NYSCEF DOC. NO. 55

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Page 1

1

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF WESTCHESTER

-----X

CITY OF NEW ROCHELLE,

Plaintiff,

-against-

Index No.
54190/2016

FLAVIO LaROCCA, MARIA LAROCCA,
FLAVIO LAROCCA & SONS, INC. a.k.a.
LAROCCA & SONS, INC. and
FMLR REALTY MANAGEMENT LLC.,
Defendants.

-----X

120 White Plains Road Tarrytown, New York March 5, 2020 11:06 a.m.

EXAMINATION BEFORE TRIAL of FLAVIO LaROCCA, one of the Defendants herein, held at the above time and place, taken before Cheryl Thompson, a Shorthand Reporter and Notary Public within and for the State of New York, pursuant to Order.

Magna Legal Services 866-624-6221 www.MagnaLS.com



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Page 2
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 1
    APPEARANCES:
 3
 4
    WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP
    Attorneys for Plaintiff
 5
           1133 Westchester Avenue
           White Plains, New York 10604
 6
     BY: SCOTT MENDELSOHN, ESQ.
 7
 8
 9
    SILVERBERG ZALANTIS LLC
     Attorneys for Defendants
           120 White Plains Road, Suite 305
10
           Tarrytown, New York 10591
11
     BY: KATHERINE ZALANTIS, ESQ.
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Page 3 1 STIPULATIONS 3 2 IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that 3 4 all rights provided by the CPLR, and Part 221 of the 5 Uniform Rules for the Conduct of Depositions, 6 including the right to object to any question, except as to form, or to move to strike any testimony at this 7 8 examination, is reserved; and, in addition, the 9 failure to object to any question or to move to strike 10 any testimony at this examination shall not be a bar 11 or waiver to make such motion at, and is reserved to, 12 the trial of this action. 13 IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to by the witness being 14 15 examined before a Notary Public other than the Notary 16 Public before whom this examination was begun, but the 17 failure to do so or to return the original of this 18 examination to counsel shall not be deemed a waiver of 19 the rights provided by Rules 3116 and 3117 of the 20 CPLR, and shall be controlled thereby. 21 IT IS FURTHER STIPULATED AND AGREED that the filing of the original of the within deposition be waived. 22 23 IT IS FURTHER STIPULATED AND AGREED that a copy of 24 the within deposition shall be furnished to counsel 25 for the witness without charge.



Page 4	
1	Flavio LaRocca 4
2	(Whereupon, Deed was premarked
3	Plaintiff's Exhibit 1 for
4	Identification, as of this date, by
5	Mr. Mendelsohn; Owner's policy was
6	premarked Plaintiff's Exhibit 2 for
7	Identification, as of this date, by
8	Mr. Mendelsohn; Summons and Complaint
9	was premarked Plaintiff's Exhibit 3
10	for Identification, as of this date,
11	by Mr. Mendelsohn; Exhibit 1 to
12	Summons and Complaint was premarked
13	Plaintiff's Exhibit 3-A for
14	Identification, as of this date, by
15	Mr. Mendelsohn; Exhibit 2 to Summons
16	and Complaint was premarked
17	Plaintiff's Exhibit 3-B for
18	Identification, as of this date, by
19	Mr. Mendelsohn; Letter dated June 22,
20	2009 was premarked Plaintiff's Exhibit
21	3-C for Identification, as of this
22	date, by Mr. Mendelsohn; Letter dated
23	November 18, 2015 was premarked
24	Plaintiff's Exhibit 3-D for
25	Identification, as of this date, by



Page 5	
1	Flavio LaRocca 5
2	Mr. Mendelsohn; Answer was premarked
3	Plaintiff's Exhibit 4 for
4	Identification, as of this date, by
5	Mr. Mendelsohn; Letter dated June 11,
6	2003 was premarked Plaintiff's Exhibit
7	5 for Identification, as of this date,
8	by Mr. Mendelsohn; Photographs were
9	premarked Plaintiff's Exhibit 6 for
10	Identification, as of this date, by
11	Mr. Mendelsohn; Google Earth dated
12	October 2014 was premarked Plaintiff's
13	Exhibit 7 for Identification, as of
14	this date, by Mr. Mendelsohn; Letter
15	dated March 17, 2003 was premarked
16	Plaintiff's Exhibit 8 for
17	Identification, as of this date, by
18	Mr. Mendelsohn; Letter dated June 22,
19	2009 was premarked Plaintiff's
20	Exhibit 9 for Identification, as of
21	this date, by Mr. Mendelsohn; Senor PC
22	was premarked Plaintiff's Exhibit 10
23	for Identification, as of this date,
24	by Mr. Mendelsohn; Survey dated
25	December 8, 2014 was premarked



Page 6	
1	Flavio LaRocca 6
2	Plaintiff's Exhibit 11 for
3	Identification, as of this date, by
4	Mr. Mendelsohn; Interrogatory
5	Responses were premarked Plaintiff's
6	Exhibit 12 for Identification, as of
7	this date, by Mr. Mendelsohn; Video
8	was premarked Plaintiff's Exhibit 13
9	for Identification, as of this date,
10	by Mr. Mendelsohn; Blow-up of October
11	2014 Google Earth was premarked
12	Plaintiff's Exhibit 14 for
13	Identification, as of this date, by
14	Mr. Mendelsohn; Two photographs were
15	premarked Plaintiff's Exhibit 15 for
16	Identification, as of this date, by
17	Mr. Mendelsohn; letter dated
18	November 18, 2015 was premarked
19	Plaintiff's Exhibit 16 for
20	Identification, as of this date, by
21	Mr. Mendelsohn; Photograph of No
22	Parking sign was premarked Plaintiff's
23	Exhibit 17 for Identification, as of
24	this date, by Mr. Mendelsohn; Survey
25	dated April 13, 2016 was premarked



Page	7	
1		Flavio LaRocca 7
2		Plaintiff's 18 for Identification, as
3		of this date, by Mr. Mendelsohn; Photo
4		of property was premarked Plaintiff's
5		Exhibit 19 for Identification, as of
6		this date, by Mr. Mendelsohn; Photo
7		of 5th Avenue was premarked
8		Plaintiff's Exhibit 20 for
9		Identification, as of this date, by
10		Mr. Mendelsohn; Multiple photographs
11		were premarked Plaintiff's Exhibit 21
12		for Identification, as of this date,
13		by Mr. Mendelsohn; photograph of yard
14		was premarked Plaintiff's Exhibit 22
15		for Identification, as of this date,
16		by Mr. Mendelsohn; and photograph of
17		fence was premarked Plaintiff's
18		Exhibit 23 for Identification, as of
19		this date, by Mr. Mendelsohn.)
20	FLAVIO LaROCCA,	
21		one of the Defendants herein, having
22		been first duly sworn by a Notary
23		Public of the State of New York,
24		upon being examined, testified as
25		follows:



Page	8
1	Flavio LaRocca 8
2	THE COURT REPORTER: Please state
3	your name for the record.
4	THE WITNESS: Flavio LaRocca.
5	THE COURT REPORTER: Please state
6	your address for the record.
7	THE WITNESS: 140 Sussex Road,
8	New Rochelle, New York 10804.
9	EXAMINATION BY
10	MR. MENDELSOHN:
11	Q Mr LaRocca, my name is Scott
12	Mendelsohn. I am an attorney with Wilson Elser
13	Moskowitz Edelman & Dicker. We represent the
14	Plaintiff in this action who is the City of New
15	Rochelle.
16	I am going to ask you some questions
17	today about the action entitled City of New
18	Rochelle versus Flavio LaRocca et al.
19	If you don't understand a question
20	I've asked you or you cannot hear me, please just
21	let me know and I will try to accommodate your
22	request or ask the question in a different way.
23	Do you understand?
24	A Yes.
25	Q Please let me know if you need to



Page 9	
1	Flavio LaRocca 9
2	take a break. I only ask that if there is a
3	question pending, that you answer the question
4	and then we will take a break.
5	Similarly, if you need to speak with
6	your attorney, just let me know, and after the
7	question has been answered you can certainly have
8	that time.
9	We have a court reporter here taking
10	everything down. She cannot take down any nods
11	or shakes of the head. So please respond verbally
12	to or make your responses verbal to my questions.
13	Okay?
14	Lastly, although you may know what my
15	question is going to be, please let me finish my
16	question before you answer so that we can have a
17	clear understanding of our conversation and the
18	record will be clear.
19	Did you review any documents prior to
20	coming here today?
21	A Yes.
22	Q What documents did you review?
23	A The Complaint and some of the
24	exhibits.
25	Q When you say "exhibits," are you



Page 10	
1	Flavio LaRocca 10
2	referring to documents that were turned over in
3	discovery?
4	A I think so.
5	Q Was there anything that you reviewed
6	prior to your testimony today that has not been
7	previously provided to your counsel?
8	A No.
9	Q Did you review any pictures before
10	your testimony today that has not been previously
11	provided to your counsel?
12	A No.
13	Q Did you have any conversations
14	regarding this case with anybody other than your
15	attorney prior to coming here and testifying
16	today?
17	A No.
18	Q Are you currently taking any
19	medications or substances that would otherwise
20	impair your ability to testify today?
21	A No.
22	Q How many properties in New York do you
23	own, Mr. LaRocca?
24	MS. ZALANTIS: Individually?
25	MR. MENDELSOHN: Let me clarify



Page 11	
1	Flavio LaRocca 11
2	the question.
3	Q How many properties do you
4	individually own in New York?
5	A One.
6	Q What property is that?
7	A My residence.
8	Q What is the address of that?
9	A 140 Sussex Road, New Rochelle, New
10	York.
11	Q And do you own any properties as the
12	principal of a company?
13	A Yes.
14	Q What properties do you own as a
15	principal of a company?
16	A 71 Palmer Avenue, New Rochelle, and
17	432 5th Avenue, New Rochelle.
18	Q You said 432 5th Avenue?
19	A I think 432. I don't know exactly if
20	it's 432 or 436 the way they have it written.
21	Q Is the property you're referring to
22	as 432 5th Avenue the same property as 436 5th
23	Avenue?
24	A I think so, yes.
25	Q Is that the property that is one of



Page 12		
1		Flavio LaRocca 12
2	the substan	ce of this action?
3	А	Yes.
4	Q	Is that the property that we went to
5	on a site v	isit
6	А	Correct.
7	Q	where you were accompanied by your
8	attorney and	d I was with another attorney from my
9	office as w	ell?
10	A	Yes.
11	Q	Is that property bordering or is it
12	bordered by	5th Avenue and East Street?
13	A	Yes.
14	Q	What business owns
15		MR. MENDELSOHN: For the record,
16		we will just call it 436 5th Avenue
17		for this proceeding.
18	Q	Is that okay?
19	А	Yes.
20	Q	What company owns 436 5th Avenue?
21	А	FMLR Realty.
22	Q	And who are the principals of FMLR
23	Realty?	
24	А	My wife and I.
25	Q	What is your official title?



Page 13		
1		Flavio LaRocca 13
2	A	Member.
3	Q	And what is your wife's official
4	title?	
5	A	Member also.
6	Q	Are there any other members of FMLR
7	Realty other	er than you and your wife?
8	А	No.
9	Q	Does FMLR Realty own any property
10	other than	436 5th Avenue?
11	A	Yes.
12	Q	What other property does it own?
13	A	69-71 Potter Avenue, New Rochelle.
14	Q	Are both 436 5th Avenue and 69-71
15	Potter Ave	nue in New Rochelle?
16	A	Yes.
17	Q	What sort of business is FMLR Realty?
18	A	It's a real estate management
19	company.	
20	Q	Other than FMLR Realty, do you own any
21	other real	ty management companies?
22	A	No.
23	Q	Other than FMLR Realty, are you a
24	principal o	of any other companies?
25	А	Yes.



Page 14		
1		Flavio LaRocca 14
2	Q	And what companies are those?
3	А	Flavio LaRocca & Sons Incorporated.
4	Q	Other than Flavio LaRocca & Sons
5	Incorporate	d, are you the principal of any other
6	companies?	
7	A	Yes.
8	Q	What companies are those?
9	A	Marco Industry.
10	Q	Do either of those companies that you
11	have mentio	ned own any property?
12	A	Yes.
13	Q	Which one of those companies?
14	A	Marco Industries.
15	Q	What property does Marco Industry own?
16	A	Commercial property.
17	Q	Is that located in the State of New
18	York?	
19	A	Yes.
20	Q	Is it located in New Rochelle?
21	А	No.
22	Q	Where is it located?
23	А	Putnam County.
24	Q	What is your position with Marco
25	Industry?	



Page 15	
1	Flavio LaRocca 15
2	A Member.
3	Q Are there any other members of Marco
4	Industry other than yourself?
5	A Yes.
6	Q Who are they?
7	A My wife.
8	Q What sort of company is Marco
9	Industry?
10	A It's a real estate owning company.
11	Q What sort of company is Flavio
12	LaRocca & Sons?
13	A Landscape and masonry construction
14	company.
15	Q Other than Flavio LaRocca & Sons, is
16	there any other company that you're a part of
17	that does landscape or realty or or landscape,
18	that performs landscape work?
19	A No.
20	Q What sort of landscape work does
21	Flavio LaRocca & Sons perform?
22	A Mainly residential and light
23	commercial.
24	Q How long has Flavio LaRocca & Sons
25	been in existence?



Page 16			
1		Flavio LaRocca	16
2	A	Since the late '90s.	
3	Q	Do you recall what year it was	
4	commenced?		
5	A	Not precisely, but I think around	
6	1998.		
7	Q	At that time in 1998, where was	
8	Flavio LaRo	cca & Sons' principal place of	
9	business?		
10	A	Two Trinity Place in New Rochelle.	
11	Q	Did there come a time when that	
12	principal p	lace of business changed?	
13	A	Yes.	
14	Q	When was that?	
15	A	After acquiring 69-71 Potter Avenue	•
16	Q	When was that?	
17	A	I think around '98, around the same	
18	time.		
19	Q	At that time when 69-71 Potter Avenue	ue
20	was acquire	d, did that become the principal place	ce
21	of business	for Flavio LaRocca & Sons?	
22	A	Yes.	
23	Q	And at some time after that, did the	9
24	principal p	lace of business for that entity move	9
25	after 69-71	Potter Avenue?	



Page 17	
1	Flavio LaRocca 17
2	A No.
3	Q Is 69-71 Potter Avenue still the
4	principal place of business for Flavio LaRocca &
5	Sons, Inc.?
6	A Yes.
7	Q Are there any places that Flavio
8	LaRocca & Sons uses to store equipment other than
9	at 69-71 Potter Avenue?
10	A Yes.
11	Q And where are those places?
12	A 436 5th Avenue, New Rochelle.
13	Q Other than those two locations, is
14	there any other real property used to store items
15	for Flavio LaRocca & Sons' business?
16	A No.
17	MS. ZALANTIS: Are you asking now
18	at this present point in time?
19	MR. MENDELSOHN: At any point.
20	A No.
21	I'm sorry. Can you repeat that? At
22	any point?
23	Q Let me rephrase the question. Your
24	lawyer makes a good objection.
25	Other than 436 5th Avenue,



Page 18	
1	Flavio LaRocca 18
2	69-71 Potter Avenue, and before that the property
3	you mentioned on Trinity Place, are there any
4	other properties that Flavio LaRocca & Sons has
5	stored its equipment on?
6	A Yes.
7	Q Where is that?
8	A Further down on East Street I was
9	renting a space from Guglielmo Landscape.
10	Q When was that?
11	A From around, let's see. I think
12	around 2010 through 2016, 2017, something like
13	that.
14	Q Is there an address for that property
15	that you were renting?
16	A No, because it's just a piece of land.
17	There is no home on it.
18	Q Is there a business that that piece of
19	property is located adjacent to?
20	A Yes.
21	Q What is that business?
22	A PAB Contracting or Paving Company.
23	Q So from 2010 to 2017, Flavio LaRocca &
24	Sons used that rented location to store equipment
25	as well?



Page 19			
1		Flavio LaRocca	19
2	А	Yes.	
3	Q	What sorts of equipment did you store	е
4	or did your	company store at that location in	
5	those dates?	?	
6	А	Some trucks, trailers, some bulk	
7	material, ar	nd some excavation and landscaping	
8	equipment.		
9	Q	Who did you rent that space from?	
10	А	Joe Guglielmo.	
11	Q	How do you know Joe Guglielmo?	
12	А	He's a neighbor.	
13	Q	Meaning he's a neighbor to 436 5th	
14	Avenue?		
15	А	Yes.	
16	Q	Was there a lease for that?	
17	А	No.	
18	Q	What was the agreement that you came	
19	to with Mr.	Guglielmo regarding your rental of	
20	that propert	cy?	
21	А	It was based on me providing some	
22	services for	r him, he would allow me to store some	е
23	of my trucks	s and equipment on his property.	
24	Q	What sorts of services were you	
25	performing t	to receive all of that property?	



Page 20	
1	Flavio LaRocca 20
2	A I was providing some landscape
3	materials for him.
4	Q What sorts of landscape materials were
5	you providing?
6	A Soil and mulch.
7	Q Approximately how much soil and mulch
8	were you providing to Mr. Guglielmo during that
9	time?
10	A I don't know. It varied based on his
11	needs. I really don't know.
12	Q Does Mr. Guglielmo have a business
13	himself?
14	A Yes.
15	Q What is Mr. Guglielmo's business?
16	A Landscaping and gardening.
17	Q Is that a competing business to Flavio
18	LaRocca & Sons?
19	A I don't know if it would be competing.
20	My clients are mainly more high-end residential
21	and light commercial.
22	I think he does more basic landscaping
23	and maintenance services, which is something I
24	don't provide, maintenance services.
25	Q Does he have any involvement in your



Page 21	
1	Flavio LaRocca 21
2	company?
3	A No.
4	Q And do you have any involvement in
5	his company?
6	A No.
7	Q When I mean involvement, I mean
8	ownership interest or running the company or
9	anything like that.
10	A Correct.
11	Q You testified earlier that Flavio
12	LaRocca & Sons performs landscaping for
13	residential properties.
14	What sorts of activities does it
15	perform?
16	A We put in plantings, trees, we do
17	regrading work, we do stone work as far as
18	retaining walls and steps, patios, we do drainage
19	work, we put in sod or turf.
20	Q How many employees does Flavio
21	LaRocca & Sons have?
22	A Currently? Six.
23	Q Does that include full-time and
24	part-time?
25	A Yes.



Page 22		
1		Flavio LaRocca 22
2	Q	In 2015, how many employees did Flavio
3	LaRocca & So	ons have, approximately?
4	A	Six to eight.
5	Q	Has Flavio LaRocca & Sons ever had
6	more than e	ight employees?
7	A	Yes.
8	Q	And when was that?
9	A	Prior to the recession.
10	Q	So that's before 2008?
11	A	Yes.
12	Q	When Flavio LaRocca & Sons first
13	moved to or	started storing equipment at 436 5th
14	Avenue, how	many employees did it have at that
15	time?	
16	A	Four to six.
17	Q	Does Flavio LaRocca & Sons own any
18	equipment?	
19	A	Yes.
20	Q	What sorts of equipment does it own?
21	A	Trucks, trailers, some excavation and
22	regrading e	quipment, tractors.
23	Q	How many trucks does Flavio LaRocca &
24	Sons curren	tly own?
25	А	Ten.



Page 23		
1		Flavio LaRocca 23
2	Q	And when we say "trucks," can you
3	describe th	nose trucks, meaning what types of
4	trucks are	those?
5	А	Pickups, vans, dump trucks.
6	Q	How many dump trucks does your
7	business ow	vn?
8	А	Five.
9		MS. ZALANTIS: Again you're
10		asking about currently, right?
11		MR. MENDELSOHN: Yes. All of
12		this is currently.
13	А	Yes.
14	Q	In 2015, how many dump trucks did your
15	company owr	n?
16	А	I don't know. I can't recall that far
17	back.	
18	Q	Was it more or less than five?
19	А	I think around the same.
20	Q	And pickups and vans, are those
21	vehicles us	sed in your business?
22	А	Yes.
23	Q	What are the uses of those vehicles?
24	А	Pickups, they are 4x4. They are used
25	for snowplo	owing and salting.



