

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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J. ARMAND MUSEY,

Plaintiff,

Index No. 157316/2014 (Part 7)

-against-

**AFFIDAVIT OF J.
ARMAND MUSEY**

425 EAST 86 APARTMENTS CORP.,

Defendant.
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I, J. Armand Musey, being duly sworn, deposes and states that I am the Plaintiff in the herein proceeding and as such have knowledge of the facts set forth herein and submit this affidavit in opposition to Defendant’s motion to dismiss the First Amended Complaint and in support of the cross-motion for leave to file an amended complaint.

1. On January 11, 2019, my counsel filed a motion for leave to amend to serve an amended complaint. On June 25, 2019, Your Honor denied in part and granted in part the motion for leave to amend. On July 25, 2019, my counsel filed a motion for leave to reargue Your Honor’s June 25, 2019 decision.

2. While the motion for leave to reargue was pending, the parties requested a settlement conference with the court, which the court granted. On December 12, 2019, we appeared before the court. Prior to our appearance, I know that my counsel engaged in settlement discussions with counsel for Defendant. Unfortunately, the December 12, 2019 conference did not lead to a settlement despite the court’s guidance.

3. **Exhibit A** is a copy of the transcript of the court conference conducted on December 12, 2019 before Judge Lebovits.

4. Until December 23, 2020, I was under the belief that Emil Samman of Romer

Debbas was actively negotiating a settlement with the Defendant on my behalf.

5. There was a breakdown in my communications with Mr. Samman, followed by a breakdown of the attorney client relationship. To date, I have no idea what my counsel Mr. Samman discussed with Defendant's counsel because he never told me.

6. Health reasons in my family prevented me from focusing on this case. In February, 2021 my partner Margaret, after months of undiagnosed ill health, suffered a "Non-ST Elevated Myocardial Infarction," i.e. a "heart attack," that required surgery and admission to New York-Presbyterian Hospital/WC for three days.

7. In April of this year, Margaret's father suffered cardiac failure followed by open-heart surgery with an aortic valve replacement and an annuloplasty at St. Francis Hospital. We were his full-time caretakers between April and May.

8. Between February and June 2021, I reached out to the defendant Board and stated my intentions to reach a settlement of all outstanding issues, but they told me that they would only discuss what they believe was the outstanding issue – the reimbursement of what I spent on replacing the terrace doors. Surely, there were other issues including Defendant's failure to deliver to me a terrace that is capable of being covered and converted into a habitable area.

9. Furthermore, I delayed filing the amended complaint because of my on-going relationship with the Co-op and my own willingness to allow the Defendant to cure its failure to provide me with a structurally sound roof terrace surface. After all, I live in the same building as the members of the Co-op board.

10. Like many small business owners, I have struggled with the effects of the pandemic. These struggles included the transition to remote work for my employees while preserving appropriate cybersecurity controls without an IT staff. As my firm's primary business

development professional I have also needed to maintain sufficient operating revenue in an environment unfavorable to smaller businesses. Our struggles ultimately led us to rely on Payroll Protection Program loans.

11. I closed on the purchase of my shares on February 27, 2013 and to this day cannot use my apartment's terrace, which accounts for a significant portion of the purchase price.

12. Between December 2018 and April 2021, I submitted design plans on ten different occasions. Defendant rejected each of these for reasons ranging from the height of the artificial grass blades to the number of paper copies required as part of the application.

13. On June 2, 2015, Defendant informed me that it would not pay for the doors.

14. On September 14, 2021, I received a check from Defendant for \$14,400 for "full and final settlement of the claim ... regarding the responsibility for the replacement of the Terrace doors." See **Exhibit B**, a copy of the correspondence from Defendant.

15. I wish to withdraw the first cause of action in acknowledgement of the offer.

16. I would also withdraw the claim in FAC 165(e) that Defendant treated another shareholder preferentially because I recognize that such claim is not part of a breach of the implied covenant of good faith and fair dealing. Rather, Defendant's preferential treatment may constitute a breach of fiduciary duty, which is not a claim in this action.

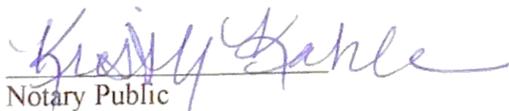
17. For the above reasons, I respectfully request that the Court grant my cross-motion for leave to amend the complaint and deny Defendant's motion to dismiss and for sanctions, and any further relief that the Court deems just.


J. Armand Musey

State of New York, County of New York, ss: ACKNOWLEDGMENT N.Y.R.P.L. 309-a

On September 21 2021, before me, the undersigned, personally appeared J. ARMAND MUSEY, personally proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Sworn to before me on the 21st day of September, 2021


Notary Public

KRISTIN M. KAHLE
NOTARY PUBLIC-STATE OF NEW YORK
No. 01KA6204722
Qualified in New York County
My Commission Expires 04-20-2025

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I hereby certify pursuant to 22 NYCRR § 202.8-b(c) that the foregoing affidavit was prepared on a computer using Microsoft Word.

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