

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

----- X
TOWN OF ORANGETOWN, NEW YORK,

Plaintiff,

-against-

ARMONI INN & SUITES, LLC, PALISADES
ESTATES EOM, LLC, and JOHNSON
KIRCHNER HOLDINGS, LLC.

Defendants.
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SUMMONS

Index No.

Date Purchased:

TO THE ABOVE-NAMED DEFENDANTS:

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 upon the Plaintiff's Attorneys, within twenty (20) days after the service of this Summons, exclusive of the date of service or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York. If you fail to so appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: White Plains, New York
May 9, 2023

KEANE & BEANE, P.C.

By: _____

Robert C. Zitt
Attorneys for Plaintiff
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(914) 946-4777

TO: ARMONI INN & SUITES, LLC
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225 Broadway, 39th Floor
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PALISADES ESTATES EOM, LLC
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225 Broadway, 39th Floor
New York, 10007

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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TOWN OF ORANGETOWN, NEW YORK,

Plaintiff,

-against-

VERIFIED COMPLAINT

ARMONI INN & SUITES, LLC, PALISADES
ESTATES EOM, LLC, and JOHNSON
KIRCHNER HOLDINGS, LLC.

Index No.

Defendants.

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Plaintiff Town of Orangetown, by its attorneys, Keane & Beane, P.C., as and for its
Verified Complaint against Defendants Armoni Inn & Suites, LLC, Palisades Estates EOM,
LLC and Johnson Kirchner Holdings, LLC, alleges as follows:

NATURE OF ACTION

1. This action is brought by Plaintiff Town of Orangetown (“Town” or “Plaintiff”) to immediately halt the deliberate, hazardous and unlawful conversion of a hotel known as the Armoni Inn & Suites (“Armoni Hotel” or “Hotel”) located on New York State Route 303 in Orangeburg, New York, in violation of the Chapter 6, Building Construction Administration, and Chapter 43, Zoning, of the Town of Orangetown Code.

2. On May 5, 2023, the Mayor of New York City, the Honorable Eric Adams, announced a new “program” to provide up to four (4) months of housing for single-adult males now in the care of New York City (the “City”) in nearby rural and residential counties.¹

¹ Mayor Adams Announces Program to Provide Shelter Option for Asylum Seekers Already In Care In Nearby New York Counties <https://www.nyc.gov/office-of-the-mayor/news/322-23/mayor-adams-program-provide-shelter-option-asylum-seekers-already-care-in> (Last accessed May 7, 2023).-

3. Mayor Adams' unilateral "Decompression Strategy" gives no regard to local zoning, building, fire and code provisions governing the sites "selected" by the City, including sites within the County of Rockland.

4. The Armoni Inn & Suites has been identified as one of these sites. It has ceased operating in conformance with the Town zoning regulations and the Certificate of Occupancy issued for these premises and is, based upon site inspections conducted by Town staff, in the process of converting to a long-term residential facility.

5. Defendants Armoni Inn & Suites, LLC (the operator of the hotel) and Palisades Estates EOM, LLC (the holder of a land lease of the buildings and improvements and holder of deed evidencing same, and Johnson Kirchner Holdings LLC (the deeded property owners) must therefore be restrained and enjoined from altering the hotel for this intended long-term residency use until required approvals and permits are obtained for this change.

6. The Town accordingly seeks from this Court an Order and Judgment: (a) declaring that the transitional use and operation of the Armoni Inn & Suites property is in violation of the Town of Orangetown Zoning Code Chapter 6, § 6-14(C); (b) declaring that the Defendants' transitional use and operation of this property is in violation of the Town of Orangetown Zoning Code Chapter 43, § 10-22 (c) declaring that the Defendants' transitional use and operation of this property is in violation of the Town of Orangetown Zoning Code Chapter 43, § 10-23, (d) temporarily restraining and enjoining the Defendants from continued use of the hotel in violation of the Code and, further, from receipt of overflow housing from New York City in such fashion and until returned to its intended

use; (e) ordering Defendants to pay for reasonable attorneys' fees, costs and disbursements of Plaintiff in bringing this action; and (f) granting the Town such further relief this Court deems just and proper.

JURISDICTION AND VENUE

7. This action is brought pursuant to New York State Town Law § 135 (the "Town Law"), which permits the Town Board of the Town of Orangetown to "maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of any [Town] ordinance, rule or regulation, notwithstanding that the ordinance, rule or regulation may provide a penalty or other punishment for such violation." Town Law § 135(1); *see also* Town Law § 268.

