COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS:	SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT DOCKET NO. 1883CVO757B		
ERIK TENCZAR and ATHINA TENCZAR			
Plaintiffs v.	COMMONWEALTH OF MASSACHUSETTS SUPERIOR COURT DEPT. OF THE TRIAL COURT PLYMOUTH COUNTY		
INDIAN POND COUNTRY CLUB, INC., SPECTRUM BUILDING CO., INC. AND PAUL M. BISCEGLIA	JUL 1 3 2018;		
Defendants	Clark of Court		

VERIFIED COMPLAINT

Introduction

The plaintiffs, Erik Tenzcar and Athina Tenczar, are the owners of the property at 294 Country Club Way, in Kingston, Massachusetts. The Tenczar property is improved with a newly constructed home completed in 2017 that abuts the fifteenth (15th) hole at Indian Pond Country Club, a private golf course owned and operated by the defendant, Indian Pond Country Club, Inc. The home was constructed by the defendant, Spectrum Building Co., Inc., which is owned by Paul M. Bisceglia, who is its sole officer, director and shareholder. This action is commenced by the plaintiffs against the defendant, Indian Pond Country Club,

CIVIL	ACTION COVER SHEET	1.883CV	10757B	Trial Court of Massachuset The Superior Court	ts 🍒
PLAINTIFF(S):	Erik Tenczar and Athina Tenczar		,	COUNTY	
ADDRESS:	294 Country Club Way, Kingston, MA 02364			Plymouth	
			DEFENDANT(S): In	dian Pond Country Club, Inc., Spectrum Building Co., Inc. a	nd Paul
			Bisceglia ·		
ATTORNEY:	Robert W. Galvin., Esq.			FILED	\neg
ADDRESS:	Galvin & Galvin, PC, 10 Enterprise Street, Sui	ite 3	ADDRESS:	COMMONWEALTH OF MASSACHUSETTS SUPERIOR COURT DEPT. OF THE TRIAL COURT	
Duxbury, MA 0233	32-3315			PLYMOUTH COUNTY	\top
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BBO:	561397			JUL 1 3 2018	+
ubo .		ACTION AND TRACE	DESIGNATION (see	reverse side)	 -
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C99 / A			F	X YES Clerk of CounO	
*if "Other" plea	se describe;				
			,		
			PURSUANT TO G.L.	· ·	
The following is:	a full, itemized and detailed statement of ard double or treble damage claims; indi	f the facts on which the	undersigned plaintiff o	r plaintiff counsel relies to determine money dam	ages. For
una tom, distegi	ard double of treble damage claims, indi-				
			RT CLAIMS ral sheets as necessary	v)	
A. Documented	medical expenses to date:			•	
1. Tota	al hospital expenses :	***************************************	••••••	<u> </u>	
2. 10ta 3. Tota	al doctor expensesal chiropractic expenses	·····		\$ <u>—</u>	
4. Tota	al physical therapy expensesal other expenses (describe below)	*-*- <i>*</i> -*	444444444444	\$ <u> </u>	
5. 100	ar other expenses (describe below)		***************************************	Subtotal (A): \$	
3. Documented I	lost wages and compensation to date	***************************************		\$	
C. Documented	property damages to dated	PPPPPPPPPPPPPPPPPPPPPPPPPPPPPPPPPPPPPP		\$ <u>\$6</u>	0,000
E. Reasonably a	nticipated future medical and hospital ex nticipated lost wages		*******		
F. Other docume	ented items of damages (describe below))	***************************************	\$ <u> </u>	
2 Briefly describ	pe plaintiff's injury, including the nature a	and owtom of injury			
o. Difelly describ	se plantan e injury, including lite flature a	nd extent of injury.			
				TOTAL (A-F):\$	
			CT CLAIMS heets as necessary)		
	d description of claims(s): uffered property damage and lost use of	land by trespass and i	nuisance by defendant	golf course, and TOTAL: \$ \$25	50,000
defendant contr	actor failed to disclose conditions and re	medy defects and dam	ages.		
Signature of A	Attorney/Pro Se Plaintiff: X			Date: July /	/ 2018
RELATED AC	TIONS: Please provide the case nur	mber, case name, ar	nd county of any rela	ted actions pending in the Superior Court.	
None					
	CERT	TIFICATION PURSI	JANT TO SJC RULE	£ 1:18	
Rule 1:18) requ	that I have complied with requireme	ents of Rule 5 of the nformation about cou	Supreme Judicial Co u d-connecte d dispute	ourt Uniform Rules on Dispute Resolution (Se resolution services and discuss with them	SJC the
Signature of A	attorney of Record: X			Date: July 1	<u>(</u> , ₂₀₁₈

