

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
MICHAEL LISTWON

Index No.

Plaintiff,

SUMMONS

-against-

Plaintiff designates Kings
County as the place of trial.

**KEAP STREET VENTURE, LLC & NY DEVELOPERS &
MANAGEMENT INC., AND JOHN DOES 1-10 (that are
contractors and sub-contractors who are currently unknown)**

The basis of venue is: Plaintiff's
place of business

Defendants.

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Plaintiff's place of business is at:
492 Metropolitan Avenue,
BROOKLYN, NY 11211

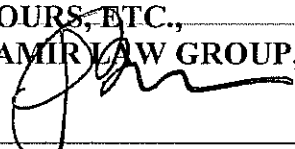
To the above named Defendants:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the complaint of the Plaintiffs herein and to serve a copy of your answer on the Plaintiffs at the address indicated below within 20 days after the service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer, a judgment will be entered against you by default for the relief demanded in the Complaint.

Dated: New York, New York
July 26, 2016

YOURS, ETC.,
TAMIR LAW GROUP, PC



Zaki Isaac B. Tamir
30 Broad Street, 14th Floor
New York, NY 10004
(212) 444-9970

DEFENDANT'S ADDRESS:

Keap Street Venture, LLC.
512 Seventh Avenue, 15th Floor,
New York, NY 10018

NY Developers & Management INC.
1303 53rd Street, Suite 193
Brooklyn, NY 11219

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

X

MICHAEL LISTWON

Plaintiff,

-against-

**KEAP STREET VENTURE, LLC & NY DEVELOPERS
& MANAGEMENT INC., AND JOHN DOES 1-10 (that
are contractors and sub-contractors who are currently
unknown)**

Defendants.

X

Index No.: /2016

VERIFIED COMPLAINT

Plaintiff MICHAEL LISTWON ("Plaintiff") by his attorneys herein, TAMIR LAW GROUP PC, by way of Verified Complaint against KEAP STREET VENTURE, LLC ("Keap Street"), NY DEVELOPERS & MANAGEMENT INC. ("NY Developers") and JOHN DOES 1-10 (that are contractors and sub-contractors who are currently unknown) ("Defendants") respectfully alleges as follows:

NATURE OF THE ACTION

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

PARTIES AND JURISDICTION

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

3. Upon information and belief, Keap Street, is a New York Domestic Limited Liability Company licensed to conduct business in the State of New York.

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

5. Upon information and belief, Keap Street owns the property located at 500 Metropolitan Avenue, Brooklyn New York 11211 (Block 2371; Lot 21).

6. Upon information and belief, NY Developers is a New York Domestic Business Corporation licensed to conduct business in the State of New York.

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

8. Upon information and belief, John Does 1-10 are contractors and sub-contractors that are currently unknown.

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

10. Venue is proper in this Court pursuant to CPLR § 503(a) because Plaintiff's property is located in the State of New York, County of Kings.

FACTS COMMON TO ALL COUNTS

11. Plaintiff is the owner in fee simple of 492 Metropolitan Avenue, Brooklyn, New York 11211 ("492 Metropolitan Avenue").

12. 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.

13. Upon information and belief, Keap Street owns the property known as 500 Metropolitan Avenue, Brooklyn, New York 11211 ("500 Metropolitan Avenue"), which is adjacent to 492 Metropolitan Avenue.

14. Upon information and belief, NY Developers has been employed by Keap Street to construct a mixed use complex on 500 Metropolitan Avenue.

15. Upon information and belief, on or about 2012 and continuing to date, NY Developers commenced excavating and construction on the property located at 500 Metropolitan Avenue.

16. NY Developers commenced work with the demolition of previously standing buildings and excavated 500 Metropolitan Avenue, prior to the commencement of NY Developers construction on 500 Metropolitan Avenue.

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

18. 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.

19. 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.

20. 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.

21. Plaintiff had an insurance policy on 492 Metropolitan Avenue and an additional two (2) buildings from Seneca Insurance Co., maintaining a joint policy lowered the overall payments for the policy on all properties. The policy expired on April 12, 2013, Plaintiff attempted to renew the policy. However, due to the deteriorating condition of the building as a result of the damaged caused by the Defendants the insurance company was and still is unwilling to continue the policy on 492 Metropolitan Avenue resulting in higher premiums on Plaintiff's other properties. Plaintiff has had difficulty obtaining insurance from other carriers due to the current condition of the building.

