

SCANNED ON 10/19/07

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

**ELANA GLATT, TOBI GLATT, and
DAVID GLATT**

Plaintiffs,

-against-

**POSY FLORAL DESIGN STUDIO, INC.
and PAULA ARAKAS**

Defendants

07603384

SUMMONS

Plaintiffs designate *New York County* as the place of trial.

The basis of venue is C.P.L.R. §§503(a).

Plaintiffs Elana and David Glatt's residence is at 150 East 69th Street, Apt. 8J, New York, New York 10021.

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and serve a copy of your answer on the plaintiffs' attorney(s) within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

DATED: New York, New York
October 11, 2007

By: _____

Elana Glatt
David Glatt
Tobi Glatt
(*pro se*)

150 East 69th Street
Apartment 8 J
New York, New York 10021
(212) 737-4923

FILED
OCT 12 2007
NEW YORK
COUNTY CLERK'S OFFICE

Defendants' Address:

Posy Floral Design Studio, Inc.
145 E. 72nd St.
New York, NY 10021

Paula Arakas
145 E. 72nd St.
New York, NY 10021

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

ELANA GLATT, TOBI GLATT, and DAVID
GLATT

Plaintiffs,

-against-

POSY FLORAL DESIGN STUDIO, INC. and
PAULA ARAKAS

Defendants

Index No.

COMPLAINT

07603384

Plaintiffs, Elana Glatt ("Elana"), Tobi Glatt ("Tobi") and David Glatt ("David") (collectively, "Plaintiffs"), appearing *pro se*, allege as follows, as and for their Complaint against Defendants Posy Floral Design ("Posy"), and Paula Arakas ("Arakas") (collectively "Defendants").

SUMMARY OF CASE

1. This is an action arising from an agreement to provide flowers at Elana and David's August 11, 2007 wedding. Plaintiffs paid Defendants almost \$30,000 to provide such services in accordance with an agreement the parties had entered. However, Defendants materially failed to perform in accordance with that agreement. Defendants' breaches were material and substantial and included, *inter alia*, substituting different and less expensive flowers than the ones required under the contract, and failing to provide specific items Plaintiffs paid for. Defendants' performance was also substantially defective in many respects, including, *inter alia*, using wilted and/or browned flowers, leaving the event without filling half the centerpiece vases with water, and using dusty and dirty vases. In addition, Defendants made misrepresentations in connection with their services which Plaintiffs relied on to their

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detriment. Plaintiffs contacted Defendants several times after their wedding to attempt to address the Defendants' defective performance and misrepresentations. However, Defendants have not responded to any of those communications. Accordingly, Plaintiffs were forced to file this action.

PARTIES

2. Plaintiffs Elana Glatt ("Elana") and David Glatt ("David") are New York residents who reside at 150 East 69th Street, Apartment 8 J, New York, New York 10021.

3. Plaintiff Tobi Glatt ("Tobi") is a New Jersey resident who resides at 26 Fawn Drive, Livingston, New Jersey 07038.

4. Defendant Posy Floral Design Studio, Inc. ("Posy") is incorporated in the State of New York, with its principle place of business at 145 E. 72nd St., New York, NY 10021. Posy is a florist who specializes in weddings and other events

5. Defendant Paula Arakas ("Arakas") is the co- owner and principal of Posy.

6. The transactions and/or occurrences giving rise to the instant action occurred in New York.

7. This Court has personal jurisdiction over the Defendants pursuant to CPLR § 302(a).

8. Venue is proper in this County pursuant to CPLR § 503(a).

FACTS COMMON TO ALL COUNTS

9. Around July of 2006, Plaintiffs contacted Posy to inquire about using Posy's services at Plaintiffs' wedding ceremony and reception on August 11, 2007.

10. Elana, the bride, and Defendant Arakas exchanged numerous emails and phone calls to discuss Posy's proposed services and met around July of 2006 for an initial consultation.

