

**McMANIMON, SCOTLAND & BAUMANN, LLC**

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*Attorneys for Plaintiff/Debtor*

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY**

In re:	Case No. 20-18601 (VFP)
HKO 3, LLC,	Chapter 11
Debtor.	
HKO 3, LLC,	Adv. Pro. No. 22-
Plaintiff,	
vs.	
E-TREE INC.,	
Defendant.	

**VERIFIED COMPLAINT TO (I) DISCHARGE MORTGAGE  
HELD BY E-TREE, INC., AND (II) TO DETERMINE  
EXTENT, VALIDITY, AND PRIORITY OF MORTGAGE**

HKO 3, LLC, (“Plaintiff” or “Debtor” or “HKO”), Plaintiff and Chapter 11 Debtor, by way of Verified Complaint against Defendant E-Tree, Inc. (“Defendant” or “E-Tree”), hereby states and alleges as follows:

## **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the parties and the subject matter of this proceeding pursuant to Sections 157 and 1334 of Title 28 of the United States Code.

2. This is a core proceeding within the meaning of Section 157(b) of Title 28 of the United States Code.

3. Venue of this action is proper in this district pursuant to Sections 1408 and 1409 of Title 28 of the United States Code.

4. This Adversary Complaint is brought pursuant to Fed. R. Bankr. P. 7001(2), in order to determine the validity, priority and extent of Defendant's lien against real property of the estate, and for related relief. In short, the mortgage lien held by E-Tree is no longer valid in that it was satisfied. Accordingly, the Debtor seeks an order discharging E-Tree's mortgage lien so that the Debtor can obtain financing to satisfy its plan. The Debtor has a replacement lender ready, willing and able to lend once the lien is discharged.

## **THE PARTIES AND RELEVANT FACTS**

5. On July 16, 2020, the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code, *i.e.*, Title 11 of the United States Code, in the United States Bankruptcy Court for the District of New Jersey.

6. The Debtor is a limited liability company that confirmed its plan of reorganization ("Plan") on September 29, 2021. The Plan enables the Debtor to retain its real property at 597-601-603 Broadway, Newark, New Jersey ("Property").

7. U.S. Bank holds a first priority mortgage lien on the Property. As required under Plan, the Debtor has been working on obtaining financing to replace U.S. Bank. The Debtor had eight months to satisfy U.S. Bank. The deadline expired, however, U.S. Bank has given the

Debtor a brief extension. Accordingly, it is critical that the E-Tree mortgage be discharged of record.

8. While in the process of seeking new financing, the Debtor discovered a mortgage on the Property in the amount of \$940,000.00 between HKO and in favor of Tae “Michael” J. Ahn. The mortgage was transferred by Mr. Ahn to E-Tree through an Assignment of Mortgage.

9. Mr. Ahn entered into a private loan with Debtor in the amount of \$940,000.00 (the “Original Loan”). See Certification of Tae J. Ahn In Support (“Ahn Cert.”) at ¶ 1.

10. The Original Loan was secured by a mortgage dated May 26, 2011 and recorded on October 3, 2011 in the Office of the Clerk of Essex County as Instrument No. 11069051 in Book 12329 of Mortgages for the said County at Page 8309, et seq. This mortgage was from HKO 3, LLC to Ahn for the Property commonly known as 597-603 Broadway, in the City of Newark in the County of Essex and State of New Jersey (the “597-603 Broadway Mortgage”). Id. at ¶ 2, Exh. A. The Property has multiple residential and commercial tenants. The Property enjoys substantial equity above its debt.

11. The Original Loan was also secured by a mortgage dated May 26, 2011 and recorded on October 3, 2011 in the Office of the Clerk of Essex County, as Instrument No. 11069053 in Book 12329 of Mortgages for the said County at Page 8316, et seq. This mortgage was from Jack Ko and Ellie Ko in favor of Ahn for the Property commonly known as 114 Washington Avenue, in the City of Belleville in the County of Essex and State of New Jersey (the “114 Washington Mortgage”). Id. at ¶ 3, Exh. B.

12. On November 12, 2012, Ahn entered into a promissory note with Jack Ko in the amount of \$500,000.00 (the “Promissory Note”). Although the Promissory Note does not state

so, the purpose of the Promissory Note was to amend the loan amount of the Original Loan from \$940,000.00 (the “Amended Loan”). *Id.* at ¶ 4, Exh. C.

