

Exhibit "8"

Page 1

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----x
CITY OF NEW ROCHELLE,

Plaintiff,

-against-

Index No.
54190/2016

FLAVIO LaROCCA, MARIA LaROCCA,
FLAVIO LaROCCA & SONS, INC. a.k.a.
LaROCCA & SONS, INC. and
FMLR REALTY MANAGEMENT LLC.,
Defendants.

-----x

120 White Plains Road
Tarrytown, New York
March 5, 2020
11:06 a.m.

EXAMINATION BEFORE TRIAL of FLAVIO LaROCCA, one
of the Defendants herein, held at the above time and
place, taken before Cheryl Thompson, a Shorthand
Reporter and Notary Public within and for the State
of New York, pursuant to Order.

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2 A P P E A R A N C E S :

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4 WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

Attorneys for Plaintiff

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1133 Westchester Avenue

White Plains, New York 10604

6

BY: SCOTT MENDELSON, ESQ.

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9 SILVERBERG ZALANTIS LLC

Attorneys for Defendants

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120 White Plains Road, Suite 305

Tarrytown, New York 10591

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BY: KATHERINE ZALANTIS, ESQ.

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1 Flavio LaRocca 8

2 THE COURT REPORTER: Please state
3 your name for the record.

4 THE WITNESS: Flavio LaRocca.

5 THE COURT REPORTER: Please state
6 your address for the record.

7 THE WITNESS: 140 Sussex Road,
8 New Rochelle, New York 10804.

9 EXAMINATION BY

10 MR. MENDELSON:

11 Q Mr LaRocca, my name is Scott
12 Mendelsohn. I am an attorney with Wilson Elser
13 Moskowitz Edelman & Dicker. We represent the
14 Plaintiff in this action who is the City of New
15 Rochelle.

16 I am going to ask you some questions
17 today about the action entitled City of New
18 Rochelle versus Flavio LaRocca et al.

19 If you don't understand a question
20 I've asked you or you cannot hear me, please just
21 let me know and I will try to accommodate your
22 request or ask the question in a different way.

23 Do you understand?

24 A Yes.

25 Q Please let me know if you need to

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1 Flavio LaRocca 9

2 take a break. I only ask that if there is a
3 question pending, that you answer the question
4 and then we will take a break.

5 Similarly, if you need to speak with
6 your attorney, just let me know, and after the
7 question has been answered you can certainly have
8 that time.

9 We have a court reporter here taking
10 everything down. She cannot take down any nods
11 or shakes of the head. So please respond verbally
12 to or make your responses verbal to my questions.
13 Okay?

14 Lastly, although you may know what my
15 question is going to be, please let me finish my
16 question before you answer so that we can have a
17 clear understanding of our conversation and the
18 record will be clear.

19 Did you review any documents prior to
20 coming here today?

21 A Yes.

22 Q What documents did you review?

23 A The Complaint and some of the
24 exhibits.

25 Q When you say "exhibits," are you

Page 10

1 Flavio LaRocca 10

2 referring to documents that were turned over in
3 discovery?

4 A I think so.

5 Q Was there anything that you reviewed
6 prior to your testimony today that has not been
7 previously provided to your counsel?

8 A No.

9 Q Did you review any pictures before
10 your testimony today that has not been previously
11 provided to your counsel?

12 A No.

13 Q Did you have any conversations
14 regarding this case with anybody other than your
15 attorney prior to coming here and testifying
16 today?

17 A No.

18 Q Are you currently taking any
19 medications or substances that would otherwise
20 impair your ability to testify today?

21 A No.

22 Q How many properties in New York do you
23 own, Mr. LaRocca?

24 MS. ZALANTIS: Individually?

25 MR. MENDELSON: Let me clarify

Page 12

1 Flavio LaRocca 12

2 the substance of this action?

3 A Yes.

4 Q Is that the property that we went to
5 on a site visit --

6 A Correct.

7 Q -- where you were accompanied by your
8 attorney and I was with another attorney from my
9 office as well?

10 A Yes.

11 Q Is that property bordering or is it
12 bordered by 5th Avenue and East Street?

13 A Yes.

14 Q What business owns --

15 MR. MENDELSON: For the record,
16 we will just call it 436 5th Avenue
17 for this proceeding.

18 Q Is that okay?

19 A Yes.

20 Q What company owns 436 5th Avenue?

21 A FMLR Realty.

22 Q And who are the principals of FMLR
23 Realty?

24 A My wife and I.

25 Q What is your official title?

Page 14

1 Flavio LaRocca 14

2 Q And what companies are those?

3 A Flavio LaRocca & Sons Incorporated.

4 Q Other than Flavio LaRocca & Sons

5 Incorporated, are you the principal of any other

6 companies?

7 A Yes.

8 Q What companies are those?

9 A Marco Industry.

10 Q Do either of those companies that you

11 have mentioned own any property?

12 A Yes.

13 Q Which one of those companies?

14 A Marco Industries.

15 Q What property does Marco Industry own?

16 A Commercial property.

17 Q Is that located in the State of New

18 York?

19 A Yes.

20 Q Is it located in New Rochelle?

21 A No.

22 Q Where is it located?

23 A Putnam County.

24 Q What is your position with Marco

25 Industry?

Page 16

1 Flavio LaRocca 16

2 A Since the late '90s.

3 Q Do you recall what year it was
4 commenced?

5 A Not precisely, but I think around
6 1998.

7 Q At that time in 1998, where was
8 Flavio LaRocca & Sons' principal place of
9 business?

10 A Two Trinity Place in New Rochelle.

11 Q Did there come a time when that
12 principal place of business changed?

13 A Yes.

14 Q When was that?

15 A After acquiring 69-71 Potter Avenue.

16 Q When was that?

17 A I think around '98, around the same
18 time.

19 Q At that time when 69-71 Potter Avenue
20 was acquired, did that become the principal place
21 of business for Flavio LaRocca & Sons?

22 A Yes.

23 Q And at some time after that, did the
24 principal place of business for that entity move
25 after 69-71 Potter Avenue?

Page 17

1 Flavio LaRocca 17

2 A No.

3 Q Is 69-71 Potter Avenue still the
4 principal place of business for Flavio LaRocca &
5 Sons, Inc.?

6 A Yes.

7 Q Are there any places that Flavio
8 LaRocca & Sons uses to store equipment other than
9 at 69-71 Potter Avenue?

10 A Yes.

11 Q And where are those places?

12 A 436 5th Avenue, New Rochelle.

13 Q Other than those two locations, is
14 there any other real property used to store items
15 for Flavio LaRocca & Sons' business?

16 A No.

17 MS. ZALANTIS: Are you asking now
18 at this present point in time?

19 MR. MENDELSON: At any point.

20 A No.

21 I'm sorry. Can you repeat that? At
22 any point?

23 Q Let me rephrase the question. Your
24 lawyer makes a good objection.

25 Other than 436 5th Avenue,

Page 19

1 Flávio LaRocca 19

2 A Yes.

3 Q What sorts of equipment did you store
4 or did your company store at that location in
5 those dates?

6 A Some trucks, trailers, some bulk
7 material, and some excavation and landscaping
8 equipment.

9 Q Who did you rent that space from?

10 A Joe Guglielmo.

11 Q How do you know Joe Guglielmo?

12 A He's a neighbor.

13 Q Meaning he's a neighbor to 436 5th
14 Avenue?

15 A Yes.

16 Q Was there a lease for that?

17 A No.

18 Q What was the agreement that you came
19 to with Mr. Guglielmo regarding your rental of
20 that property?

21 A It was based on me providing some
22 services for him, he would allow me to store some
23 of my trucks and equipment on his property.

24 Q What sorts of services were you
25 performing to receive all of that property?

Page 20

1 Flavio LaRocca 20

2 A I was providing some landscape
3 materials for him.

4 Q What sorts of landscape materials were
5 you providing?

6 A Soil and mulch.

7 Q Approximately how much soil and mulch
8 were you providing to Mr. Guglielmo during that
9 time?

10 A I don't know. It varied based on his
11 needs. I really don't know.

12 Q Does Mr. Guglielmo have a business
13 himself?

14 A Yes.

15 Q What is Mr. Guglielmo's business?

16 A Landscaping and gardening.

17 Q Is that a competing business to Flavio
18 LaRocca & Sons?

19 A I don't know if it would be competing.
20 My clients are mainly more high-end residential
21 and light commercial.

22 I think he does more basic landscaping
23 and maintenance services, which is something I
24 don't provide, maintenance services.

25 Q Does he have any involvement in your

Page 21

1 Flavio LaRocca 21

2 company?

3 A No.

4 Q And do you have any involvement in
5 his company?

6 A No.

7 Q When I mean involvement, I mean
8 ownership interest or running the company or
9 anything like that.

10 A Correct.

11 Q You testified earlier that Flavio
12 LaRocca & Sons performs landscaping for
13 residential properties.

14 What sorts of activities does it
15 perform?

16 A We put in plantings, trees, we do
17 regrading work, we do stone work as far as
18 retaining walls and steps, patios, we do drainage
19 work, we put in sod or turf.

20 Q How many employees does Flavio
21 LaRocca & Sons have?

22 A Currently? Six.

23 Q Does that include full-time and
24 part-time?

25 A Yes.

Page 22

1 Flavio LaRocca 22

2 Q In 2015, how many employees did Flavio
3 LaRocca & Sons have, approximately?

4 A Six to eight.

5 Q Has Flavio LaRocca & Sons ever had
6 more than eight employees?

7 A Yes.

8 Q And when was that?

9 A Prior to the recession.

10 Q So that's before 2008?

11 A Yes.

12 Q When Flavio LaRocca & Sons first
13 moved to or started storing equipment at 436 5th
14 Avenue, how many employees did it have at that
15 time?

16 A Four to six.

17 Q Does Flavio LaRocca & Sons own any
18 equipment?

19 A Yes.

20 Q What sorts of equipment does it own?

21 A Trucks, trailers, some excavation and
22 regrading equipment, tractors.

23 Q How many trucks does Flavio LaRocca &
24 Sons currently own?

25 A Ten.

Page 23

1 Flavio LaRocca 23

2 Q And when we say "trucks," can you
3 describe those trucks, meaning what types of
4 trucks are those?

5 A Pickups, vans, dump trucks.

6 Q How many dump trucks does your
7 business own?

8 A Five.

9 MS. ZALANTIS: Again you're
10 asking about currently, right?

11 MR. MENDELSON: Yes. All of
12 this is currently.

13 A Yes.

14 Q In 2015, how many dump trucks did your
15 company own?

16 A I don't know. I can't recall that far
17 back.

18 Q Was it more or less than five?

19 A I think around the same.

20 Q And pickups and vans, are those
21 vehicles used in your business?

22 A Yes.

23 Q What are the uses of those vehicles?

24 A Pickups, they are 4x4. They are used
25 for snowplowing and salting.

Page 24

1 Flávio LaRocca 24

2 Vans are used to transport materials.
3 That is enclosed so it doesn't get ruined by the
4 elements.

5 Q And you mentioned trailers.

6 A Yes.

7 Q What is a trailer?

8 A Trailer is a piece of equipment that
9 attaches to a truck, and it can carry another
10 piece of equipment on it which is not road legal
11 or used to be driven on the road.

12 Q How many trailers does Flavio
13 LaRocca & Sons own?

14 MS. ZALANTIS: Currently.

15 A Currently, three.

16 Q Was that approximately the same amount
17 as owned in 2015 or different?

18 A I think we may have had one more.

19 Q When we say "owned," I also want to
20 include used. So if you rent or if you borrow,
21 do these numbers that you've been giving us
22 include what you use, include all those that you
23 use of these vehicles?

24 A Yes.

25 Q Other than trucks that include pickup,

Page 25

1 Fl Flavio LaRocca 25

2 vans, and dump trucks and then trailers, what
3 other sorts of equipment does Flavio LaRocca &
4 Sons use currently?

