

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

-----X
FRANPEARL EQUITIES CORP.,

Index No.

Plaintiff,

- against -

SUMMONS

10106561

*Plaintiff Designates
New York County As The
Place Of Trial*

NEW YORK CITY LANDMARKS
PRESERVATION COMMISSION
and
THE CITY OF NEW YORK DEPARTMENT
OF BUILDINGS,

Defendants.

Date of Filing with the Clerk:

-----X

To the above-named defendants:

You are hereby summoned and required to serve on Plaintiffs' attorney an answer to the complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of the venue designated is the business address of Plaintiffs and the location of the property subject to suit herein.

Dated: New York, New York
May 18, 2010

FILED

MAY 19 2010

By:
**COUNTY CLERK'S OFFICE
NEW YORK**

KUCKER & BRUH, LLP

Alan D. Kucker, Esq.
John M. Churneftsky, Esq.
747 Third Avenue - 12th Floor
New York, New York 10017
(212) 869-5030
Attorneys for Plaintiff

Defendants:

The New York City Landmarks Preservation Commission
1 Centre Street, 9th Floor
New York, New York 10007

The New York City Department of Buildings
280 Broadway, 3rd Floor
New York, New York 10007-1801

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

-----X Index No.
FRANPEARL EQUITIES CORP.,

VERIFIED COMPLAINT

Plaintiff,

- against -

1G106561

NEW YORK CITY LANDMARKS
PRESERVATION COMMISSION
and
THE CITY OF NEW YORK DEPARTMENT
OF BUILDINGS,

Defendants.

FILED
MAY 19 2010
COUNTY CLERK'S OFFICE
NEW YORK

Plaintiff FranPearl Equities Corp., by its attorneys Kucker & Brann LP for its complaint
against Defendants New York City Landmarks Preservation Commission and The City of New
York Department of Buildings alleges as follows:

The Parties

1. Plaintiff FranPearl Equities Corp. ("Plaintiff" or "FranPearl") is a New York corporation with its principal place of business at 120 West 23rd Street, New York, New York, 10011.
2. Defendant New York City Landmarks Preservation Commission ("LPC") is a New York City agency that according to the LPC Website¹ is responsible for identifying and designating the City's landmarks and the buildings in the City's historic districts and regulating changes to designated buildings.
3. The LPC is composed of 11 Commissioners, and by law must include a minimum of three architects, a historian, a city planner or landscape architect, a realtor and at least one

¹ See, <http://www.nyc.gov/html/lpc/html/about/about.shtml>

resident of each of the five boroughs. The Commissioners are appointed by the Mayor, who also designates the Chair and Vice Chair.

4. The City of New York Department of Buildings is the administrative agency duly constituted and existing by law to process all requests for permits for the construction and reconstruction of structures located within the borders of the City of New York

Jurisdiction and Venue

5. The above-entitled court has jurisdiction over the parties and the subject disputes pursuant to CPLR 301.

6. New York County is the proper venue for this action, pursuant to CPLR 503. Among other things, Plaintiff's principal place of business is located in New York County.

Factual Allegations

7. FranPearl is a realty company that purchased two adjacent buildings located at 12 and 14 West 68th Street, New York, New York 10023 on or about March 12, 2009.

8. Danica Realty LLC ("Danica") is a limited liability company that sold 12 and 14 West 68th Street to FranPearl.

9. On or about August 31, 2005 Danica caused an application to be submitted to the New York City Department of Buildings ("DOB") seeking approval for, *inter alia*, the construction of a sixth floor level at 12 West 68th Street, New York, New York 10023 ("Premises").

10. The DOB Job No. associated with this application is Job No. 104222681.

11. On or about August 31, 2005 when Danica submitted an application to DOB seeking approval for, *inter alia*, the construction of a sixth floor level at the Premises, the DOB database did not designate the Premises as being a Landmark.

12. Upon information and belief, at some time after August 31, 2005 on a date unknown to the Plaintiff, the DOB database was modified so that the DOB database thereafter designated the Premises as being a Landmark.

13. Upon information and belief, the LPC did not properly make a designation with regard to the Premises as is mandated by the New York Administrative Code Section 25-303(f).

14. Upon information and belief, the LPC did not timely file a copy of any such Landmark designation with the city council, the department of buildings, the city planning commission, the board of standards and appeals, the fire department and the department of health and mental hygiene as is mandated by the New York Administrative Code Section 25-303(f)..

