

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT  
SUFFOLK, SS. CIVIL ACTION NO.

HERBERT S. LERMAN, EXECUTOR OF THE ESTATE  
OF MICHAEL J. CALLAHAN,  
Plaintiff

V.

D & J IRON WORKS, INC.,  
GIUSEPPE FALCONE,  
OLIVER REALTY LIMITED PARTNERSHIP,  
and  
OLIVER REALTY, INC.  
Defendants

**COMPLAINT**

The Plaintiff, Herbert S. Lerman, alleges as follows:

Parties

1. The Plaintiff, Herbert S. Lerman ("Lerman") was appointed as Executor of the Will of Michael J. Callahan by the Suffolk Probate and Family Court on November 12, 2009 (Docket No. 00P2017).

2. The Defendant, D & J Iron Works, Inc. ("D & J"), is a Massachusetts corporation having a principal office at 59 Waite Street Ext., Malden, Massachusetts 02148.

3. The Defendant, Giuseppe Falcone ("Falcone"), is an individual having an address at 130 Proctor Avenue, Revere, Massachusetts 02151.

4. The Defendant, Oliver Realty Limited Partnership ("Oliver Realty LP") is a Massachusetts limited partnership

having an address at 163 Newbury Street, Boston, Massachusetts 02116.

5. The Defendant, Oliver Realty, Inc., is a Massachusetts corporation, also located at 163 Newbury Street, Boston, Massachusetts 02116. Oliver Realty, Inc. is the General Partner of Oliver Realty LP.

#### Factual Allegations

6. The Estate of Michael J. Callahan ("Estate") is the owner of an 8-unit apartment building located at 298 Beacon Street in Boston ("298 Beacon Street Property").

7. As of March 26, 2014, all eight apartment units of the 298 Beacon Street Property were fully leased and occupied.

8. On the afternoon of March 26, 2014, a fire completely engulfed the 298 Beacon Street Property, causing substantial property damage, and forcing the tenants to find other housing.

9. On March 26, 2014, both D & J and Falcone were engaged in the business of iron works.

10. According to the Certificate of Limited Partnership, the character of the business of Oliver Realty LP is to own, purchase, manage, and develop real estate.

11. On March 26, 2014, Oliver Realty LP was the owner of an apartment building located at 296 Beacon Street in Boston ("296 Beacon Street Property"). The 296 Beacon Street Property is located adjacent to the 298 Beacon Street Property. The properties share a common party wall. The rear of both buildings face onto the Charles River.

12. Oliver Realty LP hired D & J and Falcone to perform welding work on railings located at the exterior rear of 296 Beacon Street. D & J and Falcone undertook to perform that work on March 26, 2014, a very windy day.

13. Lerman is informed and believes that neither Oliver Realty LP nor D & J nor Falcone requested a permit from the City of Boston to perform the welding work, as required by Article VII of the Boston Fire Prevention Code and 527 CMR 39.00.

14. Lerman is informed and believes that neither Oliver Realty LP nor D & J nor Falcone had a firefighter or "fire watcher" present at the site, maintained a fire extinguisher at the site, or placed a fire resistant shield or guard to prevent ignition of combustible construction materials, as required by Article VII of the Boston Fire Prevention Code and 527 CMR 39.00.

15. Lerman is informed and believes that flying sparks from the welding work caused the fire at the 298 Beacon Street Property.

#### Requests for Relief

##### Count I

##### Negligence by D & J Iron Works, Inc.

16. Lerman repeats the allegations contained in paragraphs 1 through 15 and incorporates them by reference as if fully and completely stated herein.

17. D & J had a duty to exercise reasonable care to prevent damage to adjoining property owners in connection with the welding work. Due to the inherently dangerous nature of the

welding work, D & J had a duty to take special precautions to prevent damage to the adjoining property.

18. D & J breached its duty of care in at least the following ways: (a) by failing to obtain a permit from the City of Boston, (b) by failing to have a firefighter or fire watcher present at the site, (c) by failing to have a fire extinguisher at the site, (d) by failing to shield combustible materials at the 298 Beacon Street Property from the migration of flying sparks, and (e) by failing to take measures to extinguish the fire caused by those sparks in the 298 Beacon Street Property, all as required by the Boston Fire Safety Code, 527 CMR 39.00 and all other applicable safety laws and regulations.

19. As a direct and proximate result of D & J's negligence, the Estate has sustained damages, including without limitation, property damage and loss of business income, in an amount to be determined at trial.

#### Count II

##### Negligence by Giuseppe Falcone

20. Lerman repeats the allegations contained in paragraphs 1 through 19 and incorporates them by reference as if fully and completely stated herein.

21. Falcone had a duty to exercise reasonable care to prevent damage to adjoining property owners in connection with the welding work. Due to the inherently dangerous nature of the welding work, Falcone had a duty to take special precautions to prevent damage to the adjoining property.

22. Falcone breached his duty of care in at least the following ways: (a) by failing to obtain a permit from the City of Boston, (b) by failing to have a firefighter or fire watcher present at the site, (c) by failing to have a fire extinguisher at the site, (d) by failing to shield combustible materials at the 298 Beacon Street Property from the migration of flying sparks, and (e) by failing to take measures to extinguish the fire caused by those sparks in the 298 Beacon Street Property, all as required by the Boston Fire Safety Code, 527 CMR 39.00 and all other applicable safety laws and regulations.

23. As a direct and proximate result of D & J's negligence, the Estate has sustained damages, including without limitation, property damage and loss of business income, in an amount to be determined at trial.

