

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2

Index No.: 152054/2016

BOWERY 8385 LLC,

Plaintiff [Landlord],

AFFIDAVIT OF CHRISTINE
HOBSON

-against-

83-85 BOWERY TENANTS' ASSOCIATION, YAN LING LIANG, SHU QING WANG, WENXUN SHI, SHANG WU CHEN, BI SHENG ZHENG, SHIXIANG LIN, LAI YU SZE, MEI FANG WANG, AI HUI ZHANG, AI HUI GUO, XIU QIN GUO, MEI HUI ZHANG, ALICE RUOYING CHAN, DONG YI CHEN, RONG LIN, LAN YING CHEN, ENIYA CHEN, DE AI CHEN, HANG WANG, XIAOLI WANG, MEE TON CHENG, YING HONG, XING MING WANG, AN JING JIN, MEE CHUAN CHENG, YAN LEE HEE, QIU RONG WANG, LIN HAV, BING REN XUE, CAI JIN LIN, ZHEN LIN, YU ZHU YANG, MING SAI ZHANG, CHUNG FAI CHAN, TING HONG YANG, YIM LING CHAN, FENG PING DONG, CAI DIAN CHEN, PEN MING CHEN, ZI QIANG CHEN, JIN HUA HUANG, XIAN FENG HUANG, JI DUAN CHEN, DE YANG, YAQIN LI, QILAO CHEN and HAO LIN,

Defendants [Tenants-Occupants],

-and-

"JOHN DOE" and "JANE DOE",

Defendants [Undertenants].

State of New York)

ss.:

County of New York)

Christine Hobson, being duly sworn, deposes and says:

1. My business address is 159 W. 25 St., 12th Floor, New York, NY 10001.
2. I submit this affidavit in opposition to the landlord's request for an order:

a. Pursuant to CPLR §§ 602(a) and 602(b), removing and consolidating the Civil Court proceeding entitled *Bowery 8385 LLC v. Shu Qing Wang, et al*, L&T Index No. 60243/15 with the instant Supreme Court Action (I am told this request is moot as the landlord has withdrawn this Civil Court proceeding);

b. Pursuant to CPLR § 2201, staying and tolling the Civil Court proceedings entitled *83-85 Bowery Tenants' Association v. Bowery 8385, LLC et al*, HP Index No.: 1803/2015 and *83-85 Bowery Tenants' Association v. Bowery 8385, LLC et al*, HP Index No. 1804/2015, pending a final determination of the instant Supreme Court action;

c. Pursuant to CPLR §§ 6301, 6311 and 6313, granting plaintiff a preliminary injunction through the final hearing and determination of this action, removing and enjoining Defendants, their agents, assigns, employees, independent contractors or any other persons acting on their behalf or at their direction, collectively or individually, from using and/or occupying 83 Bowery, New York, NY and 85 Bowery, New York, NY and the premises contained therein;

d. Setting the matter down for an immediate hearing for a declaration that 83 Bowery, New York, NY and 85 Bowery, New York, NY are not subject to the New York City Rent Stabilization Law ("Rent Stabilization), the Rehabilitation Law ("Rent Control") or the Emergency Tenant Protection Act ("ETPA") and;

e. Granting plaintiff such other and further relief as this Court deems just proper and equitable.

3. I am a professional engineer, licensed in Connecticut and New York. I am qualified to work in the residential, commercial, renovation, rehabilitation, forensics and other design fields. Further I am proficient and familiar with Titles 27 and 28 of the NYC

Administrative Code among other design codes, and have material proficiency in steel, concrete, masonry and wood.

4. I have been a senior structural engineer/project manager at Rand Engineering and Architecture since July of 2012. In this position I do structural analysis and design for multiple projects ranging from limited structural repairs to structural deficiencies discovered during facade repair (Local Law 11 programs). I also perform project management and construction administration of Phase 2 structural and facade repair programs. Further, I generate proposals for structural and facade related programs.

