

**05/15/2012]**

RECEIVED NYSCEF: 05/15/2012

NYSCEF DOC. NO. 1

**Wrobel and Schatz LLP  
1040 Avenue of the Americas, Suite 1101  
New York, NY 10018  
(212) 421-8100**

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

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- — — --X  
**WA ROUTE 9, LLC,**

**Index No. /2012**

**Plaintiff,**  
**-against-**


**Summons & Complaint  
Filed on May\_, 2012**

**PAF CAPITAL LLC,**

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**To the above-named defendant:**

**You are hereby summoned** to answer the complaint in this action and to serve a copy of your answer on plaintiff's attorney within 20 days after service of this summons, exclusive of the date of service, or within 30 days after completion of service where service is made in any other manner than by personal service within the state. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint. Plaintiff designates the County of New York as the place of trial. The basis of venue is CPLR 503(a), plaintiff resides in New York County.

Dated: May 15, 2012  
New York, New York

**WROBEL & SCHATZ LLP**  
  
By: David C. Wrobel, Esq.  
Attorneys for Plaintiffs  
1040 Avenue of the Americas-11th floor  
New York, New York 10018  
212-421-8100

To: **PAF CAPITAL LLC**  
460 Park Ave.  
New York, NY 10022

**Wrobel & Schatz LLP**  
**Attorneys for Defendant**  
**1040 Avenue of the Americas, Suite 1101**  
**New York, NY 10018**  
**TEL: 212-421-8100**

**STATE OF NEW YORK**  
**COUNTY OF NEW YORK**

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Index  
No. \_\_\_\_\_

**WAROUTE 9, LLC,**

**Plaintiff,**

**-against-**

**COMPLAINT**

**PAF CAPITAL LLC,**

**Defendant.**

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Plaintiff WA Route 9, LLC ("WA Route 9"), by its attorneys, Wrobel & Schatz LLP, as and for its Complaint herein against PAF Capital LLC ("PAF"), alleges as follows:

1. Plaintiff WA Route 9 ("WA") is a limited liability company organized and existing under the laws of the State of Delaware with a principal place of business located in New York, New York. WA Route 9 is the owner of a parcel of land located at 2055 South Road (U.S. Route 9), Poughkeepsie, New York (the "Parcel").
2. Upon information and belief, Defendant PAF Capital LLC ("PAF") is a Delaware limited liability company with its principal place of business at 460 Park Avenue, New York, NY 10022. At all relevant times herein from January 1, 2010 and until February 2012, PAF acted through its President and Chief Executive Officer, Mr. Elliot Neumann ("Neumann").

3. On or about July 14, 2006, pursuant to a certain Secured Promissory Note (the "Note"), PAF agreed to lend to WA, and WA agreed to borrow from PAF, the sum of \$600,000 (the "Loan"), secured by a mortgage on the Parcel.
4. WA purchased the Parcel with the intention of developing it into a commercial site.  
  
Notwithstanding the economic downturn of 2008 and other events that have hampered the development of the site, until September 1, 2010, WA complied with all the terms and conditions of the Note, making all payments of principal and interest due thereupon.
5. On or about January 6, 2010, following discussions between Neumann (acting on behalf of PAF) and Jacob Frydman, Manager of WA, PAF was provided with a 12.5% stake in WA. In connection with the transfer of the 12.5% stake to PAF, it was agreed, *inter alia*, (a) that PAF would henceforth act as a "partner" of WA, rather than solely as a lender and (b) that PAF would take no adverse action against WA or any guarantors, and that PAF and WA would work jointly together to develop a plan for the repayment of the Note.
6. Thereafter, in or about February 2012, the terms of a formal "Forbearance Agreement" were agreed between Mr. Neumann and Mr. Frydman.
7. Pursuant to the Agreement, PAF agreed to accept the sum of \$400,000 in full satisfaction of all of WA's obligation under the Note. PAF agreed to accept payment as follows:  
  
\$5,000 a month for five consecutive months, followed by lump sum payment of \$375,000.

8. Following agreement to the terms of the Forbearance Agreement, Mr. Frydman, with the knowledge and consent of Mr. Neumann, sought the approval and signature of Mr. Alan Daniels, a member of WA and a guarantor on the Note.
9. Mr. Neumann caused a draft of the Forbearance Agreement to be prepared and on or about February 29, 2012, sent the draft to Mr. Frydman noting that the language was the standard form used by PAF and reflected the deal which was made, and requesting that Mr. Frydman review the draft to let him know if there were any comments or concerns.
10. Thereafter, Mr. Frydman attempted to contact Mr. Neumann to acknowledge that the economic terms previously agreed to were correctly reflected in the document, and that he had some comments regarding some of the non-deal terms and technical language. Despite the fact that Mr. Frydman called and left messages for Mr. Neumann on multiple occasions, Mr. Frydman did not hear back from Mr. Neumann .
11. Thereafter, on or about March 29, 2012, Jennifer Norman, an employee of a company called The Lightstone Group, contacted Mr. Frydman, claiming to represent PAF and to advise that Mr. Neumann was no longer with PAF, but that she was aware of the deal made by Mr. Neumann and wanted to finalize the paperwork.
12. During the first few weeks of April 2012 (during which time the Passover/Easter holiday occurred), several attempts to set a time to meet or talk and finalize the paperwork were attempted, but no such meeting or conversation took place.
13. On or about April 26, 2012, in clear violation of the agreements entered by and between WA and PAF, The Lightstone Group (an entity with no privity to any of the transactions set out herein) issued a notice to Mr. Frydman, claiming to represent PAF,

ignoring the agreements made and instead demanding \$938,4125.34, threatening suit if same were not paid.

14. The foregoing demand constitutes an anticipatory breach of the agreement theretofore made by and between PAF and WA.

**First Cause of Action**  
**(Breach of Contract)**

15. Plaintiff repeats and realleges each and every allegation set forth herein in paragraphs 1 through 14 above.
16. As a direct and proximate result of Defendant's breach, Plaintiff has been damaged.
17. As a result of the foregoing, Plaintiff is entitled to compensatory damages, in an amount to be determined at trial and believed to be in excess of **\$1** million, plus interest, together with incidental and consequential damages.

**Second Cause of**  
**Action (Specific**  
**Performance)**

18. Plaintiff repeats and realleges each and every allegation set forth herein in paragraphs 1 through 14 above.
  19. Defendant has failed to complete performance of its agreement as promised.
  20. Plaintiff has no remedy at law.
21. As a result of the foregoing, Plaintiff is entitled to specific performance of their agreement.

**Third Cause of Action**  
**(Breach of Duty of Good Faith)**

22. Plaintiff repeats and realleges each and every allegation set forth herein in paragraphs **1** through 20 above.
23. As a result of the foregoing, defendant had a duty to act fairly with plaintiff and with utmost good faith.
24. Defendant has failed to abide by its duty to act fairly and with utmost good faith.
25. As a result of the foregoing, Plaintiff is entitled to compensatory damages, in an amount to be determined at trial and believed to be in excess of **\$1** million, plus interest, together with incidental and consequential damages.

WHEREFORE, Plaintiff WA Route 9, LLC demands judgment as follows:

- A. On the First Cause of Action, a judgment in an amount to be determined at trial and believed to be in excess of **\$1** million, together with interest, reasonable attorney's fees and costs, and such further relief as the Court may deem just and proper;
- B. On the Second Cause of Action, an Order requiring Defendant to specifically perform its obligations to Plaintiff;
- C. On the Third Cause of Action, a judgment in an amount to be determined at trial and believed to be in excess of \$1 million, together with interest, reasonable attorney's fees and costs, and such further relief as the Court may deem just and proper; and

E. The costs and disbursements incurred in this action, together with such other and further relief as this Court deems just and proper.

Dated: New York, New York  
May 15, 2012

WROBEL & SCHATZ LLP

~~1040 Avenue of the Americas~~  
Suite 1101  
New York, New York 10018 Tel:  
212-421-8100  
*Attorneys for Plaintiff*

To: PAF CAPITAL LLC  
460 Park Ave.  
New York, NY 10022

**[FILED : NEW YORK COUNTY  
CLERK 01/02/2014]**

NYSCEF DOC. NO. 219

INDEX NO.

651688/2012

RECEIVED NYSCEF:

01/02/2014

# EXHIBIT IT D

NYSCEF DOC. NO. 8

INDEX NO.

651688/2012

RECEIVED NYSCEF:

07/23/2012

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

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WAROUTE 9, LLC,

Plaintiff/Counterclaim  
Defendant,

- against-

PAF CAPITAL LLC,



-----X  
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PAF CAPITAL, LLC,

Plaintiff has designated New York County as the place of trial

## Third-Party Plaintiffs,

-against-

## FOURTH-PARTY SUMMONS

JACOB FRYDMAN, WHITE ACRE  
CAPITAL, LLC, ADDISON &  
FRITZ, LLC AND ALAN DANIELS,

### Third-Party Defendants.

----- )(  
----- )(  
JACOB FRYDMAN,

Third-Party Defendant/Fourth-Party Plaintiff, :

-against-

DAVID LICHTENSTEIN, PAF  
CAPITAL, LLC, THE  
LIGHTSTONE GROUP,  
LIGHTSTONE VALUE PLUS  
REALESTATE INVESTMENT  
TRUST INC. I, LIGHTSTONE  
VALUE PLUS REAL ESTATE  
INVESTMENT TRUST INC. II,  
LIGHTSTONE VALUE PLUS REIT  
LP, ADAM FRIEDMAN, ADAM  
FRIEDMAN ASSOCIATES : LLC,  
and JOHN/JANE DOES 1-1000.

#### Fourth-Party Defendants.

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**TO THE ABOVE-NAMED FOURTH-PARTY DEFENDANTS:**

YOU ARE HEREBY SUMMONED to answer the fourth-party complaint in this action and serve a copy of your answer, or, if the fourth-party complaint is not served with this Summons, to serve a notice of appearance, on fourth-party plaintiff's attorneys within twenty

(20) days after service of this summons, exclusive of the day of service, or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to appear or answer, judgment will be taken against you by default of the relief demanded in the fourth-party complaint.

Dated: New York, New York  
July 23, 2012

MORRISON COHEN LLP

By:         
y. David Scharf  
David C. Pollack  
909 Third Avenue  
New York, New York 10022  
(212) 735-8782

*Attorneys for Third Party Defendant  
and Fourth-Party Plaintiff Jacob  
Frydman*

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

-----X

WARROUTE 9, LLC,

Plaintiff/Counterclaim Defendant,

- against-

PAF CAPITAL LLC,

Defendant/Counterclaim Plaintiff.

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X

PAF CAPITAL, LLC,

Third-Party Plaintiffs,

-against-

JACOB FRYDMAN, WHITE ACRE CAPITAL,  
LLC, ADDISON & FRITZ, LLC AND ALAN  
DANIELS,

Third-Party Defendants.

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JACOB FRYDMAN,

Third-Party Defendant/Fourth-Party Plaintiff, :

-against-

DAVID LICHTENSTEIN, PAF CAPITAL, LLC,  
THE LIGHTSTONE GROUP, LIGHTSTONE  
VALUE PLUS REAL ESTATE INVESTMENT  
TRUST INC. I, LIGHTSTONE VALUE PLUS  
REAL ESTATE INVESTMENT TRUST INC. II,  
LIGHTSTONE VALUE PLUS REIT LP, ADAM  
FRIEDMAN, ADAM FRIEDMAN ASSOCIATES :  
LLC, and JOHN/JANE DOES 1-1000.

Fourth-Party Defendants.

