

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION

CAFÉ, GELATO & PANINI LLC, d/b/a/
CAFÉ GELATO PANINI, on behalf of itself
and all others similarly situated,

Plaintiffs,

v.

SIMON PROPERTY GROUP, INC.,
SIMON PROPERTY GROUP, L.P., M.S.
MANAGEMENT ASSOCIATES, INC., and
THE TOWN CENTER AT BOCA RATON
TRUST,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT

I. INTRODUCTION

1. When a landlord rents mall space to small businesses, it must follow state laws and regulations that forbid turning providing utilities into a profit center for secret excess rent. Likewise, when a mall landlord promises a tenant in written contract that it will not mark-up its electricity rate, it must honor that contractual obligation. But Simon Property Group, Inc. (“Simon”), broke these basic rules. Through a pernicious shell game of corporate entities, Simon for years executed a fraudulent scheme through a criminal enterprise to overcharge small business tenants for electricity at all of its shopping malls throughout the United States.

2. Simon conducts its business through Simon Property Group, L.P. (“Simon Partnership”) and, through Simon Partnership, owns M.S. Management Associates, Inc. (“M.S. Management”). M.S. Management is responsible for managing Simon’s shopping malls nationwide. Simon creates single purpose entities to own the shopping malls and places those

single purpose entities into holding companies owned by Simon Partnership, with the vast majority of profits and revenues flowing back to Simon from those operations. M.S. Management manages and conducts all the business activities of those single purpose entities.

3. Simon directed and required M.S. Management to use standard lease agreements that falsely represented that the tenants at the shopping malls it ultimately owned would be charged the amount that the shopping malls were charged by the local utility providers to supply those tenants with electricity. That is, Simon Partnership, at the direction and behest of Simon, caused M.S. Management to represent to the tenants that the tenants would pay the same amount for electricity that the tenants would pay if they were purchasing the electricity directly from the local utility. Despite the contractual obligations and representations, Simon, Simon Partnership, M.S. Management, and other unnamed co-conspirators engaged in a racketeering enterprise and conspiracy, breached the lease agreements with tenants, and violated applicable state laws and regulations by inflating the tenants' electric bills. Sometimes, the fraudulent and illegal markups exceeded 100% of the tenant's actual electricity usage charges.

4. In an effort to conceal its wrongful and illegal conduct, Simon caused M.S. Management to insert into the lease agreements a clause requiring the tenants at the shopping malls, ultimately owned and controlled by Simon through its holding companies, to waive their right to audit the shopping malls' electric bills in exchange for agreeing that the electricity charges would not be marked-up. Whenever tenants raised issues about their electricity costs, Simon caused M.S. Management to inform the tenants that they had waived their audit rights under the lease agreement and instructed M.S. Management not to provide the tenants with the actual electricity bills from the utilities, which would have revealed the undisclosed mark-ups.

5. In furtherance of its fraudulent and illegal scheme, Simon had Valquest, an independent third-party energy company, provide its customers with inflated energy surveys to justify the marked-up electrical charges. Simons' scheme allowed it to take advantage of the tenants by: (1) fraudulently misrepresenting to them that their electricity charges were not being marked-up; (2) actually having the electrical charges marked-up in contravention of the lease agreement; and (3) covering up that illegal conduct by using the audit waiver provision to shield it from scrutiny. Simon knew it was much bigger, and much better financed than the thousands of small business owners nationwide who rented mall spaces from it. In exploiting this inequality, Simon used its vast resources and superior negotiating and bargaining power to actively victimize and defraud tenants – simply to reap unfair, improper, and illegal profits.

