

# ***The Law Offices of Steven O. Berliner, LLC***

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03/21/2012

United States District Court Clerk  
District of New Jersey  
Martin Luther King Building  
& U.S. Courthouse  
50 Walnut Street  
Newark, NJ 07101

RE: James & James, P.C. v. Landlord, Inc.  
Our FileNo.: JJ000001

Dear Sir/Madam:

Please be advised this is a Complaint done for Law School purposes. This assignment was intended to evaluate writing skills, and is in no way legal advice. I am not, yet, licensed to practice law and only intend to use this Complaint for the purpose of producing a writing sample on my LinkedIn profile.

Thank you for your assistance in this matter. If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,  
**The Law Offices of Steven O. Berliner, LLC**

*Steven O. Berliner*  
Steven O. Berliner, Esq.

JJ000001

**The Law Offices of Steven O. Berliner, L. L. C**  
41-33 Christine Ct.  
Fair Lawn, NJ 07410  
Attorneys for Plaintiff, James & James, P.C.

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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James & James, P. C.

Plaintiff,

vs.

Landlord, Inc. and/or JOHN DOE (1-10)

Defendant(s).

**Civil Action No.**  
**Hon. Joseph Cerra**

Civil Action

**COMPLAINT**

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The Plaintiff, James & James, P. C. (“Plaintiff” or “James”), by and through its attorneys The Law Offices of Steven O. Berliner, LLC by way of Complaint against the Defendant(s), Landlord Inc. and/or John Doe (1-10) (“Defendant(s)” or “Landlord”), by way of Complaint says:

**JURISDICTION AND VENUE**

1. Plaintiff is a corporation organized under the laws of the State of New Jersey and authorized to do business in the State of New Jersey, having a place of business now located at 115 Main Street in Hackensack, New Jersey 07601.

2. Defendant(s) are a corporation organized under the laws of the State of Delaware, with a place of business at 45 Fool’s Hill Road, South Norwalk, Connecticut 11111.

3. This Court has original jurisdiction over this matter pursuant to 28 U. S. C. § 1332(a) because the matter in controversy exceeds the sum of \$75,000, exclusive of costs and interest, and the plaintiff and defendant are citizens of different states.

4. This is an action for damages, termination of contract and other relief brought by the Plaintiff against the Defendant for (1) breach of the implied covenant of quiet enjoyment, (2) breach of warranty against latent defects, (3) breach of a commercial contract, (4) breach of the implied warranty for fitness of particular use and (5) breach of the warranty of habitability and (6) breach by constructive eviction occurring from lease of the premises 111 Main Street, Hackensack, New Jersey 07601 from the Defendant(s), Landlord, Inc. and/or John Doe (1-10), to the Plaintiff, James & James, P. C.,

5. Venue is appropriate in this Court pursuant to 28 U. S. C. §1391(a) and (c).

### **FIRST COUNT**

6. On or about June 2, 2002 Plaintiff, James & James, P. C., discovered a loss of water pressure in the sprinkler system serving the building.

7. Although the location of the leak in the sprinkler system was unknown, Plaintiff, James & James, P. C., immediately contacted Defendant(s)' agent, Mr. Ralph Cramden, at Defendant(s) management office in Jersey City, New Jersey, and requested that the leak be repaired.

8. Subsequently, Defendant(s), Landlord Inc. and/or John Doe (1-10), assumed repair of the sprinkler system, and turned off the sprinkler valve.

9. This action, while it stopped the leaking that had caused the flooding, had the effect of making the sprinkler system inoperable.

10. After one week, the Plaintiff, James & James, P. C., discovered the sprinkler system's inoperability and immediately telephoned Mr. Ralph Cramden to advise that James & James, P. C.'s premises insurance required a working sprinkler system. Plaintiff forewarned that the lack of an operable sprinkler system was a dangerous condition.

11. Subsequently, Defendant(s), Landlord, Inc. and/or John Doe (1-10), turned the sprinkler valve back on.

12. While Defendant(s), Landlord Inc.'s and/or John Doe (1-10)'s actions restored the sprinkler system to partial operation, the leak continued, and began to cause more flooding in the basement.

13. Throughout 2002, this course of conduct was repeated on three occasions.

14. Plaintiff, James d James, P. C., called Defendant(s), Landlord, Inc. and/or John Doe (1-10), on numerous occasions and complained.

15. Throughout 2002, Plaintiff, James & James, P. C., continued to make rental payments in the total amount of \$18,000.00.

