

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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THE CITY OF NEW YORK,

Plaintiff,

-against-

Index No. _____/2023

COLLEEN E. CARTER-NEBLETT, SAINT MARKS FUNDING LLC, THE LAND and BUILDING THEREON KNOWN AS 867 ST MARKS AVENUE, Block 1222, Lot 65, in the County of Kings, City and State of New York, and "JOHN DOE" and "JANE DOE," numbers 1 through 10, fictitious names, true names unknown, the parties intended being owners, operators, managers, lessees, employees, agents and all other persons and entities claiming any right, title or interest in the premises which is the subject of this action,

SUMMONS

Defendants.

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TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff's attorney an answer to the complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates Kings County as the place of trial in accordance with CPLR § 503(a).

Dated: August 11, 2023
New York, NY

HON. SYLVIA O. HINDS-RADIX
Corporation Counsel of the City of New York
Attorney for Plaintiff the City of New York
100 Church Street, Rm 20-095
New York, NY 10007

By:



Bianca C. Isaias
Assistant Corporation Counsel

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----- X

THE CITY OF NEW YORK,

Plaintiff,

Index No. ____/2023

-against-

VERIFIED COMPLAINT

COLLEEN E. CARTER-NEBLETT, SAINT MARKS FUNDING LLC, THE LAND and BUILDING THEREON KNOWN AS 867 ST MARKS AVENUE, Block 1222, Lot 65, in the County of Kings, City and State of New York, and “JOHN DOE” and “JANE DOE,” numbers 1 through 10, fictitious names, true names unknown, the parties intended being owners, operators, managers, lessees, employees, agents and all other persons and entities claiming any right, title or interest in the premises which is the subject of this action,

Defendants.

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Plaintiff the City of New York (“the City”), by its attorney, Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, alleges upon personal knowledge as to itself and upon information and belief as to all other matters:

PRELIMINARY STATEMENT

1. Defendants are owners of a 10-unit, occupied, landmarked residential building located at 867 St Marks Avenue, Block 1222, Lot 65, County of Kings, City and State of New York, (the “Premises”). The Premises presents an immediate health and safety hazard to its tenants, tenants of the adjacent buildings, passersby and the public at large. Defendants have received numerous violations from multiple City agencies over the past decade and have failed to take corrective action to address the dangerous conditions at the Premises.

2. On June 12, 2023, the Department of Buildings (“DOB”) issued an Emergency Work Order directing the owners to immediately repair the unsafe sidewalk shed and scaffolding located at the building’s entrance. These structures, which are located over the building’s entrance and overhang the entrances of two adjacent buildings, exhibit rotted planks, loose panels, loose safety netting, and other serious safety conditions. The permit for these structures has lapsed several times; the permit last lapsed in 2017 without any attempt by ownership to renew the permit. This has resulted in the issuance of numerous violations for expired permits in addition to violations for the structures’ severely deteriorated condition. Over a month has elapsed since DOB issued the Emergency Work Order and owners have done nothing to repair these dangerous structures.

3. Predating the serious threat presented by the unsafe sidewalk shed and scaffolding are underlying conditions rendering the building itself unsafe. DOB has issued numerous Construction Code violations detailing severe structural conditions in the building including a deteriorating façade, and structural conditions affecting the stability of a section of the building. Because of these hazardous conditions, DOB issued a partial vacate order applicable to the units in that area of the building in October 2013.

4. Despite the passage of nearly a decade since the partial vacate order, owners have done nothing to correct these dangerous conditions.

5. In this action, the City seeks (a) an injunction stopping Defendants’ unlawful behavior; (b) the abatement of the hazardous conditions; and (c) civil penalties, pursuant to various New York City code provisions and the Nuisance Abatement Law.

PARTIES

6. Plaintiff, the City of New York, is a domestic municipal corporation organized and existing under the laws of the State of New York. This action is brought on behalf of the City of New York and the DOB Commissioner.

