

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

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KAREN GEORGE, : Index No.

Plaintiff, : Date Index No. Purchased:

- against - : Basis of Venue is Plaintiff's
Place of Business

BOARD OF DIRECTORS OF [redacted]
[redacted] INC., a Cooperative Corporation,
and MIDBORO MANAGEMENT, INC., :

SUMMONS

Defendants. :

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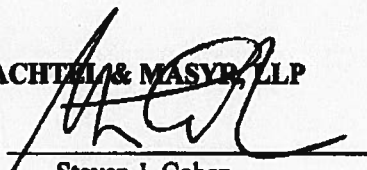
To:

MidBoro Management, Inc.
148 West 37th Street, # 8
New York, New York 10018-6978

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the 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 appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue designated is Plaintiff's residence, [redacted] New York, New York 10023.

Dated: New York, New York
October 13, 2009

WACHTEL & MASYS, LLP
By: 
Steven J. Cohen
110 East 59th Street
New York, New York 10022

*Attorneys for Plaintiff
Karen George*

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

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KAREN GEORGE, :

Index No.

Plaintiff, :

- against - :

VERIFIED COMPLAINT

BOARD OF DIRECTORS OF ONE WEST 64th :
STREET, INC., a Cooperative Corporation, :
and MIDBORO MANAGEMENT, INC., :

Defendants. :

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Plaintiff Karen George, by her attorneys, Wachtel & Masyr, LLP, as and for her

Complaint, respectfully alleges:

SUMMARY OF THE ACTION

1. Plaintiff Karen George is the owner and occupant of the cooperative apartment 8A in the building known as _____ at _____ t, New York, New York (the "Building").

2. The apartment directly below Ms. George's is owned and occupied by Madonna Ciccone ("Madonna"), who regularly uses her residential apartment as a dance rehearsal studio with others. Despite Ms. George's repeated complaints over the past seventeen months to the defendants concerning this situation, the pounding noise and vibration continues to emanate from Madonna's apartment, and Ms. George has been forced to endure substantial interference with her tenancy by virtue of defendants' failure to fulfill their obligations.

3. Although the defendants have acknowledged these problems, promised Ms. George that they would compel Madonna to abide by the terms of her proprietary lease and the

Building house rules, and gone as far as serving her with a 30 day Notice to Cure, defendants have curiously abandoned their efforts and the noise and vibration continue unabated.

4. This action for claims sounding in breach of warranty of habitability, nuisance, injunction and attorney's fees is brought out of necessity to compel defendants to finally act and to compensate Ms. George for the damages that she has suffered as a result of the defendants' inaction.

PARTIES

5. Plaintiff Karen George resides at apartment 8A at the Building (the "Apartment"). She is the lessee under a proprietary lease with [REDACTED], Inc. (the "Corporation"), the cooperative corporation that owns the Building, and the owner of the shares in the Corporation appurtenant to the Apartment.

6. Defendant Board of Directors of the Corporation (the "Board") were elected by the shareholders of the Corporation and serve at their behest. At all times relevant herein, the Corporation is a cooperative corporation organized and existing under the laws of the State of New York.

7. Defendant Midboro Management, Inc. ("Midboro") is the Corporation's managing agent for the Building. Upon information and belief, at all times relevant herein, Midboro was and is a corporation organized and existing under the laws of the State of New York.

JURISDICTION AND VENUE

8. This Court has jurisdiction over defendants pursuant to CPLR 301.

9. Venue is proper in this County pursuant to CPLR 503(a).

GENERAL ALLEGATIONS

10. Ms. George purchased the Apartment in May 1995. Upon acquiring the Apartment, she became a party to a proprietary lease with the Corporation.

11. The proprietary lease provides, in relevant part, as follows:

¶13 House Rules: The Lessor has adopted House Rules which are appended hereto: and the Directors may alter, amend or repeal such House Rules and adopt new House Rules. Such House Rules which, when a copy thereof has been furnished to the Lessee, shall be taken to be part hereof, and the Lessee hereby covenants to comply with all such House Rules and see that they are faithfully observed by the family, guests, employees and subtenants of the Lessee. Breach of a House Rule shall be a default under this Lease. The Lessor shall not be responsible to the Lessee for the nonobservance or violation of House Rules by any other lessee or person.

¶14 Use of Premises: The Lessee shall not, without the written consent of the Lessor on such conditions as Lessor may prescribe, occupy or use the apartment or permit the same or any part hereof to be occupied or used for any purpose other than as a private dwelling for the Lessee and Lessee's spouse, their children, grandchildren, parents, grandparents, brothers and sisters and domestic employees; and in no event shall more than one married couple occupy the apartment without the written consent of the Lessor. In addition to the foregoing, the apartment may be occupied from time to time by guests of the Lessee for a period of time not exceeding one month, unless a longer period is approved in writing by the Lessor, but no guests may occupy the apartment unless one or more of the permitted adult residents are then in occupancy or unless consented to in writing by the Lessor. *Notwithstanding the foregoing, (a) Lessee may use the apartment for any home occupation use permitted under applicable zoning law, building code or other rules and regulations of governmental authorities having jurisdiction and (b) the Lessee who is a holder of a block Unsold Shares (defined in Paragraph 38 below) shall have the right to use the apartment as a model or an office (or both) in connection with the sale or rental of apartment to which the Unsold Shares are allocated or for any other lawful purpose.*

¶18(b) Odors and Noises: The Lessee shall not permit unreasonable cooking or other odors to escape into the building. The Lessee shall not permit or suffer any unreasonable noise or

anything which will interfere with the rights of other lessees or unreasonably annoy them or obstruct the public halls or stairways.

¶31(e) Default in Other Covenants: If the Lessee shall be in default in the performance of any covenant or provision hereof, other than the covenant to pay rent, and such default shall continue for thirty days after written notice from the Lessor; provided, however, that if said default consists of the failure to perform any act the performance of which requires any substantial period of time, then if within said period of thirty days such performance is commenced and thereafter diligently prosecuted to conclusion without delay and interruption, the Lessee shall be deemed to have cured said default.

12. The house rules for the Building provide, in relevant part, as follows:

¶Noise: No shareholder shall make or permit any disturbing noises in the Building, or do or permit anything to be done that will interfere with the rights, comfort or convenience of other Shareholders. No musical instrument, phonograph, radio or television shall be played or operated between the hours of 11 pm and 8 am the following morning, if so doing disturbs or annoys other occupants of the building.

13. Upon information and belief, Madonna purchased apartment 7A in the Building in or about 2007. Upon information and belief, the Board initially opposed Madonna's attempt to acquire the apartment and brought an unsuccessful suit against her to prevent her purchase.

14. Beginning in or about June 2008 and continuing through the present, Ms. George has been subjected to repeated, excessive and intrusive noise and vibration emanating from apartment 7A.

15. Upon information and belief, Madonna and one or more of her invited guests repeatedly dance and/or train in apartment 7A to unreasonably high decibel amplified music, causing noise and vibration to pour through the walls, ceilings, radiators and other conduits that transmit sound.

16. Ms. George has repeatedly complained to Midboro and members of the Board about the intrusive and excessive noise and vibration.

17. Upon information and belief, other shareholders of the Corporation and residents of the Building have also repeatedly complained to the Board and Midboro about the activities taking place in apartments owned by Madonna in the Building, including the excessive noise emanating therefrom.

18. Ms. George was asked by the Board and Midboro to be patient and was assured that they were handling the problem.

19. Despite these assurances, the intrusive and excessive noise has continued unabated on a regular basis. Ms. George has been forced to endure blaring music, stomping and shaking walls for approximately one-and-a-half (1.5) to three (3) hours each day at different times of day.

20. Frustrated by the lack of response from defendants, Ms. George had no alternative but to finally retain counsel. Her attorney wrote to Dr. Phyllis Harrison-Ross, the president of the Board, on January 29, 2009 complaining about the situation, demanding that the Board remedy the problem and demanding a copy of the report that the Board commissioned or had commissioned by Cerami & Associates, an acoustical consulting firm, to assess the situation in apartment 7A.

21. In response to the letter from plaintiff's attorney, the attorney for the Corporation wrote back on February 4 and stated, in relevant part, as follows:

The Corporation is well aware of the noise and vibrations which your [January 29] letter addresses and understands and sympathizes with your client's situation. The Board has taken appropriate action to attempt to cause the noise issue to be remediated. To that end, as your letter notes, the Board, on behalf of and at the cost to shareholder Madonna Ciccone, has retained

highly-regarded acoustical engineering professionals as well as structural engineers to devise a solution to the noise issue.

Unfortunately, the proposed solution initially developed by the acoustical engineers would, in the opinion of the structural engineers, threaten the structural integrity of the Building. Therefore, in its business judgment, the Board cannot proceed to have that solution implemented. However, the Board is actively pursuing other potential solutions with the acoustical and structural engineers, as well as the shareholder and her senior representatives in order to ensure that unreasonable noise and vibrations do not emanate from Apartment 7A.

The Board appreciates your clients' patience and forbearance and we will keep you posted as the Board's effort progresses.

22. Following that letter and additional discussions, the Corporation's attorney invited Ms. George and her attorney to attend a portion of the meeting of the Board on February 24, 2009 to address their issues.

23. At the meeting, Ms. George and her counsel reiterated the situation and the Board promised to devise and implement an action plan to make sure that the problems were properly solved.

24. The Board did not uphold its promises. The excessive noise and vibrations have not been properly remediated despite Ms. George's repeated complaints to the Board. In response to those complaints, since June 2008 and continuing through the present, the defendants have dispatched the Building superintendent to the Apartment from time to time to take measurements of the decibel levels. The Board has not, however, done anything with those readings to address the complaints.

25. Nothing has changed since the February Board meeting and Ms. George has continued to endure substantial interference with her tenancy. The Cerami report has never been delivered to Ms. George.

26. Finally, on May 27, 2009, the Corporation's attorney provided Ms. George's attorney with a copy of a Notice to Cure that was said to have been served upon Madonna.

27. That Notice to Cure provided, in relevant part, as follows:

Notice To Cure

To: Madonna Ciccone

New York, New York 10023

Re: All rooms, Apartment 5AEF, 6A-G and 7A in the building (the "Building") located at (Street, Borough of Manhattan, New York, New York 10022

PLEASE TAKE NOTICE, that the within serves to notify you, pursuant to and in accordance with the written proprietary lease between you, as lessee, and One West 64th Street, Inc. (the "Lessor"), as lessor (the "Proprietary Lease"), that you are violating substantial obligations of your tenancy. You are in violation of Paragraph 14 of the Proprietary Lease in that you are occupying and using the Apartment for purposes other than a private dwelling and are permitting the use of the Apartment in the pursuit of a commercial activity in the building located at One West 64th Street, New York, New York.

PLEASE TAKE FURTHER NOTICE, that you have violated and continue to violate the New York City Zoning Resolution by using the Apartment in violation of permissible zoning.

PLEASE TAKE FURTHER NOTICE, that you are in violation of Paragraph 18(b) of the Proprietary Lease in that you have continued to permit unreasonable noise to emanate from the Apartment, which greatly interferes with the rights of other lessees.

PLEASE TAKE FURTHER NOTICE, that pursuant to Paragraph 13 and 31(e) of the Proprietary Lease, the aforementioned violations constitute substantial breaches of your obligations under the Proprietary Lease.

PLEASE TAKE FURTHER NOTICE, that, in accordance with Paragraph 31(e) of the Proprietary Lease, you are hereby required to cure said violations and defaults on or before June 30, 2009, that

being more than thirty (30) days after this Notice to Cure is served upon you, and that upon your failure to so cure, the Lessor will elect to terminate your tenancy in accordance with the applicable provisions of law and of the Proprietary Lease.

PLEASE TAKE FURTHER NOTICE, that the continuance of the aforesaid conduct shall cause the Lessor to exercise each and every available right to it under the Proprietary Lease and the applicable laws regulating your occupancy, including, but not limited to, termination of your Proprietary Lease.

28. Upon information and belief, an acoustical consultant was retained by or on behalf of Madonna to address the excessive noise and vibration problems. Any efforts undertaken at the suggestion or direction of such consultant have not, however, solved the problems.
29. Upon information and belief, the Board has failed to initiate proceedings to enforce the Notice to Cure and to compel Madonna to abide by the terms of her proprietary lease and to cure the other violations detailed in the Notice.
30. Upon information and belief, the Board has failed to initiate proceedings to enforce the Notice to Cure because it does not wish to have further litigation with Madonna, regardless of whether she is in violation of her proprietary lease.
31. Unable to seek refuge in her own home, Ms. George has been forced to vacate the Apartment during the dancing and training services in apartment 7A because the noise and vibration becomes unbearable.
32. Ms. George continues to live in her residence under these circumstances while defendants have wholly failed to make Madonna honor her obligations under her proprietary lease, and abide by the Building house rules.

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Warranty of Habitability)

33. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

34. New York Real Property Law §235(b) provides, in relevant part, as follows:

In every written or oral lease or rental agreement for residential premises the landlord or lessor shall be deemed to covenant and warrant that the premises so leased or rented and all areas used in connection therewith in common with other tenants or residents are fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety.

35. Beginning in or about June 2008 and continuing through the present, Ms. George has been victimized by intrusive noise that lasts anywhere from one-and-a-half (1.5) to three (3) hours that occurs at different times of each day, including weekends.

36. This continuous noise and vibration has subjected Ms. George to conditions which are detrimental to her life and health and have rendered her apartment unfit for human habitation and for the uses reasonably intended by her and the Corporation.

37. Ms. George has timely and regularly informed the Board and Midboro of the excessive noise and vibration at or about such time that such incidents have occurred.

38. Despite the lip service that the Board and Midboro has paid to Ms. George, the problems from apartment 7A continue unabated.

39. Ms. George has complied with all her obligations under her proprietary lease, including the timely payment of maintenance each month.

40. Defendants have breached the warranty of habitability and deprived Ms. George of her use and enjoyment of the Apartment.

41. By virtue of the foregoing, Ms. George has been damaged in an amount to be determined at trial, but believed to be not less than an amount equal to the maintenance she has paid to the Corporation since June 2008.

AS AND FOR A SECOND CAUSE OF ACTION
(Private Nuisance)

42. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

43. The excessive noise and vibration has been substantial in nature, intentional in its origin and unreasonable in its character.

44. The excessive noise and vibration has interfered with plaintiff's right to use and enjoy the Apartment.

45. The excessive noise and vibration has resulted from the defendants' failure to fulfill their duties to compel another shareholder to comply with her proprietary lease and the house rules.

46. By virtue of the foregoing, plaintiff has been damaged in an amount to be determined at trial.

AS AND FOR A THIRD CAUSE OF ACTION
(Injunction)

47. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

48. The systematic and continued use of apartment 7A in the Building for non-residential purposes has resulted in a substantial, intentional and unreasonable interference with plaintiff's use and enjoyment of the Apartment.

49. Defendants are obligated to compel the tenants in the Building to comply with their respective proprietary leases and house rules. Defendants have failed to fulfill these obligations.

50. Monetary damages are inadequate to compensate Ms. George for the losses that she has suffered and there is no adequate remedy at law.

51. Unless Madonna is compelled by defendants to cure the defaults that are subject of the Notice to Cure, plaintiff will continue to be irreparably harmed.

52. By virtue of the foregoing, the Board should be compelled to act in accordance with its responsibilities and compel Madonna to honor the terms of her proprietary lease and house rules.

53. The equities balance in favor of plaintiff.

54. Plaintiff does not have an adequate remedy at law.

AS AND FOR A FOURTH CAUSE OF ACTION
(Attorney's Fees, Costs and Expenses)

55. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

56. Defendants' failure to honor their obligations to plaintiff were the direct and proximate cause of plaintiff having no alternative but to retain an attorney to enforce her rights.

57. Paragraph 28 of the proprietary lease provides:

If the Lease shall at any time be in default hereunder and the Lessor shall incur any expense (whether paid or not) in performing acts which the Lessee is required to perform, or in instituting any action or proceeding based on such default, or defending, or asserting a counterclaim in any action or proceeding brought by the Lessee, the expense thereof to the Lessor, including reasonable attorney's fees and disbursements, shall be paid by the Lessee to the Lessor, on demand, as additional rent.

58. Under New York Real Property Law §234, an attorney's fee provision for the benefit of the landlord creates a reciprocal benefit for the tenant.

59. By virtue of the foregoing, defendants are liable to plaintiff for all of her attorney's fees, costs and expenses reasonably incurred in connection with this action.

WHEREFORE, plaintiff respectfully requests that judgment be entered in her favor and against defendants as follows:

(i) on the First Cause of Action, damages in an amount to be determined at trial, but believed to be not less than in an amount equal to the maintenance plaintiff has paid to the Corporation since June 2008;

(ii) on the Second Cause of Action, damages in an amount to be determined at trial;

(iii) on the Third Cause of Action, the Board should be compelled to act in accordance with its responsibilities and compel Madonna to honor her proprietary lease and the house rules according to the breaches identified in the Notice to Cure;

(iv) on the Fourth Cause of Action, damages in an amount equal to the reasonable attorney's fees, costs and expenses incurred by plaintiff in connection with this action; and

(v) awarding such other and further relief as may be just and proper.

Dated: New York, New York
October 13, 2009

WACHTEL & MASYSK, LLP

By: 

Steven J. Cohen

110 East 59th Street
New York, New York 10022

Attorneys for Plaintiff Karen George

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

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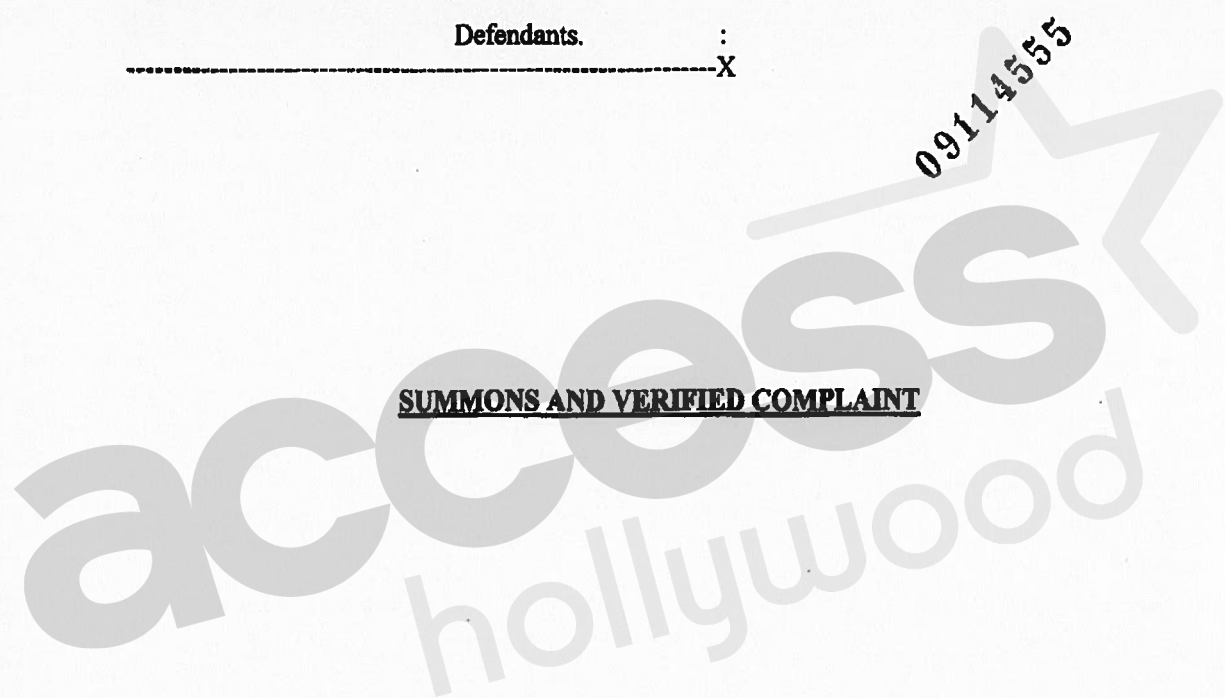
Plaintiff, :

- against - :

BOARD OF DIRECTORS OF ONE WEST 64th :
STREET, INC., a Cooperative Corporation, :
and MIDBORO MANAGEMENT, INC., :

Defendants. :
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SUMMONS AND VERIFIED COMPLAINT