5 A Tractors, skid-steer, mini excavators,
6 payloader.

7 Q Approximately how many tractors
8 currently?

9 A Two.

10 Q And skid-steers?

11 A Yes.

12 Q What is a skid-steer?

13 A It's a small like a Bobcat four-
14 wheeled with just a bucket in the front and it's
15 compact.

16 Q How many of those?

17 A Four.

18 Q Do you have any wood chippers?

19 A No.

20 Q Does your company ever use wood
21 chippers?

22 A No.

23 Q What about does your company perform
24 any removal of wood from residential properties?

25 A Only what's fallen on the ground.

Page 26

1 Flavio LaRocca 26

2 Q What happens after your company
3 removes that?

4 A We load it on the truck and take it
5 to a dumpsite.

6 Q Is it broken down in any way?

7 A Yes. Usually when they fall, they
8 break, and some may have to be cut into more
9 manageable pieces.

10 Q What is used by your company to cut
11 the wood into more manageable pieces?

12 A Well, we can't cut ourselves. We
13 call one of our affiliated tree companies and we
14 ask them to take care. But usually a chainsaw.

15 Q Who are your affiliated tree companies
16 that help you remove the wood?

17 A Martignetti Landscaping and Tree
18 Service and Moriarty out of Larchmont.

19 Q Do either of those businesses have
20 property on East Street?

21 A No.

22 Q Other than the equipment that we have
23 discussed, is there any other equipment that
24 Flavio LaRocca & Sons uses in its day-to-day
25 business currently?

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1 Flávio LaRocca 30

2 Q What sorts of applications would
3 necessitate the ride-on versus the walk-behind?

4 A In areas that need more compaction.

5 Q What does it mean to need more
6 compaction?

7 A Well, if you're excavating a footing
8 for let's say a large retaining wall, a plate
9 compactor walk-behind is not sufficient to compact
10 that soil. So you put a bigger piece of equipment
11 in there so it gives more stability to the ground
12 prior to putting up your foundation.

13 Q So is the vibratory compactor used
14 only when something is going to be put on top of
15 the aggregate?

16 MS. ZALANTIS: Objection as to
17 form.

18 You may answer.

19 A I don't --

20 Q I will rephrase it.

21 When you use the vibratory compactor
22 on the aggregate, does it always follow with
23 something going on top of the aggregate afterward?

24 A No.

25 Q What sorts of applications does it

Page 32

1 Flavio LaRocca 32

2 A When you're creating a gravel parking
3 space.

4 Q Other than the equipment that we've
5 discussed, is there any other equipment that
6 Flavio LaRocca & Sons currently uses in its day-
7 to-day business?

8 A No.

9 Q Going back now to the creation of
10 roadways or parking lots, is that something that
11 Flavio LaRocca & Sons does regularly?

12 A No.

13 MS. ZALANTIS: Objection.

14 Q How often does Flavio LaRocca & Sons
15 create parking lots or roadways?

16 A We don't do commercial parking lots
17 or roadways.

18 Q One of those items that you just
19 testified about when you use the vibratory
20 compactor is in breaking a roadway or parking lot,
21 correct?

22 A Yes.

23 Q Has your company ever used a
24 vibratory compactor in making a roadway or a
25 parking lot?

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1 Flavio LaRocca 33

2 MS. ZALANTIS: Objection as to
3 form.

4 A No.

5 Q Has Flavio LaRocca & Sons ever done
6 work to a parking lot or a roadway?

7 A Yes.

8 Q And when it has done that work, did
9 it use a vibratory compactor?

10 A No.

11 Q When it performed that work, did it
12 use a compactor?

13 A No.

14 Q Approximately how many parking lots
15 and/or roadways has Flavio LaRocca & Sons ever
16 worked on?

17 MS. ZALANTIS: Objection as to
18 form.

19 A A few.

20 Q Is that less than five or more than
21 five?

22 A More than five.

23 Q That more than five, is that both
24 parking lots and roadways?

25 A Yes.

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1 Flavio LaRocca 34

2 Q How many parking lots, approximately,
3 has Flavio LaRocca & Sons worked on?

4 A Five to ten.

5 Q How many roadways has Flavio LaRocca &
6 Sons worked on?

7 A None.

8 Q Those parking lots that Flavio
9 LaRocca & Sons have worked on, are those on
10 residential properties or commercial properties?

11 A Commercial.

12 Q Can you tell me the locations of those
13 parking lots?

14 A One is at 575 Stratton Road in New
15 Rochelle.

16 Q What sort of property is Stratton
17 Road?

18 A It's a house of worship.

19 Q Is there a name?

20 A It's the Jehovah's Witness
21 congregation there.

22 Q What sort of work did Flavio LaRocca &
23 Sons perform on the parking lot there?

24 A Cracked sealing and -- filling and
25 sealing.

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1 Flavio LaRocca 38

2 A Correct.

3 Q Where currently do you -- and when I
4 say "you," I'm referring to your business, Flavio
5 LaRocca & Sons, where currently do you store your
6 equipment?

7 A At 71 Potter Avenue and 436 5th
8 Avenue.

9 Q What is stored at 71 Potter Avenue?

10 A Some trucks, trailers, and some
11 regrading and excavation equipment.

12 Q Other than the equipment that we've
13 discussed, is there any other equipment that's
14 used to regrade?

15 A There is other equipment, but not that
16 I own.

17 Q What other equipment do you use to
18 regrade?

19 A Dozer, land grader, a box leveler.

20 Q Are those types of equipment used to
21 move earth?

22 A Yes.

23 Q Are they ever used to move trees?

24 A No.

25 Q Are they ever used to move plants

Page 39

1 Flavio LaRocca 39

2 from a job site?

3 A No.

4 Q Do you ever have to, does Flavio
5 LaRocca & Sons ever have to move vegetation from
6 a job site prior to starting or completing the
7 work?

8 A Yes.

9 MS. ZALANTIS: Objection as to
10 form.

11 A Yes.

12 MS. ZALANTIS: What do you mean
13 by "vegetation"?

14 Q Does Flavio LaRocca & Sons ever have
15 to clear trees prior to working on a project?

16 A Yes.

17 Q Does Flavio LaRocca & Sons perform
18 that work?

19 A Small stuff, yes.

20 Q Other than tree, removing trees, does
21 Flavio LaRocca & Sons also remove other sorts of
22 vegetation from a job site prior to working on
23 it?

24 MS. ZALANTIS: Objection as to
25 form.

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1 Flavio LaRocca 40

2 MR. MENDELSON: I can rephrase
3 that. I can make it clearer.

4 Q Other than removing trees as you just
5 testified to, does Flavio LaRocca on occasion
6 have to remove other sorts of vegetation from a
7 job site when working on it?

8 A Can you be more specific to what type
9 of vegetation?

10 Q Sure.

11 Bushes --

12 A Okay.

13 Q -- or brush or tall grasses --

14 A Okay.

15 Q -- are those sorts of things that
16 Flavio LaRocca & Sons has occasion to move when
17 working on a job site?

18 A Yes.

19 Q What sorts of equipment is used to
20 remove those items from a job site by your
21 company?

22 A Depending on the size, small bushes
23 can usually be attached with a chain behind one
24 of our skid-steers and pulled out. Or the
25 grasses, we use a sod cutter for the grasses. Or

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1 Flavio LaRocca 47

2 Q Approximately, now we are just talking
3 to you prior to you purchasing the property,
4 approximately how far onto East Street did that
5 survey that you viewed show the fencing
6 encroaching?

7 A I don't recall measuring it, but from
8 my recollection it was a few feet.

9 Q Other than that fencing, was there
10 anything else about that survey that showed
11 436 5th Avenue encroaching upon another
12 property?

13 A I don't recall.

14 Q Do you have a copy of that survey
15 that you viewed prior to purchasing 436 5th
16 Avenue?

17 A I think in my file I do have it.

18 Q Was that one of the documents that was
19 given to us by your counsel?

20 A I think so.

21 Q Would you be able to recognize it if
22 you saw it?

23 A I think so.

24 MR. MENDELSON: I'm going to
25 have this marked as Plaintiff's 1-A.

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1 Flavio LaRocca 48

2 (Whereupon, Survey was marked
3 Plaintiff's Exhibit 1-A for
4 Identification, as of this date, by
5 the reporter.)

6 Q Mr. LaRocca, if you can take a look
7 at what's been marked as -- show it to Kathy as
8 well -- what's been marked as Plaintiff's 1-A.

9 Do you recognize that?

10 A Yes.

11 Q What is that?

12 A It's a survey of my property on
13 436 5th Avenue.

14 Q When was that survey created?

15 A I think in November of 2000.

16 Q Is that the same survey that you're
17 testifying you reviewed prior to purchasing the
18 property?

19 A Yes.

20 Q And could you take with a yellow
21 highlighter and mark for me on that exhibit with
22 the highlighter what area you saw encroaching
23 prior to purchasing the property.

24 (Witness complies)

25 MR. MENDELSON: For the record,

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1 Flavio LaRocca 50

2 enough time.

3 A (Reviewing)

4 MR. MENDELSON: For the record,
5 Plaintiff's 2 is a group of documents
6 Bates stamped D-1 through D-15, and
7 on the front it says Owner's Policy
8 of Title Insurance.

9 A Okay.

10 Q Are you ready?

11 A Um-hm.

12 Q I want you to turn to the page that's
13 Bates stamped -- do you know what Bates stamps
14 are?

15 MR. MENDELSON: Off the record.

16 (Whereupon, a discussion was
17 held off the record.)

18 Q D 004.

19 A Okay.

20 Q Do you see at the top it says amount
21 of insurance?

22 A Yes.

23 Q And you see the name of the insured?

24 A Yes.

25 Q Who were the names of the insured?

Page 52

1 Flavio LaRocca 52

2 A No.

3 Q Do you know if either of you provided
4 a survey to either the title company or your
5 attorney at that time?

6 A Not us. I think the sellers provided
7 the survey.

8 Q I'm going to have you turn to -- and
9 do you know if the sellers provided a survey?

10 A Yes.

11 Q And who did the sellers provide a
12 survey to?

13 A To us, which in turn we gave it to our
14 attorneys, and they did what they had to do.

15 Q Do you see on -- I want you to go back
16 to D 4.

17 A Okay.

18 Q Is there a date of policy listed?

19 A Yes.

20 Q And what is the date of the policy?

21 A September 18, 2002.

22 Q Turning to D 7, could you read what's
23 on D 7.

24 A This company is unable to locate an
25 existing survey on the premises described in

Page 53

1 Flavio LaRocca 53

2 Schedule A.

3 Q Could you read what is directly above
4 that?

5 A Policy accepts any state of facts.
6 An accurate survey would show when a survey
7 showing the premises described in Schedule A is
8 received. Same will be read into the existing
9 title report.

10 Q Do you know what that means?

11 A No.

12 MS. ZALANTIS: Objection.

13 Q And I'm only asking for your personal
14 basis.

15 MS. ZALANTIS: No, you're asking
16 him for a legal conclusion.

17 MR. MENDELSON: I'm not. I'm
18 asking for his personal basis of
19 belief.

20 Q Do you have a personal basis of belief
21 as to what that means?

22 MS. ZALANTIS: I mean, you can
23 answer if you know.

24 A No.

25 Q Going back to what's been marked as

Page 54

1 Flavio LaRocca 54

2 1-A, which is back there, you highlighted an area
3 which you indicated you knew was encroaching
4 prior to buying that property.

5 Going back to 1-A, you highlighted an
6 area that you stated is encroaching on another
7 piece of property.

8 Is that fair?

9 A Yes.

10 Q What is --

11 MS. ZALANTIS: I just want the
12 record to be clear.

13 He says it was encroaching not on
14 another piece of property, but on
15 East Street.

16 Q Is it fair that it's encroaching on
17 East Street?

18 A Yes.

19 Q At that time prior to you purchasing
20 436 5th Avenue, whose property did you believe
21 that was on East Street?

22 A The Maffeis.

23 Q So your testimony is that --

24 MR. MENDELSON: Withdrawn.

25 Q I'm referring to East Street. I want

Page 55

1 Flavio LaRocca 55

2 to be very clear.

3 At the time you purchased 436 5th
4 Avenue, who did you believe owned East Street?

5 A Are you referring to the property
6 that was encroaching, or East Street in general?

7 Q I'm referring to the property that
8 was encroaching onto East Street.

9 A Maffei.

10 Q So it's your testimony that you
11 believe the encroaching property was Maffeis'.

12 A Correct.

13 Q Who at that time did you believe owned
14 East Street?

15 A The whole road?

16 Q Yes.

17 A I was told by Maffei that it was a
18 private road and it was owned by each section by
19 each owner of the properties that is there.

20 Q Did you speak with your attorney at
21 the time about that?

22 A Yes.

23 Q And what --

24 MS. ZALANTIS: I'm going to --

25 I'm not going to let him testify

Page 56

1 Flavio LaRocca 56

2 about his conversations with his
3 attorney at the time. It's
4 privileged communications.

