

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

EVERGREEN GARDENS I LLC, and YOEL
GOLDMAN,

Plaintiff,

-against-

MREF REIT LENDER 9 LLC,

Defendants.

Index No. _____

Date Filed:

SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on Plaintiff's Attorney within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to answer or appear, judgment will be taken against you by default for the relief demanded in the notice set forth below and in the complaint.

Plaintiffs designate Kings County as the venue for trial. The basis for venue is that Plaintiff resides in Kings County and the property at issue is located in Kings County.

Dated: Brooklyn, New York
February 3, 2021

LAW FIRM OF ADAM KALISH P.C.

By: /s/ Adam Kalish
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

EVERGREEN GARDENS I LLC, and YOEL
GOLDMAN,

Plaintiffs,

-against-

MREF REIT LENDER 9 LLC,

Defendants.

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VERIFIED COMPLAINT

Plaintiffs Yoel Goldman and Evergreen Gardens I LLC, by their undersigned attorneys, for his verified complaint against defendants, allege as follows:

1. Plaintiff Yoel Goldman ("Plaintiff" or "Goldman") is an individual who resides in the State of New York, County of Kings.
2. Goldman is the owner of Plaintiff Evergreen Gardens I LLC ("Evergreen I") and Evergreen Gardens II LLC ("Evergreen II").
3. Evergreen I is the current record owner of real property known as 123 Melrose Street, Brooklyn, New York, Block 3152, Lot 48 (the "Property"), a condominium development. A copy of the deed is annexed hereto as Exhibit A.
4. J.P. Morgan Chase Bank, N.A., holds a senior mortgage on the Property in the amount of \$170,000,000.00. A copy of the June 10 Amended, Restated and Consolidated Mortgage Agreement, Assignment of Leases and Rents and Security Agreement is annexed hereto as Exhibit B.
5. Defendant MREF REIT Lender 9 LLC, which is owned by Mack Real Estate Group, holds a mezzanine loan on the Property in the amount of \$65,000,000.00 dated February

12, 2019 ("Mezzanine Loan"). A copy of the Mezzanine Loan is annexed hereto as Exhibit C.

6. Goldman personally guaranteed the Mezzanine Loan.

7. On July 1, 2020, Evergreen allegedly defaulted on the Mezzanine Loan.

8. On July 31, 2020, Plaintiffs entered into a forbearance agreement with Defendant.

A copy of the forbearance agreement is annexed hereto as Exhibit D.

9. Plaintiffs thereafter tried to pay-off the loan but has repeatedly received inaccurate payoff statements, and all of his efforts to resolve these issues have been rebuffed.

10. On December 2, 2020, Defendant offered to reinstate the loan for a payment of \$7,500,000.00 by December 3, 2020, but when Plaintiffs tried to make the payment, Defendant refused to accept it. A copy of the re-instatement email is annexed hereto as Exhibit E. In fact, Furthermore, Defendant was all-along scheming, as Defendant instead, on December 2, 2020, the same day it reached this agreement, sent a notice that it would be conducting a UCC foreclosure sale of the Property on February 5, 2021 at 12:00 p.m. A copy of the UCC sale notice is annexed hereto as Exhibit F.

11. Upon information and belief, Defendant seeks to obtain the Property itself at the UCC sale. Upon information and belief, Defendant has refused to proffer an accurate payoff, or accept payment under its reinstatement agreement, because it seeks to wrest the Property from Plaintiffs at a steep discount. In effect, it is scheming to prevent Plaintiffs from paying off the mortgage as part of a scheme to unlawfully obtain the Property.

12. Plaintiffs now brings this action to both stop Defendant's misconduct and obtain redress for it.

COUNT ONE
(Breach of Contract)

13. Plaintiffs repeat each of the preceding allegations as if fully set for herein.

14. The parties entered into a contract by which Defendant loaned Evergreen I funds and which loan was personally guaranteed by Goldman.

15. The contract was eventually amended and modified to be reinstated with \$7,500,000.00 as consideration.

16. Both parties agreed to the modification and reinstatement. Nonetheless, after agreeing to the modification, Defendant breached the modification and scheduled a UCC foreclosure auction.

17. Defendant has also refused to send Plaintiffs an accurate payoff statement.

18. Plaintiffs have been damaged by these breaches of the Contract and stands to lose its Property.

19. Accordingly, the Court should enter judgment, including for consequential damages, in an amount to be determined at trial, but estimated at no less than \$70,000,000.00.

**COUNT TWO
(Specific Performance)**

20. Plaintiffs repeat each of the preceding allegations as if fully set for herein.

21. The parties entered into a contract by which Defendant loaned Evergreen I funds and which loan was personally guaranteed by Goldman.

22. The contract was eventually amended and modified to be reinstated with \$7,500,000.00 as consideration.

23. Both parties agreed to a modification and reinstatement. Nonetheless, after agreeing to the modification and reinstatement, Defendant breached the modification and scheduled a UCC foreclosure auction.

24. Defendant has also refused to send Plaintiffs an accurate payoff statement.

25. Plaintiffs have been, and are, ready willing and able to proceed to fulfill their

agreements, including the aforementioned payoffs.

26. Plaintiffs lack an adequate remedy at law.

27. Accordingly, the Court should enter judgment, ordering Defendant to specifically perform and accept the December 2, 2020 modification and reinstatement agreement and to provide accurate payoff statements.

**COUNT THREE
(Declaratory Judgment)**

28. Plaintiffs repeat the preceding allegations as if fully set forth herein.

29. A legal dispute has arisen between the parties requiring a judicial declaration of rights and interests.

30. The parties entered into a contract by which Defendant loaned Evergreen I funds and which loan was personally guaranteed by Goldman.

