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# Order to Show Cause for Injunctive Relief Against Mortgage Foreclosure Rescue Scam

AT IAS PART \_\_\_\_\_, of the  
Supreme Court of the State of New  
York, held in and for the County of  
Kings, on March \_\_\_\_, 2009.

Present: Hon. \_\_\_\_\_, Justice.

**SUPREME COURT: STATE OF NEW YORK**

**COUNTY OF KINGS: CIVIL PART**

-----x

**JANE DOE,**

**Index No. xxxxx/08**

**Plaintiff,**

**-against-**

**TONY C, CONNIE C, WELLS FARGO BANK NA,**

**Defendants.**

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**TONY C and CONNIE C,**

**Index No. XXXX/09**

**Third Party Plaintiffs,**

**-against-**

**Alfred w, JANE DOE, & JOHN DOE,**

**Third Party Defendants.**

-----x

Upon the Summons and Complaint herein filed \_\_\_\_, 2008, the Answer and Counterclaims, the Third-party Summons and Complaint filed February \_\_, 2009, the annexed affirmation of Susan Chana Lask, Esq. and affidavits of Defendants/Third-party Plaintiffs Connie C and Tony C and Rose G, all duly sworn to on March 20, 2009,

LET the Plaintiff and Third-party Defendants, JANE DOE, JOHN DOE and Alfred w, herein show cause at an IAS Term, Part \_\_\_\_\_ of the Supreme Court of the State of New York (room \_\_\_\_\_) thereof, to be held in and for the county of Kings, at the Courthouse thereof, located at 360 Adams Street, Brooklyn, New York on the \_\_\_\_\_ day of March, 2009, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon of that day, or as soon thereafter as counsel can be heard,

WHY an order should not be made and entered herein enjoining and restraining the Plaintiff and Third Party Defendants, Alfred w, JANE DOE, and JOHN DOE, their agents, servants and employees, and all persons acting in concert with them from:

1. alienating, transferring, assigning, mortgaging or committing waste upon any interest she or her heirs or assignees claim to have in the subject property at XXX Union Street, Brooklyn, New York;
2. collecting, withdrawing or depositing any drafts, checks, monies or any note related to rent from the subject property;
3. listing, advertising or in any way publicizing any part of the subject property for rent or lease; and
4. appearing within 100 feet of the subject property.

and why Defendants-Third Party Plaintiffs Connie c and Tony Campbell should not be granted such other and further relief as to the Court may seem just and proper.

Sufficient cause appearing therefor, it is

ORDERED that pending the hearing and determination of this motion, the Plaintiff and Third Party Defendants, JANE DOE, JOHN DOE and Alfred w, and all persons acting under their direction, or control or in concert with them, be and they hereby are enjoined and restrained from alienating, transferring, assigning, mortgaging or committing waste upon any interest they or their heirs or assignees claim to have in the subject property; collecting, withdrawing or depositing any drafts, checks, monies or any note related to rent from the subject property; listing, advertising or in any way publicizing any part of the subject property for rent or lease; and appearing within 100 feet of the subject premises.

and it is further

ORDERED that oral argument shall be required on the return date of this motion; and it is further

ORDERED that personal service of a copy of this Order to Show Cause, together with copies of the papers upon which it was made, shall be served upon Alfred W, Esq. as attorney for Plaintiff Jane Doe and served on Third Party Defendants on or before the \_\_\_\_\_ day of March, 2009, and shall be deemed good and sufficient notice of this application.

\_\_\_\_\_  
Justice of the Supreme Court

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**SUPREME COURT: STATE OF NEW YORK**

**COUNTY OF KINGS: CIVIL PART**

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**JANE DOE,**

**Index No. xxxxx/08**

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**TONY C and CONNIE C,**

**Index No. XXXX/09**

**Third Party Plaintiffs,**

**-against-**

**Alfred w, JANE DOE, & JOHN DOE,**

**Third Party Defendants.**

**EMERGENCY AFFIRMATION of  
SUSAN CHANA LASK IN SUPPORT OF OSC &  
PRELIMINARY RELIEF**

-----x

I, SUSAN CHANA LASK, ESQ., an attorney duly admitted to practice law in the State of New York and in good standing affirm under penalty of perjury the following:

1. I am the attorney for Defendants/Third-party Plaintiffs and am fully familiar with the facts and circumstances involved.