Page 24	
1	Flavio LaRocca 24
2	Vans are used to transport materials.
3	That is enclosed so it doesn't get ruined by the
4	elements.
5	Q And you mentioned trailers.
6	A Yes.
7	Q What is a trailer?
8	A Trailer is a piece of equipment that
9	attaches to a truck, and it can carry another
10	piece of equipment on it which is not road legal
11	or used to be driven on the road.
12	Q How many trailers does Flavio
13	LaRocca & Sons own?
14	MS. ZALANTIS: Currently.
15	A Currently, three.
16	Q Was that approximately the same amount
17	as owned in 2015 or different?
18	A I think we may have had one more.
19	Q When we say "owned," I also want to
20	include used. So if you rent or if you borrow,
21	do these numbers that you've been giving us
22	include what you use, include all those that you
23	use of these vehicles?
24	A Yes.
25	Q Other than trucks that include pickup,



Page 25		
1		Flavio LaRocca 25
2	vans, and di	ump trucks and then trailers, what
3	other sorts	of equipment does Flavio LaRocca &
4	Sons use cu	rrently?
5	А	Tractors, skid-steer, mini excavators,
6	payloader.	
7	Q	Approximately how many tractors
8	currently?	
9	А	Two.
10	Q	And skid-steers?
11	А	Yes.
12	Q	What is a skid-steer?
13	А	It's a small like a Bobcat four-
14	wheeled with	n just a bucket in the front and it's
15	compact.	
16	Q	How many of those?
17	А	Four.
18	Q	Do you have any wood chippers?
19	А	No.
20	Q	Does your company ever use wood
21	chippers?	
22	А	No.
23	Q	What about does your company perform
24	any removal	of wood from residential properties?
25	А	Only what's fallen on the ground.



Page 26	
1	Flavio LaRocca 26
2	Q What happens after your company
3	removes that?
4	A We load it on the truck and take it
5	to a dumpsite.
6	Q Is it broken down in any way?
7	A Yes. Usually when they fall, they
8	break, and some may have to be cut into more
9	manageable pieces.
10	Q What is used by your company to cut
11	the wood into more manageable pieces?
12	A Well, we can't cut ourselves. We
13	call one of our affiliated tree companies and we
14	ask them to take care. But usually a chainsaw.
15	Q Who are your affiliated tree companies
16	that help you remove the wood?
17	A Martignetti Landscaping and Tree
18	Service and Moriarty out of Larchmont.
19	Q Do either of those businesses have
20	property on East Street?
21	A No.
22	Q Other than the equipment that we have
23	discussed, is there any other equipment that
24	Flavio LaRocca & Sons uses in its day-to-day
25	business currently?



Page 27	
1	Flavio LaRocca 27
2	A Small equipment, like rototiller.
3	Q What is a rototiller?
4	A It's a mechanical shovel that digs
5	the soil to cultivate the soil in preparation for
6	landscaping installation.
7	Q Compactors. What is a compactor?
8	A It's a piece of equipment used to
9	compact the aggregate base prior to us putting
10	down a patio or walkway, steps, retaining wall,
11	or even over a drainage system.
12	Q What is an aggregate base?
13	A Aggregate base is usually gravel.
14	Q Does Flavio LaRocca & Sons utilize
15	gravel in its business?
16	A Yes.
17	Q What sorts of gravel does it use?
18	A We use clean gravel for drainage.
19	Q Where do you get that gravel from?
20	A From Edison Materials in Mount Vernon.
21	Q How does your business transport that
22	gravel that it uses?
23	A Depending on the job. If the job is
24	too big, we have them deliver it to us because
25	they have bigger equipment. If it's a smaller



Page 28	
1	Flavio LaRocca 28
2	job, we pick it up ourselves.
3	Q Describe to me the process of putting
4	down aggregate.
5	How is that done?
6	A Depends on the application. If we
7	are using it for drainage, it might be put down
8	with wheelbarrows. If it's a larger area, it
9	might be put down with a piece of equipment.
10	Q Is the compactor used when placing
11	aggregate down?
12	A Not all the times. Depends on the
13	application.
14	Q What sorts of application would
15	necessitate the use of the compactor?
16	A If we are creating an area to put a
17	solid surface over it like a patio walkway.
18	Q So when you say "a solid surface,"
19	you're referring to placing the aggregate down
20	and then there would be another surface placed on
21	top?
22	A Correct.
23	Q Are there any other sorts of
24	applications of aggregate that would necessitate
25	the use of a compactor?



Page 29	
1	Flavio LaRocca 29
2	A Sure.
3	Q And what are those?
4	A For possibly roadways or parking
5	areas.
6	Q Does your company we will take one
7	step back.
8	Other than the small tools, you were
9	saying the rototiller, are there any other tools
10	that your company uses currently?
11	A Yes. Vibratory compactors.
12	Q What is a vibratory compactor?
13	A It's a ride-on piece of equipment
14	which compacts the soil or base material that
15	you're trying to compact.
16	Q Is that the same as the compactor we
17	were just discussing?
18	A This is a little bigger.
19	Q What is the difference between the
20	vibratory compactor and then the other compactor
21	that we were just previously discussing?
22	A One is a walk-behind, the other one
23	you ride on.
24	Q Is the ride-on the bigger of the two?
25	A Yes.



Page 30	
1	Flavio LaRocca 30
2	Q What sorts of applications would
3	necessitate the ride-on versus the walk-behind?
4	A In areas that need more compaction.
5	Q What does it mean to need more
6	compaction?
7	A Well, if you're excavating a footing
8	for let's say a large retaining wall, a plate
9	compactor walk-behind is not sufficient to compact
10	that soil. So you put a bigger piece of equipment
11	in there so it gives more stability to the ground
12	prior to putting up your foundation.
13	Q So is the vibratory compactor used
14	only when something is going to be put on top of
15	the aggregate?
16	MS. ZALANTIS: Objection as to
17	form.
18	You may answer.
19	A I don't
20	Q I will rephrase it.
21	When you use the vibratory compactor
22	on the aggregate, does it always follow with
23	something going on top of the aggregate afterward?
24	A No.
25	Q What sorts of applications does it



Page 31	
1	Flavio LaRocca 31
2	not follow with putting something on top
3	afterwards?
4	A If we are putting in a French drain
5	system, which is an open gravel trenched area to
6	collect water and drain it away, we just compact
7	the surface but put nothing on it so water can
8	permeate through.
9	Q Other than a French drain system, is
10	there any other application where something else
11	would not be put over that aggregate after using
12	a vibratory compactor?
13	A Yes.
14	Q What are those?
15	A If we are doing a gravel-exposed
16	area, sometimes a decorative gravel is used in
17	landscaping beds or around perimeters of
18	properties, and we compact it to give it a smooth
19	and even finished surface.
20	Q Other than decorative areas or French
21	drains, are there any other times that a vibratory
22	compactor would be used and something would not
23	go on top of the aggregate?
24	A Yes.
25	Q What are those times?



Page 32	
1	Flavio LaRocca 32
2	A When you're creating a gravel parking
3	space.
4	Q Other than the equipment that we've
5	discussed, is there any other equipment that
6	Flavio LaRocca & Sons currently uses in its day-
7	to-day business?
8	A No.
9	Q Going back now to the creation of
10	roadways or parking lots, is that something that
11	Flavio LaRocca & Sons does regularly?
12	A No.
13	MS. ZALANTIS: Objection.
14	Q How often does Flavio LaRocca & Sons
15	create parking lots or roadways?
16	A We don't do commercial parking lots
17	or roadways.
18	Q One of those items that you just
19	testified about when you use the vibratory
20	compactor is in breaking a roadway or parking lot,
21	correct?
22	A Yes.
23	Q Has your company ever used a
24	vibratory compactor in making a roadway or a
25	parking lot?



Page 33	
1	Flavio LaRocca 33
2	MS. ZALANTIS: Objection as to
3	form.
4	A No.
5	Q Has Flavio LaRocca & Sons ever done
6	work to a parking lot or a roadway?
7	A Yes.
8	Q And when it has done that work, did
9	it use a vibratory compactor?
10	A No.
11	Q When it performed that work, did it
12	use a compactor?
13	A No.
14	Q Approximately how many parking lots
15	and/or roadways has Flavio LaRocca & Sons ever
16	worked on?
17	MS. ZALANTIS: Objection as to
18	form.
19	A A few.
20	Q Is that less than five or more than
21	five?
22	A More than five.
23	Q That more than five, is that both
24	parking lots and roadways?
25	A Yes.



Page 34		
1		Flavio LaRocca 34
2	Q	How many parking lots, approximately,
3	has Flavio	LaRocca & Sons worked on?
4	A	Five to ten.
5	Q	How many roadways has Flavio LaRocca &
6	Sons worked	on?
7	A	None.
8	Q	Those parking lots that Flavio
9	LaRocca & S	ons have worked on, are those on
10	residential	properties or commercial properties?
11	А	Commercial.
12	Q	Can you tell me the locations of those
13	parking lot	s?
14	А	One is at 575 Stratton Road in New
15	Rochelle.	
16	Q	What sort of property is Stratton
17	Road?	
18	A	It's a house of worship.
19	Q	Is there a name?
20	A	It's the Jehovah's Witness
21	congregation	n there.
22	Q	What sort of work did Flavio LaRocca &
23	Sons perform	m on the parking lot there?
24	А	Cracked sealing and filling and
25	sealing.	



Page 35	
1	Flavio LaRocca 35
2	Q Other than filling and sealing on that
3	parking lot, did Flavio LaRocca & Sons perform
4	any other work on that parking lot?
5	A No.
6	Q Other than 575 Stratton Road, what
7	other parking lots?
8	A I don't know exactly the address but
9	it's on White Plains Road in Eastchester. It's
10	the Odyssey Diner.
11	Q What sort of work did Flavio LaRocca &
12	Sons perform on that parking lot?
13	A Same. Cracked filling and sealing.
14	Q Other than those areas, what parking
15	lots?
16	A I don't know off the top because it's
17	so many years. These are the more recent ones.
18	Q When was the last time that Flavio
19	LaRocca & Sons worked on a parking lot?
20	A December.
21	Q Of 2019?
22	A Yes.
23	Q Which one was that?
24	A The Odyssey Diner.
25	Q Was a compactor used on the Odyssey



Page 36			
1		Flavio LaRocca 36	
2	Diner parki	ng lot?	
3	А	Yes.	
4	Q	Was that to fill in cracks and	
5	sealing?		
6	А	Yes.	
7	Q	Prior to using the compactor on the	
8	Odyssey Din	er parking lot, was an aggregate put	
9	down by Fla	vio LaRocca & Sons?	
10	А	Not an aggregate but asphalt was put	
11	down.		
12	Q	Flavio LaRocca & Sons places asphalt	
13	as part of	its business?	
14	А	Occasionally.	
15	Q	Approximately how many times has	
16	Flavio LaRo	cca & Sons placed asphalt?	
17	А	In what period of time?	
18	Q	From 1998 to the present.	
19	А	Forty to fifty times.	
20	Q	What generally are the projects that	
21	have requir	ed the placing of asphalt?	
22	А	Mainly residential.	
23	Q	Is that driveways?	
24	А	Yes. And pathways.	
25	Q	As a part of Flavio LaRocca & Sons'	



D 27	
Page 37	
1	Flavio LaRocca 37
2	work, is it necessary that you have to read maps
3	to do the work?
4	A Maps?
5	Q Surveys?
6	A Yes.
7	Q Do you know how to read a survey?
8	A Yes.
9	Q Approximately how often do you read
10	surveys in your work?
11	A Not often.
12	Q When are the times when performing
13	your work that you have to read surveys?
14	A When generally it's required by either
15	building permit or municipality.
16	Q What sorts of projects do you read
17	surveys for?
18	A Depends. If someone is putting up a
19	retaining wall or wanting to landscape an area of
20	their property, we need to know the boundaries so
21	that we can stay within those boundaries.
22	Q Approximately how often in your
23	projects are you called to read surveys?
24	A A couple of times a year.
25	Q Is that from 1998 to present?



Page 38	
1	Flavio LaRocca 38
2	A Correct.
3	Q Where currently do you and when I
4	say "you," I'm referring to your business, Flavio
5	LaRocca & Sons, where currently do you store your
6	equipment?
7	A At 71 Potter Avenue and 436 5th
8	Avenue.
9	Q What is stored at 71 Potter Avenue?
10	A Some trucks, trailers, and some
11	regrading and excavation equipment.
12	Q Other than the equipment that we've
13	discussed, is there any other equipment that's
14	used to regrade?
15	A There is other equipment, but not that
16	I own.
17	Q What other equipment do you use to
18	regrade?
19	A Dozer, land grader, a box leveler.
20	Q Are those types of equipment used to
21	move earth?
22	A Yes.
23	Q Are they ever used to move trees?
24	A No.
25	Q Are they ever used to move plants



Page 39	
1	Flavio LaRocca 39
2	from a job site?
3	A No.
4	Q Do you ever have to, does Flavio
5	LaRocca & Sons ever have to move vegetation from
6	a job site prior to starting or completing the
7	work?
8	A Yes.
9	MS. ZALANTIS: Objection as to
10	form.
11	A Yes.
12	MS. ZALANTIS: What do you mean
13	by "vegetation"?
14	Q Does Flavio LaRocca & Sons ever have
15	to clear trees prior to working on a project?
16	A Yes.
17	Q Does Flavio LaRocca & Sons perform
18	that work?
19	A Small stuff, yes.
20	Q Other than tree, removing trees, does
21	Flavio LaRocca & Sons also remove other sorts of
22	vegetation from a job site prior to working on
23	it?
24	MS. ZALANTIS: Objection as to
25	form.



Page 40	
1	Flavio LaRocca 40
2	MR. MENDELSOHN: I can rephrase
3	that. I can make it clearer.
4	Q Other than removing trees as you just
5	testified to, does Flavio LaRocca on occasion
6	have to remove other sorts of vegetation from a
7	job site when working on it?
8	A Can you be more specific to what type
9	of vegetation?
10	Q Sure.
11	Bushes
12	A Okay.
13	Q or brush or tall grasses
14	A Okay.
15	Q are those sorts of things that
16	Flavio LaRocca & Sons has occasion to move when
17	working on a job site?
18	A Yes.
19	Q What sorts of equipment is used to
20	remove those items from a job site by your
21	company?
22	A Depending on the size, small bushes
23	can usually be attached with a chain behind one
24	of our skid-steers and pulled out. Or the
25	grasses, we use a sod cutter for the grasses. Or



Page 41	
1	Flavio LaRocca 41
2	we use the rototiller to pull the vegetation out,
3	pile it, and then remove it.
4	Q Has the storage of your equipment, the
5	split between 71 Potter Avenue and 436 5th Avenue,
6	that's remained consistent since you acquired
7	those properties?
8	MS. ZALANTIS: Objection as to
9	form.
10	Q This is what I mean:
11	Have you always maintained the same
12	sorts of items at 71 Potter Avenue
13	MR. MENDELSOHN: Withdrawn.
14	Q Do you maintain different items at
15	71 Potter Avenue versus what you store at 436 5th
16	Avenue?
17	A It's pretty much the same, just more
18	of it. And maybe just because I can't fit all in
19	one area, I fill in the other area.
20	Q Which location can you fit more
21	equipment for storage?
22	A Well, they are pretty much both the
23	same. I can fit pretty much both on the same
24	location.
25	Q Is there anything that you store at



Page 42	
1	Flavio LaRocca 42
2	either location that you do not store at the
3	other?
4	A Just my bulk material.
5	Q Where is your bulk material stored?
6	A At 436 5th Avenue.
7	Q What does bulk material consist of?
8	A Topsoil, sand, gravel, compost, rocks.
9	Q Is mulch stored there?
10	A No, mulch is not stored. But if I
11	need it I get it delivered there.
12	Q Do you ever make your own mulch for
13	your business?
14	A No.
15	Q Do you ever make your own materials,
16	any materials, for your business?
17	A Just my own topsoil.
18	Q How do you make your own topsoil?
19	A With a screener.
20	Q Where is the screener located?
21	A At 436 5th Avenue.
22	Q What is a screener?
23	A It's a machine that processes soil
24	and it sifts out the soil to give you a cleaner
25	material, which is topsoil, which is used for



Page 43	
1	Flavio LaRocca 43
2	landscaping, and removes roots and stones from
3	the material, the bulk material.
4	Q So if I understand it correctly, a
5	screener, you take material, put it through the
6	screener, and it comes out in a different form?
7	A Correct.
8	Q Where does Flavio LaRocca & Sons
9	obtain its material that goes into the screener?
10	A Some we purchase and some we reclaim
11	from job sites when we do regrading work.
12	Q What are your daily tasks for your
13	business?
14	A I
15	Q Currently.
16	A I run the daily operations and I meet
17	with clients. I work on estimating and look at
18	job progress.
19	Q What about your wife's daily tasks?
20	A She runs the office.
21	Q Does either one of you own more of the
22	business than the other?
23	A Which business?
24	Q Flavio LaRocca & Sons.
25	A Yes.



Page 44		
1		Flavio LaRocca 44
2	Q	Which owns more?
3	A	My wife does.
4	Q	What about FMLR Realty?
5	A	I think we are equal members on that.
6	Q	When, approximately, did you purchase
7	436 5th Ave	nue?
8	A	I think it was beginning of '03 or
9	late '02.	
10	Q	We don't have to guess.
11		I'm going to show you or you have in
12	front of yo	u Plaintiff's Exhibit 1.
13		If you could take a look at that and
14	just let me	know when you had a moment to look at
15	it.	
16		If you note there is also a double O
17	handwritten	on that. That's just from the
18	deposition	that your counsel conducted of a
19	witness fro	m my client.
20	A	(Reviewing)
21		Okay. All right.
22	Q	Have you had a chance to look at
23	Plaintiff's	Exhibit 1?
24	A	Yes.
25	Q	What is Plaintiff's Exhibit 1?



Page 45	
1	Flavio LaRocca 45
2	A Looks like it's the recording of the
3	property with the Westchester County.
4	Q Is this the deed from when you
5	purchased 436 5th Avenue?
6	A Yes.
7	Q And if you can look at the second page
8	of the exhibit, do you see a date when the deed
9	was made?
10	A Second page?
11	Q I will direct your attention to the
12	top.
13	A Yes.
14	Q And what is the date?
15	A September 18, 2002.
16	Q Who were the sellers of 436 5th Avenue
17	who you purchased from?
18	A Maffei.
19	Q If you could take a look at where it
20	says between, and it says the Maffeis, and below
21	that it says party of the first part and, who were
22	the purchasers of 436 5th Avenue?
23	A My wife and I.
24	Q When you purchased 436 5th Avenue,
25	prior to purchasing it, did you look at a survey



Page 46	
1	Flavio LaRocca 46
2	of that area?
3	A Yes.
4	Q What survey did you look at?
5	A There was I think two surveys that
6	they had shown us. One that was previous and one
7	that was more current and that the Maffeis had
8	shown us.
9	Q Did you or your wife have a survey
10	commissioned of 436 5th Avenue when you purchased
11	it?
12	A When we purchased it, no.
13	Q Did you at that time view the survey
14	that you were given?
15	A Yes.
16	Q And did that survey show 436 5th
17	Avenue?
18	A Yes.
19	Q If you recall, did it show that 436
20	5th Avenue encroached or went over the boundaries
21	of its property lines onto anything?
22	A Yes.
23	Q What, if anything, did it show that
24	it encroached upon?
25	A The fencing was in East Street.



Page 47	
1	Flavio LaRocca 47
2	Q Approximately, now we are just talking
3	to you prior to you purchasing the property,
4	approximately how far onto East Street did that
5	survey that you viewed show the fencing
6	encroaching?
7	A I don't recall measuring it, but from
8	my recollection it was a few feet.
9	Q Other than that fencing, was there
10	anything else about that survey that showed
11	436 5th Avenue encroaching upon another
12	property?
13	A I don't recall.
14	Q Do you have a copy of that survey
15	that you viewed prior to purchasing 436 5th
16	Avenue?
17	A I think in my file I do have it.
18	Q Was that one of the documents that was
19	given to us by your counsel?
20	A I think so.
21	Q Would you be able to recognize it if
22	you saw it?
23	A I think so.
24	MR. MENDELSOHN: I'm going to
25	have this marked as Plaintiff's 1-A.



Page 48	
1	Flavio LaRocca 48
2	(Whereupon, Survey was marked
3	Plaintiff's Exhibit 1-A for
4	Identification, as of this date, by
5	the reporter.)
6	Q Mr. LaRocca, if you can take a look
7	at what's been marked as show it to Kathy as
8	well what's been marked as Plaintiff's 1-A.
9	Do you recognize that?
10	A Yes.
11	Q What is that?
12	A It's a survey of my property on
13	436 5th Avenue.
14	Q When was that survey created?
15	A I think in November of 2000.
16	Q Is that the same survey that you're
17	testifying you reviewed prior to purchasing the
18	property?
19	A Yes.
20	Q And could you take with a yellow
21	highlighter and mark for me on that exhibit with
22	the highlighter what area you saw encroaching
23	prior to purchasing the property.
24	(Witness complies)
25	MR. MENDELSOHN: For the record,



Page 49	
1	Flavio LaRocca 49
2	he's put yellow highlighter on the
3	exhibit.
4	Q Okay. Thank you.
5	When you purchased 436 5th Avenue, do
6	you know if you bought what is called title
7	insurance?
8	A I think so.
9	Q Do you know what title insurance is?
10	A Somewhat.
11	Q What do you understand title insurance
12	to be?
13	A I think it has to do with ensuring
14	that the property recording is correct for that
15	property.
16	Q I'm going to ask you to take a look
17	at you can move that to the side and you can
18	move 1 to the side. If you can just keep them in
19	order because you're going to go back probably.
20	I think it would be easier for you,
21	I'm not going to suggest, but if you flip them
22	over just so when we go back there you go.
23	I'm going to ask you to take a look
24	at what's been marked as Plaintiff's 2, and take
25	a look through it and let me know when you've had



Page 50		
1		Flavio LaRocca 50
2	enough time	e.
3	А	(Reviewing)
4		MR. MENDELSOHN: For the record,
5		Plaintiff's 2 is a group of documents
6		Bates stamped D-1 through D-15, and
7		on the front it says Owner's Policy
8		of Title Insurance.
9	А	Okay.
10	Q	Are you ready?
11	А	Um-hm.
12	Q	I want you to turn to the page that's
13	Bates stam	ped do you know what Bates stamps
14	are?	
15		MR. MENDELSOHN: Off the record.
16		(Whereupon, a discussion was
17		held off the record.)
18	Q	D 004.
19	А	Okay.
20	Q	Do you see at the top it says amount
21	of insuran	ce?
22	А	Yes.
23	Q	And you see the name of the insured?
24	А	Yes.
25	Q	Who were the names of the insured?



