

Exhibit B

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
SUPERIOR COURT DEPARTMENT**

SUFFOLK, ss.

CIVIL ACTION NO. 1984CV01595

SONYA BANDOUIL and ALEX
PANKIEWICZ,
Plaintiffs,

v.

MOSS REALTY LLP, MYER DANA AND
SONS, INC., and BADOINKAS, INC. d/b/a
THE COMMON GROUND,
Defendants.

**FIRST AMENDED COMPLAINT
AND JURY CLAIM**

INTRODUCTION

On the afternoon of Sunday, November 4, 2018, Sonya Bandouil suffered serious and life-threatening injuries when the concrete parapet and façade of a commercial building located in a densely populated shopping district in the Allston neighborhood of Boston collapsed on Sonya and her partner Alex Pankiewicz as they walked along the public sidewalk. Sonya, a classically trained and aspiring concert pianist, was buried under the rubble and suffered a multitude of fractures throughout her body and crushing injuries to her right hand that necessitated the amputation of a finger and extensive surgical reconstruction of her hand. Sonya and Alex also suffered severe emotional trauma and distress as a result of their ordeal.

THE PARTIES

1. Plaintiff Sonya Bandouil is an individual and a resident of Kings County, New York. Prior to the event which gives rise to this action, Ms. Bandouil was a classically trained concert pianist and piano teacher who had been studying piano since she was five years old. In 2017, she received a Bachelor of Arts degree in Music from the University of Houston. From 2017, until the date of the building collapse, Ms. Bandouil taught piano and performed professionally in the New York City area while attending graduate school in the Program in International Relations at New York University.

2. Plaintiff Alex Pankiewicz is an individual and a resident of Kings County, New York. At all relevant times, Mr. Pankiewicz has been Ms. Bandouil's romantic and domestic partner. Mr. Pankiewicz and Ms. Bandouil have been in a committed relationship since 2016.

3. Defendant Moss Realty LLP ("Moss Realty") is a Massachusetts limited liability partnership with a principal place of business in Needham, Norfolk County, Massachusetts. On

information and belief, at all relevant times, Robert Moss and Harriet Moss have been the partners of Moss Realty.

4. Defendant Myer Dana and Sons, Inc., (“Myer Dana”) is a corporation duly formed under the laws of the Commonwealth of Massachusetts with a principal place of business in Newton, Middlesex County, Massachusetts.

5. Defendant Badoinkas, Inc. (“Badoinkas”) is a Massachusetts corporation with a principal place of business in Boston, Suffolk County, Massachusetts.

FACTS COMMON TO ALL COUNTS

6. On information and belief, from and after August 1997, Moss Realty has been the owner of record of certain real property located at 75-87 Harvard Avenue, Boston, Suffolk County, Massachusetts (the “Property”).

7. The Property is depicted as Lot C-2 on a subdivision plan dated March 11, 1922 filed in the Land Court, Land Registration Office as plan No. 7221-C.

8. From at least 1923, the Property has included a structure of masonry construction that comprises a series of attached single story storefronts.

9. From at least 1950 to the present, members of the Moss family or entities controlled by the Moss family, including but not limited to Joseph Moss, Beatrice A. Moss, Moss Realty Trust, Beatrice A. Moss and Robert Moss, Trustees and Moss Realty LLP, Robert and Harriet Moss, partners, have owned and operated the Property as a commercial enterprise and have leased the storefronts located on the Property to various retail businesses.

10. In or about 1978, Joseph Moss conveyed the Property to his spouse, Beatrice A. Moss, for nominal consideration.

11. In or about July 1983, for nominal consideration, Beatrice A. Moss transferred ownership of the Property to herself as Trustee of Moss Realty Trust, a nominee trust. On information and belief, from July 1983 up to and including August 26, 1997, beneficial ownership of Moss Realty Trust was held by Moss Realty Company, a general partnership.

