

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Filed: _____, 2014

INDEX NO. _____

ROCKY J. ANNUZIATO AS ADMINISTRATOR OF ESTATE
OF JOSEPH ANNUNZIATO,
Plaintiff,

Plaintiff designates New
York County as the place of
trial.

-against-

S U M M O N S

MURPHY BED EXPRESS, INC,

Defendant.

The basis of venue is
Plaintiff's residence:
203 Eighth Avenue
New York, NY 10011

To the above named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to
serve a copy of your answer on the plaintiff's attorneys within 20 days after the service of this
summons, exclusive of the day of service of this summons, or within 30 days after service of this
summons is complete if this summons is not personally delivered to you within the State of New
York.

In case of your failure to answer this summons, a judgment by default will be taken
against you for the relief demanded in the complaint, together with the costs of this action.

Dated: Astoria, New York
March 17, 2014

SACCO & FILLAS, LLP
Attorneys for Plaintiff
31-19 Newtown Avenue
Seventh Floor
Astoria, New York 11102
(718) 746-3440

MURPHY BED EXPRESS, INC
203 Eighth Avenue
New York, New York 10011

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

INDEX NO.

ROCKY J. ANNUZIATO AS ADMINISTRATOR OF ESTATE
OF JOSEPH ANNUNZIATO,
Plaintiff,

VERIFIED COMPLAINT

-against-

MURPHY BED EXPRESS, INC,
Defendant.

Plaintiff, by his attorneys, SACCO & FILLAS, LLP, as and for his Verified Complaint,
respectfully alleges, upon information and belief:

THE PARTIES

1. On February 20, 2014, the plaintiff Rocky J. Annuziato was issued Letters of Administration to serve as administrator of the Estate of Joseph Annunziato, decedent, by order of the Surrogate's Court, Richmond County.

2. The decedent died a resident of Richmond County, State of New York on December 31, 2012.

3. The defendant MURPHY BED EXPRESS, INC, at all times herein mentioned, was and still is a domestic business corporation organized and existing under the laws of the State of New York, with its principal place of business situated in the County of New York and the State of New York.

4. The defendant, MURPHY BED EXPRESS, INC, at all times herein mentioned conducted and carried on business in the County of New York and the State of New York.

5. At all times herein mentioned, defendant MURPHY BED EXPRESS, INC transacted business within the State of New York.

6. At all times herein mentioned, defendant MURPHY BED EXPRESS, INC derived

substantial revenue from goods used or consumed or services rendered in the State of New York.

7. At all times herein mentioned, defendant MURPHY BED EXPRESS, INC expected or should reasonably have expected its acts to have consequences in the State of New York.

8. At all times herein mentioned, defendant MURPHY BED EXPRESS, INC derived substantial revenue from interstate or international commerce.

AS AND FOR A FIRST CAUSE OF ACTION

9. At all times herein mentioned, the defendant MURPHY BED EXPRESS, INC was engaged in the business of designing and manufacturing bed(s).

10. At all times herein mentioned, the defendant was engaged in the business of selling bed(s), supplied by defendant MURPHY BED EXPRESS, INC.

11. On June 28, 2011, JOSEPH ANNUNZIATO purchased from defendant a Queen size New Yorker, which was designed and manufactured by defendant MURPHY BED EXPRESS, INC.

12. Upon the distribution, sale and/or lease of the aforesaid merchandise, defendant warranted to all intended users, including decedent, that said merchandise and all its component parts were of merchantable quality and fit for the purposes for which they were designed, manufactured, assembled, inspected, sold and/or leased, and intended.

13. The decedent used said product, designed, manufactured, sold and/or leased, and distributed by defendant in accordance with the instructions.