31. The contract was eventually amended and modified to be reinstated with \$7,500,000.00 as consideration.

32. Both parties agreed to a modification and reinstatement. Nonetheless, after agreeing to the modification and reinstatement, Defendant breached the modification and scheduled a UCC foreclosure auction.

33. Defendant has also refused to send Plaintiffs an accurate payoff statement.

34. Plaintiffs have been, and are, ready willing and able to proceed to fulfill their agreements, including the aforementioned payoffs.

35. Plaintiffs lack an adequate remedy at law.

36. The Court should issue a declaratory judgment that Plaintiffs is in breach of its agreements and should order Plaintiffs to comply with its contractual obligations.

**COUNT FOUR
(Permanent Injunction)**

37. Plaintiffs repeat the preceding allegations as if fully set forth herein.

38. The parties entered into a contract by which Defendant loaned Evergreen I funds and which loan was personally guaranteed by Goldman.

39. The contract was eventually amended and modified to be reinstated with \$7,500,000.00 as consideration.

40. Both parties agreed to a modification and reinstatement. Nonetheless, after agreeing to the modification and reinstatement, Defendant breached the modification and scheduled a UCC foreclosure auction.

41. Defendant has also refused to send Plaintiffs an accurate payoff statement.

42. Plaintiffs have been, and are, ready willing and able to proceed to fulfill their agreements, including the aforementioned payoffs.

43. If the February 5, 2021 UCC auction is allowed to proceed, Plaintiffs will suffer irreparable injury because it will forever lose valuable, and irreplaceable real property.

44. Furthermore, the equities favor Plaintiffs because they will lose valuable rights and interests, while Defendant will only be required to remedy its breaches of contract.

45. Plaintiffs lacks an adequate remedy at law.

46. Accordingly, the Court should issue a permanent injunction barring the UCC foreclosure sale until Defendant complies with its contractual obligations.

**COUNT FIVE
(Accounting)**

47. Plaintiffs repeat the preceding allegations as if fully set forth herein.

48. Plaintiffs are entitled to an accounting of what they owe and an accurate payoff statement.

49. Defendant has refused to provide an accurate payoff statement.

50. Accordingly, Plaintiffs respectfully request that the Court issue a judgment ordering an accounting.

COUNT SIX
(Breach Of Implied Covenant Of Good Faith And Fair Dealing)

51. Plaintiffs repeat each of the preceding allegations as if fully set forth herein.

52. The parties entered into a contract by which Defendant loaned Evergreen I funds and which loan was personally guaranteed by Goldman.

53. The contract was eventually amended and modified to be reinstated with \$7,500,000.00 as consideration.

54. Both parties agreed; however, after agreeing to the modification, Defendant breached the modification and scheduled a UCC foreclosure auction.

55. Defendant has acted in a manner that deprives the Plaintiff of its right to receive the benefits of the modification under the agreement.

56. Plaintiff was justified in understanding that the \$7,500,000.00 would reinstate the mezzanine loan.

57. Defendant has violated the implied covenant of good faith and fair dealing in the modification agreement.

58. Plaintiffs have been damaged by these breaches of the implied covenant of good faith and fair dealing and stands to lose its Property.

59. Accordingly, the Court should enter judgment, including for consequential

damages, in an amount to be determined at trial, but estimated at no less than \$70,000,000.00.

COUNT SEVEN
(Negligent Misrepresentation)

60. Plaintiffs repeat each of the preceding allegations as if fully set forth herein.

61. The parties entered into a contract by which Defendant loaned Evergreen I funds and which loan was personally guaranteed by Plaintiffs.

62. Defendant made various statements to the Plaintiff with regards to modifying the contract and reinstating the loan upon receipt of \$7,500,000.00

63. Both parties agreed; however, after agreeing to the modification, Defendant breached the modification and scheduled a UCC foreclosure auction.

64. Plaintiffs relied on the Defendant's statements about the modification and put together the \$7,500,000.00 requested by the Defendant.

65. Defendant has acted in a manner that deprives Plaintiffs of their right to receive the benefits of the modification under the agreement.

66. Plaintiff was justified in understanding that the \$7,500,000.00 would reinstate the mezzanine loan.

67. Defendant's misrepresentation has damaged the Plaintiffs.

68. Accordingly, the Court should enter judgment, including for consequential damages, in an amount to be determined at trial, but estimated at no less than \$70,000,000.00.

CLAIMS FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that judgment be granted as follows:

- a) On the First Cause of Action, rendering a judgment for damages, including consequential damages, for Defendant's breach of contract in an amount to be determined at trial.
- b) On the Second Cause of Action, issuing a judgment awarding Plaintiff specific performance.
- c) On the Third Cause of Action, issuing a declaratory judgment that Defendant is in breach of contract and that Defendant's may not proceed with the UCC foreclosure sale.
- d) On the Fourth Cause of Action, issuing a permanent injunction barring the UCC foreclosure sale.
- e) On the Fifth Cause of Action, awarding Plaintiffs an accounting.
- f) On the Sixth Cause of action, rendering a judgment for damages, including consequential damages, for Defendant's breach of contract in an amount to be determined at trial
- g) On the Seventh Cause of Action, rendering a judgment for damages, including consequential damages, for Defendant's breach of contract in an amount to be determined at trial
- h) Awarding attorney's fees, costs, prejudgment interest and such other and further relief as the Court deems just and proper.

Dated: Brooklyn, New York
February 3, 2021

LAW FIRM OF ADAM KALISH P.C.

By: /s/ Adam Kalish

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