

COMMONWEALTH OF MASSACHUSETTS

Dedham District Court

Norfolk, ss

NICHOLAS BASDEKIS and RACHAEL BASDEKIS

Plaintiffs

v.

MICHAEL FUCCI,  
CHEF MIKE'S LLC,  
CHEF MIKE'S CATERING, INC.,  
CHEF MIKE'S TRATTORIA, LLC.

Defendants

1954CV0608

COMPLAINT AND JURY DEMAND

Parties

1. Plaintiff's Nicholas and Rachael Basdekis (hereinafter referred to as "Plaintiffs" or "Basdekis") are natural persons and residents of 53 Chandler Street, Floor 3, Somerville, Massachusetts 02144.
2. Defendant Michael Fucci (hereinafter referred to as "Chef Mike") is a natural person domiciled at 9 Warren Avenue, Newton, MA 02465, sole owner of Chef Mike's Catering, Inc., and Chef Mike's LLC and part owner of Chef Mike's Trattoria, with a usual place of business of Chef Mike's Restaurant located at 73 Highland Ave., Needham, MA 02494.
3. Defendant Chef Mike's LLC is a corporation duly organized under the laws of the Commonwealth of Massachusetts with a principal office located at 9 Warren Avenue, Newton, Massachusetts 02465.
4. Defendant Chef Mike's Catering, Corp. (hereinafter referred to as "Chef Mike's Catering") is a corporation duly organized under the laws of the Commonwealth of Massachusetts with a principal office at 9 Warren Avenue, Newton, Massachusetts 02465.
5. Defendant Chef Mike's Catering, Corp. was involuntarily dissolved by court order or by the Secretary of the Commonwealth on June 28, 2019.
6. Defendant Chef Mike's Trattoria, LLC (hereinafter referred to as "Chef Mike's Trattoria") is a corporation duly organized under the laws of the Commonwealth of Massachusetts with a usual place of business at 8 Weeks Road, Danvers, MA 01923.
7. Michael Fucci is an officer or the registered/resident agent of Chef Mike's LLC, Chef Mike's Catering, Corp, and Chef Mike's Trattoria, LLC.

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COUNT 1

(M.G.L.A. c93A)

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8. Plaintiffs incorporate herein the allegations contained in Paragraphs 1 through 7.
9. At all relevant times hereto, the defendants were engaged in trade or commerce.
10. Nicholas and Racheal Basdekis were engaged to be married with their wedding scheduled to take place on December 22, 2018.
11. On or around February 2018 Basdekis' were researching caterers for their wedding on the website www.weddingwire.com.
12. www.weddingwire.com is a website that connects vendors for wedding services with consumers planning their weddings.
13. Basdekis' saw Chef Mike's Catering listed as one of the vendors to provide catering services on www.weddingwire.com.
14. As a result of the listing on February 20, 2018 Basdekis' contacted Chef Mike via telephone and by sending him a message through his since deleted website www.chefmikeskitchen.com, to discuss the possibility of Chef Mike's Catering providing services at their wedding.
15. After numerous correspondence Basdekis' executed a contract for food and catering services to be provided at their wedding on or around March 7, 2018. The contract is attached hereto as Exhibit A.
16. The contract made no mention of Chef Mike Catering's refund policy, other than stating there was a "50% non-refundable deposit required."
17. The wedding was to be held at the Whitmore House in Arlington, MA, as listed on the contract.
18. The Whitmore House is venue operated by the Town of Arlington.
19. Arlington requires caterers that are providing services at this location to obtain a Temporary Food Permit.
20. The Temporary Food Permit is a requirement under local regulations governed by the State Sanitary Code Chapter X – Minimum Sanitation Standards for Food Establishments (105 CMR 590.000)
21. This regulation is meant for the protection of the public's health by ensuring proper licensure of food services vendors, proper regulations related to food preparation, and other such requirements.
22. Obtaining the Temporary Food Permit is a prerequisite to performing catering services at the Whitmore House.
23. From March 7, 2018 to December 22, 2018, the agreed upon date of performance, there was a significant amount of correspondence between Basdekis' and Chef Mike.
24. Throughout this time, Chef Mike constantly assured Basdekis' that everything would be fine and that delivery would be completed as agreed.
25. On October 15, 2018 Basdekis' emailed Chef Mike regarding the need for a Temporary Food Permit asking "in regards to permits, are you getting the ones you need, and I need to do that? I think you have the list of what they are but can confirm them/provide and scan them to you..."
26. In response Chef Mike did not address the Temporary Food Permit issue but instead asked if Basdekis' would be making "part 3 of 4 payments soon?"

27. No such payment arrangement was discussed in the contract.
28. On October 22, 2018 Basdekis' put Chef Mike in touch, via email, with Vicki Rose the wedding coordinator from the Town of Arlington, so that all required paperwork could be completed for the wedding.
29. On October 27, 2018 Chef Mike emailed Basdekis' asking for the third payment yet again.
30. In that email Chef Mike promised to provide an updated contract with discussed changes on the condition that this payment was made.
31. Plaintiffs were tight for money, stating in an October 29 email to Chef Mike that they would need to "move some money around in order to do this..."
32. Basdekis' made this payment even though Chef Mike had failed to satisfy Plaintiffs' questions regarding securing the permit.
33. There was no such payment structure required by the contract or agreed to by the parties.
34. Defendant never provided an updated contract to Basdekis'.
35. In early December 2018 Basdekis' contacted Chef Mike expressing frustration that all required paperwork was not completed.
36. In response Chef Mike assured Basdekis' that everything would be completed on time and told them in a December 4, 2018 text message to 'chill.'
37. In the same correspondence Chef Mike asked Basdekis' for the remaining payment amount to be sent to Chef Mike via Venmo.
38. Basdekis' provided the final payment shortly thereafter.
39. On December 17, 2018 after additional correspondence the Temporary Food Permit was still not obtained.
40. On or around December 17 Basdekis' asked Chef Mike, "Do you file the Temporary Food Permit or do I need to do it?"
41. The next day Chef Mike provided a Common Victualler License to Arlington attempting to satisfy the Temporary Food Permit requirements, stating that this license was a commissary license.
42. The Common Victualler License provided listed the Breakfast Club in Allston, MA as the restaurant associated with Chef Mike and Chef Mike's Catering.
43. After review Arlington determined that the license provided was insufficient to obtain the Temporary Food Permit because a Common Victualers License does not grant the holder authorization to cater.
44. The reasons the license was insufficient were outlined in a December 19, 2018 email from Pdraig Martin, the Lead Health Compliance Officer for the Town of Arlington to Chef Mike.
45. That email stated, "[a]ccording to Boston Inspectional Services, **a food establishment can be licensed as a commissary for mobile food operations, not for catering** (*emphasis added*). Any operation outside of food service provided at the Breakfast Club under their permit would require a separate food permit issued by the City of Boston. Unless our department receives

documentation indicating that you are licensed to operate as a caterer from that location, we will not be able to issue a permit.”

46. In a further effort to remedy the issue Arlington gave Chef Mike the phone number of a person at the Boston Inspectional Services to help resolve this matter.
47. Chef Mike made no attempt to call the person or try to resolve the matter in response to the email and instead stated in correspondence to Basdekis’, “[a]t this point as far as I’m concerned this is an Arlington issue...”
48. Chef Mike did not make any effort to remedy or mitigate the situation by contacting the Boston Inspectional Services, the Town of Arlington, or Basdekis’.
49. On December 19 Basdekis’ informed Chef Mike that they would need to hire someone else on three days’ notice if he could not provide the correct documentation.
50. On December 19 Chef Mike sent text messages to Basdekis’ claiming that everything was all set, even though it had previously been communicated to him that it was not.
51. In those text messages Chef Mike stated, “[t]his is an Arlington issue and I emailed them back an hour ago letting them know it was there issue! I’m not budging for this! Arlington and Vicki need to take their heads out of their asses... You can call them back because I won’t be taking any more emails or calls from them...”
52. On December 19, 2018 Basdekis’ sent Chef Mike an email giving Defendant the chance to remedy the problem so that the contract could be properly fulfilled.
53. In that correspondence Basdekis’ also indicated that if Chef Mike were not able to do so, they would be requesting a full refund.
54. Chef Mike, in an email response claimed to have fulfilled all requirements and in regards to the refund request, directed Basdekis’ to obtain their refund from Arlington stating in a December 20, 2018 email that, “any and all requests for refunds should be referred to the town of Arlington.”
55. The possibility that a refund may need to be obtained from a third party was not included in the contract as part of Chef Mike’s Catering’s refund policy. Had it been, Basdekis’ may not have entered into the agreement.
56. On December 20, 2018, two days before the wedding Basdekis’ requested a full refund from Chef Mike as a direct result of his failure to meet the requirements of the Town of Arlington and the Temporary Food Permit.
57. Chef Mike failed to respond to this refund request.
58. On December 22, 2018, the agreed upon date of delivery Chef Mike failed to fulfill any agreed upon obligations.
59. Defendant did not show up to the event, and did not provide any of the food, beverages, or services for which the Basdekis’ had paid in full, and made no attempt to mitigate any damages.
60. In the days following up to the wedding date, Basdekis’ contracted with another catering company to provide food and services at their wedding.
61. Basdekis’ paid the new catering company \$7,600 for such services.

62. Chef Mike retained and continues to retain all monies paid by Basdekis' (\$8,800) contrary to their rights and interests.
63. Basdekis' since December 2018 have made substantial efforts to contact Chef Mike to remedy this matter.
64. Since December 19, 2018 Chef Mike has failed to respond to any email, text, mail, or phone call correspondence regarding this matter.
65. On or around January 31, 2019 Basdekis', through their attorney, emailed and mailed a demand letter (Exhibit B) to Chef Mike for breach of contract and other causes of action, certified mail, signature required demanding a return of all money.
66. On February 2, 2019 the letter was delivered to 9 Warren Ave., Newton, MA 02465 where Chef Mike signed for it.
67. On April 19, 2019 Chef Mike incorporated Chef Mike's Trattoria under the laws of the Commonwealth of Massachusetts.
68. On June 28, 2018 Chef Mike's Catering was dissolved by the Secretary of State for the Commonwealth of Massachusetts.
69. On August 2, 2019 Chef Mike opened a new restaurant named Chef Mike's at 73 Highland Avenue, Needham, MA 02494.
70. Chef Mike's restaurant is named Chef Mike's Restaurant and the website for that restaurant, [www.eatatchefmikes.com](http://www.eatatchefmikes.com) offers catering services through the restaurant.
71. On July 16, 2019 Basdekis' through their attorney, sent Chef Mike, via certified mail, return receipt requested, postage prepaid, a written demand (Exhibit C) for relief pursuant to Mass. Gen. Laws ch. 93A, § 9, identifying the claimants and reasonably describing the unfair acts or practices relied upon and the injuries suffered.
72. On July 19, 2019 the letter was delivered to 9 Warren Ave., Newton, MA 02465 where Chef Mike signed for it.
73. Chef Mike has not responded to either letter and has failed to make a reasonable offer of relief to Basdekis' as required by M.G.L.A. c93A, § 9(3).
74. The failure to make a reasonable offer was made in bad faith with knowledge or reason to know that the aforementioned acts of Chef Mike violated G.L. c. 93A, § 2.
75. Chef Mike and Chef Mike's Catering engaged in unfair and deceptive acts, undertaken willfully and knowingly by failing to comply with State Sanitary Code Chapter X – Minimum Sanitation Standards for Food Establishments (105 CMR 590.000) which is meant for the protection of the public's health in violation of M.G.L.A. c93A, Sections 2(a) and 9, and Attorney General Regulation 940 Code Mass. Regs. § 3.16(3) promulgated thereunder.
76. Chef Mike engaged in unfair and deceptive acts, undertaken willfully and knowingly by failing to disclose prior to the consummation of the transaction, the exact nature and extent of Chef Mike's Catering's refund policy in violation of M.G.L.A. c93A, Sections 2(a) and 9, and Attorney General Regulation 940 Code Mass. Regs. § 3.13(4) promulgated thereunder.
77. Chef Mike and Chef Mike's Catering engaged in unfair and deceptive acts, undertaken willfully and knowingly by failing to deliver merchandise on which payment was made and when

a definite delivery date was in violation of M.G.L.A. c93A, Sections 2(a) and 9, and Attorney General Regulation 940 Code Mass. Regs. § 3.15(3) promulgated thereunder.

78. Defendants engaged in unfair and deceptive acts, undertaken willfully and knowingly by failing to disclose that the commissary license did not permit Chef Mike to provide catering services and that Chef Mike's Catering's refund policy included requesting a refund from a third party, the disclosure of which would likely have influenced the Basdekis' not to enter into the transaction, in violation of M.G.L.A. c93A, Sections 2(a) and 9, and Attorney General Regulation 940 Code Mass. Regs. § 3.16(2) promulgated thereunder.
79. Chef Mike's failure to attempt to resolve any issues, or mitigate any damages; inappropriate and rude communication with Basdekis'; and overall failure to perform the contract as agreed upon was unconscionable in violation of M.G.L.A. c93A, Sections 2(a) and 9, and Attorney General Regulation 940 Code Mass. Regs. § 3.16(1) promulgated thereunder.
80. As a result of the above described unfair or deceptive acts or practices, Basdekis' sustained injury including, but not limited to, expenses incurred in paying for catering services and goods that were not provided, paying for additional goods and services, and for the loss of the benefit of the bargain.

## *COUNT II*

### (Breach of Contract)

81. Basdekis' reallege and incorporate herein by reference the allegations of paragraphs 1-80 above.
82. Basdekis' and Chef Mike's Catering entered into a contract for catering services on March 7, 2018. The agreement was for the Basdekis' to pay Chef Mike's Catering in exchange for provide food, alcohol, and catering services at Basdekis' wedding.
83. Basdekis' paid Chef Mike the full amount of the contract, even though it was not required by such, prior to the agreed upon date services were to be provided (December 22, 2018).
84. Chef Mike breached the contract by failing to provide any agreed upon goods or services at Basdekis' wedding on that date.
85. Chef Mike made no attempt to mitigate the damages to Basdekis' interests.
86. As a result of the foregoing, Basdekis' were forced to spend additional money for another catering service and were deprived of the funds they had given Chef Mike.

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87. As a result of the foregoing, Basdekis' have been damaged in the amount of \$16,400.

*COUNT III*

(Conversion)

88. Basdekis' reallege and incorporates herein by reference the allegations of paragraphs 1-87.

89. Basdekis' had a right to the money paid to Chef Mike for services not performed.

90. Chef Mike retained all money, despite not providing any goods or services.

91. Chef Mike retaining the money was by wrongful act and inconsistent with the property rights of the Basdekis'.

92. As a result of the foregoing, Basdekis' have been damaged in the amount of \$16,400 plus interest that would have accrued since the time of payment.

*COUNT IV*

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

93. Basdekis' reallege and incorporates herein by reference the allegations of paragraphs 1-92.

94. Chef Mike breached the covenant of good faith and fair dealing by failing to work with Basdekis' and the Town of Arlington to properly meet the requirements to obtain a Temporary Food Permit.

95. Chef Mike's failure to remedy or at least attempt to remedy the requirements of Arlington to obtain a Temporary Food Permit as outlined under the State Sanitary code effectively destroyed and injured the right of the Basdekis' to enjoy the fruits of the contract of Chef Mike's Catering providing goods and catering services at Basdekis' wedding.

96. Chef Mike acted with dishonest purpose and conscious wrongdoing in this failure as well as in his failure to provide or discuss the possibility of providing any refund upon failing to execute the contract.

*COUNT V*

(Unjust Enrichment)

97. Basdekis' reallege and incorporates herein by reference the allegations of paragraphs 1-96.

98. Chef Mike's retention of all monies provided unjustly enriched Defendants to the unjust detriment to Basdekis'.

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99. Chef Mike's retention of such money gave Chef Mike the opportunity to use it for other purposes, such as incorporating another organization such as Chef Mike's Trattoria, LLC, or opening a new restaurant such as Chef Mike's Restaurant.

100. Basdekis' inability to use the money resulted in them not being able to make offers or entertain the purchase of a first home to own, a process which has been unnecessarily prolonged as a result.

WHEREFORE, Nicholas and Rachael Basdekis, request this court to:

- enter judgment for Nicholas and Rachael Basdekis against Defendants, jointly and severally;
- award damages to Nicholas and Rachael Basdekis in an amount determined by the court;
- treble such amount as provided by G.L. c. 93A, § 9(3);
- award interest, costs and attorney fees to Nicholas and Rachael Basdekis; and
- award such other relief as this court deems just and proper.

*Jury Demand*

PLAINTIFFS REQUEST TRIAL BY JURY OF COUNT I

PLAINTIFFS DEMAND TRIAL BY JURY OF COUNTS II, III, IV, and V

Dated: *November 5, 2019*

Respectfully Submitted,

Nicholas and Rachael Basdekis

By their attorney,



John P. McGaffigan, Esq.

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