5. In addition, I perform forensics of structural based deficiencies stemming from insurance claims, physical condition surveys and field observations of actively managed construction sites and perform special inspection services including steel, bolting, welding, concrete, masonry and wood inspections along with advising the shoring engineer/general contractor with Structural Safety/Structural Stability shoring and bracing requirements.

6. Prior to this employment I worked as a Forensics/Structural engineer for Pars Designs, LLC from October 2011 to July 2012. In this capacity I created reports describing in detail methods of failure and cause of loss and made structural repair recommendations suggesting means of reconstruction or remediation/abatement.

7. I worked as a structural engineer for Prime Solutions Inc. from January 2010 to July 2011 and was employed as a structural engineer for Moore Associates from February 2009 until July 2012. I have worked as a structural engineer since May of 2004.

8. I have reviewed the undated preliminary report of Anthony Somefun, the landlord's engineer, the undated structural stability report of Mr. Somefun, and the March 11, 2016 affidavit of Mr. Somefun submitted with the landlord's order to show cause.

9. In his affidavits and reports, Mr. Somefun states that it is his professional opinion that the buildings should be immediately evacuated in order to do necessary work to restore structural stability in the building. In addition, he claims that structural defects and deficiencies have caused the buildings to become dangerous, unsafe and detrimental to life, safety and the public welfare. Further, Mr. Somefun claims that if necessary work is not performed in the manner he recommends, the buildings are in danger of collapsing.

10. In order to assess the accuracy of these claims, I visited the buildings on January 22, 2016 and reviewed the Department of Buildings (“DOB”) and Department of Housing Preservation and Development (“HPD”) violations for the buildings as well as the partial vacate orders issued for the properties. The DOB violations for both properties are listed in **Exhibit A**, and a listing of the HPD violations for both properties is annexed in **Exhibit B**.

11. While it is true that wood beams and joists along the staircases of both buildings have deteriorated due to water infiltration and age related fatigue and that there are other conditions at the building which must be addressed, necessary repairs can be made with the tenants in place. The residential tenants do not have to be evacuated to remediate the violations and other conditions at the buildings.

12. 83 and 85 Bowery are both 5 stories with a cellar and a vault below grade (photo 1) and appear to have been constructed circa 1910, based on information obtained from New York City’s Open Accessible Space Information System (**Exhibit C**). Photos I took during my inspection are annexed as **Exhibit D**.

13. The first floor of both buildings houses commercial spaces, and the 3rd through 5th floors are designed for residential use. In 83 Bowery, the second floor is designated for commercial use, and in 85 Bowery, the second floor is designated for residential use.

14. Both building structures consist of wood roof and floor joists that bear directly atop the north and south exterior brick masonry bearing walls and interior wood load-bearing walls. Central solid wood beams run beneath the interior load-bearing walls, which span east to west and are supported by solid wood posts and the exterior east and west foundation walls, which appear to comprise a combination of stone rubble and brick masonry.

15. DOB issued partial vacate orders for the buildings as follows:

a. 83 Bowery - Complaint 1396321 - Inspection Date 5/19/15: "SRO ROOM CREATED AT 2ND FLOOR WITHOUT SECOND MEANS OF EGRESS AND LIGHT AND VENTILATION. Vacate Order issued for Room #208."

b. 85 Bowery - Complaint #1396324 - Inspection Date 5/19/15: "AT EXPOSURE #3 ONE STORY REAR EXTENSION IS DETERIORATED, STRUCTURAL DEFECTED AND UNSAFE FOR OCCUPANCY/WATER DAMAGE."

c. 85 Bowery Complaint #1399720- Inspection Date 7/1/15: "DUE TO UNSTABLE FLOOR SYSTEM AT 2ND FLOOR 1 FLOOR IS NOW DEEMED UNSAFE TO OCCUPY."

