

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

TTC MEZZ LLC,

Plaintiff,

-against-

MSC-TWO TOWER HOLDCO, LLC,

Defendant.

Index No.

VERIFIED COMPLAINT

Plaintiffs TTC Mezz LLC (“TTC Mezz”), as and for its Verified Complaint against MSC-Two Tower Hold Co, LLC (“Defendant”), respectfully allege as follows, upon knowledge with respect to its own acts and upon information and belief with respect to all other matters:

THE PARTIES

1. TTC Mezz is a limited liability company organized and existing under the laws of the State of Delaware.
2. TTC Mezz’s principal place of business is at 9 Jeffrey Place, Monsey, New York 10952.
3. Upon information and belief, Defendant is an Oregon limited liability company with its principal place of business at 121 SW Morrison, Suite 200, Portland, Oregon 97204.

BACKGROUND**A. The Property**

4. TTC Mezz is the sole member of Tower Two Center LLC (“Tower Two”). Tower Two is the owner of certain real property commonly known as 2 Tower Center Boulevard, East Brunswick, New Jersey 08816 (the “Property”).
5. The Property consists of, among other things, an approximately 400,000 square foot office tower.

6. In January 2020, the Property was appraised as having an “as is” market value of over \$83,000,000.

B. The Loan

7. On or about August 31, 2018, Benefit Street Partners Realty Operating Partnership, L.P. (“Benefit Street”) made a loan to TTC Mezz in the original principal balance of \$12,000,000 (the “Loan”). The terms of the Loan are set forth in a Mezzanine Loan Agreement dated as of August 31, 2018 (the “Loan Agreement”).

8. To evidence its indebtedness under the Loan, on or about August 31, 2018, TTC Mezz executed and delivered to Benefit Street a certain Mezzanine Promissory Note (the “Note”) in the original principal amount of \$12,000,000.

9. To secure repayment of the Note, on or about August 31, 2018, TTC Mezz executed and delivered to Benefit Street a Pledge and Security Agreement (the “Pledge and Security Agreement”), whereby TTC Mezz pledged all of its right, title, and interest in Tower Two, as well as to certain other property owned by TTC Mezz within the meaning of the Uniform Commercial Code (the “Collateral”).

10. Also on or about August 31, 2018, to further secure repayment of the Note, Aaron Berger, an indirect owner, executed and delivered to Benefit Street a Mezzanine Guaranty of Recourse Obligations (the “Guaranty”) whereby he guaranteed TTC Mezz’s payment and performance of its obligations under the Loan Agreement.

11. The Loan Agreement, the Note, the Pledge and Security Agreement, the Guaranty, and all related loan documents shall be referred to collectively herein as the “Loan Documents.”

12. The Loan Documents provide that if TTC Mezz fails to make any payments required by the Loan Documents, such failure shall constitute an event of default.

13. Upon information and belief, on some date prior to March 9, 2020, Benefit Street assigned its interests under the Loan Documents to Defendant.

14. On or about March 9, 2020, Defendant issued to TTC Mezz and Berger a Notice of Events of Default and Demand for Payment (the "Default Notice"). In the Default Notice, Defendant asserts that TTC Mezz failed to repay the Loan on or before the March 9, 2020 maturity date, and that such failure constitutes an event of default.

C. The COVID-19 Pandemic

15. In late 2019, a novel coronavirus was first identified as the cause of an outbreak of respiratory illness in Wuhan, China. On March 11, 2020, the World Health Organization declared the disease caused by the novel coronavirus, COVID-19, a pandemic.

16. To date, over 3.25 million people worldwide have been diagnosed with COVID-19, including over 1 million people in the United States. The New York metropolitan area is now the global epicenter of the pandemic, with over 304,000 cases having been diagnosed in New York and over 119,000 cases having been diagnosed in New Jersey.

