

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

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THE CITY OF NEW YORK,

Plaintiff,

-against-

SMART APARTMENTS LLC, ROBERT K.Y.
CHAN, TOSHI INC., et al.,

Defendants.
-----X

**AFFIDAVIT IN
SUPPORT**

Index No.

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

THOMAS JENSEN, being duly sworn, deposes and says:

1. I am employed by the New York City Fire Department ("FDNY") as the Chief of Fire Prevention, a position I have held since 2007. I am a member of FDNY's uniformed firefighting force, and hold the rank of Assistant Chief. I have been employed by FDNY since 1973, when I was appointed to the position of Firefighter. Prior to being appointed to the rank of Assistant Chief, I was promoted to and held the ranks of Lieutenant, Captain, Battalion Chief, Deputy Chief, Deputy Assistant Chief.

2. As Chief of Fire Prevention, I oversee the operations and personnel of the Bureau of Fire Prevention, the FDNY bureau primarily responsible for FDNY's fire prevention and code enforcement mission. In addition, as Chief of Fire Prevention I serve as the Chair of the Fire Protection Systems Committee of the 2011 New York

City Building Code Revision Project, and I am a member of the Managing Committee of the 2011 New York City Fire Code Revision Project.

3. I am fully familiar with the New York City Fire Code, and its predecessor, the New York City Fire Prevention Code, by virtue of my training, experience and position,.

4. I make this affidavit in support of plaintiffs' application for a temporary restraining order, and preliminary injunction in the above-captioned action. This affidavit outlines the heightened fire and life safety concerns and standards associated with transient residential occupancies, as compared to non-transient residential occupancies.

5. FDNY is responsible for enforcing the New York City Fire Code ("Fire Code") and rules promulgated thereunder, which seek to prevent fires and mitigate their danger to life or property, throughout the five boroughs of New York City. FDNY also has authority to enforce fire and life safety provisions contained in the New York City Building Code ("Building Code").

6. One type of building occupancy specifically addressed in the Fire Code and Building Code are hotels and other transient accommodations.

7. Transient residential occupancies in New York City (classified by Building Code Section 310.1.1 as Group R-1 occupancies) are required to be designed, constructed and operated in accordance with more stringent fire protection requirements than those applicable to apartment buildings and other non-transient residential

occupancies (classified by New York City Building Code Section 310.1.2 as Group R-2 occupancies).

8. A major reason for this distinction is that the visitors who stay in transient residential occupancies are not familiar with the layout of the building, including the exit stairwells, as are permanent residents. Occupants of transient accommodations therefore are likely to find it more difficult to evacuate the building quickly in the event of a fire or other emergency. This would be especially the case if there is a heavy smoke condition, smoke being a prime cause of death and serious injury in the event of fire. Occupants of transient accommodations typically are only familiar with the entrance through which they entered and the elevators. Use of elevators is discouraged in the case of a fire because they may open on floors engulfed by fire, smoke or heat, or even stall between floors.

9. Historically, it has taken tragic fires to lead to major changes and improvements in fire safety. For example, the 1980 fire at the Las Vegas MGM Grand Hotel and Casino, which resulted in some eighty-five (85) deaths and hundreds of injuries, and other significant hotel fires in Las Vegas, Houston, and White Plains, New York, led to substantial changes in fire safety requirements for transient accommodations in New York City. Beginning in the 1980s, FDNY addressed the need for heightened fire safety protection requirements in transient accommodations, first by issuance of a directive (Fire Prevention Directive 2-82), then by promulgation of a rule (3 RCNY 39-01), and finally through the enactment in 2008 of Chapter 4 of the new New York City Fire Code, which, together with the new Fire Department rules,

incorporated the requirements of the now repealed Fire Prevention Directive 2-82 and 3 RCNY 39-01.