7. Defendant Colleen E. Carter-Neblett is an owner of the Premises according to deeds recorded in the office of the City Register, Kings County on March 1, 1980; and New York County on July 12, 2021. During an interim two-year period, the building was owned by Colleen E. Carter-Neblett LLC, an LLC of which Colleen E. Carter-Neblett was sole proprietor according to a deed recorded in the office of the City Register New York County on November 13, 2019. These deeds are set forth as Exhibit A. Ms. Carter-Neblett's last known address is 5020 Southlake Drive, Alpharetta, Georgia 30005.

8. Defendant Saint Marks Funding LLC is an owner by virtue of an assignment of leases and rents recorded with the New York City Department of Finance, Office of the City Register, on February 25, 2021. It is an active domestic limited liability company with a process address of 104 Dogwood Avenue, Roslyn Harbor, New York 11576.

9. The above Defendants are all owners of the Premises as defined within the governing codes, including Administrative Code of the City of New York ("Admin. Code") § 28-101.5, Multiple Dwelling Law § 4(44), and Admin. Code § 27-2004(a)(45), and therefore, are responsible for the Premises.

10. Defendant, The Land and Building Thereon Known as 867 St Marks Avenue, Brooklyn, New York, Block 1222, Lot 65, in the County of Kings, City and State of New York is the Premises upon which the activities and violations described herein have occurred.

11. Defendants "JOHN DOE" and "JANE DOE" are fictitious named parties, true names unknown, the parties intended to be any other person or entities claiming right, title, or interest in the Premises which is the subject of this action.

JURISDICTION AND VENUE

12. The court has jurisdiction over the parties and claims alleged herein pursuant to New York Civil Practice Law and Rules ("CPLR") § 302(a) because defendants own real property

situated in Kings County in the State of New York, property which is the subject matter of this action.

13. Pursuant to CPLR § 507, venue is proper in Kings County.

FACTS

City Code Violations

14. The Premises is a landmarked, residential building with 10 dwelling units.

15. On June 12, 2023, DOB issued Emergency Work Order 061223CSR30802CC directing the owners to immediately repair the unsafe sidewalk shed and supported scaffolding located at exposure 1, over the building's entrance. The Order flags problems with the structures' overall stability, and describes rotted scaffold planks, loose and hanging safety netting, catchall overhang inadequate to protect adjacent properties, loose plywood panels, numerous unsecured planks, inadequate overlap on junior beams and inadequate mudsills, all of which are required pedestrian safety features. To date, owners have done nothing to repair the sidewalk shed and supported scaffolding, or to obtain new permits for these structures, which have long expired according to DOB ECB violation no. 35097198X, issued on August 18, 2014.

16. On October 12, 2013, DOB issued a Partial Vacate Order on the Premises (DOB Violation no. 101313CNER01 and DOB ECB No. 35030508X). Due to lack of maintenance and water infiltration, the wood and steel beams on the third floor at exposure 1 (front of the building) rotted through and the building's limestone façade is pushing out, affecting the building's structural stability. As a result, DOB was forced to order that the units located on the third and fourth floors of the building be vacated. The sidewalk shed and supported scaffolding, described above, were erected in response to these façade issues. However, nothing has been done to resolve the façade and interior structural conditions, and the sidewalk shed and supported scaffolding were never provided

maintenance. Nearly a decade later, the tenants of those units remain displaced, the third and fourth floors of the building sit vacant, and the sidewalk shed and supported scaffolding which were erected to allow for repair work and provide pedestrian overhead safety have been left to deteriorate and become serious safety hazards in and of themselves.

17. The City reached out to Defendant Carter-Neblett via demand letter dated March 20, 2023. Defendant and the City engaged in communications for several months where the City stressed the need for correction of the open violations, and in particular the urgency to correct the unsafe sidewalk shed and supported scaffolding. Despite repeated assurances from Defendant Carter-Neblett, no efforts were undertaken to repair the sidewalk shed or supported scaffolding, nor the building's structural issues.