11. Following the consultation, Arakas emailed Elana a written preliminary proposal detailing the flowers Posy would provide for the wedding.

12. By November 10, 2006, Arakas and Plaintiffs refined the main aspects of the proposal, including the types of arrangements, types and colors of flowers to be used, and the estimated price of the flowers. Defendants advised Plaintiffs that if they wished to see a sample table centerpiece, they would have to provide a non-refundable deposit of \$1000.

13. A "sample centerpiece" is a demonstration of the table arrangements the florist will make for the wedding.

14. On or around November 20, 2007, Plaintiffs provided Defendants with said deposit and made an appointment to see the sample centerpiece for January 11, 2007.

15. On December 18, 2006, Elana emailed Arakas attaching a picture of a particular hydrangea-- a green hydrangea with red tips, sometimes called antique hydrangea, or rust hydrangea-- and asked Arakas if that particular flower would be available in that particular color in August for her wedding.

16. Arakas responded in an email that she could provide the hydrangea in the "exact" same color and sent Elana a sample stem of the hydrangea.

17. Plaintiffs approved the color, and the proposal was changed to require the use of that specific flower in the centerpiece arrangements.

18. On January 11, 2007, Elana and Tobi met with Defendants in their store to view the sample centerpiece.

19. Arakas stated that the centerpieces at the wedding would be "exactly" the same as the sample.

20. In reliance on this representation, Plaintiffs decided to go ahead and use Posy as their wedding florist.

21. Further, Plaintiffs agreed on a price for the centerpieces of \$465 per centerpiece based on the size of the arrangement shown and the quantity of flowers used in the sample.

22. Following discussions over the following months, on July 11, 2007, Elana and Tobi met with Defendants to finalize their flower choices. After the final meeting, Plaintiffs requested that Defendants send a revised and final proposal reflecting such discussions.

23. On July 27, 2007, Elana called Arakas and requested that the final agreement be sent to Plaintiffs so they can review the agreement and make payment.

24. However, Defendants did not respond to the call, and in fact, did not send the final proposal until three days later, on July 30, 2007 (the "Agreement").

25. After receiving and reviewing the Agreement, Plaintiffs advised Arakas that it met their approval and inquired about paying the remaining balance of \$26,435.14.

26. Arakas informed Elana that payment needed to be made immediately or else Defendants would not order the flowers.

27. Elana advised Arakas that the quickest way payment could be made was by credit card and asked Arakas if payment could be so made.

28. As a secondary matter, Plaintiffs were concerned about paying such a large sum of money by certified check.

29. However, Arakas stated that Defendants do not accept credit card payments and would only accept a cashiers check. Arakas stated that if Plaintiffs did not provide them with a cashiers check immediately, Defendants would not be able to order the flowers in time for the wedding.

30. Plaintiffs were therefore faced with the choice of having no flowers at their wedding, or paying Posy with a cashiers check. Accordingly, on August 2, 2007, Plaintiffs' provided Defendants with a cashiers check in the amount of \$26,435.14.

31. Plaintiffs have since discovered that the representation that Posy does not accept payment by credit card is false. Posy does in fact accept credit card payments.

32. It is a common scheme for wedding vendors to claim they do not accept credit card payments and instead require that money be paid upfront in a non-refundable form. Wedding services are unique in the sense that payment is usually required upfront *prior* to receiving the services, not after. Often, dishonest vendors insist upon payment by cash or check so that in the event of a dispute, it will be harder for the bride to get back her money.

33. The total amount Plaintiffs' paid Defendants was \$27,435.14 (the balance of \$26,435.14 plus the \$1000 deposit.)

34. On the day of the wedding, however, Defendants materially and substantially failed to perform in accordance with the Agreement.

35. Defendants' breaches were material.

36. First, Defendants failed to provide certain items which were expressly set forth in the Agreement and for which Plaintiffs paid.