16. Defendant(s), Landlord Inc.'s, and/or John Doe (1-10)'s retention of this benefit without providing an operable sprinkler system is unjust as a matter of law and equity.

17. Plaintiff, James & James, P. C., has a right to quiet use and enjoyment of the premises, without interference from Defendant(s), Landlord, Inc. and/or John Doe (1-10).

18. Flooding from the sprinkler valve caused substantial interference with Plaintiff, James & James, P. C.'s, use and enjoyment of the premises.

19. Defendant(s), Landlord Inc., and/or John Doe (1-10) imposed a burden upon Plaintiff, James & James, P. C., which is unjust as a matter of law and equity.

20. Continuing seepage of water into the leased premises is a chronic problem that destroys the use and enjoyment of the premises. Defendant(s), Landlord Inc.'s and/or John Doe (1-10)'s actions deprive Plaintiff, James & James, P.C., from quiet use and enjoyment of the whole and/or part of the premises, and constitute breach of the implied warranty of quiet enjoyment.

**WHEREFORE**, Plaintiff, James & James, P. C., demands judgment against the Defendant(s), Landlord Inc. and/or John Doe (1-10), in the amount of \$18,000 for breach of the implied warranty of quiet use and enjoyment. Plaintiff further demands termination of the lease for the premises at 111 Main Street, Hackensack, New Jersey, 07601. Plaintiff further demands reasonable attorney's fees, costs of suit and all damages permitted at law.

### **SECOND COUNT**

21. Plaintiff repeats the allegations contained in the First Count and make the same a part hereof by reference and incorporation.

22. Around June 2002, Defendant(s) and Defendant(s)' Agent, Landlord Inc., Mr. Ralph Cramden and/or John Doe (1-10), assumed repair of the sprinkler system by inspecting and, consequently, turning off the sprinkler valve.

23. While Defendant(s), Landlord Inc.'s and/or John Doe (1-10)'s actions restored the sprinkler system to partial operation, the leak continued, and began to cause more flooding in the basement.

24. Throughout 2002, this course of conduct was repeated on three occasions.

25. A latent defect is a hidden flaw, weakness or imperfection, which a landlord knows about, but the tenant cannot discover by reasonable inspection.

26. Defendant(s), Landlord Inc.'s, and/or John Doe (1-10)'s inoperable sprinkler system remains in need of repair and is a latent defect.

27. Defendant(s), Landlord Inc., and/or John Doe (1-10)'s inspection of the sprinkler system and subsequent restoration of the sprinkler system constitute an attempt to repair a latent defect.

28. Defendant(s) and Defendant(s)' Agent, Landlord Inc., Mr. Ralph Cramden and/or John Doe (1-10) voluntarily assumed the repair of a latent defect, an inoperable sprinkler system.

29. A Landlord who voluntarily assumes repairs is liable if the repairs are completed negligently.

30. Defendant(s) and Defendant(s)' Agent, Landlord Inc.'s, Mr. Ralph Cramden's and/or John Doe (1-10)'s actions of turning off the sprinkler valve and, subsequently, turning it back on constitutes a failure to complete repair responsibly.

31. Defendant(s) and Defendant(s)' Agent, Landlord Inc., Mr. Ralph Cramden and/or John Doe (1-10), acted negligently in the sprinkler system's repair.

32. Plaintiff, James & James, P. C., called Defendant(s), Landlord, Inc. and/or John Doe (1-10), on numerous occasions and complained.

33. Around July 5, 2003, a supervisor at the Hackensack Water Department contacted Defendant(s)' Agent, Mr. Ralph Cramden and directed that the basement and elevator pit be pumped, and that the sprinkler valve be turned on.

34. By July 11, 2003 the leak had not been repaired and the water for the sprinkler system had not been restored.

35. Defendant(s) and Defendant(s)' Agent, Landlord Inc., Mr. Ralph Cramden and/or John Doe (1-10) had knowledge of a latent defect prior to Plaintiff, James & James, P.C.'s discovery that the sprinkler system was inoperable.

36. Defendant(s), Landlord Inc.'s and/or John Doe (1-10)'s failure to cure latent defects is unjust as a matter of law and equity.

37. Defendant(s), Landlord Inc.'s and/or John Doe (1-10)'s voluntary assumption of repairs and subsequent failure to cure the sprinkler system constitutes a breach of the implied warranty against latent defects.

**WHEREFORE**, Plaintiff, James & James, P. C., demand judgment against the Defendant(s), Landlord Inc., and/or John Doe (1-10), for breach of the implied warranty against latent defects. Plaintiff further demands termination of the lease for the premises at 111 Main Street, Hackensack, New Jersey, 07601. Plaintiff also demands reasonable attorney's fees, costs of suit and all damages permitted at law.

