

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 23-0264E

CHARLES AND CAMBRIDGE CORNER
LLC,

Plaintiff,

v.

147 CHARLES HOLDINGS LLC,
BRAHMA DEVELOPMENT LLC, and
JJ HARDSCAPE, INC.

Defendants.

COMPLAINT AND JURY DEMAND

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2023 JAN 31 P 12:55

INTRODUCTION

This is an action for negligence and breach of contract arising out of Defendant 147 Charles Holdings LLC, Brahma Development LLC, and JJ Hardscape Inc.'s breach of the duty of care and of lateral support as well as contractual obligations owed to Plaintiff Charles and Cambridge Corner LLC. Defendants' breach of these duties during their unplanned and unpermitted excavation in the basement of 149 Charles Street, Boston, Massachusetts directly abutting Plaintiff's property at 151 Charles Street has caused, and continues to cause, significant damage to Plaintiff's adjoining property as described herein. Plaintiff hereby seeks monetary and injunctive relief.

PARTIES

1. Plaintiff Charles and Cambridge Corner LLC ("C&C" or "Plaintiff") is a Massachusetts limited liability company with an office located at 171 Newbury Street, Boston, Suffolk County, Massachusetts, 02115.

2. Defendant 147 Charles Holdings LLC (“Holdings”) is, upon information and belief, a Massachusetts limited liability company with a principal place of business at 217 Hanover Street, # 184, Boston, Suffolk County, Massachusetts 02113. Holdings’ registered agent for service is Chaz Fisher, 217 Hanover Street 184, Boston, MA 02113.

3. Defendant Brahma Development LLC (“Brahma”) is, upon information and belief, a Massachusetts limited liability company with a principal place of business at 267 Commonwealth Avenue, Suite A, Boston, Suffolk County, Massachusetts 02116. Brahma’s registered agent for service is Ty Gupta, 267 Commonwealth Avenue Suite A, Boston, MA 02116.

4. Defendant JJ Hardscape Inc. (“JJ Inc.,” and together with Holdings and Brahma, collectively, “Defendants”) is, upon information and belief, a Massachusetts corporation with a principal place of business at 32 Bennett Avenue, Saugus, MA 01906. JJ Inc.’s registered agent for service of process is Renato De Paula Rodrigues, 32 Bennet Avenue, Saugus, MA 01906.

JURISDICTION AND VENUE

5. The Superior Court has jurisdiction over this matter because the damages that Defendants’ conduct has caused to C&C’s property likely exceeds \$50,000 (*see* M.G.L. c. 212, § 3 as amended by January 1, 2020 Supreme Judicial Court Order) and because Plaintiff seeks injunctive relief (*see* M.G.L. c. 214, § 1).

6. Venue is proper in this Court because all parties conduct their business in Suffolk County and because the subject properties are located in Suffolk County.

FACTUAL ALLEGATIONS

General Background

7. Plaintiff C&C is the owner of the real property known and numbered as 151-153 Charles Street, Boston, Massachusetts (“151 Charles”).

8. Defendant Holdings owns the real property known and numbered as 147-149 Charles Street, Boston, Massachusetts (“149 Charles”).

9. 151 Charles directly abuts 149 Charles to the north on Charles Street, i.e. to the left of 149 Charles facing the properties from Charles Street.

10. 151 Charles Street is a four-story brick structure with a small commercial space on the first floor and seven residential rental units above.

11. 149 Charles is also a four-story brick structure that was formerly occupied by the Beacon Hill Pub on the street level, with residential units above.

12. Both 151 Charles and 149 Charles are historic structures, built in the 1890’s on Charles Street at the foot of historic Beacon Hill.

13. Below is a true and accurate picture of the two properties available via Google Street View as of November 2020:



14. Although the properties share a boundary they are not separated by a classic “party wall;” rather each building has its own wall built directly against the other, set on its own foundation.

15. Defendant Holdings purchased 149 Charles in October 2021 and Plaintiff C&C purchased 151 Charles in December 2021.

Defendants' Excavation at 149 Charles

16. Defendant Holdings began an extensive renovation of 149 Charles in 2022.

17. Defendant Holdings did not design and permit the renovation work; rather it purchased 149 Charles with plans and permits that were prepared and obtained by its predecessor.

18. Upon information and belief, Defendant Holdings engaged Defendant Brahma to conduct renovation work at 149 Charles.

19. Upon information and belief, Defendant Holdings engaged Defendant JJ Inc. to conduct renovation work at 149 Charles.

20. Beginning in or about early September of 2022, Defendants began demolition of the entire basement floor of 149 Charles.

