

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

DB 232 SEIGEL LLC,

Plaintiff,

-against-

232 SEIGEL ACQUISITION LLC, TOBY MOSKOVITS, MICHAEL LICHTENSTEIN, MOSHE DOV SCHWIED, NEW YORK CITY DEPARTMENT OF FINANCE, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, ISSM PROTECTIVE SERVICES INC., NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, SALAMON ENGINEERING PLLC, ALL ISLAND MASONRY & CONCRETE INC., 20/20 INSPECTIONS INC., JOHN DOE "1" through "10" and JANE DOE "1" through "10", the last 10 names being fictitious and unknown to plaintiff, the persons or parties intended being the persons or parties, if any, having or claiming an interest in or lien upon the mortgaged premises described in this Verified Complaint,

Defendants.

Index No. _____

VERIFIED FORECLOSURE COMPLAINT

Subject Property:
Kings County, Block 3100,
Lot 34

Subject Property Address:
232 Seigel Street, Brooklyn,
New York

Plaintiff DB 232 Seigel LLC ("Plaintiff"), by its attorneys, Hahn & Hessen LLP, for its Verified Foreclosure Complaint against Defendants alleges as follows:

Nature of the Action

1. This is an action brought pursuant to Article 13 of the New York Real Property Actions and Proceedings Law to foreclose a mortgage owned and held by Plaintiff on vacant and undeveloped commercial real property located at 232 Seigel Street, Brooklyn, New York, and as more fully described in Exhibit A annexed hereto and made a part hereof (the "Subject Property").

The Parties

2. Plaintiff DB 232 Seigel LLC (“Plaintiff”) is a Delaware limited liability company, authorized to do business in New York, with its principal place of business at 1345 Avenue of the Americas, 46th Floor, New York, New York 10105.

3. Upon information and belief, Defendant 232 Seigel Acquisition LLC (“232 Seigel” or “Borrower”) is a New York limited liability company with its principal place of business at 679 Driggs Avenue, Brooklyn, New York 11211, and is a record owner of the mortgaged premises.

4. Upon information and belief, Defendant Toby Moskovits is an individual with an address at 679 Driggs Avenue, Brooklyn, New York 11211.

5. Upon information and belief, Defendant Michael Lichtenstein is an individual with an address at 679 Driggs Avenue Brooklyn, New York 11211.

6. Upon information and belief, Defendant Moshe Dov Schwied is an individual with an address at 679 Driggs Avenue, Brooklyn, New York 11211.

7. Defendants the New York State Department of Taxation & Finance and the New York City Department of Finance are named herein by reason of possible liens for unpaid New York State franchise taxes and/or New York City general corporation taxes.

8. Defendant the New York City Environmental Control Board is named herein by reason of possible liens for unpaid violations or judgments by the Environmental Control Board.

9. Upon information and belief, Defendant ISSM Protective Services Inc. is a New York domestic business corporation with its principal place of business at 45 Forshay Road, Monsey, New York, 10952, and is named herein to bar it from any right, title or interest

that it may have in the Subject Property, or any part thereof, by reason of a judgment against Defendant 232 Seigel Acquisition LLC in the amount of \$142,455.94 docketed in the Kings County Supreme Court Clerk's Office on August 13, 2019, which interest is subordinate to the lien of the mortgage sought to be foreclosed herein.

10. Upon information and belief, Defendant Salamon Engineering PLLC is a New York domestic professional service limited liability company with its principal place of business at 330 West 38 Street, Suite 402, New York, New York, 10018, and is named herein to bar it from any right, title or interest that it may have in the Subject Property, or any part thereof, by virtue of a notice of mechanic's lien filed on November 26, 2019, as extended on November 20, 2020, against 232 Seigel Acquisition LLC in the amount of \$97,900, which interest is subordinate to the lien of the mortgage sought to be foreclosure herein.