8. Venue is proper in this County pursuant to CPLR § 505(a) which provides for venue "in the county in which one of the parties resided when it was commenced; the county in which a substantial part of the events or omissions giving rise to the claim occurred; or, if none of the parties then resided in the state, in any county designated by the Plaintiff," because Defendants own and operate the Hotel within the boundaries of Rockland County and in the Town of Orangetown, County of Rockland, New York, and the Town of Orangetown is wholly located within the County of Rockland.

PARTIES

9. At all relevant times herein, Plaintiff is and was a duly constituted municipal corporation in the State of New York having jurisdiction over all health, safety and welfare matters within the geographical confines of the Town of Orangetown, New York.

10. At all relevant times herein, Defendant Armoni Inn & Suites, LLC is a domestic limited liability company duly organized and existing under the laws of the State of New York, having an address at c/o 225 Broadway, 39th Floor, New York, 10007

11. At all relevant times herein, Defendant Palisades Estates EOM, LLC is a domestic limited liability company having an address at c/o 90 State Street, Suite 700, Box 10, Albany, NY, 12207..

12. At all relevant times herein, Defendant Palisades Estates EOM, LLC is the holder, by way of an Assignment of Leasehold Interest, of a leasehold interest in ground lease, and holder of a purported deed to the buildings and improvements of real certain property located in the Town of Orangetown and specifically at 329 Route 303, Orangeburg, Town of Orangetown, New York, 10962.

13. At all relevant times herein, Defendant Johnson Kirchner Holdings, LLC, is the last record owner of real property located in the Town of Orangetown and specifically at 329 Route 303, Orangeburg, Town of Orangetown, New York, 10962

14. Defendants own and operate the Armoni Hotel, which lies on property identified on the Town Tax Map as Tax Map No.: Section 74.11, Block 2, Lots 24 and 25 (the "Subject Property").

15. A copy of the Assignment of Leasehold Interest and bargain and sale deed by which Defendant Palisades Estates EOM, LLC acquired the an ownership interest in the buildings and improvements at the Subject Property is annexed hereto as Exhibit "A".

FACTS COMMON TO ALL CAUSES OF ACTION**A. The Armoni Hotel**

16. At all relevant times herein, the Subject Property is located in the Community Shopping Zoning District (“CS District”), as defined and regulated under Chapter 43, Zoning, of the Town Code. Under the Town Code, hotels and motels are a conditional use in the CS District.

17. The Town Code defines hotel as a “multiple dwelling used primarily for the purpose of furnishing lodging, with or without meals, for more than fifteen transient guests, for compensation.” See Town Code § 11.2.

18. At all relevant times herein, the Subject Property has a Certificate of Occupancy authoring the use of the Hotel situated on the premises as a hotel. This Certificate of Occupancy was issued in, and has been in place since, the 1970’s.

19. Upon transfer of the Subject Property, the new owner is required to obtain an updated certificate of use that would otherwise authorize the new owner’s use and occupancy of the premises as a hotel.

20. At all relevant times herein, the application for that certificate of use by the new hotel owner remains pending.

B. May 5, 2023 – May 6th, 2023 – The Phone Call and Ensuing Local State of Emergency.

21. On Friday, May 5, 2023, the Honorable Teresa M. Kenny, the duly elected Supervisor of the Town of Orangetown, received a telephone call from Mayor Adams.

22. Mayor Adams advised Supervisor Kenny that the City was implementing a program whereby it would provide up to four (4) months of temporary sheltering to single-adult men seeking asylum in the United States.

23. As part of that “Decompression Strategy” and “program”, Mayor Adams advised Supervisor Kenny the City had identified a hotel in the Town of Orangetown to provide such sheltering.

24. In a subsequent phone call with a member of the Mayor’s Office, Christopher Ellis, Director of the State Legislative Affairs for the City of New York further advised Supervisor Kenny that the program would start imminently.

25. The following day, on or about May 6, 2023, Supervisor Kenny again spoke with Mr. Ellis to ascertain how many individuals would be part of the City’s program.

26. Mr. Ellis advised Supervisor Kenny that the number would not exceed one hundred (100) single-adult males and that the individuals would arrive some time in the coming days.

27. Supervisor Kenny subsequently learned from the Office of the Rockland County Executive that the proposed location for the City housing overflow would be located on Route 303 in Orangeburg, New York: the Armoni Inn & Suites.

28. Subsequently, the Rockland County Executive Edward J. Day issued a Local State of Emergency for Rockland County effective May 6th, 2023.

