SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SARATOGA

ROBERT C. MORGAN and ROBERT J. MOSER,

Plaintiffs,

-against-

RICHARD S. BROVITZ; FIX LAW P.C., f/k/a FIX SPINDELMAN BROVITZ & GOLDMAN, P.C.; JOHN DOES 1-10, same being unidentified individuals; and XYZ CORPS 1-10; same being unidentified entities,

Defendants.

Index No. 20151985

COMPLAINT

Plaintiffs, Robert C. Morgan ("Morgan") and Robert J. Moser ("Moser") (together "Plaintiffs"), by and through their undersigned counsel, as and for their Complaint against defendants, Richard S. Brovitz ("Brovitz"); Fix Law P.C., f/k/a Fix Spindelman Brovitz & Goldman, P.C. (the "Fix Firm") and John Does 1-10 and XYZ Corps 1-10 (collectively "Defendants"), state as follows:

INTRODUCTION

1. Plaintiffs bring this action for legal malpractice against their former attorneys -- Brovitz and the Fix Firm -- arising out of the irreconcilable personal conflicts of interest and professional negligence that severely compromised Defendants' representation of Plaintiffs as personal guarantors of $128,000,000 in commercial mortgage loans (the "Loans"). Ignoring obvious and significant conflicts of interest, Brovitz and the Fix Firm represented Plaintiffs in all aspects of the underlying relevant transactions, from the initial acquisition of the mortgaged properties, to their refinancing, to the ongoing operation and management of the mortgaged properties and the subsequent forbearance and loan modification/workout negotiations which

continued into 2013. At each phase of the representation, Brovitz and the Fix Firm acted negligently and/or recklessly, deviated from accepted standards of care, and otherwise disregarded their legal and ethical duties to provide sound, prudent and unbiased legal advice to Plaintiffs in connection with one of the largest business ventures of their lives.

2. At all times divided loyalties and conflicting interests, chiefly Brovitz's own equity interest in a portfolio of mortgaged properties securing one of the Loans, prevented Defendants from exercising the judgment, skill, and care necessary to properly and zealously represent their clients. First, Brovitz allowed his own self-interest to dilute the duty of loyalty he owed to Plaintiffs by failing to disclose the risk of tens of millions of dollars in potential personal liability arising from a technical violation of certain so-called "single-purpose entity" covenants contained within the loan documents. Instead of cautioning Plaintiffs against this substantial personal exposure on what Plaintiffs were counseled were effectively non-recourse loans, Brovitz rushed Plaintiffs to execute guarantees and close on the Loans -- all so Brovitz, who bore no risk of personal liability, could receive a distribution of more than $700,000 at the Loans' closings in addition to the substantial legal and title fees earned by Defendants in connection with the transactions.

3. Brovitz's conflicting interests also manifested themselves once the Loans entered default. At that time Brovitz convinced Plaintiffs to personally post a $5,000,000 letter of credit on behalf of the borrowers to secure a brief six (6) month forbearance period. Brovitz convinced and reassured Plaintiffs that, regardless of the outcome of the workout discussions and/or foreclosure proceedings, the $5,000,000 letter of credit would be returned to them and there was, therefore, no risk in posting the letter of credit and extending the forbearance period rather than simply conveying title to the mortgaged properties to the lender. Incredibly, however, Brovitz

and the Fix Firm, who negotiated the forbearance agreement on Plaintiffs' behalf, failed to provide for the return of the letter of credit in that contract. In other words, Plaintiffs' $5,000,000 was as good as gone as soon as it was posted, exposing Plaintiffs to substantial personal losses on what were supposed to be non-recourse loans. Of course, Brovitz had significant personal and pecuniary motivations to obtain the forbearance – namely the sale of the mortgaged properties he possessed an ownership interest in. Brovitz utilized the six (6) month forbearance period to complete the sale of those properties, from which he received a substantial economic gain, including certain tax benefits.

4. Despite these inherent conflicts of interest and, in direct violation of his ethical obligations, Brovitz never: (i) disclosed in writing to Plaintiffs the risks of proceeding with these transactions; (ii) advised Plaintiffs of the benefits of obtaining independent counsel; or (iii) obtained Plaintiffs' informed written consent to the terms of the transaction and Defendants' continued legal representation. Instead, Brovitz avoided those critical disclosures and concealed material facts from Plaintiffs to ensure his own financial advancement.