13. On April 17, 2013, Ahn assigned the Amended Loan, the 597-603 Broadway Mortgage and the 114 Washington Mortgage to E-Tree, Inc. recorded on October 21, 2013 in the Office of the Clerk of Essex County, as Instrument No. 13093459 and in Book 12464 of Mortgages for the said County at Page 968, (the “Mortgage Assignment”). *Id.* at ¶ 5, Exh. D.

14. Jack Ko made payments on the Amended Loan to Ahn from November 2012 through November 2016 for a total of \$500,000.00, satisfying the obligations of the Amended Loan in full. *Id.* at ¶ 6, Exh. E.

15. In order to refinance the Property and pay U.S. Bank, the Debtor must remove the lien held by E-Tree.

16. On June 2, 2022, McManimon Scotland & Baumann, LLC (“MSB”) served notice by letter on E-Tree regarding the mortgage and the request to discharge its mortgage. The letter advised E-Tree that the mortgage was paid off through payments by the Debtor to Mr. Ahn and requested a response by June 8, 2022. See Certification of Sari B. Placona, Esq. (“Placona Cert.”) ¶ 16, Ex. “A.” The letter was sent via regular and certified mail to E-Tree’s registered agent, Hyubin Eun at 1420 Sterling Boulevard, Englewood, New Jersey, the registered address for E-Tree.

17. The certified letter to E-Tree was signed for at E-Tree’s registered address, however, E-Tree has failed to respond. *Id.* ¶ 17. A copy of the certified mail green card was returned to MSB and is annexed as Ex. A to the Placona Cert.

**COUNT ONE – DECLARATORY JUDGMENT**  
**(E-Tree’s Mortgage Lien is No Longer Valid Since it has been Satisfied)**

18. The Plaintiff repeats and realleges the allegations set forth above as if set forth at length herein. Pursuant to Fed. R. Bankr. P. 7001(2), the Debtor brings this adversary complaint to determine the validity of E-Tree’s mortgage on the Property. The Plaintiff requests that this Court determine that the E-Tree mortgage is no longer valid and it be discharged and removed from title.

19. The Debtor seeks declaratory judgment determining that Defendant does not have a lien against the Property.

20. As set forth in the verified facts above, the E-Tree mortgage held by Defendant has been satisfied.

21. The Plaintiff seeks a determination declaring null and void any lien or other secured claim of Defendant on the Property.

**WHEREFORE**, the Plaintiff demands judgment against Defendant declaring that the mortgage lien against the Property is null and void and that such lien be removed of record on the title

**COUNT TWO – OBJECTION TO CLAIMS**  
**(Objection to Any Claims of E-Tree Inc. Relating to Note  
and Mortgage Pursuant to 11 U.S.C. § 502(b)(1))**

22. The Plaintiff repeats and realleges the allegations set forth above as if set forth at length herein.

23. Based upon the payments, both the Note and mortgage held by Defendant are unenforceable claims against the Debtor and property of the Debtor pursuant to 11 U.S.C. § 502(b)(1).

24. Both the claim relating to the Note and any lien securing such claim created by the Mortgage are unenforceable and, therefore, void pursuant to 11 U.S.C. §§ 506(d) and 551.

**WHEREFORE**, the Plaintiff demands judgment against Defendant waiving, expunging and barring any claim of Defendant, and granting such other and further relief as this Court deems just, appropriate and equitable.

**McMANIMON, SCOTLAND  
& BAUMANN, LLC**  
*Attorneys for Debtor and  
Debtor-in-Possession*

Dated: June 27, 2022

By: /s/ Anthony Sodono, III  
ANTHONY SODONO, III

**VERIFICATION**

I, Jack Ko, of full age, say:

1. I am the managing member of HKO 3, LLC (the "Debtor"), and am authorized to make this Verification on behalf of the Debtor in the above-captioned action in support of the allegations contained and relief sought by this Verified Complaint.

2. I have read the foregoing Verified Complaint, and hereby verify that all allegations contained therein are true and correct to the best of my knowledge, belief, and information available to me, except those made on information and belief.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: \_\_\_\_\_



Jack Ko, Managing Member of HKO 3, LLC

Dated: June 23, 2022