

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

RURAL COMMUNITY ASSISTANCE CORPORATION,

Plaintiff,

v.

No. _____

MAJOR MARKET, INC.,

Defendant.

COMPLAINT FOR DEBT AND MONEY DUE AND FORECLOSURE OF LEASEHOLD

Plaintiff, Rural Community Assistance Corporation (“RCAC”), by its counsel Modrall, Sperling, Roehl, Harris & Sisk, P.A. (Spencer L. Edelman and Josh B. Hirsch), brings this Complaint for Debt and Money Due and Foreclosure of Leasehold against Major Market, Inc. (“Major Market”), and alleges as follows:

I. GENERAL STATEMENT

On October 17, 2017, Major Market and RCAC entered into a Loan Agreement (“Loan Agreement”), whereby RCAC would loan funds to RCAC (the “Loan”). The original advance of \$544,000.00 was evidenced by a Promissory Note (“Note”) dated October 17, 2017. The Loan was secured by, among other things a certain Leasehold Mortgage dated October 17, 2017 (“Leasehold Mortgage”) pledging Major Market’s interest in a Lease dated May 5, 2017 (“Lease”) from the Zuni Tribe, as landlord, to Major Market, as tenant. The Loan was also secured by a Commercial Security Agreement (“Security Agreement”) pledging Major Market’s personal property, described in detail in the Security Agreement.¹ Beginning in 2019 RCAC and Major

¹ The Loan was also secured by personal guarantees from Major Market’s principals Darrell Tsabetsaye and Roscelia Him. Although RCAC is not bringing claims under these personal guarantees in this suit, RCAC expressly

Market agreed to several modifications to the Loan at Major Market's request, including deferring repayment, extending interest-only periods, and authorizing additional advances that increased the principal amount of the Loan to \$1,740,000. Despite these efforts and despite all written demand to cure being made, multiple events of default have occurred and are continuing under the Loan. These defaults include, 1) Major Market having missed multiple monthly installments, including the entire period of January 1, 2024 to the present, 2) Loan proceeds having been distributed to for personal use, and 3) failure to pay payroll taxes for 2023 and 2024. Accordingly, RCAC has accelerated all amounts due under the Loan and seeks judgment for the entire Loan balance (and attorney's fees expended in collecting the Loan) and foreclosure of the collateral granted under the Leasehold Mortgage and Security Agreement.

II. THE PARTIES

1. RCAC is a Non-profit Public Benefit Corporation that has its principal place of business and is incorporated in California.
2. Defendant Major Market Inc. is a New Mexico corporation that has its principal place of business in New Mexico.

III. JURISDICTION AND VENUE

3. There is complete diversity of citizenship as to all parties.
4. The amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.
5. The court has subject matter jurisdiction under 28 U.S.C. § 1332.

reserves all rights under such guarantees, including to bring claims against Mr. Tsabetsaye and Ms. Him via separate action.

6. The claims at issue in this action arose in the District of New Mexico, and Defendant is a citizen of New Mexico. Venue is therefore proper in this Court under 28 U.S.C. § 1391.

IV. CAUSES OF ACTION

LOAN

7. On October 17, 2017, RCAC and Major Market entered into a Loan Agreement evidencing the terms and conditions of a Loan from RCAC to Major Market. A true and accurate copy of the Loan Agreement is attached as **Exhibit A**.

8. On October 17, 2017, Major Market executed the Note evidencing a debt under the Loan to Major Market in the original principal amount of \$544,000. A true and accurate copy of the Note is attached as **Exhibit B**.

9. Pursuant to that Note, RCAC loaned Major Market the principal amount of \$544,000.00, and funds were advanced by RCAC in that amount.

10. RCAC is the holder of the Note

11. As security for payment of the Note and other obligations under the Loan, Major Market executed a Leasehold Mortgage, covering a lease of real property and improvements in McKinley County, New Mexico, on the Zuni Indian Reservation. A true and accurate copy of the Leasehold Mortgage is attached to this Complaint as **Exhibit C**.

12. Pursuant to the Leasehold Mortgage, Major Market granted a lien in favor of RCAC on Lease No.: 4200039587 dated May 5, 2017 by and between Major Market as tenant and the Pueblo of Zuni as landlord, approved by the United States Department of the Interior, Bureau of Indian Affairs on May 15, 2017. A true and accurate copy of the Lease is attached hereto as **Exhibit D**.

13. The Lease conveyed an interest in certain real property and improvements located thereon described as follows:

- a. A certain tract of land situated within the W/2 NW/4 of Section 27, Township 10 North, Range 19 West, New Mexico Principal Meridian (NMPM), Zuni Indian Reservation, McKinley County, New Mexico, containing 0.65 acres, more or less, more particularly described on the Boundary Survey plat of Ken Wato Tract signed by Kimo Natewa, Civil Engineer dated September 25, 1978;
- b. A parcel of land located in the W/2 NW/4 of Section 27, Township 10 North, Range 19 West, NMPM, Zuni Indian Reservation, McKinley County, State of New Mexico, containing 0.75 acres, more or less, more particularly described on the Boundary Survey plat of Sol Ondelacy Tract signed by Paul Garding, Civil Engineer, dated March 10, 1982.