in order to compel the defendant, Indian Pond Country Club, Inc., to prevent a continuing trespass and/or to abate a nuisance caused by golf balls being hit from the fifteenth (15th) hole from entering into the Tenczar Property and striking and damaging their home and preventing the use and enjoyment of their property. This action is also commenced against the general contracting firm, for breach of warranty for failing to remedy deficiencies in the home, and the owner of the general contracting firm for failing to disclose material facts concerning golf balls striking their home before it was sold to the plaintiffs resulting in damages the use and enjoyment of the home being adversely impacted and/or the value of the home being impacted.

Parties

- 1. The plaintiffs, Erik Tenzcar and Athina Tenczar (hereinafter the "Tenczars"), husband and wife, own and reside at the property at 294 Country Club Way, in Kingston, Plymouth County, Massachusetts (hereinafter the "Tenczar Property").
- 2. The defendant, Indian Pond Country Club, Inc. (hereinafter "IPCC"), is a Massachusetts corporation, with a registered office address of 60 Country Club Way, Kingston, Plymouth County, Massachusetts. IPCC owns and operates a private golf course on a certain parcel of land off Country Club Way known as Indian Pond Country Club.

- 3. The defendant, Spectrum Building Co., Inc., is a Massachusetts corporation, with a registered office address of 106 Gunning Point Road, Plymouth, Plymouth County, Massachusetts.
- 4. The defendant, Paul M. Bisceglia, is upon information and belief the sole officer, director and shareholder of the defendant, Spectrum, and resides at 106 Gunning Point Road, Plymouth, Plymouth County, Massachusetts.

Factual Background

- 5. The Tenczar Property abuts the fifteenth (15th) hole at Indian Pond Country Club.
- 6. The home on the Tenczar Property was constructed by Spectrum Building Co., Inc. prior to April 27, 2017.
- 7. Prior to the sale of the Tenczar Property to the Tenczars on April 27, 2017, the home on the Tenczar Property was repeatedly struck by golf balls hit upon information and belief from the fifteenth (15th) hole at Indian Pond Country Club causing property damage.

- 8. At no point prior to the agreement to purchase and/or sale of the Tenczar Property to the Tenczars did the defendants, Spectrum or Bisceglia, disclose to the Tenczars that the improved home and yard fell within an area that golf balls regularly entered the yard and/or struck the home then owned by Spectrum.
- 9. At the time of the sale, the Tenczars were informed that the defendant, IPCC, had a right to retrieve errant golf balls from the unimproved portion of their property which they understood to be an area beyond a retaining wall and fence beyond which the property that was unimproved. Said right is reserved in a Declaration of Covenants and Restriction and an amendment thereof.
- 10. The defendants, Spectrum and/or Bisceglia, had a duty to disclose any facts, the disclosure of which may have influenced the buyer or prospective buyer not to enter into the transaction.
- 11. The defendants, Spectrum and Bisceglia, did not to disclose to the Tenczars the fact that golf balls were being hit into the improved areas of what is now the Tenczar Property and striking the home by the defendants, Spectrum and Bisceglia, resulting in the Tenczars agreeing to purchase and then purchasing the Tenczar Property for the sum of \$750,000.00 on April 27, 2017.

- 12. Shortly after the purchase of the premises and the Tenczars' residency at the premises, golf balls hit by golfers playing the fifteenth (15th) hole at Indian Pond Country Club, were observed striking their home, entering into the improved areas of their property including their front and rear yard area and deck area, and causing property damage.
- 13. The golf ball strikes have caused repeated property damage including damage to the siding of the home on the Tenczar Property, multiple broken windows, and damage to their deck.
- 14. The golf ball strikes also have occurred when the Tenczars have attempted to make regular and customary use of their deck and yard area, including as a play area for their minor child, and have even occurred in the front of the home in the area of their driveway where the Tenczars' and their guests' vehicles are parked.
- 15. The continuous threat of golf ball strikes occurring at any time prevents the Tenczars from the use and enjoyment of their property.
- 16. In an effort to protect themselves and their minor child even when sitting on their rear deck where balls have been hit, the Tenczars have erected a wall to prevent injury to themselves.

