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January 18, 2021
Honorable James D'Auguste (e-file)
Supreme Court of the State of New York
IAS Part 55
71 Thomas Street
New York, NY 10013

Re: Deborah Privitello v. Time Equities, Inc. et al, Index No. 153834/2019

Your Honor,

The purpose of this letter to bring to the Court's attention a ruling of the New York State Department of Housing and Community Renewal ("DHCR") issued after the July 2021 return date and other subsequent events. We respectfully request the Court to take into account the decision of DHCR and grant permission to bring to the Court's attention the facts herein occurring and gleaned since the last submissions on July 31, 2021, bearing on Motion Sequences 3 and 4. DHCR is the state agency designated to oversee rent regulated properties, including Plaintiff's apartment at issue here. On November 10, 2021, DHCR issued a ruling denying Defendants' motion to restore rent due to a finding that the apartment remains uninhabitable to this day. The DHCR order states that: "Services Not Restored: Habitability…The DHCR finds that conditions upon which an order [dated June 7, 2018] was issued reducing rent have not been corrected…The owner's application to restore rent is denied." DHCR notes that the parties are in litigation. A copy of the Order is attached.

Pending before this Honorable Court in the above-referenced proceeding are competing orders to show cause. Plaintiff requests the Court to direct the Defendants to properly address the issues that have rendered Plaintiff's family homeless for over three

years and award compensation for the cost of alternative housing incurred to date and still being incurred. (Pending Motion Sequences 3 and 4). In contrast, Defendants are responsible for the conditions and only wish to perpetuate the conditions by simply covering over failing pipes, rotten joists, mold and other unsafe and unhealthy conditions that have led to multiple collapses and will only lead to more collapses, mold and continuation of unsafe structural conditions. The holding of DHCR and the affidavit/report of licensed Structural Engineer Silva confirms same. (See DKT 150Dichter Aff in opposition to OTSC, para. 22, DKT 151 Ex. 1 thereto).

While Plaintiff seeks in its motion to have the necessary work professionally performed, Defendants we have learned are engaging in a shell game to avoid utilizing qualified and licensed contractors to restore the apartment. First, in some sort of alphabet game, Defendants stated they were bringing in a company that did substandard work in 2018/2019 called N.K.G. Contracting, only this time they called them GSX Construction at the same address (N.K.G. Contracting and Time Equities, Inc. are currently subject to a lawsuit for causing a ceiling to collapse upon a tenant in an apartment below causing substantial injuries- Delgato v Time Equities and N.K.G. Contracting Inc., Index No. 105978/2021 before Justice Cohen).. Here, when we called Defendant Time Equities out on the name game, they said they would bring in Errands Pro as contractor and plumber instead. However, the plumber that came to stop leaks is not employed by Errands Pro and in fact is not a New York licensed plumber at all, instead, he showed a Massachusetts driver's license and someone else's master plumber license just as was illegally done in 2018. We looked up Errands Pro in the NYC database and found it held no contractor's license at all. So, when we called them out gain on that, Defendant's counsel then produced a license for an entity called Gamma Solutions which is alleged to be a subsidiary of Errands Pro; however, Errands Pro was formed in the Bronx as a personal services entity, not as a home contractor, and Gamma is located in Sunnyside Queens with no obvious ties to Gamma. Rather than being a legitimate contractor, Gamma has no reviews online. Why all the smoke and mirrors by Defendants, because it turns out that the alleged principal and contractor of Errands Pro is in fact an employee of Defendant Time Equities working as a super on the upper west side alongside the same manager (Ren Cablay-Schullere) of Plaintiff's unit. Counsel for Defendants have continually misled the Court in affidavits in this and the prior case and falsely held out Errands Pro as an independent contractor. This is the shell game played by Defendants. Rather than being honest and upfront, Defendants are seeking to further use the courts to get away with causing further harm to the health and safety of Plaintiff and her children. No one would permit or have confidence in Defendants making necessary repairs when they manipulate the truth and proceed with unclean hands. They are not serious about access to make the repairs necessary to restore the apartment to a clean, safe and healthy

environment, but rather creating a specter of doing so when in fact they wish to use an unqualified, unlicensed employee to sheetrock over the serious structural defects throughout the premises. Plaintiff invites and urges the Court to walk through and inspect the conditions within the apartment created by Defendants' failure to maintain and contractors for itself to see the unsafe and unhealthy environment that Defendants call habitable and that have destroyed a home and all of a family's possessions. Conditions that no one would ever consider for one moment safe for a family as evidenced by the serial vacate orders.

