

LAW/II
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X
ANTHONY SENECA,

Index No.: 152031/2017

Plaintiff,

- against -

EMIL CANGRO and CARLO CANGRO,

Defendants.

-----X

**AFFIRMATION
IN OPPOSITION
TO DISMISSAL**

LAUREL A. WEDINGER, ESQ., an attorney, duly admitted to practice law before the
Courts of this State, affirms under the penalties of perjury as follows:

1. That I am a member of the law firm of Barry, McTiernan & Wedinger, P.C., the attorneys for the plaintiff, Anthony Seneca, in the above-entitled action.
2. That I am fully conversant with the facts and circumstances heretofore had herein.
3. That I submit this affirmation in opposition to the motion of Defendants seeking to dismiss the Amended Verified Complaint filed in this matter. It is submitted the motion should be denied in its entirety.
4. Plaintiff filed an Amended Verified Complaint in this matter on September 27, 2017. The Amended Verified Complaint alleges eight causes of action including libel; libel per se; defamation; defamation per se; intentional infliction of emotional distress; negligent infliction of emotional distress; commencement of a sham litigation without standing and malicious prosecution.

5. Said action was commenced against family members of plaintiff Anthony Seneca who had filed and then discontinued lawsuits three lawsuits as against him in Supreme Court, Richmond County (hereinafter referred hereto as the “Cangro” actions).

6. As alleged in the Amended Verified Complaint, a copy of which is annexed hereto, the Cangro actions were commenced by the Cangro’s with the full knowledge that they “had no legally recognized ownership interest in the properties owned by Clove Road Development LLC, C. Seneca Construction Inc. and Flagg Place Development LLC (see Complaint at paragraph 13).

7. The lawsuits were subsequently discontinued although the Orders annexed to the moving papers fail to reflect, as alleged in the moving papers, that the discontinuance was on consent. In fact, all three Orders (see Exhibit “D” annexed to the moving papers), state that the actions were “discontinued without prejudice pursuant to terms of stipulation to follow.” No stipulation is included with the moving papers.

8. The Cangro actions were discontinued on August 11, 2017. The claims in those actions were supported by petitions verified by the Cangro’s and sought dissolution, an accounting and attorney fees (see Amended Verified Petitions, Index No.: 85036/16 and 85037/16). The Amended Verified Petitions concerning the lawsuit brought against C. Seneca Construction Inc. (Index No.: 85039/2016), alleged causes of action for dissolution, an accounting, attorney fees as well as a claim based on “false and fraudulent representations.” No alleged false or fraudulent representations were specified in the pleading. (Copies of the Cangro actions are annexed to the moving papers as Exhibit “C”)

9. Following dismissal of the above-stated Cangro actions, plaintiff herein, Anthony Seneca brought the instant action against the Cangro's. As alleged in the Amended Verified Complaint, the Cangro's made spurious claims against Seneca which were not pertinent to the causes of action presented, libeled and defamed Plaintiff causing him to sustain damages. The Cangro actions alleged that Seneca "manipulated the books of CLOVE" and took "money from CLOVE for his own personal use of \$207,200.00" (See CLOVE ROAD DEVELOPMENT LLC action, Index No. 85036/16 at paragraphs 36 and 43); that Seneca "manipulated and has shown losses" for FLAGG and has taken loans from FLAGG without consent of the Members", has "manipulated the books of FLAGG to show underestimated profits for twenty (20) years" (See FLAGG PLACE DEVELOPMENT LLC action, Index No. 85037/16 at paragraphs 31, 32, 38, 45,); and "grossly understated apartment rentals", "expenses are overstated", Seneca "has manipulated and has shown losses for the Corporation", "wasted and looted the Corporation", has been "guilty of illegal, fraudulent actions", has "directed the preparation of the Corporation income tax each year showing a loss, when in fact, there was a profit, by not disclosing the correct income or expenses" and has made "false and fraudulent representations" (See C SENECA CONSTRUCTION, INC. action, Index No. 85039/16 at paragraphs 16, 20, 25, 26, 36).

10. Based on the allegations as specified in the Amended Verified Complaint, plaintiff herein submits defendants' motion to dismiss pursuant to CPLR Section 3211(a)(7) should be denied.

11. In this matter, following discontinuance of the Cangro actions, new counsel was retained and new petitions were filed. Notably, the new Petitions, the allegations of which are

specifically denied, do not allege that Seneca engaged in illegal conduct, falsified tax returns, took an improper \$207,000 loan from the corporations or that he “manipulated the books” of the three corporations. Said allegations were gratuitously and maliciously included in the Cangro actions and they libeled and defamed Seneca. Thus, the instant motion to dismiss should be denied.