12. On information and belief, in or about January 1990, Robert Moss was appointed co-Trustee of Moss Realty Trust and Moss Realty Company continued to be the sole beneficiary of Moss Realty Trust. Thereafter, on or about November 23, 1993, Beatrice A. Moss died, Robert Moss became the sole trustee of Moss Realty Trust and Moss Realty Company remained the sole beneficiary of Moss Realty Trust.

13. On or about August 26, 1997, the partners of Moss Realty Company elected to reorganize their partnership to be a Massachusetts Limited Liability Partnership named Moss Realty LLP, and Moss Realty LLP became the sole beneficiary of Moss Realty Trust.

14. In or about January 2016, the Land Court issued a new Certificate of Title to the Property in the name of Moss Realty because under the terms of the Moss Realty Trust, the trust

was terminated twenty years following the death of the donor, Beatrice A. Moss, and title to the trust's corpus, including the Property, vested in the trust's beneficial owner, Moss Realty LLP.

15. On information and belief, Robert and Harriet Moss are the children of Joseph and Beatrice A. Moss and have held a legal, beneficial or direct ownership interest in the Property from and after 1983, when Beatrice A. Moss conveyed the Property to herself as Trustee of Moss Realty Trust.

16. At all relevant times, 85 Harvard Avenue has been one of the storefronts comprising the Property that Moss Realty Trust and subsequently Moss Realty has leased to commercial tenants.

17. At all relevant times, Myer Dana was a professional property management company under contract with Moss Realty to manage and maintain the Property in a safe condition that would not pose a risk of injury to persons in or near the Property.

18. At all relevant times, Badoinkas was Moss Realty's commercial tenant at 85 Harvard Avenue, and operated a restaurant and bar called "The Common Ground" from 85 Harvard Avenue.

19. At all relevant times, Badoinkas maintained a sign for its business that was affixed to the front exterior wall of 85 Harvard Avenue, perpendicular to the front wall of the Property facing Harvard Avenue. On information and belief, the sign was installed prior to 1994, and at some point in time thereafter, changes were made to the manner in which the sign was secured to the building.

20. On the afternoon of Sunday, November 4, 2018, Ms. Bandouil was walking in a northerly direction on the public sidewalk on Harvard Avenue in front of and adjacent to the Property, accompanied by her partner, Alex Pankiewicz. Mr. Pankiewicz was walking to Ms. Bandouil's right, closer to the curb.

21. At all relevant times, Ms. Bandouil and Mr. Pankiewicz were exercising due care for their own safety.

22. As Ms. Bandouil and Mr. Pankiewicz walked past 85 Harvard Avenue, suddenly and with absolutely no warning, the Property's concrete parapet and façade collapsed, causing tons of concrete slab and rubble to fall onto the sidewalk, trapping Ms. Bandouil beneath the debris.

23. On information and belief, the design and manner of installation of the sign for The Common Ground placed substantial strain on the integrity of the building's façade and parapet whenever strong winds struck the sign, and such design and manner of installation was a substantial contributing cause of the collapse of the Property's façade and parapet.

24. In the absence of a negligent failure of maintenance of the Property and/or installation of the Common Ground Sign or an identifiable extraordinary external event such as a hurricane or plane crash, buildings like the Property are not susceptible to catastrophic collapse like that which occurred at the Property on November 4, 2018.

25. No identifiable extraordinary external event caused the collapse of the Property on November 4, 2018.

26. The debris resulting from the collapse included mortar that appeared chalky or sandy and demonstrated substantial decay or decomposition. The condition of the mortar indicates that water penetration and repeated freezing and thawing cycles over a lengthy period of time (measured in years), had caused the mortar to cease to hold the cement blocks comprising the structure of the façade and parapet in place and failed to ensure that the components of the façade and parapet were secured to the building's underlying structure.

27. On information and belief, over a period of years prior to the collapse, the façade and parapet of the building likely demonstrated evidence of efflorescence, a visible deposit of minerals on the face of the building's masonry, and a sign that water was penetrating the mortar holding the façade and parapet in place and compromising the structural integrity of the building. It is also likely that the parapet displayed additional signs of decay, such as cracking and spalling of the cement and bowing of the parapet away from the plane of the building's front wall, all of which would have been apparent from periodic visual inspections.

