# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

WACHOVIA BANK, NATIONAL	L
ASSOCIATION,	

Plaintiff,

v.

DREIER LLP, MARC S. DREIER, JOHN DOES 1-250, ABC PARTNERSHIPS 1-250, AND XYZ CORPORATIONS 1-250,

Defendants.

Civil Action No.

1918 68 11118 UD

**VERIFIED COMPLAINT** 

Plaintiff, Wachovia Bank, National Association, by and through its attorneys, McCarter & English, LLP, by way of Verified Complaint against the Defendants, states:

### THE PARTIES

- 1. Plaintiff, Wachovia Bank, National Association ("Wachovia"), a national banking association with its main offices located in Charlotte, North Carolina, by virtue of 28 U.S.C. § 1348, is a citizen of the State of North Carolina.
- 2. Defendant Dreier LLP ("Borrower"), a New York limited-liability partnership, is a law firm with its principal place of business in New York, New York, and has offices in Los Angeles, California, Stamford, Connecticut, Santa Monica, California, Albany, New York, and Pittsburgh, Pennsylvania. It is a citizen of the State of New York.

3. Defendant Marc S. Dreier ("Guarantor") is a citizen of the State of New York residing in New York, New York.

### **JURISDICTION**

- 4. Pursuant to 28 U.S.C. § 1332, this Court has subject matter jurisdiction, as the parties are citizens of different states, and the amount in controversy exceeds the sum of \$75,000.
- 5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a), because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this District; and Defendants Dreier LLP and Marc S. Dreier reside in this District and are subject to personal jurisdiction in this District.

#### **FACTS**

- 6. Wachovia and the Borrower entered into a \$14,510,145 Second Amended and Restated Credit Agreement dated October 17, 2008 (the "\$14,510,145 Credit Agreement").
- 7. In connection with the \$14,510,145 Credit Agreement, the Borrower executed a Revolving Credit Note dated October 17, 2008 (the "Revolving Credit Note"), in favor of Wachovia in the amount of \$9,000,000.
- 8. As set forth in the \$14,510,145 Credit Agreement, Wachovia and the Borrower had already executed a \$5,510,145 Amended and Restated Credit Agreement dated January 18, 2007 (the "\$5,510,145 Credit Agreement").
- 9. In connection with the \$5,510,145 Credit Agreement, the Borrower had executed a Term Note dated January 18, 2007, in favor of Wachovia in the amount of \$5,510,145 (the "Term Note").
- 10. As set forth in § 2.5 of the \$14,510,145 Credit Agreement, Letters of Credit could be issued at the request of the Borrower in favor of third parties. There presently are two outstanding letters of credit in the aggregate amount of approximately \$1,500,000.

- 11. Article 3 of the \$14,510,145 Credit Agreement provides that, as "security for the prompt payment, performance, satisfaction and discharge when due of all Obligations," Wachovia has first-priority security interests in and liens on certain of Borrower's assets pursuant to and as more fully set forth in a certain Security Agreement. The Security Agreement is defined in the Appendix, at page 6, to the Credit Agreement as "that certain security agreement dated as of December 1, 2005 between the Borrower and the Bank, as it may be amended, restated, supplemented, or otherwise modified from time to time."
- 12. As set forth in paragraph 1 of the Security Agreement, Wachovia has a continuing security interest in and lien on "the following described property, whether now owned or hereafter acquired, and any additions, replacements, accessions, or substitutions thereof and all cash and non-cash proceeds thereof (collectively, the "Collateral"): (a) all Accounts of the Borrower and (b) General Intangibles consisting solely of unbilled time and disbursements of the Borrower."
- 13. The Guarantor executed an Amended & Restated Unconditional Guaranty dated October 17, 2008, in favor of Wachovia for all sums payable under the Revolving Credit Note, the Term Note and all documents executed in connection with either of the foregoing.
- 14. The Revolving Credit Note is in default due to the failure of the Borrower to make the November 1, 2008, interest payment and all payments due thereafter. There is currently \$9,000,000 in principal, plus interest, late charges and other sums, due and owing under the Revolving Credit Note.
- 15. The Term Note is in default due to the failure of the Borrower to make the November 1, 2008, principal and interest payment, and all payments due thereafter. The current principal balance due and owing is \$3,673,430. Additional sums are also due and

owing under the Term Note, such as interest, late charges and costs of collection

16. As a result of the defaults under the Revolving Credit Note and Term Note, Wachovia has accelerated the loans, and has elected to pursue its remedies under the \$14,510,145 Credit Agreement, the Revolving Credit Note, the \$5,510,145 Credit Agreement, the Term Note, the Security Agreement, the Guaranty, and all other documents executed in connection with any of the foregoing (collectively, the "Loan Documents").

