

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

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EROS MANAGEMENT AND REALTY,  
LLC, PIONEER MANAGEMENT AND  
REALTY, LLC, and JOHN SHARMA,

Plaintiffs,

-against-

AC35 HOTEL PARTNERS LLC,

Defendant.  
-----X

INDEX NUMBER \_\_\_\_\_

**AFFIRMATION OF AUSTIN  
GRAFF IN SUPPORT OF  
MOTION FOR  
PRELIMINARY INJUNCTION**

AUSTIN GRAFF, an attorney admitted to practice law before the Courts of the State of New York, who is not a party to this Action, affirmed to be true under penalties of perjury says:

1. I am an associate of The Scher Law Firm, LLP, the attorneys for the Plaintiffs EROS MANAGEMENT AND REALTY, LLC ("EROS"), PIONEER MANAGEMENT AND REALTY, LLC ("Pioneer"), and JOHN SHARMA ("Sharma") (collectively referred to as "Plaintiffs") in this Action. I am familiar with the relevant facts and circumstances surrounding the allegations that comprise this litigation based upon the records maintained by my office regarding this matter and communications with the Plaintiffs.

2. The Plaintiffs have a November 15, 2020 deadline to pay to the Defendant AC35 HOTEL PARTNERS LLC ("AC35") the sum of \$6.15 million under the terms of the Settlement Agreement and Purchase and Sale Agreement. *See, Exhibit A*, a copy of the Settlement Agreement, at ¶ 2. *See, Exhibit B*, a copy of the Purchase and Sale Agreement, at ¶ 2.

3. The Plaintiffs come before this Court, on an emergency application for a Temporary Restraining Order/Preliminary Injunction to seek more time to pay the amount due. The COVID-19 pandemic, its economic effects, and the Governor's and Mayor's Orders and restrictions have deeply impacted the Plaintiffs and the economics of EROS' hotel, the TRYP Hotel. The Plaintiffs, relying upon the doctrine of impossibility, doctrine of frustration of purpose, promissory estoppel and breach of the covenant of good faith and fair dealing request from this Court relief from the November 15, 2020 deadline.

4. The Plaintiffs rely upon the following exhibits in support of their Motion by Order to Show Cause:

- a. **Exhibit A**, a copy of the Settlement Agreement;
- b. **Exhibit B**, a copy of the Purchase and Sale Agreement;
- c. **Exhibit C**, a copy of the Travel Weekly article from September 30, 2020;
- d. **Exhibit D**, a copy of the Hotel Shocard website;
- e. **Exhibit E**, a copy of the Promissory Notes;
- f. **Exhibit F**, a copy of the Confessions of Judgment;
- g. **Exhibit G**, a copy of the Governor's March 20, 2020 Executive Order;
- h. **Exhibit H**, a copy of AC35's counsel's email;
- i. **Exhibit I**, a copy of AC35's email;
- j. **Exhibit J**, a copy of the Verified Complaint;
- k. **Exhibit K**, a copy of the November 10, 2020 N.Y. Court Rule 202.7(f) letter.

5. Pursuant to the N.Y. Court Rules § 202.7(f), by letter dated November 10, 2020, the Plaintiffs notified AC35 and its counsel that the Plaintiffs will be moving before this Court on November 12, 2020 at 9:30 am for a Temporary Restraining Order. *See, Exhibit K*, a copy of the November 10, 2020 letter.

6. The Plaintiffs respectfully request that the Court grant the Plaintiffs' Motion.

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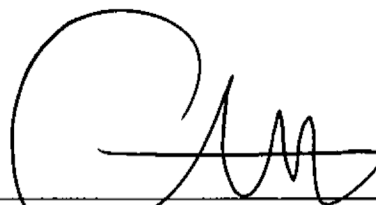
7. To the best of the undersigned's knowledge, information and belief formed after an inquiry reasonable under the circumstances, the within document(s) and contentions contained herein are not frivolous as defined in 22 NYCRR § 130-1.1-a.

8. No previous application has been submitted for the relief requested herein.

**WHEREFORE**, the Defendants request an Order: (a) restraining and enjoining the Defendant AC35 HOTEL PARTNERS LLC, its members, employees, agents, and attorneys from declaring a default against the Plaintiffs EROS MANAGEMENT AND REALTY, LLC, PIONEER MANAGEMENT AND REALTY, LLC, or JOHN SHARMA relating to a certain

Settlement Agreement executed on or about October 31, 2019 and the Purchase and Sale Agreement executed on or about October 31, 2019; and (b) restraining and enjoining the Defendant AC35 HOTEL PARTNERS LLC, its members, employees, agents, and attorneys from enforcing any Promissory Note issued by the Plaintiffs EROS MANAGEMENT AND REALTY, LLC, PIONEER MANAGEMENT AND REALTY, LLC, or JOHN SHARMA relating to a certain Settlement Agreement executed on or about October 31, 2019 and the Purchase and Sale Agreement executed on or about October 31, 2019; and (c) restraining and enjoining the Defendant AC35 HOTEL PARTNERS LLC its members, employees, agents, and attorneys from filing any Confessions of Judgment executed by the Plaintiffs EROS MANAGEMENT AND REALTY, LLC, PIONEER MANAGEMENT AND REALTY, LLC, or JOHN SHARMA relating to a certain Settlement Agreement executed on or about October 31, 2019 and the Purchase and Sale Agreement executed on or about October 31, 2019; (d) restraining and enjoining the Defendant AC35 HOTEL PARTNERS LLC its members, employees, agents, and attorneys from re-claiming any membership interest in the Plaintiff EROS MANAGEMENT AND REALTY, LLC, relating to a certain Purchase and Sale Agreement executed on or about October 31, 2019; and (e) restraining and enjoining the Defendant AC35 HOTEL PARTNERS LLC its members, employees, agents, and attorneys from taking any collection efforts against the Plaintiffs EROS MANAGEMENT AND REALTY, LLC, PIONEER MANAGEMENT AND REALTY, LLC, or JOHN SHARMA relating to any default under that certain Settlement Agreement executed on or about October 31, 2019 and the Purchase and Sale Agreement executed on or about October 31, 2019; and (e) other and further relief which the Court deems appropriate.

Dated: Carle Place, New York  
November 10, 2020

  
Austin Graff