ARGUMENT

STANDARDS APPLICABLE TO A PRE-DISCOVERY MOTION TO DISMISS

12. “On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” Collella v. GEICO, 164 A.D.3d 745 (2nd Dept. 2018); (Nelson v. Citiwide Auto Leasing, Inc., 154 A.D.3d 863, 864 (2nd Dept. 2017); *see* Leon v. Martinez, 84 N.Y.2d 83, 87–88 (1994); Gorbatov v. Tsirelman, 155 A.D.3d 836, 837 (2nd Dept. 2017).

13. “Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims, of course, plays no part in the determination of a prediscovery CPLR 3211 motion to dismiss” Gorbatov v. Tishman, *supra*, citing Shaya B. Pac., LLC v. Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, 38 A.D.3d 34, 38 (2nd Dept. 2006); *see* EBC I, Inc. v. Goldman, Sachs & Co., 5 N.Y.3d 11, 19 (2005)

14. Based on the applicable legal standard, it is submitted that the facts, as alleged in the Amended Verified Complaint satisfy the elements of the causes of action alleged and are not defeated by Defendants claim of judicial privilege. Defendants have not demonstrated that the

Amended Verified Complaint should be dismissed as a matter of law and the motion should be denied.

**THE DEFAMATORY AND LIBELOUS STATEMENTS MADE IN THE CANGRO
ACTIONS WERE NOT PERTINENT TO THE CAUSES OF ACTION ASSERTED AND
ARE NOT PROTECTED BY ABSOLUTE PRIVILEGE**

15. While the general rule is that “a statement made in the course of legal proceedings is absolutely privileged if it is at all pertinent to the litigation” (*see Sexter & Warmflash, PC v. Margrabe*, 38 A.D.3d 163 (1st Dept. 2007), *abrogated on other grounds Front Inc. v. Khalil*, 24 N.Y.3d 713 (2015), the “judicial proceedings privilege may be abused and in that event ‘protection is withdrawn’” (*Id.* at 173; also *see Youmans v. Smith*, 153 N.Y. 214 (1897)). The “sole criterion of whether such abuse has occurred is the pertinence of the statement in question to the proceedings.” *Sexter* at 172. Thus, “in case of a defamatory statement that was obviously impertinent to the judicial proceeding in which it was made, the privilege is withdrawn because the malice of the speaker or writer is inferred from the statement’s impertinence” (*Id.*). A statement made in the course of judicial proceedings is privileged “if by any view of under any circumstances, it may be considered pertinent to the litigation” (*Id.* at 173). To be actionable, a statement made in the course of judicial proceedings “must be so outrageously out of context as to permit one to conclude, from the mere fact that the statement was uttered, that it was motivated by no other desire than to defame” (*Id.*; *see also Cavallaro v. Pozzi*, 28 A.D.3d 1075, 1077 4th Dept. 2006).

16. In *Youmans v. Smith*, 153 N.Y. 214, 220 (1897) the court explained the relevant guidelines in determining whether the privilege has been lost:

“If counsel through an excess of zeal to serve their clients, or in order to gratify their own vindictive feelings, go beyond the bounds of reason and by main force bring into a lawsuit

matters so obviously impertinent as not to admit of discussion, and so needlessly defamatory as to warrant the inference of express malice, they lost their privilege and must take the consequences. In other words, *if the privilege is abused, protection is withdrawn.*” (Emphasis added.)

17. The privilege is limited to statements which are not only pertinent to the subject matter of the lawsuit but are made “in good faith and without malice” Halperin v. Salvon, 117 A.D.2d 554 (1st Dept. 1986); Lacher v. Engel, 33 A.D.3d 10 (1st Dept. 2006). Where there is a question as to the applicability of the privilege, the issue should be decided at trial (Halperin v. Salvon, 117 A.D.2d at 548; Flomenhoft v. Finkelstein, 127 A.D.3d 634 (1st Dept. 2015).

18. As noted by the Appellate Division in Halperin, “the allegation of the malicious intent was ‘arguably substantiated’ by the fact that the plaintiff had not moved forward with the lawsuit” and because of inflammatory language in the caption.

