

SUPREME COURT OF NEW YORK
COUNTY OF RICHMOND

SUMMONS

_____)
 BDD Page Ave. Restaurant Corp.)
 Plaintiff,)
 v.)
 CABO Page Avenue Associates LLC)
 Defendant,)
 Jamir Archer)
 Defendant,)
 Alejandro Nava)
 Defendant,)
 _____)

Index No. _____

Date Index No. Purchased

To the Person(s) Named as Defendant(s) above:

PLEASE TAKE NOTICE THAT YOU ARE SUMMONED to answer the complaint of the plaintiff herein and to serve a copy of your answer on the plaintiff at the address indicated below within 20 days after service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer, a judgment will be entered against you by default for the relief demanded in the complaint.

Dated: New York, New York
July 18, 2022

LAW OFFICES OF D. MARA LOWENSTEIN, ESQ.

By:



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CABO Page Avenue Associates LLC
96 Page Avenue

Staten Island, NY 10309

Alejandro Nava
38-05 36th Avenue
Long Island City, NY 11101

Jamir Archer
40 Chestnut Street
Staten Island, NY 10305

SUPREME COURT OF NEW YORK
COUNTY OF RICHMOND

COMPLAINT

_____)	
BDD Page Ave. Restaurant Corp.)	
Plaintiff,)	
)	Index No. _____
v.)	
)	
CABO Page Avenue Associates LLC)	
Defendant,)	
)	
Jamir Archer)	
Defendant,)	
)	
Alejandro Nava)	
Defendant,)	
_____)	

Plaintiff BDD Page Ave. Restaurant Corp. (“BDD” and “Plaintiff”), by and through its attorney, D. Mara Lowenstein, Esq. as and for its Complaint, as of right, respectfully allege as follows:

CLAIMS

NATURE OF THE CLAIMS

1. On or about **September 19, 2019**, Defendants executed a Promissory Note in the amount of \$80,000 (both principal and interest) in favor of the Plaintiff (a copy of which is attached hereto as **Exhibit A**) (the “Note”). The payment obligations of the Note are personally and unconditionally guaranteed by individual Defendants Jamir Archer and Alejandro Nava.
2. The Note was to be paid in equal amounts of \$3,333.33 each on the 1st day of 24 consecutive months commencing on December 1, 2019 plus a one-time payment of \$7,775.00 to reimburse the Plaintiff for rent security credited to the corporate Defendant.
3. In light of the Covid-19 pandemic (and as an accommodation to the Defendants), the Plaintiff agreed to a temporary hiatus in the requisite monthly payments and a waiver of the Default Rate of interest (as defined in the Note). The Plaintiff has made repeated calls to the Defendants and sent a Notice to Cure (as defined in the Note) by certified mail on February 7, 2022 (a copy of which is attached hereto as **Exhibit B**). The only payments made by the corporate were the following seven (7) payments in the aggregate amount of \$10,000 as follows:

Oct. 30, 2020	\$1,000
April 15, 2021	\$1,500



June 7, 2021	\$1,500
July 1, 2021	\$1,500
August 4, 2021	\$1,500
Sept. 25, 2021	\$1,500
Oct. 23, 2021	\$1,500

A balance on the Note in the amount of \$70,000 remains outstanding and has been accruing interest at the Default Rate since November of 2021 and has been accumulating late charges in accordance with the Note.

PARTIES

4. The Plaintiff herein, BDD Page Ave. Restaurant Corp. is a corporation duly organized under the laws of the State of New York and accepts mail c/o Pat DeSimone, 67 Greenport Street, Staten Island, NY 10304.

5. The corporate Defendant herein, CABO Page Avenue Associates LLC has its usual place of business at 96 Page Avenue, Staten Island, NY 10309.

6. The individual Defendant herein, Alejandro Nava is a resident of New York and resides at 38-05 36th Avenue, Long Island City, NY 11101.

7. The individual Defendant herein, Jamir Archer is a resident of New York and resides at 40 Chestnut Street, Staten Island, New York 10305.

JURISDICTION AND VENUE

8. This court has jurisdiction over Defendants pursuant to CPLR §301 and/or §302 as the causes of action asserted against the Defendants arise out of business transacted by the Defendants within Richmond County, New York State and, on information and belief, Defendants regularly do business in New York State.

9. Upon information and belief, venue is proper in this county pursuant to CPLR §503 because the corporate Defendant, CABO Page Avenue Associates LLC, is a domestic limited liability company with its principal office in Richmond County, the Plaintiff is a domestic corporation with its principal office in Richmond County, individual Defendant Jamir Archer is a resident of Richmond County, and both individual Defendants (Alejandro Nava and Jamir Archer) are the sole owners of CABO Page Avenue Associates LLC which does business in Richmond County.

AS AND FOR A FIRST CAUSE OF ACTION (Breach of Contract)

10. The Plaintiff repeats and realleges the allegations set forth in paragraphs 1 – 9 as if fully set forth herein.

11. The Defendants entered into the Note and related personal guaranty but, despite repeated verbal and written demands, have violated the terms of the Note and the personal guaranty.

12. Despite having received a written demand from Plaintiff by certified mail in February of this year, the Defendants have failed and continue to fail to make payment.

13. Plaintiff is entitled to direct and consequential damages in an amount to be determined at trial of no less than \$70,000.

**AS AND FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment)**

14. The Plaintiff repeats and realleges the allegations set forth in paragraphs 1 –13 as if fully set forth herein.

15. When the Plaintiff sold the Defendants the restaurant (CABO) (the “Restaurant”) located at 96 Page Avenue in Staten Island, the Plaintiff acted in good faith and agreed to allow the Defendants to pay a significant portion of the purchase price over the course of approximately 2 years – as memorialized in the form of the Note and personal guaranty.

16. The Restaurant is fully open and operating and yet Defendants have failed, and continue to fail, to uphold their contractual obligations under the Note and related personal guaranty and, as a result of such failure, all of the Defendants have been unjustly enriched at the expense of the Plaintiff, and it is against equity and good conscience to permit the Defendants to continue to fail to pay the Note.

17. Plaintiff is entitled to direct and consequential damages in an amount to be determined at trial of no less than \$70,000.

**AS AND FOR A THIRD CAUSE OF ACTION
(Fraudulent Inducement)**

18. The Plaintiff repeats and realleges the allegations set forth in paragraphs 1 –17 as if fully set forth herein.

19. When the plaintiff negotiated the sale of the Restaurant, the Defendants requested that part of the purchase price be in the form of the Note and the individual Defendants agreed to personally guaranty the payment of the Note. Such representations induced the Plaintiff to sell the Restaurant to the corporate Defendant and the Plaintiff relied on such representations.

20. Despite having made numerous accommodations by Plaintiff to the defendants, the Note is seriously delinquent and in arrears and the defendants have made no attempts to resume payments under the Note. At this point it has become clear that the

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