5. When the six (6) month forbearance period expired the lender commenced foreclosure proceedings and immediately threatened Plaintiffs with claims of full-recourse liability as a result of alleged "single purpose entity" covenant violations. The lender repeatedly threatened to draw upon the $5,000,000 Letter of Credit, forcing Plaintiffs to commence suit in an effort to enjoin such a draw. After over two (2) years of multi-faceted litigation, Plaintiffs were ultimately forced to pay the lender $8,638,000 to obtain a release from their obligations as guarantors under the Loans -- a liability Plaintiffs would never have been exposed to but for Defendants' wrongful acts and omissions.

6. In sum, Defendants' self-interest and failure to conform to the accepted standards of care directly caused Plaintiffs to suffer millions of dollars in financial losses for which Brovitz and the Fix Firm should be held accountable.

IDENTIFICATION OF THE PARTIES

7. Moser is a resident of Saratoga County, New York, a Guarantor of the Loans and an equity holder in the various borrower entities which formerly owned the mortgaged properties securing the Loans.

8. Morgan is a resident of Monroe County, New York, a Guarantor of the Loans and an equity holder in the various borrower entities which formerly owned the mortgaged properties securing the Loans.

9. The Fix Firm is a law firm formed and existing under the laws of the State of New York, with its principal place of business located at 295 Woodcliff Drive, Suite 200, Fairport, Monroe County, New York 14450.

10. Brovitz is an attorney licensed to practice law in the State of New York and a principal and/or shareholder in the Fix Firm. According to marketing materials that have recently been removed from his internet biography, Brovitz has spent more than thirty (30) years representing entrepreneurs, lenders and numerous companies in thousands of transactions. Until the filing of this action Brovitz also touted the fact that his representative real estate transactions include a $78 million dollar refinance of twelve (12) properties located in eight different states and a $67 million sale of five (5) RV Parks located in three states. Those transactions are the very same deals tainted by his professional negligence and self-dealing at issue here.

11. John Does 1-10 are yet to be identified individuals who assisted Brovitz and the Fix Firm in the representation of Plaintiffs.

12. XYZ Corps 1-10 are yet to be identified entities that assisted Brovitz and the Fix Firm in the representation of Plaintiffs.

FACTS COMMON TO ALL COUNTS

A. The Parties' Relationship Develops

13. Brovitz's relationship with Morgan originated in the 1990s. At that time, and for more than two decades thereafter, Brovitz and the Fix Firm served as general counsel to Morgan, his family and his business ventures and consistently performed and/or supervised legal work for Morgan and the entities in which Morgan maintained a financial interest. Among other things, Morgan relied on Brovitz and the Fix Firm to represent his interests in connection with real estate investment, financing and acquisitions throughout the State of New York.

14. Commencing in the early 2000s, Brovitz began pressing Morgan for the opportunity to acquire an ownership interest in one of Morgan's real estate investments. Brovitz impressed upon Morgan that, as a trusted advisor, he had "earned" the right to have a direct financial stake in Morgan's real estate investments and reap the rewards arising therefrom.

15. In exchange for his proposed equity stake Brovitz did not, however, offer to invest any of his own funds or provide any other economic benefit. Instead, Brovitz stressed to Morgan that in lieu of capital Brovitz could bring his professional relationships to bear in a manner that would far exceed his role as "outside counsel" – a role Brovitz made clear he also intended to retain. Brovitz assured Morgan that it would be to his substantial benefit to have a trusted advisor as a stakeholder in his deals. Over time, Brovitz's overtures placed Morgan in an increasingly untenable position. A rejection by Morgan would clearly be perceived as an affront to the parties' relationship and a slight of Brovitz's perceived professional acumen.

16. Concomitantly with Brovitz's overtures, Morgan and Moser began exploring potential joint investments in several recreational vehicle resort properties throughout the Eastern

Seaboard and the Midwest. In connection with those proposed transactions Morgan introduced Moser to Brovitz. Brovitz, sensing an opportunity to advance his own economic interests and the prestige of the Fix Firm, immediately expressed a desire to represent Plaintiffs in these sophisticated transactions, which would include significant legal work related to the property acquisitions in numerous states and securing tens of millions of dollars in financing. Moser, relying on Brovitz's long-standing relationship with Morgan and purported skill and experience, agreed to the Fix Firm's representation in the upcoming ventures.

