

IN THE COUNTY COURT OF THE FIFTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA IN AND FOR HERNANDO COUNTY  
CIVIL DIVISION

ALFRED J. BELNIAK, D/B/A HAMMERHEAD  
CONSTRUCTION,  
PLAINTIFF,

V. CASE NO.:

KENNETH F. MARSHALL,  
DEFENDANT.

---

**COMPLAINT FOR MALICIOUS PROSECUTION**

PLAINTIFF, ALFRED J. BELNIAK, D/B/A HAMMERHEAD  
CONSTRUCTION, an individual, hereinafter Plaintiff, sues DEFENDANT, KENNETH  
F. MARSHALL, hereinafter Defendant, for Malicious Prosecution and alleges the  
following in support thereof:

**JURISDICTION AND PARTIES**

1. Plaintiff is Alfred J. Belniak d/b/a Hammerhead Construction and is a resident of Hernando County, Florida residing at 5026 Cumberland Lane, Spring Hill, Florida, 34607.
2. Defendant is Kenneth F. Marshall and is a resident of Hernando County, Florida residing at 12185 Centralia Road, Weeki Wachee, Florida 34614.
3. This Court has jurisdiction pursuant to Florida Statute section 34.01.
4. This is an action for less than \$15,000.00.

## **FACTS**

5. On July, 29, 2004, Defendant contracted with Plaintiff to construct a new residential dwelling on 12185 Centralia Road in Weeki Wachee, Florida. (See Attached Exhibit A).
6. On or about October 31, 2006, Plaintiff finished the construction of Defendant's residential dwelling and Defendant took possession of the residence.
7. According to the Building Agreement, Defendant was given a one year warranty on the dwelling and all systems contained therein from material and workmanship defects. Further, a two year structural warranty was given. (See Exhibit A para. 23).
8. The Building Agreement expressly disclaimed responsibility and warranty for non-structural cracking, heaving settling to slab work, expansion cracks and work furnished by the buyer or his agents. (See Exhibit A para, 23).
9. On or about October 31, 2006, Defendant gave Plaintiff, via a third party, written correspondence stating that if certain issues were not resolved within thirty (30) days from receipt of his letter, he would seek court redress. Defendant also stated that if he did not receive a response within three (3) days from receipt of this letter, he would seek court intervention. (See Exhibit B).
10. On November 8, 2006 Defendant filed suit against Plaintiff in Civil Action No. H-27-SP-2006-1524 alleging that Plaintiff "refus[ed] to complete the telephone line installation." This action was set for Pretrial hearing on January 9, 2007. (See Attached Exhibit C).
11. On November 14, 2006, Defendant filed a second action in Civil Action No. H-27-SP-2006-1546, against Plaintiff alleging that the "front concrete sidewalk section was damaged and removed but never replaced," there was "damage to section of soffit," and

that there was “damage to exterior wall” that needed to be repaired. This case was set for a Pretrial hearing on January 16, 2007. (See Attached Exhibit D).

12. On November 22, 2006, Defendant filed a third action in Civil Action No. H-27-SP-2006-1598, against Plaintiff alleging that there was “exposed roof flashing” that needed to be covered by shingles. This action was set for Pretrial hearing on January 30, 2007. (See Attached Exhibit E).

13. On December 15, 2006, Defendant filed a fourth action in Civil Action No. H-27-SP-2006-1707, against Plaintiff for alleged overcharges on the installation of gas utilities and for sod issues. This action was set for Pretrial hearing on February 6, 2007. (See Attached Exhibit F).

14. In all four separately filed actions, Defendant sued Plaintiff for issues relating to the same residential Building Contract entered into on July 29, 2004 for the construction of a new residential dwelling.

15. Upon information and belief, all claims in each action were known to Defendant on November 8, 2007; the date of the first action filed.

16. Defendant chose to file each action separately in an attempt to defame Plaintiff and to legally harass him.

17. On January 2, 2007, Plaintiff moved to consolidate all cases and on January 9, 2007, all cases were consolidated into Civil Action No. H-27-SP-2006-1524. All other matters were set for a status conference on March 15, 2007 and again on April 18, 2007.

18. On January 2, 2007, Case No. H-27-SP-2006-1598, was voluntarily dismissed by the Defendant upon Plaintiff’s motion and explanation to the Court.

19. On April 18, 2007, all parties agreed as to what matters would be addressed at the Final Hearing: allegations of dead sod, alleged damage to trees by gunfire, alleged overcharges for air conditioning unit, gas line and excavation and fill dirt, GFI outlet in the kitchen, construction debris removal and an allegation regarding Defendant's ladder and drill being stolen from the construction site. Further, all allegations in the remaining three civil actions would be tried.

20. During the pretrial conference on April 18, 2007, the Court allowed the Defendant to add additional claims to his allegations. These new issues included alleged damage to trees by gunfire, alleged overcharges for air conditioning unit, gas lines, excavation and fill dirt, GFI outlet malfunction in the kitchen and an allegation regarding Defendant's ladder and dill being stolen from the construction site.

