

CIVIL ACTION COVER SHEET TRIAL COURT OF MASSACHUSETTS
 SUPERIOR COURT DEPARTMENT DOCKET # 12-3335 B
 COUNTY OF _____

PLAINTIFF(S) **Carey Realty LLC and City Square Holdings LLC**
DEFENDANT(S) **Olive Associates, Inc. and Todd English**

Plaintiff Atty Marjorie S. Cooke Type Defendant's Attorney Name _____
 Address Cooke Clancy & Gruenthal LLP One Liberty Sq. Defendant Atty _____
 City Boston State MA Zip Code 02109 City _____ State _____ Zip Code _____
 Tel. +1 (617) 428-6800 BBO# 97,800

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)
 CODE NO. TYPE OF ACTION (specify) TRACK IS THIS A JURY CASE?
A08 Sale or Lease of Real Estate - Fast Track Yes No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS
 (Attach additional sheets as necessary)

A. Documented medical expenses to date:
 1. Total hospital expenses
 2. Total doctor expenses
 3. Total chiropractic expenses
 4. Total physical therapy expenses
 5. Total other expenses (describe)

B. Documented lost wages and compensation to date
 C. Documented property damages to date
 D. Reasonably anticipated future medical expenses
 E. Reasonably anticipated lost wages and compensation to date
 F. Other documented items of damages (describe)

G. Brief description of plaintiff's injury, including nature and extent of injury (describe)

Subtotal _____
 Total \$ _____

RECEIVED
 CIVIL ACTION REPORT
 2012 SEP -7 PM 2:43
 MICHAEL JOSEPH DONOHUE
 CLERK OF SUPERIOR COURT

CONTRACT CLAIMS
 (Attach additional sheets as necessary)
 Provide a detailed description of claim(s):
Default of lease agreement for nonpayment of rent in amount of \$722,899.51 and breach of personal guaranty agreement
 TOTAL \$ 722,899.51

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT
None

I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods.
 Signature of Attorney of Record Marjorie S. Cooke Date: September 6, 2012
 A.O.S.C. 3-2007

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.:

~~12-3335~~ B

CAREY REALTY LLC and CITY SQUARE
HOLDINGS LLC,

Plaintiffs,

v.

OLIVE ASSOCIATES, INC. and TODD ENGLISH,

Defendants.

2012 SEP -7 PM 2:43
MICHAEL JOSEPH DOROVY
CLERK/MAGISTRATE

COMPLAINT

Plaintiffs Carey Realty LLC and City Square Holdings LLC, for their Complaint against defendants Olive Associates, Inc. and Todd English, allege as follows:

Introduction

This is an action for breach of a lease agreement and a personal guaranty based on defendants' failure to pay rental amounts in excess of Seven Hundred Twenty-Two Thousand Dollars due and owing to the plaintiffs.

Parties

1. Plaintiff Carey Realty LLC ("Carey") is a Delaware limited liability company with a principal place of business at 33 Broad Street, Boston, Massachusetts. Carey is one of the owners of the building located at 15-18 City Square in Charlestown, Massachusetts.

2. Plaintiff City Square Holdings LLC ("City Square") is a Massachusetts limited liability company with a principal place of business at 300 Trade Center, Woburn,

Massachusetts. City Square and Carey jointly own the building located at 15-18 City Square in Charlestown, Massachusetts as tenants-in-common (collectively, "Landlord").

3. Defendant Olive Associates, Inc. ("Olive" or "Tenant") is a Massachusetts corporation with a principal place of business at 10 City Square, Charlestown, Massachusetts. Olives owns and operates the Charlestown restaurant named "Olives."

4. Defendant Todd English ("Mr. English") is, upon information and belief, a Massachusetts citizen who resides at 95 Commercial Wharf, Boston, Massachusetts. Mr. English is the President of Olive and, through that entity, owns and operates Olives.

Jurisdiction and Venue

5. This Court has subject matter jurisdiction over this case pursuant to M.G.L. c. 212, § 3, as plaintiff seeks damages in excess of \$25,000. This Court has personal jurisdiction over the defendants as each resides in the Commonwealth or, alternatively, pursuant to M.G.L. c. 223A, § 3.