15. Upon information and belief, LPC did not notify DOB in writing or otherwise directing DOB to designate the Premises as being a Landmark in the DOB Database or before August 31, 2005.

16. Upon information and belief, a DOB Plan Examiner ("PE") reviewed the application, plans and documents submitted by Danica and reviewed the DOB Database.

17. Upon information and belief, at no time did the PE advise Danica that Danica was required to make any submissions to the LPC with regard to their DOB application.

18. Upon information and belief, at no time did the PE advise Danica that approval from the LPC was to be considered an "Objection" to the DOB application.

19. At no time did the PE list LPC approval as a "required item" for DOB approval of the application.

20. On or about October 26, 2005 after a review of the DOB Database, application, plans and documents by a DOB PE, the application submitted by Danica was approved by DOB.

21. Construction relating to Job No. 104222681 was commenced after DOB approved

the application.

22. Construction relating to Job No. 104222681 was thereafter completed in 2007.

23. All construction relating to Job No. 104222681 was completed in accordance with the application and plans submitted to and approved by DOB.

24. Danica received multiple approvals from DOB during the course of the construction completed in conjunction with Job No. 104222681 and received a final approval and sign off from DOB on January 14, 2008.

25. Upon information and belief, the LPC issued a warning letter ("WL 09-0686") in or about November 2008 to Danica concerning the Premises.

26. Upon information and belief, the LPC's issuance of a warning letter ("WL 09-0686") resulted in the corresponding issuance of a DOB violation.

27. On or about November 25, 2008, DOB issued a violation identified as "Violation Type: LANDMK- UNKNOWN" on the New York City Department of Buildings website².

28. By on or about May 12, 2010, the same DOB violation now appeared as "Violation Type: LANDMK- LANDMARK" on the New York City Department of Buildings website. The actual date of the change to the DOB Database is unknown to Plaintiff.

29. Upon information and belief, Danica, despite having already completed all construction relating to Job No. 104222681 in accordance with the application and plans submitted to and previously approved by DOB, in response to the issuance of WL 09-0686 sought the issuance of a Permit Certificate of Appropriateness from LPC for the construction relating to Job No. 104222681.

30. On or about June 30, 2009 the LPC denied Danica's application which sought the

² See, <http://www.nyc.gov/html/dob/html/bis/bis.shtml>.

issuance of a Permit Certificate of Appropriateness. As detailed in the LPC permit denial dated June 30, 2009,

“The work denied consists of legalizing the construction of a brick clad rooftop addition to the 1925 studio building located at the back of the property without Landmarks Preservation Commission permits, featuring aluminum windows and a rooftop cupola; as shown in existing condition photographs, historic photographs and drawings all presented on eight presentation boards dated received April 14, 2009, prepared by Lestor Evan Tour. At the same Public Meeting and Public Hearing, the Commission approved a portion of ironwork at the areaway at 14 West 68th Street without Landmarks Preservation Commission Permits.

In reviewing this proposal, the Commission noted that the Upper West Side/Central Park West Historic District designation report describes 12-14 West 68th Street as a Queen Anne style house designed by Louis Thovard and built in 1895, with attached studio building designed by Edwin C. Georgi and built in 1925; and that the building’s age, material, style, details, and scale are among the features which contribute to the special architectural and historic character of the Upper West Side/Central Park West Historic District. The Commission finally noted that the Warning Letter 09-0686 for ‘Installation of additional story at 12 West 68th Street without permit(s).’ and Warning Letter 09-0687 for ‘Alteration to areaway fence at 14 West 68th Street without permit(s).’ were issued on November 25, 2008.

With regard to this application, the Commission found that the design and details of the addition, including the octagonal roof, circular window and large window openings add a stylistic prominence to the addition which it was never intended to have; that the floor-to-ceiling heights within the pre-existing ell were raised and the new top floor contains excessively high ceilings resulting in an ill proportioned addition; and that the configuration of the windows in the addition, in terms of relating to the sash on the wing or [sic] the original house, draw undue attention to the taller top floor and diminish the harmonious relationship of the different building campaigns. Based on these findings, the Commission determined the proposal to legalize the rooftop addition to be inappropriate to the building, and to the historic district, and voted not to approve this portion of the application.”

31. On or about June 30, 2009, despite all construction relating to Job No. 104222681 having been completed in accordance with the application and plans submitted to and previously

approved by DOB, the DOB issued an Intent To Revoke Approval(s) And Permits that DOB had previously issued for the construction relating to Job No. 104222681.

