



IN THE CIRCUIT COURT OF DUPAGE COUNTY  
LAW DEPARTMENT

Michael Stoller  
Et al.

Plaintiffs,

v.

Kurk Concrete, Inc  
John Kurk,  
Cheri Moore  
Guttormsent & Terry  
Todd A. Terry  
Anthony Nudo  
John Doe's 1-10  
Defendant.

JURY DEMAND

Case No 2017L001320

**PLAINTIFFS' AMENDED COMPLAINT AND JURY DEMAND**

COMES NOW, Plaintiffs Christopher Stoller, 68, a disabled person and Michael Stoller, 26, a disabled person and protected person pursuant, the laws of the State of Illinois, the Illinois Probate Act, under the Americans for Disability Act (ADA) and for their Complaint now states as follows:

**NATURE OF THE ACTION**

1. This is an action brought against the Defendants for breach of contract, aiding and abetting, infliction of emotional distress, fraud, conspiracy et al.,.

## **PARTIES**

### **PLAINTIFFS**

2. Christopher Stoller, 69, a disabled senior citizen, a protected person under the Americans for Disability Act, residing in Illinois.

3. Michael Stoller, 27, a disabled adult-child, a protected person under the Americans for Disability Act (ADA) pursuant to the State of Illinois, City of Chicago Discrimination Ordinance and is a resident of Illinois.

### **DEFENDANTS**

1. Kurk Concrete, Inc., (Kurk), based upon information and belief is at all time herein mentioned a Foundation Contractor, organized and existing under the laws of the United States of America, with its principal place of business located in Union Grove, Wisconsin,, transacting business throughout Illinois. At all times pertinent to the Complaint, Kurk Concrete, Inc., individually and through its agents, members, President, John Kurk, Office Manager, Cheri Moore, Treasurer, Directors, , alter egos, subsidiaries, divisions or parent companies materially participated, conspired, assisted, encouraged and otherwise aided and abetted one or more of the other Defendants in the unlawful, misleading and fraudulent conduct alleged herein.

2. John Kurk individually and in his official capacity, upon information and belief was President of Kurk Concrete Inc., that does business in Illinois, and was in charge of all of the officers, agents, servants and employees under his control. John Kirk involved, conspired, and colluded with his office manager, Cheri Moore and his attorneys, Greg N. Guttormsen, Todd A. Terry and their para-legal Anthony Nudo to defraud the Plaintiffs' and had knowledge of the relevant facts of the Plaintiffs' controversy and they acted with malice, fraud, gross negligence, oppressiveness, which was not a mistake of fact or law, honest error

or judgments, overzealousness, mere negligence or other human failing. John Kirk acted with willful and wanton misconduct in the course and scope of his employment and in furtherance of the unlawful business of Kirk Concrete, Inc. John Kurk is individually liable<sup>1</sup>, and liable under the Doctrine of Respondent Superior, under the Civil Pinkerton Theory of Liability and the inequitable conduct of the agent liability<sup>2</sup>. John Kurk's negligence, willful, malicious and wanton acts against the Plaintiffs were committed in the course and scope of John Kurk's employment. and in furtherance of the business of Kurk Concrete Inc.,

3. Cheri Moore, Office Manager of Kurk Concrete, Inc., was in charge of Kurk Concrete, Inc., which does business in Illinois, and all of the officers, agents, servants and employees under her control. , each of the defendants sued herein was the agent and employee of each of the remaining defendants and was at all times acting within the purpose and scope of such agency and employment. Cheri Moore is engaged in the conduct complained of in the course and scope of her employment and is sued in her individual capacity. and had knowledge of the relevant facts of the Plaintiffs' controversy and they acted with malice, fraud, gross negligence, oppressiveness, which was not a mistake of fact or law, honest error or judgments,

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<sup>1</sup>Under the Pinkerton Theory of Liability, a defendant may be found guilty of a substantive offence committed by a co-conspirator if the offence was committed in furtherance of the conspiracy at the time the defendant was a member of the conspiracy; this is true even if the defendant neither participated in nor had knowledge of the substantive offense. A principal seeking specific performance may be bound by an agent's inequitable conduct. *E.g., Handelman v. Arquilla*, 95 N.E. 2d 910, 913 (Ill. 1951) (rejecting specific performance based on agent's material misrepresentation); *Alexander v. Hughes*, 472 P.2d 818, 819-20 (Or. 1970) (affirming the denial of specific performance when the agent misled the opposing party about the nature of the document signed). The restatement and the cited cases are consistent with the duties of both agents and principals owed to the third parties in the context of the sale of real property. See *Lombardo v. Albu*, 199 Ariz. 97, 100-01, §§13-15, 14 P.3d 288, 291-92 (2000) (noting common law and regulatory duties). In addition, the rule that the principal is bound by his agent's conduct is consistent with long-established principles of equity.

<sup>2</sup> Agent's inequitable acts may be imputed to the principle whether or not the principle knew of the agent's misconduct.

overzealousness, mere negligence or other human failing. Cheri Moore, participated in and encouraged, sanctioned, condoned and ratified the unlawful conduct of her associates. Cheri Moore, is liable directly and under the Doctrine of Respondent Superior, under the Civil Pinkerton Theory of Liability and the inequitable conduct of the agent doctrine of agency liability<sup>3</sup>. Cheri Moore participated in and encouraged, sanctioned, condoned and ratified the unlawful conduct of her associates..