16. In conjunction with the above partial vacate orders, the following jobs were filed with DOB:

a. 83 Bowery:
"ALTERATION 2ND FLOOR COMMERCIAL UNIT - REVISED PARTITION LAYOUT AND BRACI [BRACING]'
Work on Floor(s): 001
File Date 7/30/15 Job Number #122485391
Job Status: Approved (no permits procured)
Applicant: Cetera, RA #0012227

b. 85 Bowery:
"EMERGENCY REPAIRS SHORE AND BRACE EXISTING 1 STORY EXTENSION REAR YARD, EXISTING PUBLIC STAIRS, AND FLOOR JOISTS AS REQUIRED'
Work on Floors(s)" C, 001,002,003,004,005
File Date: 7/1/15 Job Number #122268010
Job Status: (Signed off) (PAA Approved 10/13/15/)
Applicant: Cetera RA, #0012227

17. As-built and structural drawings were not available for review; however, the following drawing was obtained from DOB archives: October 23, 1979 Structural staircase bulkhead support plan by T.C. Chang, PE. See **Exhibit E**, attached.

18. I observed the east and west exterior walls, rear yards, street level sidewalk, cellars, lobbies, hallways, stairwells and the following:

- a. 83 Bowery:
1st floor boiler room
2nd floor office space
Apartment 3A
- b. 85 Bowery:
1st floor commercial space
Apartment 2A
Apartment 2B
Apartment 3A
Apartment 3B
Apartment 4A
Apartment 4B

19. My findings are set forth below.

20. **Exhibit F** provides a layout of apartment lines within each building and is based off the obtained 1979 bulkhead support plan.

83 Bowery

21. Staircase along ground floor entry is sloped by approximately 1 inch along the middle stringer. Observation of cellar areas beneath the staircase reveals deformations along the finishes and framing within the same location (photos 3 through 5). Concrete slab-on grade had no visible signs of deformation; therefore deflection is not due to differential settlement of the building (photo 6). Cellar appears to have adequate space to allow for installation of temporary shoring or permanent reinforcement work along the staircase as well as along the rear if required (photo 7).

22. Cracks and bulges can be seen along the wall finishes by the 2nd floor staircase set behind the ground floor staircase (photo 8).

23. Floors were sloped throughout the 2nd floor office space, both along the east-facing portion above the ground floor staircase, adjacent to the 2nd floor staircase and along the rear west portion by a sink room (photos 9 and 10). Sloped floors and deteriorated finishes were present along the sink room; the area is in the typical location of public latrines as typically installed along the back of the buildings (photos 11 and 12).

24. 3rd floor staircase was free of major slopes and/or deflections (photo 13).

25. In Apartment 3A, wall finishes along the entryway door were cracked and floors sloped toward the staircase; similarly, the floor along the bathroom was sloped towards the staircase, and a crack through the doorway threshold was noted (photos 14 through 16).

26. Overall conditions along 83 Bowery appeared stable, and defects were limited to the 3rd floor down to the 1st floor. The 2nd floor office was vacant at the time of the evaluation; this vacancy would facilitate any installation of temporary and/or permanent reinforcing of affected floor joists and staircase framing.

85 Bowery

27. The staircase along ground floor entry is sloped by 2 inches along the middle stringer. There are cracks throughout the tile finish of the entryway floor (photos 17 through 20). The mud slab surrounding the middle stringer was deformed downward by 1 inch (photo 21).

28. Observation of cellar areas beneath the staircase revealed installation of temporary shoring and bracing along with the existing wood beam that supports the middle stringer, which appeared to sag along the middle (photos 22 through 24),

29. Temporary shoring was installed throughout the cellar and along the ground floor staircase, in addition to areas beneath the rear portion of the 1st floor (photos 25 and 26).

30. Existing lally columns were reportedly installed underneath the existing central wood girder and posts, previous to the newer wood shoring (photos 26 and 27). The existing 8-inch wide by 12-inch deep central wood beam is supported by 6-inch square wood posts (photo 28).

31. The concrete slab-on-grade had no visible sign of deformation; therefore deflection is not due to differential settlement of the building.

32. Temporary shoring and bracing were installed throughout the 1st floor commercial space (photo 29).

33. The drop ceiling panels were ajar in numerous locations, and there was an active leak in the space (photos 30 and 31).

