

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

CHILDREN’S MAGICAL GARDEN, INC.,
KATHARINE GRESLEY FRICKE a/k/a KATE
TEMPLE-WEST, DAVID CURRENCE, TIFFANY DE
BRUYN, MORE GARDENS! FUND, and ARESH
JAVADI,

Plaintiffs,

- against -

DAVID MAROM, individually, and DAVID MAROM
as President of THE HORIZON GROUP

Defendants.

Index No. _____

Date Purchased:

Plaintiff designates New York
County as the place of trial. The
basis of venue is CPLR § 503.

SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on Plaintiffs’ attorneys within 20 days after service of the summons, exclusive of the day of service (or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
November 22, 2021

Respectfully submitted,

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/s/ Benjamin F. Burry

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COMPLAINT

Plaintiffs bring this civil rights action against real estate developer David Marom and his development company, The Horizon Group (together “Marom” or “Defendants”) for abusing the judicial process when he filed baseless defamation claims (the “Marom Defamation Claims”) to intimidate and silence community members speaking out against Marom’s grinch-like plan to bulldoze the Children’s Magical Garden.

The Marom Defamation Claims were rightfully dismissed by New York Supreme Court, pursuant to New York’s anti-SLAPP statute (New York Civil Rights Law §70-a). Through this lawsuit, Plaintiffs seek to recover the attorney’s fees, costs, compensatory and punitive damages that they are entitled to under New York Civil Rights Law, and to stop David Marom’s threats and intimidation of Lower East Side residents who are simply supporting their beloved and historic community garden.

SUMMARY OF THE ACTION

1. The Children’s Magical Garden, Inc. (the “Garden”) is a beloved community garden that has served the Lower East Side for nearly forty years, celebrated by the New York

City Council as a “neighborhood treasure” that has played a “vital role in transforming the Lower East Side.” But since 2013, vengeful real estate developer David Marom has sought to seize a piece of the Garden and bulldoze it so that he can build a seven-story luxury residence for himself. This caused an uproar in the community and efforts to destroy the Garden have been condemned by City leaders—including then-Speaker Christine Quinn, Councilmember Margaret Chin, Borough President Scott Stringer, State Assemblymember Harvey Epstein, Manhattan Community Board No. 3, community groups, the principals of all four adjacent schools, local businesses, and supporters across the City.

2. Litigation over ownership to the disputed portion of the Garden (Lot 19) has been ongoing since 2014 (the “*Norfolk Action*”) and, as Marom’s legal case has faltered, he has used his wealth and resources to fund increasingly desperate measures to bully, harass, and intimidate the Garden and its supporters.

3. As part of his ruthless campaign, in October 2019, Marom filed frivolous defamation claims against the Plaintiffs—the Garden, its Director Kate Temple-West, its Treasurer David Currence, and community members and organizations—for simply repeating the claim Lower East Side residents have made for decades: this land belongs to the Garden. The baselessness of the Marom Defamation Claims was truly shocking. For example, he sought more than \$20 million in damages from Plaintiff Tiffany de Bruyn, an early childhood educator and PTA President, for making the following innocuous statement about her young daughter: “I see the joy she has when she is playing in nature and so to see all of this just destructed, it hurts my soul a little bit.”

4. New York Supreme Court Commercial Division (Hon. Andrea Masley) rightfully dismissed Marom’s claims and held that he filed them in violation of the “anti-SLAPP”

provisions of New York Civil Rights Law.¹ New York’s anti-SLAPP law was enacted for cases just like this one, where a well-heeled real estate developer files prohibitively expensive, nerve-racking, and time-consuming lawsuits to harass and intimidate community members exercising their constitutional rights to speak out on issues of public importance. That statute *requires* that “costs and attorney’s fees shall be recovered” and provides for compensatory and punitive damages against Marom as well.

5. Marom has long sought to trample and destroy this important educational space for the diverse, multi-racial Lower East Side community. In deeply troubling emails that he tried to protect as “Confidential,” David Marom and his family disparage the Lower East Side as an “angry and resentful community” and complain that he is not given the respect he is due as “a wealthy white man.” Marom’s abhorrent and intolerant views have no place in this community, which stands against his senseless attacks on a vibrant and diverse community garden that has provided mentorship to thousands of Lower East Side children.