14. The aforesaid product was inherently defective in both design and manufacture, and unsafe, inadequate and unfit for the purposes for which designed, manufactured, sold and distributed by defendant. The defendant by its agents, servants and/or employees was careless and negligent in the manufacture of said product and failed to use due care in the design, construction and testing thereof. The limitations and dangers inherent in the use of said product were not open and obvious, and could not be ascertained or known to decedent, either by visual

inspection or by the execution of preliminary testing.

15. The warranties of the defendant were untrue.

16. As a result of the improper manufacture by defendant MURPHY BED EXPRESS, INC and the breach of the warranties of merchantability and fitness for use by both defendants, the decedent was caused to sustain serious personal injuries, through no fault of decedent's.

17. By reason of the foregoing, the decedent was rendered sick, sore, nervous and disabled.

18. Defendant was careless in the design, testing, inspection, manufacture, distribution, labeling, sale, and promotion of said bed.

19. On or about December 13, 2013, the decedent, JOSEPH ANNUNZIATO, was injured inside the premises located at 120 Riche Avenue, Staten Island, New York after being struck by a defective bed sold by defendant MURPHY BED EXPRESS INC.

20. Due to defendant's breach of warranty, plaintiff ROCKY J. ANNUZIATO AS ADMINISTRATOR OF ESTATE OF JOSEPH ANNUNZIATO is entitled to damages.

AS AND FOR A SECOND CAUSE OF ACTION

21. Plaintiff JOSEPH ANNUNZIATO repeats and realleges each and every allegation contained in paragraphs numbered "1" through "19" of the Complaint as if fully set forth at length herein.

22. The bed was defective and unmerchantable and as a result of which defendant has breached implied warranties has become strictly liable to plaintiff.

23. Due to defendant, MURPHY BED EXPRESS INC 's negligence, plaintiff ROCKY J. ANNUZIATO AS ADMINISTRATOR OF ESTATE OF JOSEPH ANNUNZIATO is entitled to damages in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A THIRD CAUSE OF ACTION

24. Plaintiff JOSEPH ANNUNZIATO repeats and realleges each and every allegation contained in paragraphs numbered "1" through "22" of the Complaint as if fully set forth at length herein.

25. Defendant, MURPHY BED EXPRESS INC, failed to exercise reasonable care in designing, testing, manufacturing, marketing, distributing and selling the bed with defects.

26. Defendant, MURPHY BED EXPRESS INC, had knowledge of said defects yet Defendant has failed in its duties to recall these Defective Beds or to alert users in a timely manner.

27. Defendant, MURPHY BED EXPRESS INC, knew or should have known that consumers such as the Plaintiffs would foreseeably suffer injury or death as a result of the Defendant's failure to exercise ordinary care as described herein.

28. Defendant, MURPHY BED EXPRESS INC's negligence was a contributing cause of Plaintiff's injuries and Plaintiff's economic and non-economic loss.

29. The Defendant, MURPHY BED EXPRESS INC, was negligent by selling a bed without instructions, warnings, and all pieces necessary to properly and safely assemble the bed.

30. Additionally, parts and pieces that were not intended for use with the subject bed were sold with the bed.

31. As a proximate result of the aforementioned negligence of Defendant, MURPHY BED EXPRESS INC, the Plaintiff suffered personal injuries and harm, was required to pay for necessary healthcare, attention and services, along with incidental and related expenses, require medical monitoring and will be required to pay for additional necessary healthcare, attention and services along with additional incidental and related expenses to monitor their condition.

32. The conduct of Defendant MURPHY BED EXPRESS INC was so willful, wanton, malicious, reckless, careless and in such disregard for the consequences as to reveal a conscious indifference to the clear risk of death or serious bodily injury, and merits the imposition of punitive damages.

33. Due to defendant, MURPHY BED EXPRESS INC's negligence, plaintiff ROCKY J. ANNUZIATO AS ADMINISTRATOR OF ESTATE OF JOSEPH ANNUNZIATO is entitled to damages in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A FOURTH CAUSE OF ACTION - BREACH OF EXPRESS

WARRANTY

34. The Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

35. Defendant, MURPHY BED EXPRESS INC, made affirmative statements as to the value and use of its product and to its use.

