

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

NORTH HILL FUNDING OF NEW YORK, LLC,

Plaintiff,

- against -

MAIDEN & MADISON HOLDINGS, LLC, RIP
HOLDINGS V, LLC, CAPSTONE BUSINESS
CREDIT, LLC, CAPSTONE CAPITAL
GROUP I, LLC, JOHN R. RICE, III AND
JOSEPH F. INGRASSIA,

Defendant.

Index No. _____

Date Purchased:

SUMMONSThe basis of venue is Plaintiff's
residence in New York County.

TO THE ABOVE-NAMED DEFENDANT:

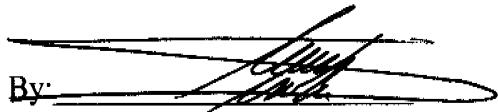
YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (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). In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

SEP 29 2009
COUNTY CLERK'S OFFICE
NEW YORK

FILED
09602997

Dated: New York, New York
September 29, 2009

GREENBERG TRAURIG LLP
Counsel for Plaintiff Poinciana Funding, LLC

By: 

Steven Sinafra, Esq.
200 Park Avenue
New York, New York, 10166
(212) 801-9200

TO:

Maiden & Madison Holdings, LLC
RIP Holdings V, LLC
Capstone Business Credit, LLC
Capstone Capital Group I, LLC
c/o Capstone Business Credit, LLC
1350 Avenue of the Americas, 24th Floor
New York, New York 10019
Attention: John Rice, III

Mr. John R. Rice, III
IC Makamah Beach Road
Fort Salonge, New York 11768

Mr. Joseph F. Ingrassia
3 Van Gogh Lane
Suffern, New York 10901

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COMPLAINT

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Plaintiff NORTH HILL FUNDING OF NEW YORK, LLC (hereafter referred to as "Plaintiff"), by its attorneys, Greenberg Traurig, LLP, as and for its Complaint, respectfully alleges as follows:

NOTICE OF CLAIM

1. Plaintiff brings this action to recover on a guaranty of payment executed by defendants MAIDEN & MADISON HOLDINGS, LLC ("Maiden"), RIP HOLDINGS V, LLC ("RIP"), CAPSTONE BUSINESS CREDIT, LLC ("Capstone Business"), CAPSTONE CAPITAL GROUP I, LLC ("Capstone Capital"); and, together with Maiden, RIP and Capstone Business, collectively, the "Entity Guarantors"), JOHN R. RICE, III ("Rice") and JOSEPH F. INGRASSIA ("Ingrassia"; and, together with the Entity Guarantors and Rice, collectively, the "Defendants") in connection with a mortgage loan in the original principal amount of \$34,000,000.00 (the "Loan") made by Plaintiff to 158 MADISON AVE ASSOCIATES, LLC (the "Borrower").

PLAINTIFF

2. Plaintiff is a Delaware limited liability company with an office for the transaction of business located at 51 East 42nd Street, Suite 300, New York, New York 10017.

THE DEFENDANTS

3. Upon information and belief, the Entity Guarantors are each a Delaware limited liability company that has an office for the transaction of business located at 1350 Avenue of the Americas, 24th Floor, New York, New York 10019.

4. Upon information and belief, Rice is an individual who resides at 1C Makamah Beach Road, Fort Salonga, New York 11768.

5. Upon information and belief, Ingrassia is an individual who resides at 3 Van Gogh Lane, Suffern, New York 10901.

VENUE

6. Venue is properly in this Court pursuant to New York Civil Practice Law and Rules Section 503, as Plaintiff resides in New York County.

THE INDEBTEDNESS

7. On or about January 9, 2008, for value received, Plaintiff, as lender, entered into a certain Loan Agreement dated as of January 9, 2008 (as the same may have been amended, modified and/or supplemented, the "Loan Agreement") with the Borrower, as borrower. Pursuant to the Loan Agreement, Plaintiff made a loan to the Borrower in the original principal amount of \$34,000,000.00. A true and correct copy of the Loan Agreement is annexed hereto as **Exhibit A.**

8. In connection with the Loan Agreement, on or about January 9, 2008, for value received, the Borrower executed and delivered to Plaintiff a certain Promissory Note dated as of January 9, 2008 in the original principal amount of \$34,000,000.00 (as the same may have been amended, modified and/or supplemented, the "Note"). A true and correct copy of the Note is annexed hereto as **Exhibit B**.

