

COPY OF FILING

SUMMONS

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONEIDA

TIMOTHY M. KLOTZ
1701 SHERMAN DRIVE
UTICA, NY 13501 PLAINTIFF

INDEX NO. CA2010-003164

vs.

CITY OF UTICA, NEW YORK and
THE CITY OF UTICA FIRE DEPARTMENT and
RUSSELL BROOKS
1 KENNEDY PLAZA
UTICA, NY 13502
DEFENDANTS

RJI NO:

JUDGE:



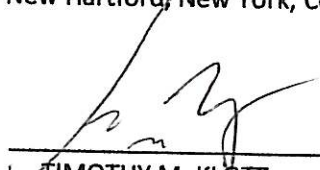
TO THE ABOVE-NAMED DEFENDANTS:

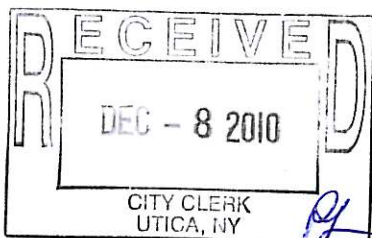
You are hereby summoned to answer the complaint in this Action, and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to service a Notice of Appearance on the Plaintiff within 20 days after the service of this Summons, exclusive of the day of service, where service is made by delivery upon you personally within the State, or within 30 days after completion of service where service is made in any other manner. In case of your failure to Appear and Answer, Judgment will be taken against you by Default for the relief demanded in the Complaint.

The basis of the venue designated is the residence of the Plaintiff.

Plaintiff resides at 1701 Sherman Drive, New Hartford, New York, County of Oneida

DATED: December 8, 2010


TIMOTHY M. KLOTZ
PRO SE
1701 SHERMAN DRIVE
UTICA, NY 13501
315-542-3311



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Sandra J. DePerno, Oneida County Clerk

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONEIDA

COMPLAINT

INDEX

NO.
TIMOTHY M. KLOTZ
1701 SHERMAN DRIVE
UTICA, NY 13501 PLAINTIFF
vs.

CITY OF UTICA, NEW YORK AND THE CITY OF UTICA
FIRE DEPARTMENT AND RUSSELL BROOKS
1 KENNEDY PLAZA
UTICA, NY 13502

DEFENDANTS

Plaintiff, pro se, as and for a Complaint in the above entitled action herein alleges and sets forth:

1. At all times herein mentioned, Plaintiff was and still is a resident of the State of New York and County of Oneida.
2. At all times hereinafter mentioned, Defendant, City of Utica, is a municipal corporation organized and existing pursuant to the Laws of the State of New York.
3. The City of Utica Fire Department, ("UFD") including the City of Utica at all times hereinafter mentioned, Defendant, is under the command of Commander and Chief, Russell Brooks and assisted by Raymond Beck; not individual fire fighters; only the top leadership.

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FOR THE FIRST CAUSE OF ACTION

4. At all times herein mentioned, plaintiff was owner and in possession of a certain parcel of improved real property ("Property") situate and known as

102 James Street Utica, NY.

5. The City of Utica Fire Department was called to a fire on September 20, 2009 at the "Property".
6. The "UFD and the City" was negligent in using minimal effort to extinguish the fire. As a result of this decision or lack of action, the "Property" was a complete loss.
7. The "UFD and the City" were negligent in fighting the fire from the front of the "Property" instead of at its source – the first floor rear right apartment.
8. The area around the "Property" on all sides had football-field-size lots of open land suitable for access, with fire hydrants located on each street bordering the open lots. The rear of the "Property" had total access and enough space to bring in large equipment with at least 5x the amount of space as did the front of the "Property" – a 2 lane street. The "UFD and

the City" were negligent in not placing fire-fighting equipment at the source of the fire.

9. The "Property" itself had a block wall separating front apartments from back apartments. The fire only spread to the front via the roof.

Minimal hoses were used on the fire in the rear. Tenants from the front apartments asked why their apartments were not being saved and why the huge hose set up in front of the "Property" was not operating. The "UFD and the City" were negligent for turning on the hose after the fire reached it; that is after the fire travelled for HOURS across the roof to the front top floor.