6. Plaintiff Café, Gelato & Panini LLC, d/b/a/ Café Gelato Panini (“Café Gelato”) was a tenant at The Town Center at Boca Raton (“TCBR”), which Simon owns through a single purpose entity, The Town Center at Boca Raton Trust (“The Trust”). For years Simon, through Simon Partnership, caused M.S. Management and The Trust to lie to Café Gelato by telling Café Gelato that it was only paying its share of the actual electricity charges at TCBR. In truth, for years Café Gelato was tricked into paying thousands of dollars in illicit electricity mark-ups, the vast majority of which were ultimately paid to Simon. Café Gelato brings this class action lawsuit on behalf of itself and all other similarly situated current and former tenants to: (1) end Simon's illegal conduct; (2) require that the terms of the lease agreements be honored by charging the tenants at the shopping malls that Simon owns through its holding companies their actual electricity costs going forward; and (3) return to current and former tenants the illegal electricity mark-ups that were charged to them and retained for years on end, as well as appropriate damages, interest, and penalties as permitted under the applicable statutes.

II. PARTIES

7. Plaintiff Café, Gelato & Panini LLC, d/b/a/ Café Gelato Panini (“Café Gelato”) is a Florida limited liability company and has its principal place of business in Florida. Café Gelato is an upscale Italian/Argentinian bistro located at TCBR. Café Gelato signed a 5-year lease with the Trust for its location at TCBR on October 24, 2014. (Café Gelato Lease, Ex. A). During its lease, Café Gelato received invoices through the United States mail for its electric costs, frequently issued on Simon letterhead, which Café Gelato believed were the amounts charged by the local utility without any mark-up because of the representations contained in the lease agreement. Café Gelato paid the full amount of those invoices.

8. Simon Property Group, Inc. (“Simon”) is a Real Estate Investment Trust (“REIT”) headquartered in Indianapolis, Indiana, has its principal place of business in Indiana, and is incorporated under the laws of Delaware. The shopping mall empire that is Simon Property Group began in 1960, when Melvin Simon, a leasing agent, founded Melvin Simon and Associates (“MSA”). In 1993, MSA took the majority of the assets it had amassed to Wall Street through the formation of Simon Property Group (“SPG”). SPG’s \$840 million initial public offering was at the time the largest in U.S. history, and the company began trading on the NYSE under the ticker symbol SPG. Today, Simon is the largest REIT in the world. As of December 31, 2019, Simon owned or held interests in over 200 income-producing properties in the United States alone.

9. Simon Property Group, L.P. (“Simon Partnership”) holds, directly or indirectly, substantially all of Simon’s assets, including Simon’s ownership interests in joint ventures, and conducts substantially all of Simon’s business. Simon Partnership is organized under the laws of Delaware, and has its principal place of business in Indianapolis, Indiana.

10. M.S. Management Associates, Inc. (“M.S. Management”) is incorporated under the laws of Delaware and has its principal place of business in Indianapolis, Indiana. M.S.

Management is one of Simon and Simon Partnership's significant subsidiaries. Simon, through Simon Partnership, uses M.S. Management to conduct its property management and development activities nationwide. M.S. Management was responsible for managing TCBR.

11. Simon's revenues are primarily derived from leases with retail tenants and generally include fixed minimum rents, percentages of rents based on tenants' sales volumes, and reimbursements from tenants for expenditures related to real estate taxes, insurance, common area maintenance, electrical charges, and other recoverable operating expenses, as well as certain capital expenditures. Simon also generates revenues from management, leasing and development fees, sponsorships, sales of peripheral land at its properties and from sales of its real estate assets. The vast majority of the revenues and profits from Simon Partnership, M.S. Management, and the single purpose entities held indirectly by Simon flow directly back to Simon.

12. The Town Center at Boca Raton Trust ("The Trust") is a New York Trust with its principal place of business in Indianapolis, Indiana.

13. Simon, Simon Property, M.S. Management, and The Trust are not regulated public utilities or electric utilities subject to the jurisdiction of the Florida Public Service Commission. Regardless, the marking-up of electrical charges is fraudulent conduct separate and distinct from the regulation and sale of electricity.

III. JURISDICTION

14. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(a), because this is an action for an amount exceeding \$5,000,000, exclusive of interest and costs, and in which at least one class member is a citizen of a state different than all of the Defendants. Subject matter jurisdiction also arises under 28 U.S.C. § 1331 based upon the federal RICO claims asserted under 18 U.S.C. § 1961 *et seq.* The Court has personal jurisdiction

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.