21. Following demolition of the basement floor, Defendants excavated down approximately *5-feet* below existing grade.

22. Defendants did not provide any written notice to Plaintiff C&C prior to Defendants' start of their excavation work at 149 Charles.

23. Defendants did not provide for any protection of Plaintiff C&C's adjoining foundation in connection with Defendants' excavation work.

24. Defendants excavated underneath the existing foundation at 149 Charles and poured concrete below the existing foundation in order to form a new lower foundation footing – a process known as “underpinning.”

25. Defendants' excavation removed lateral support for the foundation of the abutting property owned by Plaintiff C&C at 151 Charles.

26. Defendants' excavation removed soil within the critical angle of repose beneath the foundation of 151 Charles.

27. Defendants' excavation undermined the foundation of 151 Charles.

28. The plans originally approved by the City of Boston Inspectional Services Department ("ISD") for the work at 149 Charles did not depict lowering of the basement floor at 149 Charles.

29. The permit originally issued by ISD for the renovation work at 149 Charles did not authorize lowering of the basement floor at 149 Charles.

30. The plans originally approved by ISD did not depict any underpinning of the existing foundation at 149 Charles.

31. The permit originally issued by ISD for the renovation work at 149 Charles did not authorize underpinning of the foundation at 149 Charles.

32. The plans originally approved by ISD did not depict any alteration of the basement ceiling height at 149 Charles.

33. The permit issued by ISD for the renovation work at 149 Charles did not authorize any alteration of the ceiling height in the basement of 149 Charles.

34. The only structural foundation work at 149 Charles authorized by ISD is depicted in structural drawings for the renovation identified as S000 and S100, prepared by Davidson Engineering Associates, Inc., dated April 23, 2021 (collectively the "Approved Structural Drawings").

35. The Approved Structural Drawings only depicted the installation of new footings set on helical pilings within the existing basement space at 149 Charles.

36. The Approved Structural Drawings required that any basement structural work be completed as “Controlled Construction,” which requires the oversight of a licensed structural engineer.

37. Defendants excavated the basement at 149 Charles and completed underpinning without any oversight by a licensed structural engineer of record responsible for the work.

38. Defendants excavated the basement floor at 149 Charles and conducted underpinning work without any plans designed and stamped by a licensed structural engineer.

39. Upon information and belief, Defendants’ excavation of the basement at 149 Charles was completed in an effort to increase the ceiling height in the basement at 149 Charles in order to expand their proposed restaurant seating area into the basement.

40. The plans and permits for the renovation of 149 Charles did not depict or allow for any restaurant seating in the basement of 149 Charles.

41. ISD issued a stop work order against 149 Charles in or about mid-August 2022.

42. The August 2022 stop work order was based on, among other factors, neighbors’ concerns that the work in the basement violated the permits that ISD issued for 149 Charles.

43. In or about late August 2022, ISD allowed work to continue after Defendants represented that the contested work was simply “digging test pits for engineers” and, presumably, not the excavation of the floor in order to increase basement ceiling height.

44. On or about September 19, 2022, Plaintiff C&C’s tenants at 151 Charles began reporting to C&C’s property manager sudden and severe warping of floors, cracking in plaster, cracking in bathroom tiles, and failure of doors and windows to open and shut properly.

45. Plaintiff C&C's tenants reported that the sudden and severe shifting of portions of the building at 151 Charles occurred within the span of a few hours and on the days and at the very same time Defendants were excavating the basement at 149 Charles.

46. Plaintiff C&C and its tenants reported their concerns about 149 Charles to ISD and, in mid-September 2022, ISD immediately ordered Defendants to stop work until professional engineers engaged by Plaintiff C&C and Defendant Holdings could consult and determine an appropriate remediation plan.

47. ISD initially assured Plaintiff C&C that excavation at 149 Charles would not resume until C&C's structural engineer directly inspected lateral support at 149 Charles to ensure that the work was properly planned and executed.

48. In response to the stop work order, Defendant Holdings engaged Dov Kirsztajn P.E., a different structural engineer, to send a one-page report addressed to ISD, dated October 6, 2022, which concluded that the work at 149 Charles was "safe."

49. Mr. Kirsztajn's one-page letter did not reference any review of the work to confirm compliance with the Approved Structural Drawings for 149 Charles.

