

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

PRIORY HOSPITALITY, INC.;
PRIORY HOLDINGS, LLC; HISTORIC
ST. MARY'S, INC.,

Plaintiffs,

vs.

614 PRESSLEY LLC; STEWART TITLE
GUARANTY COMPANY,

Defendants.

CIVIL DIVISION

No. GD _____

**COMPLAINT FOR DECLARATORY
JUDGMENT**

Filed on Behalf of Plaintiffs

Counsel of Record for this Party:

Christopher W. Cahillane, Esquire
Pa. ID.#75977
ccahillane@tuckerlaw.com

TUCKER ARENSBERG, P.C.
1500 One PPG Place
Pittsburgh PA 15222
(412) 566-1212

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

PRIORY HOSPITALITY, INC.;)	CIVIL DIVISION - LAW
PRIORY HOLDINGS, LLC; HISTORIC)	
ST. MARY'S, INC.,)	No. GD _____
)	
Plaintiffs,)	
)	
vs.)	
)	
614 PRESSLEY LLC; STEWART TITLE)	
GUARANTY COMPANY,)	
)	
Defendants.)	

COMPLAINT FOR DECLARATORY JUDGMENT

AND NOW, come the Plaintiffs, Priory Hospitality, Inc., Priory Holdings, LLC, and Historic St. Mary's Inc., by and through their attorneys, Tucker Arensberg, P.C., and file the within Complaint for Declaratory Judgment, stating as follows:

1. Plaintiff, Priory Hospitality, Inc., is a corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal business address of 614 Pressley Street, Pittsburgh, Allegheny County, Pennsylvania 15212.
2. Plaintiff, Priory Holdings, LLC, is a limited liability company, organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal business address of 614 Pressley Street, Pittsburgh, Allegheny County, Pennsylvania 15212.
3. Plaintiff, Historic St. Mary's Inc., is a corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal business address of 614 Pressley Street, Pittsburgh, Allegheny County, Pennsylvania 15212.
4. Plaintiffs will herein after be referred to collectively as "Seller."
5. Defendant, 614 Pressley LLC ("Buyer"), is a limited liability company, organized and existing under the laws of the State of Delaware, with a principal business address of 233 Butler Street, 2A, Brooklyn, New York 11217.

6. Defendant, Stewart Title Guaranty Company ("Stewart"), is a corporation, organized and existing under the laws of the State of Texas, with a local business address of 651 Holiday Drive, Suite 4, Pittsburgh, Allegheny County, Pennsylvania 15220.

7. Seller is the owner of a 42-room historic boutique hotel and events and banquet facility located on Pittsburgh's North Side known as The Priory Hotel and Pittsburgh's Grand Hall at the Priory.

8. On May 28, 2019, Seller and Buyer entered into an Agreement of Purchase and Sale ("Agreement") whereby Buyer agreed to Purchase certain assets and real property from Seller, consisting substantially of The Priory Hotel and Pittsburgh's Grand Hall at the Priory (the "Property").

9. In connection with the execution of the Agreement, and pursuant to Section 2.3 of the Agreement, Buyer made a deposit of \$300,000.00 with Stewart which was acting as the escrow agent for the deposit (the "Deposit").

10. Pursuant to the terms of the Agreement, Buyer had up to sixty (60) days after the date of the Agreement (i.e., until July 27, 2019) to conduct due diligence, with an unqualified right to terminate the Agreement and a return of the Deposit in full during such period.

11. Pursuant to the terms of the Agreement, the closing of the sale of the Property from Seller to Buyer was to occur within sixty (60) days after the end of such due diligence period (i.e., no later than September 25, 2019).

12. Pursuant to Section 4.6 of the Agreement, Buyer represented to Seller that Buyer will have the financial wherewithal to purchase, or obtain financing to purchase, the Property.

13. At the request of Buyer, and primarily in order to accommodate Buyer's failure to obtain financing to consummate the purchase of the Property, Buyer and Seller entered into twelve (12) amendments to the Agreement: January 26, 2019 (to extend the due diligence period); September 11, 2019 (to extend the due diligence period and closing date); September 26, 2019 (to add an explicit financing contingency and to extend closing date); December 2, 2019

(to extend financing contingency and closing date); December 16, 2019 (to reduce the purchase price for the Property, and remove certain ancillary properties and affiliated sellers from the Agreement, and extend the financing contingency); December 27, 2019, and January 9, 17, 21, 24 and 28, 2020 (in each case, to extend the financing contingency); and December 31, 2020 (to reduce the purchase price and extend the closing date to May 11, 2020).

14. A copy of the Agreement, and all amendments thereto, are not attached to this Complaint for Declaratory Judgment due to confidentiality provisions contained therein.

15. On February 3, 2020, the United States declared a public health emergency due to the coronavirus outbreak. The announcement came three (3) days after the World Health Organization declared a Global Health Emergency due to the coronavirus outbreak.

