

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

Block
858

Lot
1001

Unit
COMM

-----X
31 EAST 28TH STREET NOTE BUYER LLC,

Plaintiff,

-against-

JTRE PARK 28 LLC, JACK TERZI, HAGAI LANIADO,
THE BOARD OF MANAGERS OF THE PARKWOOD
CONDOMINIUM, NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE, NEW YORK CITY
DEPARTMENT OF FINANCE, "JOHN DOE NO. 1" to
"JOHN DOE NO. 30," inclusive, the last thirty names
being fictitious and unknown to plaintiff, the persons or
parties intended being the tenants, occupants, persons or
corporations, if any, having or claiming an interest in or
lien upon the premises described in the complaint,

Defendants.
-----X

**COMMERCIAL MORTGAGE
FORECLOSURE ACTION**

SUMMONS

Index No.:

Date
Purchased:

PLAINTIFF DESIGNATES
NEW YORK COUNTY
AS THE PLACE OF TRIAL

Plaintiff's Address:
114 E. 13th Street, Front 1
New York, New York 10003

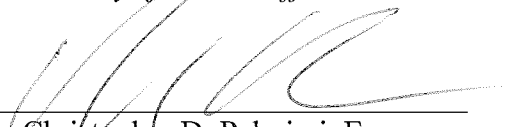
Property Address: 31-33 East 28th Street, Commercial Unit, New York, NY

TO EACH OF 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 the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service (or within thirty days after 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 appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated: Garden City, New York
July 30, 2019

JASPAN SCHLESINGER LLP
Attorneys for Plaintiff

By: 
Christopher D. Palmieri, Esq.
300 Garden City Plaza
Garden City, New York 11530
(516) 393-8221

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

-----X
31 EAST 28TH STREET NOTE BUYER LLC,

Block
858

Plaintiff,

**COMMERCIAL MORTGAGE
FORECLOSURE ACTION**

Lot
1001

-against-

VERIFIED COMPLAINT

Unit
COMM

JTRE PARK 28 LLC, JACK TERZI, HAGAI LANIADO,
THE BOARD OF MANAGERS OF THE PARKWOOD
CONDOMINIUM, NEW YORK STATE DEPARTMENT OF
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DEPARTMENT OF FINANCE, "JOHN DOE NO. 1" to
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being fictitious and unknown to plaintiff, the persons or
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corporations, if any, having or claiming an interest in or
lien upon the premises described in the complaint,

Index No.:

Defendants.
-----X

Plaintiff, 31 East 28th Street Note Buyer LLC ("Plaintiff"), by and through its attorneys,
Jaspan Schlesinger LLP, as and for its Complaint against defendants (collectively, the
"Defendants"), states as follows:

The Parties

1. Plaintiff is a New York limited liability company with offices located at 114 E.
13th Street, Front 1, New York, New York 10003.

2. Upon information and belief, defendant JTRE Park 28 LLC ("Borrower") is a
limited liability company organized and existing under the laws of the State of New York with
an address located at P.O. Box 1705, New York, New York 10150.

3. Upon information and belief, defendant, Jack Terzi ("Terzi") is an individual with
an address of 200 East 58th Street, No. 8A, New York, New York 10022.

4. Upon information and belief, defendant, Hagai Laniado (“Laniado, together with Terzi, the “Guarantors”) is an individual with an address of 1002 East 8th Street, Brooklyn, New York 11230.

5. Upon information and belief, defendant, The Board of Managers of the Parkwood Condominium, is a condominium board of managers located at 115 West 30th Street, New York, New York 10001.

6. Defendant, New York State Department of Taxation and Finance (“NYSDTF”) is an agency of the State of New York.

7. Defendant, New York City Department of Finance (“NYCDF”), is an agency of the City of New York.

8. Defendants, John Does No. 1 through 30, are currently unknown to Plaintiff, but, upon information and belief, are tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises described in this Complaint.

The Loan Transaction

9. This action is commenced to foreclose a second mortgage executed by the Borrower, which secures a note executed by the Borrower in the original principal amount of \$1,200,000.00 as more particularly described herein (the “Loan”).

10. In connection with the Loan, Borrower executed a Second Mortgage Note in favor of Signature Bank dated as of March 3, 2015 in the original principal amount of \$1,200,000.00 (the “Note”).

11. The Note was transferred to Plaintiff via an Allonge. A copy of the Note, including the Allonge, is attached hereto as Exhibit A.

12. Plaintiff is the current owner of the Note.

13. The Note is secured by the following second mortgage, security agreement, assignment of leases and rents and fixture filing (the "Mortgage"):

(A) Mortgagor: JTRE Park 28 LLC
Mortgagee: Signature Bank
Amount: \$1,200,000.00
Dated: As of March 3, 2015
Recorded: March 23, 2015
CRFN: 2015000097864

A copy of which is annexed hereto as Exhibit B.

Assignment of Mortgage

Assignor: Signature Bank
Assignee: 31 East 28th Street Note Buyer LLC
Dated: As of July 19, 2017
Recorded: August 10, 2017
CRFN: 2017000298021

A copy of which is annexed hereto as Exhibit C.