21. Plaintiff had no objection to the additional allegations being added as an amendment to Defendant's Complaint. Plaintiff requested that Defendant's Complaint be formally amended; however, Defendant never formally amended his Complaint and the Court stated it would address the amendment and additional allegations in its Final Order.

22. On May 31, 2007, a Final Hearing was held. During the Final Hearing, Defendant failed to present *any* evidence and fully failed to address Civil Action number H-27- SP-2006- 1524, and Civil Action number H-27-SP-2006-1546.

23. Further, Defendant failed to address or provide any evidence regarding the additional allowed allegations of the GFI outlet malfunction in the kitchen, construction debris, and stolen items from the construction site.

24. Immediately before the Final Hearing began, Defendant sought to add an additional claim against the Plaintiff regarding faulty cabinetry work, Plaintiff did not object to this additional claim and additional evidence and testimony was allowed.

25. On July 19, 2007, the Court, by written order, found in favor of the Plaintiff in Civil Action No. H-27-SP-2006-1707, Civil Action No. H-27-SP-2006-1546, and Civil Action No. H-27-SP-2006-1524, and held “[o]n each and every issued raised by [Defendant], he failed to meet his burden of proof to establish that the [Plaintiff] was in any way responsible for his alleged damage.” (See Exhibit G).

26. The result of the Final Hearing clearly showed that no breach of contract or faulty workmanship was ever perpetrated by Plaintiff.

27. Clearly, Defendant filed each action separately in an attempt to legally harass Plaintiff and to defame Plaintiff’s good name and reputation in the community.

**COUNT I- MALICIOUS PROSECUTION IN CIVIL ACTION**  
**NO. H-27-SP-2006-1524 (INDEPENDENTLY)**

28. Plaintiff hereby incorporates paragraphs 1-27 as though fully set forth herein.

29. Civil Action No. H-27-SP-2006-1524 alleged that Plaintiff “refus[ed] to complete the telephone line installation.” (See Attached Exhibit B).

30. Defendant failed to address or provide any evidence regarding this action.

31. Plaintiff stood ready and willing to defend this action at the Final Hearing.

32. The prosecution of this action against Plaintiff was malicious and brought without any cause to believe that a breach of contract or any other cause of action had been committed.

33. The prosecution of this action was brought vindictively and for an ulterior motive; for the purpose of attempting to legally harass and to defame Plaintiff.

34. The bringing and continuing of this action constituted malicious prosecution on the part of the Defendant against Plaintiff, and his conduct, being willful, wanton and malicious, warrants punitive damages.

35. That as a result of the malicious prosecution Plaintiff was obliged to defend himself and to expend money and time in his defense, all in an amount to be proven at the trial; that he lost time from the ordinary pursuits in his life and home, and that the quality of his life was diminished by it, all to his great damage, as will be shown at the trial.

36. Plaintiff met his burden of proof in this action and that Defendant's allegations against Plaintiff were unfounded and frivolous and without probable cause to believe that the action filed would succeed and was for an improper purpose.

37. Furthermore, this action was even more unfounded because Defendant completely failed to address or present any evidence regarding this claim of action.

38. Wherefore, Plaintiff requests special damages as may be shown and for general compensatory damages in tort as may be fixed by the jury, punitive damages as may be assessed by the jury, and for costs, disbursements and reasonable attorney fees incurred as a result of defending this action

**COUNT II- MALICIOUS PROSECUTION IN ACTION NO. H-27-SP-2006-1546**

39. Plaintiff hereby incorporates paragraphs 1-27 as though fully set forth herein.

40. Civil Action No. H-27-SP-2006-1546, alleged that the "front concrete sidewalk section was damaged and removed but never replaced," that there was damage to section of soffit," and that there was "damage to exterior wall" that needed to be repaired. (See Attached Exhibit C).

41. Plaintiff met his burden of proof in the action and Defendant's allegations against Plaintiff were unfounded and frivolous and without probable cause to believe that this action filed would succeed and was for an improper purpose.

42. The prosecution of this action against plaintiff was malicious and brought without any cause to believe that a breach of contract or any other cause of action had been committed.

43. The prosecution of this action was brought vindictively and for an ulterior motive; for the purpose of attempting to legally harass and to defame Plaintiff.

44. Upon information and belief, well before the Final Hearing the issues in this action were voluntarily corrected by Plaintiff; however, Defendant refused to dismiss this action and Plaintiff was forced to prepare and defend himself at the Final Hearing.

45. At the Final Hearing, Defendant fully failed to address or present any evidence relating to this cause of action.

46. The bringing and continuing of this action constituted malicious prosecution on the part of the Defendant against Plaintiff, and his conduct, being willful, wanton and malicious, warrants punitive damages.

