

STATE OF NEW YORK
SUPREME COURT :: COUNTY OF ERIE

743 MAIN STREET LLC
701 Seneca Street, Suite 200
Buffalo, New York 14210

Plaintiff,

**AMENDED
COMPLAINT**

vs.

Index No.

JP CONTRACTING OF WNY LLC
701 Seneca Street
Suite 202
Buffalo, New York 14210

Defendant.

Plaintiff 743 MAIN STREET LLC, as and for its Amended Complaint against Defendant JP CONTRACTING OF WNY LLC alleges as follows:

THE PARTIES

1. Plaintiff 743 MAIN STREET LLC (hereinafter “743 Main”), is a domestic New York Limited Liability Company with a primary place of business located at 701 Seneca Street, Suite 200, Buffalo, New York 14210.

2. At all times relevant to this action, Plaintiff was and is authorized to conduct business in the State of New York.

3. Defendant JP CONTRACTING OF WNY LLC (hereinafter “JP”), is a domestic New York Limited Liability Company with a primary place of business located at 701 Seneca Street, Suite 202 Buffalo, New York 14210.

4. Upon information and belief, at all times relevant to this action, JP was and is authorized to conduct business in the State of New York and is a licensed contractor in the

City of Buffalo.

5. Upon information and belief, at all times relevant to this action JP, was, and remains, engaged in the business of general contracting and construction and performed such services in the City of Buffalo, State of New York.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the parties pursuant to Civil Practice Law and Rules § 301.

7. Venue is proper in Erie County pursuant to Civil Practice Law and Rules § 503(a) as the events or omissions giving rise to 743's claims occurred in the City of Buffalo New York.

FACTUAL ALLEGATIONS

8. 743 Main incorporates the preceding paragraphs as though fully set forth herein.

9. The property commonly known as 743 Main Street, Buffalo New York (the "Property") was acquired by the Plaintiff on December 15, 2022.

10. After the purchase, 743 Main started pre-development work that included both interior and exterior work. After acquiring the Property, 743 Main invested significant sums in the rehabilitation and preparation of the Property for evaluation and redevelopment.

11. As part of the rehabilitation, 743 Main hired JP to perform a variety of work on the property, including masonry repairs on the outside of 743 Main Street.

12. The masonry repairs were precipitated by an earthquake on February 6, 2023 that shook exterior bricks loose on the building.

13. Prior to the fire, JP had been in various parts of the building to address

plumbing issues, assess exterior brick damage, and evaluate work to be performed.

14. Upon information and belief, the masonry repairs to be performed by JP were non-structural repairs.

15. 743 Main did not expect or request JP to perform services that were beyond the scope of the work that was contracted between 743 Main and JP.

16. Upon information and belief, JP's employees, agents and/or servants were in the Property on multiple occasions prior to February 28, 2023.

17. Upon information and belief, JP's employees, agents and/or servants arrived at the property on March 1, 2023, to continue performing the contracted services. JP employees had been working on the property intermittently for multiple weeks leading up to March 1, 2023.

18. Upon information and belief, JP's employees, agents and/or servants used a torch or other similar device to melt snow and ice and prepare the location for the masonry repairs.

19. Upon information and belief, in addition to using a torch, JP's employees, agents and/or servants also utilized a leaf blower to remove leaves and other debris in its work area.

20. JP's employees, agents and/or servants used these two devices near each other and the building.

21. JP's employees, agents and/or servants did not take caution in using these two devices in close proximity to the building.

22. Upon information and belief, JP knew there was a costume shop located inside the damaged wall they were contracted to fix and made no effort to remove combustible

materials from where they operated the torch device.

23. Upon information and belief, the torch used by JP ignited combustible materials on the interior of the building.

24. Upon information and belief, the leaf blower used by JP spread the flames and accelerated the flames through the interior of the building.

25. Upon information and belief, JP's employees, agents and/or servants did not realize that the flaming torch around the building ignited materials inside the building causing a fire.

26. The fire spread quickly throughout the entire building.

27. JP's employees, agents and/or servants did not act in time to prevent the fire inside the building from spreading and causing the entire building to catch fire.

28. JP by and through its employees, agents and/or servants knew or should have known that its conduct caused a dangerous and hazardous condition within the subject property.

29. JP owed a duty to 743 Main to keep its worksite in a safe condition free of the dangers and hazards created by and through its employees, agents and/or servants.

30. JP breached the duty owed to 743 Main by failing to keep its worksite in a safe condition free of dangers and creating the hazards that led to the subject fire.

31. As a direct and proximate result of the actions and or inactions of JP, its employees, agents and/or servants, the building was completely destroyed.

32. While there was no one present in the building at the start of the fire, City of Buffalo Firefighter Jason Arno tragically lost his life while attempting to put out the fire.

33. As a direct and proximate result of the negligent actions and or inactions of

JP, its employees, agents and/or servants, 743 Main suffered a complete loss of its property.

34. As a direct and proximate result of the negligent actions and or inactions of JP, its employees, agents and/or servants, 743 Main has suffered damages in excess of the jurisdictional limitations of the Court, including incurred costs for the rehabilitation and development of the Property as well as costs incurred due to the destruction of the building.

35. All the claims set forth herein fall within one or more of the exceptions noted in Article 16 of the Civil Practice Law and Rules.

AS AND FOR A FIRST CAUSE OF ACTION-NEGLIGENCE

36. 743 Main incorporates by reference the preceding paragraphs as if set forth fully herein.

37. The damage sustained by 743 Main was caused by the recklessness, negligence and/or carelessness of JP and its employees, agents and/or servants.

38. JP failed to hire competent employees, agents, and/or servants to safely conduct the services that were contracted between 743 Main and JP.

39. JP, its employees, agents and/or servants failed to perform the contracted services in a safe, proper and adequate manner to avoid the dangerous and hazardous conditions that lead to the subject fire.

40. JP, its employees, agents and/or servants failed to take adequate and necessary steps to correct the dangerous and hazardous conditions they created at the Property prior to the occurrence of the fire.

41. JP, its employees, agents and/or servants failed to take adequate and necessary precautions to prevent the fire and the spread of the fire at the Property.

42. JP, its employees, agents and/or servants failed to use due care under the

circumstances.

43. The fire event and the subsequent loss of property sustained by 743 Main was the direct and proximate result of the aforesaid actions and or inactions of JP, its employees, agents, and/or servants.

44. The loss of Property and related damages sustained by 743 Main are in an amount in excess of the jurisdictional limitations of the Court.

45. After the fire, 743 Main submitted a claim to JP's insurer, Dryden, for its loss and damages.

AS AND FOR A SECOND CAUSE OF ACTION-BREACH OF CONTRACT

46. 743 Main hereby incorporates the preceding paragraphs as if fully set forth herein.

47. JP breached its contract with 743 Main by failing to perform the contracted services in a safe and proper manner free of the dangerous and hazardous conditions that led to the subject fire.

48. As a direct and proximate result of the breach of contract by JP, 743 Main's property was destroyed.

49. The loss of the Property and related damages sustained by 743 Main are in an amount in excess of the jurisdictional limitations of the Court.

WHEREFORE, 743 Main Street LLC demands judgement against JP for damages in the amount to be determined at trial, plus interest thereon, as well as attorney's fees and expenses.

DATED: Buffalo, New York
September 26, 2023

COLUCCI & GALLAHER, P.C.



By: _____

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