17. As a result of the COVID-19 pandemic, New York's governor issued an executive order closing all non-essential businesses statewide and cancelling all non-essential gatherings of individuals of any size for any reason effective March 22, 2020. New Jersey's governor issued a similar executive order effective March 21, 2020.

18. The COVID-19 pandemic, as well as the executive orders mandating the closure of non-essential businesses, have had significant economic impacts. With respect to Plaintiffs, their efforts to refinance the Loan were hindered and delayed by and due to, among other things, the uncertainty of the financial markets and the closure of various lending offices in the New York metropolitan area.

19. Notwithstanding the foregoing, in or about April 2020, Tower Two executed a term sheet with a prospective lender for a \$59,000,000 loan secured by the Property (the “First Refinance Loan”). The closing of the First Refinance Loan would allow Plaintiffs to repay the Loan to Defendant in its entirety.

D. The Initially Scheduled Sale under the UCC

20. On or about April 20, 2020, Defendant issued a Notice of Disposition of Collateral whereby it notified Plaintiff of its intention to conduct a public sale of the Collateral in accordance with the provisions of N.Y. UCC Section 9-601, *et seq.* (the “Initially Scheduled Sale”), by telephone at Mannion Auctions, LLC, 305 Broadway, Suite 200, New York, New York on May 5, 2020 at 2:00 pm (Eastern Time).

21. On or about April 20, 2020, Defendant issued a sale notice whereby it notified the public of its intention to conduct the Scheduled Sale by telephone at Rich Michaelson Magaliff LLC, 335 Madison Avenue, 9th Floor, New York, New York on May 5, 2020 at 2:00 pm (Eastern Time).

22. On April 30, 2020, counsel for Plaintiff requested that Defendant adjourn the Initially Scheduled Sale so as to allow Plaintiff to close on the First Refinance Loan, at which time the Loan could be repaid in its entirety. Though Defendant initially refused to do so, it ultimately consented to adjournment of the Initially Scheduled Sale until June 19, 2020.

E. Plaintiffs’ Efforts to Refinance the Loan

23. Following the adjournment of the Initially Scheduled Sale, Plaintiff endeavored to secure the First Refinance Loan. The prospective lender ultimately offered a commitment to Plaintiff. Before receipt of the proposed commitment for the First Refinance Loan, Plaintiff also undertook to explore other options for refinancing the Loan so as to enable them to repay all sums

due and owing to Defendant. Unfortunately, Plaintiff's efforts in this regard were delayed when Berger's mother became ill from COVID 19, and then, tragically, passed away on May 26, 2020.

24. Notwithstanding this horrible misfortune, Plaintiff continued their discussions with a different prospective lender for a \$60 million loan secured by the Property (the "Second Refinance Loan"). The terms for the Second Refinance Loan are far more attractive than those offered for the First Refinance Loan. The appraisal necessary for the underwriting of the Second Refinance Loan has already been received, and we are advised that the prospective lender anticipates that, barring any unexpected delays, the Second Refinance Loan should close in early- to mid-July 2020.

25. Notably, the due diligence conducted by the prospective lender for the Second Refinance Loan confirmed that there is more than adequate equity to fully repay Defendant, as well as to repay the first mortgage secured by the Property.

26. In the interim, on or about June 3, 2020, Defendant issued a Notice of Disposition of Collateral whereby it notified Plaintiffs of its intention to conduct a public sale of the Collateral in accordance with the provisions of N.Y. UCC Section 9-601, *et seq.* (the "Scheduled Sale"), by telephonic conference or other remote means at Mannion Auctions, LLC, 305 Broadway, Suite 200, New York, New York on June 19, 2020 at 2:00 pm (Eastern Time).

F. The Defendant Is More Than Adequately Secured

27. A January 2020 appraisal found the approximate value of the Property to be \$83 million, or \$24 million more than the combined outstanding indebtedness owed under the first mortgage loan and the Defendant's mezzanine loan. This equity will be lost to the Plaintiff if the Defendant proceeds with the UCC sale.

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