Page 51		
1		Flavio LaRocca 51
2	А	My wife and I.
3	Q	And do you see a date of a deed that
4	this title i	Insurance is referring to?
5	A	Are you referring to the date of
6	policy?	
7	Q	I'm referring if you look in number 3.
8	А	Okay.
9	Q	Do you see a date there for a deed?
10	А	Yes.
11	Q	What is the date?
12	А	September 18, 2002.
13	Q	Is that the same date as the deed that
14	we took a lo	ook at in Plaintiff's 1?
15		If you go to the second page.
16	A	Yes.
17	Q	Is that the same date?
18	A	Yes.
19	Q	I'm going to have you look at D 5.
20		Do you see under part 1 where it says
21	survey readi	ing see annexed?
22	А	Yes.
23	Q	Did Flavio LaRocca or Maria LaRocca
24	have a surve	ey made when you purchased that
25	property?	



Page 52		
1		Flavio LaRocca 52
2	А	No.
3	Q	Do you know if either of you provided
4	a survey to	either the title company or your
5	attorney at	that time?
6	А	Not us. I think the sellers provided
7	the survey.	
8	Q	I'm going to have you turn to and
9	do you know	if the sellers provided a survey?
10	А	Yes.
11	Q	And who did the sellers provide a
12	survey to?	
13	А	To us, which in turn we gave it to our
14	attorneys, a	and they did what they had to do.
15	Q	Do you see on I want you to go back
16	to D 4.	
17	А	Okay.
18	Q	Is there a date of policy listed?
19	А	Yes.
20	Q	And what is the date of the policy?
21	А	September 18, 2002.
22	Q	Turning to D 7, could you read what's
23	on D 7.	
24	А	This company is unable to locate an
25	existing sur	rvey on the premises described in



Page 53	
1	Flavio LaRocca 53
2	Schedule A.
3	Q Could you read what is directly above
4	that?
5	A Policy accepts any state of facts.
6	An accurate survey would show when a survey
7	showing the premises described in Schedule A is
8	received. Same will be read into the existing
9	title report.
10	Q Do you know what that means?
11	A No.
12	MS. ZALANTIS: Objection.
13	Q And I'm only asking for your personal
14	basis.
15	MS. ZALANTIS: No, you're asking
16	him for a legal conclusion.
17	MR. MENDELSOHN: I'm not. I'm
18	asking for his personal basis of
19	belief.
20	Q Do you have a personal basis of belief
21	as to what that means?
22	MS. ZALANTIS: I mean, you can
23	answer if you know.
24	A No.
25	Q Going back to what's been marked as



Page 54	
1	Flavio LaRocca 54
2	1-A, which is back there, you highlighted an area
3	which you indicated you knew was encroaching
4	prior to buying that property.
5	Going back to 1-A, you highlighted an
6	area that you stated is encroaching on another
7	piece of property.
8	Is that fair?
9	A Yes.
10	Q What is
11	MS. ZALANTIS: I just want the
12	record to be clear.
13	He says it was encroaching not on
14	another piece of property, but on
15	East Street.
16	Q Is it fair that it's encroaching on
17	East Street?
18	A Yes.
19	Q At that time prior to you purchasing
20	436 5th Avenue, whose property did you believe
21	that was on East Street?
22	A The Maffeis.
23	Q So your testimony is that
24	MR. MENDELSOHN: Withdrawn.
25	Q I'm referring to East Street. I want



Dago 55	
Page 55	Flavio LaRocca 55
2	to be very clear.
3	At the time you purchased 436 5th
4	Avenue, who did you believe owned East Street?
5	A Are you referring to the property
6	that was encroaching, or East Street in general?
7	Q I'm referring to the property that
8	was encroaching onto East Street.
9	A Maffei.
10	Q So it's your testimony that you
11	believe the encroaching property was Maffeis'.
12	A Correct.
13	Q Who at that time did you believe owned
14	East Street?
15	A The whole road?
16	Q Yes.
17	A I was told by Maffei that it was a
18	private road and it was owned by each section by
19	each owner of the properties that is there.
20	Q Did you speak with your attorney at
21	the time about that?
22	A Yes.
23	Q And what
24	MS. ZALANTIS: I'm going to
25	I'm not going to let him testify



Page 56	
1	Flavio LaRocca 56
2	about his conversations with his
3	attorney at the time. It's
4	privileged communications.
5	MR. MENDELSOHN: I will move on.
6	Q Did you ever come to learn that East
7	Street is owned by The City of New Rochelle?
8	A Only by what some municipality
9	officials told me.
10	Q Who do you believe owns East Street
11	currently?
12	A The owners of all the properties along
13	East Street.
14	Q Is that the same understanding that
15	you had when you purchased that property?
16	A Yes.
17	Q When was the first time somebody told
18	you from the City that the City owned East
19	Street?
20	A When the City was planning to do the
21	eminent domain to locate their City yard there.
22	Q Was that in approximately 2009?
23	A No, I think it was around 2014.
24	Q I'm going to ask you to take a look
25	at what's been premarked as Plaintiff's 3, so you



Page 57		
1		Flavio LaRocca 57
2	can put thos	se aside.
3		Plaintiff's 3 is Summons and Complaint
4	from this ac	ction. If you need to take a moment
5	and review	it, please do before I ask you some
6	questions.	
7	А	(Reviewing)
8	Q	Have you had time to look at it?
9	А	Yes.
10	Q	Have you ever viewed or reviewed this
11	document be:	fore?
12	А	Yes.
13	Q	When, approximately, did you review it
14	first?	
15	A	When it was originally submitted.
16	Q	Did you have an opportunity prior to
17	today to rev	view all of the exhibits attached to
18	this documen	nt as well?
19	А	Yes.
20	Q	And have you read all of the
21	allegations	therein?
22	А	Yes.
23	Q	You can put that aside.
24		I'm now going to ask you to take a
25	look at what	t has been marked as Plaintiff's 4.



Page 58	
1	Flavio LaRocca 58
2	And if you could, please review that document.
3	It's the Verified Answer with
4	Affirmative Defenses and Counterclaims.
5	A (Reviewing)
6	Okay.
7	Q Were you involved in drafting this
8	document, the Answer?
9	A Yes.
10	MS. ZALANTIS: Objection.
11	Q Did you review the Answer prior to it
12	being filed with the Court?
13	A Yes.
14	Q Do you agree with all of the
15	assertions, statements and allegations that are
16	in the Answer?
17	A Yes.
18	Q Is everything in the Answer true?
19	A As far as what I can understand, yes.
20	Q If you could turn to the last page,
21	13 of 13. There is a verification there.
22	A Um-hm.
23	Q Whose signature appears on the
24	verification?
25	A My wife's.



Page 59	
1	Flavio LaRocca 59
2	Q I want you to turn to Page 9. I want
3	you to if you could review paragraphs 94 through
4	103.
5	A Okay.
6	Q Starting with, if I could draw your
7	attention to paragraph 95, could you read that
8	out loud.
9	A Defendant's properties has certain
10	Jersey barriers, concrete Jersey barriers which
11	barriers the City claims encroach upon East
12	Street.
13	Q What is that referring to?
14	A On the outside of the fence that
15	there are some concrete Jersey barriers that are
16	there.
17	Q When you say "fence," are you
18	referring to the fence which we previously, which
19	you previously highlighted in Plaintiff's 1-A?
20	A Yes.
21	Q So is it your testimony that there
22	are Jersey barriers on the outside of the gate
23	presently?
24	A Yes.
25	Q And whose Jersey barriers are those?



Page 60		
1		Flavio LaRocca 60
2	А	Those were on my property when I
3	purchased th	ne property.
4	Q	So whose Jersey barriers do you
5	believe thos	se are?
6	А	Mine.
7	Q	Are those Jersey barriers on East
8	Street?	
9	А	Yes.
10	Q	I want you to take a look at
11		MR. MENDELSOHN: Withdrawn.
12		Because we are talking about the
13		skate park.
14	Q	Is there a skate park directly across
15	East Street	from 436 5th Avenue?
16	А	Yes.
17		MS. ZALANTIS: Currently, right?
18		MR. MENDELSOHN: Right,
19		currently.
20	А	Yes, currently.
21	Q	Who owns that skate park?
22	А	The City of New Rochelle.
23	Q	When, approximately, was it built?
24	А	I don't remember the exact date but
25	sometime in	I think mid-2000.



Page 61	
1	Flavio LaRocca 61
2	Q Meaning like August of 2000 or like
3	2005?
4	A No, no, towards 2005, 2006, yeah.
5	Q Do you recall approximately when the
6	construction started on that skate park?
7	A I think, I want to say '04 or possibly
8	'03. I'm going by my recollection.
9	Q Was that area that the skate park now
10	occupies used for anything prior to the
11	construction of the skate park?
12	A Yes.
13	Q What, if anything, was it used for?
14	A There was a construction company that
15	was working on Potter Avenue. They had cleared
16	out the area which was predominantly wooded and
17	used it as their staging area.
18	Q Do you know what the name of that
19	contracting company was?
20	A Persico.
21	Q Do you know who Persico, if anybody,
22	was working for at that time?
23	A The City of New Rochelle.
24	Q What is a Jersey barrier?
25	A It's a concrete-formed structure that



Page 62	
1	Flavio LaRocca 62
2	is used to delineate certain areas when doing
3	construction work.
4	Q Approximately how big are they?
5	A They range from about 2 1/2 feet to
6	3-feet high to anywhere from 4 feet to 20- to
7	40-feet long.
8	Q Does Flavio LaRocca & Sons utilize
9	Jersey barriers in its work?
10	A No.
11	Q Has Flavio LaRocca & Sons ever
12	utilized Jersey barriers in performing its work
13	for its business?
14	A No.
15	Q How do you move a Jersey barrier, if
16	you know?
17	A With a piece of equipment.
18	Q What sort of equipment would you use?
19	A An excavator, a loader, a skid-steer,
20	it varied. Depends on the size of the barrier.
21	Q Have you ever stored Jersey barriers
22	on 436 5th Avenue?
23	A Yes.
24	Q Approximately when was that?
25	A They were there when I acquired the



Page 63	
1	Flavio LaRocca 63
2	property.
3	MS. ZALANTIS: By "they," you're
4	referring to the Jersey barriers.
5	A Correct. Jersey barriers were there
6	when I acquired the property.
7	Q When you say they "were there," were
8	they inside the gate or outside the gate?
9	A Inside the gate.
10	Q So your testimony is that when you
11	purchased 436 5th Avenue, there were Jersey
12	barriers stored inside the gate on 5th Avenue.
13	A Yes.
14	Q Approximately how many Jersey barriers
15	were stored there?
16	A Over forty of them.
17	Q How much does a Jersey barrier weigh?
18	A Anywhere from a thousand pounds to
19	about 3- to 4,000 pounds.
20	Q Now, the Jersey barriers that you're
21	testifying forty of them that were inside of your
22	gate when you purchased your property 436 5th
23	Avenue, what, approximately, were the dimensions
24	of each one of those Jersey barriers?
25	A They vary.



Page 64	
1	Flavio LaRocca 64
2	Q What was the dimensions of the largest
3	one?
4	A Twenty foot.
5	Q What was the dimensions of the
6	smallest one?
7	A Four to five foot.
8	Q How were those stored on your
9	property?
10	A Some were stacked one on top of
11	another, and other was utilized by Maffei,
12	previous owners, to hold materials in from not
13	mixing together.
14	Q If you could, could you take Exhibit
15	1-A back out. And with a blue highlighter,
16	please highlight the approximate location of
17	where those forty Jersey barriers were stored in
18	your property prior to buying it.
19	A Before? Okay. Prior to buying it.
20	MR. MENDELSOHN: Well, withdrawn.
21	Q Did you eventually move the Jersey
22	barriers yourself?
23	A Yes.
24	Q Okay. Where did you move the Jersey
25	barriers?



Page 65	
1	Flavio LaRocca 65
2	A Some within my property and some
3	outside.
4	Q And when, approximately, did you move
5	the Jersey barriers?
6	A When I took out a building permit to
7	redo, take out the rock ledge in the corner of
8	the property.
9	Q When, approximately, did you remove
10	the Jersey barriers from inside of your property?
11	A After I got the permit. I think that
12	was in '03 sometime.
13	Q Is it fair to say that was prior to
14	the construction of the skate park?
15	A Yes.
16	Q When you moved those Jersey barriers,
17	was that the first time that they had been moved
18	subsequent to you purchasing the property?
19	A Yes.
20	Q Approximately how many did you move
21	outside of your property at that time?
22	A Maybe about 80 percent of them.
23	Q In blue, can you mark where those
24	forty Jersey barriers were that you testified
25	about when you bought the property.



Page 66	
1	Flavio LaRocca 66
2	A Um-hm.
3	(Witness complies)
4	A That's what I remember.
5	Q Okay. And then if you could, you
6	just testified that at some point in approximately
7	2003 you moved 80 percent of those Jersey
8	barriers that are marked in blue outside of your
9	property.
10	Could you mark in pink where they were
11	moved outside of your property.
12	(Witness complies)
13	MR. MENDELSOHN: For the record,
14	he's marked outside of the
15	chain-linked fence onto East Street
16	over the words "East Street," and
17	then below that on the diagram as
18	well over the words "sliding gate."
19	Q So at the time you moved the Jersey
20	barriers out, approximately how many Jersey
21	barriers remained inside of your property?
22	A Roughly six to eight.
23	Q And the other roughly thirty-two to
24	thirty-four were moved in the area that you marked
25	in pink.



Page 67	
1	Flavio LaRocca 67
2	A No, forty-four, forty-five of them
3	were moved in that area. The other six to eight
4	remained inside.
5	Q So it's your testimony that the area
6	in pink where you moved Jersey barriers that were
7	previously inside of your property, Flavio
8	LaRocca & Sons moved forty to forty-four of them
9	to the area in pink outside of your property.
10	A Correct.
11	Q And that was done in approximately
12	2003.
13	A Correct.
14	Q And that was done by Flavio LaRocca &
15	Sons.
16	A Correct.
17	Q When they were placed in the area in
18	pink, is it fair to say that's on East Street?
19	A Yes.
20	Q Other than the forty to forty-four
21	that Flavio LaRocca & Sons moved outside of
22	436 5th Avenue, were there any Jersey barriers
23	that were present on the outside of that property
24	already?
25	MS. ZALANTIS: The outside of 436?



Page 68	
1	Flavio LaRocca 68
2	Q Meaning prior to you moving them to
3	the area in pink, were there already some Jersey
4	barriers there or were there no Jersey barriers
5	there?
6	A No.
7	Q Meaning there were no Jersey barriers
8	there prior to Flavio LaRocca & Sons moving them.
9	A Correct.
10	Q I want you to take a look on
11	Plaintiff's 4, which is the Answer, on paragraph
12	96 on Page 10. Can you read it out loud.
13	A When the City constructed a park
14	across East Street, the Defendant's property, it
15	took certain concrete Jersey barriers from
16	Defendant's property that belonged to the
17	Defendants.
18	Q Did you see the City take Jersey
19	barriers from your property?
20	A The contractor that the City was
21	using was there with an excavator on a Saturday
22	morning taking the Jersey barriers and placing
23	them along the City fence line of the park.
24	Q And who saw that?
25	A I did.



Page 69	
1	Flavio LaRocca 69
2	Q And was there anybody else there from
3	Flavio LaRocca & Sons at that time?
4	A No.
5	Q Approximately when was that that you
6	saw the Jersey barriers being moved?
7	A While they were constructing the
8	park.
9	Q Was that after Flavio LaRocca & Sons
10	had moved them to the area in pink?
11	A Yes.
12	Q So on a Saturday morning you witnessed
13	a contractor taking those Jersey barriers that
14	were on East Street and moving them.
15	A Yes.
16	Q Approximately how many Jersey barriers
17	did that contractor move?
18	A When I got there and I saw it, he had
19	them already placed along the fence. I forget
20	the exact number now.
21	Q When you say "along the fence," what
22	fence are you speaking of?
23	A The skate park fence.
24	Q So is it your testimony that that
25	contractor had moved them from along the sliding



Page 70	
1	Flavio LaRocca 70
2	gate fence in front of 436 5th Avenue to the gate
3	across from the skate park?
4	A Correct. And along the entire line.
5	He was there with an excavator picking them. He
6	had a hook and chain and one gentleman helping
7	him with the hook and chain while he was in the
8	excavator and just plopping them into place.
9	Q Were those Jersey barriers marked in
10	any way?
11	A No.
12	Q Was there anything that said Flavio
13	LaRocca & Sons or any marking that would have
14	indicated that those were the property of Flavio
15	LaRocca & Sons?
16	A No.
17	Q Was there any indication that those
18	Jersey barriers were the property of 436 5th
19	Avenue?
20	A The way they were stacked would
21	indicate that they belonged to my property.
22	Q When you say "the way they were
23	stacked," how were they stacked in a way that
24	would have shown they were your property?
25	A Well, if you look at the survey where



Page 71	
1	Flavio LaRocca 71
2	in pink they were double and triple stacked one
3	on top of another against my fence line, so
4	leaving more than half of the roadway free for
5	not only myself and my neighbors for getting out
6	while I did this work here. And this work was
7	going on for several months before those were
8	taken.
9	Q And that stacking was on East Street.
10	A Correct. Against my fence line.
11	Q I want you to take a look at paragraph
12	102 and read that out loud.
13	A Even if the concrete Jersey barriers
14	still did have utility, Defendants have not been
15	able to use the property it purchased for its own
16	purpose because the conversion committed by the
17	City to use the concrete Jersey barriers for its
18	own purposes.
19	Q What, if any, utility did those
20	Jersey barriers have for the business of Flavio
21	LaRocca & Sons?
22	A Well, as Maffei was using it before,
23	there could have been material dividers in the
24	yard itself, and even a protection against the
25	fencing line on the outside. Because some of the



Page 72	
1	Flavio LaRocca 72
2	neighbors or deliveries from trucks that come in
3	and out would hit my fencing, and I would have to
4	repair it and go through cost of damages.
5	Q We are talking about the same Jersey
6	barriers that you moved to the outside of the
7	gate.
8	A Temporarily, yes.
9	Q I want to move on from Plaintiff's 4
10	and we will go to Plaintiff's 5, and if you could
11	take a look at Plaintiff's 5, it's a letter dated
12	June 11, 2003, and then the second page is a
13	letter dated November 17, 2003.
14	A Yes.
15	Q Could you read the letter on Bates
16	stamp D 241 aloud.
17	A Dear Sir, this is to inform you that
18	while we have been doing rock removal, the
19	contractor who has been staging at the City-owned
20	property of 5th Avenue directly across from our
21	yard has moved twenty of our Jersey barriers
22	along the opposite side of East Street. Please
23	be advised that these Jersey barriers are from
24	our property and owned by us. We request that
25	the Jersey the barriers be returned to us



Page 73	
1	Flavio LaRocca 73
2	where they originally were located.
3	Q Where is it that you wanted the
4	Jersey barriers returned to, to the area in pink?
5	A Correct.
6	Q Do you know how much a Jersey barrier
7	costs to purchase?
8	A New, about \$2,000 apiece.
9	Q These Jersey barriers that were moved
10	to the place in pink on 1-A, were they new?
11	A Some, yes.
12	Q Approximately what percentage of them
13	were new?
14	A A good 70 percent.
15	Q Did you purchase those?
16	A They were left by Maffei on the
17	property when we closed on it.
18	Q Were those Jersey barriers a part of
19	your contract of sale to purchase that property?
20	MS. ZALANTIS: Objection as to
21	form.
22	MR. MENDELSOHN: I will rephrase.
23	Q Were the Jersey barriers included in
24	the contract of sale for your purchase of 436 5th
25	Avenue?