5 MR. MENDELSON: I will move on.

6 Q Did you ever come to learn that East
7 Street is owned by The City of New Rochelle?

8 A Only by what some municipality
9 officials told me.

10 Q Who do you believe owns East Street
11 currently?

12 A The owners of all the properties along
13 East Street.

14 Q Is that the same understanding that
15 you had when you purchased that property?

16 A Yes.

17 Q When was the first time somebody told
18 you from the City that the City owned East
19 Street?

20 A When the City was planning to do the
21 eminent domain to locate their City yard there.

22 Q Was that in approximately 2009?

23 A No, I think it was around 2014.

24 Q I'm going to ask you to take a look
25 at what's been premarked as Plaintiff's 3, so you

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1 Flavio LaRocca 58

2 And if you could, please review that document.

3 It's the Verified Answer with

4 Affirmative Defenses and Counterclaims.

5 A (Reviewing)

6 Okay.

7 Q Were you involved in drafting this
8 document, the Answer?

9 A Yes.

10 MS. ZALANTIS: Objection.

11 Q Did you review the Answer prior to it
12 being filed with the Court?

13 A Yes.

14 Q Do you agree with all of the
15 assertions, statements and allegations that are
16 in the Answer?

17 A Yes.

18 Q Is everything in the Answer true?

19 A As far as what I can understand, yes.

20 Q If you could turn to the last page,
21 13 of 13. There is a verification there.

22 A Um-hm.

23 Q Whose signature appears on the
24 verification?

25 A My wife's.

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1 Flávio LaRocca 59

2 Q I want you to turn to Page 9. I want
3 you to if you could review paragraphs 94 through
4 103.

5 A Okay.

6 Q Starting with, if I could draw your
7 attention to paragraph 95, could you read that
8 out loud.

9 A Defendant's properties has certain
10 Jersey barriers, concrete Jersey barriers which
11 barriers the City claims encroach upon East
12 Street.

13 Q What is that referring to?

14 A On the outside of the fence that
15 there are some concrete Jersey barriers that are
16 there.

17 Q When you say "fence," are you
18 referring to the fence which we previously, which
19 you previously highlighted in Plaintiff's 1-A?

20 A Yes.

21 Q So is it your testimony that there
22 are Jersey barriers on the outside of the gate
23 presently?

24 A Yes.

25 Q And whose Jersey barriers are those?

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1 Flávio LaRocca 60

2 A Those were on my property when I
3 purchased the property.

4 Q So whose Jersey barriers do you
5 believe those are?

6 A Mine.

7 Q Are those Jersey barriers on East
8 Street?

9 A Yes.

10 Q I want you to take a look at --

11 MR. MENDELSON: Withdrawn.

12 Because we are talking about the
13 skate park.

14 Q Is there a skate park directly across
15 East Street from 436 5th Avenue?

16 A Yes.

17 MS. ZALANTIS: Currently, right?

18 MR. MENDELSON: Right,
19 currently.

20 A Yes, currently.

21 Q Who owns that skate park?

22 A The City of New Rochelle.

23 Q When, approximately, was it built?

24 A I don't remember the exact date but
25 sometime in I think mid-2000.

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1 Flávio LaRocca 63

2 property.

3 MS. ZALANTIS: By "they," you're
4 referring to the Jersey barriers.

5 A Correct. Jersey barriers were there
6 when I acquired the property.

7 Q When you say they "were there," were
8 they inside the gate or outside the gate?

9 A Inside the gate.

10 Q So your testimony is that when you
11 purchased 436 5th Avenue, there were Jersey
12 barriers stored inside the gate on 5th Avenue.

13 A Yes.

14 Q Approximately how many Jersey barriers
15 were stored there?

16 A Over forty of them.

17 Q How much does a Jersey barrier weigh?

18 A Anywhere from a thousand pounds to
19 about 3- to 4,000 pounds.

20 Q Now, the Jersey barriers that you're
21 testifying forty of them that were inside of your
22 gate when you purchased your property 436 5th
23 Avenue, what, approximately, were the dimensions
24 of each one of those Jersey barriers?

25 A They vary.

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1 Flavio LaRocca 66

2 A Um-hm.

3 (Witness complies)

4 A That's what I remember.

5 Q Okay. And then if you could, you
6 just testified that at some point in approximately
7 2003 you moved 80 percent of those Jersey
8 barriers that are marked in blue outside of your
9 property.

10 Could you mark in pink where they were
11 moved outside of your property.

12 (Witness complies)

13 MR. MENDELSON: For the record,
14 he's marked outside of the
15 chain-linked fence onto East Street
16 over the words "East Street," and
17 then below that on the diagram as
18 well over the words "sliding gate."

19 Q So at the time you moved the Jersey
20 barriers out, approximately how many Jersey
21 barriers remained inside of your property?

22 A Roughly six to eight.

23 Q And the other roughly thirty-two to
24 thirty-four were moved in the area that you marked
25 in pink.

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1 Flavio LaRocca 67

2 A No, forty-four, forty-five of them
3 were moved in that area. The other six to eight
4 remained inside.

5 Q So it's your testimony that the area
6 in pink where you moved Jersey barriers that were
7 previously inside of your property, Flavio
8 LaRocca & Sons moved forty to forty-four of them
9 to the area in pink outside of your property.

10 A Correct.

11 Q And that was done in approximately
12 2003.

13 A Correct.

14 Q And that was done by Flavio LaRocca &
15 Sons.

16 A Correct.

17 Q When they were placed in the area in
18 pink, is it fair to say that's on East Street?

19 A Yes.

20 Q Other than the forty to forty-four
21 that Flavio LaRocca & Sons moved outside of
22 436 5th Avenue, were there any Jersey barriers
23 that were present on the outside of that property
24 already?

25 MS. ZALANTIS: The outside of 436?

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1 Flavio LaRocca 69

2 Q And was there anybody else there from
3 Flavio LaRocca & Sons at that time?

4 A No.

5 Q Approximately when was that that you
6 saw the Jersey barriers being moved?

7 A While they were constructing the
8 park.

9 Q Was that after Flavio LaRocca & Sons
10 had moved them to the area in pink?

11 A Yes.

12 Q So on a Saturday morning you witnessed
13 a contractor taking those Jersey barriers that
14 were on East Street and moving them.

15 A Yes.

16 Q Approximately how many Jersey barriers
17 did that contractor move?

18 A When I got there and I saw it, he had
19 them already placed along the fence. I forget
20 the exact number now.

21 Q When you say "along the fence," what
22 fence are you speaking of?

23 A The skate park fence.

24 Q So is it your testimony that that
25 contractor had moved them from along the sliding

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1 Flavio LaRocca 70

2 gate fence in front of 436 5th Avenue to the gate
3 across from the skate park?

4 A Correct. And along the entire line.
5 He was there with an excavator picking them. He
6 had a hook and chain and one gentleman helping
7 him with the hook and chain while he was in the
8 excavator and just plopping them into place.

9 Q Were those Jersey barriers marked in
10 any way?

11 A No.

12 Q Was there anything that said Flavio
13 LaRocca & Sons or any marking that would have
14 indicated that those were the property of Flavio
15 LaRocca & Sons?

16 A No.

17 Q Was there any indication that those
18 Jersey barriers were the property of 436 5th
19 Avenue?

20 A The way they were stacked would
21 indicate that they belonged to my property.

22 Q When you say "the way they were
23 stacked," how were they stacked in a way that
24 would have shown they were your property?

25 A Well, if you look at the survey where

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1 Flavio LaRocca 71

2 in pink they were double and triple stacked one
3 on top of another against my fence line, so
4 leaving more than half of the roadway free for
5 not only myself and my neighbors for getting out
6 while I did this work here. And this work was
7 going on for several months before those were
8 taken.

9 Q And that stacking was on East Street.

10 A Correct. Against my fence line.

11 Q I want you to take a look at paragraph
12 102 and read that out loud.

13 A Even if the concrete Jersey barriers
14 still did have utility, Defendants have not been
15 able to use the property it purchased for its own
16 purpose because the conversion committed by the
17 City to use the concrete Jersey barriers for its
18 own purposes.

19 Q What, if any, utility did those
20 Jersey barriers have for the business of Flavio
21 LaRocca & Sons?

22 A Well, as Maffei was using it before,
23 there could have been material dividers in the
24 yard itself, and even a protection against the
25 fencing line on the outside. Because some of the

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1 Flavio LaRocca 74

2 A As a verbal agreement, yes.

3 Q Were they in the contract?

4 MS. ZALANTIS: Objection. I
5 don't know if you're asking him for a
6 legal conclusion.

7 A I don't know if they were written in
8 the contract or not.

9 MR. MENDELSON: I'm going to
10 demand production of the contract of
11 sale from Mr. LaRocca's purchase of
12 436 5th Avenue.

13 MS. ZALANTIS: Take it under
14 advisement.

15 MR. MENDELSON: And we will
16 submit it in writing as well.

17 (REQUEST) _____

18 Q Moving forward.

19 Have you ever purchased a Jersey
20 barrier?

21 A No.

22 Q Has Flavio LaRocca & Sons ever
23 purchased a Jersey barrier?

24 A No.

25 MS. ZALANTIS: Just to clarify,

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1 Flávio LaRocca 75

2 you mean other than in connection
3 with what he already testified to,
4 right?

5 MR. MENDELSON: I think his
6 testimony speaks for itself.

7 Q I'm going to show you now what's been
8 marked as Plaintiff's 6. It's Bates stamps range
9 from 280 to 286.

10 Do you see that?

11 A Yes.

12 Q And it's a pack of photographs.
13 Have you seen those photographs
14 before?

15 A Yes.

16 Q What do those photographs depict?

17 A The Jersey barriers along the skate
18 park.

19 Q Are these the same Jersey barriers
20 that you're alleging that were moved from the
21 area in pink by that contractor to that, in front
22 of the gate in front of the skate park?

23 A Correct.

24 Q Are these Jersey barriers as depicted
25 in substantially the same condition they were in

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1 Flavio LaRocca 77

2 snowplowing, and repairing the road if needed.

3 Q Do you know if the City has ever
4 maintained East Street?

5 A As long as I've been there, no.

6 Q Did you have any conversations with
7 Mr. Maffei about the maintenance of East Street
8 prior to purchasing the property?

9 A Yes.

10 Q What, if anything, did he say?

11 A That each property owner would
12 maintain their portion before their property.

13 Q Was there ever an understanding at
14 that time when you purchased the property that
15 the City would maintain East Street?

16 A No.

17 Q Currently when you store vehicles or
18 equipment for your business at 436 5th Avenue,
19 where are they stored?

20 A At 436 5th Avenue?

21 Q Yes.

22 A 436 5th Avenue.

23 Q Where on 436 5th Avenue are they
24 stored?

25 A Within my property.

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1 Flavio LaRocca 79

2 in front of my yard.

3 Q So is it your testimony that other
4 than in front of your yard, which I'm guessing
5 means 436 5th Avenue; is that correct?

6 A Correct.

7 Q And then inside of 436 5th Avenue,
8 it's your testimony that your equipment or trucks
9 have never been stored anywhere else on East
10 Street.

11 A Well, no. Inside the -- you're
12 talking about the street or anywhere else along
13 that street?

14 Q I'm talking about anywhere else in
15 the vicinity of that street.

16 A Well, Guglielmo's yard when I was
17 there for those years.

18 Q Where is -- well, let's take a look
19 at --

20 MR. MENDELSON: Now is a good
21 time for a break. Just so I can set
22 up this next.

23 (Whereupon, a brief recess was
24 taken.)

25 Q I'm going to show you, Mr. LaRocca,

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1 Flavio LaRocca 83

2 case, what we went over as, I believe it was
3 Plaintiff's 3?

4 A Yes.

5 Q And in Plaintiff's 3 there is a piece
6 of property that's referred to as the parcel.

7 Are you familiar with that?

8 A I think so, but refresh my mind.

9 Q Let's take a look at Plaintiff's 3.

10 If you could turn to Page 4 and look
11 at paragraph 10 and read that out loud, please.

12 A At all times pertinent hereto, the
13 City has been and presently is the owner of a
14 parcel of property located in the City of New
15 Rochelle, County of Westchester, State of New
16 York, consisting of undeveloped open land between
17 East Street and Fowlers Park, the parcel.