36. Defendant, MURPHY BED EXPRESS INC, expressly warranted that the Bed was of merchantable quality, fit and safe and otherwise not injurious to the Plaintiffs' health and well being.

37. The Defendant, MURPHY BED EXPRESS INC's representations were a material part of the basis of the bargain and Plaintiffs relied upon said representations in utilizing the bed.

38. The Bed utilized by the Plaintiff was unsafe, unmerchantable, and unfit for use, otherwise injurious to the Plaintiff and did not conform to the Defendant's representations.

39. The Plaintiff, JOSEPH ANNUNZIATO death was a proximate result of Defendant's breach of express warranties as described herein.

40. Due to defendant, MURPHY BED EXPRESS INC's negligence, plaintiff ROCKY J. ANNUZIATO AS ADMINISTRATOR OF ESTATE OF JOSEPH ANNUNZIATO is entitled to damages in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A FIFTH CAUSE OF ACTION - BREACH OF IMPLIED WARRANTY

41. The Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

42. The Defendant MURPHY BED EXPRESS INC, is in the business of selling such Beds as above described and ultimately sold such goods that were utilized by the Plaintiff.

43. By placing the Defective Bed into the stream of commerce, Defendant, MURPHY BED EXPRESS INC, impliedly warranted that the Defective Bed was of merchantable quality, fit and safe for their intended use and fit for their particular purpose.

44. The Defective Bed was not merchantable at the time of the sale for reasons aforementioned and Defendant, MURPHY BED EXPRESS INC, knew or by exercise of reasonable care could have discovered the dangerous character or condition of the Bed.

45. The Defective Bed should have been properly secured to avoid injury.

46. Therefore, Defendant breached implied warranties for the Defective Bed because said product was defective, unmerchantable and not fit for their intended particular purpose.

47. The Plaintiff was a foreseeable user of the Bed.

48. The Plaintiff's injuries were a proximate result of Defendant, MURPHY BED EXPRESS INC's breach of implied warranty as described herein.

49. The Plaintiffs have given timely notice.

50. Due to defendant, MURPHY BED EXPRESS INC's negligence, plaintiff, JOSEPH ANNUNZIATO, is entitled to damages in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A SIXTH CAUSE OF ACTION – STRICT LIABILITY

51. The Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

52. Defendant, MURPHY BED EXPRESS INC, designed, manufactured, marketed, distributed, sold and/or supplied the subject Defective Bed in a condition that rendered them unreasonably dangerous.

53. The subject Defective Bed was placed into the stream of commerce in a defective and unreasonably dangerous condition, taking into account the utility of the product and the risk involved in its use.

54. The aforementioned defects existed when Defendant, MURPHY BED EXPRESS INC, placed the subject Defective Devices into the stream of commerce.

55. The Plaintiff, JOSEPH ANNUNZIATO injuries were proximately caused by one or more of the defects.

56. By engaging in the aforesaid conduct, Defendant, MURPHY BED EXPRESS INC, is strictly liable to the Plaintiff.

57. Due to defendant, MURPHY BED EXPRESS INC, 's negligence, plaintiff ROCKY J. ANNUZIATO AS ADMINISTRATOR OF ESTATE OF JOSEPH ANNUNZIATO is entitled to damages in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR AN SEVENTH CAUSE OF ACTION

58. The Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein

59. Solely as a result of the defendants' negligence, carelessness and recklessness, JOSEPH ANNUNZIATO was caused to suffer severe and serious personal injuries to mind and body, and further, that JOSEPH ANNUNZIATO was subjected to great physical pain and mental anguish.

60. The aforesaid occurrence was caused by the negligence of the defendants, without any culpable conduct on the part of JOSEPH ANNUNZIATO.