There is currently in effect yet another DOB vacate order from April 2021 on the apartment due to leaks causing three ceiling collapses on two floors in the Plaintiff's apartment and structural violations that continue to threaten the buildings integrity. Despite the vacate orders being issued by DOB, Defendants have repeatedly filed false affidavits that the apartment is habitable and seek to continue to blame Plaintiff for a lack of access as the absurd reason leaks from the roof, building facade and pipes ABOVE her apartment resulted in wastewater raining down into the apartment and – major flooding in her basement -- causing mold, buckling and cracking structural joists and floorboards from moisture and rot throughout her apartment. The reality is that from February 2019 to 2021, which also covers from the commencement of this case until 2021, Defendants never once requested access instead leaving the apartment in deplorable shape to deteriorate more over time until more leaks led to more collapses and the April 2021 vacate order even though no one was or could live in the apartment even before the latest collapses. Defendants left Plaintiff's apartment in worse condition than when they came in with their contractors in 2018 and instead misled agencies and the courts through fraudulent permit application, submissions to agencies and court that lack veracity.

Just as it hid the truth about its unlicensed contractors, Defendants attempts to hide from this Court the fact that leaks and ceiling collapses have occurred, not just in Plaintiff's apartment, but in apartments throughout the buildings. In its sworn statements to the Court, the Defendants' counsel and employees have repeatedly misled the Court by stating that there are no leaks in other apartments in the building related to the leaks into Plaintiff's unit. In fact, as revealed in the response to the ESI Orders, leaks and collapses are routinely occurring throughout the buildings causing water infiltration that undermine not only Plaintiff's unit but the structure as a whole.

Although Defendants continue to falsely claim a lack of access, obviously, Plaintiff does not have any control of Defendants access to the other apartments and common areas that have not been properly addressed per the vacate orders. One resident on a higher floor (Apartment 2A) above Plaintiff's unit, put it this way in an email to Time

Equities on the day before the collapse of Plaintiff's ceiling that Defendants falsely argue is due to a lack of access into her apartment. (This email was disclosed through the ESI Order):

" My unit had leak problems every six months at least since the purchase (2012)…What I am trying to say is that you should investigate in the building the plumbing and may be using the money to redone[sic] it, instead addressing the cause to the single units…Again, I invite management to make a more deep inspection in all the plumbing system and not on the single apartments. In order to avoid the continuous annoying situation that make the unit not livable."

"The management raised the maintenance of 20% since the beginning of the year and was not able to solve the leak problem that I think is something referring to the structure of the building and not to be addressed to the single apartment…I'll address this matter to my lawyer and I'll put [you] in contact with him. All these inconveniences due to an inefficient management which in not providing the replacement of a serious building problems…"

Another owner of a condo unit on the floors above Plaintiff's stated in an email a month before the collapse of the ceiling in Plaintiff's apartment in April 2018 :

"Hi again Ren, Just keeping you up to date on what's going on in apartment 2B. The tenant sent his new photo this morning to show you the condition of the ceiling. It's apparently saturated. She also sent a copy to the super. I hope you are able to get someone to resolve the roof issue today!"

(See Dkt. 85, Ex. D to Affirmation of Joel R Dichter in support of OTSC)

As the above emails make clear, the entire trumped-up access defense of Defendants is a hail Mary pass to avoid its criminal culpability for harassment and failing to maintain, for which DOB/HPD cited Defendants approximately 100 times. The reality is that access into Plaintiff's ground floor apartment is not needed to stem leaks from the roof, plumbing and façade into apartments and common areas from above her unit. Defendants made the same false access claims to DHCR that DHCR rejected out of hand in DHCR's denial of Defendant's petition to restore rent. It is the epitome of bad faith for a Landlord to even seek restoration of rent when it is well aware of conditions rendering the apartment uninhabitable. Defendants brazenly told DHCR that it should ignore the 2021 vacate order when considering to restore rent dating back to the 2018 vacate order. However, rent is not to be restored until the apartment is found to be habitable. DHCR ruled it has not been habitable from April 2018 to date.

DHCR thus saw through Defendants fabricated arguments of a lack of access and alleged habitability and ruled the apartment remains uninhabitable and directed the rent stay at $1. The fact-finding of DHCR, the state agency that oversees rent regulated apartments, should be conclusive in this proceeding and therefore the relief sought by Plaintiff in its pending OTSC (motion seq 4) and motion for alternative housing compensation (motion seq 3) must be granted by this Court and the pending OTSC of Defendants denied. Matter of Gaines v. NYS DHCR, 90 NY2d 545,548 (1997); Matter of Verbalis v. NYS DHCR, 1 AD2d 101 (1st Dept 2003) (Court may not overturn decision of DHCR just because Court would have reached a different conclusion).