6. Venue is proper in this Court as plaintiff Carey resides in Suffolk County.

Facts

7. On October 16, 1991, defendant Olive entered into a written lease agreement with Jonathan G. Davis in his capacity as Trustee of City Square Development Trust ("City Square Trust"), pursuant to which Olive agreed to lease approximately 4,385 square feet (the "Original Premises") at 15-18 City Square in Charlestown, Massachusetts (the "Lease"), to be used for the operation of Olives restaurant. The original Lease term was to expire on January 31, 2002. A true and correct copy of the Lease is attached hereto as Exhibit A.

8. Ten City Square LLC ("Ten City Square") became the successor-in-interest of City Square Trust with regard to the Lease. In or about 2007, plaintiffs City Square and Carey

became the successors-in-interest of Ten City Square with regard to the Lease, and became Olive's Landlord thereunder.

9. The Lease was amended in writing on a number of occasions. On July 27, 2001, City Square Trust and Olive entered into the "First Amendment of Ten City Square Lease" pursuant to which the Lease term was extended from February 1, 2002 to January 31, 2012 ("First Extended Term"). Olive was responsible under the Lease for paying monthly on the first day of each month base rent and additional rent for a portion of the annual real estate taxes and operating expenses of the building. The base rent was increased for years 6 through ten of the extended term to \$230,000 per annum, payable monthly in advance. In the First Amendment, Olive also agreed to pay a percentage of Olives' gross sales above certain breakpoints as additional rent during the extended term (the "Percentage Rent"). A true and correct copy of the First Amendment of Ten City Square Lease is attached hereto as Exhibit B.

10. In March 2006, Ten City Square, the successor-in-interest of City Square Trust, and Olive entered into the "Second Amendment to Lease," pursuant to which the Original Premises was expanded to include an additional 1,749 square feet of space in the basement of the building (the "Storage Premises"). The base rent was increased by \$30,000 per annum for the Expanded Premises, payable by Olive monthly in advance. A true and correct copy of the Second Amendment to Lease is attached hereto as Exhibit C.

11. On April 30, 2007, Ten City Square and Olive entered into the "Third Amendment to Lease," pursuant to which the Lease term was extended a second time from February 1, 2012 to January 31, 2017 (the "Second Extended Term"). The monthly base rent during the Second Extended Term was increased to \$260,000 per annum for the Original Premises and remained \$30,000 per annum for the Storage Premises. Olive remained obligated

to pay Percentage Rent during the Second Extended Term. A true and correct copy of the Third Amendment to Lease is attached hereto as Exhibit D.

12. In addition to the monthly base rent, Olive is obligated under Section 2.02 of the Lease to pay monthly its share of the annual property taxes and operating expenses for the building of which the Premises are a part.

13. On April 16, 2009, the Landlord and Olive entered into the "Fourth Amendment to Lease," pursuant to which they agreed that during the period March 1, 2009 to February 28, 2010 (the "Deferral Period"), Olive could defer \$4,000 of its monthly base rent and that it would repay to Landlord the deferred rent in equal monthly installments of \$2,000 during the period from March 1, 2010 through February 28, 2012. A true and correct copy of the Fourth Amendment to Lease is attached hereto as Exhibit E.

14. On April 16, 2009, as further consideration for the Landlord's agreement to permit Olive to defer rent during the Deferral Period, Mr. English agreed to personally guaranty Olive's obligations under the Lease, including all payment obligations. A true copy of the "Guaranty" provided by Mr. English to the Landlord is attached hereto as Exhibit F.

15. In January 2010, Olive defaulted on the Lease by failing to pay the monthly rental amount and other sums due by the first day of that month. Olive did not pay the amount of \$24,362.67 due on January 1, 2010 until February 2, 2010.

16. In February and March 2010, Olive again failed to pay the rental amounts and other sums owed for those months by the first of the month. Olive did not pay the full \$24,362.67 due by February 1, 2010 until April 12, 2010, and did not pay the \$28,362.67 due by March 1, 2010 until May 10, 2010.