B. Brovitz Partners With Plaintiffs

17. Brovitz's overtures to secure an equity stake in one of Morgan's ventures continued, with Brovitz shifting his focus to the upcoming recreational vehicle resort deals. Confronted with the same pressures he had regarding Brovitz's earlier requests for an equity interest, Morgan agreed to include Brovitz as a minority partner in one of the upcoming recreational vehicle resort investment opportunities.

18. Specifically, as part of their planned investment strategy, in or around October 2005 Morgan and Moser, through entities under their ownership and control, acquired three recreational vehicle parks located in Maine and Ohio (the "Indian Creek Portfolio"). Brovitz, both individually and through his entity, JJAR Wild Acres, LLC, was afforded a ten percent (10%) equity interest in the Indian Creek Portfolio. Brovitz did not invest any of his own money to secure this ownership interest.

19. Brovitz, along with the Fix Firm, also represented the borrower entities and Plaintiffs in connection with the acquisition and financing of the Indian Creek Portfolio, work for which the Fix Firm and Brovitz received substantial legal fees. Upon information and belief

Brovitz also served as the closing agent for this transaction and obtained additional title fees in connection with the properties' acquisition.

20. At no point in time, however, did Brovitz disclose to Plaintiffs the potential conflict of interest arising from his legal representation of Plaintiffs in the face of his own direct, personal involvement as a party to the transaction.

21. In fact, in direct violation of New York's Disciplinary Rules and Code of Professional Responsibility that were then in effect, Brovitz and the Fix Firm undertook the representation when a disinterested lawyer clearly would have recognized the inherent conflict and bowed-out, thus violating Disciplinary Rule 5-101. Likewise, in violation of Disciplinary Rule 5-104, Defendants failed to provide Plaintiffs with written disclosure of the specific terms of the transaction between lawyer and client, advise Plaintiffs to seek independent counsel and obtain, in writing, Plaintiffs' informed consent to the transaction.

22. Instead, Brovitz neglected to disclose the inherent conflicts and risks from Plaintiffs, accepted his ten percent (10%) equity stake in the Indian Creek Portfolio and billed Plaintiffs and their companies substantial legal fees and title commissions in connection with the transaction.

B. The Barclays Loans and Defendants' Failure to Disclose Critical Risks

23. In furtherance of Plaintiffs' ongoing efforts to invest in recreational vehicle resort parks, on or about September 26, 2006, Plaintiffs and various entities under their ownership and control closed on three separate non-recourse mortgage loans issued by Barclays Real Estate Capital, Inc. These Loans, in the combined original principal amount of $128,150,000, were secured by a total of seventeen (17) recreational vehicle resort parks located in eight (8) states.

24. More specifically, the three Loans can be identified as follows:

(i) a loan in the original principal amount of $75,500,000 secured by 12 recreational vehicle parks in New York, New Jersey, Florida, Ohio, North Carolina, Maine, New Hampshire and Pennsylvania (the "Atlantic Blueberry Loan");

(ii) a loan in the original principal amount of $16,300,000 secured by two recreational vehicle parks located in New York and New Jersey (the "Lake George Loan"); and

(iii) a loan in the original principal amount of $36,350,000 for the purposes of refinancing the existing mortgage debt on the Indian Creek Portfolio (the "Indian Creek Loan").

25. Defendants continued to represent Plaintiff in connection with the negotiation and closing of these Loans, with Plaintiffs relying on Brovitz and the Fix Firm, as they had always done, to spearhead the necessary due diligence, negotiation and investigation to ensure that their interests were adequately protected. In multiple respects, Plaintiffs placed their full trust and confidence in Brovitz and the Fix Firm.

26. Despite his equity interest in the Indian Creek Portfolio, Brovitz, unlike Morgan and Moser, did not personally guaranty the Indian Creek Loan and, therefore, continued to have no "skin in the game."

27. Instead, the Loans represented a windfall for Brovitz. First, upon the closing of the Indian Creek Loan, Brovitz received a distribution of well over $700,000 -- a substantial return on his "investment" of $0.00 just one year earlier. That distribution was in addition to the substantial legal fees earned by the Fix Firm and Brovitz in connection with their representation on all three Loans. Last but not least, upon information and belief Brovitz, once again earned substantial title commissions at the closing of all three Loans as well.

