

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X Index No.  
FIFTH AVENUE 58/59 ACQUISITION CO. LLC, Date Purchased:

Residing at:  
c/o Macklowe Properties  
142 West 57 Street  
New York, New York 10019

Plaintiff,

04600969

-against-

SUMMONS

BANK MELLI IRAN d/b/a MELLI BANK PLC.,

The basis of Venue:  
Residence of plaintiff

Residing at:  
767 Fifth Ave., 44<sup>th</sup> Fl.  
New York, New York 10153

Defendant(s).

-----X

TO THE ABOVE NAMED DEFENDANT(S):


**FILED**  
APR 07 2004  
NEW YORK  
COUNTY CLERK'S OFFICE

YOU ARE HEREBY SUMMONED TO APPEAR and answer the Verified Complaint in this action and to serve a copy of your answer upon Plaintiff's attorney within twenty (20) days from the service of this summons, exclusive of the day of service (or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York); and upon your failure to answer, judgment will be taken against you for the relief demanded in the complaint, together with the costs and disbursements of this action.

The basis of venue is the Plaintiff's place of business or residence

Plaintiff designates New York County as the place of trial.

Dated: Bellmore, New York  
April 1, 2004

Yours etc.,  
  
\_\_\_\_\_  
Law Offices of Henry E. Rakowski  
Attorney for Plaintiff  
2631 Merrick Road, Suite 201  
Bellmore, New York 11710  
(516) 409-6900

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X Index No.  
FIFTH AVENUE 58/59 ACQUISITION CO. LLC,

Plaintiff,

-against-

BANK MELLI IRAN d/b/a MELLI BANK PLC,

Defendants.

**FILED**

VERIFIED COMPLAINT

APR 07 2004

04600969

NEW YORK  
COUNTY CLERK'S OFFICE

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Plaintiff, Fifth Avenue 58/59 Acquisition Co. LLC, by Henry E. Rakowski, Esq., its attorney,

as and for its Verified Complaint, hereby avers as follows:

1. At all times herein mentioned, Plaintiff is a foreign limited liability company duly authorized by the New York Secretary of State to transact business in the State, County and City of New York.

2. Upon information and belief, Defendant, Bank Melli Iran d/b/a Melli Bank PLC, is a foreign bank licensed by the New York Superintendent of Banks to conduct certain banking and related business transactions in the State of New York, County of New York, and said Defendant is transacting business in the State, County and City of New York, and the instant causes of action are based upon said transactions of business

### INTRODUCTION

#### The Lease of Bank Melli Iran d/b/a Melli Bank PLC

3. By Lease dated December 22, 1994, Defendant, Bank Melli Iran, as Tenant and Longstreet Associates, L.P. agreed to the rental of approximately 7,000 square feet on the 44<sup>th</sup> floor, at 767 Fifth Ave., New York City, as more particularly described in the floor plan consisting of the Schedule "A" attached to the Lease (hereinafter the "Demised Premises") for a

term commencing on February 1, 1995 and ending at noon on the last day of the month in which the day immediately preceding the tenth anniversary of the commencement date shall occur for a rent and additional rent more particularly set forth in the Lease (hereinafter the "Lease")

4. The stated purpose for the rental was for the Tenant to use and occupy the Demised Premises "for executive offices, sales offices and/or general offices for the conduct of any lawful and reputable business..."

5. By First Amendment of Lease dated March 17, 1995, the parties agreed to add 1,300 square feet of rentable space and increasing the fixed rent and Tenant's Proportionate Share.

6. By Commencement Date Agreement dated May 23, 1995, the parties agreed that the Lease would commence on April 1, 1995 and terminate or expire (unless sooner terminated by operation of the Lease terms) on March 31, 2005.

