

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

X

Andejo Corporation, dba Seaport Watch Company,  
Fulton Market Retail Fish Inc., dba Simply Seafood,  
Apple Mac & R Corp. dba Macmenamins Pub, Roslu  
Corp. dba Bergins Beer & Wine, Lakous Inc, dba Pizza  
Index No: 655410/2016

On The Pier, Ainolahpek, Inc. dba Athenian Express,  
Seaport Novelty Gifts & News, Ltd., dba Seaport News,  
Ry-Allie Candy Corp dba Nutcracker Sweets, Waxology,  
Inc. dba Waxology, Hot Dogs Del Mar, Inc. dba Nathan's  
Famous, Andrew Huestis dba The New York Shell Shop,  
View of the World Products, Inc. t/a A View Of The World  
and Products, Ltd. Db a View of the World,

Plaintiffs

**AFFIDAVIT**

-against-

South Street Seaport Limited Partnership, Seaport  
Marketplace, LLC., DLA Piper LLP (US), DLA Piper NY LLP,  
Rosenberg Feldman Smith, LLP., Edward Shapiro, Booth  
Street Food Corp. dba Yorkville Packing House, Salad  
Mania Inc. dba Salad Mania, The Howard Hughes  
Corporation, General Growth Properties and Stephen  
M. Rosenberg,

Defendants.

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Gerard Nally, being duly sworn, deposes and states under  
penalty of perjury:

1. At all pertinent times, I was the owner of Andejo

2. I make this affidavit in opposition to the motions by the above-captioned defendants, brought pursuant to CPLR 3211, to dismiss plaintiffs' amended complaint. This as a supplement to my prior affidavit dated February 21, 2017. I understand my prior affidavit is being re-submitted in opposition to the within motion as well.

3. I understand that the defendants are now claiming, in support of their motions to dismiss, that the tenants Joint Claims Agreement ("JCA") contained a "carve out" clause in ¶6 that permitted a tenant to settle rent claims with the landlord without the consent of the tenants group and without owing the value of the settlement to the tenants as a group. On this basis, I understand the defendants are now claiming that the defendants Booth Street, Yorkville and Mr. Shapiro were entitled to settle their rent claims with the landlord in 2013 without the consent of the tenants, as they did, and that they do not owe the value of the settlement to the group, as plaintiffs allege in the within action.

4. That's not true. At no time prior to the within motions to dismiss by the defendants did anyone claim that the JCA permitted a tenant to settle rent claims without the consent of the group, or that the value of such settlement would not belong to the group. Rather, it' was always my understanding of the JCA, as well as the understanding of the other group tenants with whom I've been in contact, that no tenant was allowed to settle any claims, including ret claims, with the landlord without the consent of the group, and that, if one did, the value of any settlement belonged to the group as a whole. This is

Mr. Shapiro when we were asked to sign it. No one had claimed otherwise.

5. Neither Eddie Shapiro, nor our attorneys had ever advised me, or the other tenants, as far as I'm aware, prior to the signing of the JKCA, that their interpretation of the JCA was that it permitted a tenant to settle rent claims without the approval of the group or without owing the value of any such settlement to the group. Had they done so before I signed the JCA, I wouldn't have signed it, or entered into group litigation with Mr. Shapiro or his businesses, as I did. I don't believe the other tenants would have either.

6. The Court should also be aware that the defendant attorneys conducted one on one meetings with individual tenants' early in the litigation process to determine each tenants' particular situation. Hence, the attorneys were aware of whether individual tenants, like Mr. Shapiro, were in arrears in rent to the landlord at the time the JCA was signed. However, the attorneys did not share that information concerning other tenants with myself, or other members of the group, as far as I'm aware. Because of this, I, and other tenants were unaware when we were asked to sign the JCA by Mr. Shapiro and the attorneys, that Mr. Shapiro's businesses had large outstanding rental obligations owed to the landlord or that he was personally liable on those obligations. Had I been so advised, I would not have signed the JCA or entered into a group litigation that included Mr. Shapiro or his businesses.

7. I also understand that the defendants are claiming that the tenants were aware in 2012 that Eddie Shapiro, on behalf of himself and his businesses, had

landlord in 2005 and in 2008. I can advise the Court I was not aware of those settlements, and I don't believe that the other group members were either.

8. In 2016, I assisted John O'Kelly, the tenants' attorney in the underlying *Andejo* case

(603707/2004), in disputing the landlord's claim for an award of attorney fees in its favor against the tenants as a result of that matter. Pursuant to the claim for attorney fees, the landlord's attorneys produced their billing records. Contained in those billing records were entries pertaining to the 2005 and 2007-2008 settlements with the Shapiro defendants. That is how I, and the rest of the tenants, became aware of those settlements. We were unaware of them previously. They had not been disclosed to us by either Mr. Shapiro or the RFS attorneys.

9. In 2005, the RFS defendants were urging the tenants to agree to the landlord's request to consolidate all of the tenants' Civil Court actions into the main, *Andejo* case, in Supreme Court. The RFS attorneys advised it would be to our benefit to do so. Based on their representations, I, and the other tenants, agreed to consent to the consolidation. At no time did either the RFS attorneys, or Mr. Shapiro, our liaison to the attorneys, advise us that they were in the process of settling Mr. Shapiro's beer cart case with the landlord (the 2005 settlement) at the same time they were urging us to agree to the landlord's consolidation request. We were never informed of this conflict of interest on the part of our attorneys and Mr. Shapiro. Had I known of it at the time, I would not have consented to consolidation. Nor do I believe the other tenants would have either. The

Andejo litigation by years, and greatly increased litigation costs.

Moreover, it turned the Andejo

litigation into a rent case, which would not have happened but for the consolidation. It seems our attorneys, together with Mr. Shapiro, our liaison to them, fraudulently induced us to agree to the consolidation for their own benefit.

*Gerard Nally*

Gerard Nally

Sworn to before me this 5<sup>th</sup> day of May, 2017

*[Signature]*

Notary Public

TERRENCE ANDRE BRYANT HARPER  
Notary Public, State of New York  
No. 018 A6225736  
Qualified in Westchester County  
Commission Expires July 26, 2018