

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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CITY OF NEW ROCHELLE

Index No. \_\_\_\_\_

Plaintiff,

- against -

**SUMMONS**

FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA  
ROCCA & SONS, INC. a.k.a. F. LAROCCA & SONS, INC.  
and FMLR REALTY MANAGEMENT LLC,

Defendants.

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TO THE ABOVE-NAMED DEFENDANTS:

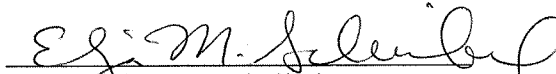
YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service, or, if service of this summons is made by any means other than by personal delivery to you within the state, within 30 days after such service is complete. 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 venue designated is the residence of plaintiff and defendants, which is Westchester County.

Dated: White Plains, New York  
April 1, 2016

Yours, etc.

Wilson Elser Moskowitz Edelman & Dicker, LLP  
Attorneys for Plaintiff  
1133 Westchester Avenue  
White Plains, NY 10604  
(914) 323-7000

By:   
Eliza M. Scheibel

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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CITY OF NEW ROCHELLE

Index No. \_\_\_\_\_

Plaintiff,

- against -

**VERIFIED COMPLAINT**

FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA  
ROCCA & SONS, INC. a.k.a. F. LAROCCA & SONS, INC.  
and FMLR REALTY MANAGEMENT LLC,

Defendants.

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Plaintiff the City of New Rochelle (the “City”) by its attorneys Wilson Elser Moskowitz  
Edelman & Dicker, LLP, alleges as follows:

**INTRODUCTION**

1. This case arises from the defendants’ brazen misappropriation of City property for their private personal and business use and their disregard for the boundaries of the City’s rights of way. Acting without the City’s permission or knowledge, defendant Flavio LaRocca and his agents, servants, and employees, wrongfully entered vacant City property adjacent to Flowers Park in New Rochelle, New York and cleared the property, including removal of potentially historic and valuable trees, to construct a parking lot. Though the City subsequently erected a fence to prevent access to the parking lot, a number of full-sized trees have been lost and the property remains in a damaged state. The defendants’ flagrant disregard for the City’s property rights deprived the City and its residents of the enjoyment of its trees and substantially interfered with the City’s use of its property. The defendants’ actions constitute wrongful entry and

continuous trespass, negligence, the creation of a nuisance, conversion of the City's valuable trees, and a violation of New York Real Property Actions and Proceedings Law § 861.

2. Additionally, the defendants' contractor's yard at 436 Fifth Avenue is encroaching on the City's public rights of way, including but not limited to East Street and Fifth Avenue. The City has informed the defendants of the encroachments and demanded that they be remedied, but the defendants have failed to remove the intrusions.

3. Accordingly, by this action, the City seeks to hold the defendants accountable for the destruction and obstruction of City property and asks this court to issue an order and judgment awarding the City damages for the loss of its trees, property damage, diminution in property value, the costs of restoring the property to its prior condition, and a permanent injunction prohibiting encroachment on City property.

#### **PARTIES**

4. Plaintiff, City of New Rochelle, is a municipal corporation, organized and existing under the laws of the State of New York.

5. Upon information and belief, defendant Flavio La Rocca, is a resident of New Rochelle, New York and the owner and CEO of defendant Flavio La Rocca & Sons, Inc., and a member of defendant FMLR Realty Management LLC.

6. Upon information and belief, defendant Maria La Rocca is the spouse of Flavio La Rocca and is a member of FMLR Realty Management LLC.

7. Defendant Flavio La Rocca & Sons, Inc., also known as F. LaRocca & Sons, Inc., is a New York corporation having its principal place of business at 71-B Potter Avenue, New Rochelle, New York 10801.

8. Defendant FMLR Realty Management LLC is a New York limited liability company with a principal place of business at 69-71 Potter Avenue, New Rochelle, New York 10801.

9. Flavio La Rocca, Maria La Rocca, Flavio La Rocca & Sons, Inc., and FMLR Realty Management LLC are referred to collectively herein as “Defendants.”

### **FACTS COMMON TO ALL CAUSES OF ACTION**

10. At all times pertinent hereto, the City has been and presently is the owner of a parcel of property located in the City of New Rochelle, County of Westchester, State of New York, consisting of undeveloped open land between East Street and Flowers Park (“the Parcel”).

11. Prior to May 2015, the Parcel consisted of a wooded area containing trees of potentially historical and financial value.

12. The Parcel is adjacent to the Sidney E. Frank Skate Park, which is part of Flowers Park, a 20-acre park in New Rochelle. Prior to May 16, 2015, the wooded area on the Parcel created privacy and a noise barrier between the Skate Park and the surrounding neighborhood. The trees on the Parcel also contributed to the ambiance of the park.

13. At all times relevant hereto, the City’s interest in the Parcel was a recorded interest and a matter of public record on file in the office of the Westchester County Clerk.