28. Given Brovitz's clear self-interest in the transaction Defendants should have declined the representation in accordance with Disciplinary Rule 5-101. At a minimum,

Defendants should have provided Plaintiffs with written disclosure of the terms of the transaction and advised Plaintiffs of the benefits of obtaining independent counsel before obtaining Plaintiffs written consent to proceed as required by Disciplinary Rule 5-104. Defendants, of course, did none of the above.

29. Instead Brovitz, eager to receive the substantial financial benefits and prestige arising from serving as lead counsel on a round of financing in excess of $128 million, pushed the Loans through to closing without providing Plaintiffs the detailed and sound counsel commensurate with such a significant engagement. Among other things, Defendants failed to keep Plaintiffs informed of the status of the negotiations regarding the Loans' terms -- if there were any negotiations at all. Instead, upon information and belief, Defendants did not adequately protect Plaintiffs' interests in the negotiation process and simply accepted the loan terms presented by Barclays. Likewise, Defendants failed to apprise Plaintiffs of the detailed terms and conditions of the Loans or caution them against risks that may lead to default and create substantial, personal liability for Plaintiffs.

30. Among the risks that Brovitz neglected to protect Plaintiffs from -- or even inform Plaintiffs of -- were the existence of certain "Single Purpose Entity" or "SPE" covenants included within the loan documents. These SPE covenants imposed stringent requirements upon the various borrowers to operate as entirely separate, bankruptcy remote, entities.

31. By way of example, and without limitation, the SPE covenants required the borrowers to:

(i) maintain separate bank accounts and financial records;

(ii) not commingle assets with any other entity or individual;

(iii) maintain assets in such a manner that it would not be costly or difficult to segregate the assets from those of another;

(iv) not incur any debt other than limited amount of short-term, unsecured trade payables;

(v) maintain adequate capital

(vi) not make any loans or advances;

(vii) file their own tax returns; and

(viii) pay their own liabilities from their own funds.

32. Failure to comply with the SPE covenants would, under the express terms of the loan documents, trigger full recourse to Plaintiffs on what were otherwise non-recourse Loans, thereby exposing Plaintiffs to potential personal liability in the tens of millions of dollars.

33. Plaintiffs, however, were never advised of the substantial risks arising from a violation thereof or counseled by Defendants as to how to ensure SPE covenant compliance. Considering that Defendants were fully aware the SPE covenants were being applied to interrelated borrower entities owning similar mortgaged properties operating under a common management company, Defendants' failure to advise Plaintiffs that the simple commingling of funds and expenses could instantly trigger full recourse on $128,150,000 in Loans smacks of recklessness and gross negligence.

34. Instead of counseling Plaintiffs as to the risks arising from the guarantees Brovitz, motivated by his own self-interest and bolstered by the fact he had not signed a personal guaranty, falsely reassured Plaintiffs that they could only trigger full recourse under the Loans if the borrower entities filed for bankruptcy protection. In reliance on the false assurances that they were not risking their own personal wealth, Plaintiffs closed on the Loans and Brovitz received his $700,000 plus distribution and tens of thousands of dollars of counsel fees and title commissions.

35. Had Plaintiffs known the full-extent of their prospective personal liability, they never would have closed on the Loans or, at a minimum, would have better protected themselves to guard against the prospect of an SPE covenant violation. Plaintiffs were not, however, afforded that opportunity as a result of Defendants' negligence and self-dealing.

C. Defendants' Continuing Representation of Plaintiffs as the Loans Enter Default

36. Between September 2006 and April 2010 Defendants' representation of Plaintiffs and the various borrower entities in connection with the Loans continued, with Defendants remaining intimately involved in the legal aspects of the operations of the various borrower entities and efforts to secure additional financing. Notwithstanding that ongoing representation, not once did Defendants advise Plaintiffs regarding compliance with the SPE covenants, continuing to place Plaintiffs at risk of exposure to substantial recourse liability.

37. As a result of the worst economic downturn since the great depression, and in the face of a steep decline in discretionary consumer spending on non-essential expenditures like vacations, the economic performance of the recreational vehicle resorts securing the Loans declined significantly and the Loans ultimately went into default. Throughout this critical period, Defendants continued to represent Plaintiffs' interests.