19. Applying the foregoing legal standards it is submitted that Defendants have not established that the statements made in the Cangro actions, i.e. that Seneca **had engaged in (unspecified) illegal activities, manipulated the books of the companies, and filed false tax returns** were pertinent to the causes of action for dissolution, accounting, and attorney fees, the only causes of action asserted in the Cangro actions. The Cangro actions did not assert a Breach of Fiduciary Duty Cause of Action as contended by Defendants herein. The action involving C SENECA CORPORATION contained one additional cause of action for alleged “false and fraudulent representations” (See Exhibit “C” annexed to the moving papers). The statements made by the Cangros in support of their actions were not pertinent to the causes of action alleged and are not protected by absolute privilege. This is easily demonstrated by the fact that the second round of lawsuits do not make the foregoing statements in support of their causes of

action which do include claims based on alleged breaches of fiduciary duty. Again, Seneca vigorously disputes the allegations contained in the newly filed lawsuits and only points out that the new pleadings are devoid of most of the defamatory and libelous language which formed the basis of the prior Cangro lawsuits.

20. Further, the most libelous and defamatory statements are contained in the lawsuit against C SENECA CONSTRUCTION, INC. which corporation contains Plaintiff's name and undermines him in the construction community, his area of profession. A defamatory statement is libelous *per se* "if the statement tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him in the minds of right-thinking persons, and to deprive him of their friendly intercourse in society (Matovcik v. Times Beacon Record Newspapers, 46 A.D.3d 636, 637 [2nd Dept. 2007]). A defamatory statement is libelous *per se* if it imputes fraud, dishonesty, misconduct, or unfitness in conducting one's profession. (*Id.*; also *see Kotowski v. Hadley*, 38 A.D.3d 499, 500 [2nd Dept. 2007]; Gjonlekaj v. Sot, 308 A.D.2d 471, 473–474 [2nd Dept. 2003]; Wasserman v. Haller, 216 A.D.2d 289 [2nd Dept. 1995]). A claim of defamation *per se* exists when the statement charges the plaintiff with a serious crime, injures the plaintiff's standing in her trade, business or profession, alleges that the plaintiff has a loathsome disease, or "imputes unchastity to a woman" (Epifani v. Johnson, 65 A.D.3d 224 [2nd Dept 2009]). Here, the statements made by the Cangro's in support of their actions were defamatory *per se* and libelous *per se*.

21. Defendants herein do not dispute that the statements made constituted defamation or defamation *per se* and libel and libel *per se*, only claiming a privilege to make such statements. Based on the applicable law it is submitted that there are at least issues of fact presented as to whether the privilege asserted applies requiring denial of the Defendants motion.

**DEFENDANTS HAVE NOT ESTABLISHED THAT PLAINTIFF'S CAUSES
OF ACTION ARE SUBJECT TO DISMISSAL**

22. Defendants also fail to establish that the negligent and intentional infliction of emotional distress, prima facie tort and malicious prosecution causes of action asserted in the Amended Verified Complaint should be dismissed.

23. As to the intentional infliction of emotional distress claim, Defendants tie the cause of action to the privilege asserted. As indicated above, there is an issue of fact as to whether the privilege applies and therefore, Defendants have not demonstrated that the cause of action for intentional infliction of emotional distress should be dismissed. Further, the argument as to the negligent infliction of emotional distress claim is based upon Defendant inaccurate claim that the Court of Appeals has limited the cause of action to three types of cases (see moving papers at paragraph 25). In fact the Taggart v. Costabile, 131 A.D.3d 243 (2nd Dept. 2015) case, relied upon by Defendants, noted that “in its most recent discussion of negligent infliction of emotional distress, the Court of Appeals stated: “[a] breach of the duty of care resulting directly in emotional harm is compensable even though no physical injury occurred when the mental injury is a direct, rather than a consequential, result of the breach and when the claim possesses some guarantee of genuineness” citing Ornstein v. New York City Health & Hosps. Corp., 10 N.Y.3d 1, 6 (2008). Accordingly, Defendants have not established that the negligent infliction of emotional distress claim should be dismissed because none of those “recognized circumstances exists” (see moving papers at paragraph 25).

24. Defendants allege that the malicious prosecution claim must be dismissed because Plaintiff failed to allege a underlying criminal prosecution. However, a civil claim for malicious prosecution does not have to be based upon a criminal action. As stated in Facebook Inc., v.