18 Q Is that Flowers Park?

19 A Flowers. I'm sorry. Yes.

20 Q Are you familiar with that piece of
21 property that this is referring to as the parcel?

22 A Yes.

23 Q Is the parcel as defined in the
24 Complaint represented in Plaintiff's 7?

25 A Yes.

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1 Flavio LaRocca 84

2 Q Could you point to it.

3 A It's where this white truck is here.

4 MR. MENDELSON: And for the
5 record, he's pointing to in the
6 middle left of the photograph there
7 is a white truck pulling, looks like
8 it's pulling something behind it that
9 is directly above East Street as we
10 are looking to this.

11 Q Is that fair?

12 A Yes.

13 Q Has Flavio LaRocca & Sons ever stored
14 any equipment or vehicles on the parcel?

15 A No.

16 Q Has Flavio LaRocca & Sons ever parked
17 vehicles or equipment on the parcel?

18 A No.

19 Q Has Flavio LaRocca & Sons' employees
20 ever parked vehicles on that parcel?

21 A No.

22 Q Has Flavio LaRocca & Sons ever
23 performed any work on that parcel?

24 MS. ZALANTIS: Objection as to
25 form.

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1 Flavio LaRocca 85

2 Q Has Flavio LaRocca & Sons ever done
3 anything to the parcel?

4 A We just raked the ground.

5 Q What is the reason the ground is
6 raked?

7 A Because when we would plow that area
8 to get into where we were storing the equipment
9 in Guglielmo's yard, we would disturb that area
10 which was gravel and wood chips thrown down by
11 previously. We just raked the area that we would
12 disturb.

13 Q How did it become Flavio LaRocca &
14 Sons' responsibility to rake the parcel?

15 A Just because we entered into the
16 property down below Guglielmo's yard. The City
17 would not maintain the road.

18 We would plow it to gain access
19 because otherwise we cannot enter our trucks and
20 equipment and we would damage the area as the
21 plows would go by.

22 And as a courtesy to my neighbors who
23 were there, we just raked out the area and that's
24 it.

25 Q Does anyone park or store equipment

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1 Flavio LaRocca 87

2 Q I'm going to ask you to take a look
3 at what's been marked as Plaintiff's 8.

4 Just take a read over it and let me
5 know when you're done.

6 A Okay.

7 (Reviewing)

8 Yes.

9 Q Have you ever seen this document
10 before?

11 A Yes.

12 Q What is it?

13 A It is a letter from Mr. Strome to our
14 inquiry about purchasing or possibly renting the
15 City property where the park is now.

16 Q What was the reason that you wanted to
17 rent that area from the City?

18 A I really wanted to purchase it but
19 the City had informed me that it was not for
20 sale. And being that there was another contractor
21 there, I thought that maybe they would rent it or
22 lease it to me for my business use.

23 Q This letter is dated March 17, 2003,
24 and it's from Charles Strome to you.

25 Is that fair?

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1 Flavio LaRocca 88

2 A Yes.

3 Q Did you write a letter to Mr. Strome?

4 A I don't remember if it was a letter
5 or an email, but there was something, I had
6 contacted him somehow.

7 Q Do you have that correspondence that
8 you sent?

9 A I don't recall if I have it or not.

10 MR. MENDELSON: I'm going to
11 demand production of that
12 correspondence, and I will follow up
13 in writing.

14 (REQUEST) _____

15 Q At that time in 2003, what did the
16 parcel look like?

17 A At that time it was all cleared out
18 and it was gravel and wood chips by the company
19 that was there that they had spread out when they
20 left.

21 Q Is that the same condition it was in
22 when you purchased 436 5th Avenue?

23 A No.

24 Q What condition was it in when you
25 purchased it?

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1 Flavio LaRocca 90

2 A I know there has been people who come
3 and visit the skate park, they have parked their
4 vehicles there, parents and even kids that go to
5 the park.

6 There has even been vendors that come
7 there, like Mr. Softee the ice cream guy who
8 services the kids at the park.

9 Even the park and rec department has
10 parked there many times. There is actually a
11 access gate going there, and some other people
12 from the neighborhood.

13 Even some of the neighbors down the
14 road have parked some of their vehicles there.

15 Q Who do you believe owns the parcel?

16 A The parcel in question, this is the
17 City's property.

18 Q Now I'm going to show you what's been
19 marked as Plaintiff's 9.

20 Could you take a read over it and let
21 me know when you're done.

22 A (Reviewing)

23 Okay.

24 Q Plaintiff's 9 is a letter from the
25 City of New Rochelle dated June 22, 2009, and

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1 Flavio LaRocca 91

2 it's signed by Paul Vacca and Jeffrey Coleman.

3 Mr. LaRocca, have you seen this letter
4 before?

5 A Yes.

6 Q What does this letter, what, if
7 anything, does it say?

8 A That it came to the City's knowledge
9 that we were encroaching on City property.

10 Q Do you agree with that, that in 2009
11 that 436 5th Avenue was encroaching on City
12 property?

13 A No.

14 Q What is your reason for your belief
15 that in 2009 when this letter was sent that you
16 were not encroaching?

17 A Because when I purchased the property,
18 the fencing was in the same location. When I got
19 the permit to do my work, the fencing was in the
20 same location. Nothing had changed and I was
21 never told that prior to this letter being
22 received some six, seven years after I purchased
23 the property.

24 Q The permit that you're speaking of,
25 was that permit regarding the gate that's at the

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1 Flavio LaRocca 93

2 Mr. Coleman.

3 Q What was discussed at the meeting?

4 A The content of this letter.

5 Q Was there any resolution to the
6 content of the letter?

7 A Yes.

8 Q What was the resolution?

9 A They both proposed that I would get a
10 surveyor to come out and mark that line to depict
11 where the property was so that they can determine
12 where it was.

13 Because I explained to them that I
14 thought that was my property, and I've been using
15 it since I've had it, and the previous owner was
16 using it who knows how many years prior to me.

17 Q At any time during that meeting, did
18 either Mr. Vacca or Mr. Coleman tell you that the
19 encroachment was okay?

20 A Not at that meeting. They said we
21 will discuss it after the surveyor comes.

22 Q Did they ever give you permission to
23 having encroachment at that time?

24 A No, they just asked me to get a
25 surveyor come out and stake that line.

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1 Flávio LaRocca 95

2 Schedule A and any old surveys of the property
3 you may have. If a copy of the deed Schedule A
4 is not provided, please note that there will be a
5 \$50 research charge.

6 Q Do you know if you provided Gabriel E.
7 Senor with a survey?

8 A Yes.

9 Q Which survey did you provide?

10 A The one that's here, the --

11 Q Is it the one that we marked as 1-A?

12 A I think. I'm not too sure if it was
13 exactly that one.

14 No, I don't remember. I think I
15 marked one, I sent him one, but I don't remember
16 exactly which one it was.

17 Q Do you know how you sent it?

18 A It was given with the, my
19 authorization and deposit when I signed this, a
20 document.

21 MR. MENDELSON: We are going to
22 demand that survey or any
23 documentation that was provided to
24 this company to complete this
25 staking.

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1 Flavio LaRocca 96

2 We will follow up in writing.

3 (REQUEST) _____

4 Q I want you to turn to D 24.

5 What was the purpose that you believed
6 of conducting this stakeout?

7 A To show us where the actual property
8 line was along East Street.

9 Q And do you see where it says for
10 professional services rendered in the middle of
11 the page?

12 A Yes.

13 Q And it says stakeout sketch email to
14 Flavio 9/10/09.

15 Do you remember receiving an email
16 regarding this?

17 A I don't remember the email but I
18 remember receiving the following, this document
19 here. This is what was given to me. It was an
20 actual paper copy that was given to me by the
21 person on the day of the survey, because I was
22 there when they were doing it.

23 MR. MENDELSON: We are going to
24 demand any correspondence with
25 Gabriel Senor and we will follow up

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1 Flavio LaRocca 97

2 in writing.

3 (REQUEST) _____

4 Q Now turning to the last page, D 25,
5 what is this?

6 A This is the sketch that the surveyor
7 who was there staking out the property gave me
8 upon completion of the survey.

9 Q What, if anything, did this say to
10 you?

11 A It showed me where the two reference
12 points were, that they had put a stake in the
13 ground and a cross on the concrete wall at the
14 corner of the property.

15 Q Now, is that at the front of the
16 property where the gate is?

17 A No, at the front of the property
18 along 5th Avenue where the evergreen trees are,
19 and then the back past the gate in the back right
20 corner.

21 Q But it's on the east side of your
22 property.

23 A Both points of east, yes.

24 Q So there is a stake somewhere you're
25 saying on the sidewalk there next to 5th Avenue?

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1 Flávio LaRocca 98

2 A He actually put it right under the
3 shrubbery, the bushes.

4 Q Then there is another stake along
5 East Street.

6 A That's not a stake. On top of the
7 concrete there was a cross which they had then
8 painted with some orange-pink paint.

9 Q But this was done on the east side of
10 your property.

11 A Correct.

12 Q And that's the side that abuts East
13 Street.

14 A Correct.

15 Q What, if anything, did the stakes show
16 about your property?

17 A That where the fencing was was a
18 difference of about 10 inches or so from where
19 their markings were.

20 Q Meaning what?

21 A Well, when my encroachment was only
22 about this much over the property line.

23 MR. MENDELSON: For the record,
24 the witness is holding up his hands
25 about --

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1 Flavio LaRocca 99

2 A Ten inches or so.

3 Q So it's your testimony that where the
4 stakes were drawn out by Gabriel Senor, it showed
5 an encroachment from your property onto East
6 Street of only 10 inches?

7 A Correct.

8 Q What was the encroachment?

9 A The fencing post was over about
10 10 inches or so from where he put the marker.

11 Q And the top of the marker on the north
12 side, most northern marker was on the concrete
13 wall?

14 A Yes.

15 Q The part you're saying there is only
16 a 10-inch encroachment, is that an encroachment
17 onto East Street?

18 A Yes.

19 Q Other than these stakes that were put
20 in by this company depicted in Plaintiff's 10,
21 have you or your business ever commissioned any
22 other surveys or stakes at 436 5th Avenue?

23 A No.

24 Q Have you other than this, have you or
25 your business ever commissioned any other surveys

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1 Flavio LaRocca 102

2 Is that fair?

3 A Yes.

4 Q I want you with the pink, can you
5 shade in the property that you encompass with the
6 green X that is your -- stating is yours that is
7 outside of that bold line.

8 A You want me to shade it or just box
9 it?

10 Q You can shade it or just put lines.
11 However --

12 (Witness complies)

13 MR. MENDELSON: He's drawn a
14 box around that area with diagonal
15 lines.

16 Q Now, would you agree with me that
17 that box with diagonal lines is on the outside of
18 that bold border?

19 A Correct.

20 Q Currently what is inside of the pink
21 shaded area?

22 A Fencing and some shelving.

23 Q Whose property is that?

24 A My property.

25 Q What shelving is it?

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1 Flavio LaRocca 104

2 shaded area, what borders the most eastern pink
3 shade of that area?

4 A The eastern side, the gate.

5 Q The same sliding gate that we've been
6 speaking about and that was also shown on 1-A.

7 A Yes.

8 Q The concrete wall where the stake was
9 put in on the northern part of the property,
10 could you draw a blue circle around where that
11 stake is.

12 (Witness complies)

13 Q Now, could you draw a blue circle on
14 the southern side where the other stake is.

15 (Witness complies)

16 MR. MENDELSON: He's put two
17 blue dots on either side of the north
18 and south of the pink shaded area.

19 Q Now I want you to take the -- let's
20 do it in yellow.

21 The area, the Guglielmo, could you
22 put an X where that is, where the space where you
23 rented to put your materials.

24 (Witness complies)

25 MR. MENDELSON: He's marked an

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1 Flavio LaRocca 106

2 A Okay.

3 Q Is it fair to say those blue areas
4 you've drawn are located on East Street?

5 A On the western side of East Street,
6 yes.

7 Q But they are within the border of
8 East Street.

9 A Correct.

10 Q As shown on this survey.

11 A Yes.

12 Q Who parks in those blue areas?

13 A Some of the workers from the other
14 companies, as well as some of the neighbors from
15 East Place and even Ashland.