Page	74	
1		Flavio LaRocca 74
2	А	As a verbal agreement, yes.
3	Q	Were they in the contract?
4		MS. ZALANTIS: Objection. I
5		don't know if you're asking him for a
6		legal conclusion.
7	А	I don't know if they were written in
8	the contrac	t or not.
9		MR. MENDELSOHN: I'm going to
10		demand production of the contract of
11		sale from Mr. LaRocca's purchase of
12		436 5th Avenue.
13		MS. ZALANTIS: Take it under
14		advisement.
15		MR. MENDELSOHN: And we will
16		submit it in writing as well.
17	(REQUEST)	
18	Q	Moving forward.
19		Have you ever purchased a Jersey
20	barrier?	
21	А	No.
22	Q	Has Flavio LaRocca & Sons ever
23	purchased a	Jersey barrier?
24	А	No.
25		MS. ZALANTIS: Just to clarify,



Page 75		
1		Flavio LaRocca 75
2		you mean other than in connection
3		with what he already testified to,
4		right?
5		MR. MENDELSOHN: I think his
6		testimony speaks for itself.
7	Q	I'm going to show you now what's been
8	marked as P	laintiff's 6. It's Bates stamps range
9	from 280 to	286.
10		Do you see that?
11	A	Yes.
12	Q	And it's a pack of photographs.
13		Have you seen those photographs
14	before?	
15	A	Yes.
16	Q	What do those photographs depict?
17	A	The Jersey barriers along the skate
18	park.	
19	Q	Are these the same Jersey barriers
20	that you're	alleging that were moved from the
21	area in pin	k by that contractor to that, in front
22	of the gate	in front of the skate park?
23	A	Correct.
24	Q	Are these Jersey barriers as depicted
25	in substant	ially the same condition they were in



Page 76			
1		Flavio LaRocca 7	6
2	when they w	ere moved?	
3	A	No.	
4	Q	What is different about them in these	
5	pictures?		
6	A	As you can see, they have been	
7	damaged, sc	ratched, hit on.	
8	Q	When you say that, do you have any	
9	pictures of	them prior to them being moved in	
10	front of th	e skate park?	
11	A	I'd have to look. I don't recall. I	
12	don't recal	1.	
13	Q	Since you purchased 436 5th Avenue,	
14	has the cit	y ever maintained East Street?	
15	A	No.	
16	Q	When I say "maintained," I mean plow	
17	or done any	thing to maintain the road.	
18	A	Their trucks come in and out as a	
19	shortcut to	East Place. But as far as plowing or	
20	maintaining	the road, no.	
21	Q	Who maintains East Street?	
22	A	We the owners of each property	
23	maintains t	he section before their property.	
24	Q	What is entailed in the maintenance?	
25	A	Cleaning any debris, sweeping,	



Page 77	
1	Flavio LaRocca 77
2	snowplowing, and repairing the road if needed.
3	Q Do you know if the City has ever
4	maintained East Street?
5	A As long as I've been there, no.
6	Q Did you have any conversations with
7	Mr. Maffei about the maintenance of East Street
8	prior to purchasing the property?
9	A Yes.
10	Q What, if anything, did he say?
11	A That each property owner would
12	maintain their portion before their property.
13	Q Was there ever an understanding at
14	that time when you purchased the property that
15	the City would maintain East Street?
16	A No.
17	Q Currently when you store vehicles or
18	equipment for your business at 436 5th Avenue,
19	where are they stored?
20	A At 436 5th Avenue?
21	Q Yes.
22	A 436 5th Avenue.
23	Q Where on 436 5th Avenue are they
24	stored?
25	A Within my property.



Page 78	
1	Flavio LaRocca 78
2	Q Is that inside of that gate that we
3	mentioned?
4	A Yes.
5	Q Where are they parked, meaning the
6	trucks?
7	A Inside the gate.
8	Q When you purchased the property in
9	approximately 2002, have your trucks ever been
10	stored anywhere other than inside of your property
11	in that vicinity near East Street?
12	A I'm sorry. Can you
13	Q I will repeat it.
14	Other than inside of your property,
15	have your trucks ever been stored on any place
16	along East Street other than inside of your
17	property.
18	A Well, just in front of my yard we
19	park there temporarily in the morning as we are
20	heading out. And then as we are coming in to
21	open the gate and close the gate.
22	Q Have your trucks, vehicles or
23	equipment been stored anyplace on East Street
24	other than inside of your property?
25	A In front of my yard. On East Street



Page 79	
1	Flavio LaRocca 79
2	in front of my yard.
3	Q So is it your testimony that other
4	than in front of your yard, which I'm guessing
5	means 436 5th Avenue; is that correct?
6	A Correct.
7	Q And then inside of 436 5th Avenue,
8	it's your testimony that your equipment or trucks
9	have never been stored anywhere else on East
10	Street.
11	A Well, no. Inside the you're
12	talking about the street or anywhere else along
13	that street?
14	Q I'm talking about anywhere else in
15	the vicinity of that street.
16	A Well, Guglielmo's yard when I was
17	there for those years.
18	Q Where is well, let's take a look
19	at
20	MR. MENDELSOHN: Now is a good
21	time for a break. Just so I can set
22	up this next.
23	(Whereupon, a brief recess was
24	taken.)
25	Q I'm going to show you, Mr. LaRocca,



Page 80	
1	Flavio LaRocca 80
2	if you can take a look at what's been marked as
3	Plaintiff's 7. It is an aerial photograph Bates
4	stamped D 262.
5	Have you viewed this photo before?
6	A I think so.
7	Q Well, as you look at it now, can you
8	tell us what this photo depicts?
9	A The area along East Street, the skate
10	park including my property and my neighbor's
11	property.
12	Q Does that include 436 5th Avenue?
13	A Yes.
14	Q Does this also include and I'm
15	going to butcher the name, the Guglielmo
16	property?
17	A Yes.
18	Q Could you mark with, if you could take
19	a yellow highlighter, could you put an X where
20	the Guglielmo property is.
21	A X?
22	Q I don't think it's showing up.
23	You know what? If you take a pen and
24	mark an arrow from the outside.
25	(Witness complies)



Page 81	
1	Flavio LaRocca 81
2	Q And does that you've marked an
3	arrow next to the Bates stamp.
4	Does that area show right where that
5	Guglielmo property is?
6	A Yes.
7	Q At a certain point is it fair to say
8	that East Street intersects with East Place?
9	A Correct.
10	Q Is the Guglielmo property on the same
11	side of East Place as 436 5th Avenue, or is it on
12	the other side?
13	A It's on both sides. It's a corner
14	property.
15	Q So it abuts both East Street and East
16	Place?
17	A Correct.
18	Q In this photograph, can you see East
19	Place?
20	A A portion of it.
21	Q Is that right where you drew the
22	arrow?
23	A Just on top of it where that red
24	vehicle is at.
25	MR. MENDELSOHN: And the witness



Page 82	
1	Flavio LaRocca 82
2	is pointing to a red vehicle right
3	above the Bates stamp.
4	Q Is that red vehicle on East Place?
5	A Yes.
6	Q So the Guglielmo property is if you're
7	are looking at this picture, it's to the right of
8	that vehicle?
9	A Correct.
10	Q Is that where in that property where
11	you stored some of your equipment?
12	A Yes.
13	Q Is there anywhere else other than the
14	Guglielmo property and 436 5th Avenue where your
15	business has stored equipment that's depicted on
16	this photograph?
17	A Potter Avenue. 69-71 Potter Avenue.
18	Q I'm speaking just on this photograph.
19	A Oh, okay. No.
20	Q Is there anyplace on this photograph
21	other than 436 5th Avenue and the Guglielmo
22	property that your business has stored vehicles
23	that's depicted on this photograph?
24	A No.
25	Q Did you review the Complaint in this



Page 83	
1	Flavio LaRocca 83
2	case, what we went over as, I believe it was
3	Plaintiff's 3?
4	A Yes.
5	Q And in Plaintiff's 3 there is a piece
6	of property that's referred to as the parcel.
7	Are you familiar with that?
8	A I think so, but refresh my mind.
9	Q Let's take a look at Plaintiff's 3.
10	If you could turn to Page 4 and look
11	at paragraph 10 and read that out loud, please.
12	A At all times pertinent hereto, the
13	City has been and presently is the owner of a
14	parcel of property located in the City of New
15	Rochelle, County of Westchester, State of New
16	York, consisting of undeveloped open land between
17	East Street and Fowlers Park, the parcel.
18	Q Is that Flowers Park?
19	A Flowers. I'm sorry. Yes.
20	Q Are you familiar with that piece of
21	property that this is referring to as the parcel?
22	A Yes.
23	Q Is the parcel as defined in the
24	Complaint represented in Plaintiff's 7?
25	A Yes.



Page 84		
1		Flavio LaRocca 84
2	Q	Could you point to it.
3	А	It's where this white truck is here.
4		MR. MENDELSOHN: And for the
5		record, he's pointing to in the
6		middle left of the photograph there
7		is a white truck pulling, looks like
8		it's pulling something behind it that
9		is directly above East Street as we
10		are looking to this.
11	Q	Is that fair?
12	А	Yes.
13	Q	Has Flavio LaRocca & Sons ever stored
14	any equipme	nt or vehicles on the parcel?
15	А	No.
16	Q	Has Flavio LaRocca & Sons ever parked
17	vehicles or	equipment on the parcel?
18	А	No.
19	Q	Has Flavio LaRocca & Sons' employees
20	ever parked	vehicles on that parcel?
21	А	No.
22	Q	Has Flavio LaRocca & Sons ever
23	performed a	ny work on that parcel?
24		MS. ZALANTIS: Objection as to
25		form.



Page 85	
1	Flavio LaRocca 85
2	Q Has Flavio LaRocca & Sons ever done
3	anything to the parcel?
4	A We just raked the ground.
5	Q What is the reason the ground is
6	raked?
7	A Because when we would plow that area
8	to get into where we were storing the equipment
9	in Guglielmo's yard, we would disturb that area
10	which was gravel and wood chips thrown down by
11	previously. We just raked the area that we would
12	disturb.
13	Q How did it become Flavio LaRocca &
14	Sons' responsibility to rake the parcel?
15	A Just because we entered into the
16	property down below Guglielmo's yard. The City
17	would not maintain the road.
18	We would plow it to gain access
19	because otherwise we cannot enter our trucks and
20	equipment and we would damage the area as the
21	plows would go by.
22	And as a courtesy to my neighbors who
23	were there, we just raked out the area and that's
24	it.
25	Q Does anyone park or store equipment



Page 86	
1	Flavio LaRocca 86
2	on the parcel?
3	A There is vehicles that used to park
4	there prior to the fencing going up.
5	Q Whose vehicles are those?
6	A Not my vehicles or any of my
7	employees.
8	Q Do you know whose vehicles those are?
9	A Might be one of my neighbors. I'm
10	not sure.
11	Q Is it your testimony that no Flavio
12	LaRocca & Sons' truck has ever or vehicle has ever
13	been parked on the parcel?
14	A Correct.
15	Q Has Flavio LaRocca & Sons ever
16	received permission from the City to do anything
17	to the parcel?
18	A No.
19	Q Have you ever inquired of the City to
20	park your business vehicles on City property?
21	A Excuse me?
22	Q Have you ever asked the City if you
23	can park your business' vehicles opposite your
24	property?
25	A No.



Page 87	
1	Flavio LaRocca 87
2	Q I'm going to ask you to take a look
3	at what's been marked as Plaintiff's 8.
4	Just take a read over it and let me
5	know when you're done.
6	A Okay.
7	(Reviewing)
8	Yes.
9	Q Have you ever seen this document
10	before?
11	A Yes.
12	Q What is it?
13	A It is a letter from Mr. Strome to our
14	inquiry about purchasing or possibly renting the
15	City property where the park is now.
16	Q What was the reason that you wanted to
17	rent that area from the City?
18	A I really wanted to purchase it but
19	the City had informed me that it was not for
20	sale. And being that there was another contractor
21	there, I thought that maybe they would rent it or
22	lease it to me for my business use.
23	Q This letter is dated March 17, 2003,
24	and it's from Charles Strome to you.
25	Is that fair?



Page	88
1	Flavio LaRocca 88
2	A Yes.
3	Q Did you write a letter to Mr. Strome?
4	A I don't remember if it was a letter
5	or an email, but there was something, I had
6	contacted him somehow.
7	Q Do you have that correspondence that
8	you sent?
9	A I don't recall if I have it or not.
10	MR. MENDELSOHN: I'm going to
11	demand production of that
12	correspondence, and I will follow up
13	in writing.
14	(REQUEST)
15	Q At that time in 2003, what did the
16	parcel look like?
17	A At that time it was all cleared out
18	and it was gravel and wood chips by the company
19	that was there that they had spread out when they
20	left.
21	Q Is that the same condition it was in
22	when you purchased 436 5th Avenue?
23	A No.
24	Q What condition was it in when you
25	purchased it?



Page 89	
1	Flavio LaRocca 89
2	A It was a little bit more wooded.
3	Q What do you mean by "more wooded"?
4	A There was more vegetation in the
5	area, more trees, shrubbery and vegetation in that
6	area.
7	Q We are just referring to the parcel,
8	correct?
9	A Right.
10	Q Do you know what happened to all that
11	vegetation and trees and wooded area?
12	A Yes.
13	Q What happened?
14	A The company that was there, Persico,
15	working on the bridge, they came in and cleared
16	out that area. And that's where their employees
17	and the equipment and materials were being stored
18	as they were working on the Potter Avenue bridge.
19	Q The parcel is not on East Street,
20	right?
21	A It is adjacent to East Street.
22	Q Other than Persico Construction or
23	the contractor that was using the now skate park
24	as a staging premises, do you know who else has
25	parked in the parcel from that time until now?



Page 90	
1	Flavio LaRocca 90
2	A I know there has been people who come
3	and visit the skate park, they have parked their
4	vehicles there, parents and even kids that go to
5	the park.
6	There has even been vendors that come
7	there, like Mr. Softee the ice cream guy who
8	services the kids at the park.
9	Even the park and rec department has
10	parked there many times. There is actually a
11	access gate going there, and some other people
12	from the neighborhood.
13	Even some of the neighbors down the
14	road have parked some of their vehicles there.
15	Q Who do you believe owns the parcel?
16	A The parcel in question, this is the
17	City's property.
18	Q Now I'm going to show you what's been
19	marked as Plaintiff's 9.
20	Could you take a read over it and let
21	me know when you're done.
22	A (Reviewing)
23	Okay.
24	Q Plaintiff's 9 is a letter from the
25	City of New Rochelle dated June 22, 2009, and



Page 91	
1	Flavio LaRocca 91
2	it's signed by Paul Vacca and Jeffrey Coleman.
3	Mr. LaRocca, have you seen this letter
4	before?
5	A Yes.
6	Q What does this letter, what, if
7	anything, does it say?
8	A That it came to the City's knowledge
9	that we were encroaching on City property.
10	Q Do you agree with that, that in 2009
11	that 436 5th Avenue was encroaching on City
12	property?
13	A No.
14	Q What is your reason for your belief
15	that in 2009 when this letter was sent that you
16	were not encroaching?
17	A Because when I purchased the property,
18	the fencing was in the same location. When I got
19	the permit to do my work, the fencing was in the
20	same location. Nothing had changed and I was
21	never told that prior to this letter being
22	received some six, seven years after I purchased
23	the property.
24	Q The permit that you're speaking of,
25	was that permit regarding the gate that's at the



Page 92	
1	Flavio LaRocca 92
2	front of your property?
3	A The rock removal and regrading work.
4	Q Was that in the front or rear of your
5	property?
6	A Rear of my property.
7	Q From the time you purchased the
8	property until receiving this letter, had you
9	discussed with anyone the encroachment that you
10	saw on the survey prior to purchasing your
11	property other than your attorney?
12	A No.
13	Q What, if anything, did you do in
14	response to getting this letter in Plaintiff's 9?
15	A I called both Mr. Vacca and
16	Mr. Coleman and I set up a meeting there on the
17	site.
18	Q Did that meeting take place?
19	A Yes.
20	Q When, approximately, did that meeting
21	take place?
22	A A week or two after the letter was
23	received.
24	Q Who was present at that meeting?
25	A My wife, myself, and Mr. Vacca and



Page 93	
1	Flavio LaRocca 93
2	Mr. Coleman.
3	Q What was discussed at the meeting?
4	A The content of this letter.
5	Q Was there any resolution to the
6	content of the letter?
7	A Yes.
8	Q What was the resolution?
9	A They both proposed that I would get a
10	surveyor to come out and mark that line to depict
11	where the property was so that they can determine
12	where it was.
13	Because I explained to them that I
14	thought that was my property, and I've been using
15	it since I've had it, and the previous owner was
16	using it who knows how many years prior to me.
17	Q At any time during that meeting, did
18	either Mr. Vacca or Mr. Coleman tell you that the
19	encroachment was okay?
20	A Not at that meeting. They said we
21	will discuss it after the surveyor comes.
22	Q Did they ever give you permission to
23	having encroachment at that time?
24	A No, they just asked me to get a
25	surveyor come out and stake that line.



Page 94			
1		Flavio LaRocca	94
2	Q	Did you do that?	
3	А	Yes.	
4	Q	I will have you look at what's been	
5	marked as P	laintiff's 10.	
6		This is a document that at the top	
7	says Gabrie	l E. Senor, P.C., and it's Bates	
8	stamped D 2	2 through D 24.	
9		Do you recognize this?	
10	А	Yes.	
11	Q	And what is this?	
12	А	This is my work order for them to	
13	come out an	d stake the right side of my property	,
14	on East Str	eet.	
15	Q	Was this done by you in response to	
16	the letter	that you received on June 22nd of 200	9
17	in Plaintif	f's 9?	
18	А	Yes.	
19	Q	How did you come to hire this	
20	surveyor?		
21	А	It was referred to me.	
22	Q	If you could read on Page D 22, the	
23	first page	of the exhibit, there is a bold in th	.e
24	middle. Co	uld you read that part.	
25	А	Please provide a copy of the deed	



Page 95		
1	Flavio LaRocca 95	
2	Schedule A and any old surveys of the property	
3	you may have. If a copy of the deed Schedule A	
4	is not provided, please note that there will be a	
5	\$50 research charge.	
6	Q Do you know if you provided Gabriel E.	
7	Senor with a survey?	
8	A Yes.	
9	Q Which survey did you provide?	
10	A The one that's here, the	
11	Q Is it the one that we marked as 1-A?	
12	A I think. I'm not too sure if it was	
13	exactly that one.	
14	No, I don't remember. I think I	
15	marked one, I sent him one, but I don't remember	
16	exactly which one it was.	
17	Q Do you know how you sent it?	
18	A It was given with the, my	
19	authorization and deposit when I signed this, a	
20	document.	
21	MR. MENDELSOHN: We are going to	
22	demand that survey or any	
23	documentation that was provided to	
24	this company to complete this	
25	staking.	



Page	96
1	Flavio LaRocca 96
2	We will follow up in writing.
3	(REQUEST)
4	Q I want you to turn to D 24.
5	What was the purpose that you believed
6	of conducting this stakeout?
7	A To show us where the actual property
8	line was along East Street.
9	Q And do you see where it says for
10	professional services rendered in the middle of
11	the page?
12	A Yes.
13	Q And it says stakeout sketch email to
14	Flavio 9/10/09.
15	Do you remember receiving an email
16	regarding this?
17	A I don't remember the email but I
18	remember receiving the following, this document
19	here. This is what was given to me. It was an
20	actual paper copy that was given to me by the
21	person on the day of the survey, because I was
22	there when they were doing it.
23	MR. MENDELSOHN: We are going to
24	demand any correspondence with
25	Gabriel Senor and we will follow up



Page	97
1	Flavio LaRocca 97
2	in writing.
3	(REQUEST)
4	Q Now turning to the last page, D 25,
5	what is this?
6	A This is the sketch that the surveyor
7	who was there staking out the property gave me
8	upon completion of the survey.
9	Q What, if anything, did this say to
10	you?
11	A It showed me where the two reference
12	points were, that they had put a stake in the
13	ground and a cross on the concrete wall at the
14	corner of the property.
15	Q Now, is that at the front of the
16	property where the gate is?
17	A No, at the front of the property
18	along 5th Avenue where the evergreen trees are,
19	and then the back past the gate in the back right
20	corner.
21	Q But it's on the east side of your
22	property.
23	A Both points of east, yes.
24	Q So there is a stake somewhere you're
25	saying on the sidewalk there next to 5th Avenue?