DLA Piper, 134 A.D.3d 610 (1st Dept. 2015) a civil malicious prosecution claim requires proof of each of the following elements: “(1) the commencement or continuation of a ... proceeding by the defendant against the plaintiff, (2) the termination of the proceeding in favor of the [plaintiff], (3) the absence of probable cause for the ... proceeding and (4) actual malice” . With respect to the element of probable cause, a plaintiff must allege that the underlying action was filed with “a purpose other than the adjudication of a claim” and that there was “an entire lack of probable cause in the prior proceeding” (Engel v. CBS Inc., 93 N.Y.2d 195 (1999)). Both the Facebook and Engel actions involved the granting of provisional remedies in underlying actions and were not predicated upon criminal prosecutions. In this matter the Cangro actions were discontinued. Although another action was filed, the newly filed complaints do not make all the same inflammatory claims as made in the Cangro actions providing evidence of the fact that the claims were made for a purpose other than the adjudication of the claim. Again, at this early pleading stage Defendants have not established that the complaint is subject to dismissal.

25. Lastly, Plaintiffs cause of action based on prima facie tort/sham lawsuit resulting from the initial lawsuit was not addressed in the moving papers. It is also not subject to dismissal. The requisite elements for a cause of action sounding in a prima facie tort include (1) intentional infliction of harm, (2) resulting in special damages, (3) without excuse or justification, (4) by an act or series or series of acts which are otherwise legal (*see Del Vecchio v. Nelson*, 300 A.D.2d 777[(2nd Dept. 2002]; Curiano v. Suozzi, 63 N.Y.2d 113 [1984]; Drago v. Buonagurio, 46 N.Y.2d 778 [1978]). The cause of action is properly raised and is not subject to the privilege Defendants assert as support for the dismissal of Plaintiff’s complaint.

26. Based on the foregoing arguments, the pleadings and the applicable law it is submitted that Defendants motion should be denied.

27. Pursuant to 22 NYCRR 130-1.1-a the undersigned, an attorney admitted to practice in the Courts of New York State, certifies that to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the within documents or the contentions therein are not frivolous as defined in Subsection (c) of Section 130-1.1.

WHEREFORE, it is respectfully submitted that Defendants motion should be denied in its entirety and for such other and further relief as the Court deems just and proper.

Dated: New York, New York
September 20, 2018

Laurel A. Wedinger

LAUREL A. WEDINGER, ESQ.
BARRY, McTIERNAN & WEDINGER, P.C.
Attorneys for Plaintiff,
ANTHONY SENECA,
101 Greenwich Street - 14th Floor
New York, New York 10006
(Formerly 2 Rector Street)
(212) 313-3600
File No.: PL R12231

TO:
MICHAEL V. GERVASI, ESQ.
SCAMARDELLA, GERVASI, THOMSON & KASEGRANDE, P.C.
Attorneys for Defendants,
EMIL CANGRO and CARLO CANGRO,
1010 Forest Avenue
Staten Island, New York 10310
(718) 442-0900

File No.: PL R12231

AFFIDAVIT OF SERVICE

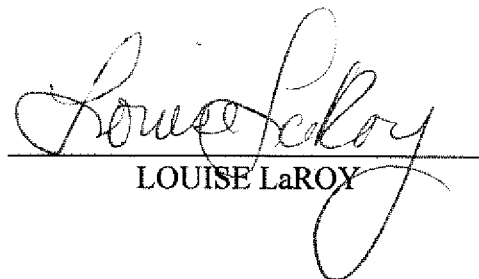
STATE OF NEW YORK)
)ss.:
COUNTY OF RICHMOND)

LOUISE LaROY, being duly sworn, deposes and says: I am not a party to this action, am over 18 years of age and reside in Staten Island, New York.

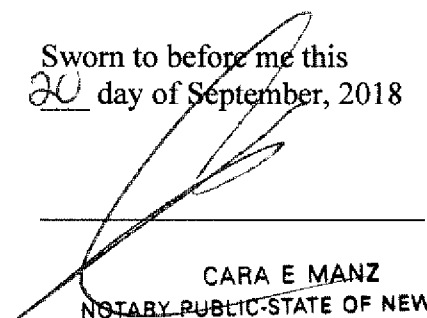
That on September 20 2018, a true copy of the annexed AFFIRMATION IN OPPOSITION TO DISMISSAL was served in the following manner:

By transmitting same to the Supreme Court, Richmond County via electronically e-filing. In doing so I have a confirmed e-filed receipt indicating that the transmission was sent; as well as by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