2. Filed in support of this Order to Show Cause requesting certain preliminary relief is:

(a) This Affirmation

(b) Affidavits of Defendants/Third-party Plaintiffs Tony C and Connie C, both dated

March 24, 2009, and

(c) Affidavit of Rose G, dated March 24, 2009.

3. In sum, 79 year old infirm and indigent Connie c was swindled by Plaintiff and Third-party Defendants, one of which is a licensed attorney and broker, Alfred w, out of her Deed to her some 1.5 Million Dollar home in Brooklyn. She resided there with her son, Tony Campbell for 45 years. At the time of the swindle in August, 2007, she was diminished in her capacities to handle her own affairs, her home was in foreclosure and she was under great duress and ripe for an unconscionable transaction.

4. Connie c was the victim of "foreclosure rescue". "Foreclosure rescue" typically involves a third party preying upon a property owner's desperate situation of falling into foreclosure. Usually an attorney works with the predators, who will represent all parties to gain the confidence of the property owner. The attorney drafts deliberately misleading documents against the property owner's interests who ultimately signs legal documents giving their property to the predator for no consideration. In the end, they typically evict or remove the victims of the scam by filing court proceedings. Oftentimes the victims are too indigent, frightened and ignorant to fight for their rights.

5. Here, W, Esq. and the Does have been threatening to evict the elderly Connie c from her own home immediately after they stole it from her (Connie c Aff), and to complete their swindle, they filed a Complaint which, as incomprehensible as it is, it is meant to intimidate the Cs out of their own home (Exhibit "A").

6. Immediate relief is requested to prevent Plaintiff and Third Party Defendants from further interfering with and hypothecating xxx Union Street, Brooklyn, New York, intimidating the Cs and to maintain the status quo that the property remain unrented. As well, the Does and W, Esq. must be ordered to physically stay away from the property until determination of this motion. The Does do not reside at the property, thus, a temporary stay away order will maintain the status quo and is needed as described below. By virtue of Ms. C's advanced age of 79 years, this matter requires a preference of an accelerated hearing date.

**FACTS**

7. The attached verified Third-party Complaint, dated February 26, 2009, was served on all parties March , 2009 , and is incorporated herein as if fully set forth (Exhibit "B").

8. On June 7, 2007, a foreclosure was filed in Kings County Supreme Court, Index No. xxxx/07 against the property because of mortgage arrears, which \$14,703.80 would have reinstated the mortgage (Exhibit "C"-Baum July 31, 2007 reinstatement letter).

9. Unbeknownst to the Cs, on August 14, 2007, Plaintiff/Third-party Defendants Jane and John doe had their attorney Alfred W file an Answer to the foreclosure Complaint as attorney for Connie c (Exhibit "D"). From that date through October 15, 2007 W, esq. represented the conflicting interests of the Cs and Does by pretending to rescue Connie c from foreclosure. In actuality, he was promoting the Scibelli's nefarious intent to steal Connie c's property.

10. On September 19, 2007, attorney Alfred w had Connie c sign a Contract of Sale he drafted (see Exh. A to Exhibit B attached hereto). The Contract of Sale purported a purchase price of \$200,000.00 or whatever "the payoff figure from HSBC" (the existing mortgagee) would be, and offered a Deed with a life estate for the 77 year old Connie c limited to live on the first floor of the home she owned for some 49 years (see Exhibit E-pars. 1, 5, 27). Paragraph 5 states: "The bargain and sale deed from Seller to Purchaser shall reserve unto Seller a life estate in the premises". Notably, W, Esq. duped Connie c deliberately drafted the Deed excluding her "life estate" (Exhibit "E").

11. Notwithstanding the swindle so far outlined here and in the Third Party Complaint (see Exhibit A), the fraud is so brazenly clear alone by Mr. W, esq. drafting a contract with a life estate to a 77 year old woman. Her life span was of no consideration to giving away her some 1.5 Million Dollar property in exchange to be reduced to live in her own home, limited to the first floor, and for life. This 79 year old woman is forced to sleep on a sofa and live in her living room by order of Jane Does and her attorney W, esq.. That is a jail sentence, not an arms length transaction. The fact they even placed this bogus term in the contract evinces how W, esq. and the Does were conniving the Cs with confusing and irrelevant terms.

