

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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JRAP ENTERPRISES, INC. and JOSEPH RAPAPORT,

Index No.: 607796/2020

COMPLAINT

Plaintiffs,

-against-

ZUCARO CONSTRUCTION, LLC and
ZUCARO HOUSE LIFTERS, INC.

Defendants.
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Plaintiffs, JRAP Enterprises, Inc. and Joseph Rapaport, by their Attorneys,
Speyer & Perlberg, LLP, as and for their complaint allege upon information and belief:

PARTIES

1. Plaintiff, JRAP Enterprises, Inc. (“JRAP”) is a corporation, organized and existing by virtue of the laws of the State of New York, with a principal place of business in the County of Suffolk.

2. Plaintiff, Joseph Rapaport (“Rapaport”) is a resident of the State of New York, County of Suffolk.

3. Defendant, Zucaro Construction, LLC (“ZCI”) is a corporation, organized and existing by virtue of the laws of the State of New York, with a principal place of business in the County of Nassau.

4. Defendant, Zucaro House Lifters, Inc. (“ZHL”) is a corporation, organized and existing by virtue of the laws of the State of New York with a principal place of business in the County of Nassau.

5. JRAP is a construction consultant that advises contractors and property owners on all aspects of house lifting, hardscape and home renovation and construction in New York City and Long Island.

6. ZCI is a general contractor, which specializes in commercial construction in the City of New York and Long Island.

7. ZHL is a general contractor that was formed to respond to the extensive flood damage that was caused to New York State after 2012 by super storm Sandy. ZHL’s primary purpose was to work with ZCI in performance of subcontracts awarded to ZCI to move homes damaged by the storm and to lift them on to a raised foundation in accordance with building department regulations that were promulgated to mitigate flood damage in future storms.

8. ZHL is a wholly owned subsidiary of ZCI over which ZCI exerts complete control.

9. ZHL and ZCI have identical or substantially identical ownership and management; they share employees, equipment, and operating facilities and they advertise to the public that ZCI is a “division” of ZHL.

10. In or about 2013, with significant input from FEMA, New York State and local building departments required structures located in designated flood zones to be removed and raised a minimum of two feet above base elevation.

11. New York City awarded contracts pursuant to a program designated the “Build it Back Program” (“BIB”) to three general contractors to comply with said regulations:

Volmar Construction, Inc., Rockaway Beach Blvd Construction Co., LLC and Fitzgerald Electrical Contractors (collectively, "General Contractors").

12. Homes on Long Island were moved and lifted pursuant to a government financed program designated "New York Rising" ("NYR").

13. Pursuant to BIB, the General Contractors solicited bids from subcontractors who were competing for subcontracts to perform the work of complying with said regulations by, among other things, removing, lifting and reconstructing homes in the flood zones.

14. Defendants planned to bid for contracts to lift homes under Long Island's NYR program and to bid on the aforesaid subcontracts from the General Contractors under the BIB program, but to do so they required additional expertise to make the bid, sell the General Contractors on awarding the subcontracts to them and then to hire and work with consultants, technicians and experts to execute the house lifting projects.

15. Defendants contacted Plaintiffs and engaged them to provide their expertise, time and skill to provide assistance in preparing bids for the subcontracts, to meet Defendants and the General Contractors and to represent the Defendants with the General Contractors in negotiating the subcontracts, in selling the General Contractors to award the subcontracts to Defendants, in hiring, working with and guiding the foundation and geotechnical experts who were required to provide specifications for the performance of the reconstruction and to consult with inspectors from the City of New York and the General Contractors to confirm that compliance with all regulations were met. In addition, Defendants engaged Plaintiffs to administer the subcontract and to make arrangements for payment to Defendants by the General Contractors.

16. The Parties to this engagement agreed to share profits and losses in that Plaintiffs agreed to accept ten percent of the gross payment for each subcontract when and if it was paid by the General Contractors as Plaintiffs' share of the profits and to accept the loss of being denied any compensation for the multitude of hours of uncompensated time and expenses incurred by them in performing the work described above if the subcontracts, or any of them, were not awarded to Defendants or if Defendants were not paid for their work through no fault of their own.

17. The parties agreed that the supervision of the subcontracts awarded by the General Contracts were to be and were jointly controlled by the Plaintiffs and the Defendants.

18. That Plaintiffs performed all services agreed to be performed as alleged herein and, with respect to house lifting contracts and subcontracts located on Long Island that were executed pursuant to the NYR program, Defendants paid Plaintiffs the agreed ten percent of monies received. However, notwithstanding that Plaintiffs performed all such services with respect to more than 40 subcontracts for house lifting under the BIB program in New York City, Defendants failed and refused to provide any compensation to Plaintiffs. (A partial list of the subcontracts for which funds are due to Plaintiffs was attached to the summons with notice filed with this action, which is incorporated by reference herein.)

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

19. Plaintiffs repeat reiterate and reallege the allegations of paragraphs 1 through 18 as though same were set forth in full herein.

