

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X

TERWILLIGER BARTONE PROPERTIES LLC,

Index No.

Plaintiff,

SUMMONS

-against-

FAT FISH MARINA LLC,

Defendant.

-----X

To: The Above-Defendants (addresses below)

YOU ARE HEREBY SUMMONED to answer the Verified Complaint in this action and to serve a copy of your Answer on the Plaintiffs' 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 the Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Plaintiffs designate Suffolk County as the place of trial. The basis of venue is the location of the property in dispute and the principal place of business of the Defendant.

Dated: Melville, New York
August 7, 2020

WEBER LAW GROUP LLP

By: 

Jason A. Stern

290 Broadhollow Road, Suite 200E

Melville, NY 11747

Telephone: (631) 549-2000

*Attorneys for Plaintiff TERWILLIGER
BARTONE PROPERTIES LLC,*

Defendants' Addresses:

Fat Fish Marina LLC
264 West Avenue
Patchogue, New York, 11772

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X

TERWILLIGER BARTONE PROPERTIES LLC,

Index No.

Plaintiff,

VERIFIED COMPLAINT

-against-

FAT FISH MARINA LLC,

Defendant.

-----X

Plaintiff Terwilliger Bartone Properties LLC (“Plaintiff”) by and through its attorneys, Weber Law Group LLP, as and for its verified complaint against defendant Fat Fish Marina LLC (“Defendant”) alleges as follows:

PRELIMINARY STATEMENT

1. This action arises out of Defendant’s efforts to avoid a \$3 million-plus contract of sale that obligated Defendant to convey to Plaintiff certain real property (“Property”) located in the Village of Patchogue (“Village”), based on a purported contractual deadline that the COVID-19 pandemic rendered impossible to comply with.

2. The contract at issue – a February 7, 2018 Agreement of Purchase and Sale (“Agreement”) – provided that Plaintiff must obtain certain Village approvals for its intended 50-unit apartment complex (“Project”), on or before July 7, 2020; and Plaintiff was scheduled to obtain such approvals at an April 23, 2020 special meeting scheduled before the Village of Patchogue Planning Board (“Planning Board”).

3. However, as a result of the COVID-19 pandemic, the related Executive Orders issued by Governor Cuomo, and the Village’s decision to suspend all public meetings, beginning

in early March 2020 – such April 23, 2020 special meeting was indefinitely suspended by the Village, and the Village has since indicated that the earliest such special meeting would be re-scheduled is at some point in the Fall of 2020.

4. Accordingly, as a result of all such unforeseen and unforeseeable circumstances, it became impossible for Plaintiff to meet the July 7, 2020 deadline.

5. Nevertheless, Defendant has taken the position that the COVID-19 pandemic is irrelevant, that Plaintiff's failure to meet the July 7, 2020 deadline is fatal, and the Agreement is no longer enforceable.

6. Plaintiff has commenced the instant action based on the equitable doctrine of impossibility of performance, seeking a declaratory judgment declaring the Agreement enforceable, the parties' obligations thereunder continuing and ongoing, and extending the deadlines thereunder until such time as the Village may reasonably re-schedule, publicly hear, and decide upon Plaintiff's applications.

7. By this action, Plaintiff also seeks judgment directing Defendant to specifically perform under the terms of the Agreement by selling the Property to Plaintiff as agreed-to, enjoining Defendant from selling the Property to any other party, and awarding Plaintiff its reasonable attorneys' fees in this action as provided for in the Agreement.

JURISDICTION AND VENUE

8. Jurisdiction is proper within the State of New York as Defendant does business within the State of New York and the acts complained of occurred, and the property at issue is located, within the State of New York.

9. Venue is proper is Suffolk County because the acts complained of occurred, and the property at issue is located, within Suffolk County.

PARTIES

10. Plaintiff Terwilliger Bartone Properties LLC is one of the top real estate development companies in the region, focusing on luxury real estate development, with numerous successful and award-winning residential development projects throughout Suffolk County and Long Island. Plaintiff is a limited liability company duly organized and existing under the laws of the State of Delaware and authorized to do business under the laws of the State of New York, with its principal place of business located at 141 Merritts Road, Farmingdale, New York 11735.

11. Upon information and belief, Fat Fish Marina LLC is the owner of the Property, and is a limited liability company duly organized and existing under the laws of the State of New York with its principal place of business located at 264 West Avenue, Patchogue, New York, 11772.

BACKGROUND FACTS

The Parties' Agreement

12. By Agreement dated February 7, 2018, Plaintiff, as buyer, and Defendant, as seller, entered into an Agreement of Purchase and Sale of the approximately 2.15 acre (or 93,621 square foot) Property, located in the Village of Patchogue, for the purpose of developing a 50-unit luxury waterfront apartment complex.

13. The Property is described in the Agreement as “certain improved real property located at West Avenue and Mulford Street, in the Village of Patchogue, County of Suffolk, State of New York, bearing Suffolk County Tax Map lot numbers 204-16-3-7 and 204-16-6-1.2, 1.3, 1.5, & 2.1”, together with Defendant’s interest in the westerly portion of Mulford Street, and

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.