### **THIRD COUNT**

38. Plaintiff repeats the allegations contained in the First and Second Counts and make the same a part hereof by reference and incorporation.

39. Defendant(s), Landlord Inc.'s and/or John Doe (1-10)'s lease specifies that "all repair work outside the building would be the responsibility of the landlord." (Annexed hereto as Exhibit A)

40. Defendant(s), Landlord Inc., and/or John Doe (1-10) are responsible to make repairs outside the building.

41. The restoration of the sprinkler system constitutes a repair outside the building.

42. Defendant(s), Landlord Inc.'s, and/or John Doe (1-10)'s failure to repair the sprinkler system constitutes breach of contract.

43. Throughout 2002, Plaintiff, James & James, P. C., continued to make rental payments in the total amount of \$18,000.00 while the sprinkler system was inoperable.

44. Defendant(s), Landlord Inc.'s, and/or John Doe (1-10)'s retention of this benefit without providing an operable sprinkler system is a failure of consideration on the part of the landlord.

45. Defendant(s), Landlord Inc.'s, and/or John Doe (1-10)'s failure to provide consideration is unjust as a matter of law and equity.

46. Defendant(s), Landlord Inc.'s and/or John Doe (1-10)'s failure to provide consideration constitutes a breach of contract.

**WHEREFORE**, Plaintiff, James & James, P. C., demand judgment against the Defendant(s), Landlord Inc., and/or John Doe (1-10), in the amount of \$18,000 for breach of contract. Plaintiff further demands termination of the lease for the premises at 111 Main Street, Hackensack, New Jersey, 07601. Plaintiff also demands reasonable attorney's fees, costs of suit and all damages permitted at law.

#### **FOURTH COUNT**

47. Plaintiff repeats the allegations contained in the First, Second and Third Counts and make the same a part hereof by reference and incorporation.

48. Plaintiff, James & James, P. C., is an accounting firm, which leased the premises from Defendant(s), Landlord Inc., and/or John Doe for the purposes of providing accounting services.

49. Plaintiff, James & James, P. C., averages revenues of \$15,000 per day.

50. Around April 2003, a 3<sup>rd</sup> party, Total Elevator, an elevator maintenance service employed by the plaintiff to service the elevators, advised Plaintiff, James & James, P. C. that water had been accumulating in the elevator pit in the back of the building.

51. On April 10, 2003, Plaintiff, James & James, P. C., contacted Defendant(s)' Agent, Mr. Cramden and demanded: (1) that the leak be fixed; (2) the sprinkler valve restored so that the sprinkler system worked at full pressure; and (3) that the defendant pump the water from the basement and the elevator pit.

52. The defendant took no action to remedy the situation.



53. On April 20, 2003, Plaintiff, James & James, P. C., received a letter from Total Elevator, advising him that it would not work on the elevators while the water remained in the elevator pit, due to a risk of electrocution to elevator personnel.

54. By July 11, 2003, the leak had not been repaired and the water for the sprinkler system had not been restored.

55. Plaintiff, James & James P. C., contacted Defendant(s)' Agent, Mr. Cramden, again.

56. Defendant(s)' Agent, Mr. Cramden, ignored Plaintiff's request and directed Plaintiff to a man named Calvin, whom Plaintiff, James & James, P. C., had no previous course of dealing with, but Mr. Cramden described as a superintendent for the property.

57. In an attempt to remedy the problem, Calvin turned off the sprinkler valve back on.

58. On July 15, 2003, workmen arrived to pump water from the basement and the elevator pit.

59. From April 3, 2003 to July 15, 2003, Plaintiff, James & James, P. C., received no elevator maintenance from Total Elevator.

60. Plaintiff, James & James, P. C., incurred costs of \$4,000 for Elevator Maintenance, which the Plaintiff, James & James, P. C., did not receive.

61. During that time period, continued seepage of water into the leased premises and a lack of elevator service greatly inconvenienced the conduct of meetings with both employees and clients.

62. Plaintiff, James & James, P. C.'s, estimates a loss of revenues in the amount of \$50,000 from the time period of April 3, 2003 until July 15, 2003 because Plaintiff, James & James, P. C. was unable to conduct meetings with both employees and clients due to continued seepage of water into the leased premises and a lack of elevator service.

63. Defendant(s), Landlord Inc.'s and/or John Doe (1-10)'s failure to provide a useable commercial setting where Plaintiff, James & James, P. C., could conduct business peacefully constitutes a breach of the implied for fitness for particular use.