9. As part of the security for the Borrower's payment obligations under the Note, on or about January 9, 2008, the Borrower executed and delivered to Plaintiff a certain Mortgage and Security Agreement dated as of January 9, 2008 (as the same may have been amended, modified and/or supplemented, the "Mortgage"), pursuant to which Plaintiff was given, inter alia, a first priority lien encumbering the fee estate of the Borrower in certain real properties with improvements thereon located at 158 Madison Avenue, New York, New York, 20 East 33rd Street, New York, New York, 24 East 33rd Street, New York, New York and 26 East 33rd Street, New York, New York.

10. In order to induce Plaintiff to make the Loan to the Borrower, and for other good and valuable consideration, on or about January 9, 2008, the Defendants executed and delivered to Plaintiff a certain Guaranty of Payment (as amended, modified, supplemented, confirmed, ratified and/or restated, the "Guaranty"; and, together with the Loan Agreement, the Note, the Mortgage and the other documents executed and/or delivered in connection with the Loan, the "Loan Documents"). A true and correct copy of the Guaranty is annexed hereto as **Exhibit C**.

11. Pursuant to the terms of the Guaranty, the Defendants absolutely and unconditionally guaranteed to Plaintiff, jointly and severally, the full, complete and punctual payment and performance of the all obligations, indebtedness and liability of the Borrower to

Plaintiff under the Loan Agreement, the Note, the Mortgage and all other documents executed and/or delivered by the Borrower or the Defendants in connection with the Loan, including, but not limited to, the principal balance of the Loan and all other sums due under the Loan Documents (collectively, the "Guaranteed Liabilities").

12. Under the terms of the Guaranty, the Defendants' duty to pay the Guaranteed Liabilities is triggered by several alternative events or circumstances, including, but not limited to, "upon the occurrence of any Event of Default or if all or a portion of the Guaranteed Liability shall not be punctually paid when due...". Guaranty at Section 4.

13. The Guaranty further provides that Plaintiff may recover from the Defendants, as guarantors, all expenses incurred by Plaintiff in enforcing or attempting to enforce the Guaranty, including, but not limited to, "any and all actual, out-of-pocket costs, expenses and reasonable attorneys' fees paid or incurred by the Lender". Guaranty at Section 9.

14. Pursuant to Section 4 of the Guaranty, Plaintiff has "no obligation to exercise any right or remedy or to seek any recovery from any party obligated under the Loan Documents or to realize upon any collateral prior to proceeding hereunder against the Guarantor...".

15. On January 9, 2009, the maturity date of the Loan, the Borrower and the Defendants failed to repay the Loan in full (the "Maturity Default").

16. Following the Maturity Default, the Borrower and the Defendants requested that Plaintiff forbear for a period of time from exercising its rights and remedies under the Loan Documents upon the occurrence of an "Event of Default".

17. On or about April 30, 2009, in consideration for Plaintiff's agreement to forbear from exercising its rights and remedies under the Loan Documents, and for other good and valuable consideration, the Borrower, the Defendants and Plaintiff entered into that certain Forbearance Agreement dated as of April 30, 2009 (the "Forbearance Agreement"). A true and correct copy of the Forbearance Agreement is annexed hereto as **Exhibit D**.

18. Pursuant to the terms of the Forbearance Agreement, the Borrower and the Defendants acknowledged the continuance of the "Designated Defaults", including the Maturity Default, and, subject to compliance by the Borrower and the Defendants with certain covenants more particularly set forth in the Forbearance Agreement, Plaintiff agreed to forbear from exercising its rights under the Loan Documents for a period of time beginning on April 30, 2009 and ending on the earlier to occur of (i) April 30, 2011 and (ii) the occurrence of a default under the Forbearance Agreement.

19. In order to induce Plaintiff to enter into the Forbearance Agreement, and for other good and valuable consideration, on or about April 30, 2009, the Defendants executed and delivered to Plaintiff a Ratification, Reaffirmation and Confirmation of Guaranty dated as of April 30, 2009 (the "Reaffirmation of Guaranty"; and, together with the Forbearance Agreement and the other documents executed and/or delivered in connection with the Forbearance Agreement, collectively, the "Forbearance Documents").