6. For the better part of a decade, Plaintiffs have suffered abuse and harassment. Marom has sent workers to the property to destroy trees and dump construction waste. Marom built encroachments on the Garden’s neighboring lots—even though he concedes he has no right to do so—and launched raids onto the Garden property to destroy plants and Garden supplies. Marom’s workers unloaded dozens of containers filled with rotting garbage onto this historic community garden.

7. Marom has refused multiple orders from New York City Parks Department to remove his “unlawful” fencing, pay for his destruction, and stop his “criminal trespass” on the property. In one instance, David Marom personally came to the community garden where, in

¹ *Children’s Magical Garden, Inc. v. Marom*, Index No. 654960/2019, NYSCEF No. 65 (Nov. 2, 2020).

front of parents and children, he insulted Garden members and kicked and pushed over benches. Marom told stunned Garden members that he would “turn over [a] port-a-potty into Children’s Magical Garden,” dumping waste and excrement where children play during afterschool programs. In a separate incident, David Marom sent an employee who is his own daughter, Jillian Forman (*née* Marom), to storm into the community garden during a busy afternoon, where Ms. Forman went on a rampage shouting and threatening the Garden’s director.

8. None of these actions by Defendants serve any legitimate business purpose. They are meant to interfere with Garden’s mission of providing a safe place for children to play and learn about nature, and to intimidate and silence the community that is speaking out against Marom’s grinch-like plan to bulldoze the Garden.

9. There was no basis for Marom’s \$20 million defamation claims against Plaintiffs, who are neighborhood residents of limited means. And Marom knew it. When forced to testify about the Marom Defamation Claims, Marom conceded that his financial partners were unconcerned with Plaintiffs’ supposedly defamatory statements, revealing that “[t]hey were happy and they gave me \$27 million” and “[w]e laugh[ed] about it.” Marom and his wealthy business partners “laugh[ed]” at his frivolous lawsuits that threatened to bankrupt Plaintiffs and their families. Meanwhile, Plaintiffs could not afford attorneys to go against Marom’s high-priced lawyers at Herrick Feinstein LLP. Instead, they found pro bono counsel, who spent significant time and resources over more than a year of contentious litigation, to defeat Marom’s claims.

10. New York Supreme Court dismissed Marom’s defamation claims against Plaintiffs in their entirety for many deficiencies, ruling that Marom failed to meet the pleading requirements for defamation under New York law; Marom “is a limited purpose public figure”

who was “actually very clearly not alleging actual malice”; Plaintiffs’ statements are protected by “litigation privilege” on account of the ongoing *Norfolk Action*; mere “republication” of a news broadcast is not defamatory; and Marom’s claims violated New York’s “anti-SLAPP” statute, codified as Section 70-a of the New York Civil Rights Law. As to Ms. de Bruyn’s innocuous statement about her young daughter, the Court went on to state that “the only thing that I see in here is her talking about her soul. And that is absolutely not [] actionable.”

11. The “anti-SLAPP” ruling against Marom is law of the case, and because Marom has refused to pay the “attorney’s fees and costs” he owes, in addition to compensatory and punitive damages, Marom gave Plaintiffs no choice but to institute this action against him. Plaintiffs hope that holding Marom responsible for his civil rights violations will finally put a stop to his abuse and harassment once and for all.

THE PARTIES

12. Plaintiff Children’s Magical Garden, Inc. is a not-for-profit corporation organized under the laws of the State of Delaware, with its principal place of business at 157 Norfolk Street, New York, New York 10002. Children’s Magical Garden operates a community garden called the “Children’s Magical Garden” at the corner of Norfolk Street and Stanton Street in Manhattan.

13. Plaintiff Katharine Gresley Fricke a/k/a Kate Temple-West is an individual residing in the State of New York at 79 Clinton Street #17, New York, New York 10002. Ms. Temple-West is the President and Director of the Garden.

