

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO.

21-1331

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2021 JUN 10 A 11:43
MICHAEL JOSEPH DOWD
CLERK / MAGISTRATE

ZOOEPHEBE REALTY TRUST f/k/a DADA
COW REALTY TRUST,

Plaintiff,

v.

J.P. LICKS HOMEMADE ICE CREAM
COMPANY, INC. and VINCENT R.
PETRYK

Defendants,

v.

ROCKLAND TRUST COMPANY and
EASTERN BANK CORPORATION
Trustee Process Defendants.

VERIFIED COMPLAINT

1. Plaintiff Zooephebe Realty Trust f/k/a Dada Cow Realty Trust ("Landlord") brings this action to recover amounts due and owing under a commercial lease with defendants J.P. Licks Homemade Ice Cream Company, Inc. ("J.P. Licks" or "Lessee") and Vincent R. Petryk ("Petryk" or "Guarantor") (collectively, the "Defendants"), which J.P. Licks and Petryk have failed and refused to pay.

PARTIES

2. Landlord is a trust established under an instrument of trust dated March 31, 1998, recorded with the Suffolk County Registry of Deeds in Book 22309 at Page 336, as amended by

instrument dated February 22, 2010, recorded with the Suffolk Registry of Deeds in Book 46140 at Page 281.

3. J.P. Licks is a corporation organized under the laws of Massachusetts with a principal place of business at 659 Centre Street, Jamaica Plain, Suffolk County, Massachusetts 02130.

4. Petryk is an individual, who personally guaranteed the obligations of J.P. Licks under a commercial lease between Landlord and J.P. Licks, and he is the registered agent of J.P. Licks with an address at 659 Centre Street, Jamaica Plain, Suffolk County, Massachusetts 02130.

5. Petryk resides at 67 Mosssdale Road, Jamaica Plain, Massachusetts 02130.

6. Upon information and belief, Trustee Process Defendant Rockland Trust Company ("Rockland Trust") is a banking institution with a usual place of business in Boston, Suffolk County, Massachusetts.

7. Upon information and belief, Trustee Process Defendant Eastern Bank Corporation ("Eastern Bank") is a banking institution with a usual place of business in Boston, Suffolk County, Massachusetts.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this matter pursuant to M.G.L. c. 212, § 4.

9. This Court possesses personal jurisdiction over J.P. Licks pursuant to M.G.L. c. 223A, § 2 because it is organized under the laws of the Commonwealth of Massachusetts and it has a principal place of business within the Commonwealth of Massachusetts.

10. This Court possesses personal jurisdiction over Petryk pursuant to M.G.L. c. 223A, § 2 because he is domiciled in the Commonwealth of Massachusetts.

11. This Court possesses personal jurisdiction over Rockland Trust pursuant to M.G.L. c. 223A, § 3 because it regularly transacts and does business within the Commonwealth of Massachusetts.

12. This Court possesses personal jurisdiction over Eastern Bank pursuant to M.G.L. c. 223A, § 3 because it regularly transacts and does business within the Commonwealth of Massachusetts.

13. Venue is appropriate in Suffolk County Superior Court because J.P. Licks' principal place of business is located in Suffolk County, Petryk works and resides in Suffolk County, and the leased property at issue is located in Suffolk County.

14. The amount in controversy exceeds the sum or value of twenty-five thousand dollars (\$25,000), exclusive of interest and costs.

FACTUAL BACKGROUND

15. The Landlord owns the property located at 659 – 661 Centre Street, Jamaica Plain, Massachusetts (the “Property”).

16. The Landlord and J.P. Licks entered into a Standard Form Commercial Lease of the Property dated April 17, 2009, as amended by a First Amendment to Lease dated October 3, 2019 (as so amended, the “Lease”).

17. Petryk, as President of J.P. Licks, executed the Lease on behalf of J.P. Licks.

18. A true and accurate copy of the Lease is attached as Exhibit A.

19. The term of the Lease runs until June 30, 2024.

20. Pursuant to the Lease, J.P. Licks, as lessee, was permitted to use the Property for “general business purposes, general office purposes, warehousing and storage and light manufacturing all as permitted under applicable zoning laws, regulations and codes.”