12. Connie c never received money from the purported sale price of \$200,000. She did not have counsel to represent her other than Mr. W, esq.. She never had the benefit of an appraisal. She understood the Scibelli's would pay off the mortgage arrears, not steal her home, which she would never have given her multi-million dollar home away for no consideration (C Aff.).

13. Paying the \$14,703.80 would have resolved the matter (see Exhibit C); however, instead, Walkendowski drafted false and deliberately confusing documents while representing conflicting party interests to effectuate the theft of Connie c's home. He then dumped the Cs as his clients and filed an action against them to take their home away on behalf of Jane doe.

14. Further to the fraud, W, esq. and the Scibelli's ignored Rose G's, the daughter of Connie c, power of attorney prohibiting any real estate transfer without Ms. G's signature (See Exhibit B's Exh. A, and refer to Exhibit B, paras.9-10, 90-91). Ms. G's POA was identical to Tony's, mandating both of their signatures on all documents, not Tony's alone. That safety factor was built in for reason for that Tony C could not make unilateral decisions for his infirm mother because he was an emotional cripple himself who depends on his mother emotionally and financially, living with her all of his 45 years. He wittingly or unwittingly resorted to drastic measures of executing the fraudulent documents on his mother's behalf under duress and for fear they would be homeless (Tony Aff.). Nonetheless, his participation in the entire transaction was unlawful, voidable, and known to be unlawful to the Does and Walendowski.

15. Connie and Tony C relate the intimidation of screaming and yelling imposed upon them to sign the Contract of Sale on September 19, 2007, when John doe picked them up at 5 a.m. from their Brooklyn home all the way to W, esq.'s Long Island office (Connie and Tony Affs.). They never ate that morning into the afternoon as they were threatened and intimidated into signing a stack of documents without counsel, an explanation or review of the documents.

16. As related by the attached affidavits, subsequent to Connie c signing over her Deed to Jane Doe, the Cs and Ms. G, the daughter of Connie, received threats from agents of the Does, including Mr. W, esq., that they will be evicted from their home and put "out on the street". Jane doe recently appeared at the premises with John doe, whom the Cs fear. The previous renter of the premises recently vacated because of a break-in to the premises, which coincidentally occurred during this litigation. That rental income paid the mortgage and expenses, which now the Cs fear Jane doe will let the property waste and fall into foreclosure or she will rent to someone to move in and intimidate the Cs, or someone unacceptable to Connie c, who in actuality is the owner.

17. The Cs live in fear of the Scibelli's. They live off of Connie's meager social security of about \$1,200 a month, basically being indigent. Connie is 79. Her health is failing. She requires a preference to be heard by this court. An immediate return date on this motion and an interim injunction as requested herein is mandated for their protection and to protect Connie's property from waste, damage, renting and further interference by the Does and W, esq..

18. Because the Does and Mr. W, esq. obtained the deed by fraud, they must be prevented from taking any action on the premises as undoubtedly the premises will be returned to Connie c because the deed was void ab initio due to being procured by fraud.

#### IMMEDIATE RELIEF REQUESTED- Preliminary Injunction

19. A party seeking a preliminary injunction must demonstrate the probability of success on the merits, danger of irreparable harm in the absence of an injunction, and a balance of the equities in his or her favor *Sheffield Towers Rehabilitation and Health Care Ctr. v. Novasso*, 293 A.D.2d 182, 185 [2002]. The purpose of the interlocutory relief is to preserve the status quo until a decision is reached on the merits" ( *Gambar Enterprises, Inc. v. Kelly Servs., Inc.*, 69 A.D.2d 297, 306 (1979). The court's role is not "to determine finally the merits of an action ...; rather, the purpose of the interlocutory relief is to preserve the status quo. Therefore, a preliminary injunction may also be granted where injunctive relief is deemed necessary to maintain the status quo, even if the movant's success on the merits cannot be determined at the time that the application for a preliminary injunction is brought." *Jacobowitz v. Jacobowitz*, 5 Misc.3d 1012(A), 798 N.Y.S.2d 710 (Sup.Ct. Kings County 2004) (at 2004 WL 2532297, at \*4); *Mr. Natural v. Unadulterated Food Products, Inc.*, 152 A.D.2d 729, 544 N.Y.S.2d 182 (2nd Dept.1989). Accordingly, because "the denial of injunctive relief would render the final judgment ineffectual, the degree of proof required to establish the element of likelihood of success on the merits should be reduced." *State v. City of New York*, 275 A.D.2d 740, 741, 713 N.Y.S.2d 360, 361 (2nd Dept.2000).

