

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

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ECALP CORP.,

Index No.:

Plaintiff,

– against –

THE ESTATE OF GLORIA JUPITER by its
personal representative, HANNAH JUPITER, and
CAROL KAUFMAN, as administrator c.t.a.,

SUMMONS

Plaintiff designates New
York County as the place
of trial. *

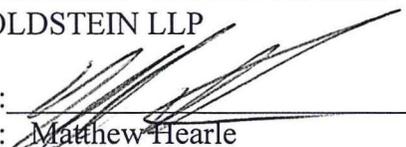
Defendant.
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TO THE ABOVE NAMED DEFENDANT:

YOU ARE HERBY SUMMONED to answer the attached Complaint in this action and to
serve a copy of your Answer, or, if the Verified Complaint is not served with this Summons, to
serve a Notice of Appearance on the Plaintiffs within 20 days after the service of this Summons,
exclusive of the day of service (or within 30 days after the service is complete if this Summons is
not personally delivered to you with the State of New York); and in case of your failure to appear
to answer, judgment will be taken against you by default for the relief demanded in the Verified
Complaint.

Dated: New York, New York
August 23, 2019

GOLDBERG WEPRIN FINKEL
GOLDSTEIN LLP

By: 
By: Matthew Hearle

Attorneys for Plaintiff
1501 Broadway, 22nd Floor
New York, New York 10036
(212) 221-5700

To: The Estate of Gloria Jupiter
by its personal representative,
Hannah Jupiter, as Executrix
1700 Lexington Avenue
New York, New York 10029

and

Carol Kaufman
Administrator c.t.a. for the late
Gloria Jupiter
c/o Michael S. Haber, Esq.,
Law Office of Michael S. Haber
11 Broadway, Suite 615
New York, New York 10004

* The basis of venue: Address or principal place of business of the parties..

SUPREME COURT OF THE STATE OF NEW YORK
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ECALP CORP.,

Index No.:

Plaintiff,

– against –

THE ESTATE OF GLORIA JUPITER by its
personal representative, HANNAH JUPITER,
and CAROL KAUFMAN, as administrator c.t.a.,

COMPLAINT

Defendants.
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Plaintiff, Ecalp Corp. (“Plaintiff”) by and through its attorneys, Goldberg Weprin Finkel Goldstein LLP, as and for its complaint against defendant the Estate of Gloria Jupiter and Carol Kaufman, as administrator c.t.a. (collectively, “Defendants”), respectfully alleges as follows:

1. This is an action sounding in breach of a contract of sale for the acquisition of real property located at 354 East 19th Street, New York, New York. Defendant-Sellers have breached numerous representations made in the contract which destroy the essence of the contract and deprive Plaintiff of that which it was purchasing.

2. Specifically, despite affirmative representations to the contrary, Defendants failed to register the building with the New York State Division of Housing and Community Renewal for numerous years rendering the legality of the rental units and the rent collected therefor questionable.

3. Plaintiff did not bargain for nor agree to pay more than \$4,000,000 for a building in which the rental units are potentially illegal and financial exposure to existing and former tenants looms all due to the negligent or intentionally deceptive practices of Defendants.

4. As such, based on Defendants' breach of the parties' contract, Plaintiff seeks, among other things, judgment declaring Defendants in breach of the contract and return of Plaintiff's contractual down payment.

PARTIES

5. Plaintiff is a New York corporation with an address c/o Croman Real Estate Inc., 740 Broadway, 2nd Floor, New York, New York 10003.

6. Upon information and belief, defendant, Estate of Gloria Jupiter is the legal Estate of Gloria Jupiter, by its personal representative, Hannah Jupiter, as Executrix which has an address of 1700 Lexington Avenue, New York, New York 10029.

7. Upon information and belief, defendant Carol Kaufman is the appointed administrator c.t.a. for the late Gloria Jupiter, who has an address c/o Michael S. Haber, Esq., Law Office of Michael S. Haber, 11 Broadway, Suite 615, New York, New York 10004.

FACTS

8. The late Gloria Jupiter was the owner of the property located at 354 East 19th Street, New York, New York (the "Premises").

9. After her death, Defendants became legally empowered to own, control and dispose of the Premises.

10. By Contract of Sale dated May 13, 2019 (the "Contract") Defendants agreed to sell the Premises to Plaintiff for the sum of \$4,100,000. Upon execution of the Contract, Plaintiff deposited with Defendants' counsel the sum of \$410,000 (the "Deposit").