16. Notwithstanding the expanding coronavirus pandemic, and the effects the pandemic was having on the American economy, including the hospitality industry, on May 8, 2020, Buyer and Seller executed a Thirteenth Amendment to Agreement of Purchase and Sale ("Thirteenth Amendment").

17. Pursuant to the Thirteenth Amendment, the parties set a closing date for the sale of the Property for August 11, 2020.

18. Pursuant to the Thirteenth Amendment, the parties agreed to certain restrictions upon Seller's ability to book future events and hotel reservations.

19. In reliance upon Buyer's entering into the Thirteenth Amendment, and in anticipation of closing the sale of the Property, Seller continued to operate its business within the restrictions set forth in the Agreement as amended by such Thirteen Amendment.

20. Pursuant to Section 2.1 of the Agreement, Buyer agreed to purchase the Property in accordance with the terms of the Agreement.

21. On July 24, 2020, Buyer gave verbal notice to Seller, in absolute and unequivocal terms, that the Buyer refused to perform its obligations under the Agreement to purchase the Property.

22. On or about May 27, 2020, and at other times thereafter, Buyer gave verbal notice to Seller, in distinct and positive statements, that Buyer does not have sufficient financing available to pay the purchase price for the Property, and is thus unable to perform its obligation to purchase the Property as required by the Agreement.

23. On July 24, 2020, counsel for Seller sent Stewart, and Buyer and its counsel, a letter notifying Stewart that Buyer had informed Seller that Buyer would not be purchasing the Property. See letter from counsel for Seller dated July 24, 2020, attached hereto as Exhibit "A."

24. Seller further informed Stewart and Buyer that Seller is entitled to the Deposit. See Exhibit "A."

25. On July 29, 2020, counsel for Buyer sent Seller and its counsel a letter purporting to terminate the Agreement citing "the COVID-19 pandemic" as a basis for the termination. See letter from counsel for Buyer dated July 29, 2020, attached hereto as Exhibit "B."

26. Buyer further informed Seller that it intended to seek the return of the Deposit held in escrow by Stewart. See Exhibit "B."

27. By letter dated July 30, 2020, Seller, through its counsel, informed Buyer that it rejected Buyer's purported termination of the Agreement, and claimed its right pursuant to Section 9.4 of the Agreement to receive the \$300,000.00 Deposit held by Stewart in escrow. See letter from counsel for Seller dated July 30, 2020, attached hereto as Exhibit "C."

COUNT I - DECLARATORY JUDGMENT

28. The averments of paragraphs 1 through 27 of this Complaint are incorporated herein by reference as if set forth at length.

29. Buyer has no rights under the Agreement to the return of the deposit since it is in default of its terms by refusing to close and by refusing to purchase the Property, and by making a material misrepresentation regarding its financial wherewithal to purchase the Property.

30. The COVID-19 pandemic is not a valid basis for the termination of the Agreement, especially in light of the fact that Buyer was fully aware of the existence of the pandemic, and the

effects the pandemic was having on the hospitality industry, but nevertheless chose to sign the Thirteenth Amendment to the Agreement setting a closing date of August 11, 2020, and continuing restrictions on Seller's ability to conduct business.

31. Pursuant to Section 9.4 of the Agreement, Buyer's default entitles Seller to retain the Deposit presently being held in escrow by Stewart.

WHEREFORE, Plaintiffs, Priory Hospitality, Inc., Priory Holdings, LLC, and Historic St. Mary's Inc., respectfully request that this Honorable Court declare that they are entitled to receive the \$300,000.00 deposit presently held by Defendant, Stewart Title Guaranty Company, and that Defendant, 614 Pressley LLC, has no right or claim whatsoever to said deposit. Plaintiffs further demand a judgment in their favor of costs, interest, and the attorneys' fees against Defendant 614 Pressley LLC incurred in prosecuting this action.

Respectfully submitted,

TUCKER ARENSBERG, P.C.

By: 

Christopher W. Cahillane, Esquire

Pa. T.D. No. 75977

ccahillane@tuckerlaw.com

1500 One PPG Place

Pittsburgh, PA 15222

(412) 566-1212

(412) 594-5619 (fax)

Attorneys for Plaintiffs, Priory Hospitality,
Inc., Priory Holdings, LLC, and Historic St.
Mary's Inc.

EXHIBIT “A”

July 24, 2020

VIA EMAIL AND FEDERAL EXPRESS

Stewart Title Guaranty Company
3402 W. Cypress Street
Tampa, FL 33607
Attn: Beth Book, Commercial Escrow Officer
Email: Beth.Book@stewart.com

Re: Agreement of Purchase and Sale between 614 Pressley LLC (“Purchaser”) and Priory Hospitality, Inc., Priory Holdings, LLC and Historic St. Mary’s, Inc. (collectively, the “Seller”), dated as of May 28, 2019, as amended (the “Agreement”). Stewart Title Guaranty Company is holding \$300,000 (the “Deposit”) as escrow agent (“Escrow Agent”) pursuant to the terms of the Agreement. Capitalized terms not defined herein shall have the meanings provided in the Agreement.

