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DOCKET NO. NNHCV-08-4029266-S : SUPERIOR COURT
MID BLOCK DEVELOPMENT, LLC : J.D. OF NEW HAVEN
V. : AT NEW HAVEN

CITY OF NEW HAVEN AND
ANDREW J. RIZZO, JR., BUILDING OFFICIAL : JUNE 23, 2008

**AMENDED APPEAL FROM ORDER OF BUILDING OFFICIAL OF THE CITY OF
NEW HAVEN AND COMPLAINT AGAINST THE CITY OF NEW HAVEN AND
ANDREW RIZZO, JR.**

BY WAY OF STATUTORY APPEAL

To the Superior Court, Judicial District of New Haven at New Haven, comes Mid Block Development, LLC, appealing from an order of the Building Official of the City of New Haven and complains and says:

1. This appeal is brought pursuant to General Statutes § 29-405.
2. The defendant, City of New Haven (“New Haven”), is a municipality duly organized under the laws of the State of Connecticut.
3. At all times relevant herein, upon information and belief, the defendant, Andrew J. Rizzo, Jr. (“defendant Rizzo”), was employed as a Building Official by New Haven.
4. At all times relevant herein, the plaintiff, Mid Block Development, LLC (“plaintiff”), owned property located on 96 Orange Street, 29 Center Street, 91 Church Street and 824-846 Chapel Street in New Haven (collectively, “the subject property”).
5. On December 12, 2007, a fire occurred at the subject property which caused extensive damage to the buildings existing thereon.

6. By way of Order dated December 13, 2007 ("Order"), sent via certified mail, return receipt requested, the defendant Rizzo ordered the buildings on the subject property immediately demolished by a demolition contractor under contract with the Livable City Initiative of New Haven. *See attached, Exhibit A.*

7. In addition, defendant Rizzo stated that New Haven would place a lien on the above-referenced property to recover costs. *Id.*

8. The plaintiff received this Order on Monday, December 17, 2007.

9. Prior to receiving the Order, on December 14, 2007 the plaintiff, through its Managing Member, Mr. Paul Denz ("Mr. Denz"), sent two letters via facsimile to the defendant Rizzo regarding the recent fire at the subject property.

10. In his first facsimile, Mr. Denz, stated, *inter alia*, that the plaintiff wished to take over the demolition and reconstruction of the subject property given that the imminent danger had passed; requested access to non-affected portion of the properties to restore power to the tenants; expressed his concern over the costs for removal and testing of materials being removed from the subject property and; offered to hire private security to oversee the safety of the site. *See attached, Exhibit B.*

11. In his second facsimile, Mr. Denz, after learning verbally that New Haven would not stop its plans to immediately demolish the improvements upon the property, provided notice that the work on the subject property is not authorized by the plaintiff and possibly unnecessary; offered to board up the facades and install jersey barriers on the affected portions of the subject

property and; advised that the plaintiff would not pay for any unnecessary expenses. *See attached, Exhibit C.*

12. Despite the above, the buildings on the subject property have been, and continue to be, demolished.

13. New Haven has been able to proceed unchecked through the associated demolition process of the subject property, all potentially at the plaintiff's cost and expense.

14. New Haven has failed and refused to provide the plaintiff with any information, engineering or otherwise, to support its finding that total demolition is necessary due to an "imminent danger."

15. New Haven has refused to allow the plaintiff, its consultants and agents access to the subject property and has effectively excluded the plaintiff from the analysis of relevant data, denied the plaintiff the opportunity to potentially protect its interests by participating in and/or providing input into the processes and plans undertaken by New Haven, all of which deprives the plaintiff of its ability to ensure that the actions undertaken by New Haven and its agents are proceeding in a commercially reasonable manner and in a manner to mitigate damages.

16. The Order violates Section 115 of the State Building Code in that defendant Rizzo failed to: serve the owner with a written notice that described the condition(s) deemed unsafe and specified the required repairs or improvements to be made to abate the unsafe condition, or that required the unsafe structure to be demolished within a stipulated time and; include in the notice any provision that the person notified declare immediately to the building official acceptance or rejection of the terms of the order.

17. The Order violates Section 116 of the State Building Code in that defendant Rizzo ordered work to remedy alleged imminent dangers even though the plaintiff, as owner of the subject property, had been located and had expressed its willingness and ability to perform the required work.

18. The defendants deprived the plaintiff of due process of law by demolishing the subject property and by failing to provide the plaintiff with a detailed description of the repairs or improvements needed, the conditions deemed unsafe and the method for challenging the order.

19. The defendants improperly allowed others to trespass on the plaintiff's property and have impeded the plaintiff's access.

20. In addition to reasons stated above, the plaintiff has been aggrieved because it has been deprived of the opportunity to hire its own contractors to test the allegedly contaminated debris and/or oversee its removal and has been precluded from hiring its own contractor to demolish the subject property, if necessary.

BY WAY OF COMPLAINT FOR DAMAGES

FIRST COUNT

1-20. The plaintiff, Mid Block Development, LLC, hereby incorporates Paragraphs 1 – 20 of the Appeal and makes them 1 – 20 of the First Count of the Complaint as if fully stated herein.

21. By way of commercial lease dated August 30, 2007 (“Lease”), the plaintiff leased to Brass Monkey a/k/a Brass Monkey, LLC a/k/a Brass Monkey Saloon (“Brass Monkey”) certain premises located at 29 Center Street in New Haven, Connecticut (“leased premises”).

22. Under the Lease, Brass Monkey was required to, *inter alia*, provide all services, utilities, labor and materials which may be necessary to keep the leased premises in compliance with all the laws and ordinances and was required to comply with all applicable laws, ordinances and regulation of federal, state, county and municipal authorities regarding its conduct of business at the leased premises.

