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File No. MF-433-G

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**First Priority Bank a division of Mid Penn  
Bank and Mid Penn Bank**

**Plaintiff(s),**

vs.

**GILMACO, Inc.; Jay A. Gillian; Michele  
Brennen Gillian; State of New Jersey**

**Defendant(s).**

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**SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
CAPE MAY COUNTY**

**Docket No. F-**

**Civil Action**

**COMPLAINT**  
(exempt from "FFA")

Plaintiff, First Priority Bank a division of Mid Penn Bank and Mid Penn Bank, with their principal place of business located at 2407 Park Drive, Harrisburg PA 17110, by way of Complaint against the Defendant(s) says:

**FIRST COUNT**

1. On or about May 25, 2017, the Defendant(s), GILAMCO, Inc., being indebted to First Priority Bank, a Division of Mid Penn Bank ("First Priority"), in the sum of \$7,395,000.00 ("Note 1"), executed to it their certain Note 1 of that date to secure that sum payable with interest at the rate of 5.25% per annum, the said sum to be payable in four (4) principal installments of \$100,000.00 on June 25, 2017, July 25, August 25 and September 25 of each year of the loan for an annual principal payment total of \$400,000.00 together with payments of interest due monthly and payable on the 25<sup>th</sup> day of each month commencing on June 25, 2017. All outstanding principal, interest and other charges are due and owing on May 22, 2022 (the "Maturity Date"). Said Note 1 was given to Plaintiff, by the Defendant(s).

2. To secure the payment of said Note 1, the said Defendant(s), GILMACO, Inc, made and delivered to First Priority Bank, a certain mortgage on May 25, 2017 in the amount of \$7,395,000.00 ("Mortgage 1") and thereby conveyed to it in fee the premises therein contained, on the express condition that such conveyance should be void if payment should be made in accordance with the terms of the Promissory Note. Said Mortgage 1 was duly recorded in the Office of the Clerk of Cape May County on June 2, 2017, in Mortgage Book M5871 at page 931. Said Mortgage is **not** a purchase money mortgage.

The mortgaged premises are described in Schedule "A" attached hereto and made a part hereof. The recorded Mortgage includes the description in Schedule "A".

3. Note 1 and Mortgage 1 contained an agreement that if any installment payment shall remain unpaid after the same shall fall due, the whole principal sum together with all unpaid interest, should, at the option of the mortgagee, its successors and assigns, become immediately due and payable.

4. Note 1 also provides for the following:

(a) that in the event any installment payment is not made within 10 days after the date when same shall fall due, that a delinquency charge of 5.00% of each dollar or fraction thereof of said monthly payment shall be immediately due and payable, and if not paid shall accrue monthly until all delinquent payments and charges thereon shall be made. Note 1 further provides for:

(b) Note 1 and Mortgage 1 described in paragraphs 1 and 2 above contain a provision for a prepayment penalty. Said prepayment penalty provides that five (5%) percent during the first year; four (4%) percent during the second year; three (3%) percent during the third year; two (2%) percent during the fourth year and one (1%) percent during the fifth year.

(c) In the event of default, and Borrower's failure to pay the loan within thirty (30) days after First Priority demands the same, Borrower shall pay a fee of five (5%) percent of the unpaid portion of the sum of the unpaid principal plus accrued interest.

5. To further secure Note 1, Defendant GILMACO Inc., delivered to First Priority Bank a division of Mid Penn Bank, an Assignment of Leases and Rents ("Assignment 1") dated May 25, 2017, whereby GILMACO, Inc., assigned to First Priority Bank a division of Mid Penn Bank all right, title and interest in and to any lease on the mortgaged premises together with all rents and profits thereon. The Assignment was recorded in the office of the Clerk of Cape May County on June 2, 2017, in Book D3733 at Page 192.

6. On August 25, 2019, a payment of principal became due and payable and was not paid and Plaintiff has elected that the entire principal sum with all unpaid interest thereon shall now become due and payable. On September 25, 2019 an interest payment came due and was not paid.