While DHCR carefully considered the submissions of both parties in rendering its decision, Defendants have done their best to make sure DOB did not hear the tenant's position in an effort to remove the current vacate order and summons. For example, Defendants made submissions to DOB to obtain a re-inspection without notifying Plaintiff. Moreover, when we learned of the request from DOB, Defendants refused our request to provide a copy of their submissions to DOB. We had to obtain their submission to DOB through a FOIL request. It was easy to see why Defendants didn't want us to have a copy as the filing is filled with inaccuracies such as an engineer hypothesizing without proof that structural damage came not from known leaks but from a washing machine that isn't even where the worst floor damage is located and that hadn't been used in years. Allegations that Plaintiff denied access at to defendants' consultants when she hasn't hadn't been near the apartment from mid-2018 to November 2021 due to the vacate orders and the impact on her and her children's health of the toxic mold and conditions in the unit.

DOB will not re-inspect a building/apartment under a vacate order unless a submission shows proper repairs have been made. As Defendants submission does not show the restoral to habitability of the apartment, DOB cancelled the inspection requested by Defendants and has left the vacate order in place.

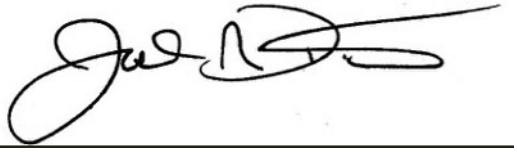
In addition, the apartment has been without electricity for several years due to Defendants actions. Contrary to Defendants statements in documents filed with this Court that Defendants had no responsibility for Con Ed terminating electric service to the apartment, Defendants have produced in their response to the ESI Order a letter from Con Edison demonstrating their criminal harassment and constructive eviction of Plaintiff by charging her for their use of electricity elsewhere in the building. The shared meter use condition resulted in Con Edison removing its meter and issuing a backbill for $6,000 that Defendants refused to pay. Plaintiff for its part paid for her electric usage on time

and in full each month. Further, Defendants have steadfastly refused to pay the electric bill while the apartment was and is under a vacate order from DOB due to Defendants failure to maintain. Instead of restoring electricity to make repairs, Defendants proposed to run lengthy extension cords from elsewhere in the building creating more hazardous conditions and security issues. The failure to provide electricity to the apartment by itself renders the apartment uninhabitable and creates a constructive eviction and constitutes harassment of Plaintiff and her family.

The constant acts of harassment, in violation of the law, are so common among landlords, such as Defendant Time Equities, that just such tactics have been identified and prohibited by the Legislature. (Housing Stability and Tenant Protection Act of 2019 criminalized such harassment, RPAPL Section 768). The list of unlawful conduct includes, but is not limited to, failure to maintain, falsifying building permit applications, refusing to properly make repairs, filing lawsuits to harass and withholding facts from the court in the frivolous lawsuit, illegal buyout offers, failure to provide alternate housing, trespassing, willful and wonton destruction of her family possessions and defamation. When Plaintiff provided full access in 2018 to make repairs, Defendant 342 East 50th Street LLC made an unsolicited buy out offer to Plaintiff. When Plaintiff did not accept the offer, Defendants retaliated by commencing a law suit against Mrs. Privitello and not making necessary repairs. Retaliation for not accepting a buy-out offer is among those specific offenses delineated as harassment. (27NYCRR1240(a)(48)(f-2)). Defendants' scheme through the prior case before Justice Crane and in this case is to use the courts as a vehicle to harm the Plaintiff. Defendants have committed all of the above delineated acts of harassment and therefore are guilty of criminal harassment under Rent Stabilization Law.

In short, since the return date, DHCR issued a ruling that the apartment remains uninhabitable and thereby rejected Defendants' petition to restore rent and underlying access argument. DOB cancelled its inspection as Defendants have not shown repairs to the buildings that would restore the apartment to habitability. Defendants have not restored electric service and simply lied about using licensed and qualified contractors. Accordingly, it is incumbent upon this Court to provide the long overdue relief sought in Plaintiff's order to show cause (Motion Seq #4) and pending motion for reimbursement of alternative housing expenses (Motion Seq #3) .

Respectfully Submitted,



Joel R. Dichter
Attorney for Plaintiff Deborah Privitello

I, Joel R. Dichter, hereby certify that the above letter is 2,611 words.