This property is defined as the “Real Property”.

14. The Lease expressly permitted Major Market to encumber the Lease by a leasehold mortgage and provided specific requirements for the approval of such encumbrance and the enforcement of such encumbrance.

15. The approval of the Leasehold Mortgage is reflected by the signature of the Superintendent, Bureaus of Indian Affairs, Zuni Agency dated November 3, 2017. *See* Leasehold Mortgage at 6.

16. The approval of the Leasehold Mortgage is reflected by Resolution No. M70-2017-P112 of the Zuni Tribal Council dated November 1, 2017. A true and accurate copy of Resolution No. M70-2017-P112 is attached hereto as **Exhibit E**.

17. On November 16, 2017 the Leasehold Mortgage was recorded in the United States Department of the Interior, Bureau of Indian Affairs, Land Titles and Records Office as Document Number 7211739587.

18. RCAC is the Mortgagee under the Leasehold Mortgage.

19. By virtue of properly recording the Leasehold Mortgage, RCAC's lien against the Lease is properly perfected.

20. As additional security for the Loan on October 23, 2017, Major Market executed and delivered to RCAC a Commercial Security Agreement granting RCAC a security interest in all inventory, chattel paper, accounts, accounts receivable, general intangibles, furniture, fixtures, and equipment, including all after acquired property, accessions, additions, replacements, and substitutions, all records relating to such personal property, and all proceeds relating to such personal property including, without limitation, the property described in Exhibits A and B to the Security Agreement and all other Collateral as defined in the Security Agreement (the "Personal Property"). A true and accurate copy of the Security Agreement is attached hereto as **Exhibit F**.

21. RCAC is the secured party under the Security Agreement.

22. On November 21, 2017, RCAC filed a UCC Financing Statement (the "UCC-1") with the New Mexico Secretary of State as Filing Number 20170058897H. A true and accurate copy of the UCC-1 is attached hereto as **Exhibit G**.

23. On November 27, 2017, RCAC recorded a UCC Financing Statement (the "Fixture Filing") with the McKinley County Clerk as Document No. 382697. A true and accurate copy of the Fixture Filing is attached hereto as **Exhibit H**.

24. By virtue of filing the UCC-1 and recording the Fixture Filing, RCAC's lien against the Personal Property is properly perfected.

25. Major Market and RCAC entered into eight loan modification agreements (collectively “Modifications”) evidencing the following modifications to the Loan.

- a. On or about January 15, 2019, Major Market and RCAC entered into Modification extending the period of interest only payments and revising the terms of payment of the Loan as set forth in Modification Agreement 1.
- b. On or about June 3, 2019, Major Market and RCAC entered into a Modification increasing the principal amount loaned from RCAC to Major Market to the amount of \$1,253,343.00, extending the period of interest only payments, and making other changes to the Loan Agreement, Note, and Mortgage as set forth in Modification Agreement 2.
- c. On or about June 19, 2019, Major Market and RCAC entered into a Modification increasing the principal amount loaned from RCAC to Major Market to the amount of \$1,500,000.00, and making other changes to the Loan Agreement, Note, and Mortgage as set forth in Modification Agreement 3.
- d. On or about November 27, 2019, Major Market and RCAC entered into a Modification extending the period of interest only payments and revising the terms of payment as set forth in Modification Agreement 4.
- e. On or about March 23, 2020, Major Market and RCAC entered into a Modification increasing the principal amount loaned from RCAC to Major Market to the amount of \$1,740,000.00, and making other changes to the Loan Agreement, Note, and Mortgage as set forth in Modification Agreement 5.
- f. On or about October 29, 2020, Major Market and RCAC entered into a Modification deferring three interest payments, extending the period of interest-

only payments, and revising the terms of payment as set forth in Modification Agreement 6.

- g. On or about April 28, 2021, Major Market and RCAC entered into a Modification deferring six interest payments, extending the period of interest-only payments, and revising the terms of payment as set forth in Modification Agreement 7.
- h. On or about September 17, 2021, Major Market and RCAC entered into a Modification reducing the non-default interest rate to 3.55% effective August 1, 2021, restructuring the loan to be a fully amortized loan maturing August 1, 2051, and deferring six interest as set forth in Modification Agreement 8.

The Modifications are collectively attached to this Complaint as **Exhibit I**.

- 26. All funds required to be advanced by the Modifications were advanced by RCAC.

DEFAULT

27. As described by the Note, Leasehold Mortgage, and Loan Agreement, an Event of Default under the Loan occurs if Major Market fails to pay any principal or interest when due under the terms of the Note, or Major Market's failure to pay when due any and all amounts under the Loan

28. Major Market has failed to pay the monthly installments due January 1, 2024 through the present.

29. Major Market remains in default under the terms of the Note due to Major Market's failure to pay any and all amounts under the Loan Agreement, Note or Mortgage when due.

