

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

NEW FUND, LP AND WESTLEAD BRIDGE, LLC,

Plaintiffs,

-against-

ROYAL ONE REAL ESTATE, LLC, ROYAL REAL ESTATE MANAGEMENT LLC, SPINDLE CAB CORP., MERILL TRANSIT INC., CAPITAL ONE, N.A., CAPITAL ONE TAXI MEDALLION FINANCE, ESMA ELBERG, individually and as one of the beneficiaries of the ESTATE and TRUST OF JACOB ELBERG, RUBEN ELBERG, as one of the beneficiaries of the ESTATE and TRUST OF JACOB ELBERG and as one of the two Co-Executors of the ESTATE OF JACOB ELBERG and as one of the two Co-Trustees of a certain trust established for the benefit of Esma Elberg, TAMARA PEWZNER, as one of the beneficiaries of the ESTATE and TRUST OF JACOB ELBERG and as one of the two Co-Executors of the ESTATE OF JACOB ELBERG and as one of the two Co-Trustees of a certain trust established for the benefit of Esma Elberg, SHOLOM ELBERG as one of the beneficiaries of the ESTATE and TRUST OF JACOB ELBERG, MICHAEL ELBERG as one of the beneficiaries of the ESTATE and TRUST OF JACOB ELBERG, SHEFA FUNDING LLC, BEST BUY DEMO, INC., PEOPLE OF THE STATE OF NEW YORK, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, NEW YORK CITY DEPARTMENT OF FINANCE, "JOHN DOE" and "JANE DOE", said names being fictitious and unknown to plaintiff, the persons or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises, described in the complaint,

Defendants.

Index No.

SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer or, if the complaint is not served with this summons, to serve a notice of appearance on Plaintiff's attorneys within twenty (20) days after service of this summons, exclusive of the day of service; or within thirty (30) days after completion of service if the

service is made in any manner other than by personal delivery within the state; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates Queens County as the place of trial based on the location of the premises to be foreclosed upon and the principle place of business of defendants.

Dated: New York, New York
December 15, 2014

STIEFEL COHEN & FOOTE, P.C.
Attorneys for Plaintiff
770 Lexington Road, 6th Floor
New York, New York 10065
(212) 715-2800


By: Philip P. Foote, Esq.

TO:

Royal One Real Estate, LLC
42-42 27th Street
Long Island City, New York 11101

Royal Real Estate Management LLC
42-42 27th Street
Long Island City, New York 11101

Spindle Cab Corp.
42-42 27th Street, 1st Fl.
Long Island City, New York 11101

Merill Transit Inc.
42-42 27th Street, 1st Fl.
Long Island City, New York 11101

Capital One, N.A.
265 Broadhollow Road
Melville, New York 11747

Capital One Taxi Medallion Finance
265 Broadhollow Road
Melville, New York 11747

Esmā Elberg
1281 Carroll Street
Brooklyn, NY 11213

Ruben Elberg
1523 President Street
Brooklyn, New York 11213

Tamara Pewzner
23 Waverly Place
Lawrence, New York 11559

Sholom Elberg
1281 Carroll Street
Brooklyn, New York 11213

Michael Elberg
7343 195th Street
Flushing, New York 11366

Shefa Funding LLC
42-42 27th Street
Long Island City, New York 11101

People of the State of New York
c/o Attorney General's Office
120 Broadway
New York, New York 10271

New York State Department of Taxation and Finance
ATTN: Office of Counsel
Building 9
W A Harriman Campus
Albany NY 12227

New York City Department of Finance
1 Centre Street, Ste # 500n
New York, NY 10007

"John Doe"
42-42 27th Street
Long Island City, New York 11101

"Jane Doe"
42-42 27th Street
Long Island City, New York 11101

Best Buy Demo, Inc.
c/o Secretary of State
Albany, New York 12231

New York City Environmental Control Board
66 John Street, 10th Floor
New York, NY 10038