14. The Mortgage encumbers real and personal property situated in the County of New York, City of New York, State of New York, Block 858, Lot 1001, Unit COMM, on the Tax Map of New York County, known by the following street address: 31-33 East 28th Street, Commercial Unit, New York, New York (the "Property").

15. A copy of the legal description of the Property is annexed hereto as Exhibit D.

16. In connection with the Loan, Borrower executed the Amended and Restated Cash Collateral Agreement dated as of March 3, 2015 ("Cash Collateral Agreement"), a copy of which is annexed hereto as Exhibit E.

17. In connection with the Loan, Guarantors executed a Limited Guaranty ("Guaranty") dated as of March 3, 2015, a copy of which is annexed hereto as Exhibit F.

18. The Note, Mortgage, Cash Collateral Agreement, Guaranty and all other documents evidencing, securing or executed in connection with the Loan are hereinafter referred to collectively as the "Loan Documents".

19. All mortgage tax due on the Mortgage was duly paid.

Defaults Under the Loan Documents

20. Pursuant to the terms of the Note the Borrower agreed to pay all amounts due and owing under the Loan Documents on August 10, 2017, the maturity date of the Note.

21. Pursuant to the terms of the Mortgage the Borrower agreed to pay all common charges due in connection with the Property.

22. Pursuant to the terms of the Mortgage the Borrower agreed to pay all real estate taxes and common charges due in connection with the Property.

23. Pursuant to the terms of the Note the Borrower agreed to pay monthly installment payments as provided in the Loan Documents.

24. The Note and Mortgage are in default due to the Borrower's failure to pay all amounts due and owing under the Loan Documents on August 10, 2017, the maturity date of the Note.

25. The Note and Mortgage are in default due to the Borrower's failure to pay the real estate taxes due in connection with the Property from on and after January 1, 2018.

26. The Note and Mortgage are in default due to the Borrower's failure to pay the common charges due in connection with the Property.

27. The Note and Mortgage are in default due to the Borrower's failure to make payment of the monthly payment installments as provided in the Loan Documents.

28. As a result of Borrower's default as set forth hereinabove, the entire amount presently secured by the Mortgage, plus accrued interest, together with amounts plaintiff has paid or may pay for real property taxes, insurance and/or attorneys' fees as provided by the Loan Documents, are due and owing.

29. By letter dated June 24, 2019, Plaintiff notified Borrower and Guarantors of the defaults under the Loan Documents and of the maturity of the Loan pursuant to its terms and notified Borrower and Guarantors that due to the maturity, all amounts due under the Loan Documents were immediately due and payable in full ("Demand Letter"). A copy of the Demand Letter sent to Borrower and Guarantors is annexed hereto as Exhibit G.

Amounts Due

30. As of July 29, 2019, the following amounts are due and owing to Plaintiff under the Loan:

- (a) Principal in the amount of \$1,148,868.00;
- (b) Interest at the contract rate from and after May 10, 2017;
- (c) Interest at the default rate from and after August 10, 2017;
- (d) Any and all fees and costs incurred by Plaintiff, both to date and hereafter, in connection with the collection of the amounts due and owing under the Loan Documents or for the protection, and preservation of the Property, including without limitation, late charges, expenses, and attorneys' fees and costs, together with interest thereon; and

Right to Foreclosure

31. Pursuant to the Mortgage, upon an event of default, Plaintiff has the right to institute a proceeding for foreclosure upon the Property.

32. Plaintiff is entitled to an order from the Court that the Mortgage be foreclosed, that the liens provided therein be declared as a valid lien on the Property, subordinate only to a first mortgage on the Property held by Plaintiff which is not being foreclosed upon, and that Plaintiff be granted immediate possession of the Property.

33. A prior foreclosure action was commenced against the Property under Index Number 850193/2017, but was dismissed by decision and order of the Court dated May 20, 2019 for reasons unrelated to the defaults stated in this foreclosure complaint. No other action has been brought to recover any part of the debt due under the Loan Documents.

34. The defendants herein have or claim to have some interest in, or lien upon the Property or some part thereof, which interest or lien, if any, has accrued subsequent to the lien of the Mortgage, and are subject and subordinate thereto.

35. Plaintiff shall not be deemed to have waived, altered, released or changed its election to foreclose by reason of any payment made after the date of commencement of this action or by reason of any other mortgage default occurring prior to or after the date of commencement of this action.

36. The NYSDTF is named as a party defendant herein due to possible unpaid franchise taxes of Borrower.

37. The NYCDF is named as a party hereto due to possible unpaid corporate taxes of Borrower.

38. John Doe 1 through John Doe 30 are joined as party defendants for the purpose of cutting off possible judgments, liens or other interests in the Property.

39. Plaintiff specifically reserves the right to pursue a temporary injunction, appointment of receiver or other relief with respect to its rights under the Loan Documents.

Pursuant to Real Property Actions and Proceedings Law §1371, Plaintiff reserves the right to ~~move the Court to enter a deficiency judgment against Borrower and the Guarantors for any~~ residue of the debt under the Note remaining unsatisfied after the foreclosure sale of the Property is completed.