6(a). Default date is August 25, 2019.

7. During the Course of this action, Plaintiff may be obliged to make advances for the payment of taxes and other necessary expenses to preserve the security and such sums advanced under the terms of the Note and Mortgage with interest to be added to the amount due on the debt secured by Plaintiff's Mortgage.

8. The following parties are added as Defendant(s) hereto for the following reasons:

(a) Michele Brennen Gillian and Jay A. Gillian are hereby made party defendants herein by virtue of Guaranties executed by Michele Brennen Gillian and Jay A. Gillian, on May 25, 2017, which guaranteed payment of the Promissory Note executed by GILMACO Inc., of that same date.

(b) The State of New Jersey is made a party defendant by virtue of the following

(i) Judgment in favor of Department of Community Affairs, State of New Jersey filed in the Superior Court of New Jersey against GILMACO Inc. t/a Gillian's Wonderland Pier on December 18, 2019 as Judgment No. DJ-191314-2019 in the amount of \$2,500.00 which judgment may be a lien against the mortgaged premises.

(ii) To extinguish any interest which it has or may have in and to the Property for possible corporate (including, without limitation) franchise taxes, unemployment compensation, or other taxes, interest, costs, penalties, recognizances, liens or amounts which may be imposed or which are due and owing by any of the Defendants to the State of New Jersey.

9. Any interest or lien which any of the Defendant(s) has or claims to have in or upon the said mortgage premises, or any part thereof, is subject to the lien of the Plaintiff's Mortgage.

10. The property is exempt from and is not subject to the provisions of the Fair Foreclosure Act because the property in question is not a residential property as defined by that Act.

WHEREFORE, Plaintiffs demands judgment for:

- (a) Fixing the amount due on its Mortgage.
- (b) Barring and foreclosing the Defendant(s), and each of them, of all equity of redemption in and to the said lands and premises.
- (c) Directing that Plaintiff be paid the amount due on its Mortgage with interest and costs.
- (d) Adjudging the same lands and premises to be sold according to law to satisfy the amount due to the Plaintiff.
- (e) Appointing a receiver of rents, issues and profits of said lands and premises.

**SECOND COUNT**

1. On or about May 25, 2017, the Defendant(s), GILMACO, Inc., being indebted to First Priority Bank, a Division of Mid Penn Bank, in the sum of \$400,000.00 ("Note 2"), executed to it a certain Line of Credit Note of that date to secure that sum payable with interest at the rate of 1.0% over the Wall Street Journal Prime Rate adjusted daily, the said sum to be payable in monthly installments of interest only commencing on June 25, 2017. All outstanding principal and interest and other charges shall be due on demand by First Priority. Said Note 2 was given to Plaintiff, by the Defendant(s).

2. To secure the payment of said Note 2, the said Defendant(s), GILMACO, Inc , made and delivered to First Priority Bank, a division of Mid Penn Bank, a certain mortgage on May 25, 2017 in the amount of \$400,000.00 (“Mortgage 2”) and thereby conveyed to it in fee the premises therein contained, on the express condition that such conveyance should be void if payment should be made in accordance with the terms of the Promissory Note. Said Mortgage 2 was duly recorded in the Office of the Clerk of Cape May County on June 2, 2017, in Mortgage Book M5871 at page 944. Said Mortgage **is not** a purchase money mortgage.

The mortgaged premises are described in Schedule “A” attached hereto and made a part hereof. The recorded Mortgage includes the description in Schedule “A”.

3. Note 2 and Mortgage 2 contained an agreement that if any installment payment shall remain unpaid after the same shall fall due, the whole principal sum together with all unpaid interest, should, at the option of the mortgagee, its successors and assigns, become immediately due and payable.