- 17. As the direct and proximate result of repeated golf ball strikes in their yard and of their home, the Tenczars contacted the defendant, Indian Pond Country Club, to inform the ownership of the club of the extent and nature of the problem.
- 18. The Tenczars asked that the principal of the Indian Pond Country Club, Frederick M. Tonsberg, Sr., to either install a protective landscaping or netting or to make other changes to the layout of the hole which is known as a dog leg to prevent golf balls from entering into the portion of the yard where golf balls are causing property damage and/or interfering with the use and enjoyment of the Tenczar Property.
- 19. IPCC has failed and neglected to respond after an initial meeting between the Tenczars and Mr. Tonsberg.
- 20. The Tenczars have since obtained an estimate to install protective netting from eighty foot tall telephone poles from a company that has installed such netting in other similar circumstance. The cost to install such netting exceeds \$55,000.00 and even with such a netting system in place, the company cannot guarantee that golf balls will not still enter over the netting entering the Tenczar Property and striking their home or causing injury.

- 21. The Tenczars again attempted to reach out to the defendant, IPCC, including by multiple telephone calls made to the staff in the Pro Shop and Offices but IPCC staff and ownership have failed and neglected to respond back.
- 22. The Tenczars have also begun tracking golf balls entering the improved portion of their property including those causing damages and others entering their yard and the numbers are now in the hundreds in a little over one year of ownership.
- 23. On or before May 1, 2018, the Tenczars engaged counsel to contact IPCC in an effort to resolve this issues. Counsel for the Tenczars then directed a letter to IPCC dated May 1, 2018 informing IPCC of the nature of the issues and requesting cooperation towards a solution. There was no response to the letter that was sent via certified mail to IPCC's registered office.
- 24. On Sunday, July 8, 2018, by approximately 11:00AM, there were observed at least 5 golf balls in the improved portion of the Tenczar Property. One of the balls, struck a window in the home shattering the glass and terrifying the plaintiffs' young daughter and resulting in the Tenczars contacting the Kingston Police Department to file a report.
- 25. Reportedly, the Kingston Police spoke with IPCC's Frederick Tonsberg, Sr. shortly after the complaint by the plaintiffs, and Tonsberg indicated to the officer that he's aware of

the situation but that it's not his problem and that the Tenczars should have known of the problem before they bought the home.

- 26. On Tuesday, July 10, 2018, another golf ball hit upon information and belief from the 15th hole struck the Tenczars' home. When the plaintiff, Athina Tenczar, spoke to the golfer riding in a cart looking to retrieve the golf ball, in response to her question inquiring as to aim, the golfer said to her "f*ck you, you should have never bought the house in the first place" and drove off. The plaintiff, Ms. Tenczar then again contacted the police who advised that the Tenczars that this is a civil matter and that they cannot resolve the issue.
- 27. As the direct and proximate result hereof, the Tenczars have suffered damages, including damage to their property, incurred costs in an effort to prevent injury and damages, suffered an interference with the use and enjoyment of their property, are confined during golfing hours in golf season to using the interior of their home, and their home and property have been devalued.

COUNT I

TRESPASS

- 28. The plaintiffs repeat and reallege the allegations in paragraphs 1 to 27 above as if expressly set forth and incorporated herein by reference.
- 29. The Tenczar Property abuts the property owned and operated as a golf course by the defendant, IPCC.
- 30. Golf balls being hit from the IPCC Property, including areas of the fifteenth (15th) hole, are entering into the improved areas of the Tenczar Property, without any license, permission or approval of the Tenczars.
- 31. The Tenczar Property has suffered damage, including but not limited to property and broken window damage from ball strikes.
- 32. The Tenczars have also incurred costs and expenses, in connection with trying to prevent damages and personal injury to themselves and their property, as a result of the ball strikes.
- 33. The Tenczars have been further limited in the use and enjoyment of their property as a result of the ball strikes.

34. The Tenczars have asked verbally and in writing of the defendant, IPCC, to cooperate with them in the development of a solution; however, the defendant, IPCC, now fails and neglects to respond to their requests and refuses to take any measures to prevent damage or injury to the Tenczars, their guests and their property.