14. At all times relevant hereto, Defendants were aware that the City owned the Parcel.

15. On or about May 16, 2015, Defendants, their agents, servants and employees, entered the Parcel with landscaping equipment and began clearing the land to create a parking lot. Defendants’ actions included cutting down numerous full-sized trees on the Parcel, leaving woodchips on site. Defendants used a steamroller to create a parking surface. As part of this process, Defendants deposited potentially contaminated materials on the cleared area. Attached

hereto as **Exhibit 1** are copies of a photograph taken on May 16, 2015 showing Defendant Flavio La Rocca and his employees clearing the Parcel and constructing the parking lot. These photographs were obtained from the local news website Talk of the Sound, at <http://www.newrochelletalk.com/content/who-flavio-la-rocca-part-iv> (last visited March 23, 2016).

16. The trees removed by Defendants were of potentially significant historic and financial value.

17. After discovery of the wrongful entry and creation of a parking lot on City property, the City erected a fence around the Parcel to prevent Defendants from utilizing the parking lot.

18. The parking lot remains on the Parcel.

**AS AND FOR A FIRST CAUSE OF ACTION  
(TRESPASS)**

19. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-18 of the complaint as if set forth fully herein.

20. The City is the owner of the Parcel.

21. On or about May 16, 2015, Defendants intentionally entered the Parcel, cut down trees, cleared the land, and created a parking lot.

22. Defendants acted without the City's permission and the City never gave consent to Defendants to enter the Parcel, clear it, or create a parking lot.

23. By their actions, Defendants attempted to wrongfully claim interest in the Parcel adverse to the City which is the lawful owner thereof.

24. Defendants' entry onto the Parcel, destruction of City property and construction of a parking lot constitute a trespass.

25. Defendants' creation of a parking lot on the Parcel constitutes a continuing trespass.

**AS AND FOR A SECOND CAUSE OF ACTION  
(NEGLIGENCE)**

26. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-25 of the complaint as if set forth fully herein.

27. Pursuant to New Rochelle City Ordinance §301-4, it is unlawful for any person to remove, destroy, cut, break, climb or injure any tree, plant or shrub on City property without a written permit from the Commissioner of the Department of Public Works.

28. Pursuant to New Rochelle City Ordinance §301-7, it is unlawful for any person to place or maintain upon the ground in any public place any stone, cement, or other impervious material or substance in such a manner as may obstruct the free access of air and water to the roots of any tree, plant or shrub in any such place.

29. Pursuant to § 861 of the New York Real Property Actions and Proceedings Law, it is unlawful for any person to cut, remove, injure, destroy or cause to be cut, removed, injured, or destroyed, any underwood, tree or timber on the land of a city without consent of the owner or to damage land in the course of such activity.

30. Defendants had a duty not to remove trees from the Parcel, not to clear the Parcel, not to place asphalt or other materials on the ground in the Parcel, and not to create a parking lot on City property without permission from the City.

31. Defendants breached their duty by entering the Parcel, cutting down trees, clearing the land, and constructing the parking lot.

32. As a direct and proximate result of Defendants' acts, the City has suffered substantial damages.

33. Therefore, Defendants' acts constitute negligence per se and/or negligence.

**AS AND FOR A THIRD CAUSE OF ACTION  
(NUISANCE)**

34. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-33 of the complaint as if set forth fully herein.

35. Defendants' creation of a parking lot on the Parcel was intentional or negligent, and unreasonable.

36. The parking lot substantially interferes with the City's use and enjoyment of the Parcel.

37. Defendants' creation of a parking lot on the Parcel constitutes a nuisance and must be abated forthwith.

**AS AND FOR A FOURTH CAUSE OF ACTION  
(CONVERSION)**

38. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-37 of the complaint as if set forth fully herein.

39. The City is the owner of the Parcel and all trees and plants thereon with the right to possession and use thereof.

40. Defendants' actions in cutting down the numerous full-sized, potentially valuable and historic trees on the Parcel constitute conversion of the City's trees.

41. As a direct and proximate result of Defendants' conversion, Plaintiff suffered damages exceeding the jurisdictional limits of all lower courts.

**AS AND FOR A FIFTH CAUSE OF ACTION  
(VIOLATION OF REAL PROPERTY ACTIONS AND PROCEEDINGS LAW § 861)**

42. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-41 of the complaint as if set forth fully herein.

43. At all times relevant hereto, the City owned the Parcel.

44. On or about May 16, 2015, Defendants, their agents, servants or employees, while in the course of their employment, entered in and upon the Parcel and cut down and destroyed numerous full-sized, potentially valuable and historic trees standing wholly upon the Parcel.

45. The entry of Defendants, their agents, servants or employees was wrongful and unlawful and without leave of the City, either express or implied, and without any reason to believe that the land belonged to Defendants or their agents, servants, or employees.

46. The acts of Defendants, their agents, servants or employees, in cutting down and destroying the trees, was deliberate, and a violation of the property rights of the City.

47. By reason of the aforesaid acts of the Defendants and their agents, servants or employees, the City and its residents have lost said trees and the land belonging to the City was damaged and lessened in value.

48. As provided for in section 861 of the New York Real Property Actions and Proceedings Law, the Defendants are liable to the City for treble the amount of said damage.