14. Plaintiff David Currence is an individual residing in the State of New York at 9 Paradise Road, Bronxville, New York 10708. Mr. Currence is the Treasurer of the Garden.

15. Plaintiff Tiffany de Bruyn is an individual residing in the State of New York at the address 128 Rivington Street #5R, New York, New York 10002. Ms. de Bruyn lives less than a block from the Garden and since the spring 2016 has regularly taken her daughter there.

16. Plaintiff More Gardens! Fund is a not-for-profit corporation organized under the laws of the State of New York, with its principal place of business in New York County.

17. Plaintiff Aresh Javadi is an individual residing in the State of New York at the address 79 Clinton Street #17, New York, New York 10002. Mr. Javadi is the Executive Director of Plaintiff More Gardens! Fund.

18. Defendant David Marom is a resident of the State of New York who lives at 700 Park Avenue, New York, New York 10021.

19. Defendant The Horizon Group is a New York unincorporated association with its principal place of business located at 53 Broadway, Brooklyn, New York 11249. “The Horizon Group” serves as an umbrella for entities through which David Marom does business as a real estate developer, including “Britt Realty LLC” and “157, LLC.” The Horizon Group maintains a website at the following link, which is incorporated by reference: www.horizonus.com. David Marom has held, at all relevant times, the chief executive position of The Horizon Group, and exercised senior managerial and decision-making authority for The Horizon Group. David Marom is the sole owner of the Horizon Group and the refers to himself as “Chairman.”

JURISDICTION AND VENUE

20. This Court has jurisdiction over this action pursuant to CPLR 301, *et seq.* because, among other reasons, Plaintiffs reside and/or transact business in the State of New York, Defendants either reside in or transact business in the State of New York, and Defendants

commenced and continued action involving public petition and participation against Plaintiffs in the State of New York.

21. Venue is proper in this Court pursuant to CPLR 503 because, among other reasons, Plaintiffs reside or have their principal place of business in New York County and/or a substantial part of the events giving rise to Plaintiffs' claim occurred in New York County.

FACTUAL BACKGROUND

The Public Backlash Against Attempts to Destroy or Interfere with The Garden

22. The Children's Magical Garden consists of three lots—Lots 16, 18, and 19. It was founded nearly 40 years ago by community activists in response to the poverty, crime, and drug epidemic that was plaguing the Lower East Side of Manhattan. At that time, used needles, old tires, discarded metal, and piles of garbage littered the premises.

23. Outraged that such abject conditions could exist across the street from an elementary school, P.S. 20, the Garden's members set to work, building, and cultivating what has today become a neighborhood icon. As recognized by Manhattan Community Board No. 3, the Garden is "a beloved community garden that has served the Lower East Side" since "1982" when "committed local community residents, after the burning down of the previously existing housing, cleared the rubble, garbage and chased the drug dealers off the block." Recently, the New York State Assemblymember for the district declared "[t]he Children's Magical Garden ... has served not only as a safe haven for many children and low-income families but has also provided consistent and quality environmental education for Lower East Side residents."

24. Since 2013, however, Defendants have sought to bulldoze the site to build a private residential building on Lot 19. Defendants' construction plans would require destroying and forever displacing the Garden from the property. The efforts to destroy or remove the

Children’s Magical Garden and build on its land have triggered significant public backlash. Prominent New York City leaders have weighed in on this public issue (all in support of the Garden), including Speaker Christine Quinn, Councilmember Margaret Chin, Borough President Scott Stringer, State Assemblymember Harvey Epstein, Manhattan, and others. Principals, teachers, and administrators from local schools have written letters and advocated for the Garden. Manhattan Community Board No. 3 took up the matter as well and issued a resolution to “preserve the whole community garden at its present location.” Community members have protested its development and thousands of residents have signed petitions in support of the Garden.

25. This public controversy over the Garden has received significant coverage in the local press, including by NBC News, New York Post, The Village Voice, Curbed, The Villager, Gothamist, amNY, Spectrum News NY1, The Bowery Boogie, The Lo-Down, Patch, and others. It is also the subject of public discussion on social media, including Facebook, Instagram, YouTube, and Twitter, where even public officials, like Councilmember Chin, have posted in support of the Garden.