**WHEREFORE**, Plaintiff, James & James, P. C., demands judgment against the Defendant(s), Landlord Inc., and/or John Doe (1-10) for breach of the implied warranty for fitness for particular use in the amount of \$54,000 for lost revenues and costs incurred by Plaintiff. Plaintiff further demands termination of the lease for the premises at 111 Main Street, Hackensack, New Jersey, 07601. Plaintiff also demands reasonable attorney's fees, costs of suit and all damages permitted at law.

#### **FIFTH COUNT**

64. Plaintiff repeats the allegations contained in the First, Second, Third and Fourth Counts and make the same a part hereof by reference and incorporation.

65. Continuing seepage of water into the leased premises fails to meet basic requirements that the premises are fit for human habitation. Defendant(s), Landlord Inc.'s and/or John Doe (1-10)'s actions deprive Plaintiff, James & James, P.C., from a habitable premises, and constitute breach of the implied warranty of habitability.

66. The implied warranty of habitability is non-waivable.

67. Waiver of the implied warranty of habitability is repugnant to public policy.

68. On October 15, 2003, Plaintiff, James & James, P. C., hired Advanced Plumbing to try to locate the leak in the sprinkler system.

69. Advanced Plumbing worked for six days at a cost of \$6,700, but was unable to locate the leak.

70. On November 20, 2003, Plaintiff hired Northeast Leak Detection Company to find the leak.

71. Northeast Leak located the leak and prepared a report, which Plaintiff, James & James, P. C., received on January 15, 2004.

72. On that same date, Plaintiff, James & James, P. C., called to tell Mr. Cramden that Northeast had found the leak and marked its location on the wall of the building.

73. Plaintiff, demanded that the defendant repair the leak.

74. Plaintiff, James & James, P. C., incurred costs in the amount of \$27,112.53 for Northeast's services.

75. Plaintiff, James & James, P. C., is permitted to make reasonable repairs and deduct their cost from future rent.

76. Restoring the sprinkler system to operation is a reasonable and necessary repair.

77. Plaintiff, James & James, P. C., is permitted to withhold all rent until the court determines fair rental value.

78. Defendant(s), Landlord Inc.'s, and/or John Doe (1-10)'s failure to stop continuing water seepage is unjust as a matter of law and equity.

79. Defendant(s), Landlord Inc.'s, and/or John Doe (1-10)'s failure to stop continuing water seepage fails to meet basic requirements that the premises are fit for human habitation, and constitute a breach of the implied warranty of habitability.

**WHEREFORE**, Plaintiff, James & James, P. C., demands judgment against the Defendant(s), Landlord, Inc. and/or John Doe (1-10) for breach of the implied warranty of habitability in the amount of \$33,812.53 for costs incurred for services rendered by Advanced Plumbing and Northeast Leak. Plaintiff further demands termination of the lease for the premises at 111 Main Street, Hackensack, New Jersey, 07601. Plaintiff also demands reasonable attorney's fees, costs of suit and all damages permitted at law.

### **SIXTH COUNT**

80. Plaintiff repeats the allegations contained in the First, Second, Third, Fourth and Fifth Counts and make the same a part hereof by reference and incorporation.

81. Continuing seepage of water into the leased premises is a chronic problem that substantially interferes with Plaintiff, James & James, P. C.'s use of the premises.

82. On or about June 2, 2002 Plaintiff, James & James, P. C., immediately notified Defendant(s), Landlord, Inc., of a loss in water pressure in the sprinkler system serving the building.

83. Subsequently, Defendant(s), Landlord Inc. and/or John Doe (1-10), assumed repair of the sprinkler system, and turned off the sprinkler valve.

84. This action, while it stopped the leaking that had caused the flooding, had the effect of making the sprinkler system inoperable.

85. Subsequently, Defendant(s), Landlord, Inc. and/or John Doe (1-10), turned the sprinkler valve back on.

86. While Defendant(s), Landlord Inc.'s and/or John Doe (1-10)'s actions restored the sprinkler system to partial operation, the leak continued, and began to cause more flooding in the basement.

87. Throughout 2002, this course of conduct was repeated on three occasions.

88. Around July 5, 2003, a supervisor at the Hackensack Water Department contacted Defendant(s)' Agent, Mr. Ralph Cramden and directed that the basement and elevator pit be pumped, and that the sprinkler valve be turned on.