Page 98	
1	Flavio LaRocca 98
2	A He actually put it right under the
3	shrubbery, the bushes.
4	Q Then there is another stake along
5	East Street.
6	A That's not a stake. On top of the
7	concrete there was a cross which they had then
8	painted with some orange-pink paint.
9	Q But this was done on the east side of
10	your property.
11	A Correct.
12	Q And that's the side that abuts East
13	Street.
14	A Correct.
15	Q What, if anything, did the stakes show
16	about your property?
17	A That where the fencing was was a
18	difference of about 10 inches or so from where
19	their markings were.
20	Q Meaning what?
21	A Well, when my encroachment was only
22	about this much over the property line.
23	MR. MENDELSOHN: For the record,
24	the witness is holding up his hands
25	about



Page 99	
1	Flavio LaRocca 99
2	A Ten inches or so.
3	Q So it's your testimony that where the
4	stakes were drawn out by Gabriel Senor, it showed
5	an encroachment from your property onto East
6	Street of only 10 inches?
7	A Correct.
8	Q What was the encroachment?
9	A The fencing post was over about
10	10 inches or so from where he put the marker.
11	Q And the top of the marker on the north
12	side, most northern marker was on the concrete
13	wall?
14	A Yes.
15	Q The part you're saying there is only
16	a 10-inch encroachment, is that an encroachment
17	onto East Street?
18	A Yes.
19	Q Other than these stakes that were put
20	in by this company depicted in Plaintiff's 10,
21	have you or your business ever commissioned any
22	other surveys or stakes at 436 5th Avenue?
23	A No.
24	Q Have you other than this, have you or
25	your business ever commissioned any other surveys



Page 100	
1	Flavio LaRocca 100
2	or stakes of the area surrounding 436 5th Avenue,
3	including East Street?
4	A Originally the area to the west going
5	up on 5th Avenue I had surveyed and staked because
6	I wanted to know where that area abutted to my
7	neighbor's area.
8	Q When was that done?
9	A Shortly after I purchased the
10	property.
11	Q So then in approximately 2001, 2?
12	A 2, 3.
13	Q 2, 3.
14	I'm now going to show you we will
15	make room Plaintiff's 11, which is a blow-up
16	of what Bates, a survey dated
17	MR. MENDELSOHN: This is just
18	for the record so the reporter has
19	it, December 8, 2014. And it's
20	Bates stamped Plaintiff 0008.
21	Q Can you, Mr. LaRocca, identify what
22	this is?
23	A Looks like a mapping out of all of
24	East Street skate park and the adjoining
25	properties onto East Place.



Page 101		
1		Flavio LaRocca 101
2	Q	Is it a survey?
3	A	Yes.
4	Q	Could you tell what date it was made?
5	A	December 8, 2014.
6	Q	Does this survey show your property
7	436 5th Ave	nue?
8	A	Yes.
9	Q	Could you put an X on there in green
10	where your	property is on 436 5th Avenue.
11		(Witness complies)
12	Q	Now, do you know what earlier you
13	testified y	ou're familiar with surveys.
14		Is that fair?
15	A	Yes.
16	Q	Do you know what the bold lines on a
17	survey show	?
18	А	Those are usually property lines or
19	borders.	
20	Q	Now, on your property 436 5th Avenue,
21	is there a	bold line there?
22	A	Yes.
23	Q	Now, your X that you drew in green
24	encompasses	an area that is outside of that bold
25	line.	



Page 102		
1		Flavio LaRocca 102
2		Is that fair?
3	A	Yes.
4	Q	I want you with the pink, can you
5	shade in th	e property that you encompass with the
6	green X tha	t is your stating is yours that is
7	outside of	that bold line.
8	А	You want me to shade it or just box
9	it?	
10	Q	You can shade it or just put lines.
11	However	
12		(Witness complies)
13		MR. MENDELSOHN: He's drawn a
14		box around that area with diagonal
15		lines.
16	Q	Now, would you agree with me that
17	that box wi	th diagonal lines is on the outside of
18	that bold b	order?
19	А	Correct.
20	Q	Currently what is inside of the pink
21	shaded area	?
22	А	Fencing and some shelving.
23	Q	Whose property is that?
24	А	My property.
25	Q	What shelving is it?



Page 103		
1		Flavio LaRocca 103
2	A	Metal shelving and wood shelving.
3	Q	Are there materials stored or anything
4	else stored	on that shelving?
5	A	Tools, some cones, silt fencing,
6	wheelbarrow	s, hand tools, shovels, rakes, pickax,
7	things like	that, brooms.
8	Q	Is it fair to say that Flavio
9	LaRocca & S	ons uses what is shaded in in that pink
10	area as its	own property?
11	A	Yes.
12	Q	What borders the pink shaded part of
13	this proper	ty?
14	A	On the inside
15	Q	Yes.
16	A	of that area?
17		There is some material bins and there
18	is parking	for a storage for bulk materials and
19	parking for	the equipment and trucks.
20	Q	And on the east side of that pink
21	shaded area	, what borders that?
22	A	Fenceline area?
23	Q	Yes.
24	A	Are you talking about here or here?
25	Q	I'm talking about just the pink



Page 104	
1	Flavio LaRocca 104
2	shaded area, what borders the most eastern pink
3	shade of that area?
4	A The eastern side, the gate.
5	Q The same sliding gate that we've been
6	speaking about and that was also shown on 1-A.
7	A Yes.
8	Q The concrete wall where the stake was
9	put in on the northern part of the property,
10	could you draw a blue circle around where that
11	stake is.
12	(Witness complies)
13	Q Now, could you draw a blue circle on
14	the southern side where the other stake is.
15	(Witness complies)
16	MR. MENDELSOHN: He's put two
17	blue dots on either side of the north
18	and south of the pink shaded area.
19	Q Now I want you to take the let's
20	do it in yellow.
21	The area, the Guglielmo, could you
22	put an X where that is, where the space where you
23	rented to put your materials.
24	(Witness complies)
25	MR. MENDELSOHN: He's marked an



Page 105	
1 1	Flavio LaRocca 105
2	X on a property that says "Now We
3	Are Formally Guglielmo Group, LLC."
4	Q Could you then draw a circle around
5	the parcel that we described.
6	A The parcel?
7	Q As defined in the Complaint.
8	(Witness complies)
9	MR. MENDELSOHN: He's drawn
10	
	yellow highlighted circle around the
11	parcel.
12	Q Now, you stated that there were cars
13	that sometimes park within the parcel.
14	Is that fair?
15	A Yes.
16	Q Are there also cars that sometimes
17	park across from the parcel abutting the Guglielmo
18	property and the PAB Landscaping property?
19	A Yes.
20	Q Could you draw and circle it in blue
21	where that parking is done.
22	(Witness complies)
23	A Circle it or, I mean, or just draw the
24	area? I mean
25	Q That's fine what you're doing.



Page 106		
1		Flavio LaRocca 106
2	А	Okay.
3	Q	Is it fair to say those blue areas
4	you've draw	n are located on East Street?
5	A	On the western side of East Street,
6	yes.	
7	Q	But they are within the border of
8	East Street	•
9	A	Correct.
10	Q	As shown on this survey.
11	A	Yes.
12	Q	Who parks in those blue areas?
13	A	Some of the workers from the other
14	companies,	as well as some of the neighbors from
15	East Place	and even Ashland.
16	Q	Does Flavio LaRocca & Sons ever park
17	or store an	y of its equipment or vehicles in those
18	blue areas?	
19	A	No.
20	Q	Does Flavio LaRocca & Sons ever store
21	or park any	of its vehicles in the area circled
22	in yellow?	
23	A	No.
24	Q	Has it ever?
25	A	No.



Page 107	
1	Flavio LaRocca 107
2	Q Now, earlier you testified that I
3	know Kathy is going to object to my use of the
4	word "work," so we will call it I'm going to
5	call it what I want.
6	Has Flavio LaRocca & Sons ever
7	performed any work within the yellow area?
8	MS. ZALANTIS: Objection as to
9	form.
10	You can answer.
11	A Yes.
12	Q What is the work that was performed
13	within the yellow area?
14	A Raking out the disturbed gravel that
15	was there from our snowplowing.
16	Q Tell me how disturbed gravel affects
17	that parcel.
18	A Okay. This area was left with gravel
19	on the ground from the contractor that was using
20	this whole area.
21	The contractor was using this for
22	equipment storage and this for employee parking,
23	Persico Contracting
24	MS. ZALANTIS: Can we just let
25	the record reflect that



Page 108	
1	Flavio LaRocca 108
2	MR. MENDELSOHN: I was just going
3	to do it.
4	MS. ZALANTIS: Go ahead.
5	MR. MENDELSOHN: You can go ahead
6	and finish what
7	A When they left it in that area, when
8	we plowed the road
9	Q So now stop.
10	MR. MENDELSOHN: For the record,
11	he has pointed to the part of the
12	survey that's marked now City of New
13	Rochelle to the south of the parcel,
14	and he's moving his finger northbound
15	on East Street.
16	A Correct.
17	MS. ZALANTIS: Could I just, just
18	to clarify for the record, I think he
19	indicated where it's depicted as now
20	and formerly City of New Rochelle as
21	where the contractor was storing
22	equipment
23	MR. MENDELSOHN: Yes.
24	MS. ZALANTIS: and materials.
25	And the yellow portion that you



Page 109	
1	Flavio LaRocca 109
2	circled with the yellow highlighter
3	was where the contractor was using as
4	a staging area; is that correct?
5	A No. That was employee parking for
6	that contractor, Persico contractor.
7	MS. ZALANTIS: Okay. Thank you.
8	MR. MENDELSOHN: Okay.
9	Q When was that?
10	A When they were using the area to build
11	the bridge in '02 or '03. Prior to the
12	construction of the skate park.
13	Q So we interrupted you.
14	How does the snowplowing affect the
15	yellow area?
16	A When we snowplowed this area, at
17	times, because it's a steep hill going down, our
18	trucks with the snow, depending on how much, or
19	ice, would skid off and scrape into the yellow
20	area where the gravel was at, and some of the
21	gravel would be pushed onto East Street and some
22	of the gravel would be piled up in mounds for the
23	snowplow.
24	MR. MENDELSOHN: For the record,
25	he moved his finger up East Street



Page 110	
1	Flavio LaRocca 110
2	north and then skipped his hand and
3	moved his hand into the yellow area
4	and came back out.
5	A Correct. Because in order for us to
6	gain entrance here where the gate was, no one
7	would ever plow this road, so we would plow it so
8	we could gain access.
9	Q When you're pointing, you're pointing
10	to an area that's outside of the boundary of East
11	Street.
12	Is it your testimony that your company
13	plows outside of East Street?
14	A I'm sorry. Excuse me. I
15	Q Does your company only plow East
16	Street or does it also plow property that's to the
17	east of East Street?
18	A They abut one another. So when you
19	have 6 inches or a foot of snow on the ground, you
20	can't tell where the line is.
21	Q So that yellow parcel is a certain
22	number of feet off of East Street.
23	Is that fair?
24	A Correct.
25	Q And it goes back into where Flowers



Page 111		
1		Flavio LaRocca 111
2	Park is.	
3		Is that fair?
4	А	Yes.
5	Q	In fact, Flowers Park comes right up
6	to East Str	eet right here, right?
7	А	Correct.
8	Q	And that includes the yellow circled
9	area, corre	ect?
10	А	Yes.
11		MS. ZALANTIS: Can I just take a
12		break for one moment before you ask
13		your next question?
14		MR. MENDELSOHN: Sure.
15		(Whereupon, a brief recess was
16		taken.)
17	Q	Mr. LaRocca, is there gravel on East
18	Street?	
19	А	On East Street, no.
20	Q	What sort of surface is East Street?
21	А	Blacktop.
22	Q	So when your plows come northbound on
23	East Street	as you've described, they are not
24	moving grav	rel onto the parcel, correct?
25	А	No.



Page 112		
1		Flavio LaRocca 112
2	Q	Meaning that is correct.
3	A	Correct.
4	Q	When your company does work on the
5	parcel, doe	s it use any equipment?
6		MS. ZALANTIS: Objection as to
7		form.
8	Q	Does it use any equipment.
9	А	Describe what kind of work you're
10	referring t	o.
11	Q	You earlier said that your company
12	does someth	ing with gravel on the parcel.
13		Is that fair?
14	А	Raking out the gravel, yes.
15	Q	Does it when it rakes out the gravel,
16	does it use	any equipment?
17	А	Yes.
18	Q	What sorts of equipment does it use?
19	А	A machine to rake out the high spots,
20	and then we	rake out by hand, and then a compactor
21	to stabiliz	e it.
22	Q	What sorts of machine is used to rake
23	out the hig	h spots?
24	A	Either a skid-steer or a payloader.
25	Q	And what sorts of equipment is used



Page 113	
1	Flavio LaRocca 113
2	to rake it out?
3	A Either a walk-behind or ride-on
4	tamper.
5	Q And what sorts of equipment are used
6	to compact it?
7	A That's to compact it. I'm sorry.
8	To rake it out is either shovels or
9	rakes.
10	Q Is it your testimony that the
11	material that's being raked out, is that material
12	that's already there, or is that material that's
13	brought there to the parcel?
14	A Material that was left there by the
15	previous contractor who was utilizing that area
16	as a staging area.
17	Q Has Flavio LaRocca & Sons ever
18	brought material to the parcel to place on the
19	parcel?
20	A No.
21	Q Has Flavio LaRocca ever removed
22	anything from the parcel?
23	A No.
24	Q Has Flavio LaRocca ever removed
25	anything from East Street?



Page 114		
1		Flavio LaRocca 114
2	А	No.
3	Q	I want you to look at Plaintiff's 3
4	which is Su	mmons and Complaint. So just have
5	that out.	
6		And then I also want you to take out
7	Plaintiff's	12, which has been marked and is the
8	Defendant's	Response to First Set of
9	Interrogato	ries and document demands by Plaintiff.
10		I want you to take a look at
11	Plaintiff's	12.
12		Do you recognizes this document?
13	A	(Reviewing)
14		Yes.
15	Q	Have you reviewed that document?
16	А	Yes.
17	Q	And were you involved in creating that
18	document?	
19	А	Yes.
20	Q	I want you to go to the last page of
21	Plaintiff's	12, and it is verification.
22		Whose signature appears on that page?
23	А	Mine.
24	Q	And prior to signing that, did you
25	read the co	ntents of what is in Plaintiff's 12?



Page 115	
1	Flavio LaRocca 115
2	A Yes.
3	Q Do you agree that the answers within
4	are true to the best of your knowledge?
5	A Yes.
6	Q I want you to turn to Page 4 of the
7	Plaintiff's 12.
8	A Page 4.
9	Q Do you see there there is a list at
10	the top of the page, there is a list of people
11	that are there.
12	A Yes.
13	Q And this is in response to a question
14	to identify all persons having knowledge of the
15	facts relevant to the subject matter of the
16	Complaint, Answer, affirmative defense and
17	counterclaims, and describe in detail the nature
18	and extent of this knowledge.
19	Is that fair?
20	A Yes.
21	Q What knowledge does Benny Rivera have
22	regarding this action?
23	A He is one of the property owners
24	directly across from Flowers Park, so he may have
25	knowledge that none of my vehicles were ever



Page 116	
1	Flavio LaRocca 116
2	parked there, and that we haven't done any work
3	besides just raking the ground as we commonly did
4	every time we plowed the road.
5	Q What about Patrick Bongo?
6	A Same.
7	Q How about Jeffrey Coleman?
8	A He is one of the persons who I met
9	regarding the staking out of this property with
10	Mr. Vacca.
11	Q Do you have any pictures of the stakes
12	that were put in in 2009?
13	A Yes.
14	Q Were they produced?
15	A Yes.
16	MR. MENDELSOHN: Kathy, do you
17	know where they are in the
18	production?
19	MS. ZALANTIS: Not offhand, but
20	there is a picture.
21	Do you want this on the record?
22	There was a picture I believe of
23	the orange X that he testified to
24	before that was produced previously.
25	MR. MENDELSOHN: Okay. Off the



Page	117		
1			Flavio LaRocca 117
2			record.
3			(Whereupon, a discussion was
4			held off the record.)
5			MR. MENDELSOHN: I'm going to
6			demand any photographs of the stakes
7			from Gabriel Senor.
8			I know that counsel is
9			representing to me in the production,
10			and I take her at her word, but any
11			additional ones.
12			If they are only showing one
13			stake, then we want photos of the
14			others as well.
15	(REQUEST)		
16		Q	Going on.
17			What about a person named Felipe Maya
18	Galind	la, Ma	artin Sanchez?
19		A	Yes.
20		Q	Who is that?
21		A	That's two different people.
22		Q	Who are those two people?
23			And we will start with Felipe Maya
24	Galind	la.	
25		А	My employee.



Page 118		
1		Flavio LaRocca 118
2	Q	What does Felipe Maya Galinda know
3	about this a	action?
4	А	He was one of the people doing the
5	repair or th	ne regrading of the gravel there at
6	Flowers Par	ς.
7	Q	So he is one of the people that has
8	worked on th	ne parcel.
9	А	Has raked the gravel at Flowers Park,
10	yes.	
11	Q	Has Felipe Maya approximately how
12	many times h	nas he done that?
13	А	A few times. I don't remember
14	exactly.	
15	Q	More than five?
16	А	I don't know if it's more than five.
17	I really car	n't say.
18	Q	What about Martin Sanchez?
19	А	Same.
20	Q	And has he also worked on the parcel?
21	А	Yes.
22	Q	Has he been involved in what you're
23	calling the	raking of the parcel?
24	А	Yes.
25	Q	Is he an employee of your company?



_ 110	
Page 119	
1	Flavio LaRocca 119
2	A Yes.
3	Q Have either one of them operated any
4	of the machinery on the parcel that you
5	described?
6	A Yes.
7	Q Both of them or one of them?
8	A No, one of them.
9	Q Which one has operated?
10	A Felipe.
11	Q Who gave them their instructions about
12	the work to do on the parcel?
13	A I did.
14	Q What were those instructions?
15	A To rake out the disturbed area of the
16	gravel and recompact it.
17	Q What is the reason that Flavio
18	LaRocca & Sons does that rake-out instead of any
19	of the other property owners?
20	A Because we are the ones who disturbed
21	it by plowing to get in to where we were keeping
22	our pieces of equipment down at the Guglielmo
23	yard.
24	Q When did the raking out of the parcel
25	start, when did that first happen?



Page 120	
1	Flavio LaRocca 120
2	A After the first winter that we were
3	down in the parcel, in the Guglielmo's property.
4	Q When was that?
5	A I'm going to say around '12.
6	Q 2012?
7	A 2012 or '13, one of those two. I
8	don't remember exactly.
9	Q Prior to 2012 and '13, who, if
10	anybody, snowplowed that area?
11	A I don't know. I didn't have the need
12	to get into that parcel so I never went down
13	there. Guglielmo, not the parcel, so we don't get
14	it confused.
15	Q Who snowplows it now?
16	A I don't know. This past winter we
17	didn't get much snow, but the previous winter I
18	didn't see anybody snowplowing it.
19	Q Now I want you to go to Page 4. You
20	see there is a request number 2.
21	A Okay.
22	Q And I want you to, it refers to your
23	response. It refers to a exhibit of the Summons
24	and Complaint.
25	Is that fair?



Page 121		
1		Flavio LaRocca 121
2	A	Yes.
3	Q	I'd like you to take out that
4	exhibit.	
5		So here it's referring to 1-A. So if
6	you could -	or, excuse me. It's referring to
7	Exhibit 1-A	. I marked it as 3-A here. So it's
8	attached to	the Summons and Complaint.
9	A	Oh, okay.
10		MR. MENDELSOHN: So for the
11		record, 3-A is Exhibit 1, Summons
12		and Complaint, and it's seven pages.
13	Q	Have you seen these photographs that
14	are in those	e pages before?
15	A	Yes.
16	Q	I want you to turn to Page 2 of 3-A.
17	So it's the	first picture.
18		What does this photograph show?
19	А	It shows an arrow, some men working
20	with som	e of my employees raking the gravel,
21	some of my	trucks there, and an arrow with the
22	name Flavio	LaRocca on it and pointing to an
23	individual.	
24	Q	Is that individual that the arrow is
25	pointing to	you?



Page 122	
1	Flavio LaRocca 122
2	A I can't say for certainty because I
3	don't recall seeing anybody taking pictures or
4	being there when I gave the instructions to my
5	employees. So I'm going to say no.
6	Q That's not my question.
7	Looking at this photograph, and this
8	is the first photograph in 3-A, is that you that
9	the arrow is pointing to?
10	A No.
11	Q Is there a truck next to the person
12	that the arrow is pointing to?
13	A Yes.
14	Q Does the truck have any writing on
15	it?
16	A Yes.
17	Q What does it say?
18	A F. LaRocca & Sons.
19	Q Is that truck of your company's?
20	A Yes.
21	Q What sort of truck is that based on
22	what you've told me earlier?
23	A To the left or to the right?
24	Q If you're looking at the photograph,
25	to the left.



Page 123	
1	Flavio LaRocca 123
2	A To the left, that is a dump truck with
3	some tools on the sides.
4	Q And is there another truck that
5	belongs to your business in this photograph as
6	well?
7	A Yes.
8	Q And where is that?
9	A On the right side.
10	Q Is that the other yellow truck in the
11	photo?
12	A The brownish-black truck, yes.
13	Q Is it the one that has a little
14	driller on the back of it?
15	A Correct.
16	Q What kind of truck is that?
17	A That's a pickup with a trailer which
18	brings around our compacting equipment.
19	Q Now, who, do you see that there are
20	other people depicted in this photograph as well?
21	A Yes.
22	Q There is the person that the arrow is
23	pointing to. We will call that person the person
24	in white.
25	Do you see that person there?