20. Here, the affidavits and exhibits support a strong probability of success that the Deed was obtained by fraud and will be declared void ab initio. *Dallessio v. Kressler*, 773 N.Y.S.2d 434, 436 (App. Div., 2 Dep't 2004) ("In the case of fraud in the factum, the maker is induced to sign something entirely different than what he thought he was signing. The instrument is 'void ab initio.' "). It is basic, well-settled legal principle that "a deed may be set aside for fraud where the grantor knew the contents of the deed he executed, but was induced to execute it by the fraudulent representations of the grantee or of someone in privity with the grantee." N.Y. Jur.2d Deeds § 196 (2007); *State v. Cortelle Corp.*, 38 N.Y.2d 83, 87 (1975); *Sabo v. Delman*, 3 N.Y.2d 155, 160 (1957); *Caruso v. Caruso*, 259 NY 607 (1932); *Isquith v. Isquith*, 229 AD 555, 563 (App. Div., 2d Dep't 1930); *Adams v. Gillig*, 199 NY 314, 314 (1910). Resultantly, the equities favor the C's injunction against the Does and W, esq. who are the thieves in the first place and have no business interfering with the property. The request for a preliminary injunction is proper against the perpetrators of the fraud, the Does's and W, esq., from filing any further action upon the property, taking action against the property, renting or taking rent from the property and entering the property.

21. The Cs are emotionally and financially distressed and have already been victimized by the Does and W, esq. now putting them on the verge of homelessness through their deceptive acts. Thus, mandating the Does and W, esq. not to interfere with Connie c's property, by entrance, action, lease or otherwise and to stay 100 feet away from the property pending the hearing of this motion will not harm anyone, and will benefit the Cs and the property from further intimidation by those parties.

22. Without an injunction, the harm is imminent and irreparable as (a) the Cs will be further intimidated and be removed from their proeprty, (b) the property will go to waste if the Does are permitted to maintain control as they have already intimidated the past renter to vacate;thus, losing income the property depended on to pay its expenses, (c) Scibelli will rent it without authority, causing legal action against the true owner, Connie c, and the property by a defrauded renter and (d) the propensity of the Does and W, esq. to commit further frauds against the property by hypothecating, transferring or renting it premised on their brazen acts of fraud already warrants issuance of a preliminary injunction to prevent their defrauding other banks, title companies, clerks and the courts as they have already done with their false documents and filings.

23. Directing her to physically stay away from Connie c's home pending the hearing of this matter would not cause Plaintiff Jane doe and Third-party Defendants to suffer irreparable hardship as a result of the preliminary injunction. The property belongs to Connie c. The Cs lived there since 1965. To date, Jane doe does not live there. She resides with her husband John doe in Long Island.

24. Notwithstanding the irreparable and imminent harm, the mere fact that the status quo needs to be preserved for a short while in which there should be no renting or other hypothecating and entering the property pending the hearing on this motion mandates a preliminary injunction.

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25. The Courts intervention in this matter is the only way to prevent this family from unjustly losing their home and enriching the Plaintiff/Third-party Defendants of their fraudulent scheme.

26. On March 23, 2009, at 4:30 p.m. I faxed a letter to attorney Alfred w who is counsel to the parties and a party hereto notifying that I will be present at this Court at 2 p.m. to present this Order to Show Cause.

27. No other provisional remedy pursuant to the CPLR has been secured or sought in this action, and no prior motion has been made for the same or similar relief as is sought herein.