89. By July 11, 2003 the leak had not been repaired and the water for the sprinkler system had not been restored.

90. On April 10, 2003, Plaintiff, James & James, P. C., contacted Defendant(s)' Agent, Mr. Cramden and demanded: (1) that the leak be fixed; (2) the sprinkler valve restored so that the sprinkler system worked at full pressure; and (3) that the defendant pump the water from the basement and the elevator pit.

91. By July 11, 2003, the leak had not been repaired and the water for the sprinkler system had not been restored.

92. Plaintiff, James & James P. C., contacted Defendant(s)' Agent, Mr. Cramden, again.

93. Defendant(s)' Agent, Mr. Cramden, ignored Plaintiff's request and directed Plaintiff to a man named Calvin, whom Plaintiff, James & James, P. C., had no previous course of dealing with, but Mr. Cramden described as a superintendent for the property.

94. On February 24, 2004, Plaintiff, James & James, P. C. called Mr. Cramden again, but Mr. Cramden did not return the call.

95. Defendant(s), Landlord Inc. and/or John Doe (1-10), did not fix the leak throughout February through July 2004.

96. Plaintiff, James & James, P. C., notified Defendant(s), Landlord, Inc., of a chronic problem on numerous occasions from June, 2002 through July, 2003.

97. Defendant(s), Landlord, Inc. and/or John Doe (1-10), failed to respond adequately.

98. On July 2004, the city performed its annual inspection of the building and determined that the sprinkler system did not meet its requirements because of grossly insufficient water flow.

99. Without insurance, Plaintiff, James & James, P. C., decided that it could not risk to continue to occupy the building.

100. On July 14, 2004, the Plaintiff, James & James, P. C. notified the Defendant, Landlord Inc. and/or John Doe (1-10), of constructive eviction from the building.

101. In an attempt to mitigate damages, Plaintiff, found a comparable location at 115 Main St.

102. Plaintiff, James & James, P. C.'s move to 115 Main St. took six business days, during which time it performed no services.

103. Plaintiff, James & James, P. C., averages revenues of \$15,000 per day.

104. During Plaintiff's move, it continued to pay all expenses associated with its operations.

105. Additionally, Plaintiff, James & James, P. C., incurred re-location costs totaling \$15,671.88.

106. Defendant(s), Landlord Inc.'s, and/or John Doe (1-10)'s actions constitute breach by constructive eviction.

**WHEREFORE**, Plaintiff, James & James, P. C., demands judgment against the Defendant(s), Landlord, Inc. and/or John Doe (1-10) for breach by constructive eviction in the amount of \$105,671.88 for lost revenues and re-location costs. Plaintiff further demands termination of the lease for the premises at 111 Main Street, Hackensack, New Jersey, 07601. Plaintiff also demands reasonable attorney's fees, costs of suit and all damages permitted at law.

**WHEREFORE**, Plaintiff, James & James, P. C., demands judgment against the Defendant(s), Landlord, Inc. and/or John Doe (1-10) for (1) breach of the implied covenant of quiet enjoyment, (2) breach of warranty against latent defects, (3) breach of a commercial contract, (4) breach of the implied warranty for fitness of particular use, (5) breach of the implied warranty of habitability and (6) breach by constructive eviction in the amount of \$211,484.41 occurring from lease of the premises 111 Main Street, Hackensack, New Jersey 07601 from the Defendant(s), Landlord, Inc. and/or John Doe (1-10), to the Plaintiff, James & James, P. C.. Plaintiff further demands termination of the lease for the premises at 111 Main Street, Hackensack, New Jersey, 07601. Plaintiff also demands reasonable attorney's fees, costs of suit and all damages permitted at law.

**CERTIFICATION OF COMPLIANCE WITH RULE 1:38-7(c)**

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1: 38-7(b).

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

**The Law Offices of Steven O. Berliner, LLC**  
Attorneys for Plaintiff

Date: 03/21/2012

By: Steven O. Berliner, Esq.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to the provisions of Rule 4:25-4, the Court is advised that Steven O. Berliner, Esq., is hereby designated as trial counsel on behalf of the Plaintiff, James & James, P. C., LLC.

**The Law Offices of Steven O. Berliner, LLC**  
Attorneys for Plaintiff

Date: 03/21/2012

By: Steven O. Berliner, Esq.

**CERTIFICATION**

Pursuant to Rule 4:5-1, it is hereby certified that this matter in controversy is not the subject of any other action pending in any Court, is not the subject of a pending arbitration proceeding and none is contemplated.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

**The Law Offices of Steven O. Berliner, LLC**  
Attorneys for Plaintiff

Date: 03/21/2012

By: Steven O. Berliner, Esq.