29. Following that declaration, the County Executive issued “Emergency Order No. 1 “Sustainable Migration”” prohibiting any hotel in Rockland County from contracting with external municipalities for the purpose of providing housing or accommodations for migrants without County licensure.

30. On May 6, 2023, the Town Board of the Town of Orangetown convened an emergency meeting to ascertain what was transpiring.

31. On May 6, 2023, the Town Board determined that Town staff from its Office of Building, Zoning, Planning, Administration and Enforcement (“OBZPAE”) should conduct a site visit at the Armoni Hotel to observe conditions at the Hotel and, further, authorized the commencement of litigation to preserve any status quo.

C. May 7, 2023 – May 8, 2023: The OBZPAE Site Visit and Confirmation of Changing Use.

32. On May 7, 2023, the Town’s Assistant Fire Inspector and Assistant Building Inspector visited the Armoni Hotel for an inspection.

33. Upon arriving, the Assistant Fire Inspector spoke with a certain staff at the Hotel who advised that the employees were removing queen beds from sixty to seventy rooms and replacing them with twin beds.

34. Hotel staff further escorted the Assistant Fire Inspector to rooms that had already been converted and to rooms that were currently being used to store spare mattresses.

35. While inspecting the rooms as shown by Hotel staff, the Assistant Fire Inspector also observed boxes containing personal protective equipment (“PPE”) ranging from masks to COVID-19 tests.

36. While inspecting the rooms as shown by Hotel staff, the Assistant Fire Inspector further observed boxes containing t-shirts reading “Social Worker” and “Supervisor” or a combination thereof.

37. While inspecting the rooms as shown by Hotel staff, Hotel staff confirmed that such PPE and associated clothing would be utilized in the implementation of the City’s housing plans at the Hotel.

38. The Assistant Fire Inspector communicated with the Hotel General Manager who was advised that she was given a directive to block out sixty (60) to seventy (70) rooms for such housing purposes.

39. The OBZPAE Director subsequently informed Armoni Hotel personnel that it appeared that the change and transition into an intended use by individuals for periods of up to four (4) months of extended, non-transient housing, is not permitted under the Town Code definition of “Hotel” nor permitted by the current Certificate of Occupancy maintained for the Subject Property.

40. Further, the OBZPAE Director concurrently informed Armoni Hotel personnel that the indeterminate period of time during which these individuals would remain in residence within the Hotel is inconsistent with the New York State Property Maintenance Code definition of “transient”.

41. As a result, the OBZPAE Director issued a Notice of Violation on May 7, 2023, advising that the Armoni Hotel was changing its use and type of occupancy in violation of the Town Code.

42. On May 8, 2023, Inspectors for the Town again returned to the Subject Property and confirmed with the Operator of the Armoni Hotel that he was ordered to make preparations for such housing as an agreement was reached between the City and the owners of the Subject Property for such purposes.

AS AND FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment – Property Used in Violation of Town of Orangetown Town
Code, Chapter 6, § 6-14(C))

43. Plaintiff repeats and realleges the allegations set forth in Paragraphs “1” through “42” hereof as if fully set forth herein.

44. At all relevant times herein, the Defendant’s use of the property is and continues to violate section 6-14(C) of the Town of Orangetown Town Code.

45. Town Code § 6-14(C) provides, in pertinent part, that no change shall be made in the use or type of occupancy of an existing building unless a Certificate of Occupancy authorizing such change shall have been issued by the Building Inspector.”

46. As set forth above and in the accompanying Affidavits supplied in support, the Defendant is changing the use of the Hotel on the Subject Property to conform with an agreement made by and between the owners of the Subject Property and the City.

47. As set forth above and in the accompanying Affidavits supplied in support, Defendants are making this change in violation of the Town Code and notwithstanding the

Certificate of Occupancy that limits use of the Subject Property as a hotel rather than what it is becoming: an agency community for non-transients.

48. As set forth above and in the accompanying Affidavits supplied in support, the Building Inspector and/or OBZPAE Building Staff has not issued any such permit or Certificate of Occupancy otherwise permitting such a change in use.

49. Therefore, by reason of the foregoing, the Town seeks an Order from this Court enjoining Defendants from making continued unlawful changes and alterations to the Hotel to facilitate such a proposed new use, and deeming this unlawful new use and occupancy to be an express violation of the Town Code.

AS AND FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment – Property Used in Violation of Town of Orangetown Town
Code, Chapter 43, § 10-22 - Permits

50. Plaintiff repeats and realleges the allegations set forth in Paragraphs “1” through “49” hereof as if fully set forth herein.