37. For example, in breach of the Agreement, Defendants failed to provide 80 votives as set forth in the Agreement, and as paid for by Plaintiffs. Upon information and belief, less than half the votives paid for were provided.

38. Similarly, in breach of the Agreement, Defendants failed to provide a bathroom arrangement for which Plaintiffs paid for.

39. Secondly, Defendants breached the Agreement by in some instances failing to provide the variety or color flower than was required under the Agreement and as represented by Defendants in discussions with Plaintiffs.

40. The Agreement contained no provisions allowing substitution of colors or types of flowers.

41. Moreover, Defendants themselves never disclaimed that the colors or flowers supplied could be different than what was promised.

42. The most egregious example was the 22 table centerpieces¹ which contained an entirely different color and species of flower than agreed.

43. Specifically, the Agreement had provided that the centerpiece arrangements would contain "rust" hydrangeas.²

44. However, the hydrangeas provided were entirely a different color and variety than that required under the Agreement. The hydrangeas used were not the rust hydrangeas Defendants agreed to provide but rather were light pink and light green hydrangeas.

¹ The total cost of the table centerpieces was over \$10,000.

² According to an email Arakas sent Elana on July 30, 2007, "rust hydrangea" is the name of the sage green hydrangea with a rust/red tip which Elana requested and Defendants promised would be provided.

45. Plaintiffs have since consulted with another florist who confirmed that the lighter hydrangea flowers which Posy used were a completely different variety than the one designated in the Agreement. Moreover, Plaintiffs have learned that the variety of hydrangeas used at the wedding were significantly less expensive than the ones promised under the Agreement.

46. Not only did Defendants substitute a cheaper flower without Plaintiffs' approval in breach of the Agreement, the cheaper flower used was entirely the wrong color.

47. The failure to use the correct color flower was a material breach of contract as well.

48. The choice of colors for the table centerpiece at a wedding is a material term of a contract for wedding flowers. First, brides often chose their flower colors to go with the colors of the venue. That was precisely the case here, where the choice of colors had been specifically chosen to match the tones of the room.

49. The use of predominantly pastel centerpieces had a significant impact on the look of the room and was entirely inconsistent with the vision the Plaintiffs had bargained and paid for. The discussed and written intention of the parties was that the centerpieces would be deep and dark colors of fuchsia, rust, and green. However, because of the use of the cheaper variety of hydrangea, the actual centerpieces were predominantly pastel pink, almost white. Defendants were aware that Plaintiffs were opposed to having light centerpieces.

50. In addition, once the colors are selected, brides plan other elements of their wedding around the colors chosen by them and the florist.

51. Here, Plaintiffs' other decisions centered around use of the sage green flower, including but not limited to the Plaintiffs' purchases of table linens, menu cards, place

cards, programs, favor boxes and napkins as well as the color of the wedding cake. All these items were chosen to match the sage green flowers, yet there were no such flowers at the wedding.

52. Other instances where Defendants breached the Agreement by failing to provide the flowers as specified in the Agreement are:

- Under the Agreement, Defendants agreed to provide twelve pink arrangements for Elana and David's rehearsal dinner, the evening before the wedding. Defendants failed to do so. Half the flowers were white arrangements instead of pink as required under the Agreement.
- The Agreement provided that Defendants would supply the bride with a green bouquet with white accents. Instead of so providing, the bride's bouquet had pink flowers.
- The Agreement stated that only cymbidium and phalaenopsis orchids would be used in the bouquet. Defendants, however, used a cheaper variety of orchids- dendrobium orchids.
- Defendants failed to provide "green" roses as described in the Agreement. The roses in the centerpieces were light pink.

53. All the above substitutions were made without Plaintiffs' consent and in contradiction to terms agreed to by the Defendants.

54. In addition, Defendants performance was defective for many other items and the quality of some of the arrangements were poor and inconsistent with the price charged.