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

NEW FUND, LP AND WESTLEAD BRIDGE, LLC,

Plaintiffs,

-against-

ROYAL ONE REAL ESTATE, LLC, ROYAL REAL ESTATE MANAGEMENT LLC, SPINDLE CAB CORP., MERILL TRANSIT INC., CAPITAL ONE, N.A., CAPITAL ONE TAXI MEDALLION FINANCE, ESMA ELBERG, individually, and as one of the beneficiaries of the ESTATE and TRUST OF JACOB ELBERG, RUBEN ELBERG, individually, and as one of the beneficiaries of the ESTATE and TRUST OF JACOB ELBERG and as one of the two Co-Executors of the ESTATE OF JACOB ELBERG and as one of the two Co-Trustees of a certain trust established for the benefit of Esma Elberg, TAMARA PEWZNER, individually, and as one of the beneficiaries of the ESTATE and TRUST OF JACOB ELBERG and as one of the two Co-Executors of the ESTATE OF JACOB ELBERG and as one of the two Co-Trustees of a certain trust established for the benefit of Esma Elberg, SHOLOM ELBERG, individually, and as one of the beneficiaries of the ESTATE and TRUST OF JACOB ELBERG and MICHAEL ELBERG, individually, and as one of the beneficiaries of the ESTATE and TRUST OF JACOB ELBERG, SHEFA FUNDING LLC, BEST BUY DEMO, INC., PEOPLE OF THE STATE OF NEW YORK, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, NEW YORK CITY DEPARTMENT OF FINANCE, "JOHN DOE" through "JANE DOE", said names being fictitious and unknown to plaintiff, the persons or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises, described in the complaint,

Defendants.

Index No.

**VERIFIED COMPLAINT
FORECLOSURE OF A
MORTGAGE**

Plaintiffs, New Fund, LP and Westlead Bridge, LLC (collectively "Plaintiffs") by its attorneys Stiefel Cohen & Foote, P.C. allege as follows:

1. Plaintiff, NEW FUND, LP, ("New Fund") is a limited partnership duly organized and validly existing under and by virtue of the laws of the State of New York, having an office for the transaction of business at 136-20 38th Avenue, Suite 10H, Flushing, NY 11354.

2. Plaintiff, WESTLEAD BRIDGE, LLC (“Westlead”) is an limited liability company duly organized and validly existing under and be virtue of the laws of the State of Illinois, having an office for the transaction of business at 1100 Sherman Avenue, Suite 115, Naperville, IL 60563.

3. Defendant, ROYAL ONE REAL ESTATE, LLC, is a limited liability company organized and existing under and by virtue of the laws of the State of New York having an office for the transaction of business at 42-42 27th Street, Long Island City, NY 11101.

4. Defendant, ROYAL REAL ESTATE MANAGEMENT, LLC, is a limited liability company organized and existing under and by virtue of the laws of the State of New York having an office for the transaction of business at 42-37 Crescent Street, Long Island City, NY 11101.

5. Defendant, SPINDLE CAB CORP., is a corporation organized and existing under and by virtue of the laws of the State of New York having an office for the transaction of business at 42-42 27th Street, Long Island City, NY 11101.

6. Defendant, MERILL TRANSIT, INC., is a corporation organized and existing under and by virtue of the laws of the State of New York having an office for the transaction of business at 42-42 27th Street, Long Island City, NY 11101.

7. Upon information and belief, Defendant, CAPITAL ONE, N.A., is a banking corporation organized and existing under and by virtue of the laws of the State of Delaware, having an office for the transaction of business at 265 Broadhollow Road, Melville, NY 11747 and is made a party defendant herein in order to bar and foreclose said defendant from any right, title or interest which it may claim in the mortgaged premises.

8. Upon information and belief, Defendant, CAPITAL ONE TAXI MEDALLION FINANCE, is a banking corporation organized and existing under and by virtue of the laws of the State of Delaware, having an office for the transaction of business at 265 Broadhollow Road, Melville, NY 11747 is made a party defendant herein in order to bar and foreclose said defendant from any right, title or interest which it may claim in the mortgaged premises.

9. Defendant, ESMA ELBERG, was JACOB ELBERG's wife and the beneficiary of the Estate of JACOB ELBERG and a certain trust established by JACOB ELBERG.