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Third-party defendant and fourth-party plaintiff, Jacob Frydman ("Frydman"), alleges as follows, by his attorneys, Morrison Cohen LLP, as and for his Answer with Affirmative

Index No. 651688/2012  
(Pursuant to CPLR 1007-1011)

Plaintiff has designated New York  
County as the place of trial

VERIFIED ANSWER WITH  
AFFIRMATIVE DEFENSES  
AND COUNTERCLAIMS OF  
THIRD-PARTY DEFENDANT AND  
FOURTH-PARTY PLAINTIFF  
JACOB FRYDMAN

VERIFIED FOURTH-PARTY  
COMPLAINT

Defenses and Counterclaims to the Third-Party Complaint of Defendant and Third-Party Plaintiff PAF Capital, LLC ("PAF"), dated June 7, 2012, and as and for his Fourth-Party Complaint against Fourth-Party Defendants David Lichtenstein ("Lichtenstein"), The Lightstone Group ("Lightstone Group"), Lightstone Value Plus Real Estate Investment Trust, Inc. ("Lightstone REIT I"), Lightstone Value Plus Real Estate Investment Trust II, Inc. ("Lightstone REIT II"), Lightstone Value Plus REIT, LP, ("Lightstone REIT III," and together with Lightstone REIT I, and Lightstone REIT II, the "REITs," and collectively with all of the foregoing, the "Lichtenstein Defendants"), Adam Friedman ("Friedman"), Adam Friedman Associates LLC ("AFA," and together with Friedman, the "AFA Defendants"), and John/Jane Does 1-1000 (the "John Doe Defendants," and collectively with all the foregoing, the "Fourth Party Defendants"), allege as follows:

1. Frydman states that Paragraph 34 of the Third Party Complaint is an introductory paragraph to which no response is necessary.
2. Frydman denies knowledge or information sufficient to determine the truth or falsity of the allegations set forth in Paragraph 35 of the Third Party Complaint.
3. Frydman denies the allegations set forth in Paragraphs 36-40 of the Third Party Complaint, except to admit that Frydman and Alan Daniels ("Daniels") are individuals and that White Acre Capital, LLC is a Delaware limited liability company.
4. Frydman submits that Paragraphs 41-42 of the Third Party Complaint present legal conclusions to which no response is necessary.
5. Frydman denies the allegations contained in Paragraph 43 of the Third Party Complaint, except to admit that Plaintiff/Counterclaim Defendant WA Route 9, LLC ("WA Route 9") borrowed a sum of \$600,000 from The Park Avenue Bank ("Park Avenue Bank") that

was secured by a purchase money mortgage loan relating to land located at 2055 South Road (U.S. Route 9), Poughkeepsie, New York (the "Route 9 Loan").

6. Frydman denies the allegations contained in Paragraph 44 of the Third Party Complaint, except to admit that a note (the "Route 9 Note"), a mortgage (the "Route 9 Mortgage"), and related documents were created in connection with the Route 9 Loan.
7. Frydman denies the allegations contained in Paragraph 45 of the Third Party Complaint, except to admit that, in connection with the Route 9 Mortgage, certain guarantees were created (the "Route 9 Guarantees"), which are no longer effective and have not been effective for more than two (2) years. Frydman avers that all claims relating to the Route 9 Guarantees were expressly released by PAF in June 2010.
8. Frydman denies the allegations contained in Paragraph 46 of the Third Party Complaint, except to admit that the Route 9 Guarantees were created on or about July 14, 2006.
9. Frydman denies the allegations contained in Paragraph 47 of the Third Party Complaint, except to refer the Court to the Route 9 Guarantees, which speak for themselves.
10. Frydman denies the allegations contained in Paragraph 48 of the Third Party Complaint, except to admit that the Mortgage, Mortgage Note, and Route 9 Guarantees were assigned to PAF on or about December 21, 2006.
11. Frydman denies the allegations contained in Paragraph 49 of the Third Party Complaint, except to admit that the maturity date of the Route 9 Loan was extended.
12. Frydman denies the allegations contained in Paragraph 50 of the Third Party Complaint.
13. Frydman denies the allegations contained in Paragraph 51 of the Third Party Complaint.  
  
Frydman avers that Fourth-Party Defendant Lightstone Group – an entity with no

privity to any of the transactions set out herein -improperly issued a notice to Frydman, claiming to represent PAF, ignoring the agreements made and instead demanding \$938,415.34, and threatening to file suit against Frydman absent payment.

14. Frydman denies the allegations contained in Paragraph 52 of the Third Party Complaint.
15. Frydman denies the allegations in the unnumbered heading between Paragraphs 52 and 53 of the Third Party Complaint.
16. Frydman denies the allegation contained in Paragraphs 53-54 of the Third Party Complaint, except to admit that PAF made a loan (the "McDonald Loan") of \$12 million to an entity named McDonald Ave. Acquisition LLC ("McDonald LLC"), which owned property located at 385 McDonald Avenue, Brooklyn, New York 11218 (the "McDonald Property").
17. Frydman denies the allegations contained in Paragraph 55 of the Third Party Complaint, except to admit that the McDonald Loan matured on July 1, 2009.
18. Frydman denies the allegations contained in Paragraph 56 of the Third Party Complaint, except to admit that the McDonald Loan was originally guaranteed by Frydman, which guarantee was extinguished on January 6, 2010 as a result of the sale of the McDonald Property to PAF McDonald Ave., LLC ("PAF McDonald"), an affiliate of PAF, for consideration, which included, inter alia, the assumption of the McDonald Loan, and which guarantee was expressly released more than two (2) years ago (the "McDonald Guarantee"). (A true and correct copy of the agreement releasing the claims, dated June 24, 2010 (the "June 24 Release"), is attached hereto as Exhibit A.)
19. Frydman denies the allegations contained in Paragraph 57 of the Third Party Complaint.

20. Frydman denies the allegations contained in Paragraph 58 of the Third Party Complaint, except to admit that a statement of financial condition was provided to PAF. Frydman respectfully refers the Court to the statement of financial condition, which speaks for itself.
21. Frydman denies the allegations contained in Paragraph 59 of the Third Party Complaint, except to admit that PAF expressly released McDonald LLC and Frydman from any liability.
22. Frydman denies the allegations contained in Paragraph 60 of the Third Party Complaint.
23. Frydman denies the allegations contained in Paragraph 61 of the Third Party Complaint.
24. Paragraphs 62-70 of the Third Party Complaint are not addressed to Frydman and as such, Frydman submits that no response is necessary.
25. Frydman submits that Paragraph 71 of the Third Party Complaint is an introductory paragraph to which no response is necessary.
26. Frydman denies the allegations contained in Paragraph 72 of the Third Party Complaint, except to admit the existence of the Route 9 Guarantees, which were released more than two (2) years ago.
27. Frydman denies the allegations contained in Paragraphs 73-76 of the Third Party Complaint.
28. Frydman submits that Paragraph 77 of the Third Party Complaint is an introductory paragraph to which no response is necessary.

29. Frydman denies the allegations contained in Paragraphs 78-82 of the Third Party Complaint.
30. Frydman submits that Paragraph 83 of the Third Party Complaint is an introductory paragraph to which no response is necessary.
31. Frydman denies the allegations contained in Paragraphs 84-89 of the Third Party Complaint.

#### AFFIRMATIVE DEFENSES

##### AS AND FOR THE FIRST AFFIRMATIVE DEFENSE (Release)

32. The purported claims set forth in the Third Party Complaint are barred because PAF has previously released Frydman from all the purported obligations upon which the Third Party Complaint relies. (See Ex. A.)

##### AS AND FOR THE SECOND AFFIRMATIVE DEFENSE (Failure to State a Cause of Action)

33. The Third Party Complaint fails to state a valid cause of action. AS AND FOR THE THIRD AFFIRMATIVE DEFENSE

##### (Waiver)

34. The purported claims set forth in the Third Party Complaint are barred by the doctrine of waiver.

##### AS AND FOR THE FOURTH AFFIRMATIVE DEFENSE (Estoppel)

35. The purported claims set forth in the Third Party Complaint are barred by the doctrine of equitable estoppel.



AS AND FOR THE FIFTH AFFIRMATIVE DEFENSE  
(Unclean Hands)

36. The purported claims set forth in the Third Party Complaint are barred by the doctrine of unclean hands.

AS AND FOR THE SIXTH AFFIRMATIVE DEFENSE  
(Prior Breach)

37. The purported claims set forth in the Third Party Complaint are barred by PAF's prior breach of the contracts upon which it relies, including PAF's prior breach of the doctrine of good faith and fair dealing.

AS AND FOR THE SEVENTH AFFIRMATIVE DEFENSE  
(Failure to Satisfy Condition Precedent)

38. The purported claims set forth in the Third Party Complaint are barred because PAF failed to fulfill conditions precedent.

OTHER POTENTIAL AFFIRMATIVE DEFENSES  
(Reserved)

39. Frydman reserves the right to rely on additional affirmative defenses not specifically set forth above, as may be appropriate during the course of these proceedings.

## **COUNTERCLAIMS AND FOURTH PARTY COMPLAINT**

40. Fourth-Party Plaintiff Jacob Frydman brings these Counterclaims and Fourth Party Complaint to stop the Fourth Party Defendants, who are engaged in a scheme, led by the Lichtenstein Defendants, to damage Frydman, his reputation, and his business through a defamatory campaign. Frydman is the chairman and chief executive officer of United Realty Trust Incorporated ("URTI"), a public real estate investment trust ("REIT"), which is about to launch its initial public offering of securities. On information and belief, Lichtenstein also is attempting to raise money for public REITs.
41. Facing Frydman's successful launch, and fearing competition in a still tight investment market, one of the Lichtenstein Defendants, PAF, filed sham claims against Frydman alleging financial fraud in the Third Party Complaint in this action. The Fourth Party Defendants then misused those claims to widely disseminate false statements about Frydman. The Fourth Party Defendants' attack has included the issuance of two malicious press releases by the AFA Defendants, and, on information and belief, the oversight of an Internet-based smear campaign encompassing false blog posts and videos produced and disseminated by the John Doe Defendants. On information and belief, all of the Fourth Party Defendants knew that their statements were false when made, or else made them with reckless or grossly negligent disregard for whether they were true or not, as part of the scheme to impede Frydman's launch. Indeed, Lichtenstein and his agents have explicitly admitted that their sole intention in filing the Third Party Complaint is to publicly "embarrass" Frydman, thus defaming his reputation.
42. The AFA Defendants' issuance of two press releases shortly after filing the third-party complaint proves up the point, as does the sole difference between the two press releases – the later release names Frydman's new business venture to maximize the negative impact on Frydman's business. Subsequent Internet posts and videos have mirrored that tack. All

reference PAF's claims about financial malfeasance, and most name Frydman's new business entity, URTI. Several state that URTI will fail or that its launch will be "almost impossible" unless Frydman settles his claims with PAF.

43. The Fourth Party Defendants apparently hope to insulate their defamatory statements with the common law privilege attaching to statements made in the course of judicial proceedings. The privilege does not attach, however, because the claims in PAF's Third Party Complaint are a sham and an excuse for their campaign of defamation. These attacks will not stop without court intervention. Frydman accordingly respectfully submits this Fourth Party Complaint seeking compensatory and punitive damages, as well as injunctive relief to stop the Fourth Party Defendants' misconduct.

#### **PARTIES**

44. Third party Defendant and Fourth Party Plaintiff Frydman is an individual who resides in New York, New York, who has had and continues to have a successful career as a real estate investor.
45. On information and belief, Fourth Party Defendant Lichtenstein is an individual who resides in New York, New York. Lichtenstein currently is raising money for public REITs.
46. On information and belief, Fourth Party Defendant Lightstone Group is a Maryland company with a principal place of business in New York, New York. It is owned and controlled by Lichtenstein.
47. On information and belief, Fourth Party Defendant Lightstone REIT I is a Maryland company with a principal place of business in New York, New York. It is sponsored and controlled by Lichtenstein.