55. For instance, Defendants charged Plaintiffs \$65 and \$55 each for the bathroom arrangements and rehearsal dinner arrangements respectively. For these

arrangements Defendants provided just twelve roses thrown in a small vase with no arrangement. The roses were not of any special variety and there were no other flowers in the arrangement.³ Indeed, they were no different than the roses available from a street vendor in New York City for \$5. Moreover, wholesale costs of roses are even less. In sum, there was a great disparity between what was charged for the arrangement and the cost and quality of the arrangement provided.

56. Other examples of Defendants' defective performance include the fact that:

- Some of the centerpieces contained wilted or browned flowers;
- Defendants left the event without filling half of the table centerpiece vases with water. These table centerpieces were placed in vases which were filled with dust;
- Defendants left the event without arranging the flowers for the bar. The bride had to arrange them herself moments before walking down the aisle; and
- The boutonnieres wilted immediately

57. In addition to the defective performance described above, the table arrangements at the wedding were far smaller than the sample centerpiece, which on January 11, 2007, Defendants had represented to be an exact representation of the size of the arrangement to be used.

³ Moreover, as discussed above (*see* ¶ 53) although the rehearsal dinner arrangements were supposed to be pink, only half of them were actually pink.

58. In contrast to representations Defendants had made, the actual table arrangements at the wedding had approximately *half* the amount of flowers as the sample Defendants showed Plaintiffs in January.

59. This is a typical bait and switch tactic in the florist industry. Here, Plaintiffs agreed on a price for the arrangement based on what was shown and then Posy used far less flowers to make a larger profit on the arrangements.

60. Plaintiffs would not have agreed to pay \$465 per centerpiece if the sample arrangement accurately reflected the quantity of flowers actually used at the wedding.

61. In addition, Defendants also failed to provide what was described in the Agreement as one 4-piece arrangement for the cocktail hour. Under the Agreement, the arrangement was to be placed on the top of the center buffet table.

62. Defendants did not provide this arrangement as agreed. In fact, there was no arrangement placed on the center buffet table.

63. Defendants unilaterally and inconsistent with the specifications of the Agreement separated the large arrangement into four small individual arrangements and placed the separated small arrangements on a ledge *behind* a side buffet table where no one could see them.

64. Finally, the escort card table arrangement failed to live up to the verbal representations Defendants made about its height. Plaintiffs paid \$800 for the escort card table arrangement. On July 11, 2007, when Plaintiffs met with Defendants for their final meeting, Plaintiffs expressed their hesitancy to spend so much money for one arrangement. Plaintiffs suggested making the arrangement smaller, and Defendants refused to do so. Indeed, Defendants stated that if Plaintiffs wanted a less expensive arrangement, they should "find

another florist.” Defendants claimed they would not do an escort card arrangement for any less than \$800 because the arrangement had to be very tall and grand to be in proportion to the height of the room, which had 65 foot ceilings, which is extremely high and in fact almost triple the typical height of wedding venues in New York city.

65. However, the day of the wedding, the arrangement was in a vase that, upon information and belief, was no more than 20 inches. The arrangement looked bare, short and absurd in the room, which has ceilings that over 65 feet high. Plaintiffs were extremely distressed and embarrassed by the fact that the arrangement was not in scale with the height of the room as Defendants promised, especially after Posy refused to scale down the arrangement in price.

66. The day of the wedding, Plaintiffs’ noticed many of the other breaches, which further caused extreme disappointment, distress and embarrassment to all of the Plaintiffs. After spending nearly \$30,000 and over twelve months planning the flowers for their wedding, the flowers were not even close to what Plaintiffs had bargained and paid for.

67. On September 5, 2007, Plaintiffs sent Defendants a letter detailing the above breaches and misrepresentations as well as other issues Plaintiffs had with Defendants’ defective performance.

68. Plaintiffs requested at minimum a refund for items they had paid for but did not receive. Plaintiffs also requested a partial refund for items they received for but which were not provided in accordance with the terms of the Agreement.