4. Guttormsent & Terry, the law firm which does business in Illinois, represents Defendant John Kurk employed unreasonable litigation conduct, abusive and coercive tactics, filed in bad faith, a frivolous unlawful mechanic's lien (**Exhibit 1**) against the Plaintiff's property with the intent to cloud the title causing an injury to the plaintiffs, even after the plaintiffs' put the law firm of Guttormsent & Terry that the filing of a mechanic's lien on the plaintiffs' property would be unlawful, . in an attempt to extort at disabled senior citizen, and a disabled adult/child into paying for a disputed bill. . This Defendant law firm aided and abetted their client Defendant Kurk Concret Inc., (*Thornwood v. Jenner & Block*, 344 N.E.2d 15 (Ill. App. 2003)), acted with malice, fraud, gross negligence, oppressiveness, unlawful retaliation which was not a result of mistake of fact or law, honest error or judgment, overzealousness, mere negligence or other human failing but that Guttormsent & Terry acted with willful and wanton retaliatory misconduct conspiring with Defendant John Kurt maliciously injure the Plaintiff, in direct violation of Attorney Rules of Professional Conduct Rule 8.4. *Thornwood v. Jenner & Block* are liable directly, under the Doctrine of Respondent Superior and under the Civil Pinkerton Theory of Liability and the inequitable

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<sup>3</sup> Agent's inequitable acts may be imputed to the principle whether or not the principle knew of the agent's misconduct

conduct of the agent. Agent's inequitable acts may be imputed to the principle whether or not the principle knew of the agent's misconduct.

5. Todd A. Terry Esq., a former Policemen, and now partner of Guttormsent & Terry Ronald ., which does business in Illinois. Defendant Terry is a practicing lawyer in the Northern District of Illinois Defendant Terry is being sued in his individually capacity and in his official capacity and at all times mentioned herein, advises/consults and is charged with being a co-conspirator, conspiring with the Defendants, aiding and abetting the Defendants in the preparation of false notice of lien (**Exhibit 1**) when he had actual and constructive notice that the Plaintiffs' never received any lawful written notice pursuant to the Wisconsin Statute. Todd A. Terry caused an injury to the Plaintiffs by clouding the title of their property, known as W3786 Woodland Drive, Lake Genvia Wisconsin 53147 (hereinafter referred to as "the property"). under the color of the law. Ronald J. Kapustra is liable under the Doctrine of Respondent Superior, the Pinkerton Theory of Liability and under the liability theory that principle/agent, and partnership liability
6. Gregg N. Guttormansen, Principal Partner of the law firm of Guttormsen & Terry, which does business in Illinois. Defendant Guttormansen is being sued in his individually capacity and in his official capacity and at all times mentioned herein, advises/consults and is charged with being a co-conspirator, conspiring with the Defendants, aiding and abetting the Defendants to defraud the Plaintiffs, by filing in bad faith a fraudulent mechanic's lien against the disabled plaintiffs under the color of law. Gregg N. Guttormansen is liable under the Doctrine of Respondent Superior, the Civil Pinkerton Theory of Liability and under the liability theory that principle/agent, and partnership liability Michael J. Shifrin acted with malice, fraud, gross negligence, oppressiveness, abuse of process, which was not the result of

mistake of fact, law, or honest error or judgment. Overzealousness, mere negligence or other human failing but that Gregg N. Guttormansen acted with willful and wanton misconduct.

4. Anthony Nudo (“Bag Man”), a para legal with the law firm of Guttormsen & Terry, individually and in his official capacity, upon information and belief was Todd A. Terry’s “bag man” had knowledge of the relevant facts of the Plaintiffs’ controversy. Aided and abetted the other defendants in their unlawful clouding of the Plaintiffs’ property. Nudo’s is a co-conspirator and is liability under the Civil Pinkerton Theory of Liability and the inequitable conduct of the agent, who colluded and conspired with other Defendants to maliciously harm and injure the Plaintiffs..

5. This action is also brought against Does 1-10, which may include Defendants’ lawyers, predecessors, partners, associates, agents, employees, affiliates and subsidiaries, process servers, contractors, developers, law firms, and realtors which hereafter are also included in the term “defendants.” Plaintiffs are ignorant of the true names and capacities of defendants sued herein and Does 1-10 inclusive, and therefore sues these defendants by such fictitious name. Plaintiffs will add their names to this Complaint to allege their true names and capacities when ascertained.

#### **VENUE**

6. Venue is proper pursuant to 735 ILCS 5/2-101. The dispute at issue occurred to resident of Illinois. Plaintiffs are residents of Illinois.

#### **JURISDICTION**

7. This Court has jurisdiction over the parties. The Plaintiffs are residents of Illinois and the Defendants regularly conduct business within the State of Illinois.