11. The Contract sets forth the parties' respective rights, representations, covenants and obligations.

12. Among the integral inducements to Plaintiff's agreement to enter into the Contract are a series of affirmative representations made by Defendants with respect to the status of the rental units in the Premises and legality of the rents collected.

13. Paragraph 25 of Rider A to the Contract provides as follows:

Seller represents that it has filed the registration required in accordance with the New York State Division of Housing and Community Renewal as required by the Omnibus Housing Act of 1983.

14. The Contract at Paragraph 24 of Rider B provides in pertinent part as follows:

[Defendant] will deliver, within fifteen (15) days from the date hereof, copies of the "initial" registration statements ... copies of registration summary, building service summary, and all "annual" statements filed subsequent thereto.

15. After entering into the Contract, Plaintiff retained the services of STM Associates, Inc. ("STM") to undertake an analysis of the records for the Premises with the New York State Division of Homes and Community Renewal.

16. STM issued its report on July 6, 2019.

17. The STM report revealed, contrary to the express representation contained in Paragraph 25 of Rider A, that the Premises have not been registered with the DHCR.

18. Defendant did not register the Premises in 2015, 2016 or 2019.

19. The STM Report explained: "The building has been registered with HCR from 1984 through 2014 and from 2017 to 2018. **Consequently none of the rents collected in the property are legal until the missing 2015, 2016 and 2019 Apartment registrations are filed with DHCR !**" (*Emphasis in original*).

20. Upon receipt of the STM Report, Plaintiff's counsel, by letter dated July 15, 2019, wrote to Defendants' counsel explaining among other things, that Defendants' representation regarding DHCR filings was inaccurate and untrue.

21. In the July 15, 2019 letter, Plaintiff's counsel explained as follows:

At MBR/DHCR Rider Paragraph 24, Seller represents that as of the date of Contract it registered all apartments with the New York State Division of Housing and Community Renewal (the "DHCR"). In fact, as you have now acknowledged, this representation is false, and registrations in fact were not made for 2015, 2016 and 2019.

22. Plaintiff's counsel's July 15, 2019 further addressed Defendant's proposed untimely filing of the missing registrations and why the remedial action was unacceptable:

You have indicated that you are prepared to make these registrations at this time. Copies of the untimely registrations will need to be sent to all tenants. The tenants will have an opportunity to object and to claim irregularities or overcharges. This is unacceptable.

23. In a letter dated August 9, 2019, Defendant's counsel acknowledged the falsity of Defendant's representation regarding the DHCR registrations.

24. In a separate letter dated August 9, 2019, Defendant purported to unilaterally declare a time of the essence closing date of August 27, 2019.

25. Plaintiff objected to the unilateral declaration of a time of the essence closing on the ground that Defendant was in breach of the Contract by making false representations regarding the DHCR registrations and its failure to deliver promised documents relating to the Premises all of which precludes Defendant from closing much less closing on a unilaterally declared time of the essence date.

26. Based on the foregoing, the time provided in the time of the essence declaration failed to provide a reasonable period of time within which to close and, as such, it was invalid as a

matter of law.

27. Despite due demand, Defendant refused to withdraw its time of the essence declaration.

28. Defendant has not delivered copies of the initial registration statements, copies of registration summaries, building services summaries and all annual statements filed for the Premises.

29. Until the DHCR registrations are made, rent may not legally be collected at the Premises.

30. To register the apartments retroactively, Defendant first must provide copies of the untimely registrations to current and former tenants who will then have the opportunity to object to them or claim irregularities or overcharges.

As and for a First Cause of Action

31. Plaintiff repeats and realleges the allegations set forth in paragraphs “1” through “30” above as though set forth at length herein.

32. The Contract is a binding agreement between Plaintiff and Defendant.

33. The Contract includes express representations made by Defendant to Plaintiff which served as material inducements to Plaintiff entering into the Contract.

34. Among Defendant’s representations was the representation that contained in Paragraph 25 of Rider A to the Contract in which Defendant promises and represents that Defendant had as of that time filed with the DHCR all required registrations for the units in the Premises.

35. Defendant's representation in Paragraph 25 of Rider A is not true; Defendant has not filed registrations for years 2015, 2016 and 2019.

36. Plaintiff was entitled to and did rely on the truth of Defendant's representations.

37. Defendant's representations relating to the DHCR registrations are not true or accurate and Defendant is, therefore, in breach of the Contract.