69. Defendants ignored the letter.

70. After two weeks passed with no response, Plaintiffs again contacted Defendants asking them to respond to their complaints.

71. Defendants failed to respond to that communication as well.

72. On September 26, 2007, Plaintiffs sent a letter by certified mail to Defendants detailing Plaintiffs' unsuccessful efforts to contact Defendants and resolve the issue of refund. Plaintiffs reiterated their request to discuss and resolve these issues with Posy and that if Posy failed to respond, Plaintiffs would have no choice but to file a legal claim.

73. Defendants received the certified letter on September 26, 2007, but failed to respond to it.

74. Indeed, to date, Defendants have failed to respond to any of Plaintiffs' correspondence, forcing Plaintiffs to file this action.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

75. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 74, as if fully set forth herein.

76. On August 2, 2007, Plaintiffs and Defendants entered into an agreement where by Defendants agreed to provide flowers for Plaintiffs' wedding and rehearsal dinner pursuant to the terms specified in the Agreement. In exchange for these promises, Plaintiffs paid Defendants a total amount of \$27,435.14.

77. Defendants breached the Agreement by failing to perform in accordance with the agreed upon specifications provided therein. Among other things:

- Defendants breached the Agreement by failing to provide certain items which Plaintiffs paid for and Defendants were required to provide.
- Defendants breached the Agreement by substituting flowers and colors without Plaintiffs' consent and in violation of the obligations described under the Agreement.

- Defendants breached the Agreement by its defective performance in the condition, quantity and quality of the flowers and services provided.

78. Defendants' breaches were material and substantial.

79. As a direct and proximate result of Defendants' breach of its contract, as alleged above, Plaintiffs have been deprived on the benefits of the Agreement, and has suffered direct and consequential damages as a result of Defendants' breach.

SECOND CLAIM FOR RELIEF

(Unjust Enrichment)

80. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 74, as if fully set forth herein.

81. Plaintiffs paid Defendants \$27,435.14 to provide the type and quantity of flowers as designated in the Agreement.

82. Defendants' defective performance under the contract has left them unjustly enriched. The quantity and quality of certain flowers delivered was not in accordance to the value if Defendants had performed in accordance with the Agreement.

83. Defendants used substituted cheaper flowers for the ones promised but did not refund Plaintiffs the difference in cost between the flowers used and the flowers promised and paid for.

84. Defendants used less flowers than promised and paid for but did not refund Plaintiffs the difference in cost between the amount of flowers used and the flowers promised.

85. Defendants have also been unjustly enriched by failing to refund Plaintiffs for items which they paid for but did not receive, including a bathroom arrangement and hanging votives.

86. The above enrichment was at the expense of Plaintiffs.

87. Upon principles of equity and fairness Defendants should not be permitted to retain the benefit of the payment Plaintiffs made for these services, when Plaintiffs did not receive the services bargained and paid for.

THIRD CLAIM FOR RELIEF

(Fraud)

88. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 74 as if fully set forth herein.

89. Defendants falsely represented to Plaintiffs that payment for the flowers could not be made by credit card.

90. If Plaintiffs had paid by credit card, they would have disputed the charges detailed above with their credit card company, and would have had a proper remedy thereby to obtain the refund they are entitled to.

91. Defendants' statement was intentional and made for the purpose of preventing Plaintiffs from having any recourse to recover or obtain a refund under the Agreement.

92. Upon information and belief, when Defendants made this misrepresentation, they knew that they would not be providing the quality or type of flowers agreed and desired to obtain the payment in a manner which would prevent Plaintiffs from having any recourse when Defendants failed to deliver the services as promised.

93. Defendants have ignored Plaintiffs repeated requests for a refund and thus, Defendants' fraud has succeeded.

94. In addition, Defendants' representation to Plaintiffs that the centerpieces at the wedding would be identical to those prepared for Plaintiffs on January 11, 2007 was false.

