

A

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT
NO.

<p>THOMAS SHAY, Plaintiff</p> <p>V.</p> <p>JEFFREY BERRY AND BER-GIAM, INC. Defendant</p>

SUFFOLK COUNTY
CIVIL CLERK

SEP 4 1991

COMPLAINT

MICHAEL J. BERRY
CLERK OF

1. At all times relevant to this action Plaintiff was and still is a resident of Boston, Massachusetts.
2. At all times relevant to this action Defendant, Jeffrey Berry, was and still is a resident of Stoughton, Massachusetts.
3. At all times relevant to this action Defendant, Ber-Giam Inc., was and still is a Massachusetts corporation.

COUNT I-NEGLIGENCE

4. On October 30, 1987, the Plaintiff was on property located at 106 Washington Street in Dedham, MA.
5. On said date, the Defendants negligently and carelessly caused an explosion.
6. Defendant had a duty not to endanger Plaintiff.
7. Defendant breached his duty to Plaintiff when he carelessly caused said explosion.
8. At the time of this explosion, Plaintiff was in the immediate vicinity of the explosion.
9. As a result of the blast, the Plaintiff suffered serious

injuries.

10. As a result of these injuries, Plaintiff was prevented from transaction his business
11. Plaintiff suffered great pain of body and mind.
12. Plaintiff incurred expenses for medical attention.

COUNT II-STRICT LIABILITY

13. Plaintiff adopts and realleges all preceding paragraphs.
14. Explosions constitute an abnormally dangerous activity.
15. The escaping concussion of the explosion caused Plaintiff to suffer injuries.
16. As a result of the abnormally dangerous nature of this explosion, Plaintiff suffered injuries.
17. As a result of the abnormally dangerous nature and activity of causing explosions, Defendant is strictly liable to Plaintiff for injuries and losses he sustained.

COUNT III-LANDLORD-TENANT

COVENANT OF QUIET ENJOYMENT

18. Plaintiff adopts and realleges all preceding paragraphs.
19. At all times relevant, plaintiff was a tenant of defendant Ber-Giam Inc.
20. The landlord-tenant relationship created an implied covenant of quiet enjoyment.
21. A landlord has a duty not to endanger his tenants.
22. Defendants breached said covenant by permitting an explosion to occur.

CCUNT IV-WARRANTY OF HABITABILITY

VIOLATION OF CHAPTER 93 A


23. Plaintiff adopts and realleges all preceding paragraphs.
24. On said date, Defendant was engaged in the conduct of trade or commerce of leasing commercial real estate.
25. The lease of commercial real estate to Plaintiff contained a warranty of habitability.
26. Plaintiff caused an explosion to occur on the premises of 106 Washington St., Dedham, MA.
27. Defendant breached the warranty of habitability by failing to maintain premises in safe manner.
28. Defendant engaged in a deceptive act or practice by causing explosion to occur.
29. Plaintiff was injured during the course of transacting his business on said day.
30. Explosion caused by Defendant was the direct proximate cause of injuries sustained by Plaintiff.
31. This breach of warranty of habitability that caused personal injury constitutes an unfair trade practice under the G.L. Ch. 93 A.

Wherefore, Plaintiff prays for judgment against defendant in an amount to be determined by the court together with his interest, costs and disbursements here in, treble damages, attorney fees, and such other and further relief as this court may deem meet and appropriate.

Plaintiff demands trial by jury.

Dated:

8/30/90


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