48. On information and belief, Fourth Party Defendant Lightstone REIT II is a Maryland company with a principal place of business in New York, New York. It is sponsored and controlled by Lichtenstein.
49. On information and belief, Fourth Party Defendant Lightstone REIT III is a Delaware limited partnership with a principal place of business in New York, New York. It is sponsored and controlled by Lichtenstein.
50. On information and belief, Fourth Party Defendant Friedman is an individual, who resides in New York, New York.
51. On information and belief, Fourth Party Defendant AFA is a Maryland company with a principal place of business in New York, New York.
52. Fourth Party Defendants John/Jane Does 1-1000 are individuals who have anonymously created and caused to be published videos and blogs defaming, threatening, and impersonating Frydman on the World Wide Web.
53. On information and belief, Defendant, Third-Party Plaintiff, and Fourth Party Defendant PAF is a Delaware limited liability company with its principal place of business at 460 Park Avenue, New York, New York 10022. It is owned and controlled by Lichtenstein.

#### JURISDICTION AND VENUE

54. Pursuant to CPLR 302, the Court has jurisdiction over the Lichtenstein Defendants because they are residents of New York and/or transact business in New York and/or contract to supply goods and services within New York and derive substantial revenue from services rendered in New York.
55. Pursuant to CPLR 503, venue is proper because Frydman and several of the Lichtenstein Defendants reside in New York.

## **FACTUAL BACKGROUND**

### **A. Lichtenstein Affiliates Make Two Loans to Frydman Affiliates, But Then Release Frydman From A Personal Guarantee On One Of The Loans In Exchange For The Right To Flip The Underlying Real Property**

56. During the real estate uptick, in 2006 and 2007, entities indirectly owned and managed by Frydman and Daniels took out two loans, one for \$600,000 (the "Route 9 Loan") and the other for \$12 million (the "McDonald Loan," and with the Route 9 Loan, the "Loans"). On information and belief, PAP took assignment of the Route 9 Loan on or about December 21, 2006, and always has held the McDonald Loan.
57. The Loans originally were guaranteed by Frydman and others (the "Route 9 Guarantee" and the "McDonald Guarantee," respectively).
58. The McDonald Loan, which was collateralized in part by a mortgage on certain property (the "McDonald Property") was paid as agreed by the parties until the loan's scheduled maturity date, on July 1, 2009.
59. Because of the impaired real estate market at that time, it was highly unlikely that the McDonald Loan could be refinanced. In mid-2009, Frydman accordingly contacted Elliot Neumann ("Neumann"), the then-president and CEO of PAF, to extend the loan maturity.
60. Rather than extend the loan, Neumann preferred that Frydman and PAF together attempt to sell the McDonald Property, to which Frydman agreed.
61. Though the property had not sold toward the end of 2009, Neumann expressed his belief that he could still sell the McDonald Property for more than the McDonald Loan.
- Frydman offered to transfer the McDonald Property to PAF or an affiliate, so that PAF could then sell the property and keep all profit on the transaction.

62. In the final transaction, PAF McDonald purchased the McDonald Property via a purchase and sale agreement, dated as of January 6, 2010 (the "PSA").
63. In the PSA, the parties acknowledged that the borrower entity for the McDonald Loan "represents that it is unable to pay back" to PAF the McDonald Loan plus accrued interest and expenses.
64. The PSA did not contain any representations about Frydman's personal finances, however, because Frydman had provided PAF with accurate documentation concerning his substantial holdings.
65. As part of the consideration for the McDonald Property, including all potential upside in a sale of the property, PAF McDonald assumed all of the indebtedness relating to the McDonald Loan.
66. Section 2 of the PSA, titled "Consideration," states:
- The Consideration for the [McDonald Property] (the "Consideration") is the assumption by [PAF McDonald] of all obligations and indebtedness pursuant to and secured by [the McDonald Mortgage].
67. The McDonald Loan and the McDonald Guarantees each constitute indebtedness pursuant to the McDonald Mortgage.
68. They were therefore assumed by PAF McDonald pursuant to Section 2 of the PSA, as set forth above.
69. A contemporaneously executed Release of Liability Agreement further provided that PAF "agrees to waive . . . any and all rights to collect a deficiency judgment or pursue [Frydman] for any other personal liability in connection with enforcement of the Note, Security Agreement or the other Loan Documents" relating to the McDonald Loan, except in limited circumstances if Frydman interfered with transfer of the deed to the McDonald Property.

70. Consequently, Frydman's obligations pursuant to the McDonald Guarantees were extinguished by the January 2010 transaction.
71. As part of the same integrated transaction, and consideration for purchase of the McDonald Property, Frydman's affiliate, White Acre Capital, LLC ("WA Capital"), transferred a 12.5% indirect ownership interest in the Route 9 Property to an affiliate of PAF (PAF East 127th St., LLC), and PAF extended the Route 9 Loan maturity date to September 1, 2010.
- B. Seeking Favorable Tax Treatment For A Transaction,  
PAF Agrees To Release Frydman From All Of His  
Personal Commitments to PAF
72. In mid-2010, PAF, which was still attempting to sell the McDonald Property, sought another deal with Frydman. This time, PAF wished to restructure McDonald LLC – which was an affiliated entity for real estate transfer tax purposes – to avoid what could have been substantial transfer taxes relating to the sale of the McDonald Property.
73. As consideration for assisting in the restructuring, Frydman requested, among other things, the complete and unconditional release of any of his or his affiliates' obligations to PAF in connection with all debts, obligations, and guarantees from the beginning of Frydman's dealings with them for any matter in any way relating to the January 6, 2010 transactions.
74. PAF agreed to this request, and entered into a Release of Liability and Indemnity Agreement, dated as of June 24, 2010 (the "June 24 Release"). A true and correct copy of the June 24 Release is attached hereto as Exhibit A.
75. In its whereas clauses, the June 24 Release makes clear that Frydman is providing substantial consideration in the "execution of all transfer tax documents related" to a restructuring transaction.

76. In exchange for Frydman's actions, section 2 of the June 24 Release provides:

Lender [PAF] hereby acknowledges and agrees that there are no further obligations of Borrower [McDonald LLC], Guarantor [Frydman] or any of the Borrower Released Parties [certain affiliates of Frydman] under the [McDonald] Loan . . . the [McDonald Guaranty] and the PSA. All of the Borrower Released Parties' obligations under the PSA have been timely performed and there are no further obligations of any Borrower Released Parties under the PSA. All of Guarantor's obligations under the [McDonald] Guaranty are deemed satisfied and there are no further obligations of Guarantor under the Guaranty.

77. Section 4 of the June 24 Release states:

Lender, [PAF] on behalf of itself and Lender Affiliate [PAF McDonald or another designated PAF affiliate] hereby releases any and all claims . . . debts . . . or liabilities of any nature whatsoever in law and in equity, both past and present, whether known or unknown, suspected or claimed against any of the Borrower Released Parties [Frydman and certain affiliates of Frydman] which Lender or Lender Affiliate or any of their successors or assigns, ever had, now have, or hereafter may have, by reason of any matter, cause, or thing whatsoever, from the beginning of any initial dealings with the Borrower Released Parties and through the time of execution of this Agreement, whether arising from or relating in any way to the [McDonald] Property, the PSA, the [McDonald] Loan . . . and the (McDonald] Guaranty.

78. Pursuant to the foregoing, all claims relating to the McDonald Guaranty and the McDonald Loan were unconditionally released pursuant to the June 24 Release.
79. Moreover, all claims relating to the Route 9 Guaranty were also released, as they related to the McDonald Property and also were specifically addressed and modified as part of the January 6, 2010 PSA.
80. The transactions make clear that PAF released all claims against Frydman not because of any concerns it had about his personal finances, but rather as consideration to permit PAF to pursue highly favorable transactions to (a) take the McDonald Property outright, flip the property, and keep all profit from the flip, and (b) mitigate the significant transfer tax impact of its proposed transaction .



D. After Learning That Frydman Is Launching A  
Competing REIT, The Lichtenstein Defendants  
Suddenly Change Course And Threaten To  
"Embarrass" Him And Ruin His New Business

81. In January 2012, Frydman announced the formation of his new firm, which would specialize in certain real estate ventures. The announcement noted that the new venture "intends to sponsor SEC-registered Real Estate Investment Trusts (REITs) that allow outside investors to participate in the firm's investments."
82. In the same timeframe, Frydman reached out to his contact at PAF, Elliott Neumann ("Neumann"), to resolve any remaining issues with respect to WA Route 9's payment of the Route 9 Loan. They agreed that WA Route 9 would pay \$400,000 as set forth in a draft forbearance agreement, dated February 27, 2012 (the "Forbearance Agreement").
83. Because the draft Forbearance Agreement incorrectly reflected Frydman and others as "guarantors" on the Route 9 Loan, Frydman reached out to Neumann numerous times to correct this ministerial error.
84. Frydman did not hear back from Neumann. Instead, on March 29, 2012, Frydman received an e-mail from Jennifer Norman ("Norman") at Lightstone Group, informing him that Neumann was no longer employed by PAF.
85. Frydman tried to communicate with Norman through April 2012 but was unsuccessful.
86. When Norman ultimately spoke with Frydman, at the end of April, she told him that she and others – she simply used the pronoun "we" – "knew" that Frydman was launching a new REIT, presumably referring to the fact that Frydman is raising \$1.3 billion for the URTI REIT, and that "they would make it difficult or impossible" for Frydman to launch his REIT.
87. Norman also declared that:

- (a) she and others – on information and belief, her boss Lichtenstein, and the rest of the Lichtenstein Defendants – would lead a campaign to "embarrass" Frydman into paying the released guarantee on the Route 9 Loan;
- (b) they would make it "difficult or "impossible" for Frydman to launch his URTI REIT; and
- (c) they were planning to sue Frydman individually.

88. On April 26, 2012, the Lightstone Group purported to make a demand on WA Route 9, Frydman, and Daniels for \$938,415.34 in connection with the Route 9 Loan.

89. No demand for payment has been issued by PAF under the Route 9 Loan.

90. Shortly after receiving the Lightstone Group's demand, in mid-May 2012, Frydman called Norman.

91. When Norman picked up the call, she immediately placed Frydman on hold. A moment later, the Lightstone Group's general counsel, Joseph Teichman, joined the call. Norman and Teichman berated Frydman and repeatedly threatened to "embarrass" him.

92. Norman and Teichman claimed that they could and would "make it impossible" for Frydman to raise money for his new REIT.

93. Norman and Teichman also told Frydman that they would "embarrass the hell out of ' him.

**E. Lichtenstein Directly Threatens Frydman**

94. On or about May 15, 2012, the borrower entity on the Route 9 Loan, WA Route 9, filed a short Complaint against PAF seeking to enforce its agreement with PAF to resolve the final tranche outstanding on the loan.

95. Shortly after the filing, Frydman incidentally saw Lichtenstein at the IMN Non- Traded REIT Conference, which was being held at the downtown Marriott Hotel in Manhattan.

96. At the conclusion of one of the sessions at the conference, Lichtenstein told Frydman he was "coming after" him.

97. Lichtenstein warned Frydman, "I am going to embarrass you."

**F. The Lichtenstein Defendants Have PAF File Sham Counterclaims and Third-Party Claims, And Then Conspire with the Other Fourth Party Defendants to Improperly Disseminate Information About Those Sham Claims to the Press and the Public at Large**

98. On June 7, 2012, PAF filed its Answer and Third Party Complaint in this action, which contain frivolous third-party claims against Frydman based on the previously released Loans. For example, Paragraph 61 of the Third Party Complaint falsely states that Frydman misled PAF by minimizing his "financial worth," when, in fact, Frydman presented PAF with accurate documentation of his substantial financial holdings.
99. Using the sham claims that Lichtenstein, on information and belief, caused PAF to file, Lichtenstein has made good on his threat to "come after" and "embarrass" Frydman. On information and belief, Lichtenstein instructed the AFA Defendants to disseminate the sham claims in the Third Party Complaint and to embellish them in order to severely damage Frydman's reputation and URTI's fund raising capabilities.
100. Accordingly, on June 25, 2012, the AFA Defendants caused to be transmitted on the news wires a press release claiming Frydman was "alleged to have committed . . . fraud . . . in connection with . . . Frydman's breach of a personal guaranty of a \$12 million loan." The press release also asserted that "Frydman defaulted on his personal guaranty of a \$12 million Joan PAF capital made to McDonald . . . LLC." It also repeated the canard that Frydman "represented to PAF Capital that he could not afford to honor his guaranty and provided PAF Capital with what they now believe are fraudulent financial statements in an effort to get PAF Capital to settle with Mr. Frydman . . . ."