38. Prior to the Loans formally being declared in default, Defendants were involved in direct negotiations with representatives of the lender, including the special servicer, LNR Partners, Inc. ("LNR"). As a result of those discussions, on or about June 30, 2010 (but effective April 1, 2010), Plaintiffs and the various borrower entities entered into various "Agreement[s] Regarding Loan[s]" (the "Forbearance Agreements") pertaining to the extant Loans. Pursuant to the Forbearance Agreements, Plaintiffs and their companies, among other things, agreed to: (i) waive all claims and defenses related to the Loans; (ii) turn over detailed financial records to

LNR regarding the operations of the various mortgaged properties; and (iii) pay significant fees to LNR. In exchange, Plaintiffs received a one year forbearance period along with the option of extending the forbearance period for two (2) additional one year terms upon payment to LNR of $1,000,000 in extension fees.

39. Brovitz, eager to avoid certain personal losses that would arise in the event the Indian Creek Portfolio was foreclosed on, once again rushed Plaintiffs to execute the Forbearance Agreements without disclosing the full risks associated therewith. For example, and without limitation, Defendants failed to disclose to Plaintiffs that they would be waiving all defenses to any claim asserted by or on behalf of the lender in exchange for the forbearance period.

40. Defendants' representation of Plaintiffs continued following the execution of the Forbearance Agreements, with Defendants intimately involved in critical aspects of ongoing negotiations with LNR regarding, among other things, the bifurcation of the Atlantic Blueberry and Lake George Loans into "Tranche A" and "Tranche B" Notes; the sale of three of the properties securing the Atlantic Blueberry Loan to accomplish a partial defeasance of that loan; and the negotiation of the sale of the remaining mortgaged properties to third-parties. All the while, Defendants continued to collect substantial counsel fees from Plaintiffs and continually failed to disclose Brovitz's inherent conflict of interest.

D. Defendants' Negligence and Self-Dealing Causes Plaintiffs to Sacrifice $5,000,000

41. As part of the ongoing workout negotiations with LNR, on or about June 25, 2012, Plaintiffs executed a "Letter Agreement" (the "Letter Agreement") negotiated on their behalf by Defendants. Pursuant to the Letter Agreement Plaintiffs were afforded a brief extension of the forbearance period – through January 1, 2013 -- to complete discounted payoffs negotiated for each of the Loans. Pursuant to the Letter Agreement, in the event Plaintiffs were

unable to satisfy the Loans, LNR would be permitted to immediately proceed with foreclosure of the mortgaged properties.

42. Included within the Letter Agreement were certain so-called "Cooperation Covenants" intended to ensure that LNR could promptly take title to the mortgaged properties in the event the discounted payoffs were not made or the Letter Agreement breached. Among other things, these Cooperation Covenants required Plaintiffs to, upon demand: (i) tender a deed-in-lieu of foreclosure to LNR for any of the mortgaged properties; and (ii) refrain from opposing or delaying, in any manner whatsoever, any foreclosure proceeding initiated by LNR in connection with the Loans.

43. Concerned about potential non-compliance, LNR demanded that the borrowers post $5,000,000 of additional cash collateral to secure the "Cooperation Covenants." With many of the mortgaged properties operating at a loss and all additional cash flow generated by the mortgaged properties already being turned over to LNR pursuant to the Forbearance Agreements, Plaintiffs were the only source of funds to post the requested additional security.

44. Plaintiffs, however, were unwilling to part with $5,000,000 of their own personal wealth on what was supposed to be a non-recourse loan simply to obtain a six (6) month extension of a forbearance period that had already been in effect for two (2) years – a fact they made abundantly clear to Defendants.

45. In response, Brovitz and the Fix Firm promised and assured Plaintiffs that the $5,000,000 would merely be posted as a "security deposit" and would be returned once the Loans were satisfied or LNR completed the foreclosure process. At all times Defendants advised Plaintiffs that the $5,000,000 would only be placed at risk if Plaintiffs opposed LNR's efforts to foreclose on the properties.

