

CAUSE NO. 2022-83673

WESTDALE CAPITAL	§	IN THE DISTRICT COURT OF
INVESTORS 3, L.P.	§	
Plaintiff	§	
	§	
VS.	§	HARRIS COUNTY, TEXAS
	§	
MICHEL KAFROUNI, MICHAEL	§	
EISENBERG, BRYAN UPTON, AND	§	
TASO MOUGOURIS	§	
Defendants	§	129th JUDICIAL DISTRICT

**DEFENDANTS MICHEL KAFROUNI’S, MICHAEL EISENBERG’S AND
TASO MOUGOURIS’S ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Michel Kafrouni, Michael Eisenberg, and Taso Mougouris, hereinafter referred to collectively as “Defendants”, and files this Original Answer against Plaintiff Westdale Capital Investors, 3, L.P., hereinafter referred to as the “Plaintiff”, and in support thereof would show the following:

I. GENERAL DENIAL

1. Defendants assert a general denial to the allegations of Plaintiff’s Original Petition, pursuant to Rule 92 of the Texas Rules of Civil Procedure. Defendants generally deny each and every allegation in Plaintiff’s Original Petition and demand strict proof of all such allegations.

II. VERIFIED DENIALS

2. Subject to and without waiving the foregoing General Denial Defendants assert, pursuant to Rule 94 of the Texas Rules of Civil Procedure, the following verified denial[s] which, singly or in combination, bar Plaintiff’s right to recover, in whole or in part, the damages alleged in Plaintiff’s Original Petition:

a. Defendants deny that Plaintiff has the legal capacity to sue as Plaintiff. Plaintiff

has not shown that Plaintiff is the proper holder of the note that is the subject of this lawsuit.

b. Defendants deny that Plaintiff is entitled to recover in the capacity in which Plaintiff sues as Plaintiff was not a party to the note that is the subject of this lawsuit. Further, Plaintiff has not shown that they have taken over said note belonging to the Defendants, if any.

c. Defendants deny the note on which Plaintiff files suit as Defendants have never had a note with Plaintiff, or any other agreement with Plaintiff for goods or services, or any business dealings with Plaintiff on which a note could be founded. Plaintiff has failed to produce any evidence that Plaintiff and BankCorp South Bank are one in the same. In the alternative, Plaintiff has failed to show that it has acquired Defendants' note, if any, with BankCorp South Bank in order to bring this lawsuit against Defendants.

d. Defendants deny the note on which Plaintiff files suit because Defendants are an improper party to this lawsuit.

e. Defendants aver that there is a defect of the parties. Specifically, Defendants are not a proper party to the note that is the subject of this lawsuit.

f. Defendants deny Plaintiff's assertion contained in Plaintiff's Original Petition that "Westdale has performed all conditions precedent to seek relief". *See* Plaintiff's Original Petition Attached as Exhibit "A" at 13.

IV. AFFIRMATIVE DEFENSES

3. Subject to and without waiving the foregoing General Denial and Verified Denials, Defendants assert, pursuant to Rule 94 of the Texas Rules of Civil Procedure, the following affirmative defense[s] which, singly or in combination, bar Plaintiff's right to recover, in whole or in part, the damages alleged in Plaintiff's Original Petition:

a. Defendants are not liable to Plaintiff because Plaintiff was not a party to the original

transaction.

b. Defendants aver that Plaintiff's allegations alleging a contract are barred by lack of consideration or failure of consideration, and that the consideration has failed in whole or in part.

c. Defendants allege that all conditions precedent for Plaintiff to maintain this action or recover herein have not been performed and/or have not occurred.

d. Defendants plead that the Plaintiff is not entitled to recover in the capacity in which it sues.

e. Defendants plead Equitable Estoppel, Fraud, and Promissory Estoppel. Plaintiff made false and misleading representations and promises that it knew or should have foreseen would have been relied upon by the Defendants. Defendants relied upon the false and misleading representations and promises and by so doing were harmed.

f. Defendants plead that Notice was not given as alleged, with respect to the alleged agreement, including changes and modifications of the alleged agreement.

g. Defendants deny that the note that Plaintiff contends is applicable is genuine.

VI. ATTORNEY'S FEES

4. It was necessary for Defendants to secure the services of Kahana:Feld, LLP and particularly the services of Roni M. Most, a licensed attorney, to defend this suit. Judgement for attorney's fees and expenses through final judgment after appeal should be granted against Plaintiff and in favor of Defendants for the use and benefit of Defendants' attorney; or in the alternative, Defendants request that reasonable attorney's fees and expenses through final judgement after appeal be taxed as costs and ordered paid directly to Defendants' attorney, who may enforce such in the attorney's own name.

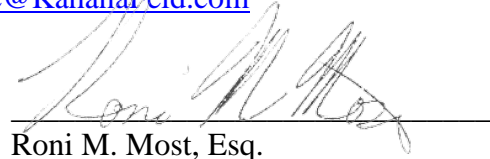
PRAYER FOR RELIEF

WHEREFORE PREMISES CONSIDERED, Defendants respectfully prays that the Court render judgment that Plaintiff take nothing by this suit, assess costs against Plaintiff, and award Defendants all other relief to which Defendants may be justly entitled, either at law or in equity.

Respectfully submitted,

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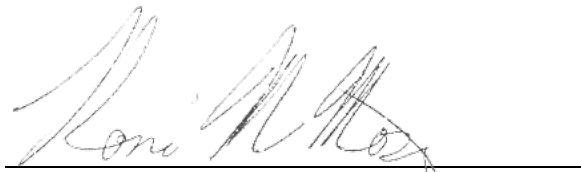
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**Attorneys for Defendants Michel
Kafrouni, Michael Eisenberg, and
Taso Mougouris**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon all counsel of record in accordance with the Texas Rules of Civil Procedure, this 30th day of January, 2023.

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Roni M. Most

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Katherine Alvarez on behalf of Roni Most
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Status as of 1/31/2023 8:02 AM CST

Case Contacts

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