11. Upon information and belief, Defendant All Island Masonry & Concrete Inc. is a New York domestic business corporation with its principal place of business at 16 Wanda Terrace, Farmingville, New York, 11738, and is named herein to bar it from any right, title or interest that it may have in the Subject Property, or any part thereof, by virtue of a notice of mechanic's lien filed on January 23, 2020, as extended on January 13, 2021, against 232 Seigel Acquisition LLC for \$683,539.30, and by virtue of a notice of mechanic's lien filed on January 23, 2020, as extended on January 13, 2021, against 232 Seigel Acquisition LLC for \$1,508,376.82, which interests are subordinate to the lien of the mortgage sought to be foreclosed herein.

12. Upon information and belief, Defendant 20/20 Inspections Inc. is a New York domestic business corporation with its principal place of business at 125 Route 59, Suite 2, Monsey, New York, 10952, and is named herein to bar it from any right, title or interest that

it may have in the Subject Property, or any part thereof, by virtue of a notice of mechanic's lien filed on March 10, 2021 against 232 Seigel Acquisition LLC for \$73,237.71, which interest is subordinate to the lien of the mortgage sought to be foreclosed herein.

13. Defendants John Doe "1" through "10" and Jane Doe "1" through "10" inclusive, the names being fictitious as their true names are unknown to Plaintiff, the persons intended as defendants being those who may be in possession of, or may be tenants, have possessory liens or other interests in, the Subject Property, are made defendants because they, or some of them, may have or may claim to have an interest in the Subject Property or any part thereof, which interest, if any, occurred subsequent to the lien of the Mortgage, and is subject and subordinate thereto.

Jurisdiction and Venue

14. This Court has personal jurisdiction over the defendants as each is a resident of the State of New York.

15. This Court has personal jurisdiction over the defendants as each is transacting business within the State of New York.

16. This Court has personal jurisdiction over the defendant Borrower pursuant to Section 10.3 of the Loan Agreement wherein it consented to jurisdiction in the City of New York, County of New York, State of New York.

17. This Court has personal jurisdiction over the Guarantors pursuant to Section 10(s) of the Guaranty wherein they consented to jurisdiction in any Court of the State of New York.

18. Venue in New York County is proper under CPLR 501 and Section 10.3 of the Loan Agreement.

Statement of Facts

I. Plaintiff's Mortgage

19. On or about December 18, 2018, Bridgecity Capital LLC entered into a Loan Agreement (the "Loan Agreement") with Borrower, pursuant to which Borrower agreed to borrow \$5,250,000.00. A true and correct copy of the Loan Agreement is annexed hereto as Exhibit B.

20. On or about December 18, 2018, Borrower also executed for the benefit of Bridgecity Capital LLC that certain Consolidated, Amended and Restated Secured Promissory Note for the principal sum of \$5,250,000.00 (the "Note"). A true and correct copy of the Note is annexed hereto as Exhibit C.

21. To secure the loan evidenced by the Note and governed by the Loan Agreement, Borrower executed and delivered that certain Consolidated, Amended and Restated Mortgage, Assignment of Leases and Rents and Security Agreement dated as of December 18, 2018 (the "Mortgage"), which was duly recorded in the Office of the City Register of the City of New York on January 14, 2019 (CRFN 2019000014876) and the recording tax imposed thereon was paid. A true and correct copy of the Mortgage is annexed hereto as Exhibit D.

22. The Mortgage consolidated and modified prior mortgages on the Property:

- a. On or about November 18, 2016, Borrower executed a Senior Loan Mortgage, Assignment of Leases and Rents and Security Agreement to ER 215 Moore LLC in the principal amount of \$4,700,000.00, which was duly recorded in the Office of the City Register of the City of New York on November 30, 2016 (CRFN 2016000423424) and the recording tax

imposed thereon was paid. This mortgage was assigned by ER 215 Moore LLC to Bridgcity Capital LLC pursuant to an Assignment of Senior Loan Mortgage dated December 18, 2018 and recorded in the Office of the City Register of the City of New York on January 14, 2019 (CRFN 2019000014873); and