46. In reliance on Defendants' advice and assurances Morgan, on behalf of the Indian Creek, Lake George and Atlantic Blueberry borrowers (and utilizing both his own and Moser's personal funds), agreed to post a $5,000,000 Letter of Credit (the "LOC") to secure borrowers' and Plaintiffs' compliance with the Cooperation Covenants.

47. Incredibly, contrary to Defendants' advice and assurances and unbeknownst to Plaintiffs, the Letter Agreement did not provide for the return of the LOC absent satisfaction of the Loans. Specifically, the Letter Agreement provides that the LOC will only be returned "provided no Termination Event occurred under this [Letter] Agreement." The Letter Agreement then defines a "Termination Event" as, among other things, borrowers' failure to make the agreed upon discounted payoff of the Loans by January 1, 2013 and/or the failure of any borrower or guarantor to timely perform any obligation under the loan documents, including repayment, in full, of the Loans.

48. In other words, pursuant to the terms of the Letter Agreement as negotiated and accepted by the Fix Firm and Brovitz, once a loan payment was missed or the borrowers failed to make the discounted payoff by January 1, 2013, LNR no longer had any obligation to return the LOC. In short, Plaintiffs' $5,000,000 was as good as gone as soon as it was posted.

49. Not only is the Letter Agreement demonstrative of the negligence that encompassed Defendants' representation of Plaintiffs in connection with the Loans, but that contract is also tainted by Brovitz's own self-dealing. Indeed, Brovitz stood to receive a substantial financial gain (and, upon information and belief, avoid significant tax liability) in the event the Indian Creek Portfolio was sold to a third-party rather than simply being turned over to the lender. By the same token, Brovitz, having not executed a personal guaranty, had nothing to

lose by convincing Plaintiffs to post an additional $5,000,000 of their own funds to secure an extension of the forbearance period.

50. Despite this glaring self-interest in a transaction involving both lawyer and client, Brovitz failed to comply with New York's Rules of Professional Conduct 1.7 and 1.8, which required him to either turn down the representation or: (i) disclose, in writing, the terms and risks of entering into the Letter Agreement; (ii) advise Plaintiffs, in writing, of the benefits of obtaining independent counsel; and (iii) obtain, in writing, Plaintiffs' informed consent to the essential terms of the transaction and Brovitz's involvement therein.

51. Brovitz had no interest in making these disclosures and obtaining the Plaintiffs' informed consent because he had everything to gain and nothing to lose if Plaintiffs executed the Letter Agreement and posted the LOC -- which is precisely what Plaintiffs did in reliance on the advice and counsel of Brovitz and the Fix Firm. As Plaintiffs would ultimately discover, posting that $5,000,000 would cost them dearly.

G. Litigation Commences and Exposes Plaintiffs to Monumental Financial Losses

52. Ultimately, Plaintiffs were only able to consummate the discounted payoffs of the Indian Creek and Lake George Loans through a sale of the mortgaged properties to a third-party. Brovitz spearheaded the negotiations with that third-party and Defendants continued to represent Plaintiffs in all aspects of that transaction and with ongoing workout negotiations with LNR pertaining to the Atlantic Blueberry Loan into at least mid-2013.

53. Unfortunately, LNR, emboldened by its stranglehold on Plaintiffs' $5,000,000 LOC, was disinclined to negotiate further and, in or around March 2013, commenced foreclosure proceedings to obtain title to the remaining mortgaged properties. Plaintiffs were powerless to challenge LNR's foreclosures, having repeatedly waived all claims and defenses under both the Letter Agreement and the earlier Forbearance Agreements. Left with no alternative, Plaintiffs

allowed the foreclosures to proceed uncontested and honored their obligations under the Cooperation Covenants.

54. Despite receiving Plaintiffs' complete and total cooperation, almost immediately LNR began threatening Plaintiffs with a draw on the LOC. Equally disconcerting, shortly after commencing foreclosure proceedings LNR began to allege, for the first time, that its review of financial records obtained during the forbearance periods revealed numerous violations of the SPE Covenants triggering full recourse under the Loans. LNR made clear that, upon its completion of the foreclosure proceedings, it would aggressively pursue recovery of a deficiency judgment against Plaintiffs – a judgment which, by all accounts would run in the tens of millions of dollars.

55. As the foreclosure process came to a close it became increasingly clear LNR had no intention of returning the LOC and, in August 2014, Morgan and the Borrowers were forced to commence suit in an attempt to obtain injunctive relief to prevent LNR from seizing the $5,000,000.