34. Exposed 2nd floor joists appeared heavily stained and deteriorated from water damage (photos 32 and 33).

35. Reportedly, destructive probes by Owner representatives were opened and sealed along the floors and ceilings throughout 85 Bowery to facilitate installation of temporary shoring and bracing and to provide information for the report presented by Anthony Somefun, PE (photos 34 and 35).

36. Floors and ceilings were sloped along both the A and B line apartments and appeared to coincide with both sets of staircase framing towards the north of the building. In addition, bathroom floors all appeared to have moderate to severe levels of water deterioration along the floors and floor finishes, with signs of openings along the perimeter and into the

structures below; ceilings were stained and bulging from a combination of leaks and sagging staircase framing (photos 36 through 52).

37. The exterior walls of the rear addition appeared intact, with minimal cracks and shifting (photo 55); temporary shoring posts installed beneath the exposed wood floor joists measure 2 inches wide by 12 inches deep, along with a 12 inch deep exterior steel beam (photo 56).

Conclusions:

38. Based on the following, wood beams and joists along the staircases within both buildings have deteriorated due to water infiltration and age-related fatigue:

39. The main wood beams along both the ground floor staircases and the upper staircases leading to the 2nd through 5th floors in both buildings provides support to the middle staircase stringers. These wood beams are sagging downward, resulting in an overall deflection of both staircase structures.

40. Beams around the staircase openings provide support to the adjoining floor joists and as a result, have caused the floors to slope toward the middle staircase stringers, particularly along the A and B lines in 85 Bowery, and along the A and C lines in 83 Bowery.

41. Ground floors, staircases and lobbies experience heavy pedestrian use in addition to heavy exposure to the elements and subsequent water infiltration.

42. Apartments along both the A and B lines in 85 Bowery had evidence of water intrusion as indicated by bubbled and soft floors along with ceiling finish stains, deteriorated/discolored bathroom tile and mortar, along with an active leak witnessed in the commercial space of 85 Bowery.

43. Permanent repairs would require reinforcing the middle staircase stringers with posts on either end or creating load-bearing walls underneath the ground level staircases; the beams along the 2nd floor staircases would require reinforcement from the ceiling below.

44. **Work could be performed within the hallways with protective barriers installed, so that tenants can remain in their apartments,** albeit with limited use of the hallways during construction. Posted times of construction would need to be coordinated with tenants on each floor, in order to keep the staircases and hallways free for use to the greatest extent possible.

45. **Pipe scaffolding can also be erected above the ground floor staircases so work can be performed above and along the 2nd floor support beams while the staircases remain open.**

46. Floor joists along the rear portion of the 2nd floor of 83 Bowery have similarly deteriorated conditions due to water infiltration and age; the damage may have largely resulted from the current location of a work sink and the original location of a public latrine. 5 story tenements constructed during this time typically had public latrines placed along the rear of each floor.

47. Floor joists along these areas, even after renovations, will experience more sagging and deterioration due to that initial period of near constant water exposure and public use.

48. **Reinforcement of these joists can be performed through the ceiling from the 1st floor space below, or can be completed through the floor while the space is vacant.**

49. The rear addition to 85 Bowery was built with wood floor joists and steel beams that did not include any exterior grade enclosures along the exposed base. The underside of the

floor joists and beams were fully exposed to the elements and subsequent moisture, accelerating deterioration.

50. **Temporary shoring installed beneath the 1st and 2nd floors of the main building and underneath the rear addition as part of the July 2015 DOB job filings appear to have stabilized the structures; more permanent repairs can commence in conjunction with rescindment of the partial vacate order.**

51. **Based on RAND's observations of the installed temporary shoring with the 1st floor store and cellar of 85 Bowery, more permanent repairs can commence along the 1st and 2nd floors without disrupting tenants living above.**

52. Reinforcement of the 2nd floor joists can be performed along the ceiling of the 1st floor commercial space, as **there is adequate space for work to be performed without disturbing tenants above.**

53. Work areas could be cordoned off along the commercial space with protective barriers that allow reinforcement work to be performed while safety prohibiting access to commercial space tenants throughout construction.