Page 124			
1		Flavio LaRocca	124
2	А	Yes.	
3	Q	There is a person standing next to	
4	him in blue		
5		Do you know who that person is?	
6	А	It's a little far away. I can't	
7	tell but it	looks like possibly one of my	
8	employees.		
9	Q	Which one?	
10	A	I can't tell. It's too far away.	
11	Q	There is two men over on the right	
12	side of the	photograph.	
13		Do you see them?	
14	A	Yes.	
15	Q	Do you recognize either of them?	
16	A	One of them, yes.	
17	Q	Which one do you recognize?	
18	A	The one furthest to the right.	
19	Q	Who is that?	
20	A	Sanchez. Martine Sanchez.	
21	Q	What is Martin Sanchez or Martine	
22	Sanchez doi:	ng in the photograph?	
23	A	Raking the gravel.	
24	Q	What is the need for the truck on	the
25	left in thi	s photograph?	



r		
Page 125		
1		Flavio LaRocca 125
2	А	It carries our tools and our wheel-
3	barrows.	
4	Q	Does it also carry gravel?
5	А	It can.
6	Q	Has it ever carried gravel?
7	А	For other jobs, yes.
8	Q	Was this gravel that's being raked
9	out, is tha	at what was existing or is that new?
10	А	That's existing and that's not
11	gravel.	
12	Q	What is it?
13	А	That's more road millings mixed with
14	gravel.	
15	Q	Do you recall when this was taken?
16	А	I wasn't there, so no.
17	Q	Is there any snow on the ground?
18	А	At this time, no.
19	Q	Do you see any snow on the picture?
20	А	No.
21	Q	Would it surprise you if this photo
22	was taken i	n May?
23	А	May have been. I don't know.
24	Q	What would be the need to rake out
25	the parcel	in May if there was no snow on the



Page 126	
1	Flavio LaRocca 126
2	ground?
3	A Our snow season goes through April.
4	We don't rake out every time it snows. After
5	several snows or after the season, even when they
6	plow our customers who have driveways, we rake it
7	out at the end of the snow season just at the
8	beginning of spring. So that's the only
9	explanation that I can give.
10	Q So it's fair to say you don't only
11	rake it out just after the plows go by.
12	A You can we almost never rake out
13	just after the plows go by because with the snow
14	on the ground, you can't see what is disturbed
15	until the snow melts.
16	Q What times of year do you usually
17	rake?
18	A April, May.
19	Q Do you ever rake in any other months?
20	A Just, like this year has been a dry
21	year for snow. If we have had an earlier snow
22	and a customer may request us to rake it out
23	sooner, we might go sooner, but usually we do it
24	at the end of the season.
25	Q When you say "a customer," who is the



Page 127	
rage 127 1	Flavio LaRocca 127
2	
	customer who would request?
3	A Some of the clients that have
4	driveways that have gravel.
5	Q No. I'm just talking about the
6	parcel.
7	A No. You asked me a question in
8	general when did you rake it out.
9	Q But I'm referring my questions here
10	are only regarding the parcel.
11	A Okay. So no, in this case we would
12	wait until later in the year to do it just once.
13	Q So how many times per year do you rake
14	out the parcel?
15	A Once or twice.
16	Q And when does that start, when is the
17	first rake-out done?
18	A Towards the end of the snow season.
19	Q And your testimony is that's April or
20	May.
21	A Correct.
22	Q When is the second rake-out done?
23	A Depends if it's needed or not.
24	Sometimes only once is sufficient.
25	Q Would it be, the rake-out be over the



Page 128	
1	Flavio LaRocca 128
2	summer, the fall, or winter?
3	A No, there is no need, because we are
4	not plowing that area in those months.
5	Q I want you to look at your request to
6	answer. And if you could see there, can you start
7	reading where it says Exhibit 1-A.
8	A I'm sorry. Where? Okay. Yeah.
9	Page 4 still?
10	Q Yes. Yes.
11	A Okay.
12	Q So Exhibit 1-A is referring to this
13	first photograph.
14	Would you agree?
15	A Yes.
16	Q So can you read that first sentence
17	there.
18	A Depicted are now fenced off area near
19	Flowers Park that had been used at time of the
20	photograph was taken and for many years before
21	and even months after by the neighboring property
22	owners, Benny's Tree Service and PAB Paving, for
23	parking of their employees' vehicles.
24	Q Now I want to stop there.
25	This is referring to the parcel,



Page 129			
1		Flavio LaRocca	129
2	correct?		
3	А	Yes.	
4	Q	How do you know that Benny's Tree	
5	Service and	PAB used it for parking?	
6	А	Well, the pictures that you have	
7	brought show	w this to me.	
8	Q	And you're able to identify cars in	1
9	those pictur	res as PAB and Benny's that are park	xed
10	in the parce	el?	
11	А	Yes. Right from the following	
12	pictures that	at you have here in the exhibits sho	W
13	that those a	are, not one of them is my employees	s '
14	vehicles, no	ot one of them is not one of my	
15	trucks.		
16	Q	We will get to those, but my questi	on
17	is very simp	ple.	
18		Would you agree with me it's differ	rent
19	to say that	none of them are your cars versus	
20	saying they	are somebody else's?	
21	А	Okay.	
22	Q	Could you agree with that?	
23	А	Sure.	
24	Q	Have you been able or have you	
25	witnessed Be	enny's employees or PAB's employees	



Page 130	
1	Flavio LaRocca 130
2	parking in the parcel?
3	A Ever since this issue came up I've
4	been paying more attention to it, yes.
5	Q And you've seen their vehicles parked
6	in the parcel?
7	A Yes.
8	Q When?
9	A After and from when these pictures and
10	after that time they were parked there.
11	Q Have you ever had any conversations
12	with Benny's, any employees or Benny himself, or
13	PAB or any of its employees about parking in the
14	parcel?
15	A No.
16	Q Would parking in the parcel and
17	driving off disturb the gravel?
18	A Not as much as the snow plow. Maybe
19	very slightly.
20	Q So it's your testimony that driving
21	on the gravel and on and off the gravel to park
22	and unpark would do less disturbance to the parcel
23	than snow plowing East Street.
24	A Correct.
25	Q So have you ever spoken with Benny or



Page 131	
1	Flavio LaRocca 131
2	anybody from Benny's or PAB about parking on the
3	parcel?
4	A No.
5	Q Have you ever asked them to rake the
6	parcel after they parked on it?
7	A No.
8	Q Have they ever raked the parcel after
9	they parked on it?
10	A I don't know.
11	Q Have you ever witnessed anybody other
12	than Flavio LaRocca & Sons raking the parcel?
13	A I've seen the parks and rec do work
14	there from time to time, personnel from the City.
15	Q When was that?
16	A Before and even during, even now.
17	Q What sorts of work have you seen parks
18	and rec do to this parcel?
19	A They go and pick up the garbage that's
20	dumped there. There is bottles and other things
21	that either the kids or other people passing by
22	throw there.
23	They cut down, weed whacked some of
24	the vegetation. Things like that, maintenance
25	work.



Page 132	
1	Flavio LaRocca 132
2	Q You've seen members of the City take
3	down vegetations on the parcel?
4	A Yeah. With weed whackers. They go
5	there and cut things down there.
6	Q When was that?
7	A Last summer, throughout the summer.
8	Q Is this before or after the fence was
9	put up?
10	A This is now, this past year, 2019.
11	That's after the fence was put up.
12	Q Before the fence was put up, have you
13	seen the City do anything to the parcel?
14	A Yeah. They would come there and even
15	park their trucks and trailers when they would
16	work on the skate park before that area was fenced
17	off.
18	Q Was that, we are talking about in
19	2006, or up and through now?
20	A Up and through. Once the skate park
21	was put up and that area was already graded by
22	the previous contractor, they would put up with
23	their trucks and trailers and park there and take
24	the equipment off.
25	Even when they would bring in their



Page 133		
1	Flavio LaRocca 133	
2	additional equipment for the skate park, they	
3	would back up right over the parcel, back it into	
4	the gate, and either discard it there or sometimes	
5	they would drive their trucks right into the	
6	park.	
7	Q Now, Benny and PAB's employees, when	
8	do they park there, all year long?	
9	A No.	
10	Q I'm talking prior to the fence being	
11	put up, and I'm specifically talking to about	
12	2014, '15 and '16.	
13	A Yeah.	
14	Q Would they park there all year long	
15	in the parcel?	
16	A No. PAB and Benny and even Guglielmo,	
17	they closed down for the winter months once it	
18	got cold and starts snowing.	
19	Q So when, approximately, do their	
20	businesses open up?	
21	A Around this time, March time.	
22	Q So is it fair to say they would park	
23	in the parcel in March during those years?	
24	A March through maybe December.	
25	Q And did they ever offer to help rake	



Page 134	
1	Flavio LaRocca 134
2	the parcel?
3	A No.
4	Q I want you to read the next sentence
5	in the interrogatory, please.
6	A As the City fails to maintain or
7	repair East Street even though it is a public
8	street, the abutting landowners are forced to
9	maintain and repair East Street and the area
10	surrounding the street where debris is often
11	dumped even though they have no legal obligation
12	to do so.
13	Q Okay. Stop.
14	You just testified that the City would
15	come and pick up debris around the parcel.
16	Is that fair?
17	A No, just in the parcel.
18	Q And so just speaking about the parcel,
19	it's your testimony that they picked up the debris
20	in the parcel.
21	A Occasionally, yes.
22	MS. ZALANTIS: Off the record for
23	a minute.
24	(Whereupon, a lunch recess was
25	taken.)



Page	135
1	Flavio LaRocca 135
2	BY MR. MENDELSOHN:
3	Q Mr. LaRocca, I just want to be clear
4	about the, what you're calling the raking that
5	you've done to the parcel.
6	When, approximately, did you start
7	raking, was that in 2012 about?
8	A It was the first winter after I was
9	in Guglielmo's yard. I don't know if it was 2012
10	or 2013.
11	Q When did the raking stop?
12	A We only raked it once or twice a year
13	at most, and that happened towards the end and
14	stopped towards the end of the snow season, around
15	April, May.
16	Q Is that of 2000 well, when,
17	approximately, would the fence get put up?
18	A When was it, I don't remember exactly
19	the year. When this whole issue came up. I
20	mean, what is it, '15, '16, '17, I don't know
21	exactly what it is.
22	Q Is it fair to say the raking was once
23	or twice a year from whenever you started renting
24	from Mr. Guglielmo up and until the fence was put
25	up?



Page 136	
1	Flavio LaRocca 136
2	A Actually when this happened, when the,
3	my, when this happened.
4	Q When the action started.
5	A Yes, when the action started.
6	Q I want to now draw your attention to
7	Page 5 of Plaintiff's 12, the interrogatories.
8	And then I want you to turn to the second picture
9	in Plaintiff's 3-A.
10	A Okay.
11	Q So what is depicted in this photo-
12	graph?
13	A Two of my men raking, my employees
14	raking the so-called gravel or millings, whatever
15	was there, with compacting, with a ride-on
16	compactor.
17	Q Who are the men depicted?
18	A One of them is Martine Sanchez and the
19	other two I can't remember. I can't see them from
20	their back.
21	Q Who is Martine Sanchez in this photo?
22	A I think the one with the yellow shirt.
23	Q Is that the one in the middle?
24	A Yes.
25	Q What is in the two workers' hands that



Page 137	
1	Flavio LaRocca 137
2	are standing on the ground?
3	A Rakes.
4	Q What is your employees riding on, on
5	the left side of the photograph?
6	A That's the compaction, the compactor,
7	the ride-on compactor.
8	Q What is that material that's being
9	raked?
10	A That's millings mixed with gravel.
11	Q How do you know that?
12	A Well, gravel is usually lighter in
13	color, and that's got blacktop into it, it's so
14	dark, and that's what was there on the ground,
15	and when the plows go by, it gets disturbed and
16	we just rake it out and just compact it. That's
17	what we did.
18	Q After it's compacted does anything
19	else happen, or does Flavio LaRocca & Sons do
20	anything else to that area?
21	A No.
22	Q I want you to take a look at Page 5
23	in Plaintiff's 12.
24	Do you see where it says Exhibit 1-B?
25	A Yes.



Page 138		
1		Flavio LaRocca 138
2	Q	Part of your response reads, could
3	you read th	ne second sentence of that response?
4	А	Starting from where the two men?
5	Q	Also depicted.
6	А	Also depicted is a motorized
7	compacting	roller used
8	Q	I'm sorry. Above that. So
9	А	Two men.
10	Q	I will read it.
11		It says Exhibit 1-B depicts the same
12	parking area described in response to 1-A.	
13		Is that the premises?
14	А	The parcel you're talking about.
15	Q	Excuse me. The parcel.
16		Is what you defined as the parking
17	area also t	the parcel?
18	А	Yes.
19	Q	Also depicted are piles of mulch and
20	upon inform	nation and belief were placed in the
21	parking are	ea by Benny Tree Service and/or PAB
22	Paving.	
23	А	Yes.
24	Q	What is your basis for belief for that
25	statement?	



Page 139	
1	Flavio LaRocca 139
2	A Well, because those were already
3	there before me. And quite frankly, that's not
4	even mulch. Maybe that's the wrong term being
5	used. Ground-up wood chips and that's it. Mulch
6	is colorized. It's brown, red or black.
7	Q As you sit here today, do you know if
8	that is Benny Tree Services or PAB Paving's wood
9	chips?
10	A I can't say because it was already
11	there. You can see even from this picture the
12	tire tracks going over the gravel prior to us
13	raking it. So when we got there, that was
14	already dumped there. I mean, by all means it
15	could have been even the parks area that dumped
16	that.
17	Q Where are you seeing the tire tracks?
18	A Right here. That's tire tracks that
19	comes across the gravel and my men are working
20	from down. These tire tracks, they have not raked
21	that area yet, and you see the tire tracks over
22	the gravel or the millings, whatever you want to
23	call it.
24	Q The way that tire track is there, that
25	tire track would be pointed south on East Street;



Page 140			
1	Flavio LaRocca 140		
2	is that correct?		
3	A Correct.		
4	Q And south would be towards 5th Avenue.		
5	A Correct.		
6	Q Now going to the third picture.		
7	Do you see that?		
8	A Yes.		
9	Q What is in this photograph?		
10	A I see a few vehicles parked on the		
11	right side and you're looking down towards the		
12	Flowers Park area. Or the parcel. Whatever you		
13	wants to call it. And you see one of my pay-		
14	loaders just flattening out the so-called gravel		
15	or millings.		
16	Q So what is the payloader's		
17	responsibility in relation to the compactor, what		
18	is the difference?		
19	A Well, the compactor cannot go over		
20	the aggregate if it's not smooth because it makes		
21	it tip over or creates an uneven surface.		
22	The raking by hand is too laborsome		
23	to rake high spots that the plows have piled up.		
24	So the payloader as you see it with		
25	the bucket down dragged it backwards, flattens		



Page 141	
1	Flavio LaRocca 141
2	out the high spot, and you smooth out lightly
3	with the rake prior to doing the compactor.
4	Q Is this your payloader?
5	A Yes, it is.
6	Q How much time from the beginning to
7	the end on a day like this that's depicted in
8	those photos would it take to fully finish your
9	work on the parcel?
10	A I don't know. As you can see, there
11	were vehicles parked there. If there were
12	vehicles in the area where they were working
13	prior to that, they probably had to wait for the
14	vehicles to move. I don't know. I can't say.
15	Q Well, approximately how long from
16	beginning to end would it take?
17	A A couple of hours.
18	Q Is that more than two hours?
19	A Two to four.
20	Q Do you know whose vehicles those are
21	parked on the right side of this photograph?
22	A These here, I don't recall.
23	Q So in your response to 1-C, you
24	state: Also depicted are vehicles in the parking
25	area that upon information and belief are owned



Page 142	
1	Flavio LaRocca 142
2	by employees of Benny Tree Servicing and/or PAB
3	Paving.
4	Are you now saying that you're not
5	sure whose vehicles they are?
6	A I'm not sure which one of those are,
7	but I haven't seen those vehicles around since
8	then, or after that time.
9	Q If you can turn to the next picture,
10	we are still in Plaintiff's 3-A.
11	What is depicted in this photograph?
12	A It's another view of the parcel
13	further down looking up towards Flowers Park
14	towards 5th Avenue.
15	Q Now, do these pictures in 3-A look to
16	you to having been taken on the same day?
17	A I think so.
18	Q What is on the back or what is inside
19	of that truck that's depicted in this photograph,
20	what is in the cab?
21	A In the pickup truck?
22	Q Yes.
23	A Looks like it's some safety cones and
24	hand tools.
25	Q What is on the trailer?



Page 143		
1		Flavio LaRocca 143
2	A	On the trailer it has rakes, and then
3	the tire an	d then the trailer, and that's it.
4	Q	Is there anything underneath the hand
5	tools there	??
6	A	The hand tools?
7	Q	Yes.
8	А	Where?
9	Q	On the trailer.
10	А	On the trailer? That storage area
11	where we keep our chains to tie down the trailer	
12	and the straps.	
13	Q	What is the best weather condition to
14	do this work?	
15	А	Best weather condition, as long as
16	the ground	is not frozen and there isn't anything
17	obstructing	the area.
18	Q	Is it okay to do it when it's wet on
19	the ground?	
20	A	Yes.
21	Q	Is there a reason you would choose to
22	do it when	it's wet on the ground?
23	A	No, no reason. You could do it either
24	when it's d	lry or wet.
25	Q	Moving to the next photograph. This



Page 144		
1		Flavio LaRocca 144
2	is now the	fifth photograph in 3-A.
3		What is depicted here, if you know?
4	A	Looks like wood chips dumped.
5	Q	Are those the wood chips that you say
6	are not mul	ch?
7	A	Correct.
8	Q	But you don't know whose wood chips
9	those are.	
10	A	Correct.
11	Q	How long were they there for?
12	A	I don't know.
13	Q	Do you remember when you first saw
14	these piles	?
15	A	They were already there prior to us
16	doing the raking work so I don't know. I don't	
17	park in that area so I don't pay attention to	
18	when that's	put there.
19	Q	Were they there all winter?
20	A	I can't say. I don't know.
21	Q	Who drives the plows?
22	A	Either my employees or myself.
23	Q	Do you ever plow East Street or did
24	you plow Ea	st Street between 2012 and 2016?
25	A	On occasion.



Page 145			
1		Flavio LaRocca	145
2	Q	When you were plowing, did you ever	r
3	have occasi	on to see those piles of wood chips?	?
4	А	No.	
5	Q	Have you seen those piles of wood	
6	chips other	than in these photographs?	
7	А	No.	
8	Q	On the day in question when these	
9	photos were	taken, it's your testimony that you	٦
10	were not pr	esent, correct?	
11	A	Correct.	
12	Q	You can put Plaintiff's 3-A aside.	
13		I want you to turn to page number	7
14	of Plaintif	f's 12.	
15		I'm still a little confused as to t	the
16	snow plowin	g, how it disturbs the gravel.	
17		How wide is the parcel?	
18	A	I don't know precisely how wide.	
19	Q	Is it more than 10 feet?	
20	A	Yes.	
21	Q	Is it more than 20 feet?	
22	A	I don't know. I never measured it	•
23	Q	How deep is it off of East Street,	
24	meaning if	you were walking from East Street to)
25	the back of	the parcel, approximately how many	



Page 146	
1	Flavio LaRocca 146
2	feet is it?
3	A The parcel goes up in slope, doesn't
4	go down.
5	Q Sure. But how many, approximately
6	how many feet is it?
7	A On the upper area it's level, and as
8	you go down it's a little higher, because the
9	road East Street goes down and the parcel is a
10	little higher.
11	Q But if you were standing, if you could
12	look at the second page, the second picture in
13	3-A.
14	A Which one is that, the one with the
15	compaction machine?
16	Q Yes.
17	If you were standing on the curb or
18	on the side of East Street, and walked from East
19	Street to the piles of mulch or the piles of wood
20	chips as you called them, how many feet is that?
21	MS. ZALANTIS: Objection.
22	Are you saying the side of East
23	Street? Where?
24	MR. MENDELSOHN: Withdrawn.
25	Q Can you see on this photograph where



Page 147		
1	Flavio LaRocca 147	
2	East Street ends?	
3	A I'm assuming you're referring to the	
4	paved area?	
5	Q I'm not. My testimony doesn't matter,	
6	but can you tell on this photo where East Street	
7	ends?	
8	A No.	
9	Q Do you see the part of the photograph	
10	where the what you're calling the mixture meets	
11	the asphalt?	
12	A Yes.	
13	Q From that, if you were standing on	
14	that area and walked to these piles of wood chips	
15	in the back, approximately how many feet is that?	
16	A In length or height or width?	
17	Q How many feet is it from that part	
18	where the mixture meets the asphalt to the wood	
19	chips?	
20	A Maybe about 15 feet eyeballing it?	
21	Q When you plow or when your employees	
22	plow East Street, do the plows go up onto the	
23	parcel?	
24	A No.	
25	Q Okay. You can put that aside. You	



Page 148		
1		Flavio LaRocca 148
2	can put the	interrogatories aside.
3		I'm now going to show you what's
4	marked as Pi	laintiff's 13, which is a video that's
5	been produce	ed in discovery to counsel. And I'm
6	going to pla	ay the video.
7		I'm going to ask if you watch it all
8	the way one	time through and then we will talk.
9	Okay?	
10	А	Um-hm.
11		(Video plays)
12	Q	What is Talk of the Sound?
13	А	I don't know.
14	Q	Have you ever heard of Talk of the
15	Sound?	
16	А	Just through this action.
17	Q	So prior to this action you've never
18	heard of Tal	lk of the Sound.
19	А	Correct.
20	Q	Prior to this action have you ever
21	heard of sor	mebody by the name of Bob Cox?
22	А	No.
23	Q	Have you ever met somebody by the name
24	of Bob Cox?	
25	А	Never.