21. J.P. Licks uses the Property for a variety of business purposes, including as its corporate office space, wholesale/product production facility, and there is also a retail store.

22. In exchange for its use of the Property, J.P. Licks is required to pay the Landlord rent, which is due in equal monthly installments.

23. Additionally, pursuant to the Lease, Petryk, as an individual, “absolutely, unconditionally, and irrevocably guarantee[d] to [Landlord] the prompt and full payment and strict performance, when due, of all obligations which [J.P. Licks] may now or hereafter owe to [Landlord] arising out of or relating to the Lease, and any extensions thereof.”

24. The Lease specifically states that Petryk’s personal guaranty was “a material inducement to [Landlord] to enter into the Lease,” and Landlord actually relied on Petryk’s guaranty when it agreed to lease the property to J.P. Licks.

25. Based on the terms of the Lease, the monthly rent owed by the Defendants from January through June 2020 was \$23,160.96.

26. Based on the terms of the Lease, the monthly rent owed by the Defendants from July to December 2020 was \$23,855.72.

27. The total rent owed by the Defendants for 2020 was \$282,100.08.

28. As guarantor, Petryk “absolutely, unconditionally, and irrevocably” guaranteed full payment of all rent owed to the Landlord.

29. In January and February 2020, J.P. Licks paid its monthly rent in full.

30. However, from March until December 2020, J.P. Licks only made partial monthly rent payments.

31. All payments made to Landlord for rent were made by entities related to J.P. Licks, including J.P. Licks Store and J.P. Licks MFG.

32. Both J.P. Licks Store and J.P. Licks MFG list the Property's address (659 Centre Street, Jamaica Plain, MA 02130) as their address.

33. Upon information and belief, J.P. Licks Store and J.P. Licks MFG are related to and controlled by J.P. Licks.

34. According to documents filed with the Massachusetts Secretary of State, Petryk is the President of both J.P. Licks Store and J.P. Licks MFG.

35. Upon information and belief, J.P. Licks directed J.P. Licks Store and J.P. Licks MFG to pay its rent at the Property.

36. At no point did the Landlord indicate that J.P. Licks was no longer required to fulfill its contractual obligations to pay its monthly rent in full as set forth in the Lease.

37. By failing to pay its rent, J.P. Licks breached the terms of the Lease.

38. By the end of 2020, J.P. Licks owed Landlord \$113,120.25 in unpaid rent, and this amount remains outstanding.

39. A true and accurate summary of the rent payments received and the amount of unpaid rent for each month in 2020 is attached as Exhibit B.

40. On or about June 16, 2020, the Landlord sent J.P. Licks a Notice of Default informing it that it was in default under the terms of the Lease because it failed to pay the entire rent owed for the months of March, April, May, and June 2020.

41. This Notice of Default demanded that J.P. Licks cure the default within ten (10) days.

42. Neither J.P. Licks nor Petryk cured this breach of the Lease by paying the arrearage.

43. On or about June 29, 2020, J.P. Licks sent, or caused to be sent, a check for an additional \$6,853.11, leaving an unpaid balance for June 2020 rent in the amount of \$4,727.37.

44. After receiving the June 29, 2020 check, Landlord sent a letter dated July 7, 2020, acknowledging receipt of the check and noting that Landlord's acceptance of the payment did not waive any of its claims and that the partial payment did not cure J.P. Licks' breach of the Lease.

45. Landlord's July 7, 2020 letter further notified J.P. Licks that the July rent payment, which was due on July 1, had not been received yet, and it also reminded the Defendants that Petryk personally guaranteed J.P. Licks' obligation to pay rent under the Lease.

46. Despite Landlord's written notices regarding J.P. Licks' ongoing uncured defaults under the Lease for failure to pay rent, J.P. Licks continued to submit only partial rent payments from July to December 2020.

47. Upon information and belief, at no point during 2020 did J.P. Licks shut down its various business operations being conducted at the Property.

