

**IN THE SUPERIOR COURT
FOR THE DISTRICT OF COLUMBIA**

JAMES B. HOVIS and ANNE P. HOVIS
3131 Connecticut Avenue, NW
Apt. 2809
Washington, DC 20008

Plaintiffs

v.

Civ. No. 0008972-11

THE B.F. SAUL COMPANY OF WASHINGTON,
A.K.A. B. F. SAUL COMPANY
7501 Wisconsin Avenue
Suite 1500
Bethesda, MD 20814
Phone No. 301-986-6000

B.F. SAUL PROPERTY COMPANY
7501 Wisconsin Avenue
Suite 1500
Bethesda, MD 20814
Phone No. 301-986-6000

THE KLINGLE CORPORATION
3131 Connecticut Avenue, NW
Washington, DC 20008
Phone No. 202-234-2723

TANYA MARHEFKA
6808 Canal Bridge Court
Potomac, MD 20854
Phone No. 301-986-6226

Defendants

**VERIFIED COMPLAINT FOR NEGLIGENCE, BREACH OF CONTRACT,
CONVERSION, FRAUD AND MISREPRESENTATION & NEGLIGENT FRAUD**

COME NOW PLAINTIFFS, James B. Hovis and Anne P. Hovis (collectively the “Plaintiffs”) and as their Verified Complaint against the Defendants, B.F. Saul Company, B.F. Saul Property Company, The Klinge Corporation, and Tanya Marhefka (collectively, the “Defendants”) state as follows:

By this Amended Complaint, the Plaintiffs are seeking actual and punitive damages for the Defendants’ negligence, breach of contract, conversion of property, fraud and misrepresentation.

SUMMARY

Plaintiffs Anne and James Hovis and their minor daughter became tenants of the so-called South Wing of The Kennedy-Warren apartment complex in January 2008. Construction of the South Wing had been completed in 2004 and was marketed as the “preeminent apartment residence in Washington...[f]eaturing premium materials from around the world”. The Plaintiffs’ monthly rent initially was \$7,900 per month, which was increased to \$8,169 after approximately one year. To date, the Plaintiffs have paid the Defendants over \$300,000.

By way of background, beginning fairly early in the Plaintiffs’ tenancy, serious problems with the building and its management and personnel became apparent. The Plaintiffs suffered a series of three incidents of water leaking through their ceiling and walls from faulty HVAC (air-conditioning) systems, regular interruptions of water service, brown-colored water coming from the bathtub faucet which took approximately one year for the Defendants to fix, repeated clogged toilets from low water pressure, and leaks from toilets, sinks, garbage disposals, and other areas. The Plaintiffs repeatedly had to bear the noise of hammers and drills as other apartments above or near to theirs were

repaired. The Kennedy-Warren staff also engaged in practices such as using both of the only two elevators to which the Plaintiffs could access their apartment to accommodate the frequent moves in and out of the apartment building, completely removing the Plaintiffs' access to their apartment.

Earlier this year, the situation worsened. In one instance, building water problems caused the Plaintiffs' washing machine to overflow into the apartment, into public areas outside of the apartment, and into other apartments on lower floors. According to the building personnel, 14 apartments suffered water damage during this one occurrence. The Plaintiffs also discovered serious mold and water damage within their apartment. The Defendants addressed these issues in an incompetent manner and without complying with measures that would protect the Plaintiffs from the noise, dust, dirt, and mold that was disseminated throughout the apartment from, for example, ripping up a large section of flooring before replacing it. The Plaintiffs and their minor daughter not only suffered physical damage, property damage and destruction, and mental anguish from these events, but huge inconvenience, interruption in their ability to perform their professional duties, expenditures of time to clean the substantial mess made by the building personnel, and on-going physical effects. Worst of all, the Defendants efforts to remediate the mold were unsuccessful, and there remains a terrible mold smell in parts of the Plaintiffs' apartment. Finally, as the Plaintiffs withheld rent because of the substantial problems, the Defendants have taken actions to evict the Plaintiffs.

THE PARTIES

1. Plaintiffs James B. Hovis and Anne P. Hovis are current tenants of a residential property located at 3131 Connecticut Avenue, NW, Washington, DC 20008, known as

The Kennedy-Warren (the “Property”).

2. Defendant The Klingle Corporation (“Klingle”) is, on information and belief, a corporation incorporated under the laws of the state of Delaware, with its principal offices in District of Columbia at the address set forth in the caption hereof.