Recommendations:

54. The following measures are recommended to address the deficiencies identified in this Report:

55. Engage a Professional Structural Engineer licensed in the State of New York to develop drawings and specifications to repair/reconstruct staircase and floor framing along both 83 and 85 Bowery. This work will require filing of drawings with DOB. Additionally due to the age of the buildings, asbestos sampling will need to be conducted and the results filed with the DOB. Corrective measure will likely include the following:

- a. Installation and coordination of protective barriers along designated construction areas;
- b. Installation of temporary shoring and bracing to facilitate stringer reinforcement;
- c. Installation of stringer posts and/or bearing walls;
- d. Reinforcement of staircase stringers, treads and risers;
- e. Reinforcement of floor joists via ceilings along affected apartments/commercial space;
- f. Reinforcement of floor joists and installation of exterior finishes along the rear addition of 85 Bowery;
- g. If asbestos sampling results are positive, performance of an asbestos abatement program. Coordination will need to be made with the affected tenants to access the subject areas.

The Somefun assessment of the scope of the problems and how to remediate them is incorrect

56. Mr. Somefun's assessments of the buildings and the conclusions that he reaches are suspect and unreliable for several reasons.

57. First, both his "preliminary report" and his "structural stability report" are undated and are both unable to be pinpointed in conjunction with known repairs at the building which makes them suspect and/or circumstantial. As part of our profession's ethics, it is standard operating procedure to date engineering reports as they relate to conditions at a building at a specific point in time. While Mr. Somefun's affidavit indicates that his first inspection of the building took place "on or about June 19, 2015" it does not state the date he returned to the

premises. As the date of Mr. Somefun's second inspection is not indicated, it is impossible to know whether conditions have changed since this unknown date.

58. Second, DOB has inspected the buildings on numerous occasions and has not issued full vacate orders on the buildings. If conditions were as dire as Mr. Somefun suggests, it is highly likely that DOB would have issued full vacate orders for the buildings.

59. Third, the initial inspection was focused on 85 Bowery. Regarding 83 Bowery, Mr. Somefun states that:

Incidentally, 83 Bowery is probably in as bad shape as 85 Bowery. Following the violation issued by HPD to remedy the bathroom floor problem; a quick inspection of the space was done on Friday June 19, 2015. The bathroom floor has dropped below normal level. Again, this indication of problems with the floor joints. The stair in the building is leaning sideways just as in the original building under focus.

60. A quick inspection of one apartment (which is not specified) and building stairs is a slim reed upon which to recommend immediate vacatur of the building. A building should not be vacated based on the supposition that it is "probably in as bad shape as" another building.

61. Further, while the landlord has filed plans to shore up 83 Bowery, it has not obtained permits for this work or performed any work to shore up this building. If the building is in as dire straits as Mr. Somefun suggests, he should have directed the landlord to immediately commence work shoring up the building.

62. Fourth, Mr. Somefun's assessment that the existing framing system needs to be removed and replaced with a new one is wrong as is his conclusion that shoring up the stairs by shoring up its framing will not be stable. It is not necessary to put posts within the public halls from the top of the building to its foundation or impede egress from the building and evacuate all the tenants as Mr. Somefun attests. The stairs can be shored up with the tenants in place, as explained above.

63. In sum, the buildings' deficiencies can be addressed without requiring the tenants to vacate, and for this reason the landlord's demand that the tenants evacuate the building should be denied.

WHEREFORE, it is respectfully requested that the Court deny the landlord's request for relief in total and that the Court grant such other and further relief as it deems just.

Christine Hobson, PE



Sworn to before me this
18 day of April, 2016

Paul Grissett
Notary Public *[Signature]*

PAUL GRISSETT
Notary Public, State of New York
No. 01GR6073650
Qualified in New York County
Commission Expires April 29, 2018