WHEREFORE, deponent respectfully requests that a preliminary injunction, enjoining and restraining Plaintiff Jane doe and Third Party Defendants from alienating, transferring, assigning, mortgaging or committing waste upon any interest they or their heirs or assignees claim to have in the subject property; collecting, withdrawing or depositing any drafts, checks, monies or any note related to rent from the subject property; listing, advertising or in any way publicizing any part of the subject property for rent or lease; and appearing within 100 feet of the subject premises. and other relief as this court deems just and proper.

Dated: March 24, 2009

Yours, etc.,

New York , New York

LAW OFFICES OF SUSAN CHANA LASK

By: Susan Chana Lask, Esq.

Attorney for Defendants/Third-party Plaintiffs

244 Fifth Avenue, Suite 2369

New York, NY 10001

(212) 358-5762

SUPREME COURT: STATE OF NEW YORK

COUNTY OF KINGS: CIVIL PART

JANE DOE,

Plaintiff,

-against-

TONY C, CONNIE C, WELLS FARGO BANK NA,

Defendants.

Index No. xxxxx/08

TONY C and CONNIE C,

Third Party Plaintiffs,

-against-

Alfred w, JANE DOE, & JOHN DOE,

Third Party Defendants.

Index No. XXXX/09

AFFIDAVIT of CONNIE C

IN SUPPORT OF

PRELIMINARY RELIEF

STATE OF NEW YORK : ss

COUNTY OF KINGS :

Plaintiff, CONNIE C, being duly sworn, deposes and says:

1. I am the Defendant/Third-party Plaintiff in this matter, am fully familiar with the facts of this case and this affidavit is made to support my motion requesting preliminary and injunctive relief .
2. I am now 79 years old. I was 77 years old at the time of the September 19, 2007 execution of the Contract of Sale to my home at xxx Union Street, Brooklyn, NY. I am not an educated woman. I have never been involved in a real estate transaction except about 45 years ago when my husband, now deceased, purchased my home. I owned it with him and lived at my home since 1965. I had part of it rented, which paid my mortgage and home expenses.
2. My son Tony C is 45 years old. He has lived with me in my home all his life. He is not independent and has emotional problems disabling him from acting on his own. We lived from the property rental income and my social security of about \$1,200 a month. We are dependent on each other
3. In 2007, the Does told me they would save my home from foreclosure. I never met, spoke to nor knew an Alfred w. I did not know he filed an Answer as my attorney to the foreclosure action against me.
4. I gave my daughter Rose G a power of attorney to execute all real estate documents for me. I never terminated that power of attorney. The only reason Tony and I executed documents on September 19, 2007 without Rose present was because we were frightened by John doe screaming and threatening we would be out on the street. He refused to allow us to read the documents. I never understood they were taking my home away from me.
5. I thought Mr. W, esq. was protecting me as my attorney the day I met him early in the morning when John doe took me and my son to his Long Island office. I

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Order to Show Cause for Injunctive Re...

never wanted to give my home away to Jane doe and Tony Campbell. I would never have "sold" my home for no money in return. I did not have a lawyer or anyone else to represent me other than Mr. W, esq.. Now, I am forced to live on the first floor of my three story home because Jane doe and her lawyer ordered me to stay away from my second floor bedroom. There is no bedroom on the first floor where they ordered me to live, so I am forced to sleep on the sofa in the living room and live on the first floor.

6. Jane doe does not live in my home. Her and her attorney threaten me by letters that I will be evicted unless I pay them \$10 a month, and now by the Complaint they filed in this Court and their other threats, they are trying to make me and my son homeless.

7. Close in time to the recent lawsuit Mr. W, esq. filed against me and my son, my home was broken into and we receive late night hang ups on the phone. My home was never burglarized in all the 45 years I lived here. My renter left the premises because of the legal proceedings with the Does. Jane doe has also arrived at my home with John doe. She enters the premises lately claiming she will rent it.

8. I always used a local real estate company to place renters at the premises. I do not want the Does or W, esq. involved in the rental process. I fear they will place someone in my home to intimidate me.

9. I am physically sick from what W, esq. and the Does did to me by taking my home away my home. I live in fear of Mr. W, esq. and the Does. I understand Jane doe's father, A Doe, threatened to put me and my son on the streets (see attached Rose G affidavit). I had a restraining order against him in the past.

