

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

SANDRA PEREZ,

Plaintiff(s),

-vs-

19 KENMARE REALTY, LLC, LITTLE  
CHARLIE'S OYSTER BAR, INC. and CITI-  
URBAN MANAGEMENT CORP.

Defendant(s).

Index No. 150891/2014

**ANSWER TO VERIFIED COMPLAINT  
WITH CROSS-CLAIM***(ECF Document)*

The defendants 19 Kenmare Realty, LLC and Citi-Urban Management Corp., by and through their attorneys, MORGAN MELHUISE ABRUTYN, by way of Answer to the Complaint of the plaintiff respectfully alleges upon information and belief:

**AS TO THE FIRST CAUSE OF ACTION**

1. The defendants admit paragraph FIRST as to Kenmare Realty, LLC, as to all other allegations, defendants lack knowledge and information sufficient to form a belief as to the allegations set forth therein.
2. The defendants lack knowledge and information sufficient to form a belief as to the allegations set forth in paragraphs SECOND, and leaves plaintiff to their proofs.
3. The defendants admit paragraphs THIRD and FOURTH
4. The defendants deny paragraphs FIFTH, SIXTH, SEVENTH and EIGHTH.
5. The defendants lack knowledge and information sufficient to form a belief as to the allegations set forth in paragraphs NINTH, and leaves plaintiff to their proofs.

{00922337}

6. The defendants deny paragraphs TENTH, ELEVENTH, TWELFTH and THIRTEENTH.

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7. The defendants admit paragraph FOURTEENTH.

8. The defendants lack knowledge and information sufficient to form a belief as to the allegations set forth in paragraphs FIFTEENTH, SIXTEENTH, SEVENTEENTH, EIGHTEENTH, NINETEENTH, TWENTIETH, TWENTY-FIRST, TWENTY-SECOND, TWENTY-THIRD, TWENTY-FOURTH and TWENTY-FIFTH.

9. The defendants admit paragraph TWENTY-SIXTH.

10. The defendants deny paragraphs TWENTY-SEVENTH, TWENTY-EIGHTH, TWENTY-NINTH, THIRTIETH, THIRTY-FIRST, THIRTY-SECOND, THIRTY-THIRD, THIRTY-FOURTH, THIRTY-FIFTH and THIRTY-SIXTH.

11. The defendants lack knowledge and information sufficient to form a belief as to the allegations set forth in paragraphs THIRTY-SEVENTH.

12. The defendants deny paragraph THIRTY-EIGHTH.

13. The defendants lack knowledge and information sufficient to form a belief as to the allegations set forth in paragraphs THIRTY-NINTH.

14. The defendants deny paragraphs FORTIETH, FORTY-FIRST, FORTY-SECOND, FORTY-THIRD, FORTY-FOURTH and FORTY-FIFTH.

#### **FIRST AFFIRMATIVE DEFENSE**

That if plaintiff sustained the injuries and damages alleged in the complaint, same were wholly or in part caused by the culpable conduct of plaintiff and defendants are entitled to judgment dismissing the complaint herein or in the alternative, the defendants are entitled to

{00922337}

judgment assessing and fixing the culpable conduct of plaintiff contributing to said injuries and damages.

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**SECOND AFFIRMATIVE DEFENSE**

The incident which forms the basis of this litigation and which allegedly caused injuries and damages to the claimant was proximately caused or contributed to by the fault of third persons not parties to this litigation. The responsibility of the party filing this answer and the right of the claimant to recover in this litigation can only be determined after the percentages of responsibility of all parties to the incident are determined whether or not they are parties of this litigation. Accordingly, this party seeks an adjudication of the percentage of fault of the claimant and each and every person whose fault contributed to the incident.

**THIRD AFFIRMATIVE DEFENSE**

The defendants deny liability, however, insofar as any collateral source payment may be made to plaintiffs, defendants are entitled to the benefits of CPLR §4545 with reference to such payments.

**FOURTH AFFIRMATIVE DEFENSE**

The defendants deny liability but assert that should any liability be established, plaintiffs' damages shall be diminished in accordance with the provisions of CPLR §1411, 1412, and 1413.

**FIFTH AFFIRMATIVE DEFENSE**

The defendants deny liability but if defendants are found to be liable, defendants assert they are entitled to the provision of limited liability and joint liability as set forth in CPLR §1600, 1601.

**SIXTH AFFIRMATIVE DEFENSE**

The claimant assumed the risk and was fully cognizant of any and all circumstances surrounding the alleged incident.

**SEVENTH AFFIRMATIVE DEFENSE**

Claims for punitive damages or exemplary damages are barred as violative of the Due Process and Excessive Fines clauses of the United States Constitution.

**AS AND FOR A CROSS-CLAIM AGAINST  
DEFENDANT LITTLE CHARLIE'S OYSTER BAR, INC.**

That if plaintiff sustained the injuries and damages in the manner and at the time and place alleged, and if it is found that the answering defendant is liable to plaintiff herein, then said answering defendants, on the basis of apportionment of responsibility for the alleged occurrence, is entitled to indemnification from and judgment over and against the aforementioned defendants on the cross-claim for all or a part of any verdict or judgment that plaintiff may recover against the answering defendant, based on common law and contractual theories and responsibility, breach of warranty, indemnification and contribution between the answering defendants and the aforementioned defendants on the cross-claim.

**WHEREFORE**, defendants demand judgment dismissing the Complaint herein as to said defendants, or diminishing the damages recoverable by plaintiff herein in proportion with the culpable conduct contributed by plaintiff, together with the costs and disbursements of this action, and further demands that, in the event the answering defendant is found liable to the plaintiff herein, said answering defendants, on the basis of apportionment of responsibility, have judgment over and against the aforementioned defendants for all or part of any verdict or judgment that plaintiffs may

recover against said answering defendants, together with costs and disbursements of this action, and  
for any expenses incurred in the defense thereof, including attorney's fees.

DATED: April 28, 2014

MORGAN MELHUISE ABRUTYN

BY: 

**JOSEPH DeDONATO**  
39 Broadway, 17th Floor  
New York, New York 10006  
Phone: (212) 809-1111  
Attorney for Defendants,  
19 Kenmare Realty, LLC  
and Citi-Urban Management Corp.  
File No. STY 65-088 JDD

TO:

Gloria Drelich, Esq.  
DAVID HOROWITZ, P.C.  
276 Fifth Avenue  
New York, NY 10001  
Phone: (212) 684-3630  
Attorney for Plaintiff, Sandra Perez

{00922337}

**ATTORNEY'S VERIFICATION BY AFFIRMATION**

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**JOSEPH DE DONATO**, an attorney duly admitted to practice law in the State of New

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York, hereby affirms the following under penalties of perjury:

1. I am an attorney of record for defendants, 19 Kenmare Realty, LLC and Citi-Urban Management Corp., in the above-captioned matter. I read the annexed Answer and know the contents thereof and the same are true to my knowledge except those matters therein which are stated to be alleged upon information and belief and as to those matters, I believe them to be true. My belief, as to those matters herein not stated upon knowledge, is based upon the following: pleadings, file investigation and correspondence.

2. The reason I make this Affirmation instead of defendants is that said defendants do not reside in the County where I maintain my office.



**JOSEPH DeDONATO**

Affirmed this 2<sup>nd</sup> day  
of April, 2014