18. As evidenced by ongoing and numerous DOB violations issued over the course of the past ten years, none of the conditions detailed above has been repaired. DOB inspected the Premises and found numerous conditions that violate City codes designed to ensure that residences and the public are safe and that dwellings are habitable. DOB issued violations against Defendants, which are set forth as Exhibit B.

19. Violations were served on the Defendants by a Notice of Violation or Summons directing that they remediate the conditions and then timely certify such correction with the issuing agency. For all Environmental Control Board ("ECB") summonses/violations, Defendants had or will have the opportunity to contest the violations at a hearing held at the Office of Administrative Trials and Hearings.

20. There are currently 29 outstanding DOB violations, 19 of which are ECB violations adjudicated before OATH, for which the Defendants have failed to show compliance as required.

21. Numerous violations are for failure to maintain the building due to the deteriorating façade conditions, including loose bricks, missing mortar joints, protruding limestone in danger of dislodging, and cracked and shifted stones. The oldest of these violations is ECB No. 35030508X, a Class-1 immediately hazardous violation for failure to maintain the exterior walls or appurtenances, which was issued in 2013 simultaneously with the Partial Vacate Order described above.

22. There are also numerous violations imposed concerning the unsafe sidewalk shed and supported scaffolding for failure to meet pedestrian protection code requirements, improper maintenance, and expired permits. As discussed above, the structures' permits have been expired since at least 2014. The structures' dangerous conditions date back to at least February 2015, as noted in ECB violation no. 35073485M issued on February 28, 2015 for the use of unapproved, unsafe electrical wiring on the sidewalk shed.

23. To date, these conditions remain uncorrected and threaten the health and safety of the building's occupants, the occupants of neighboring buildings, visitors, passersby, and the public at large.

**FIRST CAUSE OF ACTION
(BUILDING CODE)**

24. Defendants are in violation of the Construction Codes as described in the violations set forth in Exhibit B.

25. DOB, pursuant to Admin. Code § 28-204.1, served Notices of Violation upon an owner of the Premises, directing the owners to correct the violations.

26. No valid certifications of correction have been filed for the violations set forth within the dates set for correction in each Notice of Violation.

27. This Court is authorized by Admin. Code §§ 28-201, 28-205, to order Defendants to correct all violations and to grant such other relief as may be necessary to secure continuing compliance with those laws.

28. Defendants are liable for penalties as set forth in Admin. Code §§ 28-202, 28-203. Payment of such penalties may be required prior to obtaining a work permit.

**SECOND CAUSE OF ACTION
(STATUTORY PUBLIC NUISANCE – FAILURE TO MAINTAIN BUILDING IN CODE
COMPLIANCE)**

29. Under the Nuisance Abatement Law, Admin. Code § 7-703(d), any premises in violation of Admin. Code § 28-301.1 or 28-302.1 is deemed to be a public nuisance.

30. Admin. Code § 28-301.1 requires that all buildings and all parts thereof be “maintained in a safe condition,” and that “[a]ll service equipment, means of egress, materials, devices, and safeguards that are required in a building by the provisions of this code, the 1968 building code or other applicable laws or rules, or that were required by law when the building was erected, altered, or repaired, shall be maintained in good working condition.”

31. Admin. Code § 28-302.1 requires that all buildings’ exterior walls and appurtenances be “maintained in a safe condition”.

32. At all relevant inspections, City inspectors observed conditions constituting a failure to maintain the Premises in a code-compliant condition. Those conditions continue unabated to date.

33. The Premises has two recorded violations of Admin. Code § 28-301.1 for failure to maintain the building’s boiler room, and boiler in compliance with code; and one recorded violation of Admin. Code § 28-302.1 for failure to maintain the building’s walls or exterior appurtenances in compliance with code; as described in the violations set forth in Exhibit B.

34. As a result of the foregoing, there exist public nuisances at the Premises.

35. Defendants have intentionally conducted, maintained, or permitted the public nuisances alleged in this cause of action.

36. Section 7-706 of the Nuisance Abatement Law provides that a penalty may be awarded against a defendant who intentionally conducted, maintained or permitted a public nuisance in an amount not to exceed one thousand dollars (\$1,000) for each day that the nuisance occurred.