22. Defendants have caused damage and continues 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

23. Plaintiff repeats and realleges the allegations contained in the paragraphs of the complaint numbered 1 through 22 as if more fully set forth herein.

24. 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 an adjoining property in general and 492 Metropolitan Avenue in particular.

25. The excavation and construction work carried out by Defendants, their employees, contractors, subcontractors, builders, agents and/or servants 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.

26. 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.

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

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

29. 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 the Defendants, their agents, servants and/or employees in the ownership, operation, maintenance, control, supervision, planning and/or construction of 500 Metropolitan Avenue.

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

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

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

33. Plaintiff demands judgment against the Defendants in a sum which exceeds the jurisdictional limits of all lower courts; together compensatory damages, consequential damages, incidental damages and punitive damages, with lawful interest, attorney's fees, costs of suit, and any other relief the Court deems just and proper.

AS AND FOR A SECOND CAUSE OF ACTION

34. Plaintiff repeats and realleges the allegations contained in the paragraphs of the complaint numbered 1 through 33 as if more fully set forth herein.

35. In excavating and constructing Defendant's Property, Defendants violated applicable law and building codes.

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

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

38. Plaintiff demands judgment against the Defendants in a sum which exceeds the jurisdictional limits of all lower courts; together compensatory damages, consequential damages, incidental damages and punitive damages, with lawful interest, attorney's fees, costs of suit, and any other relief the Court deems just and proper.

AS AND FOR A THIRD CAUSE OF ACTION

39. Plaintiff repeats and realleges the allegations contained in the paragraphs of the complaint numbered 1 through 38 as if more fully set forth herein.

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

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

42. As a result of Defendants' action, Plaintiff has suffered a diminution in the market value of his property.

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

44. Defendants' actions as aforesaid have interfered with the Plaintiffs' present use and enjoyment of the property.

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

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

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

48. Plaintiff demands judgment against the Defendants in a sum which exceeds the jurisdictional limits of all lower courts; together compensatory damages, consequential damages, incidental damages and punitive damages, with lawful interest, attorney's fees, costs of suit, and any other relief the Court deems just and proper.

AS AND FOR A FOURTH CAUSE OF ACTION

49. Plaintiff repeats and realleges the allegations contained in the paragraphs of the complaint numbered 1 through 48 as if more fully set forth herein.

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

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

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

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

54. Plaintiff demands judgment against the Defendants in a sum which exceeds the jurisdictional limits of all lower courts; together compensatory damages, consequential damages,

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

AS AND FOR A FIFTH CAUSE OF ACTION

55. Plaintiff repeats and realleges the allegations contained in the paragraphs of the complaint numbered 1 through 54 as if more fully set forth herein.

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

57. 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.

58. Defendants have breached their duty to Plaintiff.

59. Defendants' action and/or inaction is the sole reason for the damage to 492 Metropolitan Avenue.

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

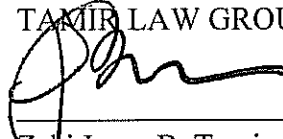
61. Plaintiff demands judgment against the Defendants in a sum which exceeds the jurisdictional limits of all lower courts; together compensatory damages, consequential damages, incidental damages and punitive damages, with lawful interest, attorney's fees, costs of suit, and any other relief the Court deems just and proper.

WHEREFORE, Plaintiff demands judgment against the Defendants in each cause of action in a sum which exceeds the jurisdictional limits of all lower courts; together compensatory

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

Dated: New York, New York
July 26, 2016

TAMIR LAW GROUP PC



Zaki Isaac B. Tamir
Attorneys for Plaintiff
30 Broad Street, 14th Floor
New York, NY 10004
(212) 444-9970

ATTORNEY'S AFFIRMATION

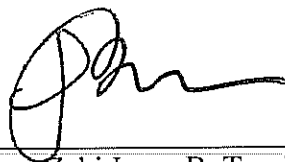
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, Zaki Isaac B. Tamir, 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 PC, the attorneys of record for Plaintiff in the within action; I have read the foregoing 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
July 26, 2016

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

Zaki Isaac B. Tamir