32. After the June 30, 2009 LPC denial of Danica's application, FranPearl (as the new owner of the Premises) submitted their own application to LPC seeking to modify the 6th floor addition previously constructed in conjunction with Job No. 104222681.

33. FranPearl's architect, the Stephen B Jacobs Group P.C., had numerous meetings with the LPC Staff regarding the grounds set forth in the June 30, 2009 LPC denial of Danica's application and received detailed advice, suggestions and guidance from the LPC Staff which was specifically incorporated into FranPearl's application.

34. The LPC Staff determined that the application had merit, certified the application as complete and recommended a Public Hearing so that a Certificate of Appropriateness could be issued by the LPC.

35. FranPearl's application which specifically incorporated the advice, suggestions and guidance of the LPC Staff to modify the 6th floor addition constructed in conjunction with Job No. 104222681 was submitted to the LPC.

36. FranPearl's application to the LPC took into consideration and addressed the grounds set forth in the June 30, 2009 LPC denial of Danica's application.

37. FranPearl made submissions and appeared before Manhattan Community Board 7 with regard to their application to the LPC to modify the 6th floor addition constructed in conjunction with Job No. 104222681.

38. The Parks & Preservation Committee of Manhattan Community Board 7 reviewed FranPearl's submissions.

39. FranPearl received approval from The Parks & Preservation Committee of

Manhattan Community Board 7 with regard to their application to the LPC to modify the 6th floor addition constructed in conjunction with Job No. 104222681.

40. FranPearl then received approval from Community Board 7 with regard to their application to the LPC to modify the 6th floor addition constructed in conjunction with Job No. 104222681.

41. A Certificate of Appropriateness Public Hearing was held on March 16, 2010.

42. At FranPearl's Certificate of Appropriateness Public Hearing on March 16, 2010 only five (5) LPC Commissioners were present.

43. As a result of only five (5) LPC Commissioners being present at FranPearl's Certificate of Appropriateness Public Hearing on March 16, 2010 no vote was taken at the Public Hearing.

44. To date, FranPearl has only received a non-written indication from the LPC that FranPearl's application will not be approved by the LPC.

45. To date, FranPearl has not received an explanation written or otherwise why FranPearl's application would not be approved by the LPC.

46. The LPC has now verbally demanded that FranPearl submit another application to the LPC requesting the dismantling of the additional story on the building constructed per Job No. 104222681 in accordance with the application and plans submitted to and previously approved by DOB.

47. As has been reported in the Wall Street Journal on Tuesday, May 24, 2010, "The Landmark Preservation Commission decided in March that a sixth-floor addition to the building at 12-13 [sic] West 68th St. was in violation of landmark rules."

48. A quorum of the LPC shall consist of six Commissioners in accordance with

Rules of the City of New York Title 63 §1-01 (63 RCNY 1-01).

49. Because FranPearl's Certificate of Appropriateness Public Hearing on March 16, 2010 was presided over by only five (5) LPC Commissioners it was in violation of 63 RCNY §1-01.

50. As set forth in Public Officers Law - Article 7 - Open Meetings Law §100 (NY CLS Pub O §100), it is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy.

51. In violation of Public Officers Law §100, the LPC conducted secret deliberations regarding FranPearl's application Certificate of Appropriateness then had a non-public vote denying FranPearl's application for a Certificate of Appropriateness.

52. As set forth in Public Officers Law - Article 6 - Freedom of Information Law §100 (NY CLS Pub O §87) the LPC is required to maintain a record of the final vote of each member in every agency proceeding in which the member votes.

53. In violation of Public Officers Law §87(3)(a), the LPC has failed to maintain and disclose a record of the final vote regarding FranPearl's application seeking a Certificate of Appropriateness.

54. In violation of Public Officers Law §87(3)(a), one or more of the LPC Commissioners that participated in the final vote were not present during FranPearl's Certificate of Appropriateness Public Hearing on March 16, 2010.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

55. FranPearl repeats and reiterates each and every allegation contained hereinabove

with the same force and effect as though fully set forth at length herein.

56. The parties have an actual, current dispute as to their respective rights, liabilities and obligations.

57. FranPearl is entitled to a declaratory judgment pursuant to CPLR §3001 for the issuance of an Order by this Court declaring that all construction completed per Job No. 104222681 was lawfully completed in accordance with the application and plans submitted to DOB.

58. FranPearl is entitled to a declaratory judgment pursuant to CPLR §3001 for the issuance of an Order by this Court declaring that all construction completed per Job No. 104222681 may and shall remain intact and unchanged.