- b. On or about November 18, 2016, Borrower executed a Building Loan Mortgage, Assignment of Leases and Rents and Security Agreement to ER 215 Moore LLC in the principal amount of \$3,100,000.00, which was duly recorded in the Office of the City Register of the City of New York on November 30, 2016 (CRFN 2016000423427) and the recording tax imposed thereon was paid. This mortgage was assigned by ER 215 Moore LLC to Bridgcity Capital LLC pursuant to an Assignment of Building Loan Mortgage dated December 18, 2018 and recorded in the Office of the City Register of the City of New York on January 14, 2019 (CRFN 2019000014874).

23. On or about December 18, 2018, Borrower executed and delivered that certain Assignment of Leases and Rents (the "Assignment of Leases and Rents"), which was duly recorded in the Office of the City Register of the City of New York on January 14, 2019 (CRFN 2019000014877) and the recording tax imposed thereon was paid. A true and correct copy of the Assignment of Leases and Rents is annexed hereto as Exhibit E.

24. On or about December 18, 2018, Defendants Toby Moskovits, Michael Lichtenstein, and Moshe Dov Schwied (collectively, "Guarantors") executed for the benefit of Bridgcity Capital LLC: (i) a Guaranty absolutely, unconditionally and irrevocably

guarantying the obligations due under the Loan Agreement, a true and correct copy of which is annexed hereto as Exhibit F; and (ii) a Completion Guaranty, guarantying the completion of Improvements as defined in the Loan Agreement, a true and correct copy of which is annexed hereto as Exhibit G. Pursuant to these agreements, the Guarantors unconditionally guaranteed the full and punctual payment of all obligations and liabilities of Borrower under the Note, the Mortgage, and the other Loan Documents, and the obligations, duties, covenants and agreements of Borrower with respect to the completion of the Construction pursuant to the Loan Agreement.

25. Pursuant to the Guaranty, the Guarantors also guaranteed the payment of all costs and expenses in connection with the enforcement of the Guaranty. (Guaranty, Sec. 1.)

26. On or about December 17, 2019, Plaintiff DB 232 Seigel LLC and Bridgecity Capital LLC entered into an Assignment and Assumption Agreement pursuant to which Bridgecity Capital LLC assigned and transferred to Plaintiff all right title and interest in the Loan Agreement, the Note, the Mortgage, the Guaranties, and the related Loan Documents. A true and correct copy of the Assignment and Assumption Agreement is annexed hereto as Exhibit H.

27. On or about December 17, 2019, Bridgecity Capital LLC executed and delivered that certain Assignment of Mortgage assigning and transferring to Plaintiff all right, title and interest in the Mortgage. A true and correct copy of the Assignment of Mortgage is annexed hereto as Exhibit I.

28. On or about December 17, 2019, Bridgecity Capital LLC executed and delivered that certain Assignment of Assignment of Leases and Rents assigning and transferring to Plaintiff all right, title and interest in the Assignment of Leases and Rents. A

true and correct copy of the Assignment of Assignment of Leases and Rents is annexed hereto as Exhibit J.

29. The Mortgage includes as part of the property mortgaged all buildings, structures, improvements, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located on the Premises (as defined in the Mortgage).

30. The Mortgage, pursuant to the terms thereof, constitutes a valid lien by Plaintiff on the Subject Property.

31. Plaintiff is the owner and holder of the Mortgage and the related loan documents (the "Loan Documents"), the originals of which are in Plaintiff's possession and control, and Plaintiff is otherwise entitled to enforce the Loan Documents pursuant to applicable law.

II. The Default

32. Borrower defaulted on the Loan Agreement by failing to complete construction in accordance with the terms of the loan documents. By letter dated October 29, 2019 (the "Default Notice"), Bridgocity Capital LLC notified Borrower of certain Events of Default under the Loan Agreement, including: (a) failure to complete the superstructure on or prior to October 18, 2019, in accordance with Section 5.1.28 and Section 8.1(a)(xxviii) of the Loan Agreement; and (b) ceasing construction work at the Property for more than thirty (30) consecutive days in violation of Section 8.1(a)(xxviii) of the Loan Agreement. A true and correct copy of the Default Notice is annexed hereto as Exhibit K.

