

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

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299 SEVENTH AVE REALTY LLC,

Plaintiff,

-against-

CAFFEBENE 299 INC. and
CAFFEBENE INC.,

Defendants
-----x

Index No.:

Date Purchased: 08/ /2015

Plaintiff(s) designate(s)
New York County, as the
place of trial

The basis of the venue is
Defendant's principal place
of business

SUMMONS


Plaintiff(s) reside(s) at
c/o Stefano Troia, Manager
203 Aldershot Lane
Manhasset, New York 11030

County of New York

To the above named Defendant(s)

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on the Plaintiff's attorney(s) 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 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 in the Complaint.

Dated: August 24, 2015



Lisa D. Levine-Shapiro, Esq.
**LAW OFFICE OF
KRAMER & SHAPIRO, P.C.**
Attorneys for
299 SEVENTH AVE REALTY LLC
80-02 Kew Gardens Road, Suite 302
Kew Gardens, New York 11415
(718) 520-1600

Defendant(s) Address(es):

Caffebene 299 Inc.
1430 Broadway
Suite 1503
New York, New York 10018

Caffebene 299 Inc.
DOS Process Address
299 7th Avenue
New York, New York 10001

Caffebene Inc.
1430 Broadway
Suite 1401
New York, New York 10018

안랩(AnLabs)의
지프라이빗오류분석
서비스를
이용하

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IAS Judge _____

VERIFIED COMPLAINT

Plaintiff, 299 Seventh Ave Realty LLC, by its attorneys, the Law Office of Kramer & Shapiro, P.C. as and for its Verified Complaint, alleges as follows:

The Parties

1. Plaintiff, 299 Seventh Ave Realty LLC (hereinafter referred to as “299 Seventh”), at all times hereinafter mentioned, was and is a limited liability company organized and existing under the laws of the State of New York with its place of business c/o Stefano Troia, Manager, 203 Aldershot Lane, Manhasset, New York 11030.

2. At all times hereinafter mentioned, 299 Seventh is and was the owner of the building located at 299 Seventh Avenue, New York, New York.

3. Upon information and belief, Defendant Caffebene 299 Inc. (hereinafter referred to as “Caffebene 299”) is a corporation organized and existing under the laws of the State of New York that has its principal place of business at 1430 Broadway, Suite 1503, New York New York 10018 and its DOS Process address at 299 7th Avenue, New York, New York 10001.

4. Upon information and belief, Defendant Caffebene Inc. is a corporation organized and existing under the laws of the State of New York with its principal executive office at 1430 Broadway, Suite 1401, New York, New York 10018.

Venue and Jurisdiction

5. Venue of this action properly placed in New York County as all parties conduct business in that county, the defendants are located in New York County, and the leased premises is located within New York County.

6. Jurisdiction is proper in New York County as all events giving rise to this action have occurred in the State and City of New York, New York County.

Nature of this Action

7. This action is for monetary damages arising out of breaches of a ten year commercial store lease against the defaulting tenant and the guarantor.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST THE DEFENDANTS

8. On or about February 14, 2013, 299 Seventh, as owner, entered into a ten year store lease with Caffebene 299 Inc. (hereinafter referred to as "Caffebene 299") for the operation of a first class coffee shop and food service establishment consistent in quality and offering with a first class Caffebene restaurant on the first and second floors and basement in the building at 299 Seventh Avenue, New York.10001. A copy of this lease agreement is annexed hereto as Exhibit A (hereinafter referred to as "the Lease").

9. The Lease was guaranteed in full by Defendant Caffebene Inc., which is, upon information and belief, the parent United States Company. The Lease guaranty is set forth on the signature page of the Lease and provides:

"The undersigned guarantor Caffebene Inc. guarantees to Owner/Landlord, Owner/Landlord successors and assigns the full performance and observance of all of the agreements to be performed and observed by tenant in the within lease including but not limited to the payment of rent and additional rent without requiring any notice to guarantor of non-payment, or non-performance, or proof, or notice of demand, to hold the undersigned

responsible under this guarantee. All of which the undersigned hereby expressly waives, and expressly agrees that the legality of this agreement and agreements of the guarantor under this agreement shall not be ended or changed by reason of the claims to owner against tenant of any of the rights or remedies given to owner as agreed in the attached lease. The guarantor further agrees that this guarantee shall remain in full force and effect as to any renewal, change or extension of the lease. As a further inducement to landlord/owner to make this lease owner and guarantor agree that in any action or proceeding brought by owner/landlord or by guarantor on any matters concerning the lease or this guarantee that owner and guarantor shall and do waive trial by jury.”

10. Under paragraph 45 of the Lease, the tenant, Caffebene 299, was responsible to pay annual fixed rent in the following amounts upon the Lease commencement date of March 7, 2013: \$420,000 per year (\$35,000.00 per month) for the two years; \$445,200.00 per year (\$37,100.00 per month) for the third and fourth years; \$471,912.00 per year (\$39,326.00 per month) for the fifth and sixth years; \$500,226.72 per year (\$41,685.56 per month) for the seventh and eighth years; and \$520,242.32 per year (\$44,186.69 per month) for the ninth and tenth years (the “Fixed Rent”).

11. Under the Lease, the tenant Caffebene 299 was also responsible for “Additional Rent” which included one hundred (100%) percent of the real estate taxes and assessments pertaining to 299 Seventh Avenue, New York, New York for the entire lease term, electricity, and water.

12. Plaintiff 299 Seventh has performed all of the terms and conditions required of it under the Lease.

13. Caffebene 299 has breached its obligations to 299 Seventh under the Lease.

14. Caffebene 299 failed to pay the August 2015 fixed rental due in the sum of \$37,100.00, failed to pay water charges from 3/18/15 through 6/14/15 in the sum of \$3545.71, and failed to pay the real estate tax due on 7/1/15 in the sum of \$37,866.22.