16 Q Does Flavio LaRocca & Sons ever park
17 or store any of its equipment or vehicles in those
18 blue areas?

19 A No.

20 Q Does Flavio LaRocca & Sons ever store
21 or park any of its vehicles in the area circled
22 in yellow?

23 A No.

24 Q Has it ever?

25 A No.

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1 Flavio LaRocca 107

2 Q Now, earlier you testified that -- I
3 know Kathy is going to object to my use of the
4 word "work," so we will call it -- I'm going to
5 call it what I want.

6 Has Flavio LaRocca & Sons ever
7 performed any work within the yellow area?

8 MS. ZALANTIS: Objection as to
9 form.

10 You can answer.

11 A Yes.

12 Q What is the work that was performed
13 within the yellow area?

14 A Raking out the disturbed gravel that
15 was there from our snowplowing.

16 Q Tell me how disturbed gravel affects
17 that parcel.

18 A Okay. This area was left with gravel
19 on the ground from the contractor that was using
20 this whole area.

21 The contractor was using this for
22 equipment storage and this for employee parking,
23 Persico Contracting --

24 MS. ZALANTIS: Can we just let
25 the record reflect that --

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1 Flavio LaRocca 108

2 MR. MENDELSON: I was just going
3 to do it.

4 MS. ZALANTIS: Go ahead.

5 MR. MENDELSON: You can go ahead
6 and finish what --

7 A When they left it in that area, when
8 we plowed the road --

9 Q So now stop.

10 MR. MENDELSON: For the record,
11 he has pointed to the part of the
12 survey that's marked now City of New
13 Rochelle to the south of the parcel,
14 and he's moving his finger northbound
15 on East Street.

16 A Correct.

17 MS. ZALANTIS: Could I just, just
18 to clarify for the record, I think he
19 indicated where it's depicted as now
20 and formerly City of New Rochelle as
21 where the contractor was storing
22 equipment --

23 MR. MENDELSON: Yes.

24 MS. ZALANTIS: -- and materials.

25 And the yellow portion that you

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1 Flavio LaRocca 109

2 circled with the yellow highlighter
3 was where the contractor was using as
4 a staging area; is that correct?

5 A No. That was employee parking for
6 that contractor, Persico contractor.

7 MS. ZALANTIS: Okay. Thank you.

8 MR. MENDELSON: Okay.

9 Q When was that?

10 A When they were using the area to build
11 the bridge in '02 or '03. Prior to the
12 construction of the skate park.

13 Q So we interrupted you.

14 How does the snowplowing affect the
15 yellow area?

16 A When we snowplowed this area, at
17 times, because it's a steep hill going down, our
18 trucks with the snow, depending on how much, or
19 ice, would skid off and scrape into the yellow
20 area where the gravel was at, and some of the
21 gravel would be pushed onto East Street and some
22 of the gravel would be piled up in mounds for the
23 snowplow.

24 MR. MENDELSON: For the record,
25 he moved his finger up East Street

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1 Flavio LaRocca 110

2 north and then skipped his hand and
3 moved his hand into the yellow area
4 and came back out.

5 A Correct. Because in order for us to
6 gain entrance here where the gate was, no one
7 would ever plow this road, so we would plow it so
8 we could gain access.

9 Q When you're pointing, you're pointing
10 to an area that's outside of the boundary of East
11 Street.

12 Is it your testimony that your company
13 plows outside of East Street?

14 A I'm sorry. Excuse me. I --

15 Q Does your company only plow East
16 Street or does it also plow property that's to the
17 east of East Street?

18 A They abut one another. So when you
19 have 6 inches or a foot of snow on the ground, you
20 can't tell where the line is.

21 Q So that yellow parcel is a certain
22 number of feet off of East Street.

23 Is that fair?

24 A Correct.

25 Q And it goes back into where Flowers

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1 Flavio LaRocca 111

2 Park is.

3 Is that fair?

4 A Yes.

5 Q In fact, Flowers Park comes right up
6 to East Street right here, right?

7 A Correct.

8 Q And that includes the yellow circled
9 area, correct?

10 A Yes.

11 MS. ZALANTIS: Can I just take a
12 break for one moment before you ask
13 your next question?

14 MR. MENDELSON: Sure.

15 (Whereupon, a brief recess was
16 taken.)

17 Q Mr. LaRocca, is there gravel on East
18 Street?

19 A On East Street, no.

20 Q What sort of surface is East Street?

21 A Blacktop.

22 Q So when your plows come northbound on
23 East Street as you've described, they are not
24 moving gravel onto the parcel, correct?

25 A No.

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1 Flavio LaRocca 113

2 to rake it out?

3 A Either a walk-behind or ride-on
4 tamper.

5 Q And what sorts of equipment are used
6 to compact it?

7 A That's to compact it. I'm sorry.
8 To rake it out is either shovels or
9 rakes.

10 Q Is it your testimony that the
11 material that's being raked out, is that material
12 that's already there, or is that material that's
13 brought there to the parcel?

14 A Material that was left there by the
15 previous contractor who was utilizing that area
16 as a staging area.

17 Q Has Flavio LaRocca & Sons ever
18 brought material to the parcel to place on the
19 parcel?

20 A No.

21 Q Has Flavio LaRocca ever removed
22 anything from the parcel?

23 A No.

24 Q Has Flavio LaRocca ever removed
25 anything from East Street?

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1 Flavio LaRocca 115

2 A Yes.

3 Q Do you agree that the answers within
4 are true to the best of your knowledge?

5 A Yes.

6 Q I want you to turn to Page 4 of the
7 Plaintiff's 12.

8 A Page 4.

9 Q Do you see there there is a list at
10 the top of the page, there is a list of people
11 that are there.

12 A Yes.

13 Q And this is in response to a question
14 to identify all persons having knowledge of the
15 facts relevant to the subject matter of the
16 Complaint, Answer, affirmative defense and
17 counterclaims, and describe in detail the nature
18 and extent of this knowledge.

19 Is that fair?

20 A Yes.

21 Q What knowledge does Benny Rivera have
22 regarding this action?

23 A He is one of the property owners
24 directly across from Flowers Park, so he may have
25 knowledge that none of my vehicles were ever

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1 Flávio LaRocca 116

2 parked there, and that we haven't done any work
3 besides just raking the ground as we commonly did
4 every time we plowed the road.

5 Q What about Patrick Bongo?

6 A Same.

7 Q How about Jeffrey Coleman?

8 A He is one of the persons who I met
9 regarding the staking out of this property with
10 Mr. Vacca.

11 Q Do you have any pictures of the stakes
12 that were put in in 2009?

13 A Yes.

14 Q Were they produced?

15 A Yes.

16 MR. MENDELSON: Kathy, do you
17 know where they are in the
18 production?

19 MS. ZALANTIS: Not offhand, but
20 there is a picture.

21 Do you want this on the record?

22 There was a picture I believe of
23 the orange X that he testified to
24 before that was produced previously.

25 MR. MENDELSON: Okay. Off the

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1 Flavio LaRocca 117

2 record.

3 (Whereupon, a discussion was
4 held off the record.)

5 MR. MENDELSON: I'm going to
6 demand any photographs of the stakes
7 from Gabriel Senor.

8 I know that counsel is
9 representing to me in the production,
10 and I take her at her word, but any
11 additional ones.

12 If they are only showing one
13 stake, then we want photos of the
14 others as well.

15 (REQUEST) _____

16 Q Going on.

17 What about a person named Felipe Maya
18 Galinda, Martin Sanchez?

19 A Yes.

20 Q Who is that?

21 A That's two different people.

22 Q Who are those two people?

23 And we will start with Felipe Maya
24 Galinda.

25 A My employee.

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1 Flavio LaRocca 118

2 Q What does Felipe Maya Galinda know
3 about this action?

4 A He was one of the people doing the
5 repair or the regrading of the gravel there at
6 Flowers Park.

7 Q So he is one of the people that has
8 worked on the parcel.

9 A Has raked the gravel at Flowers Park,
10 yes.

11 Q Has Felipe Maya -- approximately how
12 many times has he done that?

13 A A few times. I don't remember
14 exactly.

15 Q More than five?

16 A I don't know if it's more than five.
17 I really can't say.

18 Q What about Martin Sanchez?

19 A Same.

20 Q And has he also worked on the parcel?

21 A Yes.

22 Q Has he been involved in what you're
23 calling the raking of the parcel?

24 A Yes.

25 Q Is he an employee of your company?

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1 Flavio LaRocca 121

2 A Yes.

3 Q I'd like you to take out that
4 exhibit.

5 So here it's referring to 1-A. So if
6 you could -- or, excuse me. It's referring to
7 Exhibit 1-A. I marked it as 3-A here. So it's
8 attached to the Summons and Complaint.

9 A Oh, okay.

10 MR. MENDELSON: So for the
11 record, 3-A is Exhibit 1, Summons
12 and Complaint, and it's seven pages.

13 Q Have you seen these photographs that
14 are in those pages before?

15 A Yes.

16 Q I want you to turn to Page 2 of 3-A.
17 So it's the first picture.

18 What does this photograph show?

19 A It shows an arrow, some men working
20 with -- some of my employees raking the gravel,
21 some of my trucks there, and an arrow with the
22 name Flavio LaRocca on it and pointing to an
23 individual.

24 Q Is that individual that the arrow is
25 pointing to you?

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1 Flavio LaRocca 122

2 A I can't say for certainty because I
3 don't recall seeing anybody taking pictures or
4 being there when I gave the instructions to my
5 employees. So I'm going to say no.

6 Q That's not my question.

7 Looking at this photograph, and this
8 is the first photograph in 3-A, is that you that
9 the arrow is pointing to?

10 A No.

11 Q Is there a truck next to the person
12 that the arrow is pointing to?

13 A Yes.

14 Q Does the truck have any writing on
15 it?

16 A Yes.

17 Q What does it say?

18 A F. LaRocca & Sons.

19 Q Is that truck of your company's?

20 A Yes.

21 Q What sort of truck is that based on
22 what you've told me earlier?

23 A To the left or to the right?

24 Q If you're looking at the photograph,
25 to the left.

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1 Flavio LaRocca 123

2 A To the left, that is a dump truck with
3 some tools on the sides.

4 Q And is there another truck that
5 belongs to your business in this photograph as
6 well?

7 A Yes.

8 Q And where is that?

9 A On the right side.

10 Q Is that the other yellow truck in the
11 photo?

12 A The brownish-black truck, yes.

13 Q Is it the one that has a little
14 driller on the back of it?

15 A Correct.

16 Q What kind of truck is that?

17 A That's a pickup with a trailer which
18 brings around our compacting equipment.

19 Q Now, who, do you see that there are
20 other people depicted in this photograph as well?

21 A Yes.

22 Q There is the person that the arrow is
23 pointing to. We will call that person the person
24 in white.

25 Do you see that person there?

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1 Flavio LaRocca 126

2 ground?

3 A Our snow season goes through April.
4 We don't rake out every time it snows. After
5 several snows or after the season, even when they
6 plow our customers who have driveways, we rake it
7 out at the end of the snow season just at the
8 beginning of spring. So that's the only
9 explanation that I can give.

10 Q So it's fair to say you don't only
11 rake it out just after the plows go by.

12 A You can -- we almost never rake out
13 just after the plows go by because with the snow
14 on the ground, you can't see what is disturbed
15 until the snow melts.

16 Q What times of year do you usually
17 rake?

18 A April, May.

19 Q Do you ever rake in any other months?

20 A Just, like this year has been a dry
21 year for snow. If we have had an earlier snow
22 and a customer may request us to rake it out
23 sooner, we might go sooner, but usually we do it
24 at the end of the season.

25 Q When you say "a customer," who is the

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1 Flavio LaRocca 127

2 customer who would request?

3 A Some of the clients that have
4 driveways that have gravel.

5 Q No. I'm just talking about the
6 parcel.

7 A No. You asked me a question in
8 general when did you rake it out.

9 Q But I'm referring -- my questions here
10 are only regarding the parcel.

11 A Okay. So no, in this case we would
12 wait until later in the year to do it just once.

13 Q So how many times per year do you rake
14 out the parcel?

15 A Once or twice.

16 Q And when does that start, when is the
17 first rake-out done?

18 A Towards the end of the snow season.

19 Q And your testimony is that's April or
20 May.

21 A Correct.

22 Q When is the second rake-out done?

23 A Depends if it's needed or not.
24 Sometimes only once is sufficient.

25 Q Would it be, the rake-out be over the

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1 Flavio LaRocca 128

2 summer, the fall, or winter?