33. By letter dated November 19, 2019, Bridgocity Capital LLC notified Borrower that due to the Events of Default, the entire aggregate amount due under the Loan Agreement

was accelerated and that Bridgecity Capital LLC reserved its right to commence enforcement actions against the Borrower. A true and correct copy of the November 19, 2019 letter is annexed hereto as Exhibit L.

34. By letter dated January 10, 2020, Plaintiff notified Borrower that in addition to the prior Events of Default included in Bridgecity Capital LLC's notices, Borrower permitted the scheduled Maturity Date of January 1, 2020 to pass without paying any portion of the amount due under the Loan Agreement, constituting an additional unequivocal Event of Default under the loan documents (the "Maturity Default"), and demanded that Borrower immediately pay the amounts due pursuant to the Loan Agreement. A true and correct copy of Plaintiff's Maturity Default notice is annexed hereto as Exhibit M.

III. Borrower's Bankruptcy and the Court's Order Allowing a Foreclosure Action

35. On July 14, 2020, Borrower filed a voluntary petition for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. *In re. 232 Seigel Acquisition LLC*, No. 20-22845 (S.D.N.Y. Bankr.) (the "Bankruptcy Action"). As a result of Borrower's bankruptcy filing, Plaintiff was required to move to lift the automatic stay imposed by 11 U.S.C. 362 before filing this foreclosure proceeding.

36. On February 23, 2021, Plaintiff filed a motion requesting relief from the automatic stay provisions and permission from the Bankruptcy Court to proceed with this foreclosure action. On March 25, 2021, the Bankruptcy Court granted Plaintiff's motion, lifted the stay, and explicitly allowed Plaintiff "to enforce and exercise its rights in, and remedies in and to its interests in the Property ... *including without limitation by commencing and*

prosecuting an action in state court for, and obtaining, the judicial foreclosure of the Mortgage and the judicial sale of the Property.” (Order at 2) (emphasis added).

37. A true and correct copy of the Bankruptcy Court’s Order is annexed hereto as Exhibit N.

IV. Plaintiff’s Entitlement to Foreclosure

38. As of May 31, 2021, there is due and owing to Plaintiff under the Loan Agreement the sum of \$5,250,000 plus interest at the Default Rate of 24% per annum of \$1,963,500, late charges of \$262,500, an exit fee of \$26,250 and enforcement costs of \$705,824.03, totaling approximately \$8,208,074.03. No part of the amount has been paid although duly demanded.

39. The COVID-19 Emergency Protect Our Small Businesses Act of 2021 is not applicable to this matter since the Subject Property is vacant and unimproved, and was intended to be “used exclusively as an approximately 155 room hotel with amenities, community space and parking” pursuant to Section 4.1.20 of the Loan Agreement.

40. Moreover, Borrower is owned and controlled by Guarantors, who are principals of Heritage Equity Partners, a sophisticated real estate development firm that currently owns, directly or indirectly, interests in several large projects throughout New York City, including the Williamsburg Hotel and several planned and completed residential projects with hundreds of units. A true and correct copy of Heritage Equity Partners’ website listing all its properties, including the 232 Seigel Street property at issue in this case, is annexed hereto as Exhibit O.

**AS AND FOR A FIRST CAUSE OF ACTION
(Foreclosure)**

41. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 40 as if set forth in full herein.

42. Plaintiff now seeks to foreclose the Mortgage securing the Loan to Borrower in accordance with the express terms of the Loan Documents and the applicable provisions of RPAPL Article 13.