56. All told, by reason of these various foreclosure proceedings and related actions, Plaintiffs were embroiled in litigation for over two (2) years, subjecting them to several hundred thousand dollars in legal and other professional fees and costs. Following months of extensive litigation and payment of significant professional fees and costs, Plaintiffs ultimately reached a settlement with LNR.

57. In fact, to secure the release of LNR's recourse claims against Plaintiffs relating to the Loans, Plaintiffs were forced to pay LNR $8,638,000. That sum, together with the fees and costs incurred in connection with the various litigations, result in a damage claim in excess

of ten million dollars, the entirety of which is directly related to and proximately caused by the malpractice and improprieties committed by Brovitz and the Fix Firm.

FIRST COUNT
(Legal Malpractice As To Both Defendants)

58. Plaintiffs repeat and restate the allegations set forth in the prior paragraphs of this Complaint as if set forth at length herein.

59. As legal counsel to Plaintiffs, Brovitz and the Fix Firm owed Plaintiffs a duty to exercise reasonable and ordinary care in providing legal services.

60. This duty of care required, among other things, that the Fix Firm and Brovitz exercise the knowledge, skill, and ability ordinarily possessed and exercised by members of the legal profession similarly situated, to be ordinarily and reasonably diligent, careful, prudent, and ethical in discharging duties they assumed with respect to their representation of Plaintiffs, to comply with rules of professional conduct, to fully inform Plaintiffs of material facts known to the Fix Firm and Brovitz regarding matters affecting Plaintiffs' interests, to disclose conflicts of interest affecting the Fix Firm's representation of Plaintiffs and to convey accurate and complete information to Plaintiffs.

61. At each phase of their representation of Plaintiffs in connection with the Loans and the related mortgaged properties, Defendants acted maliciously and/or negligently and otherwise disregarded their legal duty to provide sound and prudent legal advice to Plaintiffs free of compromising influences and loyalties.

62. Defendants breached their duty to Plaintiffs by committing various wrongful acts, as set forth above, including, without limitation:

(i) Both prior and subsequent to the Loan's closing, the Fix Firm and Brovitz failed to advise Plaintiffs as to the nature and import of the SPE covenants included within the loan documents which, if

violated, triggered full recourse liability under the Guaranties, thus rendering Plaintiffs personally liable for the full amount of any deficiency judgment following foreclosure of the mortgaged properties;

(ii) The Fix Firm and Brovitz made certain, serious errors in drafting the Letter Agreement memorializing the terms pursuant to which Morgan posted the $5,000,000 LOC on behalf of the borrowers and the conditions upon which the LOC would be returned. In fact, the document, as negotiated and drafted, did not even provide for the return of the LOC absent satisfaction of the Loan, a reality entirely contradictory to the representations and assurances Defendants made to Plaintiffs; and

(iii) Notwithstanding possessing an equity interest in the Indian Creek Portfolio, Brovitz improperly represented Plaintiffs in connection with all negotiations relating to the Loans, including the workout negotiations, all while failing to fully and properly disclose the inherent and continuing conflict of interest that arose from his direct and personal financial interest. That conflict of interest skewed the advice and counsel Brovitz provided to Plaintiffs during the entire course of Defendants' representation, in particular with respect to the terms of the Loans, including the import of the SPE covenants, and later with respect to the posting of the LOC to secure an additional forbearance period of a mere six (6) months.

63. The above noted actions of Brovitz and the Fix Firm, together with other acts and/or omissions, were materially adverse to Plaintiffs. Had Defendants properly explained the terms of the Loans, the SPE covenants and the Letter Agreement and/or revealed to Plaintiffs the true nature and import of Brovitz's conflicted interests and/or otherwise properly advised and counseled their clients with regard to the Loans, Plaintiffs would have been properly shielded from liability. Instead, Defendants' critical errors exposed Plaintiffs to liability in the tens of

millions of dollars – liability which, but for these errors and omissions, Plaintiffs would never have confronted.

64. Defendants' representation of Plaintiffs was continuous and their deviations and misconducted tainted every aspect and phase of the underlying transactions from inception up to and including the latter half of 2013.

65. The negligence and/or malicious conduct of Brovitz and the Fix Firm, as set forth herein, directly and proximately caused Plaintiffs to suffer substantial damages.

