

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

X

MICHAEL LISTWON

Plaintiff,

-against-

Index No.: 512824/2016

**AMENDED VERIFIED
COMPLAINT**

**500 METROPOLITAN OWNER LLC, 475 KEAP STREET,
LLC, NY DEVELOPERS & MANAGEMENT INC.,
THE CHETRIT GROUP LLC, NEW LINE STRUCTURES
INC., EAST COAST DRILLING NY INC. d/b/a ECD NY,
RA CONSULTANTS LLC, and DOMANI INSPECTION
SERVICES,**

Defendants.

X

Plaintiff Michael Listwon ("Plaintiff") by his attorneys herein, Tamir Law Group P.C., by way of his Amended Verified Complaint against 500 Metropolitan Owner LLC ("500 Metropolitan LLC"), 475 Keap Street, LLC ("475 Keap"), Keap Street Venture, LLC ("Keap Street"), NY Developers and Management Inc. ("NY Developers"), The Cherit Group LLC ("Chetrit"), New Line Structures Inc. ("New Line"), East Coast Drilling NY Inc. ("ECD"), RA Consultants LLC ("RAC"), and Domani Inspection Services ("Domani", all defendants collectively are referred to herein as "Defendants") respectfully alleges as follows:

NATURE OF THE ACTION

1. This is an action to recover the full amount of damages that have been sustained to Plaintiff's property located at 492 Metropolitan Avenue, Brooklyn, New York 11211, as a result of Defendants' excavation and construction on the adjacent property located at 500 Metropolitan Avenue, Brooklyn, New York 11211 (Block 2371, Lot 21).

2. Upon information and belief, Defendants are constructing a mixed use building including a hotel, retail space, and residential condominiums upon the property located at 500 Metropolitan Avenue, Brooklyn, New York 11211 (referred to herein as “500 Metropolitan Avenue”).

PARTIES AND JURISDICTION

3. Plaintiff is the owner in fee simple of 492 Metropolitan Avenue, Brooklyn NY 11211 (Block 2371; Lot 18 (“492 Metropolitan Avenue”).

4. 500 Metropolitan LLC is a foreign limited liability company authorized to do business in the State of New York.

5. Upon information and belief, 500 Metropolitan LLC has its principal place of business at 512 Seventh Avenue, 15th Floor, New York, New York 10018.

6. 475 Keap is a domestic limited liability company authorized to do business in the State of New York.

7. Upon information and belief, 475 Keap has its principal place of business located at 512 Seventh Avenue, 15th Floor, New York, New York 10018.

8. Keap Street is a domestic limited liability company licensed to conduct business in the State of New York.

9. Upon information and belief, Keap Street has its principal place of business at 512 Seventh Avenue, 15th Floor, New York, New York 10018.

10. NY Developers is a New York domestic business corporation licensed to conduct business in the State of New York.

11. Upon information and belief, NY Developers has its principal place of business at 1303 53rd street, Suite 193, Brooklyn, New York 11219.

12. Chetrit is a domestic limited liability company authorized to conduct business in the State of New York.

13. Upon information and belief, Chetrit has its principal place of business at 512 Seventh Avenue, 15th Floor, New York, New York 10018.

14. New Line is a New York domestic business corporation licensed to conduct business in the State of New York.

15. Upon information and belief, New Line has its principal place of business at 512 Seventh Avenue, 15th Floor, New York, New York 10018.

16. ECD is a New York domestic business corporation licensed to conduct business in the State of New York.

17. Upon information and belief, ECD has its principal place of business at 35-12 19th Avenue, Astoria, New York 11105.

18. RAC is a foreign limited liability company authorized to conduct business in the State of New York.

19. Upon information and belief, RAC has its principal place of business at 512 Seventh Avenue, 6th Floor, New York, New York 10018.

20. Domani is a New York domestic business corporation licensed to conduct business in the State of New York.

21. Upon information and belief, Domani has its principal place of business at 226 East Merrick Road, Valley Stream, New York 11580.

22. Jurisdiction is proper in this Court pursuant to CPLR § 301 because this Court has personal jurisdiction over the Defendants in this action.

23. Venue is proper in this Court pursuant to CPLR § 503(a) because Plaintiff is a resident of the State of New York, County of Kings.

FACTS COMMON TO ALL COUNTS

24. Plaintiff is the owner in fee simple of 492 Metropolitan Avenue.

25. 492 Metropolitan Avenue is a three (3) story mix-use structure with a single story rear section. There is a partial full basement and partial crawlspace under the building. The front of the building faces north.

26. 500 Metropolitan LLC currently owns the property known as 500 Metropolitan Avenue.

