

2010 WL 4720384 (Neb.Dist.Ct.) (Trial Pleading)  
District Court of Nebraska.  
Sarpy County

James CROSS, Plaintiff,  
v.  
Chet MCCABE d/b/a C.C. Construction, Defendant.

No. CI10 2327.  
November 16, 2010.

### **Complaint**

James Cross, Plaintiff.

Thomas M. White, #17452, Amy S. Jorgensen, #23215, White, Wulff & Jorgensen, 209 South 19th Street, Suite 300, Omaha, Nebraska 68102, (402) 346-5700, Attorneys for Plaintiff.

COMES NOW the Plaintiff and, for his causes of action against the Defendant, alleges as follows:

#### **GENERAL ALLEGATIONS**

1. The Plaintiff is the owner of a life estate of a home and lot located at 301 East Second Street, Louisville, Cass County NE.
2. The Defendant is an individual engaged in the general construction business doing business as C.C. Construction and located at 420 S. 9th Street, Springfield, Sarpy County, NE.
3. That on or about May 24, 2010, parties entered into an oral contract for the removal and construction of a driveway as well as the erection of a limestone retaining wall along the driveway on Plaintiff's premises.

#### **FIRST CAUSE OF ACTION BREACH OF CONTRACT**

4. The Plaintiff incorporates by reference the allegations by paragraphs 1 through 3 to the extent as if set forth herein.
5. The Defendant has breached the contract in the following respects:
  - (a) As constructed, the driveway does not drain properly, creating a hazard in the winter driving conditions.
  - (b) The wall to be erected has not been completed and as built does not conform to the specifications.
  - (c) The Defendant refuses to respond to the requests of the Plaintiff and has, in fact, abandoned the project.
6. The Defendant wrongfully demanded of the Plaintiff payments in excess of the agreed price, which the Plaintiff under intense psychological pressure paid to Defendant. The amount of over payment is \$5,412.50.
7. In addition, the Plaintiff has been damaged in an amount to be determined by a jury by reason both on information and belief in excess of \$5,000.00.

WHEREFORE Plaintiff prays for judgment in the amount of the over payment of \$5,412.50 and damages for breach of the defective construction of \$5,000.00 and costs of this action.

**SECOND CAUSE OF ACTION FRAUD**

8. The Plaintiff incorporates by reference paragraphs 1 through 7 to the same extent as if fully set forth herein.
9. The Defendant on a number of occasions used the **elderly** and vulnerable condition of the Plaintiff to misrepresent the problems of construction and demanded money payments above the agreed price in the amount of \$5,412.50 from Plaintiff.
10. The Plaintiff as a result has suffered humiliation, anxiety and severe distress.

WHEREFORE Plaintiff prays for the sum of \$5,412.50 and general damages for the severe emotional distress suffered by him.

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