10. The current Fire Code imposes or references a series of requirements on transient residential occupancies beyond those which are applicable to non-transient residential occupancies:

- (a) Provision of portable fire extinguishers (FC 906.1);
- (b) Provision of automatic sprinkler systems (FC 903.2, referencing the Building Code);
- (c) Provision of manual, automatic, or manual and automatic fire alarm systems (FC 907.2, referencing the Building Code and National Fire Protection Association Standard 72);
- (d) A fire safety and evacuation plan, which sets forth the evacuation and other procedures to be implemented in the event of a fire, and which designates the fire safety director, deputy fire safety directors and fire brigade members¹ (FC 404.2.1);
- (e) Provision of a fire safety director, who is responsible for implementing the fire safety and evacuation plan, notifying the Fire Department, and communicating all instructions and directions to building occupants in the

¹ New York City Fire Code Section 402.4.1(8) requires this plan for “Group R-1 occupancies, occupied by more than 30 lodgers, or more than 15 lodgers above street level, for a period of 90 days or less; and/or operated to accommodate such numbers of lodgers for such period of occupancy; and/or designed to contain a total of more than 30 sleeping rooms, or more than 15 sleeping rooms above the street level, for such period of occupancy; and/or occupied by one or more lodgers on a floor more than 75 feet (22 860 mm) above the street level, for such period of occupancy, or operated or designed for such lodging.”

event of a fire, and who must possess a FDNY certificate of fitness and be present in the hotel or motel at all times (FC 401.6.5);

(f) Provision of a lobby fire command center, equipped with a control panel that displays the status of alarm devices in the building, and that is used by the fire safety director and FDNY emergency response personnel to implement the fire safety and evacuation plan (FC 509.1);

(g) Provision of a fire brigade, consisting of building staff trained in fire safety, who assist the fire safety director and FDNY personnel with the implementation of the fire safety and evacuation plan (FC 401.6.5); and

(h) Posting of diagrams on every guest room entrance door showing the route to two stairwells or other means of egress (FC 408.8).

10. In contrast, the New York City Fire Code contains the following less stringent fire protection requirements for non-transient residential occupancies:

(a) There is no requirement for portable fire extinguishers.

(b) There is no requirement for fire alarm systems, except for the provision of an Emergency Voice Command System required by the Building Code for buildings over 125 feet in height.

(c) In contrast to the detailed fire safety and evacuation plan and emergency preparedness staff to implement it required in transient residential occupancies, in apartment buildings the Fire Code only requires annual distribution of a fire safety guide that contains information about the building,

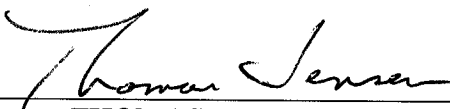
basic fire prevention and fire preparedness measures and emergency fire safety instructions in the event of fire (FC 408.9.1.1).

(d) In contrast to the posting of diagrams on each transient occupancy unit showing two evacuation routes, in apartment buildings there need only be a fire safety notice posted on the back of the main entrance door to individual dwelling unit doors and in the common areas of the building, that assists occupants in selecting the safest course of action in the event of a fire (FC 408.9.1.2).

11. Accordingly, a visitor who occupies a unit in an apartment building that is being used illegally for transient occupancy, does not have the benefit of the fire and life safety measures required in legal transient occupancies for the protection of persons unfamiliar with the layout of the building. Moreover, a visitor who occupies a unit in an apartment building that is being used illegally for transient occupancy is not afforded the same opportunity to familiarize himself or herself with the information contained in the fire safety guide for that building, as is afforded to a resident of the building. The visitor is thus placed at significantly increased risk of injury or death in the event of a fire.

12. In the larger context of fire safety in New York City it is important to note that the overall fire protection measures developed and instituted in recent decades have resulted in a dramatic decline in the number of fatalities attributable to fire incidents. As depicted in Exhibit 6 attached hereto, the number of fire related fatalities declined from almost 300 in 1976 to 62 in 2010. FDNY Statistics for 2011 (see

Exhibit 6) reported 488,017 fire incidents, including 25,380 structural fires but only 64 civilian fire fatalities. New York City's fire protection measures, including those designed to protect transient visitors to the City, have contributed to the historically low level of fire deaths.



THOMAS JENSEN
Chief of Fire Prevention

Sworn to before me this
23rd day of August, 2012.



NOTARY PUBLIC

BRIDGET S. HAMBLIN
Notary Public, State of New York
No. 02HA6165258
Qualified in Kings County
Commission Expires May 7, 2015