3. Defendant B.F. Saul Company is, upon information and belief, a corporation incorporated under the laws of the District of Columbia, with its principal offices in the State of Maryland at the address set forth in the caption hereof.

4. Defendant B.F. Saul Property Company is, upon information and belief, a corporation incorporated under the laws of the State of Maryland, with its principal offices in the State of Maryland at the address set forth in the caption hereof.

5. Defendant Tanya Marhefka is an officer of Defendants The Klingle corporation, B. F. Saul Company and/or B. F. Saul Property Company and, upon information and belief, is a resident of the State of Maryland at the address set forth in the caption hereof.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of all counts herein by reason of §11-921(a), D.C. Code. The amount in controversy exceeds \$5000.

7. Venue is proper in this Court because the Defendants perform business in the District of Columbia and all or a substantial part of the events, acts, or omissions giving rise to the Plaintiffs’ causes of action and claims for relief against the Defendants occurred in the District of Columbia.

8. This Court has personal jurisdiction over the Defendants by virtue of the so-called “long-arm jurisdiction” provisions of § 13-423(a)(1), D.C. Code.

FACTS

9. Defendant Klinge owns the Property, and the other Defendants collectively manage and operate the Property as a residential rental apartment building.
10. The Property has two “wings” that maintain separate addresses. The “historic wing” is 3133 Connecticut Avenue and, upon information and belief, was built in the 1930’s. The “South Wing” is 3131 Connecticut Avenue and, upon information and belief, was completed in 2004.
11. The Defendants market the Property as a premier, luxury Washington, DC residence.
12. According to the Property’s website, “With the opening of the South Wing in 2004...once again, the Kennedy-Warren is the preeminent apartment residence in Washington. Featuring premium materials from around the world and design of extraordinary grace, each apartment home in the South Wing of The Kennedy-Warren is a masterpiece...With the completion of the South Wing, The Kennedy-Warren maintains its place as the best address in Washington. No other rental residence has a comparable class of finishes that so thorough a collection of amenities...”
13. The Plaintiffs signed a lease to rent apartment #2809 of the Property (the Apartment”) on January 29, 2008. The lease provided for a monthly rent of \$7,900.
14. The Plaintiffs signed a second lease to rent the Apartment dated March 1, 2009, providing for a monthly rent of \$8,169 (the “Lease”), which currently is the monthly rent.
15. The lease provides for the tenancy in the Apartment of the Plaintiffs and their minor daughter (sometimes hereinafter collectively referred to as the “Tenants”).
16. During the period of nearly four years since the date on which the initial lease was signed, the Tenants have paid over \$300,000 in rent to Defendant B.F. Saul Company.

17. The Tenants have long experienced problems with the services in the Apartment, and particularly with the Defendants willingness to address and remedy problems, including those related to plumbing and water issues.

18. On two occasions, the Tenants presented evidence of the Apartment's problems at trial in Landlord and Tenant Court and won a rent offset, and on another occasion the Tenants entered into a settlement agreement which, among other things, required the Property staff to remedy certain problems within the Apartment. However, claims for damages such as personal injury and property damage may not be brought before the Landlord and Tenant Court and must be pursued in another forum.

19. By way of background, in 2010, in addition to other water-related problems, there were three occasions on which a substantial amount of water began pouring into the Apartment from the ceiling and walls from problems with the HVAC units in the Apartment and other apartments in the Property.

20. There were also frequent and unannounced water interruptions, leaks from sinks, garbage disposals, tremendous noise as, upon information and belief, work was performed on other apartments related to water problems and damage.

21. In recent months, the Tenants have experienced, among other things, leaks, water damage, flooding, and mold in the Apartment. These problems have necessitated, among other things, repairs within the Apartment by Property personnel and/or agents and contractors that included ripping up and replacing large parts of the floor, poking holes in the walls, removing sections of walls containing mold, installing new walls, plastering and painting.

22. Upon information and belief, the Property has, in the past and present, suffered

from leaks, floods, water damage and water intrusion, all of which are breeding grounds for mold.

23. The Apartment has had and continues to have recurrent instances of leaks, flooding, water damage and water intrusion, and the growth of mold as a result thereof.

24. The Tenants have suffered damage to their property as a result of such leaks, floods, water intrusion and mold.

25. Upon information and belief, the mold levels which are present in the Apartment, as well as the Defendants unsafe methods of dealing with the mold inside the Apartment, cause and contribute to substantial health problems suffered by the Tenants.