10. Defendant, RUBEN ELBERG, individually, and as one of the two Co-Executors of the ESTATE OF JACOB ELBERG and as one of the two Co-Trustees of a certain trust established for the benefit of Esma Elberg, is the son of JACOB ELBERG, and is an individual having and office for the transaction of business at 42-42 27th Street, Long Island City, NY 11101.

11. Defendant, TAMARA PEWZNER, individually, and as one of the two Co-Executors of the ESTATE OF JACOB ELBERG and as one of the two Co-Trustees of a certain trust established for the benefit of Esma Elberg, is the daughter of JACOB ELBERG.

12. Defendant, SHEFA FUNDING LLC, is a limited liability company organized and existing under and by virtue of the laws of the State of New York having an office for the transaction of business at 42-42 27th Street, Long Island City, NY 11101.

13. Defendant, BEST BUY DEMO, INC., is a corporation organized and existing under and by virtue of the laws of the State of New York having an office for the transaction of business at 214 Central Ave., Apt. 5C, Brooklyn, NY, 11221 and is made a party defendant herein in order to bar and foreclose said defendant from any right, title or interest which it may claim in the mortgaged premises by reason of an alleged mechanic's lien.

14. Defendant, PEOPLE OF THE STATE OF NEW YORK, is joined as a necessary party defendant by virtue of any possible New York State corporate franchise taxes as may be due from defendants, which unpaid franchise taxes are subject and subordinate to the lien of plaintiff's mortgage herein foreclosed, and for no other reason.

15. JACOB ELBERG, aka, YAAKOV ELBERG, died a resident of KINGS County on December 20, 2013 with a will and trust and probate proceedings for his estate are on file in the Office of the Surrogate of Kings County under File No. 2014-46 for the probate proceedings and 2014-46/A for the trusteeship proceedings. Plaintiff is informed and believes that the sole distributees and beneficiaries of the

Estate of JACOB ELBERG, Dec'd., are defendants ESMA ELBERG, RUBEN ELBERG, TAMARA PEWZNER, SHOLOM ELBERG and MICHAEL ELBERG.

16. Defendant RUBEN ELBERG was duly appointed one of the two Co-Executors of the Estate and one of the two Co-Trustees of the Trust of said JACOB ELBERG, Dec'd., and qualified as such Co-Executor and Co-Trustee.

17. Defendant TAMARA PEWZNER was also duly appointed one of the two Co-Executors of the Estate and one of the two Co-Trustees of the Trust of said JACOB ELBERG, Dec'd., and qualified as such Co-Executor and Co-Trustee.

18. Defendant, PEOPLE OF THE STATE OF NEW YORK are made a party defendant in order to bar and foreclose said defendant from any right, title or interest which it may claim in the mortgaged premises by reason of possible unpaid New York Estate taxes or transfer taxes against the Estate of said JACOB ELBERG, Dec'd.

19. Defendant, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD is made a party defendant herein in order to bar and foreclose said defendant from any right, title or interest which it may claim in the mortgaged premises by reason of a judgment against the Premises.

20. Defendant, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE is joined as a necessary party defendant in order to bar and foreclose said defendant from any right, title or interest which it may claim in the mortgaged premises solely by virtue of any possible New York corporate franchise taxes, sales taxes, or other taxes as may be due from Defendants and for no other reason.

21. Defendant, NEW YORK CITY DEPARTMENT OF FINANCE is joined as a necessary party defendant in order to bar and foreclose said defendant from any right, title or interest which it may claim in the mortgaged premises.

22. Defendants, "JOHN DOE" and "JANE DOE", said names being fictitious and unknown to plaintiff, the persons or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises, described in the complaint.

23. In the event that plaintiffs possess any other lien(s) against said mortgaged premises either by way of judgment, junior mortgage or otherwise, plaintiffs request that such other lien(s) shall not be merged in plaintiffs' cause(s) of action set forth in this complaint, but that plaintiffs shall be permitted to enforce said other lien(s) and/or seek determination of priority thereof in any independent action(s) or proceeding(s), including, without limitation, any surplus money proceedings.