27. 475 Keap was the owner of 500 Metropolitan Avenue from 2008 until on or about November 2016.

28. 475 Keap hired New Line as the general contractor and/or construction manager for the construction of a mixed use building on 500 Metropolitan Avenue (the "Project").

29. Chetrit was and is the developer overseeing the Project.

30. New Line retained ECD to perform excavation and concrete work on the Project.

31. ECD performed excavation and concrete work on the Project.

32. New Line retained RAC to act as a geotechnical engineer and special engineer for controlled inspections of soil on the Project.

33. RAC performed work on the Project including, but not limited to, soil inspection, soil-site preparation, excavation, support of excavation systems, footing, and foundation work.

34. New Line retained Domani to act as the special engineer for soils on the Project.

35. Domani's work on the Project included, but was not limited to, filling placement and density of structural stability of adjacent structures.

36. 475 Keap hired and employed NY Developers to replace New Line as the construction manager and/or general contractor on the Project.

37. 500 Metropolitan LLC retained and continues to employ NY Developers as the construction manager on the Project.

38. In or about 2012 and continuing, New Line commenced excavating and construction on the property located at 500 Metropolitan Avenue.

39. New Line commenced work with the demolition of previously standing buildings and excavated 500 Metropolitan Avenue, prior to the commencement of New Line's construction of the mixed use structure on 500 Metropolitan Avenue.

40. RAC performed excavation and construction work for the Project at 500 Metropolitan Avenue.

41. ECD performed excavation and construction work for the Project at 500 Metropolitan Avenue.

42. Domani was responsible to insure that the excavation and construction work on the Project at 500 Metropolitan Avenue did not affect the structural stability of adjacent structures including the building located at 492 Metropolitan Avenue.

43. After replacing New Line as construction manager, NY Developers continued excavating and construction work on the property located at 500 Metropolitan Avenue.

44. ECD continued to perform excavation and construction work on the Project after NY Developer became the construction manager.

45. RAC continued to perform excavation and construction work on the Project after NY Developer became the construction manager.

46. Domani was responsible to ensure that the excavation and construction work on the Project at 500 Metropolitan Avenue did not affect the structural stability of adjacent structures including the building located at 492 Metropolitan Avenue after NY Developers be/came the construction manager.

47. Defendants managed, controlled, operated, planned, maintained and/or supervised the aforementioned work, labor and/or services performed at 500 Metropolitan Avenue.

48. Defendants managed, controlled, operated, planned, maintained and/or supervised the aforementioned work, labor and/or services performed at 500 Metropolitan Avenue and/or services performed by their employees, servants, contractors, subcontractors, independent contractors and/or agents at 500 Metropolitan Avenue.

49. As a result of Defendants' actions, and the actions of Defendants employees, servants, contractors, subcontractors, independent contractors and/or agents, 492 Metropolitan Avenue has sustained substantial damage.

50. In order to prevent further damage to the 492 Metropolitan Avenue, Plaintiff employed private contractors to make numerous repairs on 492 Metropolitan Avenue, at a cost of approximately Thirty Thousand (\$30,000.00) dollars.

51. Plaintiff had an insurance policy on 492 Metropolitan Avenue and an additional two (2) buildings from Seneca Insurance Co. ("Seneca"), because maintaining a joint policy lowered the overall payments for the policy on all properties (the "Seneca Policy").

52. When the Seneca Policy expired on April 12, 2013, Plaintiff attempted to renew the Seneca Policy. However, due to the deteriorating condition of the building at 492 Metropolitan Avenue as a result of the damaged caused by the Defendants, Seneca was and still is unwilling to

continue the policy on 492 Metropolitan Avenue resulting in higher premiums on Plaintiff's other properties.

53. Plaintiff has had difficulty obtaining insurance from other carriers due to the current condition of the building at 492 Metropolitan Avenue.

54. Plaintiff has been unable to obtain insurance for 492 Metropolitan Avenue as a result of the damage sustained to the property.

55. Defendants have caused damage and continue to cause damage to 492 Metropolitan Avenue as a result of the excavation and construction work on 500 Metropolitan Avenue.

AS AND FOR A FIRST CAUSE OF ACTION

56. Plaintiff repeats and realleges the allegations contained in the paragraphs of the complaint numbered "1" through "55" as if more fully set forth herein.

57. At all times hereinafter mentioned, Defendants, their employees, contractors, subcontractors, construction managers, independent contractors, agents and/or servants had a duty to carry out the excavation and construction at 500 Metropolitan Avenue in a safe manner such that their actions in excavating and construction on the aforementioned property and building thereon did not cause any damage to any adjoining properties in general and 492 Metropolitan Avenue in particular.

