

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
EROS MANAGEMENT AND REALTY,  
LLC, PIONEER MANAGEMENT AND  
REALTY, LLC, and JOHN SHARMA,

Plaintiffs,

INDEX NUMBER \_\_\_\_\_

**VERIFIED COMPLAINT**

-against-

AC35 HOTEL PARTNERS LLC,

Defendant.  
-----X

The Plaintiffs EROS MANAGEMENT AND REALTY, LLC (“EROS”), PIONEER MANAGEMENT AND REALTY, LLC (“Pioneer”), and JOHN SHARMA (“Sharma”) (collectively referred to as “Plaintiffs”), by its attorneys, The Scher Law Firm, LLP, respectfully allege as for Plaintiffs’ Verified Complaint as follows:

**I. PARTIES, JURISDICTION AND VENUE**

1. The Plaintiff EROS MANAGEMENT AND REALTY, LLC (“EROS”) was and still is a domestic limited liability company with its principal place of business in the County of New York, State of New York.

2. The Plaintiff PIONEER MANAGEMENT AND REALTY, LLC (“Pioneer”) was and still is a domestic limited liability company with its principal place of business in the County of New York, State of New York.

3. The Plaintiff JOHN SHARMA (“Sharma”) was and still is a natural person who is domiciled and resides in the County of Queens, State of New York.<sup>1</sup>

<sup>1</sup> EROS, Pioneer, and Sharma will collectively be referred to as “Plaintiffs”.

4. Upon information and belief, the Defendant AC35 HOTEL PARTNERS LLC, (“AC35”) was and still is a domestic limited liability company, with its principal place of business in the County of New York, State of New York.

5. Jurisdiction of this Court is proper pursuant to CPLR § 301.

6. Venue in this Court is appropriate pursuant to CPLR § 503(a), since Sharma’s domicile and residence is located in the County of Queens.

## II. FACTS

7. EROS is the owner of the real property located at 345 West 35<sup>th</sup> Street, New York, New York (“Real Property”) and owns the TRYP by Wyndham New York City Times Square South hotel (“TRYP Hotel”), which operates on the Real Property.

8. As a result of COVID-19, the TRYP Hotel’s business has dropped between 98% and 100%, depending upon the New York State regulations imposed by the Governor’s Executive Orders and depending upon regulations placed upon hotels and gatherings by the Mayor of New York and the availability of guests.

9. COVID-19 has devastated the TRYP Hotel’s business.

10. The devastating effects of almost the complete shutdown of the TRYP Hotel from March 7, 2020 through today has made keeping any financial commitments impossible for the Plaintiffs.

11. The effects of COVID-19 can best be shown as it relates to July 2020 bookings at the TRYP Hotel.

12. As July 2020 approached, the TRYP Hotel was reflecting what was going to be a ten percent (10%) occupancy rate.

13. However, in July 2020, Governor Cuomo issued travelling warnings and quarantine regulations requiring people from out-of-State to quarantine for two weeks upon arrival into New York.

14. This quarantine requirement also placed a burden on hotels, like the TRYP Hotel, to monitor its guests to ensure proper quarantining.

15. In fact, the TRYP Hotel was required to create a log of all guests and contact tracers regularly contacted the TRYP Hotel to make sure any guests were properly quarantining.

16. Once the quarantine requirements were imposed, the TRYP Hotel's occupancy crashed to zero percent (0%) occupancy.

17. In addition, the TRYP Hotel obtains a lot of business from international travelers.

18. However, since international travel is essentially non-existent, but to the extent it is on-going there are quarantine mandates, the TRYP Hotel has not had any international guests since essentially March 2020.

19. But AC35 knows about the effects the COVID-19 pandemic has had on the TRYP Hotel because its hotels, the Even, Marriot Courtyard on 30<sup>th</sup> Street, and the Hotel Shocard have all been shut down and are not accepting reservations.

20. In fact, the Hotel Shocard's website, a hotel partially owned by the owners of AC35 states that they "look forward to welcoming you back to our hotel on May 1<sup>st</sup>, 2021!" **Exhibit A**, a copy of the Hotel Shocard's website.

21. What happened to the TRYP Hotel as a result of COVID-19 has been devastating.

22. If the pandemic effects were not bad enough, in the Summer of 2020, riots broke out in Manhattan.

23. Since the TRYP Hotel sits next to the Midtown South Police Precinct on 35<sup>th</sup> Street, between 8<sup>th</sup> and 9<sup>th</sup> Avenues, the street was barricaded for approximately two months because the police precinct received bomb threats.

24. While it is unclear how much effect the street closing had on business since business did not really even exist in the Summer of 2020 because of the travel restrictions and quarantine orders imposed by the New York State Governor, the closing was just another problem faced by the TRYP Hotel that makes it impossible for the Plaintiffs to live up to their contractual obligation.

25. Before the COVID-19 pandemic was ever known or expected, on or about October 31, 2019, the Plaintiffs entered into a Settlement Agreement and Release and a Purchase and Sale Agreement with AC35. *See, Exhibit B*, a copy of the Settlement Agreement. *See, Exhibit C*, a copy of the Purchase and Sale Agreement.

26. The Settlement Agreement and the Purchase and Sale Agreement and the Purchase and Sale Agreement required Pioneer to purchase AC35's 32.5% membership interest in EROS for the total sum of \$8,150,000.00.

27. The payment schedule in the Settlement Agreement required Pioneer to pay \$1,000,000 on or before November 1, 2019; \$337,593.13 on or before December 15, 2019; \$500,000 on or before March 15, 2020; \$500,000 on or before July 15, 2020; and \$6,150,000 on or before November 15, 2020. *See, Exhibit B*, at ¶ 2. *See, Exhibit C*, at ¶ 1(b).

28. Once the \$1,000,000 was paid on November 1, 2019, AC35 no longer owned any membership interests in EROS. *See, Exhibit B*, at ¶ 2.

29. The Plaintiffs timely made the payments for November 2019, December 2019, March 2020, and July 2020.

30. The Plaintiffs, however, cannot make the November 15, 2020 payment in the amount of \$6,150,000.00 because COVID-19 closed down the TRYP Hotel.

31. When the deal was struck in October 2019, AC35 knew that the Plaintiffs needed to borrow the money for the November 15, 2020 payment.

32. AC35 knew that the Plaintiffs did not have the cash to make a \$6.15 million payment in November 2020.

33. Despite have conversations with EROS' lender beginning in February 2020 to structure a borrowing enabling the Plaintiffs to make the November 15, 2020 payment, as a consequence of the COVID-19 pandemic, all the conversations ceased and there is no likelihood that the Plaintiffs will be able to borrow the money to pay AC35 for the November 15, 2020 payment of \$6.15 million.

34. As a result of COVID-19, the mortgage and financing market has dried up.

35. The Plaintiffs own a hotel in Manhattan with no "light at the end of the tunnel" when the operations of the hotel will get back to normal.

36. There is simply no one lending money to the Plaintiffs because the business prospects are so speculative.

37. Despite every effort by the Plaintiffs it has become clear that it will be impossible for the Plaintiffs to make the \$6.15 million payment on November 15, 2020.

38. As a result of the COVID-19 pandemic, there has been a frustration of purpose with respect to the Settlement Agreement.

39. The Plaintiffs are not trying to evade or never pay AC35 the \$6.15 million.

40. The Plaintiffs just need time to pay and request that the Court delay the enforcement of the Settlement Agreement and its default provisions, including the: (1) Promissory Note issued by the Plaintiffs (*see*, **Exhibit D**); and (2) Confessions of Judgment executed by the Plaintiffs. *See*, **Exhibit E**.

# 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.