TO:
MICHAEL V. GERVASI, ESQ.
SCAMARDELLA, GERVASI, THOMSON & KASEGRANDE, P.C.
Attorneys for Defendants,
EMIL CANGRO and CARLO CANGRO,
1010 Forest Avenue
Staten Island, New York 10310
(718) 442-0900


LOUISE LaROY

Sworn to before me this
20 day of September, 2018



CARA E MANZ
NOTARY PUBLIC-STATE OF NEW YORK
No. 02MA6293289
Qualified in Richmond County
My Commission Expires 12-09-2021

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND-----X
ANTHONY SENECA,

Index No.: 152031/2017

Plaintiff,

- against -

EMIL CANGRO and CARLO CANGRO,

Defendants.
-----XAFFIRMATION IN OPPOSITION
TO DISMISSAL

PLEASE TAKE NOTICE

☐ notice of entry that the within is a (certified) true copy of an entered in the office of the clerk of the within named Court on _____.

☐ notice of settlement that a Proposed (Order/Judgment) of which the within is a true copy will be presented for settlement before the Honorable _____ one of the judges of the within named Supreme Court, _____ County, _____, at 9:30 a.m. on the ____ day of _____.

Laurel A. Wedinger

LAUREL A. WEDINGER, ESQ.
BARRY, McTIERNAN & WEDINGER, P.C.
Attorneys for Plaintiff, ANTHONY SENECA,
101 Greenwich Street - 14th Floor
New York, New York 10006
(Formerly 2 Rector Street)
(212) 313-3600
File No.: PL R12231

EXHIBIT A

LAW/II
Laurel Seneca Cangro Amended S&C092517

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X
ANTHONY SENECA,

Plaintiffs,

- against -

EMIL CANGRO and CARLO CANGRO,

Defendants.
-----X

Index No.: 152031/2017

Plaintiff designates
Richmond
County as place of trial.

The basis of the venue is
Residence

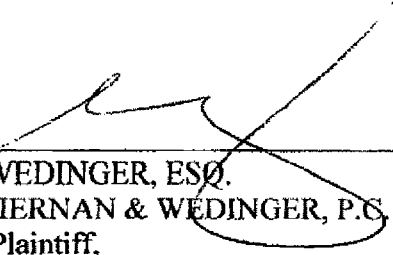
SUMMONS

Plaintiff resides in the
County of **Richmond**,
Staten Island, New York

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Amended Complaint in this action and to serve a copy of your Answer, or, if the Amended Complaint is not served with this Summons, to serve a Notice of Appearance, on the plaintiff's attorney(s) within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Amended Complaint.

Dated: Staten Island, New York
September 27, 2017



LAUREL A. WEDINGER, ESQ.
BARRY, McTIERNAN & WEDINGER, P.C.
Attorneys for Plaintiff,
ANTHONY SENECA,
265 Joline Avenue - Suite A
Staten Island, New York 10307
(718) 317-9000

RIDER VIA PROCESS SERVER:

Defendant

EMIL CANGRO

165 Buffalo Street

Staten Island, New York 10306

Defendant

CARLO CANGRO

11 Jasmine Road

Matawan, New Jersey 08857

1.AW/II
Laurel\Seneca\Cangro\AmendedS&C092517

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X
ANTHONY SENECA,

Plaintiff,

- against -

EMIL CANGRO and CARLO CANGRO,

Defendants.
-----X

Index No.: 152031/2017

**AMENDED
VERIFIED
COMPLAINT**

Plaintiff, ANTHONY SENECA, by his attorneys, BARRY, McTIERNAN &
WEDINGER, P.C., complaining of the defendants upon information and belief alleges as
follows:

1. That at all times hereinafter mentioned, plaintiff ANTHONY SENECA was and still is a resident of the County of Richmond, State of New York.
2. That at all times hereinafter mentioned, defendant EMIL CANGRO was and still is a resident of the County of Richmond, State of New York.
3. That at all times hereinafter mentioned, defendant CARLO CANGRO was and still is a resident of the Town of Matawan, State of New Jersey.
4. CLOVE ROAD DEVELOPMENT, LLC, was, and is a limited liability company duly organized under the laws of the State of New York and having an address located at 1874 Clove Road, Staten Island, New York, 10304.
5. CLOVE ROAD DEVELOPMENT, LLC, is the fee owner of premises known as 382 Flagg Place, Staten Island, New York 10304 and a vacant lot, Block 3154, Lot 47, Staten Island, New York.