26. Public sentiment and media coverage have been very critical of Marom, his interference with Garden operations, and his attempts to develop Lot 19. This has been a point of concern for Marom, who has tried to stifle the backlash against him.

The Marom Defamation Claims

27. On October 21, 2019, Defendants brought the Marom Defamation Claims against Plaintiffs. *See* NYSCEF No. 8, Index No. 654960/2019 (Supreme Court, New York County).

28. Marom alleged defamation on the grounds that social media and local news coverage reporting on his attacks against the Garden showed him for what he is—a bully who

will stop at nothing to silence residents who are standing up for their community garden.

Marom's claims were meritless and filed for the purpose of harassing Plaintiffs and interfering with their constitutional rights to speak out and advocate for their community on an issue of public importance.

29. Marom had long planned to file such claims against Plaintiffs and coordinated with his business contacts in doing so. For example, more than six weeks earlier, David Marom's business partner Sam Yaari, wrote to him asking "When are [the Herrick Feinstein attorneys] going to file a defamation countersue motion?"

30. Tellingly, Marom never filed any lawsuit against any of the organizations that published the statements he claimed were defamatory—Spectrum News NY1, The Bowery Boogie, Sara D. Roosevelt Coalition, The Villager, and Patch Media. Nor did Marom ask them to retract or correct their content. Instead, Marom's claims were targeted solely at Plaintiffs, who are the Garden, its director, treasurer, members, and supporters.

31. Marom even brought a lawsuit against an unidentified "Jane Doe" who he alleged was member of Plaintiff Children's Magical Garden. The Marom Defamation Claims concede Jane Doe said nothing. Yet Marom alleged that "Jane Doe" inflicted at least \$20 million in damages against him simply because footage of the Garden on a local news report happened to show her cleaning up the property.

32. Plaintiffs are of limited means and Marom knew he could never recover the multi-million-dollar judgment he sought from Plaintiffs.

33. Moreover, Marom suffered no pecuniary loss or economic harm from the supposed defamation.

34. In the Marom Defamation Claims, Defendants alleged that “Marom has been contacted by individuals” from “multiple business and charitable organizations in New York and in Israel” who “express[ed] concern about the defamatory statements made by [Plaintiffs], causing harm to Marom’s credibility, standing and business reputation.” This was false.

35. When Marom was required, under penalty of perjury, to “identify all Persons” who supposedly “‘contacted’ Defendants ‘expressing concern about’ reports or statements by or concerning the Garden,” Marom responded to this interrogatory by conceding that he knew of none. In fact, according to Marom’s sworn testimony, when he spoke with his financial partners, “They were happy and they gave me \$27 million” and “[w]e laugh[ed] about it.”

36. The Court dismissed the Marom Defamation Claims as legally deficient on multiple grounds.

37. The Marom Defamation Claims failed to meet the pleading requirements for defamation under New York law.

38. The Marom Defamation Claims were deficient because Marom “is a limited purpose public figure” and he “is actually very clearly not alleging actual malice.”

39. The Marom Defamation Claims were deficient because they challenged statements by Plaintiffs protected by “litigation privilege” on account of the ongoing *Norfolk Action*.

40. The Marom Defamation Claims were deficient because Plaintiffs posting a Spectrum News NY1 news report about the Garden on social media was a mere “republication” of a news broadcast, and there is no allegation that Plaintiffs “changed it in any way.”

41. The Marom Defamation Claims were deficient under New York’s anti-SLAPP statute, codified as Section 70-a of the New York Civil Rights Law.

42. Even after the Court dismissed his baseless claims, Marom continued the Marom Defamation Claims by appealing the ruling. On November 10, 2020, Marom filed notice of appeal declaring that Marom “hereby appeal[s] ... each and every aspect of the Decision and Order” dismissing his claims. On November 18, 2020, Marom filed his notice of appeal with the Appellate Division, First Department, where it was assigned Case No. 2020-04530. On November 24, 2020, Marom served Plaintiffs with his appellate notices, and filed an affirmation of service in the First Department.