43. In order to protect its security, Plaintiff has paid, or may be compelled to pay during the pendency of this action, taxes, assessments, water rates, insurance premiums, and other charges affecting the Subject Property. Plaintiff requests that any sums so paid by it or its agents, together with interest (including, where applicable pursuant to the loan documents, default interest), be included in the sum due as provided for and secured by the Mortgage being foreclosed herein and be adjudged a valid lien on the Subject Property.

44. These proceedings are not subject to the provisions of RPAPL §§ 1302, 1304, or 1306 or the New York Banking Law §§ 595-a, 6-1 and 6-m, and this action does not involve a home loan, high-cost home loan or a subprime home loan as those terms are defined therein.

45. Plaintiff shall not be deemed to have waived any default or Event of Default not specified herein.

46. Plaintiff has complied with any and all pre-filing notices required under the terms and conditions of the Loan Documents and by law.

47. Upon information and belief, each of the Defendants herein has or claims to have an interest in or lien upon the Subject Property, or any part thereof, which interest or lien, if any, is subject and subordinate to the lien of the Mortgage and to Plaintiff's interest thereon, or is a party liable to the Plaintiff for payment of the debt secured by the Mortgage.

48. No other action or proceeding has been commenced or maintained or is currently pending at law or otherwise for the foreclosure of the Mortgage or for the recovery of any part of the sums due and owing under the Loan Documents.

49. Plaintiff does not have an adequate remedy at law.

50. Plaintiff requests that the Subject Property be sold subject to:

- a. any state of facts an accurate survey would show, and any state of facts an inspection of the Subject Property would reveal;
- b. building and zoning restrictions, regulations and ordinances of the State of New York and Kings County and any violations thereof;
- c. any equity of redemption of the United States of America to redeem within one hundred and twenty (120) days from the date of sale;
- d. any lien or liens resulting from unpaid taxes, assessments, sewer or water rents, if any;
- e. covenants, restrictions, easements and public utility agreements, if any, of record affecting the Subject Property and any violations thereof;
- f. outstanding taxes, if any;
- g. prior mortgages and liens, if any, of record and any advances and arrearages thereunder; and
- h. any rights of tenants or persons in possession of the subject premises.

51. Plaintiff shall not be deemed to have waived, altered, released or changed the election hereinbefore made, by reason of any payment or performance, after the date of the commencement of this action, of any or all of the defaults mentioned herein; and such election shall continue and remain effective.

WHEREFORE, Plaintiff DB 232 Seigel LLC demands judgment against the Defendants as follows:

- a. that Plaintiff have judgment against the Defendants, and each of them and all persons claiming under them or any of them, subsequent to the commencement of this action and the filing of a notice of pendency thereof, be barred and forever foreclosed of and from all estate, right, title, interest, claim, lien and equity of redemption, if any, in the Subject Property and each and every part and parcel thereof; and
 - i. that the Subject Property be sold, together with the fixtures and articles of personalty, so as to obtain the greatest return of the sale, whether sold jointly as a single parcel or sold separately as two or more parcels; and
 - ii. that the monies received from the sale of the Subject Property be paid into Court and that Plaintiff be paid: (i) the outstanding principal and interest, together with any and all other sums due and owing under the Mortgage, Note, Loan Agreement, and the related Loan Documents, in the sum of \$8,208,074.03 as of May 31, 2021, plus interest thereon at the Default Rate through and including the date of payment; (ii) attorneys' fees incurred in enforcing the Mortgage, Note, Loan Agreement, and the related Loan Documents in an amount to be determined by the Court; and (iii) all costs, disbursements, monies advanced and sums incurred in enforcing the Mortgage, Note, Loan Agreement, and the related Loan Documents, or in protecting the lien

of the Mortgage, and any and all other amounts due under the Loan Documents; and

- b. that pursuant to RPAPL § 1371, Borrower and Guarantors be adjudged to pay any deficiency which may remain after a sale of the Subject Property and applying all of said monies so applicable; and
- c. for such other and further relief as this Court may deem just and proper.

Dated: New York, New York
May 28, 2021

HAHN & HESSEN LLP

By: /s/ Zachary G. Newman
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