and material structural deficiencies then existing at 1619 West Carmen at the time of sale from Barreras to Plaintiffs.

65. Plaintiffs were actually damaged by the amount of monies necessary to correct the subsequently identified material structural deficiencies, lost rental income, and lost market opportunity in that Plaintiffs were unable to take advantage of selling 1619 West Carmen in a favorable real estate market due to the delays caused by remediation of the material structural deficiencies mandated by the City of Chicago.

66. The activities described herein constitute both common law negligent misrepresentation.

WHEREFORE, Plaintiffs Brian K. Burns and Scott E. Burns pray that this Honorable Court enter judgment in its favor and against Defendant Gil in an exact amount to be proven at trial, but estimated to exceed \$400,000 in compensatory damages, interest, attorneys' fees and other such relief this Court deems just and proper.

COUNT VIII
(Consumer Fraud Against Gil)

67. Plaintiffs re-allege and incorporate paragraphs 1 through 21 of its Verified Complaint at Law as if fully set forth herein.

68. Gil knew that structural defects existed in the building known as 1619 West Carmen at the time Barreras and Plaintiffs entered into a real estate sales contract for said property.

69. Gil knowingly allowed Barreras to execute the Property Disclosure Statement for 1619 West Carmen, statement that failed to disclose the aforementioned and material structural deficiencies.

70. Gil failed to disclose his knowledge to Plaintiffs of the material structural deficiencies existing at 1619 West Carmen at the time of sale between Barrera and Plaintiffs.

71. Gil intended that Plaintiffs rely on the aforementioned Property Disclosure Statement.

72. Plaintiffs actually relied on the aforementioned Property Disclosure Statement to their detriment in that material structural deficiencies were subsequently identified by the City of Chicago and confirmed by third-party structural engineering firm Wiss-Janey and said deficiencies were present on March 5, 2006 when GFGR inspected and evaluated the structural integrity of the building located at 1619 West Carmen.

73. Plaintiffs were actually damaged by the amount of monies necessary to correct the subsequently identified material structural deficiencies, lost rental income, and lost market opportunity in that Plaintiffs were unable to take advantage of selling 1619 West Carmen in a favorable real estate market due to the delays caused by remediation of the material structural deficiencies mandated by the City of Chicago.

74. The activities described herein constitute a violation of the Illinois Consumer Fraud Act and Deceptive Practices Act, 815 ILCS 505/1-12 *et.seq.*

WHEREFORE, Plaintiffs Brian K. Burns and Scott E. Burns pray that this Honorable Court enter judgment in its favor and against Defendant Gil in an exact amount to be proven at trial, but estimated to exceed \$400,000 in compensatory damages, interest, attorneys' fees and other such relief this Court deems just and proper.

COUNT IX
(Breach of Fiduciary Duty by Gil)

75. Plaintiffs re-allege and incorporate paragraphs 1 through 21 of its Verified Complaint at Law as if fully set forth herein.

76. Gil knew, or through reasonable professional inquiry should have known, that material structural defects existed in the building known as 1619 West Carmen at the time Barrera and Plaintiffs entered into a real estate sales contract for said property.

77. Gil was in a position of trust vis-à-vis Plaintiffs.

78. Accordingly, Gil had a duty to exercise good faith in his negotiations with Plaintiffs to disclose the aforementioned material structural deficiencies then existing at 1619 West Carmen.

79. Gil failed to disclose known material structural deficiencies then existing at 1619 West Carmen at the time of the negotiation and sale of said property from Barrera to Plaintiffs.

80. Plaintiffs were actually damaged by the amount of monies necessary to correct the subsequently identified material structural deficiencies, lost rental income, and lost market opportunity in that Plaintiffs were unable to take advantage of selling 1619 West Carmen in a favorable real estate market due to the delays caused by remediation of the material structural deficiencies mandated by the City of Chicago.

81. The activities described herein constitute both common law negligent misrepresentation and a violation of the Residential Real Property Disclosure Act, 765 ILCS 77/35.

WHEREFORE, Plaintiffs Brian K. Burns and Scott E. Burns pray that this Honorable Court enter judgment in its favor and against Defendant Gil in an exact amount to be proven at trial, but estimated to exceed \$400,000 in compensatory damages, interest, attorneys' fees and other such relief this Court deems just and proper.

COUNT X
(Civil Conspiracy Against Gil and Barreras)

82. Plaintiffs re-allege and incorporate paragraphs 1 through 21 of its Verified Complaint at Law as if fully set forth herein.

83. Gil acted as the professional real estate advisor and agent to Barreras for the building located at 1619 West Carmen.

84. Upon information belief, Gil explained to Barreras the requirements of the Property Disclosure Statement mandated by the Illinois Residential Real Property Disclosure Act, 765 ILCS 77/35.

85. Gil and Barreras thereafter overtly and intentionally conspired to sell 1619 West Carmen to Plaintiffs without disclosing the material structural defects then existing at said property in violation of the aforementioned Residential Real Property Disclosure Act.


86. As a result of the conspiracy between Gil and Barrera, Plaintiffs were injured by its payment of monies necessary to correct the subsequently identified material structural deficiencies, lost rental income, and lost market opportunity in that plaintiffs were unable to take advantage of selling 1619 West Carmen in a favorable real estate market due to the delays caused by remediation of the material structural deficiencies mandated by the City of Chicago.

WHEREFORE, Plaintiffs Brian K. Burns and Scott E. Burns pray that this Honorable Court enter judgment in its favor and against Defendants Gil and Barreras in an exact amount to be proven at trial, but estimated to exceed \$400,000 in compensatory damages, interest, attorneys' fees and other such relief this Court deems just and proper.

Date: March 20, 2009

Respectfully submitted,

Brian K. Burns & Scott E. Burns



One of Their Attorneys

Kenneth M. Sullivan
Dennis F. Esford
Sullivan & Associates, LLC
225 West Washington Street
Suite 2400
Chicago, Illinois 60606
(312) 499-3797
Attorney No.: 39099

VERIFICATION

I, Brian K. Burns and Scott E. Burns, declare under penalty of perjury that I have read the foregoing *Verified Complaint At Law* and that the statements set forth in the Verified Complaint at Law are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that each verily believes the same to be true.



Brian K. Burns, Individually and as
President, BKB Enterprises, Inc.



Scott E. Burns