

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

-----X
J. ARMAND MUSEY,

Index No. 157316/2014

Plaintiff,

-against-

**REPLY AFFIDAVIT
OF FRANK CHANEY**

425 EAST 86 APARTMENTS CORP., DOUGLAS
ELLIMAN PROPERTY MANAGEMENT,
FRANK CHANEY, PATRICIA CARBON,
DAVID MUNVES, MICHAEL CONSIDINE,
SUZANNE KEANE a/k/a SUZANNE JULIG,
JENNIFER KRUEGER, GEORGE GREENBERG,
ALEXANDER SHAPIRO and LESLIE SPITALNICK,

Defendants.

-----X

STATE OF NEW YORK)

ss.

COUNTY OF NEW YORK)

FRANK CHANEY, being duly sworn, deposes and says:

1. I am the current president of the defendant, 425 East 86 Apartments Corp. (the “Co-op”) and I am also named individually as a defendant herein. As such, I am fully familiar with the facts and circumstances underlying this action and relevant to the present motion. I submit this reply affidavit in further support of the dismissal motion filed on behalf of the Co-op, our property management company, Douglas Elliman Property Management (“DEPM”) and all other individual defendants other than George Greenberg, who is – as I understand it – represented by separate counsel.

2. Although the affidavit of the plaintiff submitted in opposition to the dismissal motion and in support of his own cross-motion contains a number of factual inaccuracies, as so

few of them have any bearing on the outcome of the motions, I will address herein only those that do.

3. In order to bolster his arguments that (a) the Board had already prepared new rules pertaining to the roof in February 2013 and deliberately failed to apprise Mr. Musey of same after he signed the purchase agreement for the Apartment but before he closed on the purchase, and (b) he never was provided with a copy of revisions to the rules prepared in February 2014 (such that the rules have never been finalized), Plaintiff insists that the copy of the rules annexed to my October 30, 2014 affidavit as Exhibit N were prepared on February 25, 2013. See Affidavit of J. Armand Musey, sworn to January 13, 2015 (“Musey Aff.”) at ¶¶ 7, 24.

4. As I explained at paragraph 10, footnote 1, of my October 2014 affidavit – and as Mr. Musey well knows – this copy of the rules was misdated: the correct date is February 25, 2014.

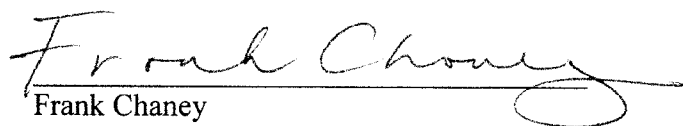
5. In fact, I emailed these February 25, 2014 rules to Mr. Musey (and Ms. Janicek) on February 28, 2014, and Mr. Musey expressly acknowledged receipt of same.¹ A copy of the February 28, 2014 email exchange, with the attached February 25, 2014 rules, is annexed hereto as **Exhibit R**.

6. In addition, it is worth noting that although the rules were revised in February 2014, the rules complained of in this lawsuit – *i.e.*, 4, 5 and 21 – remained unchanged from their original July 2013 iteration. Compare Exhibit 2 to the Complaint with Exhibit N; see also Exhibit 13.

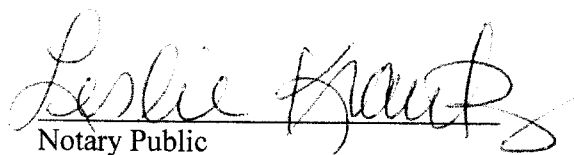
¹ In fact, in an email dated February 26, 2014 – annexed as Exhibit 13 to the Musey Affidavit – I expressly apprised Mr. Musey that “[b]y separate email I will forward the amended roof terrace standards.” While Mr. Musey attempts to contort my use of the “future tense” throughout that email to support his contention that the rules would be thereafter – yet have to date never been – further amended, reading the entire email in context and along with the following February 28, 2014 email, it is clear that the February 25, 2014 iteration of the rules provided to Mr. Musey on February 28, 2014 is the final iteration of such rules.

7. Further, in my February 28, 2014 email to Mr. Musey transmitting the revised rules, I explicitly stated that “we do not anticipate making any further changes” to the rules. See Exhibit R. At no time thereafter did I advise Mr. Musey that the Board would be open to further discussion about amending the rules or that any additional revisions would be forthcoming. There could not have been any question in any reasonable person’s mind that the rules, by that time, were final.