10. I am old and infirm. I need an immediate hearing. I want my home back. I desperately need preliminary relief.

WHEREFORE, I respectfully request this court grant a preliminary injunction, enjoining and restraining Plaintiff Jane doe and Third Party Defendants from alienating, transferring, assigning, mortgaging or committing waste upon any interest they or their heirs or assignees claim to have in the subject property; collecting, withdrawing or depositing any drafts, checks, monies or any note related to rent from the subject property; listing, advertising or in any way publicizing any part of the subject property for rent or lease; and appearing within 100 feet of the subject premises. and other relief as this court deems just and proper.

Dated: Brooklyn, NY

March 24, 2009

Sworn to and Subscribed

before me this 24th day of March, 2009

\_\_\_\_\_  
CONNIE C

\_\_\_\_\_  
NOTARY PUBLIC

-----  
**SUPREME COURT: STATE OF NEW YORK**

**COUNTY OF KINGS: CIVIL PART**

-----x  
**JANE DOE,**

**Index No. xxxxx/08**

**Plaintiff,**

**-against-**

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**Defendants.**

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**TONY C and CONNIE C,**

**Index No. XXXX/09**

**Third Party Plaintiffs,**

**-against-**

**Alfred w, JANE DOE, & JOHN DOE,**

**Third Party Defendants.**

**AFFIDAVIT of Tony C**

**IN SUPPORT OF**

**PRELIMINARY RELIEF**

-----x  
STATE OF NEW YORK : ss

COUNTY OF KINGS :

TONY C, being duly sworn, deposes and says:

1. I am Connie c's son. I lived with her at her home at xxx Union Street, Brooklyn, New York all my life. I am 45 years old. I am emotionally disabled and unable to maintain employment. I depend on my mother and she depends on me.

2. I had a power of attorney that required the joint signature of my sister, Rose G, regarding any real estate transactions for our mother. I ignored that mandate during the events from August through October, 2007 because I believed this transaction involving the Does and Mr. W, esq. was the only way to save me and my mother from being homeless. I never was told that the home would be taken from my mother. I understood the Does would pay off the some \$14,000 due. The Does told me that they had an attorney that would save us from foreclosure. I never met nor spoke to that attorney until September 17, 2009 when at 5 in the morning John doe picked up me and my mother and drove us to Mr. W, esq.'s office in Long Island.

3. It was there that John doe screamed and threatened me and my mother to sign the documents Alfred w drafted. We never had an attorney, were not permitted to review the documents and were made to sign alot of documents without any copies given to us.

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## Order to Show Cause for Injunctive Re...

4. I never intended to sell the house for my mother. I understood the Does would pay off the debt, not take the home my from my mother. I understood Mr. W, esq. represented me and my mother's interests, not that he was representing the Does against our interests and that he would later sue us on behalf of the Does to evict us from our home.

5. I now understand my mother and I were swindled by W, esq. and the Does. I fear that John doe will enter the premises and harm my mother and I. He has recently arrived with his wife Jane doe while she entered the premises, threatening to rent it out. We receive phone call hang ups in the middle of the night. I am aware that Jane doe's father, A Doe, called my sister, Rose G (her affidavit is attached hereto) threatening "They're (meaning the Does) going to get attorneys and they're going to throw their asses out!", meaning my mother and I. In the past my mother obtained a restraining order against A. The tenant recently vacated. We depended on the rent to pay for property expenses. I believe the tenant left because of this litigation and the Does interfering with the property. I desperately need preliminary relief.

WHEREFORE, I respectfully request this court grant a preliminary injunction, enjoining and restraining Plaintiff Jane doe and Third Party Defendants from alienating, transferring, assigning, mortgaging or committing waste upon any interest they or their heirs or assignees claim to have in the subject property; collecting, withdrawing or depositing any drafts, checks, monies or any note related to rent from the subject property; listing, advertising or in any way publicizing any part of the subject property for rent or lease; and appearing within 100 feet of the subject premises. and other relief as this court deems just and proper.

Dated: Brooklyn, NY

March 24, 2009

Sworn to and Subscribed

before me this 24th day of March, 2009

\_\_\_\_\_  
TONY C

\_\_\_\_\_  
NOTARY PUBLIC