38. Defendant likewise represented that it would within 15 days from the date of the Contract deliver copies of the initial registration statements as well as copies of registration summaries, building services summaries, and annual statements for the Premises.

39. Defendant failed to deliver the promised documents within 15 days of the execution of the Contract.

40. Defendant has failed to deliver the promised documents to this day.

41. Defendant's failure to deliver the promised documents constitutes a breach of the Contract.

42. Plaintiff has complied with all its contractual obligations.

43. Pursuant to Paragraph 13.02 of the Contract, because Defendant is not capable of delivering title to the Premises in accordance with the Contract, as reflected by its breach of express representations contained therein, Plaintiff is entitled to rescind the Contract and obtain the return of its Deposit, the cost of the title search obtained when the Contract was executed and attorneys' fees not to exceed \$20,000.

44. Based on the foregoing, Plaintiff is entitled to judgment against Defendant rescinding the Contract and awarding Plaintiff the sum of \$410,000 (representing the Deposit to be returned) plus interest thereon, plus the cost of title as well as Plaintiff's attorneys' fees all of

which in an amount to be determined at trial or inquest but which is believed to exceed \$440,000.

As and For a Second Cause of Action

45. Plaintiff repeats and realleges the allegations set forth in paragraphs “1” through “44” above as though set forth at length herein.

46. Defendant is in breach of the Contract for failing to register the units in the Premises with DHCR despite affirmative representations in the Contract to the contrary.

47. Defendant is in breach of the Contract for failing to deliver the initial registration statements as well as copies of registration summaries, building services summaries, and annual statements for the Premises.

48. Defendant is not in a position to close much less compel closing through a unilateral time of the essence declaration.

49. Plaintiff anticipates that Defendant disputes the foregoing.

50. A justiciable controversy exists between the parties as to the foregoing and the parties’ respective rights and obligations under the Contract.

51. By reason of the foregoing, Plaintiff is entitled to a declaratory judgment pursuant to Section 3001 of the CPLR declaring the rights and other legal relations of the parties hereto with respect to the matters set forth herein including, without limitation:

- a. That Defendant is in breach of the Contract;
- b. That Defendant does not have the right to unilaterally schedule a time of essence closing date;
- c. That Defendant has not satisfied its obligations under the Contract so as to be capable of closing thereunder;
- d. That the time of the essence declaration issued by Defendant on August 9, 2019 was unreasonable under the circumstances;

- e. That Defendant does not have right to declare Plaintiff in default under the Contract for Plaintiff's unwillingness to accept the infirm and deficient performance which Defendant is able to offer; and
- f. That based on Defendant's breach of the Contract, Plaintiff is entitled to terminate the Contract and receive return of its Deposit, with all accrued interest, the cost of its title search as well as its attorneys' fees not to exceed \$20,000.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant as follows:

- a. On Plaintiff's First Cause of Action: Judgment awarding Plaintiff the sum of \$410,000 (representing the Deposit to be returned) plus interest thereon, plus the cost of title as well as Plaintiff's attorneys' fees all of which in an amount to be determined at trial or inquest but which is believed to exceed \$440,000; and
- b. On Plaintiff's Second Cause of Action: Judgment declaring the parties' rights and other legal relations with respect to the matters set forth herein including, without limitation: (i) That Defendant is in breach of the Contract; (ii) that Defendant does not have the right to unilaterally schedule a time of essence closing date; (iii) that Defendant has not satisfied its obligations under the Contract so as to be capable of closing thereunder; (iv) that the time of the essence declaration issued by Defendant on August 9, 2019 was unreasonable under the circumstances; (v) that Defendant does not have the right to declare Plaintiff in default under the Contract for Plaintiff's unwillingness to accept the infirm and deficient performance which Defendant is able to offer; and (vi) that based on Defendant's breach of the Contract, Plaintiff is entitled to terminate the Contract and receive return of its Deposit, with all accrued interest, the cost of its title search as well as its attorneys' fees not to exceed \$20,000; and
- c. The costs and fees incurred by Plaintiff herein, including attorneys' fees; and

d. Such further and different relief as the Court may deem just and proper in these circumstances.

Dated: New York, New York
August 26, 2019

Goldberg Weprin Finkel Goldstein LLP

By: 

By: Matthew Hearle

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New York, New York 10036
(212) 221-5700