17. Olive failed to pay the full rent amount and other sums of \$28,362.67 due for April 2010, instead paying only \$22,274.66 in a number of installments ending with a final installment of \$6,500 on August 17, 2010. Olive continues to owe \$6,088.01 for April 2010, excluding interest.
18. Olive failed to pay the monthly rent and other sums due on May 1, 2010 in the amount of \$28,362.67 by the due date. Despite written demand, Olive remains in default of its obligation to pay the amount due for May 2010.
19. In late May 2010, a grease fire damaged a portion of the Premises. The fire was caused by Olive's negligence in failing to clean the grease from the ductwork that served the Premises, allowing it to accumulate and become combustible.
20. After the fire, Olive continued to default on its monthly payment obligations under the Lease. From June 1, 2010 through May 31, 2012, Olive paid none of the monthly rental and other amounts due under the Lease.
21. In June 2012, Olive defaulted on the Lease by failing to pay the rent and other amounts due by the first of the month. Olive did not pay the full \$29,330.67 due by June 1, 2012 until June 29, 2012.
22. In July 2012, Olive again defaulted on the Lease by failing to pay the rent and other amounts due by the first of the month. Olive did not pay the full \$29,330.67 due by July 1, 2012 until August 15, 2012.
23. Olive failed to pay the monthly rent and other amounts due of \$29,330.67 by August 1, 2012. Olive has paid only \$11,834.67 of the amount due for the month of August.
24. Olive has failed to pay the rent due for September 2012 in the amount of \$29,330.67.

25. Pursuant to the Fourth Amendment to Lease, Olive agreed to begin repaying the \$48,000 of rent deferred during the Deferral Period commencing on April 1, 2010 in \$2,000 monthly installments. Olive has failed to pay any of the rent deferred during the Deferral Period.

26. Pursuant to Section 14.03 of the Lease, Olive agreed to pay to Landlord interest at the rate of 18% per annum for each late payment from the date the payment was originally due.

27. Olive owes \$722,899.51 to Landlord in unpaid rent and other amounts due under the Lease plus interest at the rate per annum provided for therein.

28. Mr. English is personally liable to Landlord for the foregoing amount pursuant to his personal Guaranty of Olive's obligations under the Lease.

29. On July 25, 2012, the Landlord, through counsel, made written demand on the Defendants for the immediate payment of the amount then due and owing under the Lease. The Defendants failed and refused to pay the amount demanded.

Count I
(Breach of Contract – Olive Associates, Inc.)

30. Plaintiffs repeat and incorporate herein the foregoing paragraphs 1 through 29 above as if fully set forth herein.

31. Olive was obligated to pay the monthly rent and other sums provided for in the Lease on the first day of each month in advance.

32. Olive has defaulted on and is in breach of the Lease by its failure to pay monthly rent and other amounts due and owing to Landlord plus interest totaling \$722,899.51.

33. As a result of Olive's breach of the Lease, the Landlord has suffered damages in an amount to be determined at trial.

Count II
(Breach of Guaranty – Todd English)

34. Plaintiffs repeat and incorporate herein the foregoing paragraphs 1 through 33 above as if fully set forth herein.

35. Under the terms of the Guaranty, Mr. English guaranteed the Landlord that in the event of a default by Olive, he would perform the covenants and obligations under the Lease. He also guaranteed to the Landlord that he would pay the costs of collection, including attorneys' fees.

36. Mr. English has failed to honor his obligations under the Guaranty.

37. As a result of Mr. English's failure to honor his obligations under the Guaranty, the Landlord has suffered damages in an amount to be determined at trial.

Prayer for Relief

WHEREFORE, plaintiffs Carey Realty LLC and City Square Holdings LLC respectfully request that the Court:

A. Enter judgment against defendant Olive Associates, Inc. for breach of the Lease and award plaintiffs all damages they have suffered as a result of said breach, plus interest, costs and attorneys' fees;

B. Enter judgment against defendant Todd English for breach of the Guaranty and award plaintiffs all damages they have suffered as a result of said breach, plus interest, costs and attorneys' fees; and

C. Grant such further relief as this Court deems just and proper.

Respectfully submitted,

**CAREY REALTY LLC and CITY SQUARE
HOLDINGS LLC**

By their attorneys,



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Dated: September 7, 2012