3 A No, there is no need, because we are
4 not plowing that area in those months.

5 Q I want you to look at your request to
6 answer. And if you could see there, can you start
7 reading where it says Exhibit 1-A.

8 A I'm sorry. Where? Okay. Yeah.
9 Page 4 still?

10 Q Yes. Yes.

11 A Okay.

12 Q So Exhibit 1-A is referring to this
13 first photograph.

14 Would you agree?

15 A Yes.

16 Q So can you read that first sentence
17 there.

18 A Depicted are now fenced off area near
19 Flowers Park that had been used at time of the
20 photograph was taken and for many years before
21 and even months after by the neighboring property
22 owners, Benny's Tree Service and PAB Paving, for
23 parking of their employees' vehicles.

24 Q Now I want to stop there.

25 This is referring to the parcel,

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1 Flavio LaRocca 129

2 correct?

3 A Yes.

4 Q How do you know that Benny's Tree
5 Service and PAB used it for parking?

6 A Well, the pictures that you have
7 brought show this to me.

8 Q And you're able to identify cars in
9 those pictures as PAB and Benny's that are parked
10 in the parcel?

11 A Yes. Right from the following
12 pictures that you have here in the exhibits show
13 that those are, not one of them is my employees'
14 vehicles, not one of them is not one of my
15 trucks.

16 Q We will get to those, but my question
17 is very simple.

18 Would you agree with me it's different
19 to say that none of them are your cars versus
20 saying they are somebody else's?

21 A Okay.

22 Q Could you agree with that?

23 A Sure.

24 Q Have you been able or have you
25 witnessed Benny's employees or PAB's employees

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1 Flavio LaRocca 130

2 parking in the parcel?

3 A Ever since this issue came up I've
4 been paying more attention to it, yes.

5 Q And you've seen their vehicles parked
6 in the parcel?

7 A Yes.

8 Q When?

9 A After and from when these pictures and
10 after that time they were parked there.

11 Q Have you ever had any conversations
12 with Benny's, any employees or Benny himself, or
13 PAB or any of its employees about parking in the
14 parcel?

15 A No.

16 Q Would parking in the parcel and
17 driving off disturb the gravel?

18 A Not as much as the snow plow. Maybe
19 very slightly.

20 Q So it's your testimony that driving
21 on the gravel and on and off the gravel to park
22 and unpark would do less disturbance to the parcel
23 than snow plowing East Street.

24 A Correct.

25 Q So have you ever spoken with Benny or

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1 Flavio LaRocca 131

2 anybody from Benny's or PAB about parking on the
3 parcel?

4 A No.

5 Q Have you ever asked them to rake the
6 parcel after they parked on it?

7 A No.

8 Q Have they ever raked the parcel after
9 they parked on it?

10 A I don't know.

11 Q Have you ever witnessed anybody other
12 than Flavio LaRocca & Sons raking the parcel?

13 A I've seen the parks and rec do work
14 there from time to time, personnel from the City.

15 Q When was that?

16 A Before and even during, even now.

17 Q What sorts of work have you seen parks
18 and rec do to this parcel?

19 A They go and pick up the garbage that's
20 dumped there. There is bottles and other things
21 that either the kids or other people passing by
22 throw there.

23 They cut down, weed whacked some of
24 the vegetation. Things like that, maintenance
25 work.

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1 Flavio LaRocca 132

2 Q You've seen members of the City take
3 down vegetations on the parcel?

4 A Yeah. With weed whackers. They go
5 there and cut things down there.

6 Q When was that?

7 A Last summer, throughout the summer.

8 Q Is this before or after the fence was
9 put up?

10 A This is now, this past year, 2019.
11 That's after the fence was put up.

12 Q Before the fence was put up, have you
13 seen the City do anything to the parcel?

14 A Yeah. They would come there and even
15 park their trucks and trailers when they would
16 work on the skate park before that area was fenced
17 off.

18 Q Was that, we are talking about in
19 2006, or up and through now?

20 A Up and through. Once the skate park
21 was put up and that area was already graded by
22 the previous contractor, they would put up with
23 their trucks and trailers and park there and take
24 the equipment off.

25 Even when they would bring in their

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1 Flavio LaRocca 133

2 additional equipment for the skate park, they
3 would back up right over the parcel, back it into
4 the gate, and either discard it there or sometimes
5 they would drive their trucks right into the
6 park.

7 Q Now, Benny and PAB's employees, when
8 do they park there, all year long?

9 A No.

10 Q I'm talking prior to the fence being
11 put up, and I'm specifically talking to about
12 2014, '15 and '16.

13 A Yeah.

14 Q Would they park there all year long
15 in the parcel?

16 A No. PAB and Benny and even Guglielmo,
17 they closed down for the winter months once it
18 got cold and starts snowing.

19 Q So when, approximately, do their
20 businesses open up?

21 A Around this time, March time.

22 Q So is it fair to say they would park
23 in the parcel in March during those years?

24 A March through maybe December.

25 Q And did they ever offer to help rake

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1 Flavio LaRocca 134

2 the parcel?

3 A No.

4 Q I want you to read the next sentence
5 in the interrogatory, please.

6 A As the City fails to maintain or
7 repair East Street even though it is a public
8 street, the abutting landowners are forced to
9 maintain and repair East Street and the area
10 surrounding the street where debris is often
11 dumped even though they have no legal obligation
12 to do so.

13 Q Okay. Stop.

14 You just testified that the City would
15 come and pick up debris around the parcel.

16 Is that fair?

17 A No, just in the parcel.

18 Q And so just speaking about the parcel,
19 it's your testimony that they picked up the debris
20 in the parcel.

21 A Occasionally, yes.

22 MS. ZALANTIS: Off the record for
23 a minute.

24 (Whereupon, a lunch recess was
25 taken.)

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1 Flavio LaRocca 135

2 BY MR. MENDELSON:

3 Q Mr. LaRocca, I just want to be clear
4 about the, what you're calling the raking that
5 you've done to the parcel.

6 When, approximately, did you start
7 raking, was that in 2012 about?

8 A It was the first winter after I was
9 in Guglielmo's yard. I don't know if it was 2012
10 or 2013.

11 Q When did the raking stop?

12 A We only raked it once or twice a year
13 at most, and that happened towards the end and
14 stopped towards the end of the snow season, around
15 April, May.

16 Q Is that of 2000 -- well, when,
17 approximately, would the fence get put up?

18 A When was it, I don't remember exactly
19 the year. When this whole issue came up. I
20 mean, what is it, '15, '16, '17, I don't know
21 exactly what it is.

22 Q Is it fair to say the raking was once
23 or twice a year from whenever you started renting
24 from Mr. Guglielmo up and until the fence was put
25 up?

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1 Flavio LaRocca 137

2 are standing on the ground?

3 A Rakes.

4 Q What is your employees riding on, on
5 the left side of the photograph?

6 A That's the compaction, the compactor,
7 the ride-on compactor.

8 Q What is that material that's being
9 raked?

10 A That's millings mixed with gravel.

11 Q How do you know that?

12 A Well, gravel is usually lighter in
13 color, and that's got blacktop into it, it's so
14 dark, and that's what was there on the ground,
15 and when the plows go by, it gets disturbed and
16 we just rake it out and just compact it. That's
17 what we did.

18 Q After it's compacted does anything
19 else happen, or does Flavio LaRocca & Sons do
20 anything else to that area?

21 A No.

22 Q I want you to take a look at Page 5
23 in Plaintiff's 12.

24 Do you see where it says Exhibit 1-B?

25 A Yes.

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1 Flavio LaRocca 139

2 A Well, because those were already
3 there before me. And quite frankly, that's not
4 even mulch. Maybe that's the wrong term being
5 used. Ground-up wood chips and that's it. Mulch
6 is colorized. It's brown, red or black.

7 Q As you sit here today, do you know if
8 that is Benny Tree Services or PAB Paving's wood
9 chips?

10 A I can't say because it was already
11 there. You can see even from this picture the
12 tire tracks going over the gravel prior to us
13 raking it. So when we got there, that was
14 already dumped there. I mean, by all means it
15 could have been even the parks area that dumped
16 that.

17 Q Where are you seeing the tire tracks?

18 A Right here. That's tire tracks that
19 comes across the gravel and my men are working
20 from down. These tire tracks, they have not raked
21 that area yet, and you see the tire tracks over
22 the gravel or the millings, whatever you want to
23 call it.

24 Q The way that tire track is there, that
25 tire track would be pointed south on East Street;

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1 Flavio LaRocca 141

2 out the high spot, and you smooth out lightly
3 with the rake prior to doing the compactor.

4 Q Is this your payloader?

5 A Yes, it is.

6 Q How much time from the beginning to
7 the end on a day like this that's depicted in
8 those photos would it take to fully finish your
9 work on the parcel?

10 A I don't know. As you can see, there
11 were vehicles parked there. If there were
12 vehicles in the area where they were working
13 prior to that, they probably had to wait for the
14 vehicles to move. I don't know. I can't say.

15 Q Well, approximately how long from
16 beginning to end would it take?

17 A A couple of hours.

18 Q Is that more than two hours?

19 A Two to four.

20 Q Do you know whose vehicles those are
21 parked on the right side of this photograph?

22 A These here, I don't recall.

23 Q So in your response to 1-C, you
24 state: Also depicted are vehicles in the parking
25 area that upon information and belief are owned

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1 Flavio LaRocca 143

2 A On the trailer it has rakes, and then
3 the tire and then the trailer, and that's it.

4 Q Is there anything underneath the hand
5 tools there?

6 A The hand tools?

7 Q Yes.

8 A Where?

9 Q On the trailer.

10 A On the trailer? That storage area
11 where we keep our chains to tie down the trailer
12 and the straps.

13 Q What is the best weather condition to
14 do this work?

15 A Best weather condition, as long as
16 the ground is not frozen and there isn't anything
17 obstructing the area.

18 Q Is it okay to do it when it's wet on
19 the ground?

20 A Yes.

21 Q Is there a reason you would choose to
22 do it when it's wet on the ground?

23 A No, no reason. You could do it either
24 when it's dry or wet.

25 Q Moving to the next photograph. This

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1 Flavio LaRocca 146

2 feet is it?

3 A The parcel goes up in slope, doesn't
4 go down.

5 Q Sure. But how many, approximately
6 how many feet is it?

7 A On the upper area it's level, and as
8 you go down it's a little higher, because the
9 road East Street goes down and the parcel is a
10 little higher.

11 Q But if you were standing, if you could
12 look at the second page, the second picture in
13 3-A.

14 A Which one is that, the one with the
15 compaction machine?

16 Q Yes.

17 If you were standing on the curb or
18 on the side of East Street, and walked from East
19 Street to the piles of mulch or the piles of wood
20 chips as you called them, how many feet is that?

21 MS. ZALANTIS: Objection.

22 Are you saying the side of East
23 Street? Where?

24 MR. MENDELSON: Withdrawn.

25 Q Can you see on this photograph where

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1 Flavio LaRocca 148

2 can put the interrogatories aside.

3 I'm now going to show you what's
4 marked as Plaintiff's 13, which is a video that's
5 been produced in discovery to counsel. And I'm
6 going to play the video.

7 I'm going to ask if you watch it all
8 the way one time through and then we will talk.
9 Okay?

10 A Um-hm.

11 (Video plays)

12 Q What is Talk of the Sound?

13 A I don't know.

14 Q Have you ever heard of Talk of the
15 Sound?

16 A Just through this action.

17 Q So prior to this action you've never
18 heard of Talk of the Sound.

19 A Correct.

20 Q Prior to this action have you ever
21 heard of somebody by the name of Bob Cox?

22 A No.

23 Q Have you ever met somebody by the name
24 of Bob Cox?

25 A Never.

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1 Flavio LaRocca 149

2 Q Have you ever had any conversations
3 with somebody named Bob Cox?

4 A Not that I recall, no.

5 Q Do you know if your wife has?

6 A I don't think so.

7 Q Have you seen this video prior to
8 today?

9 A Yes.

10 Q When did you last see it?

11 A A day or two ago in preparation for
12 some of the questions for this.

13 Q Prior to this action, have you seen
14 this video?

15 A I think I seen it once after it was
16 published and after this action. No, not prior
17 to this action, no.

18 Q I'm pausing it on second ten of this
19 video.

20 Is it fair to say that this video
21 seems to be taken on the same day as those photo-
22 graphs in Exhibit 3-A? If you know.

