

# **NARINE AFFIDAVIT**

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

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J. ARMAND MUSEY,

Plaintiff,

Index No. 157316/2014

-against-

**AFFIDAVIT OF  
KASWAREE NARINE**

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.

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STATE OF NEW YORK )

ss.

COUNTY OF NEW YORK )

**KASWAREE NARINE**, being duly sworn, deposes and says:

1. I am an account executive employed by Residential Management Group, LLC d/b/a Douglas Elliman Property Management (“DEPM”), a property management company operating in New York City and a named defendant herein. Through my employment by DEPM, since approximately January 2010, along with my colleague, Karel de Boer, I have been the managing agent for 425 East 86 Apartments Corp. (the “Co-op”), another defendant in the above-captioned matter. As such, I am fully familiar with the facts and circumstances underlying this action and relevant to the present motion. I submit this affidavit in support of the dismissal motion filed on behalf of the Co-op, DEPM and all other individual defendants other than George Greenberg, who is – as I understand it – represented by separate counsel.

2. In the regular course of managing the affairs of the Co-op, DEPM maintains files for each apartment located in the Co-op's building (the "Building").

3. There are 74 residential apartments in the Building owned or co-owned by 103 shareholders.<sup>1</sup> (Two of these apartments are still owned by the sponsor of the Co-op.)

### **Governing Documents**

4. In the file for PH-A, which currently is owned by the plaintiff herein, J. Armand Musey, I have located, among other things: (a) the fully-executed proprietary lease for PH-A (the "Lease"); and (b) the fully-executed contract of sale of PH-A. These two documents are annexed hereto, respectively, as **Exhibits D** and **E**.

5. The Lease – as is represented at paragraph 6 thereof – is the same form proprietary lease used in connection with each and every other apartment in the Building.

6. Annexed hereto as **Exhibit F** is "Schedule A" to the Co-op's offering plan (the "Offering Plan"), which document also is maintained by DEPM in the regular course of its management of the Co-op.

7. Although I have searched, I have not located any documents demonstrating that any portion of the Building's roof area is allocated specifically to PH-A.

### **The Building's Roof**

8. The roof area that Mr. Musey appears to believe is part of his apartment, functioning as a terrace for his exclusive use and enjoyment, can be accessed not only from this apartment, but also from the Building stairwell which goes from the ground level all the way to the roof level.

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<sup>1</sup> There also are two commercial units and a resident manager's unit, as well.

9. On or about April 19, 2013, Plaintiff submitted an alteration package for review and approval by the Co-op's board of directors (the "Board"). A copy of this alteration package is annexed hereto as **Exhibit G**.

10. The proposed alterations included significant work to the interior of the apartment, including: (a) "demolition of partitions and finishes;" (b) "installation of new floors;" (c) "installation of new plumbing;" (d) "installation of new electrical panel;" (e) "installation of new central AC/heat pump system;" (f) "replacement and relocation of existing radiators;" (g) "installation of new gas cooktop and oven with recirculating vent hood;" and (h) "introduction of (3) new window openings." See id.

11. In addition, the proposal included the "[i]nstallation of terrace pavers and cedar pergola" on the roof space immediately adjacent to the apartment. See id.

12. Also in April 2013, the Board had begun a review and overhaul of the Co-op's governing documents, including its House Rules as they pertained to the use of the roof.

13. It was my understanding that of concern to the Board in re-considering the Co-op's House Rules relating to the use of the roof was liability in event of another storm such as Irene or Sandy and extending the life of the roof, maintaining its water-tightness.

14. In 2011, the roof membrane on the front half of the Building was replaced. It is on this portion of the roof that Mr. Musey's apartment sits.

15. This new roof membrane was comparable to the roof membrane that had been in place prior thereto, over which no decking or other material had been placed by the prior owner/occupant of PH-A (Elaine Kaufman), the Co-op, or anyone else.

16. The only other apartment with roof space immediately adjacent to it is PH-B, which apartment is owned by George Greenberg.

17. Based upon my review of the PH-B file, it appears that in the summer 1990, Mr. Greenberg obtained approval from the Board to install over the roof membrane thick rubber tiles, which tiles protect the roof membrane and allow him to make use of this roof space as a “terrace.” A copy of the 1990 alteration agreement is annexed hereto as **Exhibit H**.

#### **Doors Leading from PH-A to the Roof**

18. On or about April 3, 2014, Mr. Musey contacted me about replacement of the door from the apartment’s kitchen to the outside. A copy of an April 3, 2014 email from Mr. Musey addressing this issue is annexed hereto as **Exhibit I**.<sup>2</sup>

19. I conveyed this communication to the Board and upon its direction, I advised Mr. Musey that the Co-op would replace this door at the Co-op’s expense, despite the fact that it was not the Co-op’s responsibility to do so. See id.

20. In response, Mr. Musey demanded that not one, but three, doors be replaced at the Co-op’s expense. See id.

21. To my knowledge, the Board declined to replace all three, as it is the Board’s position that the doors are the responsibility of Mr. Musey and not the Co-op.<sup>3</sup> The Co-op had offered to replace the one door Mr. Musey originally asked to be replaced as a gesture of goodwill in the face of his unhappiness in connection with the adoption of the new rules pertaining to the roof.

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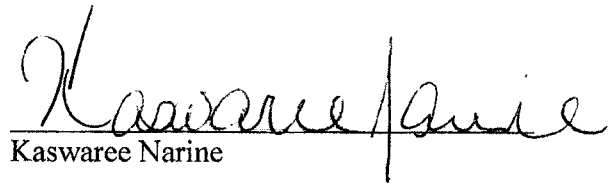
<sup>2</sup> Mr. Musey had contacted me about replacing a single terrace door back in September 2013, as well. A September 3, 2013 email from Mr. Musey is annexed hereto as **Exhibit J**.

<sup>3</sup> To the best of my knowledge, the Board’s determination in this regard was based upon its understanding that the doors had previously been replaced by Ms. Kaufman and thereafter became shareholder responsibility. This door was wood, rather than the aluminum doors otherwise found throughout the Building.

**Parapet Wall**

22. I am advised by counsel that among the complaints raised by Mr. Musey is that “no wall exists around [the roof’s] perimeter” that is compliant with applicable New York City Building Code. This is incorrect.

23. In 2013, installation was complete of a new parapet wall meeting New York Building Code requirements. Photographs of same, taken by me on [June 2013] are annexed here to as **Exhibit K**.

  
Kaswaree Narine

Sworn to me this  
29<sup>th</sup> day of October, 2014

  
Notary Public

CINDY HARRINGTON  
Notary Public - State of New York  
No. 01HA698204  
Qualified in Kings County  
Commission Expires on December 8, 2016