6. C. SENECA CONSTRUCTION, INC., was and is a Corporation organized under the laws of the State of New York and having an address located in Richmond County, New York.

7. C. SENECA CONSTRUCTION, INC., is the fee owner of premises known as 1874 Clove Road, Staten Island, New York.

8. FLAGG PLACE DEVELOPMENT, LLC, was and is a limited liability company duly organized under the laws of the State of New York and having an address located in Richmond County, State of New York.

9. FLAGG PLACE DEVELOPMENT, LLC, is the fee owner of premises known as 378 Flagg Place, Staten Island, New York; 380 Flagg Place, Staten Island, New York; 392 Flagg Place, Staten Island, New York; 1890-1892 Clove Road, Staten Island, New York, and a vacant lot identified as Block 897, Lot 40, Staten Island, New York.

10. On or about September 9, 2016, defendants EMIL CANGRO and CARLO CANGRO commenced certain actions as against plaintiff ANTHONY SENECA, CLOVE ROAD DEVELOPMENT, LLC, C. SENECA CONSTRUCTION, INC., and FLAGG PLACE DEVELOPMENT, INC. (hereinafter jointly referred to as the "Corporations"), as well as against other parties not named herein. Said actions were commenced in Supreme Court, Richmond County bearing Index numbers 85036/2016; 85039/2016 and 85037/2016 (hereinafter referred to as the "Lawsuits").

11. That in support of commencement of said actions, defendants EMIL CANGRO and CARLO CANGRO submitted verified petitions purportedly verifying the truth of the statements as contained in the verified petitions and filed with the Court in support of the aforementioned Lawsuits.

12. That the verified petitioners are needlessly defamatory, containing statements not pertinent to the dissolution actions commenced, which themselves, were lacking in merit, and were expressly malicious resulting in damages sustained by plaintiff herein.

13. In addition to the foregoing, defendants' actions were commenced with the full knowledge that defendants EMIL CANGRO and CARLO CANGRO had no legally recognized ownership interest in the properties owned by CLOVE ROAD DEVELOPMENT, LLC, C. SENECA CONSTRUCTION, INC., and FLAGG PLACE DEVELOPMENT, LLC and the Lawsuits were maliciously brought as against plaintiff herein resulting in damages to plaintiff.

AS AND FOR A FIRST CAUSE OF ACTION

14. Plaintiff, ANTHONY SENECA, repeats and reiterates each and every allegation contained in paragraphs "1" through "13" as if more fully set forth at length herein.

15. That on September 9, 2016, defendants EMIL CANGRO and CARLO CANGRO defamed and slandered plaintiff ANTHONY SENECA by publicly calling him a "thief" claiming he took money for his own personal use from the Corporations; that he "manipulated the books" of the Corporations; diverted assets for his own use; enriched himself at the expense of defendants herein; has taken improper loans from the Corporations; looted the Corporations; has misappropriated monies from the Corporations; has engaged in "illegal and fraudulent actions" and has filed false tax returns.

16. That as a result of all of the aforementioned defamatory per se and slanderous statements, plaintiff, ANTHONY SENECA has been subjected to humiliation, scorn, degradation, mental anguish and suffering, has sustained damage to his reputation and suffered personal injuries, pecuniary special damages and suffered defamation per se.

17. As a result of all of the aforementioned, plaintiff, ANTHONY SENECA has been damaged in a monetary sum exceeding the jurisdictional limits of all lower Courts of the State of New York.

AS AND FOR A SECOND CAUSE OF ACTION

18. Plaintiff, ANTHONY SENECA, repeats and reiterates each and every allegation contained in paragraphs "1" through "17" as if more fully set forth at length herein.

19. That on September 9, 2016, defendants EMIL CANGRO and CARLO CANGRO defamed and libeled plaintiff ANTHONY SENECA by publicly identifying him and labeling him a "thief" alleging he took money for his own personal use from the Corporations; that he "manipulated the books" of the Corporations; diverted assets for his own use; enriched himself at the expense of defendants herein; has taken improper loans from the Corporations; looted the Corporations; has misappropriated monies from the Corporations; has engaged in "illegal and fraudulent actions" and has filed false tax returns.

20. That as a result of all of the aforementioned defamatory and libelous statements, including libel per se plaintiff, ANTHONY SENECA has been subjected to humiliation, scorn, degradation, mental anguish and suffering, has sustained damage to his reputation and suffered personal injuries, pecuniary special damages and defamation per se.