48. Beginning in January 2021, J.P. Licks' began paying its rent in full each month; however, J.P. Licks has not made any payments to satisfy its unpaid 2020 rent balance.

49. Landlord sent J.P. Licks two additional letters, dated January 22, 2021 and April 6, 2021, notifying J.P. Licks that it was still in default of its obligations under the Lease for failure to pay its rent.

50. Despite Landlord's efforts to collect the overdue rent, J.P. Licks and Petryk have refused and failed to pay the outstanding rent balance.

51. Upon information and belief, on or about April 5, 2020, J.P. Licks Management was approved to receive a Paycheck Protection Program (“PPP”) loan from the U.S. Small Business Administration in the amount of \$1,385,700.

52. Upon information and belief, J.P. Licks Management’s PPP application sought \$173,200 for rent expenses.

53. Upon information and belief, J.P. Licks Management is related to and controlled by J.P. Licks.

54. According to documents filed with the Massachusetts Secretary of State, Petryk is the President of J.P. Licks Management.

55. Despite securing a federal loan with \$173,200 in funds designated for paying rent, J.P. Licks only paid \$111,077.43 in rent to Landlord from April to December 2020.

56. Upon information and belief, on or about January 27, 2021, J.P. Licks Management was approved to receive a second PPP loan in the amount of \$1,549,433.

57. Upon information and belief, J.P. Licks Management’s second PPP application did not seek any money for rent expenses.

58. Upon information and belief, J.P. Licks has possessed sufficient funds to cure its breach of the Lease, but it has willfully and intentionally refused to pay its outstanding rent balance.

COUNT I

(Breach of Contract Against J.P. Licks and Petryk)

59. Landlord repeats and re-alleges each of the foregoing paragraphs as if fully set forth herein.

60. The Lease is a binding contract between J.P. Licks, Petryk, and Landlord.

61. Landlord timely performed all of its obligations under the Lease.

62. J.P. Licks breached the Lease by failing to pay the rent due and owing.

63. Petryk, as guarantor, breached the Lease by failing to pay J.P. Licks' rent due and owing.

64. J.P. Licks and Petryk have failed to cure the breaches as required by the Lease.

65. As a result of J.P. Licks and Petryk's breaches of the Lease, Landlord has suffered harm in an amount to be determined at trial, but in no event less than the \$113,120.25, which is currently due and owing under the Lease for unpaid rent, plus interest and attorney's fees.

COUNT II

(Breach of the Implied Covenant of Good Faith and Fair Dealing Against J.P. Licks and Petryk)

66. Landlord repeats and incorporates by reference all preceding paragraphs as if fully set forth herein.

67. The Lease is a binding contract between J.P. Licks, Petryk, and Landlord, which is subject to an implied covenant of good faith and fair dealing, requiring that the parties remain faithful to the intended and agreed upon expectations of the parties, and to refrain from the improper conduct as alleged in this Verified Complaint.

68. Through the activities described above, J.P. Licks and Petryk have intentionally deprived Landlord of the benefits of the Lease.

69. J.P. Licks and Petryk's conduct described herein constitutes a breach of the covenant of good faith and fair dealing implied as a matter of law in the Lease.

70. As a result of J.P. Licks and Petryk's breaches, Landlord has suffered damages in an amount to be determined at trial, plus interest and attorney's fees.

COUNT III
(Trustee Process Against Rockland Trust)

71. Landlord repeats and incorporates by reference all preceding paragraphs as if fully set forth herein.

72. J.P. Licks and Petryk currently owe Landlord no less than \$113,120.25 under the terms of the Lease.

73. Upon information and belief, Rockland Trust holds accounts, goods, effects, or credits in the name of J.P. Licks.

74. Landlord has a likelihood of success on the merits of its claims because the Lease is a valid and binding contract, and J.P. Licks cannot dispute the amount of rent due and owing under the Lease or its failure to pay as required under the Lease.