95. Defendants intentionally misrepresented the size of the arrangement to induce Plaintiffs' agreement to pay a particular price per arrangement.

96. Plaintiffs relied on this misrepresentation in deciding to use Posy as their florist as well as agreeing to the price charged per centerpiece.

97. In contrast to representations Defendants had made, the table arrangements had approximately half the amount of flowers as the samples Defendants showed Plaintiffs in January.

98. Plaintiffs have suffered damages resulting from Defendants' fraudulent conduct.

99. Defendants' conduct was willful and intentional and in bad faith. Defendants' conduct thus warrants punitive damages, particularly given the special nature of a wedding celebration, which is a once in a lifetime event. Further, the Defendants' fraud caused great embarrassment and distress to Plaintiffs on the day of the wedding.

FOURTH CLAIM FOR RELIEF

(Negligent Misrepresentation)

100. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 74 as if fully set forth herein.

101. On December 18, 2006, Defendants represented that they would provide Plaintiffs with hydrangeas in the "exact" color of a picture Elana sent to Arakas.

102. The hydrangeas provided at the wedding were not "exactly" or even close to the color Arakas promised.

103. Instead, the hydrangea was a different, and cheaper, variety as well as an entirely different color than Arakas' previous representations.

104. Defendants had a duty to use reasonable care to see that the representation was correct. Defendants failed to use such reasonable care and either recklessly or willfully used a different color flower than promised.

105. Plaintiffs were damaged as a result of Defendants' misrepresentation in the manner alleged above, including but not limited to purchasing other items in reliance on the color flower Defendants had guaranteed.

FIFTH CLAIM FOR RELIEF

(Violation of New York General Business Law Section 349)

106. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 74 as if fully set forth herein.

107. Defendants utilized a traditional "bait-and-switch" practice by representing that the sample centerpiece was an exact replication of the ones which would be at the wedding. Instead, after receiving Plaintiffs' money, Defendants provided Plaintiffs with centerpieces which were half the size of the sample.

108. Defendants conduct as described above was deceptive or misleading in a material respect.

109. Employing such a "bait and switch" scheme has a broad impact on consumers at large.

110. Defendants' conduct violated Section 349 of New York General Business law.

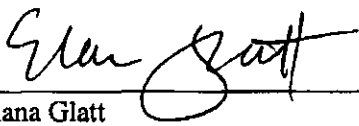
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment in its favor against Defendants as follows:

- a) On Plaintiffs' First Cause of Action for Breach of Contract, damages in an amount to be determined at trial but not less than \$43,435.14;
- b) On Plaintiffs' Second Cause of Action for Unjust Enrichment, an amount to be determined at trial not less than \$27,435.14;
- c) On Plaintiff's Third Cause of Action for Fraud, an amount to be determined at trial but not less than \$200,000; as well punitive damages in the amount of \$90,000;
- d) On Plaintiffs' Fourth Cause of Action for Negligent Misrepresentation an amount to be determined at trial but not less than \$50,000;
- e) On Plaintiffs' Fifth Cause of Action Violation of New York General Business Law § 349, an amount to be determined at trial, and
- f) On All Claims for Relief:
 - a. For pre- and post-judgment interest on all sums awarded; and
 - b. For such other and further legal, equitable or other relief as the Court deems proper, including the costs incurred in bringing this lawsuit.

DATED: New York, New York
October 12, 2007

Respectfully submitted,

By: 
Elana Glatt
David Glatt
Tobi Glatt
(pro se)

150 East 69th Street
Apartment 8 J
New York, New York 10021
(212) 737-4923

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SUMMONS AND COMPLAINT

ELANA GLATT FOR PLAINTIFFS
ELANA GLATT, TOBI GLATT AND DAVID GLATT

(pro se)
150 EAST 69TH STREET, #8J
NEW YORK, NY 10021
(212) 737-4923