#### ***Ad Adamnum Declaration***

8. Plaintiffs seek to recover no more than a total of \$74,000 ea inclusive of damages, treble damages, restitution, costs and attorneys’ fees

## **FACTUAL BACKGROUND**

9. Michael Stoller, 27, a disabled “adult-child” a protected person as defined by the Americans for Disability Act (ADA) who has an equitable interest in the subject property and Christopher Stoller, 69, a senior disabled citizen is a protected person as defined by the ADA. Michael Stoller and Christopher Stoller (“Plaintiffs”) hereby make the following allegations against the Defendants’ Kirk Concrete, Inc., John Kirk, Cheri Moore, the law firm Guttormsent & Terry, Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and his “bag man” Anthony Nudo (“Defendants”), Defendants are over the age of 18 and all *sui juris* and state as follows:

### **INTRODUCTION**

This is an action to recover damages resulting from Defendant’s breach of contract, aiding and abetting and Intentional infliction of emotional stress, conspiracy, fraud.

### **„ SUBSTANTIVE ALLEGATIONS**

6. Plaintiffs own a newly constructed summer home located at W33786 Woodland Drive, Lake Geneva, .

7. . On May 4<sup>th</sup>, 2017 in Illinois, Plaintiff, Christopher Stoller, entered into two written contract with the Defendant, Kurk Concrete herein, a copy of which is attached hereto as Exhibit 2 and made a part hereof. By the terms of the contract, defendant Kurk was to evacuate, strip the top soil, to build a foundation according to the plan and specifications submitted submitted to Kurk Concrete marked as Exhibit 3. In order for a prefab home to be placed on the foundation on real property situated in Lake Geneva, Wisconsin, which real property is owned by Plaintiffs.

8.

. Pursuant to the agreements defendant Kurk proceeded with the construction of the foundation and caused to be erected on the “unfinished” and “defective foundation in August of 2017. Because of Kurk Concrete’s breach of the agreement and failure to complete the project, the building which was placed on the defective foundation has not been completed in accordance with the contract.

9.

. No notice of completion for the building has been filed.

10.

. The construction of the building has not been completed in accordance with the contract between the parties hereto in the following particulars, Kurk Concrete, Inc., employees walked off of the job in August of 2017 and refused to put the handicap accessible ramp, which the Plaintiff, Christopher Stollera disabled person needs to access the home. The contract also called for Defendant Kurk Concrete Inc., to install a concrete “stoop/porch” to the entrance to the home. Nor did Kurk Concrete install the handy cap side walk ramp to the house.

11.

. Under the terms of the contract, defendant Kurk Concrete Inc agreed to install 8 3’X3’ X 12’ Basements column pads with 24” diameter x 48” piers. Kurk Concrete failed to install these column pads upon which the prefab house was to be placed upon. The agreement “document provides details for the interior columns located below the mating wall between the two modules for both masonry piers for steel posts. For both interior column types, this document

requires a separate footing below each column. See Exhibit 4, the Wiss Jenny Report. In order to hid and conceal Kurk Concrete's failure to properly install the said column pads which support the house structure, Kurk Concrete laid a foundation floor to cover his failure to abide by the foundation instructions.

12.

. Plaintiffs has made demands on defendant Kurk Concrete to complete the work but Kurk Concrete has failed, refused, and neglected to do so; plaintiffs has thereby suffered damage in the amount of \$95,000.00, the amount plaintiff must pay for the completion of the unfinished work; all of the foregoing items and the total sum thereof are reasonable.

13.

. The building was not and cannot not be occupied by the Plaintiffs herein until the said work is finished,

14.

. The delay in completion of the buildings was caused by the carelessness, neglect, and failure of the Kurk Concrete to complete the building in accordance with the terms of the written contract; by reason of defendant Kurk Concrete failure and neglect, and by reason of the breach of the contract, plaintiff has suffered damages in the maxium allowed by law in that the house remains unlivable and the Plaintiffs' have no axcess to the home

15.

. By reason of the failure and neglect of defendant Kurk Concrete to complete the contract within the agreed time and by reason of breach of the contracts and by further reason of the damage suffered by plaintiffs in the amount of \$100,000.00,.

16.

. Plaintiffs has faithfully and fully performed all of the conditions and covenants required of to be performed.

17. In May 4<sup>th</sup>, 2017, Plaintiff Christopher Stoller met with Defendant Kurk Concrete's representative, John Kurk who told Christopher Stoller that his company was qualified and would abide by his agreement to complete Stoller's foundation according to their agreement. John Kurk assured Christopher Stoller that best available materials and labor to build a proper foundation for the new home that would be placed upon it according to the plans presented.

18. In reliance on Defendant John Kurk's representations, the Christopher Stoller entered a contract with Kurk Concrete Inc., on 5/4/17. See Contract attached hereto as Exhibit 2.

19. Kurk Concrete Inc., did not install the foundation in accordance with the Contract or the plans.

20. By failing to install the said pads, the handy cap walk way, the concrete stoop, the house is not inhabitable for occupancy to this very date and defendat Kurk Concrete breached the Contract, and such breaches are material.

21. The building codes provide that the said home must have a concrete stoop in order to enter the building. As such according to the building codes, the building is not suitable for occupancy

22. Prior to filing this lawsuit, the Plaintiffs' demanded that Kurk Concrete remedy the breaches by installing the handy cap ramp, installing the concrete stoop and tearing out the basement

floor and installing the column pads to support the structure of the house. Defendant Kurk Concrete refused this request.

### **COUNT I—BREACH OF CONTRACT**

23. Plaintiffs reallege and incorporate the allegations set forth the above in paragraphs above as if set forth herein in full.