26. Upon information and belief, there are similar problems in other apartments within the Property. For example, the Property's head building engineer testified at trial that during one instance in which, due to a water problem in the Property, the Tenant's washing machine overflowed and flooded the Apartment, 14 apartments within the Property suffered water damage from that incident alone.

27. The Defendants knew or should have known of the problems prior to entering into the Lease and should have remedied the problems prior to inducing the Tenants to reside in the Apartment and to agree to pay the rent provided for in the Lease.

28. The Defendants failed to notify the Tenants of the water problems, leaks, flooding, and mold growth at the Property.

29. The Defendants have failed to adequately address the problems, including but not limited to the mold growth, which continue to cause property damage and pose health hazards within the Apartment.

30. The Defendants took actions which exacerbated the exposure of the Tenants and

their minor daughter to the mold and increased the physical illness and damage suffered thereby and omitted to take actions that would have protected the Tenants from damage.

31. The Tenants personal belonging have been damaged and/or destroyed as a result of the leaks, flooding, mold, and water problems.

32. The Tenants have suffered, and continue to suffer, health problems as a result of the conditions existing and which existed in the Apartment, including but not limited to headaches, nausea, allergic reactions and skin irritation, memory loss, sinus problems and congestion, fatigue, chest pain, and emotional distress.

33. Additionally, the Tenants have suffered other problems in the building not related to water damage. For example, on a number of occasions, the Tenants' access to their apartment and/or their ability to leave the 8th floor on which their apartment is located has been completely removed, as the Defendants have removed from service the only two elevators accessing the Tenant's apartment. The Tenants were literally trapped on the 8th floor and could not exit (except by way of the fire stairs) and were, at other times, prevented from entering any elevator (from the lobby or parking garage) that would get to their apartment.

34. This is both a serious health and safety violation (for example, what if someone had a heart attack at a time when the elevator access was eliminated). This situation happened recently even though it has happened repeatedly in the past and the Tenants complained on a number of occasions to the Property's employees.

35. The Defendants permit the Building's cleaning personnel to engage in highly unsanitary measures which jeopardize the life and health of the Tenants despite being notified repeatedly of such. The Tenants have repeatedly notified the Landlord that the

cleaning personnel in the Building's public areas (such as the lobby and the fitness center) regularly reach their gloved hands INTO the trash receptacles to retrieve trash (including used tissues, etc.), put the trash into a larger trash bags, then, using the same unwashed and contaminated hands, handle door knobs, work-out towels, etc. These agents of the Landlord are doing more damage in terms of spreading disease than if they let the receptacles overflow with trash. The Tenants have complained repeatedly regarding this problem.

**COUNT 1
(NEGLIGENCE)**

36. The allegations of Paragraphs 1 to 35 are realleged as if fully set forth herein.

37. The Defendants owed the Tenants the duty to provide fit and habitable living conditions for the Tenants and their minor daughter and to maintain the Apartment in safe and habitable condition, and to repair dangerous conditions in the Apartment.

38. The Defendants owed a duty to Tenants not to impose damage on the Tenants and to exercise reasonable care to protect the Tenants while attempting to correct or repair any dangerous conditions.

39. The Defendants breached their duty to the Tenants by failing to exercise reasonable care in maintaining the property in safe and habitable condition, failing to warn the Tenants of the presence of mold growth, failing to protect the Tenants from exposure to mold, failing to comply with applicable building codes, and failing to comply with applicable housing and health codes.

40. The Defendants breached their duty to the Tenants by undertaking certain actions including but not limited to actions related to cleaning the mold, removing and replacing flooring, and removing and replacing portions of walls, in a manner that increased the Tenants' exposure to mold spores and the damage suffered by the Tenants as a result of such exposure.

41. As a direct and proximate results of the Defendants' negligence, the Tenants have been foreseeably injured in damages to personal property and by personal injuries, and the Tenants are entitled to compensation therefor, including but not limited to expenses to repair or replace damaged personal property and expenses for physicians, hospitals, and/or other health care professionals and for the treatment of personal injuries resulting from the Defendants' actions and omissions and the condition of the Apartment.

42. As a further direct, proximate, reasonably foreseeable consequence of the Defendants' actions, the Tenants have sustained pain, suffering, mental and emotional anguish, extreme inconvenience, inability to devote their time to their professional duties, and diminished enjoyment of the leased properties.

**COUNT 2
(BREACH OF CONTRACT)**

43. The allegations of Paragraphs 1 to 42 are realleged as if fully set forth herein.

44. The Defendants have breached the Lease through acts and omissions, including, but not limited to, failing to maintain the water, heating and other Property systems in good repair, by allowing substantial housing code violations to occur, by causing or allowing breaches of the Tenants right to quiet enjoyment, and by taking actions which increased the damage suffered by the Tenants, and by failing to protect the Tenants while performing work in the Apartment.

45. As a direct and proximate results of the Defendants' breaches, the Tenants have been injured in damages to personal property and by personal injuries, and the Tenants are entitled to compensation therefor, including but not limited to expenses to repair or replace damaged personal property and expenses for physicians, hospitals, and/or other health care professionals and for the treatment of personal injuries resulting from the Defendants' actions and omissions and the condition of the Apartment.

46. As a further direct, proximate, reasonably foreseeable consequence of the Defendants' actions, the Tenants have sustained pain, suffering, mental and emotional

anguish, extreme inconvenience, inability to devote their time to their professional duties, and diminished enjoyment of the leased properties.

**COUNT 3
(CONVERSION OF PROPERTY)**

47. The allegations of Paragraphs 1 to 46 are realleged as if fully set forth herein.

48. The Defendants had a duty to the Tenants not to convert the Tenants' property.

49. The Defendants deprived the Tenants of the possession and use of certain personal property that was damaged and/or destroyed in flooding and in connection with mold contamination as a result of the Defendants' failure to exercise reasonable care in maintaining the property in safe and habitable condition, failure to warn the Tenants of the presence of mold growth, failure to comply with applicable building codes, and failure to comply with applicable housing and health codes.

50. The Defendants conversion of the Tenants' property caused damage to the Tenants by depriving the Tenants of the use thereof.

**COUNT 4
(FRAUD AND MISREPRESENTATION)**

51. The allegations of Paragraphs 1 to 50 are realleged as if fully set forth herein.

52. The Defendants intentionally made false statements and representations, and omitted material information, to the Tenants, regarding, among other things, the qualities, conditions, safety, and value of the Apartment.

53. Such false representations were made with the intent to defraud the Tenants and to induce the Tenants to enter into a lease of the Apartment and to agree to the high rate of rent provided for therein and to continue their occupancy of the Apartment.

54. The Defendants knew, or should have known, at the time such statements were made, that such statements and representations were false and material in nature.

55. The Tenants reasonably relied on the false statements of the Defendants to their detriment, including but not limited to by entering into a lease with the Defendants and to paying over \$300,000 in rent during the term of the tenancy.

56. The Tenants, as consumers, had a right to rely on the misrepresentations and omissions made by the Defendants.

57. As a result of Defendants false statements and misrepresentations, the Tenants have been damaged.

58. The Defendants actual or constructive malice in making international representations to the Tenants should be punished by punitive damages.

COUNT 5
(NEGLIGENT MISREPRESENTATION)

59. The allegations of Paragraphs 1 to 58 are realleged as if fully set forth herein.

60. The Defendants negligently made false statements and representations, and omitted material information, to the Tenants, regarding, among other things, the qualities, conditions, safety, and value of the Apartment.

61. The Defendants' statements, representations and omissions were false and material in nature.

62. The Defendants statements and representations had the tendency to induce the Tenants to lease and remain tenants in the Apartment.

63. The Tenants reasonably relied on the false statements of the Defendants to their detriment, including but not limited to by entering into a lease with the Defendants and to pay over \$300,000 in rent during the term of the tenancy.

64. The Tenants, as consumers, had a right to rely on the misrepresentations and omissions made by the Defendants.

65. As a result of Defendants false statements and misrepresentations, the Tenants have been damaged.

66. The Defendants constructive malice in making international representations to the Tenants should be punished by punitive damages.

JURY DEMAND

The Plaintiffs hereby request a jury trial for all issues triable by jury.

REQUEST FOR RELIEF

WHEREFORE, the Company demands judgment against the Defendants for:

- A. Actual damages in the amount of two hundred twenty-five thousand dollars (\$225,000), or such other amount as may appear on proof thereof at trial;
- B. Punitive damages equal to three times actual damages, but in an amount not less than three times the actual damages proved at trial;
- C. Costs, plus reasonable attorneys' fees;
- D. Interest on all of the foregoing at the legal rate from the date of judgment until payment in full; and
- E. Such further relief as the Court may deem proper.

Respectfully Submitted,

_____/s/_____
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