4. Note 2 also provides for the following:

(a) That in the event any installment payment is not made within 10 days after the date when same shall fall due, that a delinquency charge of 5.0% of each dollar or fraction thereof of said monthly payment shall be immediately due and payable, and if not paid shall accrue monthly until all delinquent payments and charges thereon shall be made. Note 2 further provides for:

(b) If First Priority demands payment of the Loan in accordance with the provisions of the Loan Documents, and GILMACO, Inc., fails to pay the Loan within thirty (30) days of the demand, GILMACO, Inc., will be charged five (5%) percent of the unpaid portion of the sum of the unpaid principal plus accrued unpaid interest.

(c) That there shall be a sixty (60) day clean-up period annually.

(d) That a default under any loan from GILMACO, Inc., including the \$7,395,000.00 loan referenced in Count One of this Complaint would be an Event of Default under Note 2.

5. To further secure Note 2, Defendant GILMACO, Inc., delivered to First Priority Bank a division of Mid Penn Bank, an Assignment of Leases and Rents ("Assignment 2") dated May 25, 2017, whereby GILMACO, Inc., assigned to First Priority Bank a division of Mid Penn Bank all right, title and interest in and to any lease on the mortgaged premises together with all rents and profits thereon. The Assignment was recorded in the office of the Clerk of Cape May County on June 2, 2017, in Book D3733 at Page 205.

6. On July 24, 2020, First Priority Bank demanded payment of the amounts due under Note 2 and Gillian has failed and refused to satisfy Note 2.

6(a). In addition, Defendant defaulted on interest payments due as of April 25, 2020.

6 (b). Default date is April 25, 2020 as to interest payment default.

7. During the Course of this action, Plaintiff may be obliged to make advances for the payment of taxes and other necessary expenses to preserve the security and such sums advanced under the terms of the Note and Mortgage with interest to be added to the amount due on the debt secured by Plaintiff's Mortgage.

8. The following parties are added as Defendant(s) hereto for the following reasons:

(a) Michele Brennen Gillian and Jay A. Gillian are hereby made party defendants herein by virtue of Guaranties executed by Michele Brennen Gillian and Jay A. Gillian, on May 25, 2017, which guaranteed payment of the Promissory Note executed by GILMACO Inc., of that same date.

(b) The State of New Jersey is made a party defendant by virtue of the following

(i) Judgment in favor of Department of Community Affairs and State of New Jersey filed in the Superior Court of New Jersey against GILMACO

Inc. t/a Gillian's Wonderland Pier on December 18, 2019 as Judgment No. DJ-191314-2019 in the amount of \$2,500.00 which judgment may be a lien against the mortgaged premises.

(ii) To extinguish any interest which it has or may have in and to the Property for possible corporate (including, without limitation) franchise taxes, unemployment compensation, or other taxes, interest, costs, penalties, recognizances, liens or amounts which may be imposed or which are due and owing by any of the Defendants to the State of New Jersey.

9. Any interest or lien which any of the Defendant(s) has or claims to have in or upon the said mortgage premises, or any part thereof, is subject to the lien of the Plaintiff's Mortgage.

10. The property is exempt from and is not subject to the provisions of the Fair Foreclosure Act because the property in question is not a residential property as defined by that Act.

WHEREFORE, Plaintiffs demands judgment for:

- (a) Fixing the amount due on its Mortgage.
- (b) Barring and foreclosing the Defendant(s), and each of them, of all equity of redemption in and to the said lands and premises.
- (c) Directing that Plaintiff be paid the amount due on its Mortgage with interest and costs.
- (d) Adjudging the same lands and premises to be sold according to law to satisfy the amount due to the Plaintiff.
- (e) Appointing a receiver of rents, issues and profits of said lands and premises.

**THIRD COUNT**

1. On or about May 7, 2019, the Defendant(s), GILMACO, Inc, being indebted to Mid Penn Bank ("Mid Penn"), in the sum of \$500,000.00 ("Note 3"), executed to it a certain Non-Revolving Line of Credit Note of that date to secure that sum payable with interest at the rate of 1.0% over the Wall Street Journal Prime Rate adjusted daily, the said sum to be payable in monthly

installments of interest only commencing on June 25, 2019, with all accrued principal, interest and other charges due on August 31, 2020 (the "Maturity Date"). Said Note was given to Plaintiff, by the Defendant(s).