37. Pursuant to Admin. Code § 7-706(h), the City is entitled to a judgment against Defendants ordering them to pay a penalty of \$1,000 for each day that they intentionally conducted, maintained, or permitted each public nuisance alleged in this cause of action.

38. Pursuant to Admin. Code §§ 7-706(a) and 7-714, the City is entitled to an injunction against Defendants permanently restraining such public nuisances.

WHEREFORE, the City demands judgment against the defendants as follows:


- (1) With respect to the FIRST CAUSE OF ACTION:
 - a. Declaring that Defendants have failed to correct and comply with the violations complained of herein;
 - b. Ordering Defendants to comply with all outstanding violations and certify their compliance within thirty (30) days of the date of the court's order;
 - c. Enjoining Defendants from performing any construction work at the Premises without first properly securing permits from DOB;
 - d. Directing the entry of judgment in the amount of all City code penalties due and not previously docketed;

- e. Imposing penalties as authorized by City codes, for each condition found to be in violation of City codes, including directing that additional penalties accrue for ongoing violations, and directing entry of judgment for these penalties;
- (2) With respect to the SECOND CAUSE OF ACTION:
- a. Declaring that Defendants have caused public nuisances in violation of the Nuisance Abatement Law;
 - b. Enjoining Defendants from further actions or omissions that result in the continuation of public nuisances;
 - c. Imposing civil penalties as authorized by the Nuisance Abatement Law, for each violation of the Nuisance Abatement Law directing that additional penalties accrue for ongoing public nuisances;
 - d. Pursuant to Admin. Code § 7-714(g), allowing, in addition to the costs and disbursements allowed by the CPLR, the attorney's fees, actual costs, expenses and disbursements of the City in investigating, bringing and maintaining this action;
- (3) Directing the entry of judgment in the amount of all actual costs, expenses and disbursements; and
- (4) Granting to the City such other and further relief as the Court may deem just, proper, and equitable.

Dated: New York, New York
August 11, 2023

Hon. Sylvia O. Hinds-Radix
Corporation Counsel of the City of New York
Attorney for Plaintiff
100 Church Street, 20th Floor
New York, NY 10007

By: _____



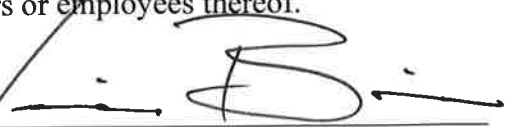
Bianca C. Isaias
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100 Church Street, 20th Floor
New York, NY 10007
(212) 356-4050
bisaias@law.nyc.gov

VERIFICATION

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

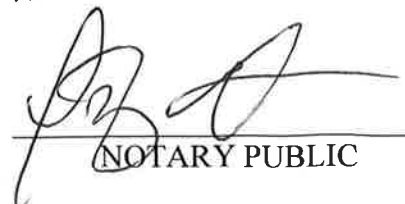
BIANCA C. ISAIAS, an attorney duly admitted to practice before the Courts of the State of New York, hereby affirms, under penalty of perjury pursuant to CPLR § 2106, as follows:

I am an Assistant Corporation Counsel in the in the office of Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York. I am duly admitted to practice law in the Courts of the State of New York. I verify under penalty of perjury that the City of New York is the plaintiff in the within action, that the allegations in the Complaint as to the City and its municipal agencies are true to my knowledge, that I believe to be true any matters alleged therein upon information and belief, and that my knowledge is based on the books and records of the City’s agencies and/or statements made to me by officers or employees thereof.



 BIANCA C. ISAIAS

Sworn to before me this
11th day of August, 2023



 NOTARY PUBLIC

INEZ CONTRERAS
 Commissioner of Deeds
 City of New York No. 1-10126
 Certificate Filed in New York County
 Commission Expires November 01, 2024

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COMMERCIAL BANK
OF THE STATE OF NEW YORK
CORPORATED IN NEW YORK
STATE OF NEW YORK
2023, 10 2023