7. On September 26, 2003, Plaintiff purchased the building and real estate known as 767 Fifth Avenue, New York City.

**Defendant's Failure to Pay Rent.**

8. Defendant failed to pay the Rent and /or additional rent from October 30, 2003 through April 1, 2004 totaling \$274,409.60, as more fully set forth in the statement of account dated March 19, 2004, which along with the 10-day demand, is attached hereto as Exhibit "A".

9. Plaintiff has not received any payments of rent and/or additional rent prior to October 30, 2003.

**AS AND FOR A FIRST CAUSE OF ACTION  
AGAINST DEFENDANT BANK MELLI IRAN d/b/a  
MELLI BANK PLC**

10. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "9", supra, as if more fully set forth at length herein.

11. The Lease provides as follows:

1.04. Tenant shall pay to Landlord without notice or demand and without abatement, deduction or set-off, in lawful money of the United States of America, as the office of Landlord or at such other place as Landlord may designate, the Fixed Rent and Additional Rent reserved under this Lease for each year of the Term, which payments shall consist of:

The First Amendment of Lease dated March 17, 1995 provides as follows:

4. As of the date hereof, the Lease shall be amended as follows:

(a) Section 1.04 of the Lease shall be amended to provide that the annual rate of Fixed Rent shall be increased by \$68,250 to \$435,750...

The Lease further provides as follows:

1.04(B) Additional rent ("Additional Rent") consisting of all such other sums of money as shall become due from and payable by Tenant to Landlord hereunder, payable in monthly installments in advance, unless specifically provided herein to the contrary, on the first day of each and every calendar month during the Term.

1.07 landlord shall have the same remedies for any default in the payment of any installment or item of Additional Rent as is provided hereunder for any default in the payment of Fixed Rent.

4.02(A) If Taxes in any Tax Year shall increase above Base Year Taxes, then Tenant shall pay as Additional Rent Tenant's Proportionate Share of such increase.

5.02 For each Operating Year commencing during the term of this Lease, Tenant shall pay an amount (hereinafter referred to as an "Operating Payment") equal to Tenant's Proportionate Share of the amount by which the Operating Expenses for such Operating Year exceed the Operating Expenses for the Base Operating Year.

15.01 (C) Whenever at any time during the Term an adjustment in the Electrical Energy Sum shall be due by Landlord.. Landlord shall furnish to Tenant a statement in writing of Landlord's determination of the amount of said adjustment... The amount of such adjustment in Fixed Rent, as specified in any such statement of Landlord, shall become binding upon the parties hereto unless, within sixty (60) days after Landlord shall have furnished to Tenant such statement, Tenant notifies Landlord in writing that Tenant disputes the amount of such adjustment in Fixed Rent so determined by Landlord... Tenant shall pay to Landlord the amount of such adjustment in Fixed Rent specified in Landlord's statement.

24.02 This Lease and the Term and estate hereby granted are subject to the further limitation that

- A. Whenever Tenant shall default in the payment of any installment of Fixed Rent or Additional Rent, on any day upon which the same shall be due and payable and such default shall continue for ten (10) days after landlord shall have given Tenant a notice specifying same, or
- D. when ever tenant shall abandon the Demised Premises,

Then in any such event at any time thereafter, Landlord may give the Tenant a notice of intention to end the Term at the expiration of five (5) days from the date of service of such notice of intention, and upon the expiration of said five (5) days this Lease and the Term and estate hereby granted, whether or not the term shall theretofore have commenced, shall terminate with the same effect as if that day were the Expiration Date, but Tenant shall remain liable for damages as provided in Article 26.

25.01. ...In the event of any termination of this Lease under the provisions of Article 24 ...or by suitable action or proceeding at law, or ...otherwise by reason of default hereunder on the part of Tenant, Tenant shall thereupon pay to Landlord Fixed Rent and Additional Rent due up to the time of such termination of his Lease, and shall also pay to Landlord damages as provided in Article 26.

26.01. If this Lease is terminated under the provisions of Article 24, or if Landlord shall re-enter the Demised Premises under the provisions of Article 25, or in the event of the termination of this Lease, or ... by suitable action or proceeding at law or ... otherwise, by reason of default hereunder on the part of Tenant, Tenant shall pay to Landlord as damages, at the election of Landlord...