24. Plaintiff Christopher Stoller and Defendant Kurk Concrete Inc., are parties to a Contracts. *See* Exhibit 2.

25. Kurk Concrete Inc., breached the Contract, and the breach is material.

26. Kurk Concrete Inc., breach of contract caused Plaintiffs to suffer damages.

**WHEREFORE**, Christopher Stoller and Michale Stoller, Plaintiffs demand damages against Kurk Concrete, Inc for breach of contract. Plaintiffs pray for judgment against the Defendants individually and in their official capacity in the maximum amount allowed by law for compensatory damages but not to exceed \$74,000.00 including attorney fees and costs. Plaintiff's request that because of the (all which are attorneys) breach of their ethical, fiduciary and statutory obligations the said Defendants law firm of Guttormsent & Terry, Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and their "bag man, Anthony Nudo should be required to disgorge and forfeit their right to any fees procured as a result of their wrongful conduct as well as a separate award to Plaintiffs.

## COUNT II

### Malicious Abuse of Process<sup>4</sup>

#### Slander of Title

(As to all of the Defendants)

27. Plaintiffs adopt and restate the allegations contained in Paragraphs 1 through 190 of Plaintiffs' Complaint, as if the same were fully set forth herein.
28. Defendants' Attorneys law firm Guttormsent & Terry, the law firm, Todd A. Terry, Gregg N. Guttormansen ,instituted a frivolous, fraudulent lien against the Plaintiffs' said property Exhibit 1, without proper advance 30 day notice of their intend to file a lien according to the statute
29. On page 1 of the said lien it false states that the Defendant is owed \$24,500.00 when he failed to complete the contract, failed to install the proper pads, failed to install the handy cap ramp and the concrete stoop. On page 2 the Kurk Concrete falsely claims that he notified the Plaintiff of his intention to file a Claim on October 12, 2017. Kurk Concrete attaches an exhibit, B, a copy of a letter which was returned to him by the post office which was mailed to the wrong address. Kurk Concrete relies on the misdirected notice of intent to file a lien against the Plaintiff as evidence that Kurk Concrete complied with the notice provision of the statute.

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<sup>4</sup> Plaintiff has established a cause of action for abuse of process, the plaintiff plead and proved facts establishing (1) an ulterior purpose by the defendants in the regular use of regular court process and (2) the use of regular judicial process for an improper purpose. *Kumar v. Bornstein*, 354 Ill.App.3d 159, 820 N.E.2d 1167, 290 Ill. Dec. 100 (2d Dist. (2004)); *Neurosurgery & Spine Surgery, S.C. v. Goldman*, 339 Ill.App.3d 177, 790 N.E.2d 925, 274 Ill. Dec. 152 (2d Dist. 2003); *Kirchner v. Greene*, 294 Ill.App.3d 672, 691 N.E.2d 107, 229 Ill. Dec. 171 (1st Dist. 1998); *Sutton v. Hofeld*, 118 Ill.App.3d 65, 454 N.E.2d 681, 73 Ill. Dec. 584 (1st Dist. 1983); *Kurek v. Kavanagh, Scully, Sudow, White* 12

30. Christopher Stoller advised Kurk Concrete's attorneys defendants law firm Guttormsent & Terry, the law firm, Todd A. Terry, Gregg N. Guttormansen , that the filing of the said lien would be a fraud on the Recorders Office and a violation of the Rules of Professional Conduct and they scoffed a the Plaintiff's admonition.
31. The frivolous, fraudulent lien recorded in the Walworth County Recorders office was initiated against the Plaintiffs for an improper purpose, intimidation, embarrassment, harassment and to unlawfully attempt to extort the Plaintiff to pay \$24,500 to Kurk Concrete which the Plaintiff does not owe.
32. The ulterior purpose of the Defendants' was to slander the title of the Plaintiffs' real estate through the "regular court process".the filing of a mechanic lien with the recorders office.
33. The Defendants used the "regular filing of a mechanic lein process for an improper purpose" the unlawful slander of the Plaintiffs title for the said real estate..
34. Proximate cause of injury to the Plaintiffs was foreseeable and the Plaintiffs have suffered and are still suffering damages resulting from the unlawful behavior of the Defendants.

WHEREFORE, Plaintiffs pray for judgment against the Defendants individually and in their official capacity in the maximum amount allowed by law for compensatory damages but not to exceed \$74,000.00 including attorney fees and costs. Plaintiff's request that because of the (all which are attorneys) breach of their ethical, fiduciary and statutory obligations the said Defendants law firm of Guttormsent & Terry, Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and their "bag

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*& Frederick*, 50 Ill.App.3d 1033, 365 N.E.2d 1191, 1195, 8 Ill. Dec. 805 (3d Dist. 1977).

man, Anthony Nudo should be required to disgorge and forfeit their right to any fees procured as a result of their wrongful conduct as well as a separate award to Plaintiffs.

## COUNT III5

### **Aiding and Abetting**

(as to the law firm of Guttormsent & Terry Todd A. Terry Esq, the ring leader Gregg N.

