

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
BLUE RIO LLC, and PETER FINE :  
 :  
 Plaintiffs, :  
 :  
 -against- :  
 :  
 CITY OF MOUNT VERNON MAYOR :  
 RICHARD THOMAS, in his individual and :  
 official capacities, MICHAEL GIANATASIO, :  
 and the CITY OF MOUNT VERNON, :  
 :  
 Defendants. :  
 :  
-----X

Civ. Action No. 7:17-cv-02015 (VB)

**AFFIRMATION IN SUPPORT  
OF MOTION TO DISMISS**

**JEFFREY D. BUSS, ESQ.**, an attorney duly admitted to practice before this

Court, hereby affirms subject to the penalties of perjury that:

1. I am a member of Smith, Buss & Jacobs, LLP, attorneys for defendants in the above captioned proceeding.
2. I respectfully submit this affirmation in support of Defendants’ pre-answer motion to dismiss Plaintiff’s complaint pursuant to Rule 12(b)(1) and 12 (b)(6) of the Federal Rules of Civil Procedure.
3. Annexed hereto as **Exhibit A** is a July 11<sup>th</sup>, 2016 Article from the Westchester Business Journal describing Plaintiff’s Project located at 203 Gramatan Avenue, Mount Vernon, New York, and noting that the Project has been in development for nine (9) years under three different Mayoral Administrations.
4. Annexed hereto as **Exhibit B** are three (3) OSHA Violations described as “serious”, issued against 203 Gramatan Avenue, Mount Vernon, New York, on July 7<sup>th</sup>, 2016.

5. Annexed hereto as **Exhibit C** is a July 26, 2016 LoHud Newspaper Article entitled “Contractor at Mount Vernon site fined \$17k”.

6. Annexed hereto as **Exhibit D** is a December 6<sup>th</sup>, 2016 LoHud Newspaper Article entitled “Contractors at Mount Vernon Project fined \$20k”, citing additional and subsequent OSHA violations issued against 203 Gramatan Avenue.

7. Annexed hereto as **Exhibit E** is a copy of the State Court Complaint filed on April 26<sup>th</sup>, 2016, entitled *Phillips v Blue Rio, LLC et. al.*, Index No 153508/2016. The Complaint alleges that a worker sustained serious injury at the Blue Rio Project after falling from unprotected scaffolding in violation of work safety laws.

8. Annexed hereto as **Exhibit F** is a copy of a State Court Complaint filed on September 8<sup>th</sup>, 2016, entitled *Watt v Atlantic Development Group, Blue Rio, To Better Days Construction and The City of Mount Vernon*, Index No. 62575/2016. The Complaint alleges injury to a resident of Mount Vernon from a fall due to an unprotected sidewalk construction hazard in violation of work place safety laws.

9. Annexed hereto as **Exhibit G** is a copy of an Answer filed by Blue Rio in the *Watt v Atlantic Development Group* lawsuit asserting a cross-claim against the City of Mount Vernon in apparent violation of the Loan Agreement between the Mount Vernon Urban Renewal Agency and Blue Rio. Said Loan Agreement granted Blue Rio a long term PILOT agreement, limiting their tax obligations to the City of Mount Vernon for forty (40) years. The Loan Agreement contains covenants from Blue Rio pursuant to which it warrants to comply with all municipal codes, including building and safety requirements, and warrants to indemnify the City against any and all personal injury claims.

10. Annexed hereto as **Exhibit H** is an October 18<sup>th</sup>, 2016 Inspection report prepared by Universal Engineering Services, detailing site conditions at 203 Gramatan Avenue, Mount Vernon, New York.

11. Annexed hereto as **Exhibit I** is a State Court Petition filed on February 3<sup>rd</sup>, 2017, in an action entitled *Blue Rio v Frank DeLeonardis*, Index No 51668/2017. The Petition seeks to compel access to an adjoining property pursuant to NY Real Property Law 881.

12. Annexed hereto as **Exhibit J** is the Opposing Affidavit of the adjoining property owner in the *Blue Rio v DeLeonardis* proceeding, asserting that Blue Rio engaged in unsafe and hazardous work site practices resulting in damage to the adjoining property; that Blue Rio refused to repair the damage; and that Blue Rio failed to properly insure the adjoining property. The adjoining property owner demands that Blue Rio pay him \$40,000 plus \$5 Million in property insurance to secure access to his property.

13. Annexed hereto as **Exhibit K** is an April 7, 2017 Settlement and License Agreement filed in *Blue Rio v. DeLeonardis* proceeding pursuant to which Blue Rio agrees to pay DeLeonardis \$30,000 and to provide \$5 million in property insurance.

14. Annexed hereto as **Exhibit L** is a February 23, 2017 Westchester Business Journal Article entitled “Building Goes Up, Tensions Arise in Mount Vernon”, in which Blue Rio’s attorney boldly states “It’s extraordinary, said Blue Rio attorney Andrew G. Celli Jr. “The City is putting its thumb on the scale until we pay” and “One theory about the delays, Celli said, is incompetent City oversight”.

15. Annexed hereto as **Exhibit M** is a March 20<sup>th</sup>, 2017 LoHud News Article entitled “Lawsuit” Mount Vernon Mayor Richard Thomas retaliated against Developer”, published the

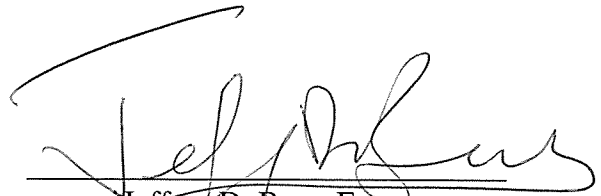
same day the Complaint was filed in this action. The story repeatedly quotes Andrew G. Celli boldly making statements on behalf of Blue Rio against the City of Mount Vernon.

16. Annexed hereto as **Exhibit N** is an April 21, 2017 Site Inspection by Universal Engineering Services, conducted after Plaintiff requested an inspection to remove a stop work order. The inspection shows multiple building code and safety violations including a worker standing on an awning without any safety harness or scaffolding and unpressurized stand pipes for fire suppression.

17. Annexed hereto as **Exhibit O** is a copy of a State Court Petition filed in *Altheim v. Atlantic Development Group, Peter Fine, and the Entities listed in Schedule A*, Index No 653511/2014. *Altheim* is a State Court proceeding regarding an arbitration of a partnership dispute between Altheim and Peter Fine. The Verified Petition states that the Peter Fine entities “reputation and ability to secure further low income and affordable housing projects” may have been injured by the execution of a search warrant issued by the Manhattan District Attorney’s office, pursuant to which investigators “opened a locked credenza maintained by Mr. Fine in Mr. Fine’s own office...and “found over \$300,000 in cash”, resulting in charges against a Fine “solely owned and controlled company” of “falsifying tax records and tax fraud”, and a plea of guilty in June of 2012 by the Fine owned and controlled company.

**WHEREFORE**, it is respectfully requested that Defendants Rule 12 (b)(1) and (6) pre-answer motion to dismiss be granted in its entirety, and that Defendants be granted such other and further relief as may seem just and equitable to this Court.

Dated: Yonkers, New York  
April 28<sup>th</sup>, 2017

A handwritten signature in black ink, appearing to read 'Jeffrey D. Buss', is written over a horizontal line.

Jeffrey D. Buss, Esq.  
Smith, Buss & Jacobs, LLP  
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