# FIRST COUNT

(Foreclosure of Security Interest in Collateral)

- 1. Wachovia repeats and realleges the previous allegations of this Verified Complaint as if set forth more fully herein.
- 2. As set forth above, to secure repayment of the loans and any amounts that are required to be reimbursed by the Borrower to Wachovia for sums drawn under outstanding letters of credit, the Borrower granted Wachovia a security interest in the Collateral. To perfect its security interest in the Collateral, Wachovia filed a UCC-1 financing statement with the New York Department of State on December 30, 2005, as instrument number 200512301380562.
- 3. The Borrower defaulted under the Revolving Credit Note and the Term Note, and the other Loan Documents, as set forth above.
- 4. Pursuant to the terms of the Loan Documents, the entire amounts due under the Revolving Credit Note and the Term Note are now due and payable. Wachovia is permitted to foreclose on the Collateral. It has elected to do so, and to among other things collect directly from the account debtors all amounts due or to become due to Borrower.
  - 5. During the course of this action Wachovia may be obligated to make advances of

necessary expenses to preserve the security of the Collateral. All such sums advanced, together with interest, shall be added to the amounts due Wachovia.

6. Wachovia is entitled to foreclose its security interests in the Collateral.

WHEREFORE, Plaintiff, Wachovia Bank, National Association, demands that

Judgment be entered in its favor and against Defendant Dreier LLP for the following relief:

- (a) enjoining and restraining Defendant Dreier LLP, its agents, servants, lawyers and partners (current, former and departing), and employees from transferring, selling, secreting, insulating, disposing, assigning, dissipating, and/or further encumbering the Collateral;
  - (b) permitting foreclosure of its security interest in the Collateral;
- (c) requiring Defendant Dreier LLP to produce all documents evidencing the Collateral, including financial information, records, and statements;
- (d) permitting Plaintiff, Wachovia Bank, National Association, to collect directly from account debtors and obligors all amounts due or to become due Defendant Dreier LLP; and
- (e) granting such other further relief as is equitable and just, including recovery of costs of suit and reasonable attorneys' fees.

#### SECOND COUNT

(Judgment on Revolving Credit Note)

- Wachovia repeats and realleges the allegations of the First Count of this Verified
   Complaint as if set forth more fully herein.
- 2. The Borrower has failed to pay Wachovia the sums due under the Revolving Credit Note.

WHEREFORE, Plaintiff, Wachovia Bank, National Association, demands that

Judgment be entered in its favor and against Defendant Dreier LLP for all sums due under the Revolving Credit Note, together with prejudgment interest and costs of suit, including recovery of reasonable attorneys' fees.

# THIRD COUNT

(Judgment on Term Note)

- 1. Wachovia repeats and realleges the allegations of the First and Second Counts of this Verified Complaint as if set forth more fully herein.
  - 2. The Borrower has failed to pay Wachovia the sums due under the Term Note.

WHEREFORE, Plaintiff, Wachovia Bank, National Association, demands that Judgment be entered in its favor and against Defendant Dreier LLP for all sums due under the Term Note, together with prejudgment interest and costs of suit, including recovery of reasonable attorneys' fees.

## **FOURTH COUNT**

(Breach of Contract under Revolving Credit Note)

- 1. Wachovia repeats and realleges the allegations of the First through Third Counts of this Verified Complaint as if set forth more fully herein.
- 2. The Borrower's failure to make payments in accordance with the terms of the Revolving Credit Note constitutes a breach of contract.
  - 3. Wachovia has been damaged as a result of the Borrower's breach of contract.

WHEREFORE, Plaintiff, Wachovia Bank, National Association, demands that Judgment be entered in its favor and against Defendant Dreier LLP for compensatory damages,

together with prejudgment interest and costs of suit, including recovery of reasonable attorneys' fees.