28. Further, the debris demonstrated that masonry ties that were likely originally installed when the building was first constructed in the 1920s or earlier, and which are supposed to help to secure the façade and parapet to the building's underlying structure, had been inadequate even when first installed, but had then oxidized from exposure to air and water that penetrated the mortar over a period of years, such that at the time of the collapse they were completely ineffective to hold the parapet and façade in place.

29. Moreover, the design of the building's parapet, which was corbeled outward from the plane of the building's front wall, increased the hazard created by the decaying condition of the façade and parapet.

30. In 2005, Moss and/or Myer Dana as Moss's authorized agent, were informed that "The original tin components of the parapet are in poor overall condition. Missing material as well splits and cracking were found in the existing tin flashing components." Further, Moss and/or Myer Dana were informed in 2005 that the front wall flashing was "somewhat shoddy."

31. In May 2017 and again in May 2018, Moss and/or Myer Dana as Moss's authorized agent, were informed that the roof of the building was in very poor condition, had been installed poorly, and that there was water penetrating the flashing and roof at and on the top of the parapet wall. Moss and Myer Dana were informed that water was penetrating the wall flashings and wall caps and that the flashing on top of the parapet wall had failed in multiple locations.

32. On information and belief, although appropriate periodic inspections of the condition of the building's façade and parapet over a period of years prior to the collapse would have revealed the decayed, dangerous condition of the building's façade and parapet, the owners, occupants and managers of the Property, including the Defendants herein, failed to perform such inspections and failed to perform reasonable, necessary repairs to ensure that the condition of the Property did not pose a substantial risk of serious harm or death to persons traversing the public sidewalk in front of the Property.

33. Further, the building's owners, occupants and managers knew or should have known that, due to the design of the parapet, which protruded over the sidewalk and away from the plane of the building's front wall, the decay of the mortar and masonry ties created a particularly hazardous condition and increased the risk of serious injury or death to passersby on the public sidewalk.

34. In consequence of the collapse of the Property's façade and parapet, Ms. Bandouil was trapped under tons of concrete and rubble and suffered serious and life threatening injuries, including but not limited to the following: Temporal skull fracture; Rib fracture; Pneumothorax; Pelvic ring fracture; Olecranon fracture; Metatarsal fracture; Lumbar vertebral fracture; Injury of artery; Hematoma; Fracture of spinous process of thoracic vertebra; Femur fracture; Dysphagia; De-gloving injury of hand; Clavicle fracture; Multiple fractures of ribs on left side; Mandibular fracture; Unstable burst fracture of first lumbar vertebra; Scalp laceration; Temporal bone fracture; Splenic laceration; De-gloving injury of right hand; Right femoral shaft fracture; and a crush injury to her dominant right hand that was of such severity that her third finger had to be amputated.

35. Mr. Pankiewicz was also struck by falling debris and suffered physical injuries but was not trapped or rendered unconscious because he was further from the building at the time of the collapse.

36. Mr. Pankiewicz was stunned and distraught when he realized Ms. Bandouil was under the rubble and urgently, with the help of passersby, began desperately to remove stone and rubble from atop Ms. Bandouil in an effort to save her. Another passerby called 911.

37. Eventually, Ms. Bandouil was freed from the debris and was transported by ambulance to the Brigham & Women's hospital.

38. Ms. Bandouil underwent many surgical procedures in consequence of her injuries, including the amputation of the third finger of her right hand.

39. Ms. Bandouil was hospitalized in the intensive care ward at Brigham & Women's Hospital for 12 days. She was hospitalized at the Brigham for a total of 23 days.

40. Upon discharge from the Brigham, Ms. Bandouil was transferred to the Spaulding Rehabilitation Hospital facility in Cambridge, MA. After 37 days, Ms. Bandouil was transferred to the Spaulding Rehabilitation Hospital facility in Charlestown, MA, where she was treated for an additional 28 days.

