MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

# COUNTY OF ERIE

**MARK C. POLONCARZ**
COUNTY EXECUTIVE

DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

March 19, 2013

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

| | |
|---|---|
| File Name: | *Pearl Block Inc. v. City of Buffalo Dept. of Taxation and County of Erie Real Property Tax Services* |
| Document Received: | Order to Show Cause |
| Name of Claimant: | Pearl Block Inc.<br>475 Delaware Avenue<br>Buffalo, New York 14202 |
| Claimant's attorney: | David B. Smith, Esq.<br>Feuerstein & Smith, LLP<br>475 Delaware Avenue<br>Buffalo, New York 14202 |

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enclosure

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

PEARL BLOCK, INC.
475 DELAWARE AVENUE
BUFFALO, NEW YORK 14202

Plaintiff,

-vs-

CITY OF BUFFALO
DEPARTMENT OF TAXATION
120 CITY HALL
BUFFALO, NEW YORK 14202

COUNTY OF ERIE
DEPARTMENT OF REAL PROPERTY TAX SERVICES
95 FRANKLIN STREET, ROOM 100
BUFFALO, NEW YORK 14202

Defendant.

**ORDER TO SHOW CAUSE**

**ORAL ARGUMENT REQUESTED**

Index Number: I 2013-720

**UPON** the reading and filing of the Affidavit of David B. Smith, Esq., of the Law Firm of Feuerstein & Smith, LLP, attorneys for the Plaintiff, sworn to on the 6 day of March, 2013 and upon all of the papers, pleadings, and proceedings had heretofore herein,

**LET** the Defendant, City Of Buffalo, County of Erie Department of Real Property Tax Services, show cause for this Court, Part 26 thereof, held in and for the County of Erie at 25 Delaware Avenue, in the City of Buffalo, State of New York on the 21 **day of** March, **2013 at** 9:30 **a.m.** on that day or as soon thereafter as counsel can be heard, why an Order should not be made and entered herein granting the Plaintiff the following relief:

1. To mark as paid, discharged, released and indemnify and hold harmless, the Plaintiff from the 2000, 2001 and 2002 tax obligations allegedly due regarding the subject property, commonly known as 436 Franklin, Buffalo New York 14202; and

2. Such other and further relief the Court may deem just and necessary under the circumstances.

**SUFFICENT REASON APPEARING THEREFORE,** let service on the Defendant City Of Buffalo be completed through delivery of this Order to City of Buffalo Corporate Counsel at 1100 City Hall, Buffalo, New York 14202 and on, County of Erie Department of Real Property Tax Services through delivery of this Order to the County Attorney's office at 95 Franklin Street, Buffalo, New York 14202, together with the papers upon which it is granted on or before the 13 day of March, 2013 be deemed good and sufficient service; and it is further

**ORDERED,** that all responding papers are due on or before the 19 day of March, 2013.

***ALL OF THE ABOVE IS SO ORDERED.***

DATED: MAR 11 2013

ENTERED:

GRANTED

MAR 11 2013

BY /S/ MARY LOUISE ENSER

MARY LOUISE ENSER

COURT [illegible]

/S/ JOHN A. MICHALEK, J.S.C.

Honorable JOHN A. MICHALEK, J.S.C

STATE OF NEW YORK

SUPREME COURT : COUNTY OF ERIE

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PEARL BLOCK, INC.
475 DELAWARE AVENUE
BUFFALO, NEW YORK 14202

Plaintiff,

-vs-

CITY OF BUFFALO
DEPARTMENT OF TAXATION
120 CITY HALL
BUFFALO, NEW YORK 14202

COUNTY OF ERIE
DEPARTMENT OF REAL PROPERTY TAX
SERVICES
95 FRANKLIN STREET, ROOM 100
BUFFALO, NEW YORK 14202

Defendant.

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**AFFIDAVIT OF DAVID B. SMITH, ESQ.**

Index Number: I 2013 120

David B. Smith, Esq., being duly sworn, deposes and says:

1. I am an attorney duly licensed to practice law before all Courts of the State of New York and as such, represent the Plaintiff, Pearl Block, Inc. relative to these proceedings. Additionally, I submit this Affidavit as President of the aforementioned Plaintiff.
2. I submit this Affidavit in support of Plaintiff's Order to Show Cause challenging the validly of certain allegedly unpaid tax obligations encumbering the subject property, 436 Franklin, Buffalo, New York, 14202 (hereinafter "the property") and for an Order to discharge, release, indemnify and hold harmless, and mark as paid the 2000, 2001 and 2002 tax obligations regarding the property.
3. The alleged balance due was discharged and otherwise paid. That your Affiant, on behalf

of Plaintiff, has had numerous contact with the City of Buffalo after purchase by the Plaintiff. The property's many years of unpaid city taxes were discharged and paid by the Plaintiff as further outlined herein.