COUNT II

NUISANCE

- 35. The plaintiffs repeat and reallege the allegations in paragraphs 1 to 34 above as if expressly set forth and incorporated herein by reference.
- 36. The Tenczar Property abuts the property owned and operated as a golf course by the defendant, IPCC.
- 37. Golf balls being hit from the IPCC Property, including areas of the fifteenth (15th) hole, are entering into the improved areas of the Tenczar Property, without any license, permission or approval of the Tenczars.

- 38. The plaintiffs, the Tenczars, have repeatedly complained of the conditions and requested assistance from the defendant, IPCC, in abating the issues; however, the defendant IPCC, has failed and neglected to respond and apparently blames the Tenczars.
- 39. The defendant, IPCC's actions in allowing the conditions to continue causes a substantial and unreasonable interference with the use and enjoyment of the Tenczar Property, deprives them their exclusive right to enjoy the use of their property free from material disturbance and annoyance, and/or interferes with the reasonable value of their property.

COUNT III

FRAUD AND MISREPRESENTATION

- 40. The plaintiffs repeat and reallege the allegations in paragraphs 1 to 39 above as if expressly set forth and incorporated herein by reference.
- 41. The defendants, Spectrum and Bisceglia, had actual knowledge that golf balls being hit from the area of the defendant, IPCC's Property, were entering the improved areas of the now Tenczar Property and caused damages.

- 42. Upon information and belief, damage caused by golf balls entering the Tenczar Property was repaired by the defendants, Spectrum and Bisceglia, prior to the time for inspection of the property and not disclosed to the Tenczars.
- 43. Upon information and belief, evidence that golf balls were entering the Tenczar

 Property was removed by the defendants, Spectrum and Bisceglia, prior to the time the

 Tenzcars were inspecting the property the effect of which was to conceal the existence of such

 conditions from the Tenczars.
- 44. Golf balls being hit from the IPCC Property, including areas of the fifteenth (15th) hole, are entering into the improved areas of the Tenczar Property, without any license, permission or approval of the Tenczars and are causing a substantial and unreasonable interference with the use and enjoyment of the Tenczar Property, deprives them their exclusive right to enjoy the use of their property free from material disturbance and annoyance, and/or interferes with the reasonable value of their property.
- 45. Had the Tenczars knew of the conditions prior to the time they entered into an agreement to purchase the Tenczar Property or closed on the Tenczar Property, they would not have purchased the property.

46. As the direct and proximate result hereof, the plaintiffs, the Tenczars, have suffered damages and/or a diminution in the value of their property.

COUNT IV

NEGLIGENT MISREPRESENTATION

- 47. The plaintiffs repeat and reallege the allegations in paragraphs 1 to 48 above as if expressly set forth and incorporated herein by reference.
- 48. The defendants, Spectrum and Bisceglia, knew or should have known that golf balls being hit from the area of the defendant, IPCC's Property, were entering the improved areas of the now Tenczar Property and causing damages.
- 49. The defendants, Spectrum and Bisceglia, in the course of its business, supplied false information for the guidance of the Tenczars including by failing to disclose the cause of property damages, causing and resulting in pecuniary loss to the Tenczars, by their justifiable reliance upon the information, and with failure to exercise reasonable care or competence in obtaining or communicating the information.

50. As the direct and proximate result hereof, the plaintiffs, the Tenczars, have suffered damages and/or a diminution in the value of their property.

COUNT V

BREACH OF CONTRACT

- 51. The plaintiffs repeat and reallege the allegations in paragraphs 1 to 50 above as if expressly set forth and incorporated herein by reference.
- 52. The plaintiffs also have numerous items of exterior and interior work that was warranted under their contract with Spectrum and that the defendants, Spectrum and Bisceglia, agreed to remedy, at the time of the sale of the new home.
- 53. Included in the items are (1) the deck was warped and has to be leveled out but not all screws are in place; (2) the backsplash caulking not completed; (3) the ceiling crack in kitchen needs to be repaired and/or redone; (4) the living room window and basement sliding door needs to be resealed and leak during storms.

54. Despite repeated requests, the defendants, Spectrum and Bisceglia, have failed in breach of their agreement to remedy these issues obligating the plaintiffs to expend money to remedy the issues.