23 A I don't know.

24 Q Does it look like the same day?

25 A Some of the pictures do but I can't

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1 Flavio LaRocca 154

2 A It carries tools.

3 Q And what would be the reason that one
4 of your employees would need a box van on this
5 job?

6 A Maybe there might have been a tool
7 that they didn't have with them that they needed.

8 Q Do you know who he was speaking to?

9 A No.

10 Q Do you know who that employee was?

11 A I just remember his first name, Hugo.
12 I don't remember his last name.

13 MR. MENDELSON: I demand
14 production of Hugo's last name.

15 (REQUEST) _____

16 Q Is Hugo still an employee of yours?

17 A No.

18 Q When did he cease being an employee?

19 A Let's see. He went back home a
20 couple of years ago I think, two or three years
21 ago.

22 Q Do you know if he was still in the
23 country?

24 A No.

25 Q Meaning he is or he's not?

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1 Flavio LaRocca 155

2 A Last I heard he went back home to
3 Mexico.

4 MR. MENDELSON: I still demand
5 his last name.

6 (Video plays)

7 Q I've stopped at 49, second 49.

8 Can you tell who those two workers are
9 that are depicted there?

10 A The one in the front looks like
11 Martine Sanchez.

12 Q And the one in the back?

13 A The one in the back I don't recall.

14 Q Is it one of your employees?

15 A It doesn't look like one of my
16 employees. I just don't recall the face. I can't
17 see from that far away.

18 Q If it is one of your employees, would
19 Martin Sanchez know who it was?

20 A He should.

21 (Video plays)

22 Q I've stopped it at one minute 50
23 seconds in.

24 There is a gentleman walking a wheel-
25 barrow on the street.

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1 Flavio LaRocca 158

2 the entrance to Mr. Guglielmo's property?

3 A I can't tell. I don't know. It's
4 around there somewhere but I don't know if it's
5 right next to it or further in. I can't tell.

6 Q Is it fair to say that to get down
7 East Street and enter Mr. Guglielmo's premises,
8 you would need to go by where that black pickup
9 truck is located in this frame?

10 A To the east of it, on the right side.
11 Not there.

12 Q Now, you had earlier on, Plaintiff's
13 11, you marked some areas in blue.

14 Do you remember doing that?

15 A Yes.

16 Q Are these areas in blue depicted in
17 this frame?

18 A Yes.

19 Q Is that area we are speaking about
20 right in front of that pickup truck?

21 And when I say "right in front of,"
22 what I'm meaning is, you see here there is like a
23 little orange something at the back of the pickup
24 truck?

25 A Yes.

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1 Flávio LaRocca 159

2 Q And do you see the area directly to
3 the right of that little orange?

4 A Where that puddle of water is?

5 Q Yes.

6 A Okay.

7 Q Is that one of the areas that you
8 circled in blue?

9 A Yes.

10 Q Do people park their vehicles along
11 that area sometimes?

12 A Yes.

13 Q Did Flavio LaRocca & Sons ever park
14 its vehicles along that area?

15 A No.

16 (Video plays)

17 Q That's a better frame for what I'm
18 talking about. I'm stopped at 2:41.

19 Do you see now that it's actually you
20 can kind of see cones at the back of that truck
21 back here?

22 A Okay.

23 Q Do you see what I'm speaking about?

24 A Yes.

25 Q In the back -- right in front of the

Page 160

1 Flavio LaRocca 160

2 back rear of that black pickup truck.

3 A Correct.

4 Q Did people park there in 2014 to
5 2016?

6 MS. ZALANTIS: By "there," what
7 are you saying?

8 Q Meaning right in front of those cones
9 that are depicted on the left-hand side of the
10 screen.

11 A Yes. And even previously to that.

12 (Video plays)

13 Q Now I'm at 2:49.

14 Did you just see the Flavio LaRocca &
15 Sons truck that you identified earlier drive down
16 northbound on East Street?

17 A Yes.

18 Q Where is it going?

19 A It looks like it's going towards East
20 Place.

21 Q Now that work that we just saw
22 depicted in this video, did the City give you
23 permission to do any of that work?

24 A No.

25 Q I'm going to show you now what's been

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1 Flavio LaRocca 161

2 marked as Plaintiff's 14.

3 If you could take a look at it. I
4 think it's in the top of your pile there. It was
5 used at the deposition of Paul Vacca and it's
6 Bates stamped D 0353. And there is another photo
7 in this that's Bate stamped D 0262.

8 Do you recognize what is depicted in
9 Plaintiff's 14?

10 A Yes.

11 Q And what is it?

12 A Parts of East Street with Flowers
13 Park.

14 Q Do you see on if you look at the
15 parcel, do you see the parcel in this?

16 A Um-hm.

17 Q Is there any vehicles in the parcel --

18 A Yes.

19 Q -- on this?

20 And what is in the parcel?

21 A Looks like three trucks.

22 Q Is there a white truck as well?

23 A Yes.

24 Q Is that the same parcel that you
25 identified on Plaintiff's 11 with the yellow?

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1 Flavio LaRocca 162

2 A Yes.

3 Q If you look across East Street to the
4 left when you're looking at this photograph, and
5 you move northbound on East Street, do you see
6 there is like a little peninsula there with trees
7 on it?

8 A I don't know if it's trees. I see
9 vegetation on it but I don't see a tree there.

10 Q Describe to me what that area looks
11 likes to you.

12 A Looks like a little area with stuff
13 growing out of the ground.

14 Q Does it look like it's on dirt or
15 something else that is jutting out onto East
16 Street?

17 A I don't know what that's on. I don't
18 know if it's on dirt or just piled on the
19 asphalt.

20 Q Would you agree with me that on
21 Plaintiff's 13, and I'm going to 2:33, 2 minutes
22 and 33 seconds in, that that little area of
23 vegetation on it is gone?

24 MS. ZALANTIS: Objection as to
25 form.

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1 Flavio LaRocca 163

2 Q You can answer.

3 A That it's not there, yes.

4 Q Meaning you agree that it's no longer
5 there and on minute 2:33 of the video.

6 A That's what it looks like.

7 Q Do you know what happened to it?

8 A No.

9 Q I'm now going to show you what I'm
10 going to ask to be marked as Plaintiff's 24.

11 (Whereupon, 2016 aerial
12 photograph was marked Plaintiff's
13 Exhibit 24 for Identification, as of
14 this date, by the reporter.)

15 Q Now, I want you to take a look at
16 Plaintiff's 24.

17 Do you recognize what Plaintiff's 24
18 is showing?

19 A Yes.

20 Q What is it showing?

21 A East Street from 5th Avenue down
22 towards East Place.

23 Q And is the parcel shown in Plaintiff's
24 24?

25 A Yes.

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1 Flavio LaRocca 165

2 MS. ZALANTIS: There is two
3 pages of Plaintiff's 14 so he just
4 indicated it on the first page.

5 MR. MENDELSON: Yes. Correct.

6 Q Now I want you to take a look at
7 Plaintiff's 24, and do you see the area where you
8 have just been speaking about in Plaintiff's 14
9 with the little piece that juts out onto East
10 Street across from the parcel that has vegetation
11 on it, is that area depicted in Plaintiff's 24?

12 A No.

13 Q Let me ask it a different way.

14 Is the area where that vegetation did
15 exist in Plaintiff's 14, is the general area
16 depicted in --

17 A Oh. The general area. Yes.

18 Q -- in Plaintiff's 24.

19 A Yes.

20 Q Is the vegetation now gone when you
21 look at Plaintiff's 24?

22 A Looks like it.

23 MS. ZALANTIS: Objection as to
24 form.

25 Q When you look up at the top of

Page 168

1 Flavio LaRocca 168

2 A Yes.

3 Q On the right-hand side?

4 A Yes.

5 Q Do you see on the second page, the
6 second picture of Plaintiff's 15, do you see that
7 area that's in the cones on the left-hand side?

8 A Yes.

9 Q Does that seem to be the same area on
10 Plaintiff's 14 that had the vegetation on it?

11 A Looks like it. Um-hm.

12 Q Thank you.

13 I'm now going to ask you to look at
14 Plaintiff's 16.

15 Take your time and read it and then
16 let me know when you're ready to discuss it.

17 MR. MENDELSON: Off the record.

18 (Whereupon, a discussion was
19 held off the record.)

20 Q Plaintiff's 16 is a letter from the
21 City of New Rochelle dated November 18, 2015, and
22 it's signed by Alexander Tergis.

23 Is that fair?

24 A Yes.

25 Q Do you recall receiving this letter?

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1 Flávio LaRocca 169

2 A Yes.

3 Q What is the substance of this letter?

4 A Basically says that we have property
5 that encroaches onto City-owned property.

6 Q Now, between 2009 and 2015, had you
7 done anything to correct what the City was telling
8 you was an encroachment?

9 A No.

10 Q Up and until today, from the time you
11 purchased the property and you knew there was an
12 encroachment until now, have you taken any steps
13 to, regarding the encroachment --

14 MR. MENDELSON: Withdrawn.

15 Q From the time you purchased the
16 property until today, have you taken any steps
17 regarding the encroachment?

18 A Yes.

19 Q What were those steps?

20 A I contacted the -- when I received in
21 '09 the letter from Mr. Vacca and Coleman, I
22 contacted them, we had a meeting, we had a
23 surveyor come out, he staked the property.

24 At the end of that stake and providing
25 the sketch, I met with both Mr. Vacca and

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1 Flavio LaRocca 170

2 Mr. Coleman to discuss what was outlined by the
3 surveyor. And it was said to me by both of them
4 at that time that the encroachment was minimal,
5 they weren't concerned about it, and there was
6 really nothing necessary for me to do.

7 Q When did that conversation happen?

8 A A week or two after the survey was
9 done, roughly.

10 Q Where did that conversation occur?

11 A On the site, right outside my
12 property, and when I also showed both of them
13 where the two markings from the surveyor were put
14 to where they were saying it was municipality
15 property.

16 Q So your testimony is you met with
17 City officials at your property on two dates in
18 2009 --

19 A Correct.

20 Q -- correct?

21 One was prior to you had it staked out
22 and one was after.

23 A Correct.

24 Q Who else was present at the meeting
25 after?

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1 Flavio LaRocca 172

2 no action is required at this time.

3 Q Did they give you anything in writing
4 to that effect?

5 A I recall it being all verbal. I don't
6 remember receiving anything in writing.

7 Q Did they ever tell you that you needed
8 to get a license?

9 A No.

10 Q Did they give you any additional steps
11 that you needed to take?

12 A No.

13 Q Did you promise them that you would
14 perform anything in response to that conversation?

15 A No.

16 Q Other than that meeting and the
17 staking out, have you performed any other
18 activities with regard to the encroachment?

19 A No.

20 Q From the 2000 approximately 2 when
21 you purchased the property up and until the
22 present day, has the front of 436 5th Avenue
23 changed?

24 A The only thing that I left there were
25 a couple of Jersey barriers so nobody would

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1 Flavio LaRocca 173

2 barricade into my fence like they had done.

3 Q Has the fence been moved at all?

4 A No.

5 Q Has the storage shelves and anything
6 that are between the fence or that are in the
7 pink area that you outlined in Plaintiff's 11,
8 has that changed at all?

9 A No.

10 Q So what did you do when you received
11 the letter on November 18th of 2015?

12 A That's when I decided to get legal
13 counsel to respond to this.

14 Q Now, there is a handwriting on top
15 that says -- can you read the handwriting that's
16 on top of Plaintiff's 16.

17 A Um-hm.

18 Met with Flavio and Maria and
19 attorneys. Other business owners.

20 Q Is there anything else?

21 A 12/10/15, 10 a.m.

22 Q Whose handwriting is that?

23 A That's my wife's handwriting.

24 Q Your wife's name is Maria, correct?

25 A Correct.

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1 Flavio LaRocca 174

2 Q So she's referring to herself, you
3 and attorneys?

4 A Correct.

5 Q Did that meeting take place?

6 A Yes.

7 Q What was the substance of that
8 conversation?

9 MS. ZALANTIS: I ask him not to
10 discuss anything that is privileged
11 that he may have had with attorneys.

12 Q Well, let's discuss.

13 Who was present at that meeting?

14 A Our attorney, myself, my wife, and I
15 think two or three of the other owners next door
16 to me.

17 Q When you say your attorney, your
18 present attorney?

19 A Not at that time, no.

20 Q Was that attorney, at that time was
21 that attorney representing you?

22 A We were going to ask him to represent
23 us.

24 Q When you say "we were going to ask
25 him," who was going to ask him to represent you?

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1 Flavio LaRocca 175

2 A Myself and my wife.

3 Q And so it's fair to say the other
4 business owners weren't going to ask that attorney
5 to represent them.

6 A Well, they may have also gotten
7 involved until we found out that that attorney
8 did not handle this type of legal matter.