24. On or about October 10, 2007, the Defendants, Royal One Real Estate, LLC ("Royal One") and, as amended, Royal Real Estate Management, LLC ("Royal")(collectively referred to herein as "Obligors"), for the purpose of evidencing an indebtedness in the amount of Three Million Five Hundred Thousand dollars (\$3,500,000), duly executed, acknowledged and delivered to Rosenthal & Rosenthal, Inc., a Promissory Note, as amended by an Amendment dated October 10, 2007, a Second Amendment dated January 28, 2009, a Third Amendment dated December 21, 2009, a Fourth Amendment executed on March 1, 2011, a Fifth Amendment dated June 13, 2012, a Sixth Amendment dated August 5, 2013 and a Letter Agreement dated February 19, 2014 (the "Note"), a copy of which, with amendments, is hereto annexed and marked **Exhibit "A"** with the same force and effect as if set forth at length herein:

Instrument:	PROMISSORY NOTE
Dated:	October 10, 2007
Obligors:	Royal One Real Estate, LLC and Royal Real Estate Management, LLC
Obligee:	Rosenthal and Rosenthal, Inc.
Amount:	\$3,500,000.00

25. The payment of the indebtedness under the Note was guaranteed by Defendants, RUBEN ELBERG, JACOB ELBERG and Royal Real Estate Management, LLC.

26. For the purpose of securing payment for the said indebtedness, as more fully set forth in the Note, the Obligors, as mortgagors, on or about October 10, 2007, executed, acknowledged and delivered to obligee, Rosenthal & Rosenthal, Inc., as mortgagee, a certain Mortgage, Assignment of Leases and Rents and Security Agreement (hereinafter sometimes the "Mortgage"), a copy of which is hereto annexed and marked **Exhibit "B"**, with the same force and effect as if set forth at length herein, wherein and whereby the Obligors, as mortgagors, mortgaged to said obligee, as mortgagee, certain real property, which mortgaged premises are more particularly described in the Mortgage.

27. The Mortgage was duly recorded in the office for the recording of mortgages in the City of New York, and the recording data is as follows:

Recorded in the Office of: The City Register of the City of New York
Date of Recording: November 7, 2007
CRFN: 2007000558603

28. Any applicable recording tax was paid at the time of recording of the Mortgage.

29. A Partial Release of Mortgage was duly recorded in the office for the recording of mortgages in the City of New York, solely against two (2) of the seven (7) parcels appurtenant to the Mortgage (Block 430, Lots 37 and 38), a copy of which is hereto annexed and marked **Exhibit "C"**, with the same force and effect as if set forth at length herein, and the recording data is as follows:

Recorded in the Office of: The City Register of the City of New York
Date of Recording: October 11, 2011
CRFN: 2011000357917

30. In order to further collaterally secure the obligations of the Obligors to Rosenthal & Rosenthal, Inc., and now Plaintiffs by assignment, on or about January 21, 2009, Defendants, Merrill Transit Inc. ("Merrill"), and Spindle Cab Corp. ("Spindle") duly executed, acknowledged and delivered to Rosenthal & Rosenthal, Inc. their "Guaranty of Payment" (hereinafter "Guaranties"), copies of which are annexed hereto as **Exhibit "D" and "E"** with the same force and effect as if set forth at length herein.

31. In order to further collaterally secure the obligations of the Obligors to Rosenthal & Rosenthal, Inc., and now Plaintiffs by assignment, on or about January 21, 2009, Defendants, Merrill and Spindle duly executed, acknowledged and delivered to Rosenthal & Rosenthal, Inc. a General Security Agreement granting a security interest to Rosenthal & Rosenthal, Inc. in, among others things, New York City Taxi Medallions, numbers 5p65, 5p66, 1K44 and 1K47 (hereinafter "Taxi Medallions"), copies of which are annexed hereto as **Exhibit "F" and "G"** with the same force and effect as if set forth at length herein.