2. To secure the payment of said Note 3, the said Defendant(s), GILMACO Inc., made and delivered to Mid Penn Bank, a certain mortgage on May 7, 2019 in the amount of \$500,000.00 ("Mortgage 3") and thereby conveyed to it in fee the premises therein contained, on the express condition that such conveyance should be void if payment should be made in accordance with the terms of the Note. Said Mortgage 3 was duly recorded in the Office of the Clerk of Cape May County on May 13, 2019, in Mortgage Book M6065 at page 226. Said Mortgage **is not** a purchase money mortgage.

The mortgaged premises are described in Schedule "A" attached hereto and made a part hereof. The recorded Mortgage includes the description in Schedule "A".

3. Note 3 and Mortgage 3 contained an agreement that if any installment payment shall remain unpaid after the same shall fall due, the whole principal sum together with all unpaid interest, should, at the option of the mortgagee, its successors and assigns, become immediately due and payable.

4. Note 3 also provides for the following:

(a) that in the event any installment payment is not made within 10 days after the date when same shall fall due, that a delinquency charge of 5.00% of each dollar or fraction thereof of said monthly payment shall be immediately due and payable, and if not paid shall accrue monthly until all delinquent payments and charges thereon shall be made. Note 3 further provides for:

(b) If Mid Penn demands payment of the Loan in accordance with the Loan Documents, and GILMACO Inc., does not pay the loan within thirty (30) days of the demand, GILMACO, Inc., will also pay a fee of five (5%) percent of the unpaid portion of the sum of the unpaid principal plus accrued unpaid interest.



5. To further secure Note 3, Defendant GILMACO, Inc., delivered to Mid Penn Bank, an Assignment of Leases and Rents ("Assignment 3") dated May 7, 2019, whereby GILMACO Inc., assigned to Mid Penn Bank all right, title and interest in and to any lease on the mortgaged premises together with all rents and profits thereon. The Assignment was recorded in the Office of the Clerk of Cape May County on May 7, 2019, in Book 3853 at Page 816.

6. On April 25, 2020, a payment of principal and interest became due and payable and was not paid and Plaintiff has elected that the entire principal sum with all unpaid interest thereon shall now become due and payable.

6(a). Default date is April 25, 2020.

7. During the Course of this action, Plaintiff may be obliged to make advances for the payment of taxes and other necessary expenses to preserve the security and such sums advanced under the terms of the Note and Mortgage with interest to be added to the amount due on the debt secured by Plaintiff's Mortgage.

8. The following parties are added as Defendant(s) hereto for the following reasons:

(a) Michele Brennen Gillian and Jay A. Gillian are hereby made party defendants herein by virtue of Guaranties executed by Michele Brennen Gillian and Jay A. Gillian, on May 7, 2019, which guaranteed payment of the Promissory Note executed by GILMACO, Inc. of that same date.

(b) The State of New Jersey is made a party defendant by virtue of the following

(i) Judgment in favor of Department of Community Affairs and State of New Jersey filed in the Superior Court of New Jersey against GILMACO Inc. t/a Gillian's Wonderland Pier on December 18, 2019 as Judgment No. DJ-191314-2019 in the amount of \$2,500.00 which judgment may be a lien against the mortgaged premises.

(ii) To extinguish any interest which it has or may have in and to the Property for possible corporate (including, without limitation) franchise taxes, unemployment compensation, or other taxes, interest, costs, penalties, recognizances, liens or amounts which may be imposed or which are due and owing by any of the Defendants to the State of New Jersey.

9. Any interest or lien which any of the Defendant(s) has or claims to have in or upon the said mortgage premises, or any part thereof, is subject to the lien of the Plaintiff's Mortgage.