SECOND COUNT
(Vicarious Liability As To The Fix Firm)

66. Plaintiffs repeat and restate the allegations set forth in the prior paragraphs of this Complaint as if set forth at length herein.

67. At all relevant times, a principal/agent relationship existed between Brovitz and the Fix Firm and Brovitz acted within the scope of such agency in representing Plaintiffs with regard to the facts and circumstances alleged herein.

68. The acts and/or omissions of Brovitz, as aforesaid, were intended, in part, to facilitate and/or promote the business of the Fix Firm and generate fees relating to professional services provided by the Fix Firm with regard to the Loans and otherwise ensure that the Fix Firm continued to represent Plaintiffs and their entities.

69. At all relevant times, the Fix Firm cloaked Brovitz with actual and/or apparent authority to act on its behalf and as its agent in representing Plaintiffs with regard to the Loans.

70. The Fix Firm is, therefore, vicariously liable for Brovitz's acts and/or omissions, as alleged herein, and should be held liable for all resulting damages sustained by Plaintiffs.

71. As a direct and proximate cause of the legal malpractice and acts and/or omissions of Brovitz and other Fix Firm attorneys, Plaintiffs suffered substantial damages for which the Fix Firm is vicariously liable.

THIRD COUNT
(Vicarious Liability As To Brovitz)

72. Plaintiffs repeat and restate the allegations set forth in the prior paragraphs of this Complaint as if set forth at length herein.

73. At all relevant times Brovitz, as a shareholder and/or officer of the Fix Firm, owed a duty to supervise the professional services being performed by others acting under his direct supervision in performing legal services for Plaintiffs on behalf of the Fix Firm.

74. As aforesaid, at all relevant times those working on behalf of the Fix Firm under Brovitz's direct supervision owed Plaintiffs a duty to exercise reasonable and ordinary care in providing legal services.

75. This duty of care required, among other things, that the employees of the Fix Firm providing professional services to Plaintiffs under Brovitz's direct supervision exercise the knowledge, skill, and ability ordinarily possessed and exercised by members of the legal profession similarly situated, to be ordinarily and reasonably diligent, careful, prudent, and ethical in discharging duties they assumed with respect to their representation of Plaintiffs, to comply with rules of professional conduct, to fully inform Plaintiffs of material facts known to Defendants regarding matters affecting Plaintiffs' interests, to disclose conflicts of interest affecting the Fix Firm's representation of Plaintiffs and to convey accurate and complete information to Plaintiffs.

76. As aforesaid, at each phase of their representation of Plaintiffs in connection with the Loans and the related mortgaged properties, the employees of the Fix Firm providing

professional services to Plaintiffs under Brovitz's direct supervision acted maliciously and/or negligently and otherwise disregarded their legal duty to provide sound and prudent legal advice to Plaintiffs free of compromising influences and loyalties.

77. As a shareholder and/or officer of the Fix Firm Brovitz is, therefore, vicariously liable for the acts and/or omissions of those employees of the Fix Firm providing professional services to Plaintiffs under Brovitz's direct supervision and should, therefore, be held liable for all resulting damages sustained by Plaintiffs.

78. As aforesaid, Plaintiffs suffered substantial damages as a direct and proximate cause of the legal malpractice and acts and/or omissions of those employees of the Fix Firm providing professional services to Plaintiffs under Brovitz's direct supervision.

WHEREFORE, Robert C. Morgan and Robert J. Moser demand judgment against Richard S. Brovitz and Fix Law P.C., f/k/a Fix Spindelman Brovitz & Goldman, P.C., jointly and severally, as follows:

(a) As to the First Count, an award of compensatory damages, disgorgement of all fees paid, punitive damages, interest, attorneys' fees and costs and other damages to be determined at trial against Defendants.

(b) As to the Second Count, an award of compensatory damages, disgorgement of all fees paid, punitive, damages, interest, attorneys' fees and costs and other damages to be determined at trial against the Fix Firm.

(c) As to the Third Count, an award of compensatory damages, disgorgement of all fees paid, punitive, damages, interest, attorneys' fees and costs and other damages to be determined at trial against Brovitz.

DATED: New York, New York
August 27, 2015

COLE SCHOTZ P.C.

By: _____

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