COUNT VI

BREACH OF WARRANTY

- 55. The plaintiffs repeat and reallege the allegations in paragraphs 1 to 54 above as if expressly set forth and incorporated herein by reference.
- 56. The failure to remedy the exterior and interior items at the Tenczar Property by the defendants, Spectrum and Bisceglia, despite repeated request constitutes a breach of warranty for which the Tenczars have suffered damages.

COUNT VII

BREACH OF IMPLIED COVENANTS OF GOOD FAITH AND FAIR DEALING

- 57. The plaintiffs repeat and reallege the allegations in paragraphs 1 to 56 above as if expressly set forth and incorporated herein by reference.
- 58. The failure by the defendants, Spectrum and Bisceglia, to disclose the conditions complained involving golf balls striking the home and causing damages and the failure remedy the exterior and interior items at the Tenczar Property despite request constitutes a breach of the implied covenants of good faith and fair dealing for which the Tenczars have suffered damages.

COUNT IX

EQUITABLE RELIEF AND INJUNCTION

- 59. The plaintiffs repeat and reallege the allegations in paragraphs 1 to 50 above as if expressly set forth and incorporated herein by reference.
- 60. The damages being caused at the Tenczar Property substantially and unreasonably interfere with the use and occupancy of the Tenczar Property.

- 61. Damages can be avoided by the defendant, IPCC, by moving the location of the tee boxes and/or making physical alterations or improvements at the tee that preclude golfers from making shots that purposefully are aimed at or near the Tenczar Property.
- 62. The need to make immediate changes and the need for temporary and permanent relief is evident since the plaintiffs, the Tenczars, are virtually unable to use and enjoy the outdoor yard area of their property due to the actual conditions on the defendant, IPCC Property.
- 63. The defendants are also subjected to repeated damage to their home caused by golf balls being hit from IPCC into the Tenczar Property.
- 64. The defendant, IPCC, must be temporarily, preliminarily and/or permanently enjoined from continuing to use those portions of the fifteenth (15th) hole at Indian Pond Country Club unless and until adequate and reasonable measures are implemented by IPCC to prevent further damage and personal injury to the plaintiffs, the Tenczars, from golf balls being hit into the improved portion of their property.

WHEREFORE the plaintiffs, Erik and Athina Tenczar, request the following relief:

1. That judgment enter in favor of the plaintiffs on Counts I to IX;

- 2. That this Court enter an order temporarily, preliminarily and/or permanently enjoining the defendant, IPCC, and persons using the golf course with its knowledge and consent, from continuing to use those portions of the fifteenth (15th) hole at Indian Pond Country Club where balls strike the Tenczar Property unless and until adequate and reasonable measures are implemented to prevent further property damage and personal injury to the plaintiffs, the Tenczars, from golf balls being hit into their property;
- That this Court award the plaintiffs, the Tenczars, money damages for the cost to repair and respond to damages caused by the defendant, IPCC, use of its land as a golf course;
- 4. That this Court award the plaintiffs, the Tenczars, money damages for the failure to disclose the conditions as against the defendants, Spectrum and Bisceglia, and pierce the corporate veil and hold Bisceglia, individually responsible for the conduct of Spectrum; and,
- 5. That this Court award the plaintiffs, the Tenczars, money damages for breach of contract, warrant and implied covenants as against the defendants, Spectrum and Bisceglia, and pierce the corporate veil and hold Bisceglia, individually responsible for the conduct of Spectrum; and,
- 6. That this Court award the plaintiffs, the Tenczars, their costs of action and reasonable counsel fees.
- 7. For such other and further relief as this Court deems just and equitable.

VERIFICATION

We, Erik and Athina Tenczar, hereby state under oath that we have read the Verified Complaint, and affirm that the facts set forth herein are true, accurate and complete based on our own personal knowledge, and information and belief which we also believe to be true.

SIGNED UNDER THE PENALTIES OF PERJURY

Dated: July 10, 2018

Erik Tenczar

Athina Tencza

Erik Tenczar Athina Tenczar

By their Counsel,

Robert W. Galvin, Esq.

(BBO # 561397)

Galvin & Galvin, PC

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JURY CLAIM

The plaintiffs request a jury trial on all issues so triable.

Erik Tenczar

Athina Tenczar

By their Counsel,

Robert W. Galvin, Esq.

(BBO # 561397)

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