Guttormansen, and his “bag man” Anthony Nudo ),

35. Plaintiffs adopt and restate the allegations contained in all previous paragraphs of Plaintiffs’ Complaint, as if the same were fully set forth herein.
36. The law firm of Guttormsent & Terry Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and his “bag man” Anthony Nudo, unknown attorneys, agents, officers, directors, JOHN DOES 1-10, owed a duty to the Plaintiffs and they failed on all accounts.
37. Defendants were aware of the duty that all of the Defendants owed the Plaintiffs and yet they all conspired to defraud and injure the Plaintiffs. By the filing of the

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<sup>5</sup>The elements necessary to convict under aiding and abetting theory are (1) that the accused had specific intent to facilitate the commission of a crime by another; (2) the accused had the requisite intent of the underlying substantive offenses; (3) the accused assisted or participated in the commission of the underlying substantive offense and (4) that someone committed the underlying offense. Aiding and abetting and conspiracy claims find their roots in criminal law. In the civil context, they lead to liability. For those who help others actors or a main actor (usually for lawyers, it is the client) to commit some tort against a third party. In practice, this often involves a claim that the lawyer helped the client either to commit a fraud on a third party or breach some duty (usually a fiduciary duty). To a third party, when brought against lawyers, these in-concert liability claims, in most jurisdictions, involve the following elements: (1) a duty owed by the client to a third party; (2) that the lawyer is aware of the duty owed by the client to the third party; (3) that the client breaches that duty and/or commits a tort against that third party; (4) that the lawyer is aware of the breach and/or tort committed by the client; (5) that the lawyer assists the client in committing the tort and/or breach; and (6) that the third party suffers some damage. *Thornwood v. Jenner & Block*, 344 N.E. 2d. 15 (ILL. App. 2003).

frivolous lien and by their false representations in order to slander the Plaintiffs' title to the said property in an attempt to extort the Plaintiffs to pay \$24,500.00 to Kurk Concrete, when these defendants knew that Kurk Concrete was in breach of its contract and caused the plaintiff damages in excess of what ever monies Kurk Concrete claimed were owed for their failure to fulfill their obligations under the said Contracts

38. Defendants' law firm of Guttormsent & Terry Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and his "bag man" Anthony Nudo, have directly assisted their client Kurk Concrete in making misrepresentations and/or defrauding the Plaintiffs, slander the title of their realstate in violation of the Notice provision of the Statute
39. Proximate cause of injury to the Plaintiffs was foreseeable and the Plaintiffs have suffered and are still suffering damages resulting from the unlawful behavior of the Defendants.
40. WHEREFORE, Plaintiffs pray for judgment against the Defendants individually and in their official capacity in the maximum amount allowed by law for compensatory damages but not to exceed \$74,000.00 including attorney fees and costs. Plaintiff's request that because of the (all which are attorneys) breach of their ethical, fiduciary and statutory obligations the said Defendants law firm of Guttormsent & Terry, Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and their "bag man, Anthony Nudo should be required to disgorge and forfeit their right to any fees procured as a result of their wrongful conduct as well as a separate award to Plaintiffs.

## COUNT IV6

### Failure to Comply with Applicable Law

41. Plaintiffs adopt and restate the allegations contained in all previous as if the same were fully set forth herein.
42. Defendants law firm of Guttormsent & Terry Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and his “bag man” Anthony Nudo filed a fraudulent lien with proper advance notice to Plaintiff.
43. .Proximate cause of injury to the Plaintiffs was foreseeable and the Plaintiffs have suffered and are still suffering damages resulting from the defendants to follow applicable law.
44. WHEREFORE, Plaintiffs pray for judgment against the Defendants individually and in their official capacity in the maximum amount allowed by law for compensatory damages but not to exceed \$74,000.00 including attorney fees and costs. Plaintiff’s request that because of the (all which are attorneys) breach of their ethical, fiduciary and statutory obligations the said Defendants law firm of Guttormsent & Terry, Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and their “bag man, Anthony Nudo should be required to disgorge and forfeit their right to any fees procured as a result of their wrongful conduct as well as a separate award to Plaintiffs.

## COUNT V7

### Fraud

45. Plaintiffs adopt and restate the allegations contained in all previous Paragraphs as if the same were fully set forth herein.
46. Defendants filed a fraudulent lien against the Plaintiffs said property.
47. Defendants made false representations contained in the lien filing Exhibit 1 in the Walworth County Recorders office in order to slander the Plaintiffs' title and to extort \$24,500.00 which the plaintiff did not owe.
48. Proximate cause of injury to the Plaintiffs was foreseeable and the Plaintiffs have suffered and are still suffering damages resulting from the Defendants' fraud on the Plaintiffs .
49. WHEREFORE, Plaintiffs pray for judgment against the Defendants individually and in their official capacity in the maximum amount allowed by law for compensatory damages but not to exceed \$74,000.00 including attorney fees and costs. Plaintiff's request that because of the (all which are attorneys) breach of their ethical, fiduciary and statutory obligations the said Defendants law firm of Guttormsent & Terry, Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and their "bag man, Anthony Nudo should be required to disgorge and forfeit their right to any fees procured as a result of their wrongful conduct as well as a separate award to Plaintiffs.

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<sup>7</sup>Deceit, trickery, sharp practice or breach of confidence perpetrated for profit or to gain some unfair or dishonest advantage.