41. Upon discharge from the Spaulding Rehabilitation Hospital facility in Charlestown, MA, Ms. Bandouil returned to the family home in the Dallas, TX metropolitan area to stay with her parents while undergoing continuing rehabilitation therapy on an outpatient basis five days a week.

42. While Ms. Bandouil has made substantial progress in her recovery from the injuries she suffered on November 4, 2018, she continues to suffer from serious injuries that restrict her movement and activities. She continues to walk with a cane or walker. Many of her injuries will be permanent and have resulted in permanent loss of function and disfigurement.

43. Among the more serious injuries Ms. Bandouil suffered was the amputation of the third finger of her dominant hand. Amputation of a digit is a very serious injury for any person, but for a professionally trained pianist, it is the end of a career and the aspirations that Ms. Bandouil had nurtured since she was five years old.

44. In addition to her physical injuries, Ms. Bandouil has suffered severe emotional and mental trauma, including trauma resulting from the realization that the loss of her finger and other injuries to her hand have resulted in the loss of her advanced piano performance skill and ability she had acquired from a lifetime of practice and devotion, and knowing that she must now re-learn piano with only three fingers on her dominant right hand. In all likelihood, Ms. Bandouil's prospects for a successful career as a professional pianist and piano teacher are over.

45. In addition to his physical injuries, Mr. Pankiewicz has further suffered severe mental anguish, shock and trauma as the result of witnessing the collapse of the Property's façade onto Ms. Bandouil, his participation in the efforts to rescue her and from witnessing her struggles to recover from her injuries subsequent to November 4, 2018. Mr. Pankiewicz continues to struggle with nightmares and panic attacks and continues to involuntarily relive the horrifying event he witnessed.

46. Following the November 4, 2018 collapse, on or about November 6, 2018, the Commissioner of the City of Boston Inspectional Services Department and the Inspector of Buildings of the City of Boston adjudged the Property to be an unsafe structure under the Massachusetts State Building Code, 780 C.M.R. § 116.1.

COUNT I
NEGLIGENCE vs. MOSS REALTY LLP

47. Plaintiffs repeat and re-allege the allegations of paragraphs 1-46 of their complaint as if each were set forth here in full.

48. As the owner of the Property, Moss Realty owed a duty of reasonable care to those persons who pass the Property on the public sidewalk, including a duty to maintain the Property in a reasonably safe condition.

49. As the owner of the Property, it was foreseeable to Moss Realty that its failure properly to maintain the Property in a safe condition, including the building's façade and parapet and the signage for the tenants' businesses, could result in a failure of the building structure that would cause serious injury or death to passersby on the public sidewalk.

50. On information and belief, Moss Realty failed, over a period of many years, properly to inspect the façade and parapet of the Property and maintain it in a structurally sound and safe condition.

51. Moss Realty knew, or should have known, that its failure to properly inspect and maintain the Property created a substantial risk of serious harm to pedestrians passing the Property on the public sidewalk.

52. Moss Realty's failure to properly inspect and maintain the Property was a breach of Moss Realty's duty to Ms. Bandouil and Mr. Pankiewicz as passersby using the public sidewalk in a foreseeable manner.

53. As the direct and proximate result of Moss Realty's negligence, Ms. Bandouil and Mr. Pankiewicz have suffered serious, disabling and permanent injuries.

54. Moss Realty is liable therefore.

COUNT II
NUISANCE vs. MOSS REALTY LLP

55. Plaintiffs repeat and re-allege the allegations of paragraphs 1-54 of their complaint as if each were set forth here in full.

56. Moss Realty's failure to maintain the Property in a safe condition created a public nuisance and posed a threat to the health and well-being of every person using the sidewalk adjacent to the Property.

57. The condition of the Property's concrete parapet and signage above and overhanging the public sidewalk constituted a public nuisance that created a risk of serious injuries to persons walking or standing on the sidewalk.

58. As the direct and proximate result of Moss Realty's maintenance of a public nuisance on the Property, Ms. Bandouil and Mr. Pankiewicz were caused to suffer serious, disabling and permanent injuries.