32. In order to further collaterally secure the obligations of the Obligors to Rosenthal & Rosenthal, Inc., and now Plaintiffs by assignment, on or about January 21, 2009, Defendants Merrill and Spindle, duly executed, acknowledged and delivered to Rosenthal & Rosenthal, Inc. a Pledge Agreement

granting a security interest to Rosenthal & Rosenthal, Inc. in, among others things, 200 Shares of common stock in Spindle and 200 Shares of common stock in Merrill, copy of the Pledge Agreement is annexed hereto as **Exhibit “H”** with the same force and effect as if set forth at length herein.

33. On November 20, 2014, Rosenthal & Rosenthal, Inc., assigned all its right, title and interest, in (a) the Note, as amended; (b) the \$3,500,000 Mortgage and Security Agreement and Assignment of Leases and Rents dated October 10, 2007 and made by ROYAL ONE and ROYAL (the “Mortgage”); (c) Guarantee dated October 10, 2007 executed by Ruben Elberg in favor of Assignor with respect to the obligations to Rosenthal & Rosenthal, Inc. pursuant to the Note; (d) Guarantees and General Security Agreements dated January 21, 2009 executed by Spindle and Merrill in favor of Rosenthal & Rosenthal, Inc.; (e) UCC-1s filed by Rosenthal & Rosenthal, Inc. against the Royal One, Royal, Merrill and Spindle; (f) the Environmental Indemnity Agreement dated October 10, 2007 in favor of Rosenthal & Rosenthal, Inc.; and (g) the Mortgage Insurance Policy issued by Stewart Title Insurance Company (Policy No. M-8902-062450), to New Fund and Westlead. The Note, Mortgage, Guarantees, Security Agreements and all related documents will be referred to collectively as the “Loan Documents”. A copy of the Assignment and Assumption Agreement is annexed hereto as **Exhibit “I”** with the same force and effect as if set forth at length herein.

34. The Obligors have failed to comply with the terms and provisions of the Mortgage and aforesaid instruments secured by the Mortgage by failing and omitting to pay the Mortgage installments due monthly.

35. By reason of the defaults heretofore set forth, Plaintiffs have elected and hereby elects to declare immediately due and payable the entire balance of principal with interest thereon.

36. The following amounts are now due and owing on the Mortgage and the Loan Documents, no part of any of which has been paid although duly demanded:

	<u>Mortgage</u>
Unpaid Principal	\$3,350,000.00
Interest	\$33,500 at 12% for September 2014
Maturity	September 30, 2014
Default	\$105,000.00 at 12% from October 1, 2014 to December 31, 2014

Fees	\$35,150.28
TOTAL	\$3,523,650.28

37. Each of the above-named defendants has or claims to have or may claim to have some interest in or lien upon said mortgaged premises or some part thereof, which interest or lien, if any, has accrued subsequent to, and is subject and subordinate to, the lien of said Mortgage.

38. Plaintiffs request that in the event that this action will proceed to judgment of foreclosure and sale, said premises should be sold subject to the following:

- (a) Any state of facts that an inspection of the premises would disclose.
- (b) Any state of facts that an accurate survey of the premises would show.
- (c) Covenants, restrictions, easements and public utility agreements of record, if any.
- (d) Building and zoning ordinances of the municipality in which the mortgaged premises are located and possible violations of same.
- (e) Any rights of tenants or persons in possession of the subject premises.
- (f) Any equity of redemption of the United States of America to redeem the premises within 120 days from the date of sale.
- (g) Prior mortgages, judgments and liens of record, if any.
- (h) Transfer taxes to be paid by any foreclosure sale purchaser.

39. In the event that Plaintiffs possesses any other lien(s) against said mortgaged premises either by way of judgment, junior mortgage or otherwise, plaintiffs request that such other lien(s) shall not be merged in plaintiff's cause of action set forth in this complaint, but that plaintiff shall be permitted to enforce said other lien(s) and/or seek determination of priority thereof in any independent action(s) or proceeding(s), including, without limitation, any surplus money proceedings.

40. Plaintiffs shall not be deemed to have waived, altered, released or changed the election hereinbefore made, by reason of any payment after the commencement of this action, of any or all of the defaults mentioned herein, and such election shall continue and remain effective.

