

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

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DANIEL KRAMER, :

Plaintiff, :

vs. :

ARA HOVNANIAN, RACHEL LEE :

HOVNANIAN, AUTUN CONTRACTORS, :

WILLIAM F. O'NEILL ARCHITECTS, GILSANZ :

MURRAY STEFICEK LLP, PILLORI :

ASSOCIATES, PA, SIGNATURE INTERIOR :

DEMOLITION, INC., JG CONSTRUCTION OF :

QUEENS INC., SUPER JC CONSTRUCTION :

CORPORATION, and MITCHELL IRON WORKS, :

Defendants. :

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Index No. 157527/13

**PLAINTIFF'S REPLY TO
GILSANZ MURRAY STEFICEK
LLP'S COUNTERCLAIM**

Plaintiff, Daniel Kramer ("Plaintiff"), by his attorneys Ingram Yuzek Gainen Carroll & Bertolotti, LLP, as and for his reply to the counterclaim of Gilsanz Murray Steficek LLP ("GMS") in its Answer to Second Amended Verified Complaint, filed on December 8, 2015 ("Counterclaim") here states the following:

AS AND FOR A REPLY TO THE FIRST COUNTERCLAIM

1. Plaintiff denies the allegations in Paragraph 47 of the Counterclaim in the form alleged.
2. Plaintiff denies the allegations in Paragraph 48 of the Counterclaim.
3. Plaintiff admits the allegations in Paragraph 49 of the Counterclaim.
4. Plaintiff denies knowledge or information sufficient to form a belief as to the truth of the allegations alleged in Paragraph 50 of the Counterclaim.
5. Plaintiff denies knowledge and information sufficient to form a belief as to the truth of the allegations alleged in Paragraph 51 of the Counterclaim.

6. Plaintiff denies the allegations in Paragraph 52 of the Counterclaim and respectfully refers all questions of law to the Court.

7. Plaintiff denies the allegations in Paragraph 53 of the Counterclaim and respectfully refers all questions of law to the Court.

8. Plaintiff denies the allegations in Paragraph 54 of the Counterclaim.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

9. The Counterclaim fails to state a cause of action against Plaintiff.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

10. GMS has suffered no damage as a result of Plaintiff's alleged conduct.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

11. Any damages sustained by GMS were caused in whole or in part by GMS's own negligence and any recovery by GMS must be diminished in proportion to the part of its damages attributable to its own negligence or that of others for which it is responsible.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

12. The damages allegedly sustained by GMS were not caused by any negligence, carelessness, recklessness or culpable conduct on the part of Plaintiff, but were caused by reason of the negligence, carelessness, recklessness or culpable conduct of other parties and/or persons other than Plaintiff, over which Plaintiff was not obligated to and did not exercise supervision or control.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

13. GMS had a duty to use reasonable care to ensure that the construction activities at 292 West 4th Street, New York, New York (the "Project Premises") are conducted in a

reasonable and safe fashion so as to avoid foreseeable death, injury, property damage, and other economic harm to Plaintiff.

14. During the performance of the construction activities at the Project Premises, GMS had a duty to place vibration monitors at 294 West 4th Street, New York, New York (the "Adjacent Premises"), monitor the vibration levels at the Adjacent Premises, and ensure that the vibration levels at the Adjacent Premises did not exceed maximum vibration thresholds to ensure the safety of Plaintiff and the Adjacent Premises.

15. GMS was required to place the vibration monitors at the Adjacent Premises as close as practical to the construction activities at the Project Premises generating the vibrations. GMS was required to move the vibration monitors to adhere to this requirement.

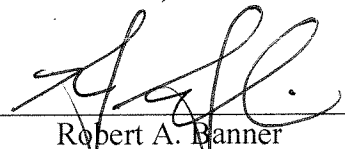
16. Exponent was not responsible for the vibration monitors at the Adjacent Premises, and it was not Exponent's responsibility to prevent the construction activities at the Project Premises from causing damage to the Adjacent Premises.

WHEREFORE, Plaintiff 736 West End Avenue Associates, LLC respectfully requests judgment dismissing the counterclaim by defendant Gilsanz Murray Steficek, LLP together with such other and further relief as this Court deems just and proper.

Dated: New York, New York
January 8, 2016

**INGRAM YUZEK GAINEN CARROLL
& BERTOLOTTI, LLP**

By: _____


Robert A. Banner
Sean T. Scuderi

Attorneys for Plaintiff
250 Park Avenue
New York, New York 10177
Telephone: (212) 907-9600

VERIFICATION

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

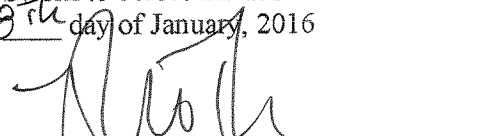
DANIEL KRAMER, being duly sworn, deposes and says:

I am the plaintiff in the within action. I have read the foregoing Plaintiff's Reply to Gilsanz Murray Steficek LLP's Counterclaim and know the contents thereof. The same are true to my knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.



DANIEL KRAMER

Sworn to before me this
8th day of January, 2016



Notary Public

JESSICA LYNN ROTHMAN
Notary Public, State of New York
No. 02RO6062578
Qualified in New York County
Commission Expires August 13, 2017