59. FranPearl is entitled to a declaratory judgment pursuant to CPLR §3001 for the issuance of an Order by this Court directing the dismissal of WL 09-0686 issued by the LPC in or about November 2008 as Danica completed the installation of an additional story at 12 West 68th Street with and in accordance with all issued permit(s).

60. FranPearl is entitled to a declaratory judgment pursuant to CPLR §3001 for the issuance of an Order by this Court directing the dismissal of DOB violation number 09-0686 identified as "Violation Type: LANDMK- UNKNOWN".

61. FranPearl is entitled to a declaratory judgment pursuant to CPLR §3001 for the issuance of an Order by this Court directing the dismissal of DOB violation number 09-0686 identified as "Violation Type: LANDMK- LANDMARK".

62. FranPearl is entitled to a declaratory judgment pursuant to CPLR §3001 for the issuance of an Order by this Court directing the retraction and revocation of the DOB Intent To Revoke Approval(s) And Permits issued on June 30, 2009.

63. FranPearl is entitled to a declaratory judgment pursuant to CPLR §3001 for the issuance of an Order by this Court directing that LPC issue a Certificate of Appropriateness in response to Danica's prior application which sought the issuance of a Permit Certificate of Appropriateness with regard to the 6th floor addition constructed in conjunction with Job No. 104222681.

64. FranPearl is entitled to a declaratory judgment pursuant to CPLR §3001 for the issuance of an Order by this Court directing that the LPC vote denying FranPearl's application which sought the issuance of a Permit Certificate of Appropriateness with regard to the 6th floor addition constructed in conjunction with Job No. 104222681 is hereby declared null and void due to .

65. Alternatively, FranPearl is entitled to a declaratory judgment pursuant to CPLR §3001 for the issuance of an Order by this Court directing that LPC issue a Certificate of Appropriateness in response to FranPearl's prior application which sought the issuance of a Permit Certificate of Appropriateness with regard to the 6th floor addition constructed in conjunction with Job No. 104222681 due to violations of 63 RCNY 1-01, NY CLS Pub O §100, and/or NY CLS Pub O §87.

SECOND CAUSE OF ACTION
(Equitable Estoppel)

66. FranPearl repeats and reiterates each and every allegation contained hereinabove with the same force and effect as though fully set forth at length herein.

67. Sums of money were expended in lawfully completing the construction per Job No. 104222681.

68. When Danica submitted an application to DOB seeking approval for, *inter alia*, the construction of a sixth floor level at the Premises, the DOB database did not designate the

Premises as being a Landmark.

69. DOB approved the application relating to Job No. 104222681.

70. Danica commenced and completed construction relating to Job No. 104222681 in reliance upon DOB's approval of the application.

71. If FranPearl was now required to remove lawfully completing the construction per Job No. 104222681 it would costs hundreds of thousands of dollars.

72. If FranPearl was now required to remove the lawfully completed construction per Job No. 104222681 then FranPearl would lose the ability to rent a duplex penthouse apartment at the Premises and lose rents corresponding thereto.

73. If FranPearl was now required to remove the lawfully completed construction per Job No. 104222681 then FranPearl would be unable to rent the penthouse apartment at the Premises during demolition and construction and lose rents during that time period.

74. If FranPearl was now required to remove the lawfully completed construction per Job No. 104222681 then FranPearl would need to remove tenants from other apartments at the Premises during the renovation period and be unable to rent other apartments at the Premises due to and during the course of demolition and construction.

75. If FranPearl was now required to remove the lawfully completed construction per Job No. 104222681 then FranPearl would be left with only a simplex apartment and the rental value for that simplex apartment would be less than half the rental value of the currently existing duplex penthouse apartment.

76. Accordingly, if the LPC or DOB now requires the removal of the lawfully completed construction per Job No. 104222681 Plaintiff will be damaged in a sum of no less than \$1,750,000.00.