Page 149		
1		Flavio LaRocca 149
2	Q	Have you ever had any conversations
3	with somebo	dy named Bob Cox?
4	A	Not that I recall, no.
5	Q	Do you know if your wife has?
6	A	I don't think so.
7	Q	Have you seen this video prior to
8	today?	
9	A	Yes.
10	Q	When did you last see it?
11	A	A day or two ago in preparation for
12	some of the	questions for this.
13	Q	Prior to this action, have you seen
14	this video?	
15	A	I think I seen it once after it was
16	published a	nd after this action. No, not prior
17	to this act	ion, no.
18	Q	I'm pausing it on second ten of this
19	video.	
20		Is it fair to say that this video
21	seems to be	taken on the same day as those photo-
22	graphs in E	xhibit 3-A? If you know.
23	A	I don't know.
24	Q	Does it look like the same day?
25	A	Some of the pictures do but I can't



Page 150	
1	Flavio LaRocca 150
2	say for certainty.
3	Q What is depicted in this still frame
4	at 10 seconds in, what is depicted here?
5	A I see a loader and a pickup with a
6	trailer and a couple of guys raking the material.
7	Q Turning to Plaintiff's 3-A, I want
8	you to specifically turn to photo 3.
9	A Okay.
10	Q Was the video in this picture taken
11	on the same day?
12	MS. ZALANTIS: Objection as to
13	form.
14	A I can't say. The video looks like
15	there is more wood on the ground. The picture
16	here seems drier.
17	Q Is that loader the same loader that's
18	depicted on 3-A?
19	A Yes.
20	Q Are those wood chips the same wood
21	chips that are depicted in 3-A?
22	A It looks to be.
23	Q And that vehicle in the back, the
24	brownish vehicle that you described earlier in
25	3-A, is that the same vehicle that seems to be in



Page 151	
1	Flavio LaRocca 151
2	the back here at 10 seconds into this video?
3	A Seems to be.
4	Q Do you see I'm stopped at 17
5	seconds into the video now.
6	Do you see a vehicle on the left-hand
7	side of the screen?
8	A Yes.
9	Q Is that one of Flavio LaRocca & Sons'
10	vehicles?
11	A Yes.
12	Q Is that the same vehicle that's
13	depicted on picture 3-A?
14	A Seems like a portion of it.
15	Q When you say "a portion of it," it
16	seems like a portion of the same vehicle?
17	A Yes.
18	Q Now do you see an individual in white
19	on the video at 17 seconds and who is standing on
20	the left-hand side of the frame?
21	A Are you talking about in the back by
22	those two cars?
23	Q In front of the two cars, yes.
24	A Okay. Yes.
25	Q Do you see a person talking to him?



Page 152		
1		Flavio LaRocca 152
2	А	Yes.
3	Q	Is that also depicted in 3-A?
4	А	Different angles but seems like it.
5	Q	Who is that person in white on the
6	video?	
7	А	I can't tell.
8	Q	Now stopped at 20 seconds in, can you
9	tell who the	e individual is in white now?
10	А	No. So far back I can't tell.
11	Q	Who are the workers on frame 20
12	seconds?	
13	А	On the right?
14	Q	Yes.
15	А	One of them looks like Martine
16	Sanchez, and	d the other one I don't recall. He's
17	not an emplo	oyee of ours at this time.
18	Q	When you look at frame or picture 3-A,
19	are those th	he same workers that are depicted on
20	the right-ha	and side?
21	А	Yes.
22	Q	Stopped at 26 seconds in.
23		Do you see there is a piece of equip-
24	ment at the	top?
25	А	Yes.



r		
Page 153		
1		Flavio LaRocca 153
2	Q	What is that?
3	А	That is our, the compactor roller.
4	Q	Is that the same compactor roller
5	that's pict	ured in the second picture of 3-A?
6	А	Yes.
7		MS. ZALANTIS: 3-A?
8		MR. MENDELSOHN: The second
9		picture in 3-A.
10	Q	Mr. LaRocca, do you speak Spanish?
11	А	Yes.
12	Q	I'm going to start playing the video
13	at 38 secon	ds in, and I think you're going to hear
14	one of the	people you've identified as one of your
15	workers say	something.
16		And if you could listen and tell me
17	what he say	rs, please.
18		(Video plays)
19	Q	And I've stopped it at forty-five.
20		Could you tell what was said?
21	А	Yeah. He was asking somebody if they
22	were going	to get the box van.
23	Q	What is a box van?
24	А	Box van. It's a van with a box.
25	Q	What does a box van do?



Page	154		
1		Flavio LaRocca 154	
2	А	It carries tools.	
3	Q	And what would be the reason that one	
4	of your em	ployees would need a box van on this	
5	job?		
6	А	Maybe there might have been a tool	
7	that they	didn't have with them that they needed.	
8	Q	Do you know who he was speaking to?	
9	А	No.	
10	Q	Do you know who that employee was?	
11	А	I just remember his first name, Hugo.	
12	I don't remember his last name.		
13		MR. MENDELSOHN: I demand	
14		production of Hugo's last name.	
15	(REQUEST)		
16	Q	Is Hugo still an employee of yours?	
17	А	No.	
18	Q	When did he cease being an employee?	
19	А	Let's see. He went back home a	
20	couple of	years ago I think, two or three years	
21	ago.		
22	Q	Do you know if he was still in the	
23	country?		
24	А	No.	
25	Q	Meaning he is or he's not?	



Page 155		
1		Flavio LaRocca 155
2	A Las	t I heard he went back home to
3	Mexico.	
4		MR. MENDELSOHN: I still demand
5	his	last name.
6		(Video plays)
7	Q I'v	e stopped at 49, second 49.
8	Can	you tell who those two workers are
9	that are depict	ed there?
10	A The	one in the front looks like
11	Martine Sanchez	
12	Q And	the one in the back?
13	A The	one in the back I don't recall.
14	Q Is	it one of your employees?
15	A It	doesn't look like one of my
16	employees. I j	ust don't recall the face. I can't
17	see from that for	ar away.
18	Q If	it is one of your employees, would
19	Martin Sanchez	know who it was?
20	A He	should.
21		(Video plays)
22	Q I'v	e stopped it at one minute 50
23	seconds in.	
24	The	re is a gentleman walking a wheel-
25	barrow on the s	treet.



Page 156			
1		Flavio LaRocca 15	56
2		Do you know who that is?	
3	A	I can't tell.	
4	Q	Is it one of your employees?	
5	A	I don't think so.	
6	Q	What location is he in front of at	
7	1 minute 50	seconds in this video?	
8	A	That's right between PAB's property	
9	and my prop	erty.	
10	Q	Is he walking towards your property?	
11	A	Yes.	
12	Q	Do you know if that's one of your	
13	wheelbarrow	s?	
14	A	No.	
15	Q	Now, Mr. LaRocca, while this is	
16	playing I'm	getting to the next spot.	
17		This video, is it a fair and accurate	9
18	depiction o	f the work you do to rake out or you	
19	did from 20	12 to approximately 2016 to rake out	
20	the parcel?		
21	A	Yes.	
22	Q	I'm stopping it at 2:34.	
23		Mr. LaRocca, I want you to look at	
24	the, in thi	s frame at 2:34. There is a black	
25	pickup truc	k in the middle of the screen.	



Page 157		
1		Flavio LaRocca 157
2		Do you see that?
3	А	Yes.
4	Q	Do you see there is a wet area right
5	in front of	it?
6	А	Yes.
7	Q	Do you see any trees on that wet area?
8	А	No.
9	Q	Do you know if there were ever trees
10	there?	
11	А	There may have been. I don't know.
12	Q	Do you know if 2014 there were trees
13	there?	
14	А	I don't recall.
15	Q	Is that area that we are speaking of
16	right here,	right in front of this pickup truck,
17	that's what	we are talking about
18	А	I'm sorry. You're pointing to the
19	area across	the park, from Flowers Park?
20	Q	From the parcel. There is a black
21	pickup truc	k.
22	А	Yes.
23	Q	Do you see that?
24	А	Yes.
25	Q	Is that black pickup truck at about



Page 158	
1	Flavio LaRocca 158
2	the entrance to Mr. Guglielmo's property?
3	A I can't tell. I don't know. It's
4	around there somewhere but I don't know if it's
5	right next to it or further in. I can't tell.
6	Q Is it fair to say that to get down
7	East Street and enter Mr. Guglielmo's premises,
8	you would need to go by where that black pickup
9	truck is located in this frame?
10	A To the east of it, on the right side.
11	Not there.
12	Q Now, you had earlier on, Plaintiff's
13	11, you marked some areas in blue.
14	Do you remember doing that?
15	A Yes.
16	Q Are these areas in blue depicted in
17	this frame?
18	A Yes.
19	Q Is that area we are speaking about
20	right in front of that pickup truck?
21	And when I say "right in front of,"
22	what I'm meaning is, you see here there is like a
23	little orange something at the back of the pickup
24	truck?
25	A Yes.



Page 159		
1		Flavio LaRocca 159
2	Q	And do you see the area directly to
3	the right o	f that little orange?
4	A	Where that puddle of water is?
5	Q	Yes.
6	A	Okay.
7	Q	Is that one of the areas that you
8	circled in	blue?
9	A	Yes.
10	Q	Do people park their vehicles along
11	that area s	ometimes?
12	А	Yes.
13	Q	Did Flavio LaRocca & Sons ever park
14	its vehicle	s along that area?
15	A	No.
16		(Video plays)
17	Q	That's a better frame for what I'm
18	talking abo	ut. I'm stopped at 2:41.
19		Do you see now that it's actually you
20	can kind of	see cones at the back of that truck
21	back here?	
22	A	Okay.
23	Q	Do you see what I'm speaking about?
24	A	Yes.
25	Q	In the back right in front of the



Page 160	
1	Flavio LaRocca 160
2	back rear of that black pickup truck.
3	A Correct.
4	Q Did people park there in 2014 to
5	2016?
6	MS. ZALANTIS: By "there," what
7	are you saying?
8	Q Meaning right in front of those cones
9	that are depicted on the left-hand side of the
10	screen.
11	A Yes. And even previously to that.
12	(Video plays)
13	Q Now I'm at 2:49.
14	Did you just see the Flavio LaRocca &
15	Sons truck that you identified earlier drive down
16	northbound on East Street?
17	A Yes.
18	Q Where is it going?
19	A It looks like it's going towards East
20	Place.
21	Q Now that work that we just saw
22	depicted in this video, did the City give you
23	permission to do any of that work?
24	A No.
25	Q I'm going to show you now what's been



Page 161	
1	Flavio LaRocca 161
2	marked as Plaintiff's 14.
3	If you could take a look at it. I
4	think it's in the top of your pile there. It was
5	used at the deposition of Paul Vacca and it's
6	Bates stamped D 0353. And there is another photo
7	in this that's Bate stamped D 0262.
8	Do you recognize what is depicted in
9	Plaintiff's 14?
10	A Yes.
11	Q And what is it?
12	A Parts of East Street with Flowers
13	Park.
14	Q Do you see on if you look at the
15	parcel, do you see the parcel in this?
16	A Um-hm.
17	Q Is there any vehicles in the parcel
18	A Yes.
19	Q on this?
20	And what is in the parcel?
21	A Looks like three trucks.
22	Q Is there a white truck as well?
23	A Yes.
24	Q Is that the same parcel that you
25	identified on Plaintiff's 11 with the yellow?



Page 162	
1	Flavio LaRocca 162
2	A Yes.
3	Q If you look across East Street to the
4	left when you're looking at this photograph, and
5	you move northbound on East Street, do you see
6	there is like a little peninsula there with trees
7	on it?
8	A I don't know if it's trees. I see
9	vegetation on it but I don't see a tree there.
10	Q Describe to me what that area looks
11	likes to you.
12	A Looks like a little area with stuff
13	growing out of the ground.
14	Q Does it look like it's on dirt or
15	something else that is jutting out onto East
16	Street?
17	A I don't know what that's on. I don't
18	know if it's on dirt or just piled on the
19	asphalt.
20	Q Would you agree with me that on
21	Plaintiff's 13, and I'm going to 2:33, 2 minutes
22	and 33 seconds in, that that little area of
23	vegetation on it is gone?
24	MS. ZALANTIS: Objection as to
25	form.



Page 163		
1		Flavio LaRocca 163
2	Q	You can answer.
3	А	That it's not there, yes.
4	Q	Meaning you agree that it's no longer
5	there and c	on minute 2:33 of the video.
6	А	That's what it looks like.
7	Q	Do you know what happened to it?
8	А	No.
9	Q	I'm now going to show you what I'm
10	going to as	sk to be marked as Plaintiff's 24.
11		(Whereupon, 2016 aerial
12		photograph was marked Plaintiff's
13		Exhibit 24 for Identification, as of
14		this date, by the reporter.)
15	Q	Now, I want you to take a look at
16	Plaintiff's	3 24.
17		Do you recognize what Plaintiff's 24
18	is showing?	
19	А	Yes.
20	Q	What is it showing?
21	А	East Street from 5th Avenue down
22	towards Eas	st Place.
23	Q	And is the parcel shown in Plaintiff's
24	24?	
25	А	Yes.



Page 164	
1	Flavio LaRocca 164
2	Q Can you take a yellow highlighter and
3	draw a circle around the parcel in Plaintiff's
4	24.
5	(Witness complies)
6	A I don't know if it's going to come out
7	on this picture.
8	Q Let's take you know what? Take a
9	blue pen and draw around it.
10	(Witness complies)
11	MR. MENDELSOHN: He's drawn in
12	blue pen around the area marked as
13	the parcel or he's depicted as the
14	parcel.
15	Q Now I want you to take a look at
16	Plaintiff's 14.
17	A Okay.
18	Q Can you do me a favor and draw a
19	circle around, if the parcel is in Plaintiff's
20	14.
21	(Witness complies)
22	MR. MENDELSOHN: For the record,
23	he's drawn a blue circle around the
24	white truck encompassing the other
25	trucks in the photo.



Page 165	
1	Flavio LaRocca 165
2	MS. ZALANTIS: There is two
3	pages of Plaintiff's 14 so he just
4	indicated it on the first page.
5	MR. MENDELSOHN: Yes. Correct.
6	Q Now I want you to take a look at
7	Plaintiff's 24, and do you see the area where you
8	have just been speaking about in Plaintiff's 14
9	with the little piece that juts out onto East
10	Street across from the parcel that has vegetation
11	on it, is that area depicted in Plaintiff's 24?
12	A No.
13	Q Let me ask it a different way.
14	Is the area where that vegetation did
15	exist in Plaintiff's 14, is the general area
16	depicted in
17	A Oh. The general area. Yes.
18	Q in Plaintiff's 24.
19	A Yes.
20	Q Is the vegetation now gone when you
21	look at Plaintiff's 24?
22	A Looks like it.
23	MS. ZALANTIS: Objection as to
24	form.
25	Q When you look up at the top of



Page 166		
1		Flavio LaRocca 166
2	Plaintiff's	24 to the left-hand side, does it
3	give a date	as to when that photo was taken from
4	Google Eart	h?
5	A	Is that, am I reading this right? 4,
6	is it 19, 2	019?
7	Q	Do you see on the left-hand side it
8	says 1994?	
9	A	Okay.
10	Q	And on the right-hand side it says
11	2019?	
12	A	Yes.
13	Q	And does it say 4/2016 above it?
14	A	Yes, 4/2016, yes.
15	Q	Then if you look at the second page
16	of Plaintif	f's 14, what is the date depicted on
17	it?	
18	A	The top date?
19	Q	Yes.
20	A	10/2014.
21	Q	This was produced by you, and your
22	counsel rep	resented that the first page of
23	Plaintiff's	14 is a blow-up of what is in the
24	second page	
25		Does that look fair to you?



Page 167		
1	Flavio LaRocca 167	
2	A I can't tell. One is very dark, the	
3	other one is very light. I can't tell if it's a	
4	blow-up or not. I can't tell.	
5	MR. MENDELSOHN: Kathy, are you	
6	representing that the first page is a	
7	blow-up?	
8	MS. ZALANTIS: Yes. I believe	
9	that's an enlargement of the second	
10	page of that.	
11	MR. MENDELSOHN: Okay.	
12	Q Plaintiff's 15, if you could look at	
13	it.	
14	What is depicted in Plaintiff's 15?	
15	A Another view of Flowers Park with some	
16	vehicles in the area.	
17	Q We are looking at two pages of	
18	Plaintiff's 15. There is a first picture and a	
19	second picture.	
20	Are they both depicting the same	
21	general area?	
22	A To some degree, yes. Just a different	
23	angle.	
24	Q Is the parcel viewable in both of	
25	these photographs?	



Page	168		
1			Flavio LaRocca 168
2		А	Yes.
3		Q	On the right-hand side?
4		А	Yes.
5		Q	Do you see on the second page, the
6		second pict	ure of Plaintiff's 15, do you see that
7		area that's	in the cones on the left-hand side?
8		А	Yes.
9		Q	Does that seem to be the same area on
10		Plaintiff's	14 that had the vegetation on it?
11		А	Looks like it. Um-hm.
12		Q	Thank you.
13			I'm now going to ask you to look at
14		Plaintiff's	16.
15			Take your time and read it and then
16		let me know	when you're ready to discuss it.
17			MR. MENDELSOHN: Off the record.
18			(Whereupon, a discussion was
19			held off the record.)
20		Q	Plaintiff's 16 is a letter from the
21		City of New	Rochelle dated November 18, 2015, and
22		it's signed	by Alexander Tergis.
23			Is that fair?
24		А	Yes.
25		Q	Do you recall receiving this letter?



Page 169	
1	Flavio LaRocca 169
2	A Yes.
3	Q What is the substance of this letter?
4	A Basically says that we have property
5	that encroaches onto City-owned property.
6	Q Now, between 2009 and 2015, had you
7	done anything to correct what the City was telling
8	you was an encroachment?
9	A No.
10	Q Up and until today, from the time you
11	purchased the property and you knew there was an
12	encroachment until now, have you taken any steps
13	to, regarding the encroachment
14	MR. MENDELSOHN: Withdrawn.
15	Q From the time you purchased the
16	property until today, have you taken any steps
17	regarding the encroachment?
18	A Yes.
19	Q What were those steps?
20	A I contacted the when I received in
21	'09 the letter from Mr. Vacca and Coleman, I
22	contacted them, we had a meeting, we had a
23	surveyor come out, he staked the property.
24	At the end of that stake and providing
25	the sketch, I met with both Mr. Vacca and



Page 170			
1	Flavio LaRocca 170		
2	Mr. Coleman to discuss what was outlined by the		
3	surveyor. And it was said to me by both of them		
4	at that time that the encroachment was minimal,		
5	they weren't concerned about it, and there was		
6	really nothing necessary for me to do.		
7	Q When did that conversation happen?		
8	A A week or two after the survey was		
9	done, roughly.		
10	Q Where did that conversation occur?		
11	A On the site, right outside my		
12	property, and when I also showed both of them		
13	where the two markings from the surveyor were put		
14	to where they were saying it was municipality		
15	property.		
16	Q So your testimony is you met with		
17	City officials at your property on two dates in		
18	2009		
19	A Correct.		
20	Q correct?		
21	One was prior to you had it staked out		
22	and one was after.		
23	A Correct.		
24	Q Who else was present at the meeting		
25	after?		