51. At all relevant times herein, Defendant’s use of the property is and continues to violate Chapter 43, § 10.22 of the Town of Orangetown Town Code.

52. At all relevant times herein, Chapter 43, §§ 10.22 and 10.221 provide, in pertinent part, that a permit is required for all building uses, alterations and construction. See Town Code 10.221.

53. It is overwhelmingly clear that Defendants’ modification and alterations to facilitate and accommodate an influx of housing overflow from the City requires a permit as such permit is required for building uses and alterations.

54. Therefore, by reason of the foregoing, the Town seeks an Order from this Court enjoining Defendants from making continued unlawful changes and alterations to the Hotel to facilitate such a proposed new use on the Subject Property, and deeming this unlawful new use and occupancy to be an express violation of the Town Code.

AS AND FOR A THIRD CAUSE OF ACTION
(Declaratory Judgment – Property Used in Violation of Town of Orangetown Town Code, Chapter 43, § 10-23 – Certificate of Occupancy)

55. Plaintiff repeats and realleges the allegations set forth in Paragraphs “1” through “54” hereof as if fully set forth herein.

56. At all relevant times herein, the Defendant’s use of the Subject Property is and continues to violate Chapter 43, § 10.23 of the Town of Orangetown Town Code.

57. At all relevant times herein, Chapter 43, §§ 10.23 and 10.231(c) provide, in pertinent part, that no change shall be made in the use or type of occupancy of an existing building or change in the use of land...unless a certificate of occupancy authorizing such change in use in conformity with the regulations of this Code and other applicable building laws, ordinances, and regulations shall have been issued by the inspector. See Town Code 10.231(c)

58. It is overwhelmingly clear that Defendants’ modification and alterations to facilitate and accommodate an influx of housing overflow from the City is a change in use and type of occupancy as contemplated by the Town Code.

59. Accordingly, the Defendants are required to apply for and obtain a Certificate of Occupancy as contemplated by the relevant provisions of the Town Code..

60. Therefore, by reason of the foregoing, the Town seeks an Order from this Court enjoining the Defendant from its continued unlawful changes and alterations to the Hotel to facilitate such a proposed new use, and deeming this unlawful new use and occupancy to be an express violation of the Town Zoning Code.

AS AND FOR A FOURTH CAUSE OF ACTION
(Temporary, Preliminary, and Permanent Injunction)

61. Plaintiff repeats and realleges the allegations set forth in Paragraphs “1” through “60” hereof as if fully set forth herein.

62. As set forth above in detail, the Subject Property maintains and is subject to a Certificate of Occupancy limiting the use of the Armoni Hotel as a hotel.

63. Upon admissions of Hotel staff, observations made by Town Inspectors, and the change in use, Defendants must be enjoined from receipt of any individuals or overflow from the City’s intended plan to relocate a significant number of single-adult males to the Armoni Hotel for long-term housing.

64. In short, Defendants must be enjoined from participation in any such “plan” that will result in violations of local zoning regulations.

65. Here, injunctive relief should be issued because (a) the Town has a likelihood of success on the merits of the action, (2) the equities are balanced in the Town’s favor in the enforcement of the Town Code; and (3) while unnecessary obtain injunctive relief, irreparable harm will occur to local residents and the migrants City intends to house in violation of local zoning standards.

Likelihood of Success on the Merits

66. The Town is likely to succeed on the merits because it is without dispute that the conversion of the Hotel into a non-permitted use is prohibited by the Town Code without the necessary and requisite approvals.

67. These already occurring changes to the Hotel have been personally observed by Town Inspectors.

68. It is further evident that the Defendants' continued preparations for receipt of such housing influx will only further commit the Defendants to a course of action that results in a change in use to the Armoni Hotel.

69. It is also clear that the Defendants continue to carry out such activities despite the Town's inspections, warnings, and issuance of a Notice of Violation.

70. Accordingly, the Town will succeed on the merits of enforcing its own code.

Balancing of the Equities

71. The balancing of the equities favors the Town as there are no lawful adverse impacts that will result of the Defendant Hotel is enjoined from modifying the Hotel into what would otherwise become a non-permitted use for its current certificate of occupancy.

72. However, if the Defendant is not enjoined, continuing alterations and modifications to the subject property to facilitate this influx will result in potential disaster to those who suddenly occupy a hotel without requisite approvals or permissions for a change in use to a facility that otherwise acts as an agency or community residence.

