

Newt-Tso II SPV, LLC v Michael E. Jones M.D., P.C.

2026 NY Slip Op 31850(U)

April 27, 2026

Supreme Court, New York County

Docket Number: Index No. 651426/2025

Judge: Phaedra F. Perry-Bond

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

NEWT-TSO II SPV, LLC, SMALL BUSINESS LENDING, LLC
AS SERVICER FOR THE NALP BUSINESS LOAN TRUST
2024-1,

Plaintiffs,

INDEX NO. 651426/2025
MOTION DATE 07/07/2025
MOTION SEQ. NO. 002

- v -

MICHAEL E. JONES M.D., P.C., MICHAEL E. JONES,
PREMIER SURGICAL PAVILION OF OXON HILL LLC, 6178
OXON HILL PROPERTIES LLC, CLIFFSIDE AMBULATORY
SURGICAL CENTER LLC, LEXINGTON SURGICAL
CONSULTANTS LLC, 113 LEXINGTON REALTY, LLC

Defendants.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 57, 59, 62, 63, 64, 65, 66, 67

were read on this motion to/for DISMISS.

Upon the foregoing documents, Defendants' motion to dismiss is granted and the Complaint is dismissed, without prejudice. Plaintiffs cross-motion to amend is denied as moot.

As alleged in the Amended Complaint, Defendant Michael E. Jones M.D. P.C. ("Borrower") executed a promissory note (the "Loan") in the amount of \$6,250,000.00 in favor of non-party Newtek Business Services Holdco 6, Inc. ("Holdco"). To back the Loan, collateral was pledged by Borrower and Defendant Cliffside Ambulatory Surgical Center, LLC in favor of Holdco in a commercial security agreement (the "Security Agreement"). In addition, Defendants Michael E. Jones, Premier Surgical Pavilion of Oxon Hill, LLC, 6178 Oxon Hill Properties, LLC, Cliffside Ambulatory Surgical Center, LLC, Lexington Surgical Consultants LLC, and 113 Lexington Realty LLC (collectively "Guarantors") executed a guaranty.

The Security Agreement was assigned to Plaintiff Newt-Tso II SPV-LLC on September 25, 2023. Thereafter, on July 23, 2024, the Loan, Security Agreement, and guaranty were transferred to U.S. Bank Trust Company National Association, and its successors and assigns as indenture trustee for the holders of the NALP business loan trust 2024-1 Business Loan-Backed Notes, Series 2024-1 (“U.S. Bank”). Allegedly, Small Business Lending LLC was appointed as servicer of the Loan. Plaintiffs allege Defendants breached the Loan, Security Agreement, and guaranty by failing to pay the Loan’s principal, which was demanded on February 6, 2025. The issue is the demand for payment, which also contained notices to cure, was sent by Newt-Tso II SPV-LLC, who at the time had assigned away its rights under the Loan, Security Agreement, and guaranty.

Defendants move to dismiss because the demand which forms the basis of this lawsuit was defective and null. Plaintiffs oppose and cross move to remove Newt-Tso II SPV-LLC from the caption. The motion to dismiss is granted and the cross motion is denied as moot. The Court and the parties are stuck with the allegations in the pleadings, and the Amended Complaint explicitly states “defendants have failed to comply with the terms and provisions of the Note, Security Agreement and the guaranty, by failing and omitting to pay the full principal sum which became due on demand, and which was so demanded on February 6, 2025” (NYSCEF Doc. 33). Although Plaintiffs cross move for leave to amend, and despite being on notice of the defective demand on February 6, 2025, Plaintiffs fail to remedy this pleading deficiency by setting forth some alternative basis for default and acceleration in the proposed amended pleading.

While there may be some evidence that Defendants defaulted under the Loan, Security Agreement, and guaranty on other grounds, the basis of the default alleged in this lawsuit is the due to Defendants’ alleged failure to comply with the demand sent by Newt-Tso II SPV-LLC on

February 6, 2025. However, that was not a default as Newt-Tso II SPV-LLC did not have standing to demand payment at the time the demand letter was sent.

While the Security Agreement and the guaranty do not contain any notice requirement prior to accelerating, this does not change the fact that the alleged default which forms the basis of this lawsuit is a default arising from the failure to comply with a defective demand letter sent on February 6, 2025. “[A] noteholder must effect an ‘unequivocal overt act’ to accomplish” acceleration, which is considered “a substantial change in the parties’ contractual relationship” (see *Kirschenbaum v Wells Fargo Bank, N.A.*, 193 AD3d 425 [1st Dept 2021] quoting *Albertina Realty Co. v Rosbro Realty Corp.*, 258 NY 472 [1932]). It is undisputed that the noteholder did not send the February 6, 2025 letter which according to the Amended Complaint was the “unequivocal overt act” accelerating the Loan. Since the sole alleged basis for acceleration was failure to comply with a February 6, 2025 letter, which was not sent by a noteholder, the motion to dismiss is granted.

While theoretically Plaintiffs could refile based on other alleged events of default, the alleged default which forms the basis of this lawsuit was not a default at all since the demand purportedly triggering acceleration was sent by a party without any right to collect under the Loan, Security Agreement, or guaranty. Therefore, the Complaint is dismissed, without prejudice. Plaintiffs are granted leave to replead with alternative allegations of default warranting acceleration, if possible.

Accordingly, it is hereby,

ORDERED that Defendants’ motion to dismiss is granted and the Amended Complaint is dismissed, without prejudice and with leave to replead within thirty days to remedy pleading defects regarding events triggering default and acceleration; and it is further

ORDERED that Plaintiffs' cross-motion to amend is moot in lieu of the Amended Complaint being dismissed; and it is further

Ordered that within ten days of entry, counsel for Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

4/27/26
DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE