

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT  
Civil Action No.: 19-3440

2020 FEB -5 A 11: 59  
CLERK OF SUPERIOR COURT  
SUFFOLK COUNTY  
SHERIFF / MAGISTRATE

CVI-TCB COMMERCIAL, LLC

Plaintiff

v.

CRIMSONBIKES, LLC

Defendant

v.

CITIZENS BANK N.A.

Trustee Process Defendant

AFFIDAVIT OF ETHAN CEPLIKAS, ESQUIRE IN SUPPORT OF PLAINTIFF'S MOTION FOR A DEFAULT JUDGMENT

I, Ethan Ceplikas, hereby say and depose the following:

- I am a member of the bar of the Commonwealth of Massachusetts. The Community Builders is the managing member of the Plaintiff, CVI-TCB Commercial, LLC ("TCB"). I have been employed by The Community Builders since 2014 and my current position is General Counsel and Vice President.
- The Community Builders is a Massachusetts non-profit and one of the largest non-profit developers and owners of affordable housing in the country. In addition to being one of the largest non-profit owners and developers of affordable housing, part of the Community Builder's mission is to revitalize neighborhoods. I was personally involved in managing the relationship between TCB and Crimson.

3. On or about June 1, 2011, TCB leased the entire ground floor commercial space located at 390 Western Avenue, Boston, Massachusetts (the "Building").

4. On or about April 1, 2017, TCB and CrimsonBikes, LLC ("Crimson") entered into a sublease whereby Crimson agreed to lease a portion of the Building to operate a bicycle service and retail center and TCB became Crimson's landlord (the "Sublease"). *See Exhibit 1 attached hereto.*

5. Pursuant to Article 3.1 of the Sublease, Crimson agreed to build-out the space at its own expense, subject to some tenant improvement allowance to assist with a portion of the build-out that was to be paid by TCB as a reimbursement once Crimson completed, among other things, the build-out and provided sufficient documentation demonstrating that it had paid its contractors.

6. Additionally, Article 3.1 of the Sublease required Crimson to procure "a performance bond in an amount equal to one hundred percent (100%) of the cost of Tenant's Work for the faithful performance of the contract and also a labor and material payment bond in an amount not less than one hundred percent (100%) of the cost of such work, as security for the payment of persons performing labor and furnishing materials on behalf of the tenant." (collectively "Tenant Bonds").

7. Further, Article 10.1(d) of the Sublease obligated Crimson to indemnify TCB for any claims arising out of Crimson's failure to perform any obligation or covenant required by the Sublease. Each of these terms were essential to the Sublease and TCB would not have entered into the Sublease if these terms had not been included in the Sublease.

8. Shortly after the execution of the Sublease, Crimson entered into a contract with Construction Coordinators, Inc. ("CCI") to perform a customized build-out of Crimson's bicycle service and retail center.

9. Beginning as early as the Spring of 2017, Crimson began missing many build-out deadlines which were required under the Sublease, such as deadlines for obtaining permits and approvals. Also, by late 2017 and early 2018, Crimson began missing rent payments and TCB was forced to initiate eviction proceedings in Brighton District Court.

10. In April 2018, Crimson agreed to vacate the Building and return possession to TCB on or about May 2018. In or around this time period, TCB learned that Crimson had not paid CCI for the build-out of its commercial space. TCB also learned that Crimson did not purchase the contractually required Tenant Bonds to secure payment to CCI. CCI and several of its subcontractors filed mechanics liens on the Property as a result of Crimson's failure to pay.

11. CCI and, at least one subcontractor, filed lawsuits against the owner of the Building in order to perfect their mechanic's liens based on the work they had performed for Crimson. Pursuant to TCB's lease with the owner of the Building, the owner of the Building required TCB to address and resolve the mechanic's liens. Crimson repeatedly advised TCB that it would comply with its obligations to TCB and pay CCI. Crimson, however, did not pay CCI. On or about October 18, 2018, TCB and CCI entered into a settlement agreement whereby TCB paid CCI \$200,000 to resolve its claims against the building owner and dissolve its mechanics' lien and those of CCI's subcontractors. *See Exhibit 2 attached hereto for a copy of the check issued by TCB to CCI.*

12. Article 15.14 of the Sublease states, "Landlord shall have the right...to pay such sums or perform such acts which may be necessary or appropriate by reason of the failure or

neglect of Tenant to perform any of its obligations under this Lease beyond any applicable notice or grace period hereunder. If Landlord, in connection with the foregoing, makes any expenditures or incurs any obligations for payment of money, Tenant agrees to pay to Landlord upon demand all such sums, together with interest thereon at a rate equal to 18%.” To date, despite TCB’s demands, Crimson has not repaid to TCB any of the \$200,000 paid to CCI and the \$1,575 paid to TCB’s attorneys’ incurred by TCB in order to resolve CCI’s claim.

13. Additionally, Section 19.2 provides for the recovery of “reasonable attorneys’ fees and disbursements” for a party that obtains a judgment against the other in a “proceeding against the other party in connection with this lease...”

14. TCB seeks a sum certain from Crimson in the amount of \$201,575 plus \$5,322 in reasonable attorneys’ fees and costs.

15. The \$201,575 is comprised of the following categories:

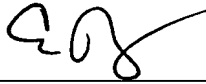
- (a) \$200,000 – paid to CCI; and
- (b) \$1,575 paid to Pierce Mandell LLP who represented TCB in settling the CCI claim;

16. In this action, pursuant to Section 19.2 of the lease, TCB seeks reasonable attorneys’ fees and costs in the as follows:

- (c) \$4,920.00 in attorneys’ fees for Dunbar Goloboy LLP who represents TCB in this case; and
- (d) \$402 in costs incurred in this case, which are comprised of the filing fee, summons (\$290), and process server fees (\$112).

STATED UNDER THE PENALTIES OF PERJURY THIS 3rd DAY OF

February, 2020



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Ethan Ceplikas, Esquire  
General Counsel, The Community Builders, Inc.