101. The AFA Defendants followed up a week later with another press release, which, on information and belief, the Lichtenstein Defendants instructed them to issue. This July 3, 2012 release was word-for-word identical to the June 25, 2012 release, except for one detail that does not appear in PAF's claims, and which is irrelevant to PAF's claims, but highly relevant to the Lichtenstein Defendants' scheme to harm Frydman and URTI:

Jacob Frydman is in the process of forming a public fund-raising vehicle registered with the SEC under the name United Realty Trust Incorporated.

102. After AFA issued these defamatory press releases, the Lichtenstein Defendants and the AFA Defendants, on information and belief, caused the John Doe Defendants, to undertake an Internet smear campaign against Frydman and seeking to impede URTI's efforts to raise capital, including but not limited to the following:

- On July 13, 2012, a blog falsely represented that it supported the interests of Frydman and URTI, using the name of both in its domain name, <http://jacobfrydmanunitedrealtytrust.podbean.com> without any authorization from Frydman or URTI. The blog included a link to a defamatory video accusing Frydman of defaulting on his guaranties and referencing PAF Capital's Third Party Complaint. The blog also claimed that "one can go online and find out all about [Frydman and URTI] . . . and all their problems . . . in no time whatsoever," and included links to fake websites for Frydman and URTI that actually linked to the defamatory press releases issued by the AFA Defendants.
- On July 14, 2012, a blog identified the "Jacob Frydman of United Realty Trust lawsuit" and repeated allegations that Frydman had provided fraudulent financial statements.
- A July 15, 2012 post under the headline "Cases Like Jacob Frydman Do Make Your Career Life Worth Fighting For" suggested using social media to research Frydman and learn about United Realty Trust and PAF's fraud allegations.



- Another July 15, 2012 post warned that Frydman would take money from people, but then he would become greedy and start cheating people. It further suggested that people who had invested with United Realty Trust "are now suffering a lot . . ."
- A July 16, 2012 blog about Frydman appeared with the headline "United Realty Trust Incorporated Cannot Be For Now Because Of The Law Suits Alleging Fraud."
- Another July 16, 2012 posting claims that PAF's claims against Frydman "will affect the starting of a financial company United Realty Trust Incorporated by Mr. Frydman . . . unless the law suits are settled amicably between the parties to the law suits quickly."
- A third July 16, 2012 posting is titled "The Formation of United Realty Trust Incorporated Can Be A Big Question Mark Now," and asserts that "the idea of starting United Realty Trust is almost impossible unless [Frydman] comes to a settlement with [PAF] . . ."
- On July 17, 2012, a blog claimed that while Frydman previously "had plans to start a new company by the name United Realty Trust Incorporated," lawsuits against Frydman alleging significant fraud "are definitely going to stall the announcement of the new company . . ."
- Videos were posted on July 13 and 14 containing similar false and defamatory statements.
- Lichtenstein and the other Fourth Party Defendants also caused several dozen other willfully false and malicious blogs and emails to be created, wrongfully impersonating Frydman and URTI, defaming Frydman, and seeking to impede URTI's efforts to raise capital.

103. Each of these posts builds on the false allegations in PAF's sham Third Party Complaint not only to attack Frydman and impugn his business reputation, but also to undermine his new business venture, URTI, and his ability to obtain investors for that venture.
104. The creators and publishers of the defamatory blogs, videos, and domains have wrongfully concealed their identities in order to evade liability for their actionable statements.

As such, their identities are not known at this time and they have been labeled as "John/Jane Does 1-1000" herein.

105. By reason of the foregoing, it is apparent that PAF asserted its sham counterclaims and third-party claims merely to allow Lichtenstein and the other Fourth Party Defendants to attack Frydman and impair his ability to raise capital for URTI.

**FIRST CAUSE OF ACTION**

(Libel)

106. Frydman repeats and realleges all of the allegations made heretofore as if fully set forth herein.
107. After several times warning Frydman that they would publicly embarrass him, the Fourth Party Defendants schemed to defame Frydman, injure his reputation in his business and profession, and otherwise impair his ability to raise funds for URTI.
108. In furtherance of their scheme, and after PAF asserted its sham claims, the Fourth Party Defendants published and caused to be published numerous defamatory statements concerning Frydman to the press and, upon information and belief, on the Internet as well.

I 09. On information and belief, the Fourth Party Defendants will assert that such statements are protected under the common law privilege generally applicable to statements made in the course of judicial proceedings.

110. The Fourth Party Defendants have waived immunity with respect to the aforementioned statements by reason of having abused the privilege through PAF's institution of sham claims, which were brought solely as a vehicle for the Fourth Party Defendants to attack Frydman's reputation and business with impunity.
111. The AFA Defendants filed two separate press releases for dissemination over the general news wires, on June 25 and July 3, 2012. In each, the AFA Defendants claimed that

Frydman made misrepresentations and provided fraudulent financial statements. In the second, the AFA Defendants specifically identified Frydman's new business venture, URTI, even though this identification was wholly irrelevant to the case proceedings, and even though they had issued an otherwise identical press release just the week prior. On information and belief, all of these actions were done pursuant to the instruction of the Lichtenstein Defendants, and with knowledge of the falsity of the claims, or reckless disregard for whether the claims were true.

112. On information and belief, the Fourth Party Defendants undertook an Internet smear campaign against Frydman spearheaded by the Lichtenstein Defendants and the AFA Defendants, and executed by the John Doe Defendants, who reiterated and amplified those same misstatements. They further stated that Frydman would be unable to raise funds for URTI unless and until Frydman settled PAF's claims. These statements have no relevance to the litigation, but only are intended to damage Frydman.

113. Said statements were and are false.

114. Said statements were defamatory per se because they have injured Frydman in his business and profession.

115. In publishing this defamatory matter, the Fourth Party Defendants wrongfully and willfully intended by such publication to injure Frydman's business reputation and good name.

116. At the time the Fourth Party Defendants uttered and caused to be published the libelous matter set forth above, they acted with actual malice because they knew the statements were false or, in the alternative, they failed to ascertain the accuracy of the statements and instead published them with reckless or grossly negligent disregard for whether they were true or not.



117. The Fourth Party Defendants are not entitled to immunity for the above statements because PAF's sham counterclaims were brought solely for the purpose of cloaking said statements with the appearance of privilege. Further, the Fourth Party Defendants' statements were not made in furtherance of any litigation objective and were not reasonably related to the subject matter of the proceeding.
118. As a direct result of the foregoing defamatory conduct and statements, Frydman has suffered injury to his personal and business reputation, and has been damaged in an amount to be determined at trial, but believed to be in excess of \$50,000,000.
119. In addition, because of the wanton, willful and malicious nature of the foregoing wrongful conduct, Frydman also is entitled to recover punitive damages.

**SECOND CAUSE OF ACTION**  
(Injunction)

120. Frydman repeats and realleges all of the allegations made heretofore as if fully set forth herein.
121. The Fourth Party Defendants have made defamatory statements about Frydman and, on information and belief, continue to promote libelous internet postings about Frydman.
122. These libelous postings already have caused Frydman significant harm. If the postings are not stopped, and Frydman's business venture fails because of the Fourth Party Defendants' defamatory actions, the harm to Frydman will be irreparable.
123. The Court accordingly should enter an injunction preventing the Fourth Party Defendants from continuing to make or promote defamatory statements concerning Frydman.

**THIRD CAUSE OF ACTION**  
**(Tortuous Interference with Prospective Economic Advantage)**

124. Frydman repeats and realleges all of the allegations made heretofore as if fully set forth herein.
125. Frydman is a real estate developer with a long-standing record of success. His real estate developments include the redevelopment of Two Dag Hammerskjold Plaza, the redevelopment of the Aetna Building, the development of DHL's New York Headquarters, the acquisition and redevelopment of the Global Crossings Headquarters, the acquisition of the NBC Television Studios (where for over a decade Frydman produced the daytime drama "As The World Turns" for Proctor & Gamble) as well as numerous other properties.
126. Frydman and his partners and affiliates have worked for almost a year in preparing URTI to go public. Undertaking the formation of a public REIT, such as URTI, is generally expected to cost a sponsor approximately \$15 million. To date, Frydman and his partners and affiliates have already spent approximately \$7 million in cash and expect to continue spending significantly more as URTI is launched and commences its raising of over **\$1** billion. These expenditures include securities law compliance; legal, accounting and other professional fees; funding the overhead and operating costs of URTI's advisor, United Realty Advisors, LP; instituting systems and technology for Sarbanes-Oxley compliance; forming and funding the overhead and operating expenses of an affiliated FINRA-member broker-dealer and funding its regulatory required capitalization; SEC and state Blue Sky registration fees; hiring and covering the due diligence and underwriting costs of URTI's managing underwriter; leasing, furnishing, equipping and staffing four offices which house 46 employees, and funding the recruiting, payroll and other costs associated with each; the building of technology platforms for the "back-office" operations of URTI and its affiliates; the licensing of software; creating

operating policies and procedures; hiring, and structuring the investor relations and dividend distribution systems with URTI's transfer agent; developing, designing, obtaining regulatory approval for, and printing of sales literature, brochures, prospectuses and digital marketing materials; identifying, recruiting, and hiring of a national wholesaling sales team, and numerous other costs. URTI is scheduled to go public in the coming weeks. Frydman reasonably believes that URTI will generate more than \$100 million for management and advisory services, and more than \$50 million in performance fees. In total, Frydman alone could earn close to \$50 million based on his ownership interest in URTI and its affiliates.

127. Upon information and belief, the Lichtenstein Defendants knew (and in fact were very concerned) that Frydman had a reasonable expectation of entering into valid business and professional relationships with many additional investors in URTI, with the reasonable probability of future significant economic benefits to Frydman.
128. By their conduct, the Lichtenstein Defendants sought to deceive the public, including Frydman's prospective business relations, and knowingly, intentionally, and tortiously interfered with Frydman's prospective business relationships and economic opportunities. On information and belief, the Lichtenstein Defendants sought to use the AFA Defendants and the John Doe Defendants as their public mouthpiece in a wrongful attempt to insulate themselves from liability.
129. As a direct and proximate result of the Lichtenstein Defendants' tortious interference with Frydman's prospective business relationships, Frydman has suffered actual and consequential damages beginning in July 2012 in an amount to be determined at trial, but believed to be in excess of \$50,000,000.

130. In addition, because the Lichtenstein Defendants' interference was done with conscious and deliberate disregard for Frydman's rights, was willful and outrageous, and with the malicious intent to cause harm to Frydman, Frydman also is entitled to recover punitive damages.

FOURTH CAUSE OF ACTION  
(Unfair Competition)

131. Frydman repeats and realleges all of the allegations made heretofore as if fully set forth herein.

132. The Lichtenstein Defendants have competed and continue to actively and directly compete against Frydman and URTI by unfair and wrongful means that included and includes, among other things, diverting from Frydman and URTI to the Lichtenstein Defendants potential investors in REITs

133. The Lichtenstein Defendants' conduct is calculated to, is likely to, and on information and belief has mislead investors into deciding not to invest in URTI.

134. The Lichtenstein Defendants have engaged in such conduct in order to arrogate to themselves the economic benefit of investors who otherwise would have invested with URTI.

135. As the direct and proximate result thereof, the Lichtenstein Defendants have caused Frydman to lose market standing, business, business opportunities, profit and opportunities for profit that he would have had but for the Lichtenstein Defendants' wrongful and unfair competition.

136. As a direct and proximate result of the Lichtenstein Defendant' wrongful conduct and unfair competition, Frydman has suffered actual and consequential damages in an amount to be determined at trial, but believed to be in excess of \$50,000,000.