## COUNT VI

### Conversion<sup>8</sup>

50. Plaintiffs adopt and restate the allegations contained in Paragraphs 1 through 234 of Plaintiffs' Complaint, as if the same were fully set forth herein.
51. Defendants intentionally breached a foundation contract, exercising "dominion and control" .
52. Defendants deprived the Plaintiffs of possession or use of his home..
53. The interference caused damages to the Plaintiffs. Proximate cause of injury to the Plaintiffs was foreseeable and the Plaintiffs have suffered and are still suffering damages resulting from the Defendants' conversion

WHEREFORE, Plaintiffs pray for judgment against the Defendants individually and in their official capacity in the maximum amount allowed by law for compensatory damages but not to exceed \$74,000.00 including attorney fees and costs. Plaintiff's request that because of the (all which are attorneys) breach of their ethical, fiduciary and statutory obligations the said Defendants law firm of Guttormsent & Terry, Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and their "bag man, Anthony Nudo should be required to disgorge and forfeit their right to any fees procured as a result of their wrongful conduct as well as a separate award to Plaintiffs.

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<sup>8</sup>Conversion, elements: (1) defendant's unauthorized and wrongful assumption of control, dominion, or ownership over plaintiff's personal property; (2) plaintiff's right in the property; (3) plaintiff's right to immediate possession of the property, absolutely and unconditionally; and (4) plaintiff's demand for possession of the property. Bill Marek's The  
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## COUNT VII<sup>9</sup>

### **Intentional Infliction of Emotional Distress**

54. Plaintiffs adopt and restate the allegations contained in Paragraphs 1 through 239 of Plaintiffs' Complaint, as if the same were fully set forth herein.
55. This cause of action for intentional infliction of distress is premised on the outrageous conduct of the Defendants engaging in an ongoing pattern of abuse and breach of contract, which has prevented the Plaintiffs, disabled persons, to take possession of their home.
56. The Defendants' conduct became so extreme and outrageous culminating by present the Plaintiffs from taking possession of their home, filing a frivolous, fraudulent lien, slandering the title of the plaintiffs', to unlawfully lose their residence and the peaceful enjoyment of their living quarters. Such conduct is so extreme and outrageous when considering that both Plaintiffs are disabled persons, protected persons, under the Americans for Disability Act and Christopher Stoller is over 68 years old and crippled..
57. Said conduct of the Defendants goes beyond all possible pound of decency. *Public Finance Corporation v. Davis*, 66 Ill. 2d 85, 90; with the culmination of leaving the disabled Plaintiffs unlawfully unable to occupy their new home to this very date..

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Competitive Edge, Inc. v. Mickelson Group, Inc., 346 Ill. App. 3d 996, 1003 (2004).

<sup>9</sup>Four elements must be present in order for intentional infliction of emotional distress to exist (1) defendants acted intentionally or recklessly; (2) defendants' conduct was extreme and outrageous; (3) defendants' act is the cause of the distress; and (4) plaintiff suffers severe emotional distress as a result of the defendants' conduct. All four of these elements are present in the case at bar.

58. Said conduct has caused the Plaintiffs to endure physical and emotional illness and as a result of Defendants' misconduct, the Defendants caused direct injury to the Plaintiffs.
59. Defendants recklessly or consciously disregarded the probability of causing emotional distress to Plaintiffs which are both disabled, and a direct injury and should not have to endure such conduct.
60. Plaintiffs suffered severe and extreme emotional distress and continue to suffer and endure it. They have suffered grief, worry, humiliation and shame which they should never have to endure.
61. Defendants' extreme and cruel behaviors go way beyond all possible bounds of decency.
62. Proximate cause of injury to the Plaintiffs was foreseeable and the Plaintiffs have suffered and are still suffering damages resulting from the Defendants' Intentional Infliction of Emotional Distress on the Plaintiffs .
63. The Defendants have not even stopped inflicting severe emotional distress on the Plaintiffs'.

WHEREFORE, Plaintiffs pray for judgment against the Defendants individually and in their official capacity in the maximum amount allowed by law for compensatory damages but not to exceed \$74,000.00 including attorney fees and costs. Plaintiff's request that because of the (all which are attorneys) breach of their ethical, fiduciary and statutory obligations the said Defendants law firm of Guttormsent & Terry, Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and their "bag

man, Anthony Nudo should be required to disgorge and forfeit their right to any fees procured as a result of their wrongful conduct as well as a separate award to Plaintiffs.

## COUNT VIII

### Equitable Estoppel<sup>10</sup>

64. Plaintiff adopts and restates all allegations contained in all previous as if the same were fully set forth herein.
65. Defendants Kurk Concrete, through its President John Kurk assured Christopher Stoller, in May of 2017 that his company would pour a foundation in compliance with all of the applicable Code Rules and that Christopher Stoller had nothing to worry about. John Kurk, knew that Christopher Stoller was a disabled senior citizen over 65 years old and John Kurk assured him that he would build a handicap accessible ramp, which the Plaintiff, Christopher Stollera disabled person needs to access the home. Defendant Kurk Concrete Inc., agreed to install a concrete “stoop/porch” to the entrance to the home.
66. Defendant Kurk agree to evacuate, strip the top soil, to build a foundation according to the plan and specifications submitted to Kurk Concrete marked as Exhibit 3. In order for a prefab home to be placed on the foundation on real

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<sup>10</sup>In *Vaughn v. Speaker*, 126 Ill. 2d 150, 533 N.E.2d 885 (1988), the Illinois Supreme Court listed six elements of equitable estoppel and gave guidance to Illinois courts on when estoppel can be applied in cases involving the statute of limitations. The six elements Plead by the Plaintiff include: (1) a misrepresentation or concealment of material facts through the words or conduct of the party to be estopped, (2) knowledge by the party against whom the estoppel is alleged that the representations were untrue, (3) no knowledge of the truth respecting the representations on the part of the party asserting equitable estoppel, (4) a reasonable expectation of the party estopped that his representations will be acted upon, (5) a good faith reliance to its detriment by the party asserting estoppel, and (6) prejudice to the party asserting estoppel if the other party is permitted to deny the truth of its representations. See *Vaughn*, 126 Ill. 2d at 162-63, 533 N.E.2d at 890.

property situated in Lake Geneva, Wisconsin, which real property is owned by Plaintiffs.