8. Finally, for the Court’s ease of reference, annexed hereto as **Exhibit S** is a copy of the “Inspection Report of Apartment Building,” dated February 23, 1979, and included in the offering plan for the Co-op. This is a cleaner version of Exhibit 5 annexed to Mr. Musey’s affidavit.


Frank Chaney

Sworn to me this
30th day of February, 2015


Notary Public

LESLIE KRAVITZ
Notary Public, State of New York
No. 01KR5074510
Qualified in Bronx County
Commission Expires March 17, 2015

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

-----X

J. ARMAND MUSEY,

Plaintiff,

Index No. 157316/2014

-against-

**REPLY AFFIDAVIT
OF SEAN DALY**

425 EAST 86 APARTMENTS CORP., DOUGLAS
ELLIMAN PROPERTY MANAGEMENT,
FRANK CHANEY, PATRICIA CARBON,
DAVID MUNVTS, MICHAEL CONSIDINE,
SUZANNE KEANE a.k.a SUZANNE JULIG,
JENNIFER KRUEGER, GEORGE GREENBERG,
ALEXANDER SHAPIRO and LESLIE SPITALNICK,

Defendants.

-----X

STATE OF NEW YORK)

ss.

COUNTY OF NEW YORK)

SEAN J. DALY, P.E., being duly sworn, deposes and says:

1. I am a professional engineer and the principal of Daly Engineering Consulting, P.C., which firm was engaged by 425 East 86 Apartments Corp. (the "Co-op") in or about December 2011 to investigate leaks into the Co-op's building, which engagement led to, *inter alia*, my designing and overseeing the construction of a new parapet wall. As such I have personal knowledge of the matters set forth herein. I submit this reply affidavit in further support of the dismissal motion filed on behalf of the Co-op, Douglas Elliman Property Management and all other individual defendants other than George Greenberg, who is - as I understand it - represented by separate counsel.

2. Having demonstrated in my original affidavit of November 3, 2014 that contrary to the allegations contained in the complaint filed in this matter that the main roof of the Co-op's

building does not have installed a Code-compliant parapet wall, such a Code-compliant wall is, in fact, in place. I am advised that the plaintiff, Mr. Musey, is now complaining that the roof area *over his apartment* does not have in place a Code-compliant parapet wall, rendering it “unusable.” See Affidavit of J. Armand Musey, sworn to January 13, 2015 (“Musey Aff.”) at ¶35.

3. Notably, Mr. Musey neither cites a pertinent provision of the New York City Building Code (or any other legal provision) supporting his contention, nor has he proffered the affidavit of an architect or engineer to support his specious claim.

4. To the extent that Mr. Musey is relying upon Section 1509.8 of the New York City Building Code (cited at paragraph 29 of his complaint), the relevant portion thereof states that a protective railing is required only where the height of a rooftop structure (including a penthouse) is greater than twenty-two feet. Mr. Musey’s penthouse apartment is set back five to ten feet on all sides from the exterior building walls, is not greater than twenty-two feet in height above the surrounding main roof of the building and is therefore not subject to the requirements of Section 1509.8 of the Code.

5. I am aware of no legal requirement that the roof over Mr. Musey’s penthouse be equipped with a parapet wall or railing of forty-two inches or higher.

6. In addition, the roof space over Mr. Musey’s apartment housing a booster pump servicing the entire building, as well as HVAC equipment servicing only Mr. Musey’s apartment. This is not an area of the building where Mr. Musey (or anyone) should be spending any time.

7. In addition, I have inspected the doors in Mr. Musey’s apartment that he contends should be replaced at the Co-op’s expense. Without getting into a dispute of what I did or did

not say about these doors being in need of replacement – as such representations have no bearing on the outcome of this motion – I can state that one of the existing terrace doors in question is of wooden construction and two existing terrace doors are made of metal frame and glass; none of the doors in question are kalamein doors (which were found to be installed in the apartment in 1979 per the architect’s report contained in the Co-op’s offering plan).


Sean J. Daly

Sworn to me this
[2] day of February, 2015


Notary Public

CRISCENCIA L. ARNOLD
Notary Public, State of New York
No. 01AR6085201
Qualified in Westchester County
Commission Expires Dec 23, 2018