THE DEFAULT

20. Pursuant to the terms of the Forbearance Agreement, the Borrower was obligated to pay to Plaintiff not later than July 31, 2009 an additional payment of \$ _____ to be deposited into an interest reserve account in an amount which, when added to the existing

balance in the interest reserve account on July 31, 2009, would be sufficient to pay interest on the unpaid principal balance of the Loan as of July 31, 2009 for the period beginning on August 1, 2009 to and including November 30, 2009. The Borrower failed make such payment in full. Pursuant to Section 3.2(c) of the Forbearance Agreement, the Borrower's failure to make such payment constitutes an "Event of Default" under the Forbearance Agreement and the Loan Documents (the "Forbearance Default").

21. Pursuant to Section 4.2(h) of the Forbearance Agreement, the Borrower was entitled to a thirty (30) day grace period within which to cure the Forbearance Default, which grace period ended on August 31, 2009. The Borrower failed to cure the Forbearance Default within the applicable grace period.

22. By letter dated September 1, 2009, Plaintiff provided notice to, inter alia, the Borrower and the Defendants that a Forbearance Default had occurred under Section 4.2(c)(C) of the Forbearance Agreement, that the Borrower and the Defendants failed to cure said Forbearance Default within the applicable grace period, that such failure constitutes an Event of Default under the Forbearance Agreement [and the Loan Documents] and, pursuant thereto, Plaintiff "is entitled to exercise any and all remedies available to the Lender under the Loan Documents, the Forbearance Agreement and the other documents executed and/or delivered in connection therewith" (the "Notice of Default"). A true and correct copy of the Notice of Default is annexed hereto as **Exhibit E**.

FIRST CAUSE OF ACTION
Breach of Contract

23. Plaintiff repeats and realleges paragraphs 1 through paragraphs 22 above as if fully set forth herein.

24. An Event of Default occurred and remains continuing under the Forbearance Agreement and the Loan Documents and the Guaranteed Liabilities are due and payable.

25. The Defendants are in default of their obligations under the Guaranty by reason of their failure to pay the Guaranteed Liabilities to Plaintiff as set forth herein.

26. By reason of the foregoing, Plaintiff is entitled to a judgment against each of the Defendants for the outstanding principal balance of the Loan together with accrued and accruing interest thereon and all other amounts due and owing to Plaintiff under the Forbearance Documents and Loan Documents.

SECOND CAUSE OF ACTION
Recovery of Costs and Expenses

27. Plaintiff repeats and realleges paragraphs 1 through 26 above as if fully set forth herein.

28. Plaintiff has incurred and will continue to incur attorneys' fees, costs and expenses in enforcing its rights under the Guaranty.

29. By reason of the foregoing, Plaintiff is entitled to a judgment against each of the Defendants in an amount to be determined by the Court.

NO WAIVER OF OTHER REMEDIES

30. Plaintiff does not waive its right to amend this complaint in this action or to take such other action as may be appropriate pursuant to the Loan Documents and the Forbearance Documents.

WHEREFORE, Plaintiff demands judgment against each of the Defendants, jointly and severally, as follows:

- (a) on the first cause of action, awarding Plaintiff a money judgment against each of the Defendants for the outstanding principal balance due and owing under the Loan in the amount of \$32,843,437.50 together with (i) accrued and accruing interest through and including the date the indebtedness is repaid and (ii) any and all other charges and fees;
- (b) on the second cause of action, awarding Plaintiff a money judgment against each of the Defendants for the costs and expenses incurred by Plaintiff, including its reasonable attorneys fees, in enforcing its rights against the Defendants under the Guaranty, the Loan Documents and the Forbearance Documents, all in an amount to be determined by the Court;
- (c) awarding Plaintiff interest and the costs and disbursements of this action; and
- (d) awarding Plaintiff such other and further relief as the Court deems just and proper.

Dated: New York, New York
September 29, 2009

GREENBERG TRAURIG LLP
Counsel for Plaintiff, North Hill
Funding of New York, LLC

By: 

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Defendants.

SUMMONS AND COMPLAINT

Law Offices
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Philip H. Cohen, Esq., Receiver

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