59. Moss Realty is liable therefore.

COUNT III
STRICT LIABILITY vs. MOSS REALTY LLP

60. Plaintiffs repeat and re-allege the allegations of paragraphs 1-59 of their complaint as if each were set forth here in full.

61. On and before November 4, 2018, the condition of the roof, parapet and façade of the Property was unsafe and violated the provisions of the Massachusetts State Building Code, 780 C.M.R. § 101, et seq.

62. The injuries and damages alleged herein to have been suffered by Plaintiffs were caused by the violations of 780 C.M.R. § 101, et seq. that existed at the Property on and before November 4, 2018.

63. As the Owner of the Property, and pursuant to the provisions of M.G.L. c. 143, § 51, Moss is strictly liable therefore.

COUNT IV
NEGLIGENCE vs. MYER DANA & SONS, INC.

64. Plaintiffs repeat and re-allege the allegations of paragraphs 1-63 of their complaint as if each were set forth here in full.

65. As the manager of the Property, Myer Dana & Sons, Inc. (“Myer Dana”) owed a duty of reasonable care to those persons who pass the Property on the public sidewalk, including a duty to maintain the Property in a reasonably safe condition.

66. As the manager of the Property, it was foreseeable to Myer Dana that its failure properly to maintain the Property in a safe condition, including the building’s façade and parapet and the signage for the tenants’ businesses, could result in a failure of the building structure that would cause serious injury or death to passersby on the public sidewalk.

67. On information and belief, Myer Dana failed, over a period of many years, properly to inspect the façade and parapet of the Property and maintain it in a structurally sound and safe condition.

68. Myer Dana knew, or should have known, that its failure to properly inspect and maintain the Property created a substantial risk of serious harm to pedestrians passing the Property on the public sidewalk.

69. Myer Dana’s failure to properly inspect and maintain the Property was a breach of Myer Dana’s duty to Ms. Bandouil and Mr. Pankiewicz as passersby using the public sidewalk in a foreseeable manner.

70. As the direct and proximate result of Myer Dana’s negligence, Ms. Bandouil and Mr. Pankiewicz have suffered serious, disabling and permanent injuries.

71. Myer Dana is liable therefore.

COUNT V
NUISANCE vs. MYER DANA AND SONS, INC.

72. Plaintiffs repeat and re-allege the allegations of paragraphs 1-71 of their complaint as if each were set forth here in full.

73. Myer Dana’s failure to maintain the Property in a safe condition created a public nuisance and posed a threat to the health and well-being of every person using the sidewalk adjacent to the Property.

74. The condition of the Property’s concrete parapet and the signage for the tenants’ businesses above and overhanging the public sidewalk constituted a public nuisance that created a risk of serious injuries to persons walking or standing on the sidewalk.

75. As the direct and proximate result of Myer Dana's maintenance of a public nuisance on the Property, Ms. Bandouil and Mr. Pankiewicz were caused to suffer serious, disabling and permanent injuries.

76. Myer Dana is liable therefore.

COUNT VI
STRICT LIABILITY vs. MYER DANA & SONS, INC.

77. Plaintiffs repeat and re-allege the allegations of paragraphs 1-76 of their complaint as if each were set forth here in full.

78. On and before November 4, 2018, the condition of the roof, parapet and façade of the Property was unsafe and violated the provisions of the Massachusetts State Building Code, 780 C.M.R. § 101, et seq.

79. The injuries and damages alleged herein to have been suffered by Plaintiffs were caused by the violations of 780 C.M.R. § 101, et seq. that existed at the Property on and before November 4, 2018.

80. As the Manager of the Property and the party in control, pursuant to the provisions of M.G.L. c. 143, § 51, Myer Dana is strictly liable therefore.

COUNT VII
NEGLIGENCE vs. BADOINKAS, INC.

81. Plaintiffs repeat and re-allege the allegations of paragraphs 1-80 of their complaint as if each were set forth here in full.

82. As a commercial tenant operating its business from the Property, Badoinkas owed a duty of reasonable care to those persons who pass the Property on the public sidewalk, including a duty to maintain the Property in a reasonably safe condition.