10. The plaintiff and his wife arrived at the fire within the first 30 minutes.

Chief Brooks was asked why the water was not being put on the fire. He responded, with hands in pockets, "This building is coming down because your sprinklers don't work." The "UFD and the City" were negligent for not extinguishing the fire for ANY reason.

One tenant has given a sworn statement regarding his conversation with a 'fire marshal' in which the tenant asks if they are going to save anyone in the rear apartments and is told he may be arrested and that "we are not risking any of our fire fighters for anyone on James Street."

11. The loss of the "Property" caused a substantial loss of future income and value to Plaintiff, resulting in a loss of retirement funds to plaintiff.

12. Further, the damage to the "Property" caused it to be demolished. The "UFD and the City's" negligence caused the loss, damaging the Plaintiff financially as he is being pursued by the City for the cost of the demolition in the amount of \$130,000.00

SECOND CAUSE OF ACTION

13. After the September 20, 2009 fire at the "Property", Russell Brooks and other "UFD" employees made many public libelous and slanderous quotes to the media, damaging Plaintiff with severe stress, anxiety and depression.
14. The UFD, specifically Brooks and Beck, stated to all media outlets and the public that the "sprinkler system did not work", "that it partially work", in an effort to blame Plaintiff for the "Property" burning and the people dying. Again, the fact is that the sprinkler system did its job.
15. The "UFD and the City" damaged Plaintiff greatly by saying the "sprinkler system did not work" when it did work.
16. The many inaccurate statements slandering Plaintiff, written and spoken through the media outlets, will be presented at trial. One particularly egregious statement was Brooks quoted in the Observer Dispatch on December 16, 2009, page 4A saying that "The victims were already dead when the fire fighters arrived on scene", blaming Plaintiff for the deaths.

If one refers to the front page of that same issue, there is a word-for-word conversation between second floor tenant, Terry Singh and the 911 operator, confirming that the UFD is on scene while Terry is alive.

If Terry Singh on the second floor directly above the fire, is alive while the UFD is on scene, tenants on higher floors, it would stand to reason, were also alive.

The "UFD and the City" damaged Plaintiff to the point of hopelessness and despair.

17. The UFD stated to media outlets and the public that the "smoke alarms didn't work", falsely stating this, when smoke alarms could be heard by several witnesses.

Brooks is not obligated to give all details of a fire to the public.

Therefore, these slanderous lies were meant to do irreparable harm.

The afternoon after the fire, my public adjuster and I were walking through the "Property" and could still hear battery operated alarms ringing. This damaged Plaintiff by casting him as a criminal to the public and authorities.

18. The "UFD and the City" damaged Plaintiff by telling these lies to his insurance company resulting in another possible loss of approximately \$500,000.00 plus legal fees to recover insurance claim creating tremendous stress and financial hardship for business and family.

19. These lies alleged conditions of the "Property" that were inaccurate and blatantly false; including lies by omission that, being not releasing to the public the true cause of the fire which was 'accidental, tenant negligence', leaving Plaintiff and his family exposed to the wrath of the public, causing Plaintiff extreme mental , emotional and physical anguish. The fire was caused by Douglas Crane, tenant of first floor right rear apartment, who came home late Saturday night under the influence of drugs and/or alcohol. He put frozen pork chops in his toaster oven, on the kitchen counter, and then fell asleep.

20. The UFD attempted to again slander Plaintiff about not registering the "Property".

The fact is Plaintiff was required by the Court to register 5 properties in July of 2008. Two of the properties were owned by Craig Loomis. He registered them. Plaintiff sent by mail applications and checks for the other 3 properties. Two of the checks were cashed for 1617 and 1620 Oneida Street. The James Street check was never cashed. Plaintiff was NEVER contacted for an inspection on any of the properties until after the fire.

Furthermore, a conversation with a state official revealed that all municipalities in New York State require all commercial properties be inspected by the Fire Marshall every year. Plaintiff, nor several other

commercial property owners, has ever been contacted for a fire safety inspection.