10. The property is exempt from and is not subject to the provisions of the Fair Foreclosure Act because the property in question is not a residential property as defined by that Act.

WHEREFORE, Plaintiff demands judgment for:

- (a) Fixing the amount due on its Mortgage.
- (b) Barring and foreclosing the Defendant(s), and each of them, of all equity of redemption in and to the said lands and premises.
- (c) Directing that Plaintiff be paid the amount due on its Mortgage with interest and costs.
- (d) Adjudging the same lands and premises to be sold according to law to satisfy the amount due to the Plaintiff.
- (e) Appointing a receiver of rents, issues and profits of said lands and premises.

**FOURTH COUNT**

1. The Plaintiff repeats and realleges the allegations contained in the First Count, Second Count, and Third Count and incorporates them herewith as if set forth herein at length.

2. Plaintiff is entitled to the possession of the premises situate in Cape May County, more particularly described in Paragraph 2 of the First Count, Second and Third Count hereof commonly designated as 600-640 Boardwalk, Ocean City NJ 08226 and 641 Wayne Avenue, Ocean City NJ 08226.

3. Defendant(s), at all times since said date, deprived Plaintiff of possession of said premises.

WHEREFORE, Plaintiff demands judgment against the Defendant(s) for:

- (a) Possession of said premises.
- (b) Damages for *Mesne* Profits.
- (c) Costs.

#### **FIFTH COUNT**

1. The Plaintiffs repeats the allegations set forth in the First Count of this Complaint as though set forth at length herein.

2. As additional Security for the First and Second Notes and in compliance with the terms of the First and Second Mortgages, GILMACO, Inc executed and delivered First Priority Bank a division of Mid Penn Bank, Security Agreements pledging collateral as fully described therein. Said Security Agreements were perfected through a UCC Financing Statement that was recorded with Office of the Clerk of Cape May County on June 2, 2017 in Book F14, Page 614; UCC Financing Statement that was recorded with Office of the Clerk of Cape May County on June 2, 2017 in Book F14, Page 618; UCC Financing Statements that was recorded with Office of the Clerk of Cape May County on June 2, 2017 in Book F14 Page 623 and UCC Financing Statements that was recorded with Office of the Clerk of Cape May County on June 2, 2017 in Book F14 Page 628; a UCC Financing Statement that was recorded with the State of New Jersey on June 1, 2017 as # 52248186 and a UCC Financing Statement that was recorded with the State of New Jersey on July 6, 2018 as # 52878640 . A copy of said UCC Financing Statements are attached hereto and made a part hereof as Exhibit "B".

3. As additional Security for the Third Notes and in compliance with the terms of the Third Mortgage, GILMACO, Inc executed and delivered Mid Penn Bank, Security Agreements pledging collateral as fully described therein. Said Security Agreements were perfected through a

UCC Financing Statement that was recorded with Office of the Clerk of Cape May County on May 13, 2019 in Book F63, Page 528 and UCC Financing Statements that was recorded with Office of the Clerk of Cape May County on May 13, 2019 in Book F63 Page 533 and a UCC Statement that was recorded with the State of New Jersey on May 9, 2019 as # 53318251. A copy of said UCC Financing Statements are attached hereto and made a part hereof as Exhibit "C".

**WHEREFORE**, Plaintiffs demands judgment against the Defendant(s) for:

- a. Fixing the amount due on the Financing Statement.
- b. Barring and foreclosing the Defendants in each of them of all equity of redemption in and to the said goods and chattels on and in said premises in questions, more specifically set forth in the Financing Statement.
- c. Adjudging that said goods and chattels located on and in the said premises in question, more specifically set forth in the Financing Statement, be sold according to law by the Sheriff, together with the sale of the mortgaged premises, to satisfy the amount due Plaintiff.

**EISENBERG, GOLD & AGRAWAL P.C.**  
Attorneys for Plaintiff

By:   
Janet L. Gold, Esquire

DATED: 9/17/2020