B. sums equal to Fixed Rent and Additional Rent (as above presumed) payable hereunder which would have been payable by Tenant had this Lease not so terminated, or had Landlord not so re-entered the Demised Premises, payable quarterly but otherwise upon the terms therefore specified herein following such termination or such re-entry and until the Expiration Date...

12. On or about October 30, 2003, Defendant moved out and abandoned the Demised Premises, which remains vacant.

13. On March 18, 2004, Plaintiff delivered a ten (10) day notice to cure the defendant's default in payment of Rent and Additional Rent, and demanded payment of \$274,409.60, but the default has continued without cure for more than ten days.

14. The March 19, 2004 statement of account consists of unpaid rent, and additional rent of real estate tax escalation, electrical charges, and operating cost escalations.

15. Defendant received and retained the statement of account for each month from November 1, 2003 through March 19, 2004 and has never objected to any statement of account as being untrue or inaccurate.

16. By virtue of the foregoing, Plaintiff is entitled to a judgment against Defendant for unpaid Fixed Rent and Additional Rent totaling \$274,409.60 plus interest accruing thereon at the legal rate from April 1, 2004.

**AS AND FOR A SECOND CAUSE OF ACTION  
AGAINST DEFENDANT BANK MELLI IRAN d/b/a  
MELLI BANK PLC**

17. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "16", supra, as if more fully set forth at length herein.

18. The Lease provides as follows:

29.01 If Tenant shall default in the performance of any covenant, agreement, term, provision or condition herein contained beyond the expiration of any applicable notice or grace periods...Bills for any ... reasonable and necessary bills for all costs, expenses and disbursements, including (without being limited to) reasonable counsel fees, incurred in collecting or endeavoring to collect Fixed Rent, additional Rent or other charges or any part thereof ...shall immediately become due and payable as Additional Rent under this Lease...

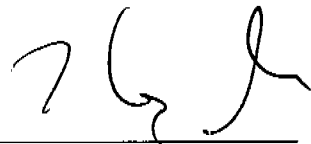
19. Plaintiff retained the services of Henry E. Rakowski, Esq., as collection counsel to collect the unpaid Rent and Additional Rent and has paid \$37,500 to date and will, upon collection be required to pay an additional 5% of all sums collected, which assuming a full collection (without accrued interest) will be an additional \$13,720.48. By virtue of the foregoing, Plaintiff is entitled to a judgment for liquidated legal fees in the sum of \$51,220.48, representing only 18.7% of the amount to be collected.

WHEREFORE, Plaintiff respectfully demands judgment as follows:

1. Against Defendant, Bank Melli Iran d/b/a Melli Bank PLC on the first cause of action for the sum of \$274,409.60 plus interest accruing thereon at

- the legal rate from April 1, 2004;
2. Against Defendant, Bank Melli Iran d/b/a Melli Bank PLC on the second cause of action for the sum of \$51,220.48; and
  3. For the costs and disbursements of this action and for such other and further relief as this court deems just and appropriate.

Dated: Bellmore, New York  
April 1, 2004



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HENRY E. RAKOWSKI, for  
LAW OFFICES OF HENRY E. RAKOWSKI  
Attorney for Plaintiff  
2631 Merrick Road, Suite 201  
Bellmore, N.Y. 11710  
(516) 409-6900



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LAW OFFICES OF HENRY E. RAKOWSKI

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

FIFTH AVENUE 58/59 ACQUISITION CO. LLC.,

Index No.

Plaintiff,

-against-

BANK MELLI IRAN d/b/a MELLI BANK PLC,

Defendant.

SUMMONS AND VERIFIED COMPLAINT

LAW OFFICES OF HENRY E. RAKOWSKI

Attorney For Plaintiff

Office And Post Office Address  
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