30. On June 12, 2024, RCAC provided Major Market with a Notice of Default. A true and accurate copy of this Notice of Default is attached as **Exhibit J**.

31. Pursuant to the requirements of the Leasehold Mortgage, the Zuni Pueblo was provided notice for a first opportunity to cure Major Market's default or purchase Major Market's interest in the Lease within 60 days after receipt of notice. This Notice is attached to this Complaint as **Exhibit K**.

32. The Zuni Pueblo has not elected to exercise its right of first opportunity to cure the default or purchase the Lease.

33. Despite the Notice of Default, Major Market has not cured the default under the Note, Leasehold Mortgage, and Loan Agreement.

34. Because of the continuing default, RCAC has declared all amounts under the Loan to be immediately due and payable.

AMOUNTS DUE AND ENFORCEMENT

35. As of June 13, 2025, the total amount due from Major Market to RCAC was \$1,810,316.49, computed as follows:

- a. Principal of \$1,703,466.49, plus
- b. Accrued interest of \$95,748.98, plus
- c. Late fees of \$6,854.06, plus
- d. Costs of collection, including attorneys fees of \$38,819.35.

36. Interest continues to accrue after June 13, 2025, at the rate of 3.55% per year (\$165.97 per day).

37. Because of the default, the Major Market is liable and responsible for payment of all costs incurred by RCAC in collecting any amount due, which costs include the reasonable fees and expenses of RCAC's attorneys.

38. The entire amount owed by Major Market to RCAC is now due and payable.

39. RCAC's lien is the senior consensual lien on the Lease and Personal Property

40. RCAC has elected to exercise its right pursuant to the Leasehold Mortgage and Security Agreement to judicially foreclose its liens on the Lease and Personal Property.

41. Pursuant to NMSA 1978, § 39-5-18 the redemption period on the Lease following any judicial foreclosure sale is nine months.

42. No redemption period (except for the right to redeem by paying the full amount of the Loan under the UCC, NMSA 1978, § 55-9-623) applies following the judicial sale of the Personal Property.

RELIEF

Count I – Debt and Money Due

43. Judgment should be entered in favor of RCAC and against Major Market for all amounts due under the loan, plus interest, costs of collection, and any other amounts advanced to protect RCAC's interest in the Lease and Personal Property, until the entire indebtedness has been paid.

44. RCAC has been required to employ counsel to collect the amount due on the Note and to institute and prosecute this suit, thereby incurring attorney's fees and costs which are additional indebtedness secured by the Leasehold Mortgage and Security Agreement and which are recoverable by RCAC.

WHEREFORE, RCAC prays that Judgment be entered:

A. In favor of RCAC and against Major Market, Inc. in the amount of \$1,844,888.88, as of June 13, 2025, computed as follows:

1. Principal of \$1,703,466.49, plus
2. Accrued interest of \$95,748.98, plus

3. Late fees of \$6,854.06, plus

4. Costs of collection, including attorneys fees of \$38,819.35

B. Awarding RCAC interest from June 13, 2025, at the rate of 3.55% per annum until the judgment is paid in full.

C. Awarding RCAC all fees and costs of collection or enforcement thereafter, including all documentary evidence, abstracts and title reports; plus any and all amounts which RCAC may be required to pay for which recovery can be had by RCAC in accordance with the provisions of any of the loan documents, as well as any amounts paid or advanced by RCAC to preserve or protect the Lease or Personal Property, plus interest on all such amounts.

Count II – Foreclosure

45. RCAC has a perfected lien on the Lease and Personal Property.

46. RCAC's liens on the Lease and Personal Property is senior to any Defendants to this action.

47. The lien of RCAC against the Property should be foreclosed in the manner prescribed by law, in order to satisfy the indebtedness owed under the Loan, and said judgment should provide for the immediate sale of the Major Market's interest in the Lease and Personal Property; and permit RCAC to bid in all or any portion of the amount of this indebtedness at the foreclosure sale or sales.

48. The Court should appoint a Special Master to conduct the foreclosure sale or sales and report to the Court and the parties the results of any sale and the application of proceeds thereof.

WHEREFORE, RCAC prays that Judgment be entered:

A. Foreclosing RCAC's liens against the Lease and Personal Property and ordering the Lease and Personal Property securing the same to be sold according to the law and practice of this Court, and that the proceeds thereof be applied to the payment of the amount due RCAC as set forth above, and that such liens be declared prior and paramount to the interest of all Defendants.

B. The Defendant, and all persons claiming under, by, or through them, be barred and foreclosed of any right, title, interest, or claims in or to the Lease and Personal Property.

C. Appointing a Special Master to effect sale of the Lease and Personal Property, in accordance with the orders of this Court and applicable New Mexico law, and foreclosing the interests of any Defendant in the same.

D. Allowing RCAC to purchase the Lease and/or Personal Property at the foreclosure sale(s), that the Special Master, to be appointed, assign the Lease and Personal Property to the purchaser or purchasers thereof.

MODRALL, SPERLING, ROEHL, HARRIS
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