137. In addition, because of the wanton, willful and malicious nature of the foregoing wrongful conduct, Frydman also is entitled to recover punitive damages.

**FIFTH CAUSE OF ACTION**  
(Prima Facie Tort)

138. Frydman repeats and realleges all of the allegations made heretofore as if fully set forth herein.

139. The Lichtenstein Defendants intentionally inflicted harm on Frydman by virtue of the acts detailed above.

140. The Lichtenstein Defendants had no excuse or justification for inflicting harm on Frydman.

141. The Lichtenstein Defendants' conduct resulted in Frydman suffering special damages in an amount to be determined at trial, but believed to be in excess of \$50,000,000.

142. In addition, because of the wanton, willful and malicious nature of the foregoing wrongful conduct, Frydman also is entitled to recover punitive damages.

**SIXTH CAUSE OF ACTION**  
(Indemnity Against PAF)

143. Frydman repeats and realleges all of the allegations made heretofore as if fully set forth herein.

144. In the June 24 Release, PAF agrees to indemnify Frydman and hold him harmless "against any losses, claims, damages, demands and liabilities (or actions or proceedings in respect thereof) . . . related to or directly or indirectly arising in any manner in connection with the [McDonald] Loan, [or] the [McDonald] Guaranty . . ."

145. Based on PAF's counterclaims and Third Party Complaint in this action, Frydman sent PAF a letter dated July 17, 2012, requesting indemnification under the June 24 Release, including for all of his attorneys' fees and costs incurred in defending this action.
146. Frydman thus is entitled to payment by PAF of his legal fees and costs incurred in defense of PAF's Third-Party Complaint.
147. PAF's failure to meet its indemnification obligations under the June 24 Release is a breach of the release.
148. Based on PAF's breach, among other things, Frydman has been forced to bring the Fourth Party Complaint against PAF.
149. Frydman accordingly is entitled to his attorneys' fees and costs incurred in defending against PAF's Third-Party Complaint, as well as his attorneys' fees and costs incurred in enforcing his rights under the June 24 Release in this Fourth Party Complaint.

WHEREFORE, Frydman respectfully requests judgment against each of the Lichtenstein Defendants, jointly and severally:

- a. On the First Cause of Action, for libel, damages to be paid to Frydman in the amount of at least, \$50,000,000, with the exact amount of damages to be determined at trial, plus punitive damages to be determined at trial;
- b. On the Second Cause of Action, for an injunction, a permanent injunction preventing the Lichtenstein Defendants from continuing to make or promote libelous statements about Frydman;
- c. On the Third Cause of Action, for tortious interference with prospective business relations, damages to be paid to Frydman in the amount of at least, \$50,000,000, with the exact amount of damages to be determined at trial, plus punitive damages to be determined at trial;
- d. On the Fourth Cause of Action, for unfair competition, damages to be paid to Frydman in the amount of at least, \$50,000,000, with the exact amount of damages to be determined at trial, plus punitive damages to be determined at trial;

- e. On the Fifth Cause of Action, for prima facie tort, damages to be paid to Frydman in the amount of at least, \$50,000,000, with the exact amount of damages to be determined at trial, plus punitive damages to be determined at trial;
- f. On the Sixth Cause of Action, for indemnity against PAF, damages to be paid to Frydman, with the exact amount of damages to be determined at trial;
- g. An award of Frydman's legal fees, costs, and disbursements;
- h. Punitive damages on all Causes of Action but the Second and Sixth Causes of Action; and
- l. such other and further relief as the Court deems just and proper.

Dated: New York, New York  
July 23, 2012

MORRISON COHEN LLP

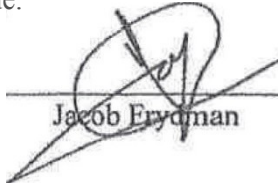
By   
David C. Pollack

909 Third Avenue, 27<sup>th</sup> Floor  
New York, New York 10022  
(212) 735-8600

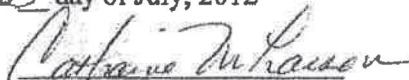
*Attorneys for Third Party Defendant and Fourth  
Party Plaintiff Jacob Frydman*

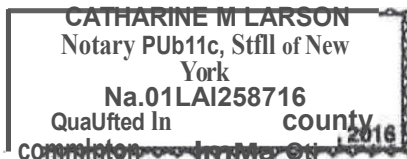
VERIFICATION

I am a Third Party Defendant and the Fourth-Party Plaintiff in the above-captioned action. I have reviewed the foregoing Verified Answer With Affirmative Defenses and Counterclaims of Third-Party Defendant and Fourth-Party Plaintiff Jacob Frydman and Verified Fourth Party Complaint and know and **understand** the contents thereof. The responses and allegations therein are true to my knowledge except as to matters stated upon information and belief, **and** as to those matters, I believe them to be true.

  
Jacob Frydman

23 day of July, 2012

  
Notary Public





# EXHIBIT

## E

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: CHARLES E. RAMOS  
Justice

PART 53

Index Number : 651688/2012  
WA ROUTE 9, LLC  
vs.  
PAF CAPITAL LLC  
SEQUENCE NUMBER :  
002 SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ, NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were filed on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

No(a). \_\_\_\_\_

No(e). \_\_\_\_\_

No(e). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

Motion is decided in accordance with  
accompanying Memorandum Decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

CHARLES E. RAMOS

1. CHECK ONE: ..... ☐ CASE DISPOSED

NON FINAL DISPOSITION

2. CHECK AS APPROPRIATE: ..... MOTION IS: ☒ GRANTED

☐ DENIED

☐ GRANTED

IN PART

☐ OTHER - 3. CHECK IF APPROPRIATE:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION

-----X  
WA ROUTE 9, LLC,

Plaintiff,

Index No. 651688/12

- against -

PAF CAPITAL, LLC

Defendant.

-----X  
PAF CAPITAL, LLC

Third-Party Plaintiff,

Index No. 590475/12

- against -

JACOB FRYDMAN, WHITE ACRE CAPITAL, LLC,  
ADDISON & FRITZ, LLC, and ALAN DANIELS,

Third-Party Defendants.

-----X  
JACOB FRYDMAN,

Fourth Party  
Plaintiff,

Index No. 590603/12

- against -

DAVID LICHTENSTEIN, PAF CAPITAL, LLC,  
THE LIGHTHOUSE GROUP, LIGHTSTONE PLUS REAL  
ESTATE INVESTMENT TRUST INC. I, LIGHTHOUSE  
VALUE PLUS REAL ESTATE TRUST INC. II,  
LIGHTSTONE VALUE PLUS REIT LP, ADAM FRIEDMAN,  
ADAM FRIEDMAN ASSOCIATES LLC, and  
JOHN/JANE DOES 1-1000,

Fourth-Party Defendants.

-----X

**Charles E. Ramos, J.S.C. :**

Motion sequences 002, 004, 005, and 006 are herein  
consolidated for disposition.

In motion sequence 002, the third-party  
defendant/fourth-

party plaintiff Jacob Frydman ("Frydman") moves pursuant to CPLR 3212 for summary judgment dismissing the second cause of action for fraudulent inducement and the third cause of action for negligent misrepresentation in the third-party complaint (the "Third Complaint") .

In motion sequence 004, the fourth-party defendants the Lighthouse Group, Lightstone Plus Real Estate Investment Trust Inc. I, Lighthouse Value Plus Real Estate Trust Inc. II, Lightstone Value Plus REIT LP (collectively, the "Lighthouse Entities"), Adam Friedman Associates LLC ("AFA"), David Lichtenstein ("Lichtenstein"), and PAF Capital, LLC ("PAF") move pursuant to CPLR 3211 to dismiss the fourth-party complaint (the "Fourth Complaint") .

In motion sequence 005, PAF moves pursuant to CPLR 3212 for summary judgment on its first counterclaim for breach of contract against the plaintiff WA Route 9, LLC ("WA") and on its first cause of action for breach of contract against the third-party defendants White Acre Capital, LLC ("WAC"}, Addison & Fritz, LLC ("Addison"} , Alan Daniels ("Daniel\$° , and Frydman (together with WAC, Addison, and Daniels, the "Guarantors") . In addition, Frydman cross-moves pursuant to CPLR 3212 for summary judgment to dismiss third-party plaintiff PAF's first cause of action for breach of contract.

During oral argument, the Court granted PAF's motion for summary judgment against WA and the Guarantors

(the "Decision").

In motion sequence 006, Frydman moves pursuant to CPLR 2221

to reargue the Decision.

### **Background**

The facts as alleged in the complaint, the Third Complaint, the Fourth complaint, and the parties' memorandum are as follows: **The Route 9 Loan**

On July 14, 2006, Park Avenue Bank issued a mortgage to WA in the amount of \$600,000, that was collateralized by real property located along US Route 9 in Poughkeepsie, New York (the "Route 9 Loan"). The Route 9 Loan was guaranteed by each of the Guarantors (the "Route 9 Guarantee"). On December 21, 2006, the WA Loan was assigned to PAF.

The maturity date of the Route 9 Loan was extended numerous times, ultimately until September 1, 2010. On January 6, 2010, PAF alleges that WAC, as managing member of WA, transferred a 12.5% interest in WA to a PAF affiliate pursuant to a loan modification and extension agreement (the "Route 9 Extension") as consideration for extending the Route 9 Loan maturity date to September 1, 2010.

On September 1, 2010, WA defaulted on the Route 9 Loan, which remains in default as of the date of this decision .

### **The McDonald Loan**

On June 7, 2007, PAF issued a mortgage to McDonald Ave

Acquisition LLC ("McDonald") in the amount of \$12 million, that was collateralized by real property located in Brooklyn, New York (the "McDonald Property"), with a maturity date of July 1, 2009 (the "McDonald Loan") . Frydman personally guaranteed the McDonald Loan (the "McDonald Guarantee").

On July 1, 2009, McDonald defaulted on the McDonald Loan. After the default, PAF alleges that Frydman represented that he would not be able to personally satisfy the McDonald Guarantee because his assets were severely depleted. Frydman provided personal financial statements confirming his inability to satisfy the McDonald Guarantee.

Based on Frydman 's representations, PAF agreed to take possession of the McDonald Property and release McDonald and Frydman from their obligations under the McDonald Loan and the McDonald Guarantee (the "McDonald Transaction").

On January 6, 2010, an affiliate of PAF, PAF McDonald Ave, LLC ("PAFM"), entered into a purchase and sale agreement to purchase the McDonald Property in exchange for assuming all the obligations and indebtedness secured by the McDonald Loan (the . "PSA"). The transaction was encompassed by the McDonald Agreement and eleven other separate agreements (collectively, the "Transaction Documents").

PAF, intending to resell the McDonald Property, structured the McDonald Transaction to reduce its tax liability by having

PAFM hold the deed for the McDonald Property in escrow for 120 days until a sale with the ultimate purchaser could close.

Contemporaneously, PAF and Frydman executed a release of liability agreement, pursuant to which, PAF waived any and all rights to hold Frydman personally liable for the McDonald Loan and McDonald Guarantee on the condition that Frydman provide current financial statements (the "January Release") . Pursuant

to the January Release, PAF had the sole and absolute discretion in approving or rejecting Frydman 's financial statements, which it ultimately approved.

In June 2010, PAF, unable to find an ultimate purchaser for the McDonald Property, restructured the McDonald Transaction using its own entities to complete the sale and mitigate its tax liability. As consideration for the amendments required to restructure the McDonald Transaction (the "Amendments"), PAF and Frydman executed a second release of liability and indemnity agreement that expressly provided that Frydman had fulfilled his obligations under the McDonald Transaction and released Frydman from all potential claims arising from the McDonald Loan, the McDonald Guaranty, and the McDonald Transaction (the "June Release", together with the January Release, the "Releases").

Frydman alleges that PAF agreed work with WA to jointly develop a repayment plan for the Route 9 Loan, as consideration for the execution of the Amendments (Frydman Aff., NYSCEF #114,





23). To that end, Frydman alleges that in early 2012, PAF, through its President Elliot Neumann, and Frydman negotiated a proposed forbearance agreement relating to the Route 9 Loan (the "Forbearance Agreement") . A draft of the Forbearance Agreement was circulated, but never executed.