61. The defendants caused and created said dangerous, and unsafe condition.

62. By reason of the foregoing, JOSEPH ANNUNZIATO was severely injured and damaged, sustained severe nervous shock and mental anguish, great physical pain and emotional upset, some of which injuries are believed to be permanent in nature and duration, and JOSEPH ANNUNZIATO will be permanently caused to suffer pain, inconvenience and other effects of such injuries; further hospital and/or medical expenses will necessarily be incurred on behalf of JOSEPH ANNUNZIATO in the future in an effort to cure JOSEPH ANNUNZIATO of said injuries; and JOSEPH ANNUNZIATO will be unable to pursue JOSEPH ANNUNZIATO's usual duties with the same degree of efficiency as prior to this accident, all to JOSEPH ANNUNZIATO's great damage.

63. This action falls within one or more of the exceptions set forth in Section 1602 of the Civil Practice Law and Rules.

64. Due to defendant, MURPHY BED EXPRESS INC's negligence, plaintiff ROCKY J. ANNUZIATO AS ADMINISTRATOR OF ESTATE OF JOSEPH ANNUNZIATO is entitled to damages in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR AN EIGHTH CAUSE OF ACTION

65. The Plaintiffs incorporate by reference the allegations contained in the preceding

paragraphs as though fully set forth herein.

66. Defendant, MURPHY BED EXPRESS INC, assembled the bed prior to the bed being sold.

67. Defendant, MURPHY BED EXPRESS INC, subsequently dis-assembled the bed prior to the bed being sold.

68. Subsequent to dis-assembling the bed, the bed and its components were given to the purchasers.

69. Defendants were negligent in the they knew or should have known that the bed was unsafe and unfit for its ordinary use; the components given to the plaintiffs were defective and incorrect; and plaintiff would rely upon defendants in utilizing the bed which was not proper and unsafe.

70. This action falls within one or more of the exceptions set forth in Section 1602 of the Civil Practice Law and Rules.

71. Due to defendant, MURPHY BED EXPRESS INC's negligence, plaintiff ROCKY J. ANNUNZIATO AS ADMINISTRATOR OF ESTATE OF JOSEPH ANNUNZIATO is entitled to damages in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A NINTH CAUSE OF ACTION

72. The Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein

73. That on or about the 13th day of December, 2013, the decedent, JOSEPH ANNUNZIATO, was caused to be injured leading to his death, due to the Defendants negligent operation, maintenance, installation, management, control, supervision, repair, inspection, construction, design of the Murphy bed installed at the decedent residence of 120 Riche Avenue,

Statem Island, State of New York.

74. Solely as a result of the defendants' negligence, carelessness and recklessness, JOSEPH ANNUNZIATO was caused to suffer severe and serious personal injuries to mind and body, and further, that JOSEPH ANNUNZIATO was subjected to great physical pain leading to his death.

75. By reason of the foregoing, JOSEPH ANNUNZIATO was severely injured leading to his death.

76. This action falls within one or more of the exceptions set forth in Section 1602 of the Civil Practice Law and Rules.

77. Due to defendants' negligence, plaintiff ROCKY J. ANNUZIATO AS ADMINISTRATOR OF ESTATE OF JOSEPH ANNUNZIATO is entitled to damages.

78. Plaintiff ROCKY J. ANNUZIATO AS ADMINISTRATOR OF ESTATE OF JOSEPH ANNUNZIATO repeats and realleges each and every allegation contained in paragraphs numbered "1" through "24" of the Complaint as if fully set forth at length herein.

79. As a result of the accident, the decedent JOSEPH ANNUNZIATO died on December 31, 2012.

80. The accident and the injuries resulting in the decedent's death were caused by the negligence of the defendant, without any negligence on the part of the decedent contributing thereto.

81. The decedent was born on or about February 1, 1980.

82. The decedent was survived by heirs-at-law and next of kin. The heirs-at-law and next of kin of the decedent sustained pecuniary loss as a result of the death of the decedent, including, but not limited to, loss of society.