58. The excavation and construction work carried out by Defendants, their employees, contractors, subcontractors, builders, agents and/or servants, or at the direction of the Defendants has caused, and continues to cause serious damage to 492 Metropolitan Avenue, including, but not limited to, structural damage to the property such as a large crack in the east wall of the foundation of 492 Metropolitan Avenue, the rotation of the east wall of 492 Metropolitan Avenue, a large crack on the east side of Plaintiff's property, the rear of the one-story portion has

also settled relative to the front half, two spills of petroleum-based product adjacent to the foundation of the east side of Plaintiff's property, penetration of the concrete masonry units (CMU) in the rear of the one-story, significant water penetration on the east side of the foundation, the top corner of the third floor façade is separating and falling towards the south, the top of the third floor façade has numerous cracks and its separating and pulling away from the interior wythes, vertical cracks on the front façade, the opening in the foundation between the three-story section and the one-story section is not level, indicating foundation settlement, the interior floors of the one-story section are substantially out of level due to settlement, settlement and separation of the one-story section from the three-story section has occurred, moisture penetration into the interior in the rear of the one-story area, the first floor between the three-story section and the one-story section exhibits differential movement due to settlement and the rotation referenced earlier, numerous cracks in the roof of the rear one-story section have appeared due to rotation, separation and settlement, cracking in the CMU on the exposed portion of the west wall of the rear one-story section has occurred, the upper wall of the adjacent structure has separated at the top, the upper chimney has separated from the adjacent wall and substantial settlement and separation of rear wall and large separation on the east wall of the rear one-story section rotating south.

59. The excavation and construction work at 500 Metropolitan Avenue, directly along the property line between 492 Metropolitan Avenue and 500 Metropolitan Avenue, to a depth of 15 feet supported by a secant pile wall on the east side and a sheet pile wall on the south side of 492 Metropolitan Avenue has caused serious damage to 492 Metropolitan Avenue, including but not limited to, causing a large crack on the east wide wall on Plaintiff's property, a large hole was

left next to the foundation of the structure towards the front of the east side of Plaintiff's property and the upper wall of Plaintiff's property has been separated.

60. The aforementioned damage has created a danger to the Plaintiff, his guests, invitees, tenants and the public at large.

61. Upon information and belief, the damage to Plaintiff's property is ongoing and may continue to the point of total structural failure.

62. The aforementioned consequences to 492 Metropolitan Avenue resulting from the actions, negligence, carelessness, recklessness and failure by the Defendants to protect 492 Metropolitan Avenue prior to the commencement and during the excavation and construction work, was caused wholly by reason of the negligence, carelessness, and recklessness of Defendants, their agents, servants and/or employees in the ownership, operation, maintenance, control, supervision, planning and/or construction of 500 Metropolitan Avenue.

63. Defendants, their agents, servants and/or employees had actual and/or constructive notice of the dangerous conditions arising from their actions.

64. By reason of the foregoing, Plaintiff has suffered damage to his property.

65. By reason of the foregoing, Plaintiff has sustained damages and has and will incur expenses related to corrective actions.

66. Plaintiff demands judgment against the Defendants in an amount to be determined at trial, but not less than \$3,000,000 (Three Million Dollars); together with compensatory damages, consequential damages, incidental damages, and punitive damages, with lawful interest, attorneys' fees, costs of suit, and any other relief the Court deems just and proper.

AS AND FOR A SECOND CAUSE OF ACTION

67. Plaintiff repeats and realleges the allegations contained in the paragraphs of the complaint numbered "1" through "66" as if more fully set forth herein.

68. In excavating and constructing 500 Metropolitan Avenue, Defendants violated applicable law and building codes.

69. Defendants' violation of law and building codes has damaged the Plaintiff.

70. By reason of the foregoing, Plaintiff has sustained damages and has and will incur expenses related to corrective actions.

71. Plaintiff demands judgment against the Defendants in an amount to be determined at trial, but not less than \$3,000,000 (Three Million Dollars); together with compensatory damages, consequential damages, incidental damages, and punitive damages, with lawful interest, attorneys' fees, costs of suit, and any other relief the Court deems just and proper.

AS AND FOR A THIRD CAUSE OF ACTION

72. Plaintiff repeats and realleges the allegations contained in the paragraphs of the complaint numbered "1" through "71" as if more fully set forth herein.

73. Defendants' actions as aforesaid have created a private nuisance.

74. Defendants' actions as aforesaid negligently, carelessly, and recklessly invaded Plaintiff's interest in the private use and enjoyment of 492 Metropolitan Avenue.