In March 2012, PAF informed Frydman that Neumann was no longer at PAF. The following month, PAF informed Frydman that it was seeking repayment of the Route 9 Loan based on its original terms with interest and penalties . PAF then issued notices of default seeking to enforce the terms of the Route 9 Loan and Route 9 Guarantees.

Frydman alleges that PAF abandoned the negotiations concerning the Forbearance Agreement because it discovered that Frydman was forming a competing real estate investment trust known as United Realty Trust Incorporated ("URTI").

PAF counters that Frydman's personal disclosures in connection with forming URTI revealed that Frydman misrepresented his financial condition to PAF in order to induce it to provide the Releases.

Thereafter, WA commenced this action seeking to enforce the terms of the Forbearance Agreement. PAF counterclaimed and interposed the Third Complaint against Frydman and the Guarantors, asserting causes of action for fraud.

Frydman then interposed the Fourth Complaint against PAF asserting causes of

action for libel, injunctive relief, tortious interference, unfair competition, prima facie tort, and indemnification.

### **Discussion**

#### Motion sequence 002

Frydman moves for summary judgment to dismiss the second cause of action for fraudulent inducement and the third cause of action for negligent misrepresentation in the Third Complaint.

#### *Fraudulent Inducement*

PAF's cause of action for fraudulent inducement alleges that Frydman misrepresented his personal financial condition to induce PAF to participate in the McDonald Transaction and provide the January Release to Frydman. Thereafter, Frydman maintained his fraud in order to procure the June Release. As a result, PAF argues that the June Release should be voided.

Frydman asserts that the broad language of the June Release bars the assertion of PAF's causes of action for fraudulent inducement and negligent misrepresentation.

Furthermore, Frydman argues that PAF's allegations fail to establish the prima facie elements of fraudulent inducement and negligent misrepresentation warrants the granting of summary judgment in his favor.

To void the June Release, PAF "must establish the basic elements of fraud, namely a representation of material fact, the falsity of that representation, knowledge by the party who made the representation that it was false when

made, justifiable

reliance by the plaintiff, and resulting injury" (*Centro Empresarial Cempresa S.A. v Am. Movil, S.A.B. de C.V.*, 17 NY3d 269, 276 [2011] [internal quotations omitted], hereafter referred to as "*Centro II*").

PAF has maintained that it entered into the McDonald Transaction because Frdyma represented that he would be unable

to repay the McDonald Guarantee (Lichtenstein Aff., 11 6, 7, 12) .

In January 2010, after the default of the McDonald Loan, Frydman provided his personal financial statement, current as of May 30, 2009, to PAF as evidence of his inability to satisfy the McDonald Guarantee (*id.* at 1 15). Thereafter, PAF accepted Frydman's handwritten updates to the financial statement, which Frydman represented reflected his financial condition as of December 31, 2009 (*id.* at ■16).

During the period between May 2009 to December 2009, Frydman's financial statements demonstrated that his assets had severely deteriorated and completely supported his representation that he was unable to repay the McDonald Guarantee (*id.* at 1 17).

"[A] party that releases a fraud claim may later challenge that release as fraudulently induced only if it can identify a separate fraud from the subject of the release" (*Centro II* at 277) .

The relevant portions of the June Release provide

that: PAF hereby releases any and all claims, suits, controversies, actions, causes of

action, cross-claims, counter-claims, demands, debts, compensatory damages, liquidated damages, punitive or exemplary damages, other damages, claims for costs or attorneys' fees, or liabilities of any nature whatsoever in law and in equity, both past and present, whether known or unknown, suspected, or claimed against any of the Borrower Release Entities which [PAF) or any of their successors or assigns, ever had, now have, or hereafter may have, by reason of any matter, cause of thing whatsoever, from the beginning of any initial dealings with the Borrower Release Entities and through the time of execution of this Agreement, whether arising from or relating in any way to the [McDonald) Property, the PSA, the [McDonald) Loan, the Loan Documents, and the [McDonald] Guaranty..."<sup>1</sup> (Frydman Aff., Ex. D, p. 3).

The subject of the June Release clearly covers any causes of action arising from or relating to the McDonald Transaction .

PAF fails to identify a separate fraud from the subject of the June Release that would support a cause of action for fraudulent inducement.

PAF has alleged that Frydman's misrepresentation s related to his financial condition induced it to participate in the McDonald Transaction, providing the Releases, and foregoing the enforcement of the McDonald Guaranty.

PAF cannot now argue that Frydman 's misrepresentation went beyond the subject of the June Release, when it admits that its decision to enter into the McDonald Transaction was based, at least in part, on Frydman 's misrepresentations about his

---

<sup>1</sup>Frydman is included within the "Borrower Released Entities."

financial condition and inability to repay the McDonald Guarantee.

"It is well established that a valid release constitutes a complete bar to an action on a claim which is the subject of the release" (*Global Minerals and Metals Corp. v Holme*, 35 AD3d 93, 98 [1st Dept 2006)). "Further, a release that, by its terms, extinguishes liability on any and all claims arising in connection with specified matters is deemed to encompass claims of fraud relating to those matters, even if the release does not specifically refer to fraud and was not granted in settlement of an actually asserted fraud claim" (*Centro Empresarial Cempresa S.A. v Am. Movil, S.A.B. de C. V.*, 76 AD3d 310, 31·9 [1st Dept 2010], *affd* 17 NY3d 269 [2011] , hereafter referred to as "Centro I").

The broad language contained within the June Release that contemplates the release of "any and all claims" regardless of their nature that are "known or unknown, " indicates an intention by PAF to release causes of action such as fraud, that are unknown at the time of execution (June Release, §4; see *Centro II* at 276 [finding that the use of certain terms in a release evinces an intention to release unknown and future causes of action]).

"[A] release may encompass unknown claims, including unknown fraud claims, if the parties intend and the agreement is 'fair



and knowingly made '" (id.). The requirement of a "fairly and knowingly made" agreement applies to situations "where because the releaser has had little time for investigation or deliberation, or because of the existence of overreaching or unfair circumstances, **it** was deemed inequitable to allow the release to serve as a bar to the claim of the injured party" (*Mangini v McClurg*, 24 NY2d 556, 567 [1969]) .

The June Release was clearly "fairly and knowingly" made because the January Release expressly provided PAF with "sole and absolute discretion" to approve Frydman 's financial statements, clearly demonstrating that PAF had an unrestricted opportunity to investigate Frydman 's financial condition prior to entering into the McDonald Transaction (January Release, § 7 [c]). PAF fails to allege any overreaching or unfair standards that would vitiate the June Release.

"[P]arties can seldom be certain that the representations made by other contracting parties are indeed true, they must-lest their cause of action for fraud be barred-insert the requisite prophylactic provision to ensure against the possibility of misrepresentatio n" ( *ACA Fin. Guar. Corp. v Goldman, Sachs & Co.*, 2013 NY Slip Op 03429 \*2 [1st Dept 2013]) .

If PAF did not intend to release a cause of action for fraud, then it should have insisted on access to bank statements or inserted a prophylactic provision conditioning the Releases on the truth of Frydman 's financial statements (see



*Permasteelisa,*

*S.p.A. v Lincolnshire Mgt. , Inc.*, 16 AD3d 352 [1st Dept 2005); *Graham Packaging Co., L.P. v Owens-Illinois, Inc.*, 67 AD3d 465 [1st Dept 2009] ; *Centro I* at 320; *ACA* at \*1).

PAF's failure to exercise its opportunity to investigate is also fatal to its ability to establish justifiable reliance.

The record clearly demonstrates that the full extent of PAF's due diligence involved blindly approving the unaudited financial statement from Frydman and then further accepting handwritten updates to the financial statement as sufficient representations of his financial condition .

The fact that Frydman was purportedly assisting PAF in the McDonald Transaction does not mitigate PAF's failure, especially considering the circumstances in which the McDonald Transaction was conceived of in the first place.

The initial relationship between Frydman and PAF was that of a debtor and creditor nature. Thus Frydman, as the debtor, would benefit substantially if PAF, as the creditor, did not enforce the McDonald Guarantee. The circumstances clearly provided Frydman with a great incentive to portray the bleakest financial condition possible and provide an alternative to PAF commencing an action for foreclosure and to enforce the McDonald Guarantee against him.

By entering into the McDonald Transaction purely based upon Frydman 's representations of his own financial condition "without inserting into the [Releases] a prophylactic provision to ensure

against the possibility of misrepresentation [PAF] may truly be said to have willingly assumed the business risk that the facts may not be as represented" (ACA at \*2 [1st Dept 2013]).

*Negligent Misrepresentation*

PAF's cause of action for negligent misrepresentation alleges that Frydman was obligated to impart accurate information because of a privity-like relationship, which he failed to do.

As a result, PAF detrimentally relied on his misrepresentations in executing the McDonald Transaction and providing the release.

PAF's cause of action for negligent misrepresentation must be dismissed because PAF fails allege facts that demonstrate it had a special relationship with Frydman that obligated him to impart accurate information to PAF.

It is well established that "an arm's length borrower-lender relationship is not of a confidential or fiduciary nature and therefore does not support a cause of action for negligent misrepresentation" (*Dobroshi v Bank of Am., N.A.*, 65 AD3d 882,

884 [1st Dept 2009]). Frydman 's purported assistance in the sale of the McDonald Property is insufficient to create a special relationship between him and PAF.

Therefore, Frydman's motion for summary judgment dismissing the second cause of action for fraudulent inducement and the third cause of action for negligent misrepresentation is granted.

PAF moves to dismiss Frydman 's Fourth Complaint that asserts

causes of action for libel, injunctive relief, tortious interference, unfair competition, prima facie tort, and indemnification.

On February 26, 2013 , during oral argument, this Court sustained the first cause of action for libel and the second cause of action for injunctive relief as against PAF and Lichtenstein, but dismissed those causes of action as against all other fourth-party defendants (Trans., Feb. 26, 2013, 76:21-23).

The third fourth-party cause of action for tortious interference with prospective economic advantage and the fourth fourth-party cause of action for unfair competition must be dismissed because Frydman does not have standing to assert these causes of action. The Fourth Complaint clearly alleges that the non-party URTI suffered the harm stemming from PAF's alleged conduct.

The fifth cause of action for prima facie tort must be dismissed because Frydman 's allegations of special damages are vague and conclusory.

Dismissal of the sixth cause of action for indemnification is premature at this stage, in light of this Court's determination that the June Release is valid and enforceable .

#### Motion Sequence 005

This motion was previously decided by the Court during oral argument on February 26, 2013.

PAF moved for summary judgment on its first counterclaim for

breach of contract against WA, and its first third-party cause of action for breach of contract against the Guarantors. WA and the Guarantors (collectively, the "Route 9 Defendants") cross-moved for summary judgment on PAF's first third-party cause of action for breach of contract.

During oral argument, this Court denied the Route 9 Defendants' cross-motion and granted PAF's motion for summary judgment in its entirety (Trans., Feb. 26, 2013 , 47:20-22) .

Motion sequence 006

Frydman seeks to reargue this Court's Decision on the basis that the Court misapprehended the fact that the Route 9 Extension was an integrated transaction with the McDonald Transaction . In the Decision, this Court held that Frydrnan' s obligations pursuant to Route 9 Guarantee were not covered within the subject of the Releases and remain actionable.

In the instant motion, Frydman argues that the Route 9 Loan cannot be in default because he was released from his obligations under the Route 9 Loan and the Route 9 Guarantee by the June Release.

Frydman alleges that the Route 9 Extension was actually partial consideration relating to the McDonald Transaction (Frydman Aff., NYSCEF #114, 22). Thus, the language in the June Release that provides a release of all claims "whether arising from or relating in any way to the [McDonald] Property, the PSA, the [McDonald] Loan, the Loan Documents, and the

[McDonald] Guaranty ..." was intended to encompass the Route 9

Loan and Route 9 Guarantee obligations (June Release, § 4).