83. Solely as a result of the negligence of the defendant and the injuries sustained by the

decedent which ultimately led to death, the decedent's estate incurred funeral and administrative expenses.

84. Due to defendant's negligence, plaintiff ROCKY J. ANNUZIATO AS ADMINISTRATOR OF ESTATE OF JOSEPH ANNUNZIATO is entitled to damages.

WHEREFORE, the plaintiff demands:

a. judgment awarding damages on the first cause of action, in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction;

b. judgment awarding damages on the second cause of action, in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction;

c. judgment awarding damages on the third cause of action, in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction;

d. judgment awarding damages on the fourth cause of action, in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction;

e. judgment awarding damages on the fifth cause of action, in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction;

f. judgment awarding damages on the sixth cause of action, in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction;

g. judgment awarding damages on the seventh cause of action, in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction;

h. judgment awarding damages on the eighth cause of action, in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction;

i. judgment awarding damages on the ninth cause of action, in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction;

j. interest, the costs and disbursements of this action, together with such other and further relief as to this Court seems just and proper.

Dated: Astoria, New York
March 17, 2014



By: **Tonino Sacco**
SACCO & FILLAS, LLP

Attorneys for Plaintiff
31-19 Newtown Avenue
Seventh Floor
Astoria, New York 11102
(718) 746-3440
Our File No.: 12076-13

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ROCKY J. ANNUZIATO AS ADMINISTRATOR OF ESTATE
OF JOSEPH ANNUNZIATO,

Plaintiff,

-against-

Murphy Bed Express, Inc,

Defendant.

INDEX NO.

ATTORNEY'S
VERIFICATION

Tonino Sacco, an attorney duly admitted to practice law in the State of New York,
makes the following affirmation under the penalty of perjury:

I am of the firm of SACCO & FILLAS, LLP, the attorneys of record for the plaintiff.

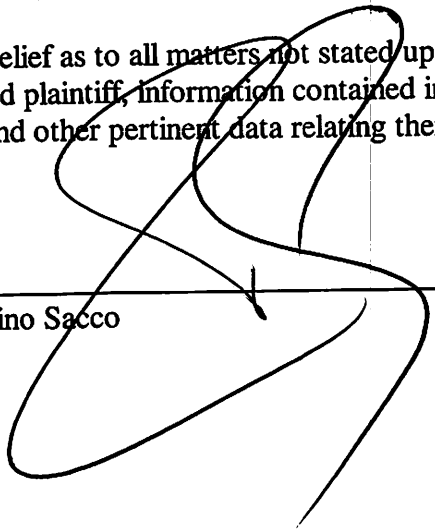
I have read the foregoing Complaint and know the contents thereof; the same is true to
my own knowledge except as to the matters therein stated to be alleged on information and
belief and that as to those matters, I believe them to be true.

This verification is made by affirmant and not by plaintiff because he is not in the County
of Queens, which is the County where your affirmant maintains offices.

The grounds of affirmant's belief as to all matters not stated upon affirmant's knowledge
are correspondence had with the said plaintiff, information contained in the said plaintiff's file,
which is in affirmant's possession, and other pertinent data relating thereto.

Dated: Astoria, New York
March 17, 2014

Tonino Sacco



SUPREME COURT OF THE STATE OF NEW YORK
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ROCKY J. ANNUZIATO AS ADMINISTRATOR OF ESTATE OF JOSEPH
ANNUNZIATO,

Plaintiff,

-against-

MURPHY BED EXPRESS, INC,
Defendant.

SUMMONS and VERIFIED COMPLAINT

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed documents are not frivolous.

Dated: March 17, 2014

Signature: _____

Tonino Sacco, Esq.

SACCO & FILLAS, LLP

Attorneys for Plaintiff

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Astoria, New York 11102

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