

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

HS 45 JOHN LLC,

Case No. 15-10368 (SHL)

Debtor.
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**DECLARATION OF ANDREW W. ALBSTEIN IN RESPONSE
TO THE MARCH 30, 2015 AFFIDAVIT OF BRIAN SHATZ**

ANDREW W. ALBSTEIN, declares the following under penalties of perjury,
pursuant to 28 U.S.C. § 1746:

1. I am the managing real estate partner of the law firm of Goldberg Weprin Finkel Goldstein LLP and was personally involved in the communication with Madison Realty Capital (“Madison Realty”) prior to the execution of the Contract of Sale (the “Contract”).

2. Although it may be unconventional to submit a response to reply papers, I cannot let go unanswered the contention in the March 30, 2015 affidavit of Brian Shatz that the Debtor did not conduct due diligence to confirm the status of the mortgages. To the contrary, I personally spoke with Josh Zegen, a managing member of Madison Realty, for the purpose of confirming the status of the mortgages. I respectfully submit this Declaration to set the record straight regarding the efforts made by the Debtor to verify the Seller’s representation.

3. Mr. Shatz’s affidavit is carefully worded to create the false impression that Madison Realty somehow advised the Debtor that the mortgages were in default prior to executing the Contract. Mr. Shatz’s assertions completely ignore my conversation with Mr. Zegen in which I, on behalf of the Debtor, sought to confirm the status of the mortgages shortly before the execution of the Contract.

4. The call was placed by Sam Sprei in my office, who handed me the phone to speak with Mr. Zegen.

5. During that conversation, Mr. Zegen told me that the mortgages were current. Mr. Zegen was well known to me based on my prior business dealings with Madison Realty in various other transactions.

6. Additionally, Madison Realty was aware that the Debtor was considering assuming the mortgages (with Madison Realty's consent) as part of the sale. In fact, the relatively short period of time between contract execution and the final aspects of the closing was designed to finalize the terms of a mortgage extension with Madison Realty or obtain a new mortgage from another lender going forward.

7. It is noteworthy that Mr. Shatz never once denies that I spoke with Mr. Zegen or that Mr. Zegen advised me that the mortgages were current. Rather, Mr. Shatz suggests that the Debtor somehow had knowledge based on the payoff statements that Madison Realty allegedly sent to the Seller.

8. Neither I nor the Debtor ever received these payoff statements prior to the execution of the Contract, and no evidence has been produced that Madison Realty sent those statements to the Debtor or me.

9. Shortly after the contract was signed on Friday, September 19, 2014, my associate Michael Podolsky sent an email on Tuesday, September 23, 2014 to Mr. Zegen with a proposed consent letter, also referencing that the loans were current based on our prior conversation. Madison Realty did not respond back to us with respect to this email or indicate that the loans were in default. A copy of this email with the attachment is annexed hereto as Exhibit A.

10. In fact, Madison Realty ignored our requests for payoff information for several weeks thereafter.

11. I understand that due inquiry of Madison Realty's involvement will be pursued by proposed special counsel for the Debtor to avoid any potential conflicts. However, I did not want the Debtor's lack of an immediate response to be taken as acknowledgment of the statements made by Mr. Shatz relating to the Debtor's due diligence.

Dated: New York, New York
March 31, 2015

/s/ Andrew W. Albstein
Andrew W. Albstein

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EXHIBIT “A”

From: Michael Podolsky [mailto:mpodolsky@gwfglaw.com]
Sent: Tuesday, September 23, 2014 1:39 PM
To: Josh Zegen (josh@madisonrealtycapital.com); Brian Shatz (brian@madisonrealtycapital.com)
Cc: aalbstein@gwfglaw.com; yschwartz@blpclaw.com
Subject: 45 John Street, New York, New York

Josh:

In furtherance of your conversations with Andy over the last few days, attached please find a proposed letter from SDF81 45 John Street 1 LLC and SDF1 45 John Street 2 LLC in connection with those certain loans encumbering the premises known as 45 John Street, New York, New York.

If acceptable, kindly have the letter executed, have Schedule A attached thereto and have a PDF of the letter sent to us by email with an original to follow to my attention.

Thank you.

Michael B. Podolsky, Esq.
Goldberg Weprin Finkel Goldstein LLP
1501 Broadway, 22nd Floor
New York, New York 10036
(212) 301-6987 (direct dial)
(212) 221-5700 (main number)
(212) 730-4518 (fax)
mpodolsky@gwfglaw.com

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**SDF81 45 JOHN STREET 1 LLC
SDF81 45 JOHN STREET 2 LLC
C/O MADISON REALTY CAPITAL
825 THIRD AVENUE, 37TH FLOOR
NEW YORK, NEW YORK 10022**

September __, 2014

HS 45 JOHN LLC
c/o Orin Management
34-04 Parsons Boulevard
Flushing, New York 11354
Attn: Steven Sohn

Re: 45 John Street, New York, New York

Reference is made to those certain mortgage loans more particularly described on Schedule A hereto (the "Loans") made by SDF81 45 John Street 1 LLC and SDF81 45 John Street 2 LLC (collectively, "Lender") to 45 JOHN LOFTS LLC ("Borrower") in connection with the premises known as 45 John Street, New York, New York (the "Property").

Lender hereby certifies to HS 45 JOHN LLC ("Purchaser"), the prospective purchaser of the Property or a 49.9% membership interest in Borrower (the "Purchase"), that (i) Schedule A hereto sets forth the current true and correct principal balances and outstanding interest balances of the Loans, (ii) none of the Loans are in default nor does there exist an event that with the giving of notice or passage of time would constitute a default and (iii) no funds have been advanced pursuant to that certain \$12,000,000 building loan evidenced by that certain Building Mortgage and Security Agreement, dated as of March 4, 2014.

Lender hereby consents to the Purchase, whether by purchase of the fee interest or by purchase of 49.9% of the membership interests in Borrower, and, if applicable, (i) the withdrawal of Chun Peter Dong as a member of Borrower, (ii) the resignation of Chaim Miller as the manager of Borrower and (iii) the appointment of Steven Sohn, or an entity controlled by Steven Sohn, as the manager of Borrower. In the event Purchaser shall acquire the fee interest in the Property, Lender hereby consents to the assumption of the Loans by Purchaser.

Lender hereby agrees that so long as the Agreement shall be in effect Lender shall provide prompt written notice of any default under any of the Loans to Purchaser. Lender agrees

HS 45 JOHN LLC
September ___, 2014
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that Purchaser shall have the right to cure any such default within thirty (30) days after consummation of the Purchase, during which time Lender shall not avail itself of any remedies in connection with such default.

Sincerely,

SDF81 45 JOHN STREET 1 LLC

Name:
Title

SDF81 45 JOHN STREET 2 LLC

Name:
Title