PAF maintains that the interest in WA was for the extension of the Route 9 Loan maturity date only. It argues that the Route 9 Extension is a completely independent transaction, separate and apart from the McDonald Transaction.

This Court agrees. None of the Transaction Documents, including the Releases, reference the Route 9 Loan or the Route 9 Guarantee. The sophisticated parties clearly were capable of inserting references to the Route 9 Loan and Route 9 Guarantees if they so desired.

Frydman failed to demonstrate that the parties intended the June Release to include the Route 9 Loan and the Route 9 Guarantees or explain the failure to reference them in the agreements. "[C]ourts should be extremely reluctant to interpret an agreement as impliedly stating something which the parties have neglected to specifically include" (*Centro* at 277).

Furthermore, Frydman has alleged that as part of the execution of the Amendments, PAF agreed to not take any adverse action to enforce the Route 9 Loan or the Route 9 Guarantees against WA or the Guarantors, that PAF would act as a partner to WA, and that PAF and WA would jointly develop a repayment plan for the Route 9 Loan, though no agreement to that effect is contained within the record before this Court (Frydman Aff., NYSCEF #114, ¶ 23).

Moreover, during oral argument, the Court found that the Forbearance Agreement had no probative value in demonstrating that PAF intended to release Frydman from his obligations under the Route 9 Guarantee (Trans., Feb. 26, 2013, 44:19-45:2). The Court adheres to its previous finding on this issue as well.

The Forbearance Agreement was never executed and was unenforceable. The mere fact that the forbearance of the Route 9 Loan was contemplated was insufficient to raise a triable issue of fact that would preclude the granting of summary judgment.

Finally, this Court cannot conclude that there was even a meeting of the minds with respect to the Forbearance Agreement because Frydman admits that he objected to the inclusion of certain parties in the agreement. At best, the Forbearance Agreement demonstrated that the parties were in the process of negotiating the terms of a potential forbearance of the Route 9 Loan.

Frydman has failed to identify any facts or law that this Court misapprehended in rendering the Decision. Consequently, Frydman 's motion for reargument must be denied.

Accordingly, it is

ORDERED that Frydman 's motion for summary judgment (MS 002) is hereby granted in its entirety thereby dismissing the second and third third-party causes of action for fraudulent inducement and negligent misrepresentation, and it is further

ORDERED that the Lighthouse Entities' motion to dismiss (MS





004) is granted to extent of dismissing the first and second fourth-party causes of action against all parties except Lichtenstein and PAF, and dismissing the third through fifth fourth-party causes of action in their entirety, and **it** is further

ORDERED that PAF's motion for summary judgment (MS 005) is hereby granted in all respects, and it is further

ORDERED that WA and the Guarantors ' cross-motion for summary judgment (MS 005) is denied in its entirety, and it is further

ORDERED that Frydman 's motion to reargue is denied, and it is further

ORDERED that the parties contact the Clerk of Part 53 to schedule a Preliminary Conference to be held no later than June 27, 2013.

This constitutes the decision and order of this Court.  
Dated: May 22, 2013

ENTER:



J.S.C.

**CHARLES E. RA MOS**

\ \bullet \bullet

*DC-12-12410*

IN THE DISTRICT  
COURT OF

**The**

DALLAS COUNTY,

: /

§  
DISTRICT  
§  
§

44<sup>th</sup> JUDICIAL

MISCELLANEOUS PROCEEDING TO  
TAKE DEPOSITION AND REQUEST FOR  
PRODUCTION OF DOCUMENTS  
6176943v1

Page 1

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

WA ROUTE 9, LLC,

Plaintiff/Counterclaim Defendant,,

-against-

PAF CAPITAL LLC,

Defendant/Counterclaim Plaintiff.

PAF Capital, LLC.,

Third-Party Plaintiffs,

-against-

JACOB FRYDMAN, WHITE ACRE  
CAPITAL, LLC, ADDISON & FRITZ, LLC  
and ALAN DANIELS,

Third-Party Defendants.

JACOB FRYDMAN,

Third-Party Defendant/Fourth-Party Plaintiff,

-against-

DAVID LITCHTENSTEIN, PAF CAPITAL,  
LLC, THE LIGHTSTONE GROUP,

LIGHTSTONE VALUE PLUS REAL  
ESTATE INVESTMENT TRUST INC. I,

LIGHTSTONE VALUE PLUS REAL  
ESTATE INVESTMENT TRUST INC. II,

LIGHTSTONE VALUE PLUS REIT LP,

ADAM FREIDMAN, ADAM FRIEDMAN

ASSOCIATES LLC, and JOHN/JANE DOES § 1-  
1000.

Fourth-Party Defendants.

Index No. 651688/2012

Index No. 590475/2012

Index No. 590603/2012



MISCELLANEOUS PROCEEDING TO TAKE DEPOSITION  
AND REQUEST FOR PRODUCTION OF DOCUMENTS

Jacob Frydman ("Frydman"), files this Miscellaneous Proceeding to take Deposition and Request for Production of Documents pursuant to Texas Rule of Civil Procedure 201.2 and Texas Civil Practice & Remedies Code § 20.002 and would show the Court as follows:

Jacob Frydman is the Third-Party Defendant/Fourth Party Plaintiff in a lawsuit currently pending in the Supreme Court of the State of New York County of New York styled *WA Route 9, LLC, Plaintiff/Counterclaim Defendant, v. PAF Capital LLC, Defendant/Counterclaim Plaintiff*, Index No. 651688/2012; *PAF Capital, LLC, Third-Party Plaintiffs, v. Jacob Frydman, White Acre Capital, LLC, Addison & Fritz, LLC and Alan Daniels, Third-Party Defendants*, Index No. 590475/2012; *Jacob Frydman, Third-Party Defendant/Fourth-Party Plaintiff, v. David Lichtenstein, PAF Capital, LLC, The Lightstone Group, Lights/one Value Plus Real Estate Investment Trust Inc. I, Lightstone Value Plus Real Estate Investment Trust Inc. II, Lights/one Value Plus Reil LP, Adam Friedman, Adam Friedman Associates LLC, and John/Jane Does 1- 1000, Fourth-Party Defendants*, Index No. 590603/2012 (the "New York lawsuit").

On September 21, 2012, Frydman, Third-Party Defendant/Fourth Party Plaintiff filed a Notice of Motion for Open Commission for a deposition out of state, namely in Dallas, Texas. A true and correct copy of the Notice is attached as Exhibit 1. The deposition is for production of documents from a company located in Texas called SoftLayer Technologies.

On October 1, 2012, Judge Charles E. Ramos, of the Supreme Court of the State of New York County of New York, entered a Commission for Production of Documents in the State of Texas granting Third-Party Defendant/Fourth Party Plaintiff's Commission for Production of Documents in the State of Texas. A true and correct copy of the Order is attached as Exhibit 2.





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/

The Commission requests that this Court issue a subpoena compelling SoftLayer Technologies, 4849 Alpha Road, Dallas, Dallas County, Texas 75244, to appear for deposition and to produce for inspection and copying the documents listed in the Deposition Notice attached as Exhibit A to the Commission to Take Out-of-State Deposition and Request for Production of Documents from SoftLayer Technologies. The deposition will be taken on November 15, 2012, commencing at 9:00 a.m., at the offices of Gardere Wynne Sewell, LLP, 1601 Elm St., Suite 3000, Dallas, Texas 75201, or at some other time and place as may be agreed in writing.

Based on the foregoing, Jacob Frydman asks this Court to enforce the Commission and issue a Subpoena compelling SoftLayer Technologies appearance for oral deposition and production of documents at the designated time and place.

Respectfully submitted,

**GARDERE WYNNE SEWELL LLP**

---

Stuart Blaugrund  
State Bar No. 02473350

3000 Thanksgiving Tower  
1601 Elm Street  
Dallas, Texas 75201-4761  
214.999.4690  
214.999.4667 facsimile



CERTIFICATE OF SERVICE

I hereby certify that on 19<sup>th</sup> day of October, 2012, a true and correct copy of the foregoing was served as indicated, on the following:

Matthew Sheppe  
Reiss Eisenpress & Sheppe,  
LLP 425 Madison Avenue  
New York, NY 10017

Katherine Sherman  
Wrobel & Schatz, LLP  
1040 Avenue of the Americas  
11th Floor  
New York, NY 10018

David Pollack  
Morrison Cohen LLP  
909 Third Avenue  
New York, NY 10022

A handwritten signature in black ink, appearing to read "Matthew Sheppe", is written over a horizontal line.



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

----- )(  
WA ROUTE 9, LLC,

Index No. 651688/2012

Plaintiff/Counterclaim Defendant,

- against-

NOTICE OF MOTION FOR  
OPEN COMMISSION

PAF CAPITAL LLC,

Defendant/Counterclaim Plaintiff.

----- )(  
PAF CAPITAL, LLC,

Index No. 590475/2012

Third-Party Plaintiffs,

-against-

JACOB FRYDMAN, WHITE ACRE CAPITAL,  
LLC, ADDISON & FRITZ, LLC AND ALAN.  
DANIELS,

Third-Party Defendants.

----- )(  
JACOB FRYDMAN,

Third-Party Defendant/Fourth-Party Plaintiff, : Index No. 590603/2012

-against-

DAVID LICHTENSTEIN, PAF CAPITAL, LLC,  
THE LIGHTSTONE GROUP, LIGHTSTONE  
VALUE PLUS REALESTATE INVESTMENT  
TRUST INC. I, LIGHTSTONE VALUE PLUS  
REAL ESTATE INVESTMENT TRUST CNC. II,  
LIGHTSTONE VALUE PLUS REIT LP, ADAM  
FRIEDMAN, ADAM FRIEDMAN ASSOCIATES :  
LLC, and JOHN/JANE DOES 1-1000.

Fourth-Party Defendants.

----- )({

PLEASE TAKE NOTICE that, upon the accompanying Affirmation of David C.

Pollack, dated September 21, 2012, and upon all prior pleadings and proceedings heretofore  
had

#4050400 v1 021518 0003

**EXHIBIT**

**1**

herein, Third-Party Defendant/Fourth Party Plaintiff Jacob Frydman ("Frydman") hereby moves for an Order directing the issuance of an open commission to (1) enable Frydman to inspect and copy documents in the possession, custody or control of SoftLayer Technologies, 4849 Alpha Road, Dallas, Texas 75244 ("SoftLayer"); and (2) request the District Court in Dallas County,

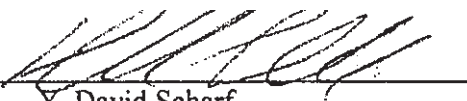
Texas: to issue a subpoena duces tecum directing SoftLayer to appear at its deposition and to produce and permit Frydman, or someone acting on his behalf, to inspect and copy documents in

the possession, custody or control of SoftLayer. Frydman further moves for such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 221 4(b), opposition papers, if any, are to be served on or before October 1;

PLEASE TAKE FURTHER NOTICE that this motion is returnable at the Motion Support Office Courtroom, 60 Centre Street, New York, Room 130, on October 3, 2012, at 9:30 a.m.

Dated: New York, New York  
September 21, 2012

By:   
Y. David Scharf

David C. Pollack

909 Third Avenue  
New York, New York 10022  
(212) 735-8600

*Attorneys for Jacob Frydman*





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

----- )(  
WA ROUTE 9, LLC,

Index No. 651688/2012

· Plaintiff/Counterclaim Defendant,

- against-

PAF CAPITAL LLC,

AFFIRMATION IN  
SUPPORT OF  
COMMISSION

Defendant/Counterclaim Plaintiff.

-----:X:  
PAF CAPITAL, LLC,

Third-Party Plaintiffs,

Index No. 590475/2012

-against-

JACOB FRYDMAN, WHITE ACRE CAPITAL,  
LLC, ADDISON & FRITZ, LLC AND ALAN  
DANIELS,

Third-Party Defendants.