47. That as a result of the malicious prosecution Plaintiff was obliged to defend himself and to expend money and time in his defense, all in an amount to be proven at the trial; that he lost time from the ordinary pursuits in his life and home, and that the quality of his life was diminished by it, all to his great damage, as will be shown at the trial.

48. Plaintiff met his burden of proof in the action and Defendant's allegations against Plaintiff were unfounded and frivolous and without probable cause to believe that the action filed would succeed and for an improper purpose.

49. Wherefore, Plaintiff requests special damages as may be shown and for general compensatory damages in tort as may be fixed by the jury, punitive damages as may be assessed by the jury, and for costs, disbursements and reasonable attorney fees incurred as a result of defending this action

**COUNT III- MALICIOUS PROSECUTION IN ACTION NO. H-27-SP-2006-1707**

50. Plaintiff hereby incorporates paragraphs 1-27 as though fully set forth herein.

51. Civil Action No. H-27-SP-2006-1707, against Plaintiff alleged that there was “exposed roof flashing.” (See Attached Exhibit D).

52. The roofing passed inspection by the Hernando County Building Department.

53. Plaintiff chose to oblige Defendant and place shingles over the flashing to appease Defendant.

54. Defendant, after Plaintiff’s motion to the Court, dismissed this action at the Pre-trial Hearing on January 2, 2007.

55. Plaintiff met his burden of proof in the action and that Defendant’s allegations against Plaintiff were unfounded and frivolous and without probable cause to believe that this action filed would succeed and was for an improper purpose.

56. The prosecution of this action against Plaintiff was malicious and brought without any cause to believe that a breach of contract or any other cause of action had been committed.

57. The prosecution of this action was brought vindictively and for an ulterior motive; for the purpose of attempting to legally harass and to defame Plaintiff.



58. The bringing and continuing of this action constituted malicious prosecution on the part of the Defendant against Plaintiff, and his conduct, being willful, wanton and malicious, warrants punitive damages.

59. That as a result of the malicious prosecution Plaintiff was obliged to defend himself and to expend money and time in his defense, all in an amount to be proven at the trial; that he lost time from the ordinary pursuits in his life and home, and that the quality of his life was diminished by it, all to his great damage, as will be shown at the trial.

60. Wherefore, Plaintiff requests special damages as may be shown and for general compensatory damages in tort as may be fixed by the jury, punitive damages as may be assessed by the jury, and for costs, disbursements and reasonable attorney fees incurred as a result of defending this action

**COUNT IV- MALICIOUS PROSECUTION IN ACTION NO. H-27-SP-2006-1598**

61. Plaintiff hereby incorporates paragraphs 1-27 as though fully set forth herein.

62. Civil Action No. H-27-SP-2006-1598, against Plaintiff alleged overcharges on the installation of gas utilities and for sod issues. (See Attached Exhibit E).

63. Plaintiff met his burden of proof in the action and that Defendant's allegations against Plaintiff were unfounded and frivolous and without probable cause to believe that this action filed would succeed and was for an improper purpose.

64. The prosecution of this action against Plaintiff was malicious and brought without any cause to believe that a breach of contract or any other cause of action had been committed.

65. The prosecution of this action was brought vindictively and for an ulterior motive; for the purpose of attempting to legally harass and to defame Plaintiff.

66. The bringing and continuing of this action constituted malicious prosecution on the part of the Defendant against Plaintiff, and the conduct of each of them, being willful, wanton and malicious, warrants punitive damages.

67. That as a result of the malicious prosecution Plaintiff was obliged to defend himself and to expend money and time in his defense, all in an amount to be proven at the trial; that he lost time from the ordinary pursuits in his life and home, and that the quality of his life was diminished by it, all to his great damage, as will be shown at the trial.

68. Wherefore, Plaintiff requests special damages as may be shown and for general compensatory damages in tort as may be fixed by the jury, punitive damages as may be assessed by the jury, and for costs, disbursements and reasonable attorney fees incurred as a result of defending this action.

**WHEREFORE**, Plaintiff demands judgment against Defendant as follows:

- a. For special damages as may be shown and for general compensatory damages in tort as may be fixed by the jury.
- b. For punitive damages as may be assessed by the jury.
- c. For costs, disbursements and reasonable attorney fees in this action.
- d. All costs and attorney's fees incurred in defending against Civil Action No. H-27-SP-2006 (independently and as consolidated), 1524; H-27-SP- 2006- 1546, H-27-SP- 2006-1707; H-27-SP- 2006-1598.
- e. Plaintiff hereby demands a trial by jury.

---

**Debra B. Tuomey, Esq.**  
**Florida Bar No. 0496781**  
**Debra B. Tuomey, Attorney at Law**  
**15187 Woodcrest Road**  
**Brooksville, FL 34604**  
**Telephone: (352) 584-0020**  
**Fax: (352) 797-4868**

**VERIFICATION**

I, Alfred J. Belniak, hereby affirm under the penalty of perjury that the foregoing facts and statements in the attached Complaint are true and correct to the best of my knowledge.

---

Alfred J. Belniak