67. The Plaintiff relied upon the Defendant's statements lease would be valid until.

68. The Defendants had actual and constructive knowledge of the true facts that the Defendant's never intended to abide by their agreement.

69. The Plaintiff made reliance upon the misrepresentations of the Defendants that caused the Plaintiff a disabled person, an innocent party, detriment of the Plaintiff.

70. Plaintiffs were damaged by the conduct of the Defendants.

WHEREFORE, Plaintiffs pray for judgment against the Defendants individually and in their official capacity in the maximum amount allowed by law for compensatory damages but not to exceed \$74,000.00 including attorney fees and costs. Plaintiff's request that because of the (all which are attorneys) breach of their ethical, fiduciary and statutory obligations the said Defendants law firm of Guttormsent & Terry, Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and their "bag man, Anthony Nudo should be required to disgorge and forfeit their right to any fees procured as a result of their wrongful conduct as well as a separate award to Plaintiffs.

## COUNT IX

### **Tortious inducement of Breach of Fiduciary Duties<sup>11</sup> (as to Kurk Concrete, John Kurk and . Defendants)**

71. Plaintiff adopts and restates all allegations contained in Paragraphs 1 through 287 of Plaintiffs' Complaint, as if the same were fully set forth herein.
72. Kurk Concrete, John Kurk and Cheri Moore, Office Manager of Kurk Concrete, Inc., breached of the fiduciary's duties to plaintiff.
73. Defendants. has breached and failed in its responsibilities to the Plaintiffs.
74. The named Defendants conspired with the Defendants law firm of Guttormsent & Terry Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and his "bag man" Anthony Nudo for the purpose of not abiding the terms and conditions of the their agreement Exhibit 2.
75. There is an actual connection between the Defendants Kurk Concrete, John Kurk and Cheri Moore, Office Manager of Kurk Concrete, Inc . and Defendants law firm of Guttormsent & Terry Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and their "bag man" Anthony Nudo s misconduct and their filing of the fraudulent

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<sup>11</sup>The Defendants' owed a fiduciary duty to the Plaintiff. *Ward Enters v. Banc & Olufsen Am.*, 2003 U.S. Dist. Lexis 21610, 2003 WL 22859793 at 2 (N.D. ILL. 2003) (citing *Bixby's Food Systems, Inc., v. McKay*, 985 F. supp. 802, 808 (N.D. ILL., 1997); *McGowan v. Pillsbury Co.*, 723 F. Supp. 530, 536 (W.D. Wash. 1989)). Special circumstances for the Plaintiff which created the breach of fiduciary duty because the Plaintiff reposed trust and confidence in the Defendants, who thereby gained a resulting influence and superiority over the Plaintiff. *Humana Health Plan, Inc. v. Heritage Ind. Med. Group P.C.*, 2001 U.S. Dist. Lexis 78, 2001 WL 8878 at 2 (N.D. ILL. 2001) (quoting *Oil Express National, Inc. v. Latos*, 966 F. Supp. 650, 651 (N.D. ILL. 1997)). Plaintiffs' Count XX alleges all of the elements necessary to establish a valid claim for breach of fiduciary duty (1) the existence of a fiduciary duty; (2) a breach of that duty; and (3) an injury proximately resulting from that breach. *Bernstein & Grazian, P.C. v. Grasan and Volpe, P.C.*, 402 Ill. App.3d 961, 976 (1<sup>st</sup> Dist. 2010). A fiduciary relationship exists where one party the (Plaintiff) reposes trust and confidence in another (Fletcher Jones) who thereby gains a resulting influence and superiority over the subservient party. *Khan v. Deutsche Bank AG*, 2012 IL 112219 Paragraph 58.

mechanic lien (Exhibit 1) and Kurk Concrete's refusal to abide by the terms and conditions of the contract (Exhibit 2)

76. The Defendants law firm of Guttormsent & Terry Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and their "bag man" are directly responsible for the proximate cause for the harm that Kurk Concrete, John Kurk and Cheri Moore, Office Manager of Kurk Concrete,Inc. inflicted on the Plaintiff due to their failure to their advise and counsel.
77. Defendants Kurk Concrete, John Kurk and Cheri Moore, Office Manager of Kurk Concrete,Inc used their fiduciary relationship to benefit themselves.
78. Defendants law firm of Guttormsent & Terry Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and their "bag man" knowingly induced the contract breach and Defendants that Kurk Concrete, John Kurk and Cheri Moore, Office Manager of Kurk Concrete,Inc. has accepted benefits from the breach.
79. Plaintiffs have been damaged by the said breach and by the conduct of the Defendants.