These inaccurate and incompetent statements damaged Plaintiff by causing more financial and physical harm.

21. Brooks again lied on several occasions stating that "102 James Street was not up to codes." Units #2, 4, 7, 9 passed code inspections, as these tenants received some form of public assistance and The "Property" passed yearly insurance renewal inspections in 2007 and 2008 and was renewed in June 2009. I complied with the insurance company's fire safety requirements which were to add emergency lighting and fire extinguishers. These lies damaged Plaintiff by portraying him to the public, business acquaintances family and friends as a negligent landlord.
22. The "UFD and the City" knew or should have known the layout and condition of the building because on at least 3 occasions the UFD with a fire truck and ambulance personnel were in the "Property" in 2009 for emergency calls. This incompetence caused inaccurate information to be released again causing great emotional damage to the plaintiff with the loss of tenants/friends in the "Property".
23. The "UFD and the City's" damages to the Plaintiff, because of the slander and irresponsible, libelous comments is extreme emotional pain, anxiety, depression and post traumatic stress disorder that requires to this day, therapy and medication.

24. The "UFD and the City's" damages to the Plaintiff caused him to suffer a stroke 3 weeks after the fire from the pressure of the lies forever altering his way of life and potentially shortening his life span.
25. The "UFD and the City's" damages have caused Plaintiff a chronic condition of high blood pressure.
26. By reason of the foregoing, the plaintiff has been injured in his reputation and good standing in said community, wherein he lives, and has been held up to ridicule and contempt by his friends, acquaintances, neighbors, and the public in general.

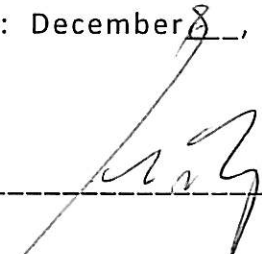
THIRD CAUSE OF ACTION


27. The "UFD" Officers including Russell Brooks and Raymond Beck made the above described slanderous and libelous statements and lies in an effort to cover up their own mistakes; the damage by the "UFD and the City" resulting in the violation of Plaintiff's Federal and New York State Constitutional rights including the right to equal protection of law in violation of the 5th and 14th amendments of the United States Constitution and Sections 6 and 11 of the New York State Constitution.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. In the first cause of action, Plaintiff demands judgment against Defendants, CITY OF UTICA, AND THE CITY OF UTICA FIRE DEPARTMENT AND RUSSELL BROOKS, for all of the above described financial loss to Plaintiff, the sum of \$1,000,000.00.
- B. In the second cause of action, Plaintiff demands judgment against Defendants, CITY OF UTICA, and AND THE CITY OF UTICA FIRE DEPARTMENT AND RUSSELL BROOKS for all of the above described pain and suffering, the amount of \$2,500,000.00.
- C. In the third cause of action, Plaintiff demands judgment against Defendants, CITY OF UTICA, AND THE CITY OF UTICA FIRE DEPARTMENT AND RUSSELL BROOKS, for violation of Plaintiff's rights, the sum of \$1,000,000.00.
- D. And for such other and further relief as the Court may deem just and proper, legal fees, if and as incurred, costs and disbursements.

DATED: December 8, 2010



Succ. to int. in 12/8/10

LLOYD SCHOR
NOTARY PUBLIC-STATE OF NEW YORK
No. 015C4749304
Qualified in Oneida County
My Commission Expires June 30, 2011

TIMOTHY M. KLOTZ, PRO SE
1701 SHERMAN DRIVE
UTICA, NY 13501

VERIFICATION

STATE OF NEW YORK)

COUNTY OF ONEIDA) ss,:


Timothy M. Klotz, being duly sworn, depose and say: I am the Plaintiff in the within action; I have read the foregoing complaint and know the contents thereof; the same is true to my own knowledge; except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.



TIMOTHY M. KLOTZ

Sworn to before me this

8 day of December 2010



LLOYD SCHOR
NOTARY PUBLIC-STATE OF NEW YORK
No. 015C4749304
Qualified in Oneida County
My Commission Expires June 30, 2011
DATED: December 8, 2010



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