15. On August 18, 2015, Caffebene 299 abandoned the leased premises without justification.

16. By defaulting in the payment of Fixed Rent and Additional Rent, Defendants are liable to 299 Seventh for all Fixed Rent due for the balance of the lease term in the sum of three million six hundred fifty two thousand, five hundred fifty eight dollars and eight cents (\$3,652,558.08), and for all real estate taxes and other Additional Rent due for the balance of the lease term in a sum to be determined after trial.

17. Furthermore, under paragraph 45 (e) of the Lease, 299 Seventh waived its right to collect Fixed Rent for the first six months of the Lease only so long as Caffebene 299 was not in default of any of the terms of the Lease. Since Caffebene 299 is in default, 299 Seventh is entitled to recoup the first six months of previously uncollected Fixed Rent in the sum of \$210,000.00.

18. 299 Seventh is entitled to recover a six (6%) per cent late fee where any installment of Fixed Rent or Additional Rent due under the Lease is not paid on or before the seventh day of the calendar month during which such installment is due.

19. 299 Seventh is entitled to recover any and all expenses incurred for putting the demised premises in good order or for preparing same for re-rental.

20. By reason of Defendant Caffebene 299's breaches of the Lease, Plaintiff 299 Seventh is entitled to judgment against Defendants in a sum to be determined after trial but not less than three million nine hundred forty one thousand seventy dollars and one cent (\$3,941,070.01), that will include the balance of the Fixed Rent and Additional Rent due as of the date of default but unpaid, the recoupment of the first six months of Fixed Rent, late fees due under the Lease, plus

the cost of any and all expenses for putting the demised premises in good order or for preparing same for re-rental.

**AS AND FOR A SECOND CAUSE OF ACTION
AGAINST DEFENDANTS**

21. Plaintiff repeats and reiterates paragraphs 1-20 with the same force and effect as if fully restated herein.

22. Under paragraphs 18 and 19 of the Lease and paragraph 81 (i) of the Lease Rider, Defendants are liable to 299 Seventh for the attorneys' fees with interest, costs and disbursements incurred by 299 Seventh for any action or proceeding brought by 299 Seventh to enforce its rights under the Lease.

23. Plaintiff 299 Seventh is entitled to recover from Defendants such attorneys' fees with interest, costs and disbursements against Defendants, in a sum to be determined after trial, but not less than ten thousand (\$10,000.00) dollars.

**AS AND FOR A THIRD CAUSE OF ACTION
AGAINST DEFENDANT CAFFEBENE INC.**

24. Plaintiff repeats and reiterates paragraphs 1-23 with the same force and effect as if fully restated herein.

25. Defendant Caffebene Inc. is liable to Plaintiff 299 Seventh for all sums due under the Lease for the defaults by Caffebene 299 under the Guarantee it executed.

26. By reason of Caffebene 299's breaches of the Lease, Plaintiff 299 Seventh is entitled to judgment against Defendant Caffebene Inc. in a sum to be determined after trial but not less than three million nine hundred forty one thousand seventy dollars and one cent (\$3,941,070.01), that will include the balance of the Fixed Rent and Additional Rent due as of the date of default but unpaid, the recoupment of the first six months of Fixed Rent, late fees due under the Lease, legal

fees plus interest, costs and disbursements incurred, plus the cost of any and all expenses for putting the demised premises in good order or for preparing same for re-rental.

WHEREFORE, Plaintiff, 299 Seventh Ave Realty LLC, demands judgment against the Defendants respectfully as follows:

1. On the first cause of action, against both Defendants jointly and severally in a sum to be determined after trial but not less than three million nine hundred forty one thousand seventy dollars and one cent (\$3,941,070.01), that will include the balance of the Fixed Rent and Additional Rent due as of the date of default but unpaid, the recoupment of the first six months of Fixed Rent, late fees due under the Lease, plus the cost of any and all expenses for putting the demised premises in good order or for preparing same for re-rental;

2. On the second cause of action, against both Defendants jointly and severally in a sum to be determined after trial but not less than ten thousand dollars;

3. On the third cause of action, against Defendant Caffebene Inc. in a sum to be determined after trial but not less than three million nine hundred forty one thousand seventy dollars and one cent (\$3,941,070.01), that will include the balance of the Fixed Rent and Additional Rent due as of the date of default but unpaid, the recoupment of the first six months of Fixed Rent, late fees due under the Lease, legal fees plus interest, costs and disbursements incurred, plus the cost of any and all expenses for putting the demised premises in good order or for preparing same for re-rental.; and all together with interest thereon, and costs and expenses, and such other and further relief as this Court may deem just and proper.

Dated: Kew Gardens, New York
August 24, 2015

Law Office of Kramer & Shapiro, P.C.



By Lisa D. Levine-Shapiro, Esq.
Attorneys for Plaintiff

299 Seventh Ave Realty LLC
80-02 Kew Gardens Road Suite 302
Kew Gardens, N.Y. 11415
(718) 520-1600

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시크릿
치브로코리아
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VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF QUEENS)

Lisa D. Levine-Shapiro, Esq., an attorney admitted to practice in the Courts of the State of New York states that I am an attorney at the Law Office of Kramer & Shapiro, P.C., the attorneys for the Plaintiff herein, 299 Seventh Ave Realty LLC. I have read the annexed Verified Complaint, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.. My belief, as to those matters therein not stated upon knowledge is based upon review of documents and conversations with our client. The reason I make this affirmation instead of 299 Seventh Ave Realty LLC is that it does not maintain an office in the County in which our law office is located.

I affirm that the foregoing statements are true under penalties of perjury.

Dated: August 24, 2015


Lisa D. Levine-Shapiro, Esq.