## FIFTH COUNT

(Breach of Contract under Term Note)

- 1. Wachovia repeats and realleges the allegations of the First through Fourth Counts of this Verified Complaint as if set forth more fully herein.
- 2. The Borrower's failure to make payments in accordance with the terms of the Term Note constitutes a breach of contract.
  - 3. Wachovia has been damaged as a result of the Borrower's breach of contract.

WHEREFORE, Plaintiff, Wachovia Bank, National Association, demands that Judgment be entered in its favor and against Defendant Dreier LLP for compensatory damages, together with prejudgment interest and costs of suit, including recovery of reasonable attorneys' fees.

#### **SIXTH COUNT**

(Judgment on Guaranty)

- 1. Wachovia repeats and realleges the allegations of the First through Fifth Counts of this Verified Complaint as if set forth more fully herein.
  - 2. The Guarantor has failed to pay Wachovia the sums due under the Guaranty.

WHEREFORE, Plaintiff, Wachovia Bank, National Association, demands that Judgment be entered in its favor and against Defendant Marc S. Dreier for all sums due under the Guaranty, together with prejudgment interest and costs of suit, including recovery of reasonable attorneys' fees.

#### **SEVENTH COUNT**

(Breach of Contract under Guaranty)

- 1. Wachovia repeats and realleges the allegations of the First through Sixth Counts of this Verified Complaint as if set forth more fully herein.
- 2. The Guarantor's failure to make payments in accordance with the terms of the Guaranty constitutes a breach of contract.
  - 3. Wachovia has been damaged as a result of the Guarantor's breach of contract.

    WHEREFORE, Plaintiff, Wachovia Bank, National Association, demands that

Judgment be entered in its favor and against Defendant Marc S. Dreier for compensatory damages, together with prejudgment interest and costs of suit, including recovery of reasonable

attorneys' fees.

## **EIGHTH COUNT**

(Conversion)

- 1. Wachovia repeats and realleges the allegations of the First through Seventh Counts of this Verified Complaint as if set forth more fully herein.
- 2. Defendants John Does 1-250 are individuals who, without proper and lawful authorization, assumed and exercised rights of ownership over Wachovia's Collateral, or who exercised, without authorization and wrongfully, an act of dominion or control over Wachovia's Collateral, thereby altering the Collateral and/or depriving Wachovia of its rights.
- 3. Defendants ABC Partnerships 1-250 are partnerships and other similar entities who, without proper and lawful authorization, assumed and exercised rights of ownership over Wachovia's Collateral, or who exercised, without authorization and wrongfully, an act of

dominion or control over Wachovia's Collateral, thereby altering the Collateral and/or depriving Wachovia of its rights.

- 4. Defendants XYZ Corporations 1-250 are corporations and other similar entities who, without proper and lawful authorization, assumed and exercised rights of ownership over Wachovia's Collateral, or who exercised, without authorization and wrongfully, an act of dominion or control over Wachovia's Collateral, thereby altering the Collateral and/or depriving Wachovia of its rights.
  - 5. As a result of the above conversion, Wachovia has suffered damages.

WHEREFORE, Plaintiff, Wachovia Bank, National Association, demands that Judgment be entered in its favor and against Defendants John Does 1-500, ABC Partnerships 1-500, and XYZ Corporations 1-500 for compensatory damages, punitive damages, prejudgment interest, and costs of suit, including recovery of reasonable attorneys' fees.

Dated: December 7, 2008

McCARTER & ENGLISH, LLP

Attorneys for Plaintiff,

Wachovia Bank, National Association

By:

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-and-

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# **VERIFICATION**

STATE OF NEW YORK :

COUNTY OF NEW YORK:

Robert T. Tolan, of full age, being duly sworn according to law, upon his oath deposes and says:

I am employed as a Senior Vice President for Wachovia Bank, National Association, and am familiar with the loan transactions referenced in the Verified Complaint.

I have reviewed the Verified Complaint, and based on my review of the loan documents and my personal involvement with these loan transactions, the factual matters contained herein are true to the best of my knowledge.

Sworn and subscribed to before

\_\_day of December, 2008. Josh Libertarie Jr.

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