20. The engagement, hereinabove alleged, was a contract for consideration agreed to be performed and performed by Plaintiffs.

21. Plaintiffs performed all conditions required by said contract to recover the agreed compensation of 10% of the funds received by Defendants for the work Plaintiffs performed in executing, supervising and administering the subcontracts.

22. No part of said compensation was paid by Defendants although duly demanded.

23. Accordingly, Defendants have breached their contract with Plaintiffs and are liable to them for damages.

24. That the amount of Plaintiffs' agreed compensation for the work they performed pursuant to said contract was in excess of One Million Dollars (\$1,000,000.00).

AS AND FOR A SECOND CAUSE OF ACTION
(Breach of fiduciary duty)

25. Plaintiffs repeat reiterate and reallege the allegations of paragraphs 1 through 24, as though same were set forth in full herein.

26. That the engagement alleged herein was and was intended to be a joint venture.

27. That Defendants' failure to pay the agreed compensation to Plaintiffs was a breach of their fiduciary duty to Plaintiff.

28. Defendants' breach of their fiduciary duty to Plaintiffs was willful and contumacious, without any good faith basis whatsoever and was dishonest.

29. That by reason of the foregoing, Defendants are liable to Plaintiffs for compensatory damages in excess of One Million Dollars (\$1,000,000.00) and exemplary damages of One Million Dollars (\$1,000,000.00) and Plaintiffs' reasonable attorneys fees.

AS AND FOR A THIRD CAUSE OF ACTION
Accounting

30. Plaintiffs repeat reiterate and reallege the allegations of paragraphs 1 through 29, as though same were set forth in full herein.

31. Defendants are obligated to account to Plaintiffs for all funds received from the General Contractors on the subcontracts that were secured for them, worked on and administered by Plaintiffs.

AS AND FOR A FOURTH CAUSE OF ACTION
(Implied covenant of good faith and fair dealing)

32. Plaintiffs repeat reiterate and reallege the allegations of paragraphs 1 through 31, as though same were set forth in full herein.

33. That the Defendants breached their implied covenant of good faith and fair dealing with Plaintiffs.

34. That by reason of the foregoing Defendants are liable to Plaintiffs in the amount of One Million Dollars (\$1,000,000.00) compensatory damages and One Million Dollars (\$1,000,000.00) exemplary damages and attorney's fees.

AS AND FOR A FIFTH CAUSE OF ACTION
(Quantum Meruit)

35. Plaintiffs repeat reiterate and reallege the allegations of paragraphs 1 through 34, as though same were set forth in full herein.

36. That the reasonable value of the services rendered by Plaintiffs to negotiate, sell, supervise and administer the aforementioned subcontracts issued to Defendants was in excess of One Million Dollars. (\$1,000,000.00).

37. That by reason of the foregoing Defendants are liable to plaintiff is *quantum meruit* in the amount of One Million Dollars (\$1,000,000.00).

AS AND FOR A SIXTH CAUSE OF ACTION
Unjust enrichment

38. Plaintiffs repeat reiterate and reallege the allegations of paragraphs 1 through 37, as though same were set forth in full herein.

39. That Defendants recovered funds from the General Contractors in excess of Ten Million Dollars (\$10,000,000.00).

40. That the Plaintiffs' agreed share of the profits earned from said funds was in excess of One Million Dollars (\$1,000,000.00), which was retained by Defendants in violation of their legal obligations to Plaintiffs as hereinabove alleged.

41. By reason of the foregoing, Defendants were unjustly enriched by retaining Plaintiffs' share of said profits and Plaintiffs are entitled to recover in equity One Million Dollars (\$1,000,000.00) from Defendants.

WHEREFORE, Plaintiffs JRAP Enterprises, Inc. and Joseph Rapaport demand judgment in the following amounts:

On the FIRST CAUSE OF ACTION \$1,000,000.00;
On the SECOND CAUSE OF ACTION \$2,000,000.00 and reasonable attorneys fee;
On the THIRD CAUSE OF ACTION judgment ordering an accounting by Defendants;
On the FOURTH CAUSE OF ACTION \$2,000,000.00 and reasonable attorneys fees;
On the FIFTH CAUSE OF ACTION \$1,000,000.00; and
On the SIXTH CAUSE OF ACTION \$ 1,000,000.00,
together with interest, cost and disbursements of this action and such other and further relief deemed by the court to be in the interest of justice.

Dated: Hauppauge, New York
August 20, 2020

Yours, etc.

SPEYER & PERLBERG, LLP
Attorneys for Plaintiffs

By: _____/s/_____
Dennis M. Perlberg, Esq.
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Hauppauge, New York 11788
(631) 673-6670
File No.: 20-902 (900)

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COMPLAINT

SPEYER & PERLBERG, LLP
Attorneys for Plaintiffs
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Hauppauge, New York 11788
(631) 673-6670

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney duly admitted to practice in the Courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: Hauppauge, New York
August 20, 2020

Signature: _____/s/_____
Dennis M. Perlberg, Esq.