Page 171		
1	Flavio LaRocca 171	
2	A My wife.	
3	Q So it was you, your wife, Paul Vacca	
4	and Alexander Tergis.	
5	Is that fair?	
6	A Correct.	
7	No, not Tergis, Coleman. Tergis was	
8	not the Commissioner of Public Works in '09.	
9	Q So it was Mr. Coleman.	
10	A Coleman.	
11	Q Were there any emails or anything that	
12	led up to that meeting?	
13	A Just telephone conversations.	
14	Q What was take me through that	
15	conversation. What was said.	
16	A Well, they requested that I produce	
17	evidence to where the boundaries of the property	
18	line was, and I showed them the stakes on both	
19	corners, and I showed them the sketch which we	
20	discussed earlier, and they after analyzing things	
21	I said to them, what do you want me to do?	
22	And both Mr. Vacca and Mr. Coleman	
23	said it is minimal, I don't think it's that big	
24	of an encroachment.	
25	As far as I'm concerned they told me	



Page 172	
1	Flavio LaRocca 172
2	no action is required at this time.
3	Q Did they give you anything in writing
4	to that effect?
5	A I recall it being all verbal. I don't
6	remember receiving anything in writing.
7	Q Did they ever tell you that you needed
8	to get a license?
9	A No.
10	Q Did they give you any additional steps
11	that you needed to take?
12	A No.
13	Q Did you promise them that you would
14	perform anything in response to that conversation?
15	A No.
16	Q Other than that meeting and the
17	staking out, have you performed any other
18	activities with regard to the encroachment?
19	A No.
20	Q From the 2000 approximately 2 when
21	you purchased the property up and until the
22	present day, has the front of 436 5th Avenue
23	changed?
24	A The only thing that I left there were
25	a couple of Jersey barriers so nobody would



Page 173			
1		Flavio LaRocca	173
2	barricade i	nto my fence like they had done.	
3	Q	Has the fence been moved at all?	
4	A	No.	
5	Q	Has the storage shelves and anythi	ng
6	that are be	tween the fence or that are in the	
7	pink area t	hat you outlined in Plaintiff's 11,	
8	has that ch	anged at all?	
9	A	No.	
10	Q	So what did you do when you receiv	ed
11	the letter on November 18th of 2015?		
12	A	That's when I decided to get legal	
13	counsel to	respond to this.	
14	Q	Now, there is a handwriting on top	ı
15	that says -	- can you read the handwriting that	's
16	on top of P	laintiff's 16.	
17	A	Um-hm.	
18		Met with Flavio and Maria and	
19	attorneys.	Other business owners.	
20	Q	Is there anything else?	
21	A	12/10/15, 10 a.m.	
22	Q	Whose handwriting is that?	
23	А	That's my wife's handwriting.	
24	Q	Your wife's name is Maria, correct	?
25	A	Correct.	



Page 174	
1	Flavio LaRocca 174
2	Q So she's referring to herself, you
3	and attorneys?
4	A Correct.
5	Q Did that meeting take place?
6	A Yes.
7	Q What was the substance of that
8	conversation?
9	MS. ZALANTIS: I ask him not to
10	discuss anything that is privileged
11	that he may have had with attorneys.
12	Q Well, let's discuss.
13	Who was present at that meeting?
14	A Our attorney, myself, my wife, and I
15	think two or three of the other owners next door
16	to me.
17	Q When you say your attorney, your
18	present attorney?
19	A Not at that time, no.
20	Q Was that attorney, at that time was
21	that attorney representing you?
22	A We were going to ask him to represent
23	us.
24	Q When you say "we were going to ask
25	him," who was going to ask him to represent you?



Page 175	
1	Flavio LaRocca 175
2	A Myself and my wife.
3	Q And so it's fair to say the other
4	business owners weren't going to ask that attorney
5	to represent them.
6	A Well, they may have also gotten
7	involved until we found out that that attorney
8	did not handle this type of legal matter.
9	Q What was the reason the other business
10	owners were getting involved?
11	A Because they were concerned that
12	possibly their property may have been encroaching
13	on what was called City property on East Street.
14	Q What was the next step you took after
15	that meeting?
16	A I asked for a referral who I could use
17	for this type of a case, and then I was referred
18	to my attorney currently now.
19	Q At that time when you received this
20	letter, had you seen any other additional surveys
21	other than the one that we discussed earlier from
22	2001 and the staking map?
23	A I don't recall if a portion of this
24	survey was sent to me by the City at that time or
25	not. I don't recall.



Page 176	
1	Flavio LaRocca 176
2	Q I want you to take a look at
3	Plaintiff's 11, and you have marked an area in
4	pink on there, and I want you to take the pink
5	highlighter again.
6	Are there any areas that's your
7	property or that you believe is your property
8	that's outside of the bold borders that borders
9	5th Avenue?
10	And if there are, please highlight
11	them as you did in front.
12	(Witness complies)
13	MR. MENDELSOHN: For the record,
14	he's highlighted a portion of 436 5th
15	Avenue annexed to 5th Avenue as well.
16	Q There is a masonry, it says stone
17	masonry right in that area, stone masonry wall.
18	Whose stone masonry wall is that?
19	A Mine.
20	Q Is there anything in between the wall
21	and your, and the bold line there?
22	A There is a row of evergreen trees.
23	Q Whose evergreen trees are those?
24	A Mine as well.
25	Q I want to show you if you could take



Page 177			
1	Flavio LaRocca 177		
2	a look at 17.		
3	Exhibit 17 is a group of photographs		
4	that was produced by Defendants, D 0109.		
5	Do you see the top photograph, what is		
6	that depicting?		
7	A The front corner of East and 5th		
8	Avenue where my property is with the fence, and		
9	then my signage and some of the storage bins that		
10	are there.		
11	Q Do you see there is a No Parking		
12	sign?		
13	A Yes.		
14	Q Whose sign is that?		
15	A Mine.		
16	Q What is that affixed to?		
17	A My fence.		
18	Q That No Parking sign, who put that		
19	sign there?		
20	A I did.		
21	Q What is it, what was the purpose of		
22	putting that No Parking sign there?		
23	A Because people who were pulling in to		
24	use the skate park would park and I would not be		
25	able to access my property.		



Page 178	
1	Flavio LaRocca 178
2	Q You park your vehicles in front of
3	your property, right?
4	A Not in front of my property. I
5	temporarily parked them as I said earlier to open
6	my gate to get in, but I don't leave them there
7	all day.
8	Q Did the City give you permission to
9	put No Parking signs in front of your property?
10	A We called the police department when
11	that was happening and they said, they had
12	suggested to us to just get some No Parking signs
13	and put them there.
14	Q Who did you speak to at the police
15	department?
16	A I don't remember. I called the
17	general office and even an officer had come down
18	and met with me there. I don't have the name but
19	that was going back when the skate park was first
20	done in '03 I think it was or '04. I don't
21	remember.
22	Q Was there a police report taken?
23	A I don't think so because there was no
24	incident.
25	Q Did you call 911 or just the regular



Page 179		
1		Flavio LaRocca 179
2	police numb	er?
3	А	Regular New Rochelle police.
4	Q	I'm going to have you look at
5	Plaintiff's	19.
6	A	Okay.
7	Q	This is a photograph.
8		What is depicted on Plaintiff's 19?
9	A	You're looking at East Street towards
10	5th Avenue	just maybe about 30 yards past my
11	property.	
12	Q	Now, you see the truck parked there
13	in front of	your property?
14	А	Yes.
15	Q	Whose truck is that?
16	А	My pickup.
17	Q	That's parked on East Street, right?
18	А	Correct.
19	Q	Now, do you see in Plaintiff's 19, do
20	you see the	re is a wood, I'll call it wood wall
21	there?	
22	А	Yes.
23	Q	And is that wood wall the boundary of
24	your proper	ty?
25	A	Correct. With the concrete wall



Page 180	
1	Flavio LaRocca 180
2	underneath it.
3	MS. ZALANTIS: Which wood wall
4	are you talking about?
5	Q If you could take a pen and circle
6	around that wood wall we are discussing.
7	A You want just the wall or also the
8	concrete underneath it?
9	Q Either/or is fine.
10	A Okay.
11	(Witness complies)
12	MR. MENDELSOHN: For the record,
13	he's made a couple of lines outlining
14	the wall that we are discussing now
15	with a blue pen.
16	Q Do you see the gate that's closer to
17	us as you're looking in the photograph on the
18	adjacent property?
19	A Yes.
20	Q Whose gate is that?
21	A PAB.
22	Q Is that gate on Plaintiff's 11, is
23	that shown on Plaintiff's 11?
24	A I think so.
25	Q And if you could, if you see it, can



Page 181	
1	Flavio LaRocca 181
2	you highlight that in yellow, that gate that's
3	shown?
4	A What is not on my property, what is
5	not related to my property?
6	Q The PAB gate that we are talking
7	about. If you see that on Plaintiff's 11, can
8	you please mark it with the yellow highlighter.
9	A Okay.
10	MS. ZALANTIS: Wait. I'd just
11	like to note that he's doing this to
12	the best of his ability. He's
13	looking at a picture and marking a
14	survey. It's not
15	Q Let's take a look at Plaintiff's 11.
16	Is there a gate there on the property
17	to the north of yours?
18	A The one behind mine, adjacent to
19	mine.
20	Q Yes. On East Street.
21	A Yes.
22	Q Is there a gate in front of that
23	property?
24	A Yes.
25	Q Can you highlight in yellow that



Page 182		
1		Flavio LaRocca 182
2	gate?	
3		(Witness complies)
4	Q	Thank you.
5		Is that gate or a portion of that
6	gate the sa	me gate that we are discussing in
7	Plaintiff's	19?
8	A	Yes.
9	Q	Now looking at Plaintiff's 20.
10		What is Plaintiff's 20 showing?
11	A	You're looking at 436 5th Avenue from
12	5th Avenue.	
13	Q	My question is, is the stone masonry
14	wall that w	e just highlighted or that you just
15	highlighted	on Plaintiff's 11 on the 5th Avenue
16	side of you	r property, is that depicted in
17	Plaintiff's	20?
18	A	Yes.
19	Q	Is that the stone wall with the gate
20	on top of i	t?
21	A	With the little railing, yes.
22	Q	Excuse me. The whitish railing?
23	A	Yes.
24	Q	Are those the arborvitaes behind it
25	that you ju	st discussed?



Page 183	
1	Flavio LaRocca 183
2	A Correct.
3	Q Is this 5th Avenue in front here?
4	A Yes, it is.
5	Q I'm going to skip 21.
6	Looking at 22, what is 22 showing?
7	A The corner of, let's say the north
8	corner of my property on East Street bordering my
9	neighbor's property.
10	Q Is that gate that's in, the gate to
11	the right, right behind that red truck, is that
12	gate the same gate that we just highlighted or
13	that you just highlighted in yellow on Plaintiff's
14	11?
15	A Yes.
16	Q Looking at Plaintiff's 23.
17	What is Plaintiff's 23?
18	MS. ZALANTIS: I'm sorry. Can
19	you just read back that last
20	question.
21	(Whereupon, the last question was
22	read back.)
23	MS. ZALANTIS: Okay.
24	Q Look at Plaintiff's 23.
25	What is depicted there?



Page 184			
1		Flavio LaRocca 184	4
2	А	The parcel.	
3	Q	Is there something around the parcel	
4	in this pic	ture?	
5	A	A fence.	
6	Q	When, approximately, did that fence	
7	go up?		
8	А	I don't recall the exact date.	
9	Q	Do you know why the fence went up?	
10	А	I guess because the park's department	
11	didn't want	anybody parking there.	
12		MR. MENDELSOHN: Lastly I'm	
13		going to have marked, it's a group	
14		of photos that I got yesterday.	
15		They are Bates stamped D 400 through	
16		D 416.	
17		I'm going to mark them	
18		Plaintiff's 25.	
19		(Whereupon, photographs were	
20		marked Plaintiff's Exhibit 25 for	
21		Identification, as of this date, by	
22		the reporter.)	
23	Q	You're now looking at Plaintiff's 25,	
24	which is a	group of photos I just described.	
25		Can you take a look at them.	



Page 185			
1		Flavio LaRocca	185
2	А	(Reviewing)	
3		Okay.	
4	Q	Do you recognize those?	
5	А	Yes.	
6	Q	What are they?	
7	А	Pictures depicting the area of Eas	t
8	Street with	Flowers Park and the vehicles park	ed
9	in that are	ea.	
10	Q	Do you know who took those photos?	
11	А	Yes.	
12	Q	Who took them?	
13	А	I did.	
14	Q	When did you take those photos?	
15	А	About within the last week to ten	
16	days.		
17	Q	Is there anything on them that you	
18	feel is imp	portant to this case?	
19		MS. ZALANTIS: Objection as to	
20		form, but you can answer.	
21	А	Well, it shows that somebody is st	ill
22	spreading w	good chips in that area, even behind	
23	the fencing	ı .	
24	Q	For the record, you are looking at	
25	Page 3 and	you're pointing at the ground?	



Page 186	
1	Flavio LaRocca 186
2	A Um-hm. Looks that somebody is still
3	cutting vegetation in that area as well.
4	Q What about this shows the vegetation
5	is being cut?
6	A Even Exhibit 23 shows that somebody
7	is going in there and cutting the vegetation from
8	inside the fenced area. That vegetation was much
9	higher at other places at the time.
10	Q Exhibit 23 there is leaves on the
11	trees, right?
12	A Correct.
13	Q And in the third photo here there is
14	not, right?
15	A Correct. And you see vegetation also
16	growing and that somebody has been cutting it.
17	Q Are you talking about the grass?
18	A Correct.
19	Q Exhibit 23 is not in the winter,
20	correct?
21	A Correct.
22	Q Third photo is in the winter,
23	correct?
24	A Yes. But you can see the difference
25	of wood chips being placed in this area.



Page 187	
1	Flavio LaRocca 187
2	Q What else?
3	A The damage done to the fencing that
4	was put also in that area who is not only backing
5	into it, but also somebody else who is paving
6	along the fence line area there, that wasn't there
7	previously.
8	Q Do you know who paved that area?
9	A No. I just saw it done.
10	These are other pictures inside that
11	the area, the trees, whatever was there when we
12	did the raking work was not touched.
13	But the area inside, as you can see,
14	even in the wintertime there is new fresh wood
15	chips being thrown on it.
16	Q Refer to the Bates stamp you're
17	looking at.
18	A 406, D 0406, as well as 407.
19	You can clearly see even in the
20	wintertime there is fresh materials that someone
21	is putting on it, and then here who is utilizing
22	the areas in question where the so-called
23	vegetation or peninsula how you had described
24	before is parking in those areas and whose
25	vehicles they belong to. This entire area on the



Page 188	
1	Flavio LaRocca 188
2	west side of East Street between PAB and
3	Guglielmo. And I haven't been in that property
4	now since that year. 2015.
5	And some of these vehicles are the
6	same vehicles in the initial pictures that you
7	had depicted in your exhibits.
8	MR. MENDELSOHN: One moment.
9	I'm just going to make sure I don't
10	have anything else.
11	(Whereupon, a brief recess was
12	taken.)
13	MR. MENDELSOHN: Oh. I do.
14	Q I'm going to have you take a look at
15	Plaintiff's 18. More arts and crafts.
16	Plaintiff's 18, do you recognize what
17	this is?
18	A Yes.
19	Q What is it?
20	A A blow-up of my parcel, my property,
21	on the corner of East and 5th Avenue.
22	Q Is this a survey?
23	A Yes.
24	Q What is the date of the survey?
25	A April 13, 2016.



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2	Q Does this survey show an encroachment
3	of your property onto East Street?
4	A Yes.
5	Q Can you highlight in pink wherever
6	that encroachment is shown.
7	(Witness complies)
8	MR. MENDELSOHN: And for the
9	record, the witness has highlighted
10	in pink.
11	Q Does that area remain the same as it
12	was in 2016 today?
13	A Yes.
14	Q One moment.
15	From 2002, approximately, when you
16	bought the property, until 2016, approximately,
17	when this action started, did you ever notice any
18	trees missing from the parcel that were there
19	previously?
20	A No.
21	Q Did you ever notice any vegetation
22	that was gone in the parcel that was there
23	previously during those dates?
24	A No.
25	MR. MENDELSOHN: I have nothing



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2	further.
3	MS. ZALANTIS: Can I just ask a
4	few questions?
5	MR. MENDELSOHN: Sure.
6	EXAMINATION BY
7	MS. ZALANTIS:
8	Q So you testified earlier that in
9	connection with your business, sometimes you
10	remove limbs or branches from trees.
11	Is that accurate?
12	A Yes.
13	Q And then you testified
14	MR. MENDELSOHN: Objection as to
15	form.
16	Q And then there was some discussion
17	about you removing trees.
18	Can you describe in connection with
19	your business, what types of tree removal work you
20	do?
21	A Yes. It's mainly ornamental trees,
22	small trees. I don't have the license or the
23	insurance to do big trees. I don't have the
24	equipment either to do the big trees.
25	So usually if a job like that comes,



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1	Flavio LaRocca 191
2	I give it out to other subcontractors to do.
3	Q When did you do the work on your
4	property in connection with the rock removal?
5	MR. MENDELSOHN: Which property?
6	Q Your current property.
7	A 436.
8	Q 436, yes.
9	A In 2003, I think, early 2003, April-
10	May time.
11	Q And did you obtain a permit in
12	connection with that work?
13	A Yes, I did.
14	Q And at that time did you have to get
15	any kind of street opening or street obstruction
16	permit?
17	A No.
18	Q And in connection with that work done
19	in 2003, you testified that you moved certain
20	Jersey barriers out in front of the existing fence
21	on your property at 436.
22	A Correct.
23	Q And during that time that you were
24	doing that work in 2003, did the City ever
25	conduct any inspections of the work that you were



Page 192	
1	Flavio LaRocca 192
2	doing?
3	A Yes.
4	Q And during those inspections, where
5	were the Jersey barriers?
6	A Outside on East Street in front of my
7	fence, my gated area.
8	Q And did the City ever raise any
9	issues about the placement of the Jersey
10	barriers?
11	A No.
12	Q Were you ever advised that you need
13	to get a specific permit from the City with
14	respect to the placement of the Jersey barriers
15	on East Street?
16	A Well, commonly if you're obstructing
17	the street, you're supposed to get what is called
18	a street obstruction permit from DPW. But when
19	we filed for the permit, they said that was not
20	required.
21	MS. ZALANTIS: I have nothing
22	further.
23	Thanks.
24	MR. MENDELSOHN: I have some
25	followup.



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2	FURTHER EXAMINATION
3	BY MR. MENDELSOHN:
4	Q When you say that they said it was
5	not required, who said it was not required?
6	A The building department.
7	Q Who from the building department told
8	you an obstruction permit was not required?
9	A The person that was reviewing the
10	permit application. I think at that time if I'm
11	not mistaken was Peter W-Y-R-I-C-H-E-A? I'm very
12	wrong on that. I think that's what I remember.
13	Q Is that in writing anywhere?
14	A No, it was verbal when I called to
15	find out about the status of my permit and if
16	anything else was required.
17	Q Were the Jersey barriers specifically
18	discussed?
19	A Well, the Jersey barriers were
20	outside
21	Q That's not my question.
22	My question is, on that phone call
23	were the Jersey barriers specifically discussed.
24	A No, just the regrading work was
25	discussed.



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2	MR. MENDELSOHN: Thank you.	I
3	have no further questions.	
4		
5	(Time noted: 3:47 p.m.)	
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2	ACKNOWLEDGMENT
3	
4	STATE OF NEW YORK)
5	ss:
6	COUNTY OF WESTCHESTER)
7	
8	
9	I, FLAVIO LaROCCA, hereby certify that I have
9	read the transcript of my testimony taken under oath
10	read the transcript of my testimony taken under outh
	in my deposition of March 5, 2020; that the transcript
11	
	is a true, complete, and correct record of what was
12	
	asked, answered, and said during this deposition, and
13	
14	that the answers on the record as given by me are true
T 4	and correct.
15	and correct.
16	
	FLAVIO LaROCCA
17	
18	
19	
20	
21	
22	Subscribed and sworn to
23	of, 2020
24	, 2020
	NOTARY PUBLIC
25	



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 2
                       CERTIFICATE
 3
     STATE OF NEW YORK
 4
                            ss:
 5
     COUNTY OF WESTCHESTER)
 6
 7
 8
          I, CHERYL THOMPSON, a Shorthand Reporter and
 9
     Notary Public in and for the State of New York, do
10
     hereby certify:
          That the testimony of FLAVIO LaROCCA was held
11
12
     before me at the aforesaid time and place.
13
          That said witness was duly sworn before the
14
     commencement of the testimony, and that the testimony
15
     was taken stenographically by me and is a true and
     accurate transcription of my stenographic notes.
16
17
          I further certify that I am not related to any of
     the parties to the action by blood or marriage, and
18
19
     that I am in no way interested in the outcome of this
20
     matter.
21
          IN WITNESS WHEREOF, I have hereunto set my hand
     this 10th day of March 2020.
22
2.3
24
                                   CHERYL THOMPSON
25
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INDEX NO. 54190/2016 FILED: WESTCHESTER COUNTY CLERK 05/27/2022 07:24 PM NYSCEF DOC. NO. 55 RECEIVED NYSCEF: 05/27/2022 Page 200 Flavio LaRocca ERRATA SHEET DEPOSITION OF FLAVIO LaROCCA RE: City OF NEW ROCHELLE V. FLAVIO LaROCCA DATE TAKEN: MARCH 5, 2020 PAGE LINE # CORRECTION REASON FLAVIO LaROCCA Subscribed and sworn to before me this day of , 2020



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