9 Q What was the reason the other business
10 owners were getting involved?

11 A Because they were concerned that
12 possibly their property may have been encroaching
13 on what was called City property on East Street.

14 Q What was the next step you took after
15 that meeting?

16 A I asked for a referral who I could use
17 for this type of a case, and then I was referred
18 to my attorney currently now.

19 Q At that time when you received this
20 letter, had you seen any other additional surveys
21 other than the one that we discussed earlier from
22 2001 and the staking map?

23 A I don't recall if a portion of this
24 survey was sent to me by the City at that time or
25 not. I don't recall.

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1 Flavio LaRocca 176

2 Q I want you to take a look at
3 Plaintiff's 11, and you have marked an area in
4 pink on there, and I want you to take the pink
5 highlighter again.

6 Are there any areas that's your
7 property or that you believe is your property
8 that's outside of the bold borders that borders
9 5th Avenue?

10 And if there are, please highlight
11 them as you did in front.

12 (Witness complies)

13 MR. MENDELSON: For the record,
14 he's highlighted a portion of 436 5th
15 Avenue annexed to 5th Avenue as well.

16 Q There is a masonry, it says stone
17 masonry right in that area, stone masonry wall.

18 Whose stone masonry wall is that?

19 A Mine.

20 Q Is there anything in between the wall
21 and your, and the bold line there?

22 A There is a row of evergreen trees.

23 Q Whose evergreen trees are those?

24 A Mine as well.

25 Q I want to show you if you could take

Page 177

1 Flavio LaRocca 177

2 a look at 17.

3 Exhibit 17 is a group of photographs
4 that was produced by Defendants, D 0109.

5 Do you see the top photograph, what is
6 that depicting?

7 A The front corner of East and 5th
8 Avenue where my property is with the fence, and
9 then my signage and some of the storage bins that
10 are there.

11 Q Do you see there is a No Parking
12 sign?

13 A Yes.

14 Q Whose sign is that?

15 A Mine.

16 Q What is that affixed to?

17 A My fence.

18 Q That No Parking sign, who put that
19 sign there?

20 A I did.

21 Q What is it, what was the purpose of
22 putting that No Parking sign there?

23 A Because people who were pulling in to
24 use the skate park would park and I would not be
25 able to access my property.

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1 Flavio LaRocca 178

2 Q You park your vehicles in front of
3 your property, right?

4 A Not in front of my property. I
5 temporarily parked them as I said earlier to open
6 my gate to get in, but I don't leave them there
7 all day.

8 Q Did the City give you permission to
9 put No Parking signs in front of your property?

10 A We called the police department when
11 that was happening and they said, they had
12 suggested to us to just get some No Parking signs
13 and put them there.

14 Q Who did you speak to at the police
15 department?

16 A I don't remember. I called the
17 general office and even an officer had come down
18 and met with me there. I don't have the name but
19 that was going back when the skate park was first
20 done in '03 I think it was or '04. I don't
21 remember.

22 Q Was there a police report taken?

23 A I don't think so because there was no
24 incident.

25 Q Did you call 911 or just the regular

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1 Flavio LaRocca 180

2 underneath it.

3 MS. ZALANTIS: Which wood wall

4 are you talking about?

5 Q If you could take a pen and circle

6 around that wood wall we are discussing.

7 A You want just the wall or also the

8 concrete underneath it?

9 Q Either/or is fine.

10 A Okay.

11 (Witness complies)

12 MR. MENDELSON: For the record,

13 he's made a couple of lines outlining

14 the wall that we are discussing now

15 with a blue pen.

16 Q Do you see the gate that's closer to

17 us as you're looking in the photograph on the

18 adjacent property?

19 A Yes.

20 Q Whose gate is that?

21 A PAB.

22 Q Is that gate on Plaintiff's 11, is

23 that shown on Plaintiff's 11?

24 A I think so.

25 Q And if you could, if you see it, can

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1 Flavio LaRocca 182

2 gate?

3 (Witness complies)

4 Q Thank you.

5 Is that gate or a portion of that
6 gate the same gate that we are discussing in
7 Plaintiff's 19?

8 A Yes.

9 Q Now looking at Plaintiff's 20.

10 What is Plaintiff's 20 showing?

11 A You're looking at 436 5th Avenue from
12 5th Avenue.

13 Q My question is, is the stone masonry
14 wall that we just highlighted or that you just
15 highlighted on Plaintiff's 11 on the 5th Avenue
16 side of your property, is that depicted in
17 Plaintiff's 20?

18 A Yes.

19 Q Is that the stone wall with the gate
20 on top of it?

21 A With the little railing, yes.

22 Q Excuse me. The whitish railing?

23 A Yes.

24 Q Are those the arborvitaes behind it
25 that you just discussed?

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1 Flavio LaRocca 186

2 A Um-hm. Looks that somebody is still
3 cutting vegetation in that area as well.

4 Q What about this shows the vegetation
5 is being cut?

6 A Even Exhibit 23 shows that somebody
7 is going in there and cutting the vegetation from
8 inside the fenced area. That vegetation was much
9 higher at other places at the time.

10 Q Exhibit 23 there is leaves on the
11 trees, right?

12 A Correct.

13 Q And in the third photo here there is
14 not, right?

15 A Correct. And you see vegetation also
16 growing and that somebody has been cutting it.

17 Q Are you talking about the grass?

18 A Correct.

19 Q Exhibit 23 is not in the winter,
20 correct?

21 A Correct.

22 Q Third photo is in the winter,
23 correct?

24 A Yes. But you can see the difference
25 of wood chips being placed in this area.

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1 Flavio LaRocca 187

2 Q What else?

3 A The damage done to the fencing that
4 was put also in that area who is not only backing
5 into it, but also somebody else who is paving
6 along the fence line area there, that wasn't there
7 previously.

8 Q Do you know who paved that area?

9 A No. I just saw it done.

10 These are other pictures inside that
11 the area, the trees, whatever was there when we
12 did the raking work was not touched.

13 But the area inside, as you can see,
14 even in the wintertime there is new fresh wood
15 chips being thrown on it.

16 Q Refer to the Bates stamp you're
17 looking at.

18 A 406, D 0406, as well as 407.

19 You can clearly see even in the
20 wintertime there is fresh materials that someone
21 is putting on it, and then here who is utilizing
22 the areas in question where the so-called
23 vegetation or peninsula how you had described
24 before is parking in those areas and whose
25 vehicles they belong to. This entire area on the

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1 Flavio LaRocca 189

2 Q Does this survey show an encroachment
3 of your property onto East Street?

4 A Yes.

5 Q Can you highlight in pink wherever
6 that encroachment is shown.

7 (Witness complies)

8 MR. MENDELSON: And for the
9 record, the witness has highlighted
10 in pink.

11 Q Does that area remain the same as it
12 was in 2016 today?

13 A Yes.

14 Q One moment.

15 From 2002, approximately, when you
16 bought the property, until 2016, approximately,
17 when this action started, did you ever notice any
18 trees missing from the parcel that were there
19 previously?

20 A No.

21 Q Did you ever notice any vegetation
22 that was gone in the parcel that was there
23 previously during those dates?

24 A No.

25 MR. MENDELSON: I have nothing

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1 Flávio LaRocca 190

2 further.

3 MS. ZALANTIS: Can I just ask a
4 few questions?

5 MR. MENDELSON: Sure.

6 EXAMINATION BY

7 MS. ZALANTIS:

8 Q So you testified earlier that in
9 connection with your business, sometimes you
10 remove limbs or branches from trees.

11 Is that accurate?

12 A Yes.

13 Q And then you testified --

14 MR. MENDELSON: Objection as to
15 form.

16 Q And then there was some discussion
17 about you removing trees.

18 Can you describe in connection with
19 your business, what types of tree removal work you
20 do?

21 A Yes. It's mainly ornamental trees,
22 small trees. I don't have the license or the
23 insurance to do big trees. I don't have the
24 equipment either to do the big trees.

25 So usually if a job like that comes,

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1 Flavio LaRocca 191

2 I give it out to other subcontractors to do.

3 Q When did you do the work on your
4 property in connection with the rock removal?

5 MR. MENDELSON: Which property?

6 Q Your current property.

7 A 436.

8 Q 436, yes.

9 A In 2003, I think, early 2003, April-
10 May time.

11 Q And did you obtain a permit in
12 connection with that work?

13 A Yes, I did.

14 Q And at that time did you have to get
15 any kind of street opening or street obstruction
16 permit?

17 A No.

18 Q And in connection with that work done
19 in 2003, you testified that you moved certain
20 Jersey barriers out in front of the existing fence
21 on your property at 436.

22 A Correct.

23 Q And during that time that you were
24 doing that work in 2003, did the City ever
25 conduct any inspections of the work that you were

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1 Flávio LaRocca 193

2 FURTHER EXAMINATION

3 BY MR. MENDELSON:

4 Q When you say that they said it was
5 not required, who said it was not required?

6 A The building department.

7 Q Who from the building department told
8 you an obstruction permit was not required?

9 A The person that was reviewing the
10 permit application. I think at that time if I'm
11 not mistaken was Peter W-Y-R-I-C-H-E-A? I'm very
12 wrong on that. I think that's what I remember.

13 Q Is that in writing anywhere?

14 A No, it was verbal when I called to
15 find out about the status of my permit and if
16 anything else was required.

17 Q Were the Jersey barriers specifically
18 discussed?

19 A Well, the Jersey barriers were
20 outside --

21 Q That's not my question.

22 My question is, on that phone call
23 were the Jersey barriers specifically discussed.

24 A No, just the regrading work was
25 discussed.

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1 Flavio LaRocca 194

2 MR. MENDELSON: Thank you. I
3 have no further questions.

4

5 (Time noted: 3:47 p.m.)

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1 Flavio LaRocca 195

2 A C K N O W L E D G M E N T

3

4 STATE OF NEW YORK)

5 ss:

6 COUNTY OF WESTCHESTER)

7

8

9 I, FLAVIO LaROCCA, hereby certify that I have
10 read the transcript of my testimony taken under oath
11 in my deposition of March 5, 2020; that the transcript
12 is a true, complete, and correct record of what was
13 asked, answered, and said during this deposition, and
14 that the answers on the record as given by me are true
15 and correct.

15

16

FLAVIO LaROCCA

17

18

19

20

21

22 Subscribed and sworn to
23 before me this _____ day
24 of _____, 2020

24

NOTARY PUBLIC

25

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8

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2 I N D E X

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E X H I B I T S

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6

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4

5 INSERTS: PAGE LINE

6 Hugo's last name 154 15

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9 Contract of sale from Mr. LaRocca's 74 17
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Survey or any documentation that 96 3

12 was provided to Gabriel E. Senior,
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14 Senior

15 Photographs of the stakes from 117 15
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21

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23

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25

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2 C E R T I F I C A T E

3

STATE OF NEW YORK)

4

ss:

5

COUNTY OF WESTCHESTER)

6

7

8 I, CHERYL THOMPSON, a Shorthand Reporter and
9 Notary Public in and for the State of New York, do
10 hereby certify:

11 That the testimony of FLAVIO LaROCCA was held
12 before me at the aforesaid time and place.

13 That said witness was duly sworn before the
14 commencement of the testimony, and that the testimony
15 was taken stenographically by me and is a true and
16 accurate transcription of my stenographic notes.

17 I further certify that I am not related to any of
18 the parties to the action by blood or marriage, and
19 that I am in no way interested in the outcome of this
20 matter.

21 IN WITNESS WHEREOF, I have hereunto set my hand
22 this 10th day of March 2020.

23

24

CHERYL THOMPSON

25

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2 E R R A T A S H E E T

3

DEPOSITION OF FLAVIO LaROCCA

4 RE: City OF NEW ROCHELLE V. FLAVIO LaROCCA

DATE TAKEN: MARCH 5, 2020

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FLAVIO LaROCCA

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Subscribed and sworn to
23 before me this ____ day
of _____, 2020

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25 NOTARY PUBLIC

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