

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK IAS Part 3

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NATIXIS, NEW YORK BRANCH, *et al.*

Plaintiffs,

Index No. 850272/2019

-against-

**REFEREE'S REPORT
OF COMPUTATION**

20 TSQ LESSEE LLC, *et al.*,

**Assigned Justice
Honorable Joel M. Cohen**

Defendants.
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Christopher E. Chang, an attorney at law duly admitted to practice before all of the courts of the State of New York, hereby affirms the following under the penalties of perjury:

1. Pursuant to an order of the Court dated and entered April 16, 2021, I was appointed Referee to ascertain and compute the amount due to Plaintiffs upon their notes and mortgage upon which this foreclosure action was commenced and to examine and report whether the mortgaged premises can be sold in parcels. The mortgaged premises is located at 701 Seventh Avenue in Manhattan at the heart of Times Square. The Marriott Edition Times Square Hotel ("Marriott") occupies the majority of the space at the mortgaged premises

2. Before proceeding to examine the evidence, I duly swore to faithfully and fairly determine the questions referred to me as Referee and to make a just and true report thereon to the best of my understanding. My Referee's oath was electronically filed with the court on May 5, 2021.

3. I have computed and ascertained the amount due and owing to Plaintiffs under said notes and mortgage (exclusive of the reimbursable costs of enforcement) and report that the amount due to Plaintiffs as of July 8, 2021 is the sum of **\$778,641,034** ("Total Indebtedness") as follows:

a. As of May 9, 2021, the total debt due was **\$768,054,037** (“Indebtedness”)

consisting of the following:

Original Principal of Promissory Notes	\$650,000,000.00
Accrued and Unpaid Interest on Original Principal Balance	\$92,868,994.65
Protective Advances	\$24,377,280.85
Default Rate Interest on Protective Advances	\$807,761.22

b. From May 10, 2021 to June 8, 2021, the Indebtedness increased at a rate of \$175,824.22 per day for the sum of **\$5,274,727** ($\$175,824.22 \times 30$ days).

c. From June 9, 2021 to the date hereof (July 8, 2021), the Indebtedness increased at a rate of \$177,075.68 per day for the sum of **\$5,312,270** ($\$177,075.68 \times 30$ days).

4. The Total Indebtedness is summarized as follows:

Debt as of May 9, 2021	\$768,054,037
May 10, 2021 - June 8, 2021	\$5,274,727
June 9, 2021 - July 8, 2021	\$5,312,270
Total Indebtedness	\$778,641,034

5. A full and complete computation of the amounts due and owing under said notes and mortgage (and the details thereof) is set forth in the affidavit by Brian Murphy sworn to May 12, 2021 together with all supporting exhibits (Exhibits “A” through “K”) submitted by Plaintiffs in connection with this computation. *See* NYSCEF Documents 526-541. I adopt all of the computations set forth in Mr. Murphy’s affidavit.

6. Defendants’ principal objection to the amount sought by Plaintiffs focuses on the

inclusion by Plaintiffs of \$7,125,000 in their calculation of “protective advances”.¹ These advances of \$7,125,000 were made by Plaintiffs to Marriott between July 2020 and April 2021 to prevent Marriott from ceasing to provide the security, maintenance and other services necessary to ensure that the hotel would be ready to re-open when legally and economically feasible.

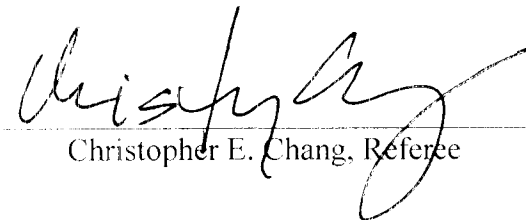
7. I find that the inclusion of the \$7,125,000 as part of the calculation of “protective advances” was proper. The record is clear that: **i)** Marriott provided detailed information and analyses supporting their requests for the advances; **ii)** Marriott’s requests were credible and reasonable; **iii)** Defendants were provided all of the information Marriott provided; and **iv)** Plaintiffs had the contractual authority to make the advances and acted in good faith in making said advances. *See* affidavit of Daniel R. Milstein, Esq. dated July 2, 2021, Exhibits “A” through “BB” (NYSCEF Documents 592-589). Indeed, given the circumstances, the record establishes that Plaintiffs had no choice but to make the advances requested by Marriott to protect and preserve the viability of the mortgaged premises. *See* affidavit of Alan Tantloff dated July 2, 2021 (NYSCEF Document 589).

8. Finally, the mortgaged premises consists of an indivisible long-term ground lease of all of the land and improvements thereon, and a long-term license agreement regarding signage usage. On this basis, I am of the opinion that it is neither financially prudent nor feasible to sell the mortgaged premises in multiple parcels and therefore report that the mortgaged premises should be sold in one parcel so as to maximize the value received for the mortgaged premises when it is sold

¹ As set forth above, the total amount of “protective advances” sought by Plaintiffs is \$24,377,280.85.

at public auction.

Dated: New York, New York
July 8, 2021



Christopher E. Chang, Referee