83. As a commercial tenant operating its business from the Property, it was foreseeable to Badoinkas that its failure properly to maintain the Property in a safe condition, including the building's façade and parapet and the signage Badoinkas used to advertise its location, could result in a failure of the building structure that would cause serious injury or death to passersby on the public sidewalk.

84. On information and belief, Badoinkas failed, over a period of many years, properly to inspect the façade and parapet of the Property and its signage and maintain them in a structurally sound and safe condition.

85. Badoinkas knew, or should have known, that its failure to properly inspect and maintain the Property created a substantial risk of serious harm to pedestrians passing the Property on the public sidewalk.

86. Badoinkas's failure to properly inspect and maintain the Property was a breach of Badoinkas's duty to Ms. Bandouil and Mr. Pankiewicz as passersby using the public sidewalk in a foreseeable manner.

87. As the direct and proximate result of Badoinkas's negligence, Ms. Bandouil and Mr. Pankiewicz have suffered serious, disabling and permanent injuries.

88. Badoinkas is liable therefore.

COUNT VIII
NUISANCE vs. BADOINKAS, INC.

89. Plaintiffs repeat and re-allege the allegations of paragraphs 1-88 of their complaint as if each were set forth here in full.

90. Badoinkas's failure to maintain the Property in a safe condition created a public nuisance and posed a threat to the health and well-being of every person using the sidewalk adjacent to the Property.

91. The condition of the Property's concrete parapet and signage above and overhanging the public sidewalk constituted a public nuisance that created a risk of serious injuries to persons walking or standing on the sidewalk.

92. As the direct and proximate result of Badoinkas's maintenance of a public nuisance on the Property, Ms. Bandouil and Mr. Pankiewicz were caused to suffer serious, disabling and permanent injuries.

93. Badoinkas is liable therefore.

COUNT IX
STRICT LIABILITY vs. BADOINKAS, INC.

94. Plaintiffs repeat and re-allege the allegations of paragraphs 1-93 of their complaint as if each were set forth here in full.

95. On and before November 4, 2018, the condition of the signage affixed to the Property was unsafe and violated the provisions of the Massachusetts State Building Code, 780 C.M.R. § 101, et seq.

96. The injuries and damages alleged herein to have been suffered by Plaintiffs were caused by the violations of 780 C.M.R. § 101, et seq. that existed at the Property on and before November 4, 2018.

97. As the occupant of the Property and the party in control of the signage for the Common Ground, pursuant to the provisions of M.G.L. c. 143, § 51, Badoinkas is strictly liable therefore.

REQUEST FOR RELIEF


WHEREFORE, Plaintiffs Sonya Bandouil and Alex Pankiewicz respectfully request that:

- a. Judgment enter against the defendants, Moss Realty LLP, Myer Dana and Sons, Inc. and Badoinkas, Inc. jointly and severally and that full and fair damages be awarded to Ms. Bandouil and Mr. Pankiewicz for their injuries;
- b. Plaintiff Sonya Bandouil be awarded her full and complete economic and intangible damages as allowed by law, including all available pre or post-judgment interest;
- c. Plaintiff Alex Pankiewicz be awarded his full and complete economic and intangible damages as allowed by law, including all available pre or post-judgment interest;
- d. Plaintiff Sonya Bandouil be awarded all appropriate costs, attorney's fees, expenses and interest as authorized by law;
- e. Plaintiff Alex Pankiewicz be awarded all appropriate costs, attorney's fees, expenses and interest as authorized by law; and
- f. The Court grant such other relief as it deems just and appropriate.

JURY CLAIM

Plaintiffs claim a trial by jury on all claims so triable.

Respectfully submitted,
Plaintiffs, SONYA BANDOUIL and ALEX
PANKIEWICZ
By their counsel,



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Dated: November 11, 2019

CERTIFICATE OF SERVICE

I, Michael D. Lurie, counsel to Plaintiffs, hereby certify that on this 11th day of November 2019, I caused a copy of the foregoing to be served on counsel of record for each of the parties **VIA ELECTRONIC MAIL** as follows:

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