

# Lawsuit filed over moldy home heads for trial

By **WILL ASTOR**

A Pittsford dentist and his wife who have spent four years battling a local builder over an alleged toxic mold infestation in their 6-year-old, \$400,000 home are slated to get their day in court next week.

Neil and Patti Goldstein sued Brookwood Building Corp., a company associated with Spall Realty Corp., in 2007, filing an action in state Supreme Court in Rochester. The Goldsteins claim the builder's mishandling of floor joists and improper installation of gutters and drainage created a toxic mold problem that made them sick and cost \$100,000 to fix.

In a second amended complaint filed in 2008, the couple added Spall Realty Corp. and Weyerhaeuser Co., manufacturer of the floor joists, as defendants.

The case is scheduled for trial June 7 before state Supreme Court Justice Evelyn Frazee.

Citing an attorney's advice against speaking about ongoing litigation, Spall Realty principal Theodore Spall Jr. declined to comment.

The Goldsteins' original court complaint targeted Brookwood alone. The couple contracted with Brookwood to have a home built on a Pittsford lot in spring 2004 and closed on the home that September, the complaint states.

The Goldsteins filed the 2007 complaint roughly a year after they discovered mold growing on floor joists in their basement's ceiling and more than a year after they had begun complaining to the builder about water seeping through the basement walls, the Pittsford couple's attorney, Stephen Schwarz of Faraci Lange LLP, said in an interview this week.

After they began to suffer health problems and saw exercise equipment they kept in the basement ruined, the Goldsteins hired experts to diagnose the problems,

he said. They spent \$100,000 on mold remediation, repairing their home's non-functioning drainage and gutters and replacing the damaged exercise equipment, Schwarz added.

The Goldsteins allege in court papers that during construction Brookwood's and Spall's workers ignored Weyerhaeuser's instructions to keep the preformed joists wrapped in their original plastic packaging and not allow them to come in contact with mud.

The Goldsteins' complaint alleges that the builder did not properly grade the site, installed an inadequate gutter system, failed to use proper fill around the house's foundation, did not install a functioning drain system and failed to properly ventilate the basement after the concrete floor was poured, creating ideal conditions for mold to flourish.

In court papers, Spall and Brookwood deny any defects in the gutters and drainage system and deny that workers mishandled the Weyerhaeuser joists.

In an affidavit submitted as part of the court case, Terry Brennan, a mold expert hired by the Goldsteins, states that his investigations over a roughly two-year period turned up more than a dozen mold species inhabiting the basement floor joists. Mold continued to grow on the joists even when the basement was dried out, leading him to investigate the joists further and to conclude that mold spores were likely to have been present inside the joists when they were manufactured, Brennan states.

In a reply to the Goldstein complaint, Weyerhaeuser denies responsibility for the mold problem.

In 2008, Spall and Brookwood replied to the amended complaint, seeking to have the action dismissed on grounds that the Goldsteins had waited too long to file. Spall Realty maintained in the filing that it had no contractual relationship with the Goldsteins,

stating that the couple had contracted with Brookwood and not with Spall Realty.

In a decision handed down last October, Frazee rejected Spall's bid to have the case thrown out and found that Spall Realty could be held liable for damages. While the companies might be separately registered, Spall Realty and Brookwood share a website and use the same slogan, the judge stated. The construction manager on the Goldstein building site was a Spall Realty employee, whose only knowledge of Brookwood was of a name on a contract, Frazee added.

In a separate decision last month, Frazee also denied Weyerhaeuser's request to be dismissed from the dispute. Questions as to whether the Weyerhaeuser joists were partially or fully responsible for the Goldsteins' mold problems would have to be decided in a trial, the judge ruled.

In an odd wrinkle on the eve of the trial, the attorney for Spall Realty and Brookwood, James Gresens of Duke, Holzman, Photiadis & Gresens LLP in Buffalo, stated in a May 27 letter to Frazee, obtained by the Rochester Business Journal, that he had been ordered by his clients to withhold pretrial submissions the judge had asked for.

His clients further instructed him to appear for the June 7 court date but to limit his role by not engaging in jury selection, Gresens added in the letter.

"The scope of my current engagement is to appear in court while my client's witnesses testify pursuant to Weyerhaeuser's subpoenas and contest damages," Gresens stated in the letter.

On his clients' instructions, he did plan to file a pretrial motion seeking to limit evidence the Goldsteins can present to a jury, the attorney added.

Gresens did not respond to a request for comment.

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