75. As a result of Defendants' action, Plaintiff has suffered a diminution in the market value of his property at 492 Metropolitan Avenue.

76. As a result of Defendants' actions, Plaintiff has suffered the reduction of the rental or usable value of the property.

77. Defendants' actions as aforesaid have interfered with the Plaintiffs' present use and enjoyment of the property at 492 Metropolitan Avenue.

78. Defendants' actions as aforesaid are unreasonable in character.

79. Defendants' actions as aforesaid are substantial in nature.

80. By reason of the foregoing, Plaintiff has sustained damages and has and will incur expenses related to corrective actions.

81. Plaintiff demands judgment against the Defendants in an amount to be determined at trial, but not less than \$3,000,000 (Three Million Dollars); together with compensatory damages, consequential damages, incidental damages, and punitive damages, with lawful interest, attorneys' fees, costs of suit, and any other relief the Court deems just and proper.

AS AND FOR A FOURTH CAUSE OF ACTION

82. Plaintiff repeats and realleges the allegations contained in the paragraphs of the complaint numbered "1" through "81" as if more fully set forth herein.

83. Defendants, without justification or permission, negligently caused silt, soil and other materials and substances to enter Plaintiff's property.

84. Defendants, without justification or permission, negligently caused people to enter 492 Metropolitan Avenue.

85. Defendants, without justification or permission, negligently caused tools, machinery and vehicles to enter 492 Metropolitan Avenue.

86. Defendants, without justification or permission, trespassed upon 492 Metropolitan Avenue.

87. By reason of the foregoing, Plaintiff has sustained damages and has and will incur expenses related to corrective actions.

88. Plaintiff demands judgment against the Defendants in an amount to be determined at trial, but not less than \$3,000,000 (Three Million Dollars); together with compensatory damages,

consequential damages, incidental damages, and punitive damages, with lawful interest, attorneys' fees, costs of suit, and any other relief the Court deems just and proper.

AS AND FOR A FIFTH CAUSE OF ACTION

89. Plaintiff repeats and realleges the allegations contained in the paragraphs of the complaint numbered "1" through "88" as if more fully set forth herein.

90. At all times herein mentioned, Defendants had a duty to protect 492 Metropolitan Avenue.

91. Defendants have negligently, carelessly, and recklessly disregarded Plaintiff's rights and failed to protect and/or adequately protect 492 Metropolitan Avenue from the excavation and construction activities at 500 Metropolitan Avenue.

92. Defendants have breached their duty to Plaintiff.

93. Defendants' actions and/or inaction are the sole reason for the damage to 492 Metropolitan Avenue.

94. By reason of the foregoing, Plaintiff has sustained damages and has and/or will incur expenses related to corrective actions.

95. Plaintiff demands judgment against the Defendants in an amount to be determined at trial, but not less than \$3,000,000 (Three Million Dollars); together with compensatory damages, consequential damages, incidental damages, and punitive damages, with lawful interest, attorneys' fees, costs of suit, and any other relief the Court deems just and proper.

WHEREFORE, Plaintiff demands judgment against the Defendants in each cause of action in an amount to be determined at trial but not less than \$3,000,000 (Three Million Dollars); together with compensatory damages, consequential damages, incidental damages, and

punitive damages, with lawful interest, attorneys' fees, costs of suit, and any other relief the Court deems just and proper.

Dated: New York, New York
May 18, 2017

TAMIR LAW GROUP P.C.

A handwritten signature in black ink, appearing to read 'Andrew Kurtz', is written over a horizontal line.

Andrew Kurtz

Of Counsel

Attorneys for Plaintiff

30 Broad Street, 14th Floor

New York, NY 10004

(212) 444-9970

ATTORNEY'S AFFIRMATION

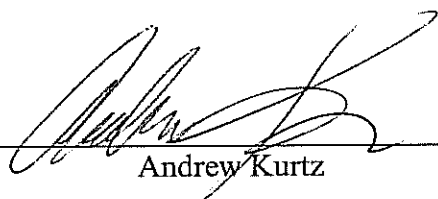
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, Andrew Kurtz, an attorney admitted to practice in the courts of New York State, state that I am an attorney with the law firm TAMIR LAW GROUP P.C., the attorneys of record for Plaintiff in the within action; I have read the foregoing AMENDED VERIFIED COMPLAINT and know the contents thereof; the same is true to my knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe to be true. The reason this verification is made by me and not by Plaintiff is that Plaintiff does not reside within the County of New York where affirmant has his office.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows: records and information in affirmant's possession.

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated: New York, NY
May 18, 2017



Andrew Kurtz