----- )(  
JACOB FRYDMAN, :

Third-Party Defendant/Fourth-Party Plaintiff,

Index No. 590603/2012

-against-

DAVID LICHTENSTEIN, PAF CAPITAL, LLC,  
THE LIGHTSTONE GROUP, LIGHTSTONE  
VALUE PLUS REALESTATE INVESTMENT ·  
TRUST INC. I, LIGHTSTONE VALUE PLUS  
REAL ESTATE INVESTMENT TRUST INC. II,  
LIGHTSTONE VALUE PLUS REIT LP, ADAM  
FRIEDMAN, ADAM FRIEDMAN ASSOCIATES :  
LLC, and JOHN/JANE DOES 1-1000.

Fourth-Party Defendants.

----- )(  
David C. Pollack, an attorney duly admitted to practice law in the State of New York,

affirms the following to be true under penalty of perjury:

...

1. . I am associated with Morrison Cohen LLP, counsel for Third-Party Defendant/Fourth-Party Plaintiff Jacob Frydman ("Frydman") in this action. As such, I am fully familiar with the facts and circumstances contained within this affirmation.
2. I respectfully submit this affirmation in support of Frydman's motion for an order pursuant to CPLR 3108, 3111, and 3120, directing the issuance of a commission to inspect and copy documents in the possession of SoftLayer Technologies, 4849 Alpha Road, Dallas, Texas 75244 ("SoftLayer"). SoftLayer is not a party to the above-referenced actions.
3. The above-captioned actions involve a claim for defamation and other actionable statements by the Fourth Party Defendants. Specifically, Defendant and Third Party Plaintiff PAF Capital LLC ("PAF") has accused Frydman of fraud in connection with, *inter alia*, the release of his personal guaranty of a \$12 million loan. As set forth in Frydman's verified Fourth Party Complaint, this accusation is false. It is merely a sham orchestrated by PAF, and its sponsor, David Lichtenstein, as well as his affiliates, The Lightstone Group, Lightstone Value Plus Real Estate Investment Trust Inc I, Lightstone Value Plus Real Estate Investment Trust Inc. II, and Lightstone Value Plus REIT LLC (the "Lichtenstein Defendants") to improperly discredit a competing venture begun by Frydman and his partners, United Realty Trust Inc. ("URTI"), which recently went public. Adam Friedman and Adam Friedman Associates LLC (the "AFA Defendants") have also issued two sham press releases, amplifying and disseminating PAF's sham claims.
4. Shortly after the sham claims and press releases were filed and disseminated, numerous blog entries and other web pages publicizing the sham claims were posted on the World Wide Web (the "Posts"). The Posts purported to connect the false allegations of fraud with the launch of URTI, wrongfully and baselessly asserting that URTI investors were

"suffering" and that Frydman would be forced to "settle" with PAF in order to allow URTI to go public. The authors of these entries and web pages improperly hid their identities. As such, they are named in Frydman's Fourth Party Complaint as John/Jane Does 1-1000 (the "John Doe Defendants").

5. From the publicly available information linked to the Posts, Frydman has learned that SoftLayer and its subsidiaries, including The Planet.com Internet Services ("ThePlanet.com"), provide web hosting services in connection with the Posts. As a result, and on information and belief, SoftLayer has in its possession, custody, or control, documents that will identify, or assist in the identification of, the John Doe Defendants.

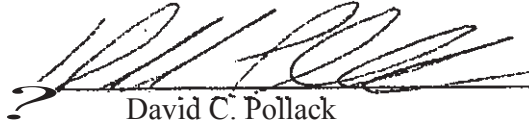
6. Upon information and belief, SoftLayer is a Delaware corporation with headquarters in Dallas, Texas. Consequently, it is not subject to the subpoena power of the State of New York. The information and documents sought are relevant and material to the issues in this action and cannot otherwise be obtained. They are necessary because SoftLayer possesses, has control over and/or has access to documents relevant, necessary and material to this action, including documents identifying the John Doe Defendants.

7. I have spoken with counsel for the Lichtenstein Defendants and AFA Defendants regarding this motion and he has represented that he will not oppose it.

8. No prior requests for this relief have been made.

WHEREFORE, Frydman requests the issuance of an open commission to enable Frydman to inspect and copy the documents set forth in Exhibit A, and which are in SoftLayer's possession, custody, or control.

Dated: New York, New York  
September 21, 2012



David C. Pollack

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

----- :X:  
WA ROUTE 9, LLC,

Plaintiff/Counterclaim Defendant,

Index No. 651688/201 2

- against-

PAF CAPITAL LLC,

· Defendant/Counterclaim Plaintiff.

COMMISSION FOR  
PRODUCTION OF  
DOCUMENTS IN THE  
STATE OF TEXAS

----- :X:  
PAF CAPITAL, LLC,

Third-Party Plaintiffs,

Index No. 590475/2012

-against-

JACOB FRYDMAN, WHITE ACRE CAPITAL,  
LLC, ADDISON & FRITZ, LLC AND ALAN  
DANIELS,

Third-Party Defendants.

----- :X:  
JACOB FRYDMAN,

Third-Party Defendant/Fourth-Party Plaintiff, : Index No. 590603/2012

-against-

DAVID LICHTENSTEIN, PAF CAPITAL, LLC,  
THE LIGHTSTONE GROUP, LIGHTSTONE  
VALUE PLUS REALESTATE INVESTMENT  
TRUST INC. I, LJGHTSTONE VALUE PLUS  
REAL ESTATE INVESTMENT TRUST INC. II,  
LIGHTSTONE VALUE PLUS REIT LP, ADAM  
FRIEDMAN, ADAM FRIEDMAN ASSOCIATES :  
LLC, and JOHN/JANE DOES 1-1000.

Fourth-Party Defendants.

----- :X:

THE PEOPLE OF THE STATE OF NEW YORK

TO: David C. Pollack, Esq. ·



A motion having been brought on for an Order, pursuant to CPLR 3108 and 3120, to enable Third Party Defendant/Fourth Party Plaintiff Jacob Frydman ("Frydman") to obtain an open commission to inspect and copy documents outside the State of New York;

NOW, upon filing and reading of the accompanying affirmation of David C. Pollack, Esq., dated September 21, 2012, and after due deliberation;

You are hereby commissioned to inspect and copy documents in the possession, custody or control of SoftLayer Technologies, 4849 Alpha Road, Dallas, Texas 75244 ("SoftLayer") at a location in Dallas County to be designated by Frydman in accordance with a subpoena to be served upon SoftLayer pursuant to the rules of that jurisdiction; and

You are hereby authorized to request the District Court in Dallas County, Texas, to order that a subpoena issue to SoftLayer commanding it to produce for copying and inspection the documents described in the subpoena with provision for the defraying by Frydman of the expenses of the production and copying of such documents; and

You are further advised:

- I. That the requested documents are subject to disclosure in the action before this Court; and
2. That under the laws of the State of New York, where this action is pending, the documents may be used in said pending action.

Signed this 1 day of October 012 at New York New York.

ENTER

**CHARLES E. RAMOS**

Exhibit A /



## EXHIBIT "A"

### THIRD-PARTY DEFENDANT/FOURTH-PARTY PLAINTIFF JACOB FRYDMAN'S REQUEST FOR PRODUCTION OF DOCUMENTS TO SOFTLAYER TECHNOLOGIES, INC.

#### DEFINITIONS AND INSTRUCTIONS

- (a) "Post" means any blog entry, webpage, or other material posted to the internet and viewable on the World Wide Web in connection with the hyperlinks, domain names, and IP addresses set forth in the chart annexed as Exhibit B hereto.
- (b) "Blog Content" means the text, video, or other content of a Post, including the HTML or other markup language necessary to make the Post viewable on the World Wide Web.
- (c) "Blogger" means any person or entity who contributed, entered, posted, submitted, uploaded, or otherwise transmitted the Blog Content to a Web Host.
- (d) "Web Host" means any person or entity that utilized SoftLayer's hosting services (through a membership with SoftLayer or otherwise) to make the Blog Content viewable as a Post on the World Wide Web.
- (e) "Soft.Layer" means SoftLayer Technologies, Inc., including all of its affiliates, its predecessors, successors in interest, including without limitation The Planet.com Internet Services, Inc. ("ThePlanet.com"), and all of their present and former directors, officers, employees, consultants, agents and representatives, including any attorneys, consultants, or investigators to whom the documents sought herein have been provided.
- (f) "Lichtenstein Defendants" means David Lichtenstein, PAF Capital, LLC, The Lightstone Group, Lightstone Value Plus Real Estate Investment Trust Inc. I, Lightstone Value Plus Real Estate Investment Trust Inc. II, and Lightstone Value Plus REIT LP.
- (g) "AFA Defendants" means Adam Friedman and Adam Friedman Associates LLC.
- (h) "And" as well as "or" shall be construed either disjunctively or conjunctively as is necessary to bring within the scope of these requests all documents which might otherwise be construed to be outside their scope. The singular includes the plural and the plural includes the singular. Unless otherwise specified, all items include the past, present and future.
- (i) "Communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise), including but not limited to any correspondence, discussions, electronic mail, facsimiles, memoranda, meetings, messages, notes, or telephone conversations.
- j) "Concerning" means relating to, referring to, describing, evidencing, constituting, containing, analyzing, discussing, reporting or commenting on, inquiring about, considering or mentioning in whole or in part.

(k) "Document" means the original (or any copy when originals are not available) and any non-identical copies (whether different from the original because of notes, marks, initials, stamped indicia, any comment or any rotation of any character made on such copies or otherwise), or drafts of any kind of printed, typed, recorded, written, graphic, or photographic

matter, video tapes, audio recordings, data compilations from which information can be obtained and translated, facsimiles, electronic mails, notebooks of any character, diaries and calendars, routing slips or memoranda, reports, publications, books, sketches, drawings, any tangible recording, however made, of information, data, or communications including notes, memoranda, correspondence and papers, minutes or records of meetings, reports and/or summaries of investigations, agreements and contracts, including all modifications or revisions thereof, reports or summaries of negotiations, court papers, brochures, promotional literature, pamphlets, press releases, and instructions, including writings of every kind and description, whether inscribed by hand, mechanically, electronically, photographically or by other means as well as phonic or visual reproduction of oral statements, conversations or events, any translations of any of the foregoing, however denominated, and regardless of their author or origin. A draft or non identical copy is a separate document within the meaning of the term. The term "document" includes all electronically-stored information, including, but not limited to, e-mails and attachments, voice mail, instant messaging and other electronic communications, word

processing documents, text files, hard drives, spreadsheets, graphics, audio and video files, databases, calendar, telephone logs, transaction logs, Internet usage files, offline storage or information stored on removable media, information contained on home computers, laptops or other portable devices, network access information, backup materials, and native files and the corresponding metadata which is ordinarily maintained.

(j) SoftLayer shall furnish all documents described below that are in the possession, custody, or control of SoftLayer.

(m) Each document request shall be deemed continuing, and you are required to supplement your production of documents promptly upon obtaining additional responsive documents.

(n) Except with respect to document request number 1, the period of time covered by this request is from May 1, 2012 to the present.

DOCUMENTS TO BE  
PRODUCED

1. Documents sufficient to identify all Web Hosts.
2. All documents concerning payments to SoftLayer by the Web Hosts concerning the Posts, including without limitation, copies of checks, invoices; or wire transfer documentation.
3. All documents concerning communications between SoftLayer and the Web Hosts concerning the Posts, including without limitation, any applications, membership forms, account information, or other submissions by the Web Hosts to SoftLayer or ThePlanet.com.

4. All documents concerning the identities of the Bloggers.
5. All documents concerning the Lichtenstein Defendants.
6. AH documents concerning the AFA Defendants.

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578-623 in PDF file.

Please  
refer to  
PDF file  
to view  
Exhibit B  
as the  
conversion  
to Word  
document

did not  
come out  
clear.

Pages