**AS AND FOR A SIXTH CAUSE OF ACTION  
(NUISANCE BY ENCROACHING ON EAST STREET AND FIFTH AVENUE)**

49. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-48 of the complaint as if set forth fully herein.

50. East Street is now, and at all times mentioned in this complaint was, a public street located within the corporate limits of plaintiff City of New Rochelle, and controlled and maintained by plaintiff.

51. Fifth Avenue is now, and at all times mentioned in this complaint was, a public street located within the corporate limits of plaintiff City of New Rochelle, and controlled and maintained by plaintiff.

52. Defendants operate a contractor's yard at 436 Fifth Avenue in the City of New Rochelle, New York.

53. Structures associated with the Defendants' contractor's yard are encroaching into East Street and Fifth Avenue, including a stone masonry wall which encroaches into the Fifth Avenue right of way, and a concrete storage bin wall and chain link fence and gate which encroach into the East Street right of way. Attached hereto as **Exhibit 2** is a copy of an aerial photograph showing East Street and Fifth Avenue with arrows generally indicating the areas of encroachment.

54. Pursuant to New Rochelle City Code §111-38, "no portion of a building or other structure shall encroach upon or project into any street, alley, park or other public property without a special permit having been issued therefor by the Council of the City of New Rochelle, New York, except as specifically stated in § 111-39, and the owner of any building, any part of which encroaches on public property, shall be liable to the City of New Rochelle for damage

which may result to any person or property by reason of such encroachment, whether or not such encroachment is specifically allowed by the State Code.”

55. Defendants do not have a special permit for their encroachments into East Street or Fifth Avenue.

56. Defendants’ encroachments are unlawful and greatly impair the aesthetics and usefulness of East Street and Fifth Avenue.

57. Defendants’ encroachments are unreasonable and constitute a nuisance.

58. On June 22, 2009, plaintiff duly notified defendant FMLR Management LLC in writing of the unlawful obstruction and encroachment described above, and demanded that defendant remove the unlawful obstruction and encroachment immediately. A copy of this notice is attached to this complaint, marked **Exhibit 3**, and incorporated by this reference.

59. On November 18, 2015, plaintiff duly notified defendant FMLR Management LLC in writing of the unlawful obstruction and encroachments described above, and demanded that defendant remove the unlawful obstructions and encroachments immediately. A copy of this notice is attached to this complaint, marked **Exhibit 4**, and incorporated by this reference. Defendants have failed and refused to remove the obstructions into East Street and Fifth Avenue.

60. Defendants’ encroachments on East Street and Fifth Avenue are causing irreparable harm to the City and its residents and their ability to use East Street and Fifth Avenue.

WHEREFORE, the City of New Rochelle demands judgment against Defendants for the following:

- (a) compensatory damages including but not limited to the value of the removed trees, loss in value of the Parcel, and property damage;

(b) statutory damages under RPAPL § 861 including stumpage value and \$250 per tree, treble damages, and the costs to restore the property to its prior condition;

(c) consequential damages including but not limited to the costs of constructing the fence to prohibit access to the parking lot and the costs of removing the parking lot and restoring the Parcel to its prior condition;

(d) statutory damages under City Code §111-40 of \$2500 per first violation and \$5000 for each subsequent offense;

(e) a permanent injunction prohibiting defendants from encroaching upon City property at East Street and Fifth Avenue;

(f) punitive damages;

(g) attorneys' fees and costs;

(h) prejudgment interest at the maximum legal rate; and

(i) such other and further relief as the Court may deem just and proper.

Dated: White Plains, New York  
April 1 2016

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP  
Attorneys for the City of New Rochelle

By: 

Peter A. Meisels  
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White Plains, NY 10604  
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Our File No.: 07367.00101

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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CITY OF NEW ROCHELLE

Index No. \_\_\_\_\_

Plaintiff,

- against -

**VERIFICATION**

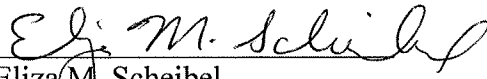
FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA  
ROCCA & SONS, INC. a.k.a. F. LARocca & SONS, INC.  
and FMLR REALTY MANAGEMENT LLC,

Defendants.

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Eliza M. Scheibel, an attorney admitted to practice law before the Courts of the State of  
New York hereby verifies:

I am an associate with the firm of Wilson, Elser, Moskowitz, Edelman & Dicker, LLP,  
counsel for the plaintiff, the City of New Rochelle (the "City") in this action. I have reviewed  
the foregoing verified complaint and know the same to be true, except as to those matters which  
are alleged on information and belief, as to which I believe them to be true. I make this  
verification on behalf of the City, a governmental subdivision, pursuant to CPLR 3020(d)(2)  
based on my review of the City's records and files.

  
Eliza M. Scheibel

Sworn to before me this  
1<sup>st</sup> day of April, 2016

  
\_\_\_\_\_  
Notary Public

**MATHEW T. DUDLEY**  
NOTARY PUBLIC, State of New York  
No. 02DU6269716  
Qualified in New York County  
Term Expires October 1, 2016