75. Landlord is not aware of any liability insurance available to satisfy its claims.

76. Landlord seeks an attachment of the accounts, goods, effects or credits of J.P. Licks in the amount of \$113,120.25.

COUNT IV
(Trustee Process Against Eastern Bank)

77. Landlord repeats and incorporates by reference all preceding paragraphs as if fully set forth herein.

78. J.P. Licks and Petryk currently owe Landlord no less than \$113,120.25 under the terms of the Lease.

79. Under the terms of the lease, Petryk “absolutely, unconditionally, and irrevocably guarantee[d] to [Landlord] the prompt and full payment and strict performance, when due, of all obligations which [J.P. Licks] may now or hereafter owe to [Landlord] arising out of or relating to the Lease, and any extensions thereof.”

80. As guarantor, Petryk is personally liable for paying J.P. Licks' rent under the terms of the Lease.

81. Petryk has failed to fulfill his obligations as guarantor under the Lease.

82. Upon information and belief, Eastern Bank holds accounts, goods, effects, or credits in the name of Petryk.

83. Landlord has a likelihood of success on the merits of its claims because the Lease is a valid and binding contract, and Petryk, who personally guaranteed J.P. Licks' performance under the terms of the Lease, cannot dispute the amount of rent due and owing or his failure to pay as required under the Lease.

84. Landlord is not aware of any liability insurance available to satisfy its claims.

85. Landlord seeks an attachment of the accounts, goods, effects or credits of Petryk in the amount of \$113,120.25.

PRAYERS FOR RELIEF

WHEREFORE, Landlord respectfully requests that this Court:

- (a) Enter judgment for Landlord on all counts;
- (b) Award Landlord monetary damages in an amount to be proven at trial;
- (c) Order an attachment of the accounts, goods, effects, or credits of J.P. Licks in the possession of Rockland Trust in the amount of \$113,120.25;
- (d) Order an attachment of the accounts, goods, effects, or credits of Petryk in the possession of Eastern Bank in the amount of \$113,120.25;
- (e) Award Landlord its costs, interest and attorney's fees incurred in connection with this action; and

(f) Award such other and further relief as the Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE.

Respectfully submitted,

ZOOEPHEBE REALTY TRUST f/k/a DADA
COW REALTY TRUST

By its attorneys,

/s/ Colin Edge

Joseph P. Messina (BBO # 559328)

Colin J. F. Edge (BBO #696950)

PRINCE LOBEL TYE LLP

One International Place, Suite 3700

Boston, MA 02110

Tel: (617) 456-8000

Fax: (617) 456-8100

jmessina@princelobel.com

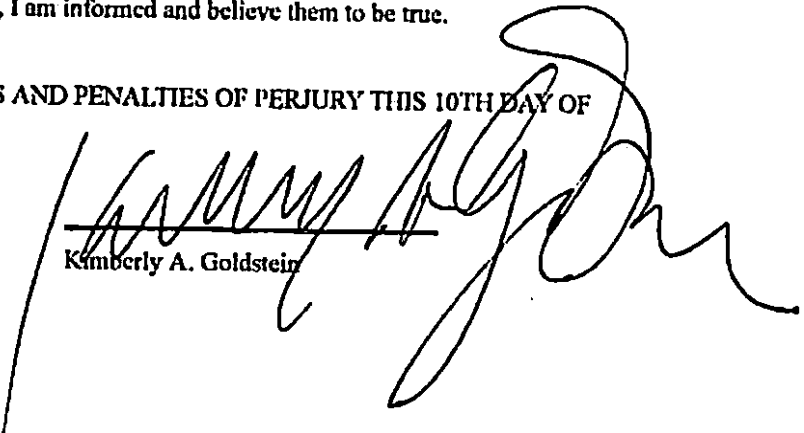
cedge@princelobel.com

Date: June 10, 2021

VERIFICATION

I, Kimberly A. Goldstein, Trustee of Zocephbe Realty Trust *aka* Dada Cow Realty Trust, verify that I have read the above Verified Complaint, and the facts set forth therein are true and accurate based on my personal knowledge, except for those allegations based on information and belief, and, as to those allegations, I am informed and believe them to be true.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 10TH DAY OF JUNE, 2021.



Kimberly A. Goldstein

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