40. The provisions of RPAPL §1306 are inapplicable to this action. The Note upon which this action is based is not a "Home Loan" as defined in §6-1 of the Banking Law or RPAPL §1304(5)(a) as: (i) the mortgagor on the Mortgage does not occupy the Property as its residence or principal dwelling, (ii) the mortgagor on the Mortgage is not a natural person and (iii) the loan was for a commercial purpose.

41. The Property and the title thereto are subject to any state of facts an accurate survey would show; to all covenants, restrictions, easements, agreements, reservations, and prior liens, if any, of record and to any violations thereof; to the physical condition of any building or structure as of the date of sale hereunder; to building restrictions and zoning ordinances and to any violations of the same.

42. Plaintiff specifically reserves its rights to share in any surplus monies arising from the sale of the Property by virtue of its position as a lien creditor other than by the Mortgage.

43. During the pendency of this action, Plaintiff may be compelled to pay local taxes, assessments, water rates, insurance premiums and other charges affecting the Property. In that event, the Plaintiff requests that such amounts with interest, should be added to the sum secured by the Mortgage.

Guarantors

44. Guarantors each executed the Guaranty.

45. Guarantors are made parties hereto to have and make them bound by the proceedings herein so as to permit the assessment of any deficiency in the amount not recovered by Plaintiff by sale of the Property in this action without the need for separate action, but only to the extent as set forth in the Guaranty.

Right to Possession and Rents

46. Pursuant to the Mortgage, upon a default by Borrower, Plaintiff is entitled to immediate possession of the Property and may collect and make use of rents, profits and income from the Property.

47. In addition, the license granted to Borrower for the use of rents automatically terminated upon an event of default under the Loan Documents.

48. As such, Plaintiff is entitled to an order directing that all rents, issues, proceeds, revenues, profits, profits and income from the Property be remitted to Plaintiff in accordance with the terms of the Mortgage and directing that any such amounts be used to reduce the indebtedness described above.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in favor of Plaintiff for foreclosure of the Mortgage as follows:

A. Ordering that Plaintiff has the legal right to and is authorized to foreclose on the Property:

- (i) in one parcel according to law, together with the fixtures and articles of personalty upon the Property;
- (ii) subject to zoning restrictions and ordinances adopted by any municipality or other governmental authority, and violations thereof;
- (iii) subject to any state of facts that an accurate survey would show;

- (iv) subject to covenants and restrictions of record, if any; and
- (v) subject to violations, if any, noted by any federal, state, city, town or village agency having authority over the Property;

B. Finding that such foreclosure will vest in the purchaser thereof free and clear title to the Property, free of any and all interests that are or might be asserted by any of the defendants, but subject to the first mortgage on the Property held by Plaintiff;

C. Ordering that Plaintiff has the right to credit bid at such foreclosure sale any and all amounts due to Plaintiff under the Note;

D. Ordering and directing that a referee sell the Property and deliver title via a Referee's Deed to the successful bidder at such foreclosure;

E. Ordering and directing that the proceeds of the sale be applied as follows:

- (i) to payment of the expenses of the sale;
- (ii) to the payment of the debt owed to Plaintiff under the Note;
- (iii) to the payment of foreclosure costs and other accrued costs in connection with the foreclosure;
- (iv) to the payment, at Plaintiff's option, of any real property taxes that may be due and unpaid in connection with the Property;
- (v) to the payment, at Plaintiff's option, of all other assessments against or attributable to the Property; and
- (vi) the surplus, if any, to the payment of debts secured by junior liens on the Property and then, to Borrower, in accordance with further order of the Court.

F. Ordering that Borrower has no right of redemption after the sale of the Property;


G. Finding that Plaintiff has preserved its rights to pursue any deficiency that may exist under the Loan after application of the proceeds of the foreclosure sale pursuant to the Real Property Actions and Proceedings Law and may move the Court to enter final judgment against Borrower and Guarantors for such deficiency; and

H. Ordering all further relief is as is just and proper.

Dated: Garden City, New York
July 30, 2019

JASPAN SCHLESINGER LLP
Attorneys for Plaintiff

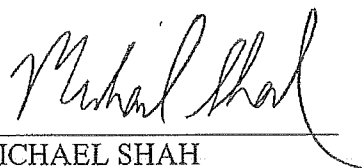
By: _____


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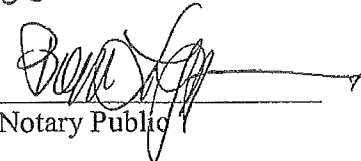
VERIFICATION

STATE OF NEW YORK)
 ss.:
COUNTY OF NEW YORK)

MICHAEL SHAH, being duly sworn, deposes and says that I am the Manager of the plaintiff, 31 EAST 28TH STREET NOTE BUYER LLC; that I have read the foregoing complaint and know its contents, which are true to my own knowledge, except as to matters alleged upon information and belief, and as to those matters, I believe them to be true. The grounds for my belief are my personal knowledge and plaintiff's books and records.


MICHAEL SHAH

Sworn to before me this
30 day of July, 2019


Notary Public