23. After Brass Monkey took possession of the leased premises, New Haven, through its Fire Department, conducted an inspection and found that certain aspects of the existing sprinkler system in the leased premises violated the Fire Code.

24. New Haven, through its Fire Department, was aware, as of at least November 2007, that Brass Monkey intended to open for business prior to complying with the Fire Code.

25. New Haven allowed the Brass Monkey to open for business despite its knowledge that the leased premises were not in compliance with the Fire Code.

26. The Chief Fire Marshal of New Haven approved Brass Monkey's Application for Permit to Operate a Food Service Establishment on or about November 9, 2007.

27. Similarly, New Haven issued a certificate of occupancy to Brass Monkey at a time when it knew that the released premises were not in compliance with the Fire Code.

28. Thereafter, on December 12, 2007, a fire occurred at the leased premises and caused extensive damages to the buildings existing thereon.

29. Following the aforesaid fire, New Haven hired Laydon Industries, Inc. ("Laydon Industries") to undertake the demolition of the subject property.

30. Upon information and belief, Laydon Industries possessed a Class B demolition license when in fact a Class A demolition license was legally required in order to complete the majority of the demolition.

31. New Haven was negligent in one or more of the following ways:

- a. in that it issued a certificate of occupancy for the leased premises when it knew or should have known that Fire Code violations existed;
- b. in that the Chief Fire Marshal approved Brass Monkey's Application for Permit to Operate a Food Service Establishment when it knew or should have known that Fire Code violations existed; and
- c. in that it hired Laydon Industries for purposes of demolishing the subject property when it knew or should have known that Laydon Industries did not possess the requisite demolition certificate and was unqualified to perform the demolition.

32. As a result of New Haven's negligence as aforesaid, the plaintiff, an identifiable person subject to imminent harm, suffered damages which include, but are not limited to, the following: damage to and loss and destruction of the subject property; loss of use of the subject property; incorrect performance and higher costs of the demolition of the subject property; money damages; and a lien for demolitions costs and expenses.

SECOND COUNT

1-32. The plaintiff, Mid Block Development, LLC, hereby incorporates Paragraphs 1 – 32 of the First Count of the Complaint for Damages and makes them 1 – 32 of the Second Count of the Complaint for Damages as if fully stated herein.

33. The defendants owed a duty to property owners such as the plaintiff and owed a duty specifically to the plaintiff to ensure compliance with the State Fire and Building Codes and to conduct the demolition process in a commercially reasonable manner and in a manner to mitigate damages.

34. It was apparent that the defendants' failure to act as aforesaid would likely subject the plaintiff, an identifiable person, to imminent harm.

35. The defendants breached the aforementioned duty.

36. As a result of the breach of duty by the defendants, the plaintiff suffered damages including, but not limited to, damage to and loss and destruction of the subject property; loss of use of the subject property; incorrect performance and higher costs of the demolition of the subject property and money damages; and a lien for demolitions costs and expenses.

THIRD COUNT

1-32. The plaintiff, Mid Block Development, LLC, hereby incorporates Paragraphs 1 – 32 of the First Count of the Complaint for Damages and makes them 1 – 32 of the Third Count of the Complaint for Damages as if fully stated herein.

33-36. The plaintiff, Mid Block Development, LLC, hereby incorporates Paragraphs 33 – 36 of the Second Count of the Complaint for Damages and makes them 33 – 36 of the Third Count of the Complaint for Damages as if fully stated herein.

37. Pursuant to General Statutes § 52-557n and/or § 7-465, New Haven is liable for the actions, as aforesaid, of its employees, officers and agents, including, but not limited to, the defendant Rizzo, and New Haven is obligated to pay the monetary damages so assessed.

PRAYERS FOR RELIEF

FIRST COUNT

WHEREFORE, the plaintiff appeals from the Order of the Building Official and respectfully requests:

1. That the Order be overturned and/or declared null and void;
2. That all demolition being conducted on the subject property, by or on behalf of New Haven, be halted immediately;
3. That the plaintiff and its agents be permitted full and complete access to the subject property, subject to in place safety requirements;
4. That the plaintiff be allowed to hire its own contractors, or consult with in place City of New Haven contractors, to finish any further required demolition of the subject property;
5. That New Haven be prohibited from filing a lien on the subject property pursuant to Section 49-73b of the Connecticut General Statutes;
6. That New Haven be prohibited from attempting to recover the costs and expenses associated with the demolition of the subject property through any other means;
7. That plaintiff be relieved from payment of costs and expenses associated with the demolition of the subject property sought to be assessed and/or collected by New Haven; and
8. Such further relief as in law or equity may appertain.

SECOND COUNT

1. Monetary damages; and
2. Such further relief as in law or equity may appertain.

THIRD COUNT

1. Monetary damages; and
2. Such further relief as in law or equity may appertain.

THE PLAINTIFF --

MID BLOCK DEVELOPMENT, LLC

By _____

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STATEMENT OF RELIEF AND AMOUNT IN DEMAND

The amount, legal interest, or property and demand is greater than \$15,000.00, exclusive of interest and costs, and is based upon an express promise to pay a definite sum.

The plaintiff's claims for relief include the following:

1. That the Order be overturned and/or declared null and void;
2. That all demolition being conducted on the subject property, by or on behalf of New Haven, be halted immediately;
3. That the plaintiff and its agents be permitted full and complete access to the subject property, subject to in place safety requirements;
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MID BLOCK DEVELOPMENT, LLC

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CERTIFICATION

This is to certify that a copy of the foregoing was mailed via first class mail, postage prepaid, to all counsel and *pro se* of record as follows this day of June 2008:

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