77. In such event, Plaintiff is entitled to a money judgment on this cause of action in an amount to be determined by the Court but in no event less \$1,750,000.00.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

1. On the first Cause of Action, a declaratory judgment against LPC and DOB declaring that all construction completed per Job No. 104222681 was lawfully completed in accordance with the application and plans submitted to DOB.
2. On the first Cause of Action, a declaratory judgment against LPC and DOB declaring that all construction completed per Job No. 104222681 may and shall remain intact and unchanged.
3. On the first Cause of Action, a declaratory judgment against LPC and DOB directing the dismissal of WL 09-0686 issued by the LPC in or about November 2008 as Danica completed the installation of an additional story at 12 West 68th Street with and in accordance with all issued permit(s).
4. On the first Cause of Action, a declaratory judgment against LPC and DOB directing the dismissal of DOB violation number 09-0686 identified as "Violation Type: LANDMK- UNKNOWN".
5. On the first Cause of Action, a declaratory judgment against LPC and DOB directing the dismissal of DOB violation number 09-0686 identified as "Violation Type: LANDMK- LANDMARK".
6. On the first Cause of Action, a declaratory judgment against LPC and DOB directing that LPC issue a Certificate of Appropriateness in response to Danica's prior application which sought the issuance of a Permit Certificate of Appropriateness with regard to the 6th floor addition constructed in conjunction with Job No. 104222681.

7. On the first Cause of Action, a declaratory judgment against LPC and DOB directing the retraction and revocation of the DOB Intent To Revoke Approval(s) And Permits issued on June 30, 2009.

8. On the first Cause of Action, a declaratory judgment directing that the LPC vote denying FranPearl's application which sought the issuance of a Permit Certificate of Appropriateness with regard to the 6th floor addition constructed in conjunction with Job No. 104222681 is hereby declared null and void.

9. On the first Cause of Action, a declaratory judgment against LPC and DOB directing that LPC issue a Certificate of Appropriateness in response to FranPearl's prior application which sought the issuance of a Permit Certificate of Appropriateness with regard to the 6th floor addition constructed in conjunction with Job No. 104222681.

10. On the second Cause of Action, awarding judgment against the LPC in favor of Plaintiff in an amount of no less than \$1,750,000.00 plus interest thereon as allowable by law.

11. On the second Cause of Action, awarding judgment against the DOB in favor of Plaintiff in an amount of no less than \$1,750,000.00 plus interest thereon as allowable by law.

12. On all causes of action, interest on money judgment granted herein, costs, disbursements and attorneys' fees for this action, and such other and further relief as this Court deems just and proper.

Dated: New York, New York
May 18, 2010

KUCKER & BRUH, LLP
Attorneys for Plaintiff
747 Third Avenue
12th Floor
New York, New York 10017
(212) 869-5030

By:


Alan D. Kucker
John M. Churneftsky

TO:

The New York City Landmarks Preservation Commission
1 Centre Street, 9th Floor
New York, New York 10007

The New York City Department of Buildings
280 Broadway, 3rd Floor
New York, New York 10007-1801

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

-----X
FRANPEARL EQUITIES CORP.,

Index No.

VERIFICATION

Plaintiff,

- against -

NEW YORK CITY LANDMARKS
PRESERVATION COMMISSION
and
THE CITY OF NEW YORK DEPARTMENT
OF BUILDINGS,

Defendants.

-----X

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

ARTHUR MINEROF, being duly sworn, subscribes and affirms the following under the penalties of perjury:

I am the President of FranPearl Equities, Corp., Plaintiff herein. I have read the annexed Verified Complaint and the same is true to my own knowledge except as to those matters stated therein to be alleged upon information and belief, and as to those matters, I believe them to be true. The source of my information and the grounds of my belief are based upon my personal knowledge of the facts and by reviewing the records of Plaintiff.

Arthur Minero
ARTHUR MINEROF

Sworn to before me this
18th day of May, 2010

[Signature]

Notary Public

ALAN D. KUCKER
Notary Public, State of New York
No. 31-4708184
Qualified in Westchester County
Commission Expires May 31, 2011

Index No.

Year 20

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

FRANPEARL EQUITIES CORP.,

Plaintiff,

-against-

NEW YORK CITY LANDMARKS PRESERVATION COMMISSION
and THE CITY OF NEW YORK DEPARTMENT OF BUILDINGS,

Defendants.

SUMMONS & COMPLAINT

KUCKER & BRUH, LLP

Attorneys for

Plaintiff

747 THIRD AVENUE
NEW YORK, NEW YORK 10017
(212) 869-5030

Please refer all communications to:

Esq.

John M. Churneffsky

Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.41-a.

Dated: May 18, 2010

Signature

Print Signer's Name John M. Churneffsky

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

NOTICE OF ENTRY

that the within is a (certified) true copy of a entered in the office of the clerk of the within-named Court on

20

NOTICE OF SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the Hon. , one of the judges of the within-named Court, at on 20 , at M.

Dated: