

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

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J. ARMAND MUSEY, :

Plaintiff, :

-against- :

425 EAST 86 APARTMENTS CORP., DOUGLAS :

ELLIMAN PROPERTY MANAGEMENT, :

FRANK CHANEY, PATRICIA CARBON, DAVID :

MUNVES, MICHAEL CONSIDINE, SUZANNE :

KEANE, JENNIFER KRUEGER, GEORGE :

GREENBERG, ALEXANDER SHAPIRO, AND :

LESLIE SPITALNICK :

Defendants. :

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Index Number: 157316/2014

ANSWER TO COUNTERCLAIM

Plaintiff J. Armand Musey, by his attorneys, HINMAN, HOWARD & KATTELL, LLP, answering the Co-op Defendants' counterclaim dated September 19, 2014 (the "Answer and Counterclaim"), upon information and belief, respectfully allege:

1. With respect to the allegations set forth in paragraph 78 of the Answer and Counterclaim, the Plaintiff respectfully refers the Court to the referenced Proprietary Lease and denies the allegations to the extent they are inconsistent therewith.
2. Denies the allegations set forth in paragraph 79 of the Answer and Counterclaim.
3. Denies the allegations set forth in paragraph 80 of the Answer and Counterclaim.

AS A FOR A FIRST AFFIRMATIVE DEFENSE

4. Defendants' claims are barred, in whole or in part, by documentary evidence.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE


5. Paragraph 28 of the proprietary lease by and between defendant 425 East 86 Apartments Corp. (the "Co-op Corporation") and Plaintiff dated February 27, 2013 (the "Proprietary Lease") provides for indemnification of defendant Co-op Corporation by Plaintiff where Plaintiff has defaulted under the Proprietary Lease. That Paragraph 28 of the Proprietary Lease requires Plaintiff to be in default for indemnification of legal fees is clear in the text of Paragraph 28 itself, the Index to the Proprietary Lease and other documentary evidence.

6. Plaintiff has not received any notice from defendant Co-op Corporation that he is in default under the Proprietary Lease, Plaintiff is not aware of any reason that he would be in default under the Proprietary Lease and Defendants do not allege in their Counterclaim that Plaintiff is in default under the Proprietary Lease. Plaintiff is, therefore, not required under the Proprietary Lease to indemnify defendant Co-op Corporation for its legal fees in this litigation.

WHEREFORE, the Plaintiff demands judgment: (a) dismissing the Counterclaim of the Co-op Defendants and (b) granting such other, further and different relief as the Court may deem just, proper and equitable.

Dated: New York, New York
October 6, 2014

HINMAN, HOWARD & KATTELL, LLP

By: 

Stuart Sugarman, Esq.

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