### Count III

#### Negligence by Oliver Realty LP

24. Lerman repeats the allegations contained in paragraphs 1 through 23 and incorporates them by reference as if fully and completely stated herein.

25. Oliver Realty LP had a duty to exercise reasonable care to prevent damage to adjoining property owners in connection with the welding work on its property.

26. The nature and circumstances of the welding work to be performed by D & L and Falcone were inherently dangerous, such that damage to adjoining landowners would probably result unless special precautions were taken.

27. Oliver Realty knew or had reason to know that the welding work to be performed by D & J and Falcone was inherently dangerous to the property of adjoining landowners.

28. Oliver Realty had a duty to use reasonable care ensure that D & J and Falcone take special precautions to avoid damage to the property of adjoining landowners.

29. Oliver Realty LP breached its duty in at least the following ways: (a) by permitting D & J and Falcone to perform work without a required permit from the City of Boston, and without a fire detail or fire watcher; (b) by permitting D & J and Falcone to perform inherently dangerous work on such a windy day; and (c) by failing to instruct and oversee the work of D & J and Falcone to ensure that special precautions would be undertaken to avoid the risk of fire to adjoining landowners.

30. As a direct and proximate result of Oliver Realty LP's negligence, the Estate has sustained damages, including without limitation, property damage and loss of business income, in an amount to be determined at trial.

#### Count IV

##### Vicarious Liability of Oliver Realty LP

31. Lerman repeats the allegations contained in paragraphs 1 through 30 and incorporates them by reference as if fully and completely stated herein.

32. Based upon information and belief, Oliver Realty LP had the right to control D & J and Falcone by (a) insisting that they obtain proper permits for the work and comply with the Boston

Fire Prevention Code, 527 CMR 39.00 and all other applicable safety laws and regulations, (b) determining the date upon which the work of D & J and Falcone would be performed upon its property, (c) directing that no work be done on its property in high winds, (d) requiring that D & J and Falcone took precautions necessary to avoid any risk to adjoining landowners from the welding work, and (e) requiring that, by virtue of the high winds, D & J and Falcone took special precautions necessary to avoid any risk to adjoining landowners from the welding work.

33. As a direct and proximate result of D & J's and Falcone's negligence, the Estate has sustained damages, including without limitation, property damage and loss of business income, in an amount to be determined at trial.

34. Under the doctrine of vicarious liability, Oliver Realty LP is responsible for the damages which D & J and Falcone has caused to the Estate.

#### Count V

##### Vicarious Liability of Oliver Realty LP for Damage Resulting from Inherently Dangerous Work

35. Lerman repeats the allegations contained in paragraphs 1 through 34 and incorporates them by reference as if fully and completely stated herein.

36. The nature and circumstances of the welding work to be performed by D & J and Falcone were inherently dangerous, such that damage to adjoining landowners would probably result unless special precautions were taken.

37. By virtue of the inherently dangerous nature of the welding work, Oliver Realty LP is liable for the failure of D & J and Falcone to take such special precautions to avoid damage to the property of adjoining landowners.

Count VI

Joint and Several Liability of  
D & J Iron Works, Inc., Giuseppe Falcone and Oliver Realty LP

38. Lerman repeats the allegations contained in paragraphs 1 through 37 and incorporates them by reference as if fully and completely stated herein.

39. The negligent acts or omissions of D & J, Falcone, and Oliver Realty LP each contributed to the indivisible damages which the Estate has suffered.

40. D & J, Falcone, and Oliver Realty LP are jointly and severally liable for the Estate's damages.

Count VII

Preliminary Injunction  
Oliver Realty LP and Oliver Realty Inc.

41. Lerman repeats the allegations contained in paragraphs 1 through 40 and incorporates them by reference as if fully and completely stated herein.

42. Lerman requests that the court grant a preliminary injunction restraining Oliver Realty LP and Oliver Realty, Inc. from transferring, assigning, encumbering, hypothecating, or otherwise alienating any of their assets, both real and personal, except as may be required in the ordinary course of their businesses.



WHEREFORE, the Plaintiff Herbert S. Lerman, Executor of the Estate of Michael J. Callahan, demands that this court:

- A. On Count I, award damages against D & J Iron Works, Inc., based on negligence, in an amount to be determined at trial, plus interest and costs;
- B. On Count II, award damages against Giuseppe Falcone, based on negligence, in an amount to be determined at trial, plus interest and costs;
- C. On Count III, award damages against Oliver Realty LP, based on negligence, in an amount to be determined at trial, plus interest and costs;
- D. On Count IV, award damages against Oliver Realty LP, based on vicarious liability, in an amount to be determined at trial, plus interest and costs;
- E. On Count V, award damages against Oliver Realty LP, based on vicarious liability for damage caused by inherently dangerous work, in an amount to be determined at trial, plus interest and costs;
- F. On Count VI, award damages against D & J Iron Works, Inc., Giuseppe Falcone, and Oliver Realty LP, jointly and severally, in an amount to be determined at trial, plus interest and costs;
- G. On Count VII, issue a Preliminary Injunction restraining Oliver Realty LP and Oliver Realty, Inc. from transferring, assigning, encumbering, hypothecating, or otherwise alienating any of their assets, both real and

personal, except as may be required in the ordinary course of their businesses;

H. Award such other relief as the court deems just and proper.

THE PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY.

Respectfully submitted,  
Herbert S. Lerman, Executor

By his attorneys,

April 14, 2014



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