50. Defendant Holdings did not provide a copy of Mr. Kirsztajn's October 6, 2022 letter to Plaintiff C&C.

51. Upon information and belief, ISD lifted its mid-September 2022 stop work order in reliance on Mr. Kirsztajn's October 6, 2022 letter.

52. Plaintiff C&C repeatedly sought to contact a representative of Holdings by letter, over the phone, and via email, beginning on or about September 29, 2022 and continuing through October 19, 2022, but Defendants did not respond.

53. It was not until October 19, 2022, after additional inquiries by phone and via email, that counsel for Defendant Holdings at the time, Chaz Fisher, Esq., called counsel for Plaintiff C&C in response to its demands and continuing concerns about damage to 151 Charles.

54. On October 19, 2022, Attorney Fisher assured Plaintiff C&C's counsel that Defendant Holdings had engaged an unidentified licensed structural engineer to oversee the work at 149 Charles and to investigate concerns regarding lateral support.

Damage to 151 Charles and Harm to Plaintiff

55. Plaintiff C&C engaged its own structural engineer, Rene Mugnier, P.E., to evaluate the work at 149 Charles Street and the damage to 151 Charles.

56. Mr. Mugnier issued several reports setting forth his conclusion that, *"It is our opinion that the work on the adjacent building [at 149 Charles] is responsible for the recent cracks, new or enlarged [at 151 Charles]."*

57. Mr. Mugnier had great concern that, *"there is no structural engineer responsible for the work which is taking place [at 149 Charles], as the original engineer is no longer responsible for the work which is taking place."*

58. On October 11, 2022, Plaintiff C&C's tenants in Unit 2F and 3F at 151 Charles notified C&C that they intended to terminate their residential leases based on concerns about the structural integrity of the building.

59. On October 31, 2022, Plaintiff C&C's tenants in Units 1F, 2F, 3F and Unit 4 at Silver Place had in fact terminated their leases by notice to C&C as a result of damage to 151 Charles.

60. On December 30, 2022, Mr. Mugnier conducted an inspection of 151 Charles and determined that the front units of the building had shifted to the point that they could no longer support any occupancy.

61. On January 3, 2023, immediately after receipt of Mr. Mugnier's report, Plaintiff C&C ordered two tenants that remained at the front of 151 Charles to vacate the building for safety.

62. On January 13, 2023, ISD held a meeting at its offices with representatives of 151 Charles and 149 Charles.

63. On January 13, 2023, ISD ordered Defendants to stop work until such time as they: (1) produce plans that show proposed underpinning and lowering of the basement floor at 149 Charles, and (2) amend the permit for the renovation to include lowering of the basement floor at 149 Charles.

64. Defendants responded to ISD's demand with submission of a one-page sketch stamped by a new engineer, Stanislav Berdichevsky, P.E., which purported to depict a detail of the underpinning that was completed at 149 Charles (the "Sketch Plan").

65. The Sketch Plan does not adequately provide for lateral support, does not accurately depict conditions at 151 or 149 Charles, and does not address the damage caused to the foundation of 151 Charles.

66. As of the filing of this Complaint, cracking in walls, displacement of doors and windows, and sinking of floors continue at 151 Charles.

67. As currently built, Defendants' underpinning of the foundation at 149 Charles does not provide adequate lateral support to 151 Charles.

68. Defendants' acts and omissions have caused and continue to cause damage to 151 Charles and to Plaintiff.

Defendants' Breach of the Neighbor Agreement

69. 151 Charles and 149 Charles are subject to an "Agreement Regarding Proposed Project," entered into by Plaintiff C&C's and Defendant Holdings' predecessors in title (the "Neighbor Agreement").

70. The Neighbor Agreement is recorded in the Suffolk County Registry of Deeds and is binding on Plaintiff C&C and Defendant Holdings.

71. The Neighbor Agreement requires that the renovation of 149 Charles conform to all requirements imposed by the Beacon Hill Civic Association.

72. Defendants have failed or refused to renovate 149 Charles in accordance with the requirements of the Beacon Hill Civic Association, including without limitation Defendants' unpermitted excavation of the basement of 149 Charles.

73. The Neighbor Agreement requires that Defendants conduct a condition survey of 151 Charles prior to any construction at 149 Charles in order to help identify any subsequent damage resulting from the work at 149 Charles.

74. Defendants failed and/or refused to complete any pre-construction survey of 151 Charles.

75. The Neighbor Agreement requires that Defendants keep Plaintiff C&C informed about the status of the renovations at 149 Charles.

76. Defendants have failed and/or refused to communicate any information to Plaintiff C&C regarding the status of the renovations at 149 Charles.

77. By Defendants' acts and omissions described above, they have breached their obligations under the Neighbor Agreement and have caused Plaintiff C&C to suffer damages.

COUNT I
NEGLIGENCE
(VS. ALL DEFENDANTS)

78. Plaintiff C&C restates and incorporates by reference all allegations made in the previous paragraphs of this complaint as though fully set forth herein.

79. As the owner of property neighboring 151 Charles, Defendants owe Plaintiff C&C a duty to perform any construction, renovations, or repairs with reasonable care and in a good and workmanlike manner.

80. In addition, as an adjoining property owner, Plaintiff C&C is entitled to expect, and did expect, that naturally occurring soil and water conditions, including the lateral support provided by surrounding properties, will remain in their natural state.

81. Defendants owed Plaintiff a duty of lateral support with respect to Defendants' renovations and construction activities at 149 Charles.

82. By conducting major excavation work without any plan or permits, without proper shoring, and by removing naturally occurring soil that provides lateral support to 151 Charles, Defendants acted recklessly and negligently and in breach of their duty of lateral support to Plaintiff C&C.

83. As a direct and proximate result of this breach, Defendants have caused, and continue to cause, damage to Plaintiff C&C's property.

84. Additionally, as a direct and proximate result of this breach, Defendants have caused, and continue to cause, Plaintiff C&C monetary harm in the form of lost rent, remedial costs for fixing the damage to 151 Charles, damage to reputation, and rent remediation to the tenants of 151 Charles.

85. Plaintiff C&C seeks damages for all such harm and damages in an amount to be determined at trial.

86. Plaintiff C&C also seeks injunctive relief necessary to allow C&C's engineers access to 149 Charles in order to assess the condition of lateral support and reasonable opportunity to review any new plans submitted by Defendants to ISD.

87. Plaintiff C&C also seeks injunctive relief necessary to prevent Defendants from continuing to cause damage to C&C's property (namely 151 Charles) and resulting monetary harm.

**COUNT II
BREACH OF CONTRACT
(VS. DEFENDANT HOLDINGS)**

88. Plaintiff C&C restates and incorporates by reference all allegations made in the previous paragraphs of this complaint as though fully set forth herein.

89. Plaintiff C&C's and Defendant Holdings' predecessors in title entered into the Neighbor Agreement, whereby the redevelopment of 149 Charles is required to comply with the obligations set forth in the Neighbor Agreement.

90. Plaintiff C&C and its predecessors in title have complied with all of their obligations under the Neighbor Agreement.

91. Defendant Holdings has defaulted, breached, and failed to perform its obligations under the Neighbor Agreement.

92. As a result, Plaintiff C&C has suffered and continues to suffer damages.

93. Plaintiff C&C also seeks injunctive relief in the form of an order requiring Defendants to comply with their obligations set forth in the Neighbor Agreement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff C&C prays that this Court:

(1) Enter judgment in favor of Plaintiff C&C and against Defendants on all Counts in an amount to be determined, plus continuing interest, and costs;

(2) Enter an order permanently enjoining Defendants from conducting any further work in the basement of 149 Charles until Defendants produce a plan reviewed and approved by Plaintiff C&C's licensed professional structural engineer that provides for adequate lateral support at 151 Charles and conforms to all requirements of the Beacon Hill Civic Association, as required by the Good Neighbor Agreement;

(3) Enter an order permanently enjoining Defendants from altering the current conditions at 149 Charles in any way that would prevent C&C and its engineer from analyzing the cause(s) of damage to 151 Charles; and

(4) Award Plaintiff C&C such other relief as this Court deems just, fair, and equitable.

JURY DEMAND

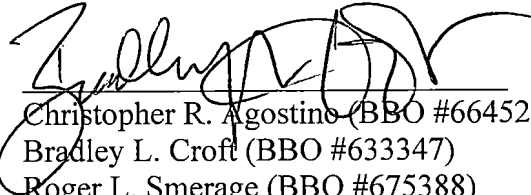
Plaintiff C&C demands a trial by jury of all issues that are so triable.

Respectfully submitted,

PLAINTIFF

**CHARLES AND CAMBRIDGE
CORNER LLC**

By its Attorneys,



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