43. Marom continued the Marom Defamation Claims until May 10, 2021, when his appeal was finally deemed dismissed, pursuant to 22 N.Y.C.R.R. 1250.10(a), for Marom’s failure to perfect the appeal within six months of the date of his notice of appeal.

44. Plaintiffs’ counsel reached out to Marom, through his counsel in an effort to resolve this matter without instituting this civil rights lawsuit against him. Plaintiffs invited Marom to remedy this wrong and issue an apology to the community he has hurt. But Marom ignored these overtures and refused to engage with Plaintiffs. Plaintiffs had no choice but to file this lawsuit to obtain a formal judgment against him.

FIRST CAUSE OF ACTION
(VIOLATION OF CIVIL RIGHTS LAW 70-A FOR UNLAWFUL ACTION AGAINST INVOLVING PUBLIC PETITION AND PARTICIPATION)

45. Plaintiffs repeat and reallege paragraphs 1 through 44 of this Complaint as if fully set forth herein.

46. Plaintiffs were each named as a defendant in the Marom Defamation Claims.

47. The Marom Defamation Claims were an “action involving public petition and participation,” within the meaning of New York Civil Rights Law. Marom’s defamation claims were based upon Plaintiffs’ alleged public communications, including to journalists, on public

websites, and on social media platforms, in connection with destruction of a historic and beloved community garden, public opposition to development of the community garden site, the ongoing legal dispute over ownership of a portion of the community garden property, and otherwise in furtherance of Plaintiffs' constitutional rights of free speech and petition, and in in connection with issues of public interest relating to the Garden.

48. Marom commenced or continued the Marom Defamation Claims without a substantial basis in fact and law and the Marom Defamation Claims could not be supported by a substantial argument for the extension, modification, or reversal of existing law. Further, New York Supreme Court's dismissal of the Marom Defamation Claims was an adjudication pursuant to CPLR 3211(g), within the meaning of Section 70-a of the New York Civil Rights Law.

49. Marom commenced or continued the Marom Defamation Claims for the purpose of harassing, intimidating, punishing, or otherwise maliciously inhibiting the free exercise of speech, petition, or association rights.

50. Marom commenced or continued the Marom Defamation Claims for the sole purpose of harassing, intimidating, punishing, or otherwise maliciously inhibiting the right of free exercise of speech, petition, or association rights.

51. Defendants' actions have damaged Plaintiffs by forcing them to incur the burden and time of defending against the Marom Defamation Claims for more than a year and obtaining dismissal of Marom's baseless claims. In contrast to Marom, who has been repeatedly sued in state and federal court, for everything from fraud to sexual harassment, Plaintiffs had little knowledge about defending against a defamation lawsuit. The Marom Defamation Claims forced Plaintiffs to spend substantial time and resources to understand and participate in their defense and secure dismissal of the claims against them.

52. In addition, the foregoing conduct of Defendants is the result of willful and malicious or intentional conduct or conduct that manifests a knowing and reckless indifference toward, and disregard of, the rights of the Plaintiffs.

53. By reason of the foregoing, Plaintiffs are entitled to an award of costs and attorney's fees, compensatory damages, and punitive damages against Defendants in connection with the Marom Defamation Claims, and all costs, expenses, and attorney's fees incurred in these proceedings.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

54. Entry of judgment in favor of Plaintiffs against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, including:

- (a) Awarding attorney's fees and costs in connection with the Marom Defamation Claims;
- (b) Awarding compensatory damages;
- (c) Awarding punitive damages;
- (d) Awarding costs and expenses incurred in connection with this action, including reasonable attorneys' fees to the extent available under applicable law;
- (e) Awarding prejudgment and post-judgment interest at the maximum legal rate; and
- (f) Granting such other and further relief as the Court may deem just and proper.

55. Plaintiffs reserve the right to seek all remedies available at law and equity.

JURY TRIAL DEMAND

56. Plaintiffs demand trial by jury of all issues triable of right to a jury.

Dated: New York, New York
November 22, 2021

Respectfully submitted,

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