WHEREFORE, Plaintiffs pray for judgment against the Defendants individually and in their official capacity in the maximum amount allowed by law for compensatory damages but not to exceed \$74,000.00 including attorney fees and costs. Plaintiff's request that because of the (all which are attorneys) breach of their ethical, fiduciary and statutory obligations the said Defendants law firm of Guttormsent & Terry, Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and their "bag man, Anthony Nudo should be required to disgorge and forfeit their right to any fees procured as a result of their wrongful conduct as well as a separate award to Plaintiffs.

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## **COUNT X**

### **Civil Conspiracy**

80. Plaintiff adopts and restates all allegations contained in all previous Paragraphs as if the same were fully set forth herein.
81. Defendants Kurk Concrete, John Kurk and Cheri Moore, Office Manager of Kurk Concrete conspired with Defendants law firm of Guttormsent & Terry Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and their “bag man” and are continuing to conspire, after this lawsuit was filed, with each other to accomplish by concerted action, the unlawful acts allege herein in order to defraud the Plaintiff out of the use of his subject property.
82. The Plaintiffs have been damaged by the Defendants.

WHEREFORE, Plaintiffs pray for judgment against the Defendants individually and in their official capacity in the maximum amount allowed by law for compensatory damages but not to exceed \$74,000.00 including attorney fees and costs. Plaintiff’s request that because of the (all which are attorneys) breach of their ethical, fiduciary and statutory obligations the said Defendants law firm of Guttormsent & Terry, Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and their “bag man, Anthony Nudo, should be required to disgorge and forfeit their right to any fees procured as a result of their wrongful conduct as well as a separate award to Plaintiffs.

## COUNT XI

### Tortious interference with Contract

83. Plaintiff adopts and restates the allegations contained in all previous as if the same were fully set forth herein.
84. The Plaintiff had a valid and enforceable contract between the Plaintiff and the Kurk Concrete for the construction of a foundation Exhibit 2 that was in full force and effect.
85. The Defendants Defendants law firm of Guttormsent & Terry Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and their “bag man” intentionally and unjustifiably induced the breach of the contract.
86. The Defendants Defendants law firm of Guttormsent & Terry Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and their “bag man” intentionally and unjustifiably forced the breached of the rental contract, by the Defendants' wrongful conduct the filng of the fraudulent lien (Exhibit 1
87. The proximate cause of the harm to the Plaintiffs was foreseeable and the Plaintiffs have suffered and are still suffering damages resulting from the Defendants' tortuous interference with the Plaintiff's contract (“Exhibit 2”).

WHEREFORE, Plaintiffs pray for judgment against the Defendants individually and in their official capacity in the maximum amount allowed by law for compensatory damages but not to exceed \$74,000.00 including attorney fees and costs. Plaintiff's request that because of the (all which are attorneys) breach of their ethical, fiduciary and statutory obligations the said Defendants

law firm of Guttormsent & Terry, Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and their “bag man, Anthony Nudo should be required to disgorge and forfeit their right to any fees procured as a result of their wrongful conduct as well as a separate award to Plaintiffs.

## **COUNT XII**

### **CONTRACT FRAUD, CONSPIRACY, WILLFUL AND WANTON CONDUCT**

86. Plaintiffs adopt and restate the allegations contained in all previous as if the same were fully set forth herein.

87. Defendants law firm of Guttormsent & Terry Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and their “bag man, Kurk Concrete, John Kurk and Cheri Moore, Office Manager of Kurk Concrete all colluded and conspired together acting with malice, fraud, gross negligence, oppressiveness, which was not a result of mistake of fact or law, honest error or judgment, overzealousness, mere negligence or other human failing, but that the said Defendants acted with willful and wanton misconduct in the course and scope of their employment and in furtherance of their respective business, individually and collectively agreed with a meeting of the minds, based upon the advice and counsel of the Defendants law firm of Guttormsent & Terry, Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and their “bag man, Anthony Nudo to breach the agreement (Exhibit 2) . Plaintiffs” were damaged by the defendants.

WHEREFORE, Plaintiffs pray for judgment against the Defendants individually and in their official capacity in the maximum amount allowed by law for compensatory damages but not to exceed \$74,000.00 including attorney fees and costs. Plaintiff’s request that because of the (all which are attorneys) breach of their ethical, fiduciary and statutory obligations the said Defendants law firm of Guttormsent & Terry, Todd A. Terry Esq, the ring leader Gregg N. Guttormansen, and their “bag

man, Anthony Nudo should be required to disgorge and forfeit their right to any fees procured as a result of their wrongful conduct as well as a separate award to Plaintiffs.

Respectfully submitted,

/s/Michael Stoller

/s/Christopher Stoller, 99500  
415 Wesley #1  
Oak Park, IL 60303  
(773) 746-3163  
cns40@hotmail.com

**Binding Stipulation**

We do hereby swear and affirm that We do not now, and will not at any time during this case, whether it be removed, remanded, or otherwise, seek damages or restitution in excess of \$74,000 (inclusive of treble damages, costs and attorneys' fees) or seek damages or restitution In excess of \$74,000 per plaintiff.or to seek punitive damages or exemplary damages.  
We understand that this stipulation is binding and it is my intent to be bound by it,

**VERIFICATION**

Under penalties as provided by law under Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct except as to matters therein stated to be on information and belief, and as much matters, the undersigned certifies as aforesaid that I verify believe the same to be true.

/s/Michael Stoller

/s/Christopher Stoller