21. As a result of all of the aforementioned, plaintiff, ANTHONY SENECA has been damaged in a monetary sum exceeding the jurisdictional limits of all lower Courts of the State of New York.

AS AND FOR A THIRD CAUSE OF ACTION

22. Plaintiff, ANTHONY SENECA, repeats and reiterates each and every allegation contained in paragraphs "1" through "21" as if more fully set forth at length herein.

23. The defendants caused the intentional infliction of emotional distress upon the plaintiff ANTHONY SENECA by subjecting plaintiff to malicious prosecution and making libelous, slanderous and defamatory claims as against plaintiff which were expressly malicious and without merit. Said statements made by defendants represented extreme and outrageous conduct.

24. That the intentional infliction of emotional distress occurred by publicly identifying plaintiff and falsely labeling him a "thief" alleging he took money for his own personal use from the Corporations; that he "manipulated the books" of the Corporations; diverted assets for his own use; enriched himself at the expense of defendants herein; has taken improper loans from the Corporations; looted the Corporations; has misappropriated monies from the Corporations; has engaged in "illegal and fraudulent actions" and has filed false tax returns.

25. That as a result of the aforementioned intentional infliction of emotional distress plaintiff, ANTHONY SENECA has been subjected to humiliation, scorn, degradation, mental anguish and suffering, has sustained damage to his reputation and suffered personal injuries, pecuniary special damages and defamation per se.

26. As a result of all of the aforementioned, plaintiff, ANTHONY SENECA has been damaged in a monetary sum exceeding the jurisdictional limits of all lower Courts of the State of New York.

AS AND FOR A FOURTH CAUSE OF ACTION

27. Plaintiff, ANTHONY SENECA, repeats and reiterates each and every allegation contained in paragraphs "1" through "26" as if more fully set forth at length herein.

28. The defendants caused the negligent infliction of emotional distress upon the plaintiff ANTHONY SENECA by subjecting plaintiff to malicious prosecution and making libelous, slanderous and defamatory claims as against plaintiff which were expressly malicious and without merit. Said statements made by defendants represent extreme and outrageous conduct.

29. That defendants negligently inflicted emotional distress by publicly identifying plaintiff and falsely labeling plaintiff a "thief" alleging he took money for his own personal use from the Corporations; claiming he "manipulated the books" of the Corporations; diverted assets for his own use; enriched himself at the expense of defendants herein; has taken improper loans from the Corporations; looted the Corporations; has misappropriated monies from the Corporations; has engaged in "illegal and fraudulent actions" and has filed false tax returns.

30. That as a result of the aforementioned negligent infliction of emotional distress plaintiff, ANTHONY SENECA has been subjected to humiliation, scorn, degradation, mental anguish and suffering, has sustained damage to his reputation and suffered personal injuries, pecuniary special damages and defamation per se.

31. As a result of all of the aforementioned, plaintiff, ANTHONY SENECA has been damaged in a monetary sum exceeding the jurisdictional limits of all lower Courts of the State of New York.

AS AND FOR A FIFTH CAUSE OF ACTION

32. Plaintiff, ANTHONY SENECA, repeats and reiterates each and every allegation contained in paragraphs “1” through “31” as if more fully set forth at length herein.

33. That on September 9, 2016, defendants committed libel per se, and defamation per se by charging plaintiff with a serious crime, publicly calling him and publicly identifying him as a “thief” and claiming he took money for his own personal use from the Corporations; that he “manipulated the books” of the Corporations; diverted assets for his own use; enriched himself at the expense of defendants herein; has taken improper loans from the Corporations; looted the Corporations; has misappropriated monies from the Corporations; has engaged in “illegal and fraudulent actions” and has filed false tax returns.

34. That the aforesaid statements damaged plaintiffs’ reputation within the construction industry, his trade, business and profession, causing him humiliation, scorn, degradation, loss of reputation, mental anguish and suffering, personal injures pecuniary damages, special damages and damages as the result of libel per se and defamation per se.

35. As a result of all of the aforementioned, plaintiff, ANTHONY SENECA has been damaged in a monetary sum exceeding the jurisdictional limits of all lower Courts of the State of New York.

AS AND FOR A SIXTH CAUSE OF ACTION

36. Plaintiff, ANTHONY SENECA, repeats and reiterates each and every allegation contained in paragraphs “1” through “35” as if more fully set forth at length herein.

37. That on September 9, 2016, defendants published false statements to third-parties as against plaintiff constituting defamation per se as against plaintiff ANTHONY SENECA without privilege or authority with spite and ill will and/or with actual malice resulting in damages sustained by plaintiff.