73. Moreover, if the Defendant is not enjoined, the Defendant will have exhibited a complete disregard for local zoning resulting in irreparable harm.

74. The only reasonable method to stop the current conversion and potential complete conversion is to enjoin such activity to preserve the health, safety and well-being of those in the community and those being shipped into the community without further protection.

75. In this case, unless the Defendant is restrained, immediate and irreparable harm will result.

Irreparable Harm

76. Though the Town need not demonstrate irreparable harm to enforce its own zoning laws, harm could very well come to those who occupy a hotel that has changed to an agency community designed to house non-transient occupants for an indeterminable period of time.

77. Harm may befall the regular and transient occupants of a hotel by the establishment's occupancy of non-transient guests.

78. Moreover, irreparable harm will occur to the Town.

79. To otherwise allow contractual agreements to circumvent the local zoning code and local states of emergency would result in the proverbial slippery slope of disregard for local law.

80. The Town is seeking a temporary, preliminary, and permanent restraint and injunction against the Armoni Hotel because the evidence conclusively demonstrates that the Hotel has negotiated, or contracted, with an out of County municipality to essentially modify the subject Hotel into what is otherwise an infirmary for migrant overflow from New York City.

81. The Town has no other adequate remedy at law, and the Defendant has no right to change the use of its property without all applicable permits, approvals or review by Town Officials tasked with preserving the life, safety and welfare of its residents.

82. No other application has been made for the relief requested herein.

83. Accordingly, this Court should issue an order temporarily, preliminarily, and permanently restraining and enjoining the Armoni Hotel from its continuing and developing transition from what was once a Hotel into something other than what is permitted pursuant to the Town Code.

WHEREFORE, Plaintiff Town of Orangetown respectfully requests the entry of an Order and Judgment against Defendants, as follows:

(1) On Plaintiff's First Cause of Action, declaring that the Armoni Hotel is in violation of the Town of Orangetown Town Code

(2) On Plaintiff's Second Cause of Action, declaring that the Armoni Hotel is in violation of the Town of Orangetown Town Code;

(3) On Plaintiff's Third Cause of Action, declaring that the Armoni Hotel is in violation of the Town of Orangetown Town Code;

(4) On Plaintiff's Fourth Cause of Action, temporarily restraining and enjoining the Defendant from further alterations to the subject property and, further, temporarily restraining and enjoining the Defendants from receiving or participating in any agreement with the City of New York that otherwise renders the Defendants property in non-compliance with the Town Code and, further,

permanently restraining and enjoining Defendants from further activities associated with such receivership of housing overflow from the City of New York at the hotel; and

(5) Directing the Defendants to pay for the reasonable attorney's fees, costs and disbursements of the Plaintiff in bringing this action; and

(6) Granting Plaintiff Town such further relief this Court deems just and proper.

Dated: White Plains, New York
May 9, 2023

KEANE & BEANE, P.C.

By: 

Robert C. Zitt
Attorneys for Plaintiff
445 Hamilton Avenue, 15th Floor
White Plains, New York 10601
(914) 946-4777

SUPREME COURT OF THE STATE OF NEW YORK
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Plaintiff,

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ARMONI INN & SUITES, LLC, PALISADES
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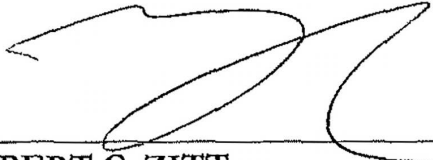
VERIFICATION

Index No.:

STATE OF NEW YORK)
)SS.:
COUNTY OF ROCKLAND)

ROBERT C. ZITT, an attorney duly admitted to practice in the Courts of the State of New York, hereby affirms the following under the penalty of perjury:

That I am the Attorney for the plaintiff in the within action; that I have read the foregoing Summons and Complaint and know the contents thereof; that the same is true to my own knowledge, except as to those matters stated therein to be alleged on information and belief; and as to those matters I believe them to be true. This Verification is made by me and not by the Plaintiff because the Plaintiff, Town of Orangetown, New York, is a governmental subdivision and I am acquainted with the facts. The grounds of my belief as to all matters not stated upon my own knowledge are as follows: Material forwarded to me consisting of materials prepared for litigation, attorney's work product, and other privileged materials.



ROBERT C. ZITT

Sworn to before me this
9 day of May, 2023



Notary Public

GEORGE ALISSANDRATOS
Notary Public, State of New York
Reg. No. 02AL6417932
Qualified in Westchester County
Commission Expires May 24, 2025