WHEREFORE, the Plaintiffs demand judgment that the defendants and each of them and all persons claiming under them or any of them, subsequent to the commencement of this action and the filing of a notice of pendency thereof, be barred and foreclosed of and from all estate, right, title, interest, claim, lien and equity of redemption of, in and to the said mortgaged premises and each and every part and parcel

thereof; that the said premises may be decreed or sold, according to law, subject to the terms set forth in Paragraph "40" of this complaint; that the monies arising from the sale thereof may be brought into Court; that the Plaintiffs may be paid the amount due on the Loan Documents as hereinbefore set forth, with interest and late charges to the time of such payment and the expenses of such sale, plus reasonable attorney's fees, together with the costs, allowances and disbursements of this action, and together with any sums incurred by Plaintiffs pursuant to any term or provision of the Loan Documents set forth in this complaint, or to protect the lien of Plaintiffs' mortgage, together with interest upon said sums from the dates of the respective payments and advances thereof, so far as the amount of such monies properly applicable thereto will pay the same; that this Court forthwith appoint a receiver of the rents and profits of said premises, during the pendency of this action with the usual powers and duties; and that the defendants, ROYAL ONE REAL ESTATE, LLC, ROYAL REAL ESTATE MANAGEMENT LLC, SPINDLE CAB CORP., MERILL TRANSIT INC., JACOB ELBERG, ESMA ELBERG as one of the beneficiaries, RUBEN ELBERG, as one of the Guarantors, one of the beneficiaries, one of the two Co-Executors of the ESTATE OF JACOB ELBERG and one of the two Co-Trustees of a certain trust established for the benefit of Esma Elberg, TAMARA PEWZNER, as one of the Guarantors, one of the beneficiaries, one of the two Co-Executors of the ESTATE OF JACOB ELBERG and one of the two Co-Trustees of a certain trust established for the benefit of Esma Elberg, SAM ELBERG as one of the beneficiaries of the ESTATE and TRUST OF JACOB ELBERG, and MICHAEL ELBERG as one of the beneficiaries of the ESTATE and TRUST OF JACOB ELBERG, may be adjudged to pay the whole residue, or so much thereof as the Court may determine to be just and equitable, of the debt remaining unsatisfied after a sale of the mortgaged premises and the application of the proceeds pursuant to the directions contained in such judgment, and that in the event that Plaintiffs possess any other lien(s) against said mortgaged premises either by way of judgment, junior mortgage or otherwise, Plaintiff requests that such other lien(s) shall not be merged in Plaintiffs' cause of action set forth in this complaint, but that Plaintiffs shall be permitted to enforce said other lien(s) and/or seek determination of priority thereof in any independent action(s) or proceeding(s), including, without

limitation, any surplus money proceedings, and that the Plaintiffs may have such other and further relief, or both, in the premises, as may be just and equitable.

Dated: New York, New York
December 15, 2014

STIEFEL COHEN & FOOTE, P.C.




By: Philip P. Foote, Esq.
Attorneys for Plaintiffs
770 Lexington Avenue, 6th Floor
New York, New York 10065
212-755-2800

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF QUEENS)

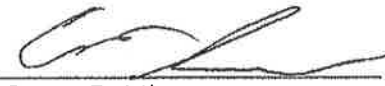
Joe Zhenghong Zhou, being duly sworn, hereby deposes and says:

1. I am the President of New York EB5 Funds, LLC, the general partner of New Fund, LP, one of the Plaintiffs if this action.
2. I have read the annexed Verified Summons and Complaint and know the contents thereof and the same are true to the best of my knowledge except as to matters stated to be upon information and belief and, as to those matters, I believe them to be true.
3. The grounds for my belief as to matters stated upon information and belief are derived from documents, files and other books and records maintained by Plaintiffs.



Joe Zhenghong Zhou

Sworn to before me this
15th day of December, 2014



Notary Public

CURT DONALD SCHMIDT
NOTARY PUBLIC-STATE OF NEW YORK
No. 02SC6236956
Qualified In Westchester County
My Commission Expires March 14, 2015