38. That the aforesaid statements damaged plaintiffs' reputation within the construction industry, his trade, business and profession, causing him humiliation, scorn, degradation, loss of reputation, mental anguish and suffering, personal injures pecuniary damages, special damages and damages as the result of defamation per se.

39. As a result of all of the aforementioned, plaintiff, ANTHONY SENECA has been damaged in a monetary sum exceeding the jurisdictional limits of all lower Courts of the State of New York.

AS AND FOR A SEVENTH CAUSE OF ACTION

40. Plaintiff, ANTHONY SENECA, repeats and reiterates each and every allegation contained in paragraphs "1" through "39" as if more fully set forth at length herein.

41. That defendants verified petitions submitted in support of the Lawsuits as against plaintiff ANTHONY SENECA and the Lawsuits themselves represent sham litigations which were maliciously commenced solely to defame, slander and distress plaintiff ANTHONY SENECA in an attempt to gain an advantage over him and the Corporations. The underlying litigations involving the Corporations are meritless and defendants EMIL CANGRO and CARLO CANGRO lack standing to bring said actions.

42. That the statements made by defendants, as described in the foregoing paragraphs damaged plaintiffs' reputation within the construction industry, his trade, business and

profession, causing him humiliation, scorn, degradation, loss of reputation, mental anguish and suffering, personal injuries, pecuniary damages, special damages and damages as the result of defamation per se.

43. As a result of all of the aforementioned, plaintiff, ANTHONY SENECA has been damaged in a monetary sum exceeding the jurisdictional limits of all lower Courts of the State of New York.

44. That by reason of the foregoing, plaintiff has been damaged in the sum which exceeds the jurisdictional limits of all lower Courts which would otherwise have jurisdiction of this action.

AS AND FOR AN EIGHTH CAUSE OF ACTION

45. Plaintiff, ANTHONY SENECA, repeats and reiterates each and every allegation contained in paragraphs "1" through "44" as if more fully set forth at length herein.

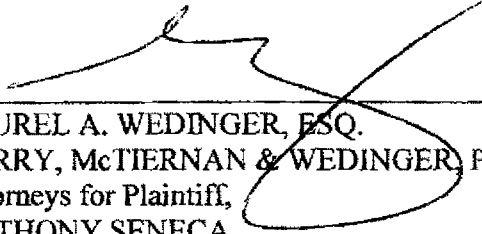
46. That defendants verified petitions submitted in support of the Lawsuits as against plaintiff ANTHONY SENECA and the Lawsuits themselves were commenced as a malicious prosecution begun with malice and without probable cause which lawsuits were dismissed ending in plaintiff's favor.

47. That defendants' malicious prosecution of their Lawsuits damaged plaintiff ANTHONY SENECA subjecting him to humiliation, scorn, degradation, mental anguish and suffering, has sustained damage to his reputation and suffered personal injuries, pecuniary special damages and defamation per se.

48. As a result of all of the aforementioned, plaintiff, ANTHONY SENECA has been damaged in a monetary sum exceeding the jurisdictional limits of all lower Courts of the State of New York.

WHEREFORE, plaintiff demands judgment against defendants in a sum which sum exceeds the jurisdictional limits of all lower Courts which would otherwise have jurisdiction of this action, together with costs and disbursements of this action.

Dated: Staten Island, New York
September 27, 2017



LAUREL A. WEDINGER, ESQ.
BARRY, McTIERNAN & WEDINGER, P.C.
Attorneys for Plaintiff,
ANTHONY SENECA,
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(718) 317-9000

RIDER VIA PROCESS SERVER:

Defendant

EMIL CANGRO
165 Buffalo Street
Staten Island, New York 10306

Defendant

CARLO CANGRO
11 Jasmine Road
Matawan, New Jersey 08857

VERIFICATION

STATE OF NY)
COUNTY OF Richmond) ss.

ANTHONY SENECA, being duly sworn, depose say:

That he is the plaintiff in the within action and that he has read the annexed SUMMONS and AMENDED VERIFIED COMPLAINT and know the contents thereof, and that the same is true to his own knowledge, except as to those matters which are stated to be alleged upon information and belief, and that as to those matters he believes them to be true.



ANTHONY SENECA

Sworn to before me this

27 day of September, 2017


Notary Public

SARA L SHARP
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SH6169427
Qualified in Richmond County
My Commission Expires June 25, 2019