4. The subject property was purchased by David B. Smith September 13, 2002 at a Federal Tax Foreclosure Sale for the purchase price of Twenty-Three Thousand Dollars ($23,000.00). Attached hereto as EXHIBIT 1 is a copy of the Department of the Treasury-Internal Revenue Service Certificate of Sale of Seized Property.
5. On March 12, 2003, Mr. Smith executed a Notice of Assignment, assigning and transferring any and all interest to the subject property, 436 Franklin, to Plaintiff Pearl Block, Inc. Attached hereto as EXHIBIT 2 is a copy of said Notice.
6. The Deed was executed and recorded on March 17, 2003, between Ron Boyea, acting ~~Compliance Area Director, Area 2 of Small Business/Self Employed Division of the~~ Internal Revenue and Pearl Block, Inc. Attached hereto as EXHIBIT 3 is a copy of the Deed.
7. At the time the property was foreclosed and placed for public auction sale on August 20, 2002, the Department of Treasury Internal Revenue Service issued a Notice of Encumbrances Against or Interest in Property Offered for Sale as part of the Notice of Public Auction Sale. Attached hereto as EXHIBIT 4 is a copy of the Notice of Public Auction Sale with Notice of Encumbrances.
8. A review of the Notice of Encumbrances displays both Federal Tax liens, as well as New York State and County Tax liens. See EXHIBIT 4. The three (3) disputed tax bills subject to this Order to Show Cause are listed as junior liens and would have been discharged therefore, at the time of the purchase and transfer of 436 Franklin.
9. However, and regardless of discharge, Plaintiff has paid for all outstanding tax liabilities.

Attached hereto as EXHIBIT 5.

10. Since the time of purchase and obtaining ownership of the property in 2003, Plaintiff has continually and consistently made payment to the Defendant of all taxes due on the property. Attached hereto as EXHIBIT 6 are copies of the Real Property Information from the Erie County Real Property Tax Services Website confirming same. Significantly, these tax bills show no arrears or other unpaid charges, dating back to the availability of these records to 2009.

11. After an evaluation of the past property taxes, Plaintiff disputes that any amount remains owed. At no time over the past decade was the Plaintiff put on notice of any unpaid taxes nor otherwise made aware of any claim that any such taxes were allegedly delinquent.

12. Plaintiff received a Delinquent Tax and Personal Liability Notice and Demand for Payment from the Erie County Real Property Tax Services in May 2012, notifying the Plaintiff that three (3) tax bills remained unpaid and delinquent. Attached hereto as EXHIBIT 7 is a copy of said Notice. This is the first and only notice ever received. The tax bills in dispute are the following: bill number XPD * 9049907, dated 2000, for the amount of $908.68; bill number 1*49650, dated 2001, for the amount of $2,085.59; and bill number 1*49484, dated 2002, for the amount of $1,740.04; for a total sum of $4,734.31.

13. Since the time of the notice, the interest and fees on the foregoing encumbrances have continued to accrue, resulting in the following totals, as of December 27, 2012: bill number XPD * 9049907, dated 2000, for the amount of $981.23; bill number 1*49650, dated 2001, for the amount of $2,161.37; and bill number 1*49484, dated 2002, for the amount of $1,807.46; for a total sum of $4,950.06.

14. Plaintiff argues that the alleged balance due is not a valid debt, the balance of the tax liens

were discharged by payment and operation of law. The Plaintiff obtained the property by a Deed through the Federal Internal Revenue foreclosure proceeding, which extinguished the claims of the Defendant as they were junior to the IRS, not of record or otherwise able to run with the land.

15. Further, because the subject tax liens predate the purchase and transfer of the property by the Plaintiff, such encumbrances are junior to the I.R.S. tax liens and were satisfied at the closing.

16. Moreover, had there been taxes due they should have been discharged by the ongoing and continued tax payments made by the Plaintiff herein. Therefore, Plaintiff argues that any money received by the county as confirmed through EXHIBIT 5, should have properly been credited to the oldest and longest outstanding alleged bill.

17. The Defendant has not come forth with particular facts to justify their position that Plaintiff owes the three (3) outstanding tax liens, all of which accrued prior to Plaintiff's ownership of the property and for over a decade remained dormant, without any demand or claim for payment. The Defendant is barred by laches from pursuing any claims.

18. The Order to Show Cause herein is necessary and required so as to protect the rights of the Plaintiff against tax delinquency and possible foreclosure action against the Plaintiff and accrued penalties and interest improperly applied and accrued herein.

19. The Plaintiff moves that the unpaid taxes encumbering the property be discharged and that the Plaintiff be released, indemnified and held harmless from any claims for outstanding taxes in regard to 436 Franklin and that the records of the city be amended and marked as paid.

20. For the foregoing reasons, the outstanding and unpaid tax obligations encumbering the property, in the amount of Four Thousand Nine Hundred Fifty Dollars and Six Cents

($4,950.06), must be dismissed in their entirety and your affiant respectfully requests that the Court grant the relief sought herein. In the alternative, the Plaintiff requests a hearing in this matter.

WHEREFORE, your Affiant respectfully requests that the Court grant the relief herein requested, and for such other and further relief as may be just and proper.

David B. Smith, Esq.

Sworn to on the 6th day
of March, 2013.

Notary Public

MARK E. GUGLIELMI
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 03/13/2014