Dear Ms. Book:

This is to serve as official notification that (i) Seller has received verbal notification from Purchaser that Purchaser will not be purchasing the Property, as Purchaser is required to do pursuant to the Agreement, and (ii) Seller is therefore entitled to the Deposit.

Sincerely,

TUCKER ARENSBERG, P.C.

By:



Name: Eric M. Schumann
(counsel to Seller)

cc: John E. Graf (via email)
Matthew E. Jassak, Esquire (via email)
Aaron Marcus (via email)
Alexandra Verbeck (via email and FedEx)
Andrew Turbide, Esquire (via email)
Lois Tosi (via email)

TADMS:5349498-1 013065-009551

EXHIBIT “B”

July 29, 2020

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

Priory Hospitality, Inc.
614 Pressley Street
Pittsburgh, Pennsylvania, 15212
Attn: John E. Graf
Email: john@thepriory.com

Stewart Title Guaranty Company
3402 W. Cypress Street
Tampa, FL 33607
Attn: Beth Book, Commercial Escrow Officer
Email: Beth.Book@stewart.com

Tucker Arensberg, PC
1500 One PPG Place
Pittsburgh, PA 15222
Attn: Eric M. Schumann, Esq.
Email: eschumann@tuckerlaw.com

Re: Agreement of Purchase and Sale dated May 28, 2019 (as amended, the "Agreement") by and between 614 PRESSLEY LLC, and its permitted successors or assigns (collectively, the "Purchaser") and PRIORY HOSPITALITY, INC. ("Hospitality Seller"), PRIORY HOLDINGS, LLC ("Holdings Seller"), and HISTORIC ST. MARY'S, INC. ("Historic Seller") (collectively, Hospitality Seller, Holdings Seller and Historic Seller are referred to herein individually and collectively as the "Seller") for certain property commonly known as the "The Priory Hotel" and "Pittsburgh's Grand Hall" (the "Property")

Ladies and Gentlemen:

As you know, this firm represents Purchaser in relation to the acquisition of the Property pursuant to the Agreement. Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Agreement.

This letter shall serve as notice pursuant to Section 9.3 of the Agreement that a condition precedent to the obligation of Purchaser under the Agreement cannot or will not be satisfied prior to the Closing, currently scheduled for August 11, 2020. In particular, Section 5.1(b) of the Agreement provides that Purchaser's obligations under the Agreement are subject to the satisfaction of the following condition precedent:

All of Seller's representations and warranties made in this Agreement shall be true and correct in all material respects as of the date hereof and as of the Closing Date as if then made; there shall have been no material adverse change in the business conducted at the Property and no matter, condition or event shall have occurred which could in Purchaser's commercially reasonable judgment, materially and adversely affect the operation, value or marketability of the Property or any part thereof; Seller shall have performed in all material respects all of its covenants and other obligations under this Agreement and Seller shall have executed and delivered to Purchaser at Closing a certificate to the foregoing effect. (*emphasis added*).



FOLEY & LARDNER LLP

July 29, 2020

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As you are aware, since March of 2020, the COVID-19 pandemic has had a uniquely devastating and disproportionate effect on the Property due to travel bans, restrictions on group gatherings, shifting in consumer behavior, large scale travel cancellations and Seller's election at various times to shut down the Property. As a result, since March 2020, Seller has held limited large scale events at the Property (the overwhelming driver of the business), occupancy rates at the Property have plummeted, and the once profitable business operated thereon, is no longer currently profitable and is, in fact, operating at significant shortfalls¹. In Purchaser's commercially reasonable judgment, the COVID-19 pandemic has resulted in a material adverse change in the business conducted at the Property, and COVID-19 has had and will continue to have for an undetermined amount of time a material adverse impact on the operations, value and marketability of the Property. Purchaser further believes that the material adverse impact on the Property will be measured in terms of years, and not months.

Therefore, as material closing conditions set forth in Section 5.1 have become incapable of fulfillment on or prior to Closing on August 11, 2020, Purchaser hereby provides notice of such failure in accordance with Section 9.3 of the Agreement, and further notifies Seller that, subject to any cure rights set forth in Section 9.3, Purchaser intends to terminate the Agreement in accordance with Section 9.3(a) of the Agreement and receive a return of the Deposit. Purchaser does not waive any rights hereunder and the failure to reference any facts or additional provisions of the Agreement shall not be a waiver of any rights or remedies, all of which are reserved.

Please do not hesitate to contact us with any comments or questions. Thank you.

Very truly yours,

Matthew E. Jassak, Esq.

cc (via email):
Aaron Marcus
Jasmine Esmailbegui, Esq.
Alexandra Verbeck
Andrew Turbide, Esq.
Lois Tosi

¹ We note that in May of 2020, Seller took out an additional \$70,000 loan partially secured by the Property. We assume the loan was needed in order to fund losses associated with the ownership and operation of the Property during the pandemic.

EXHIBIT “C”

July 30, 2020

VIA EMAIL AND FEDERAL EXPRESS

Foley & Lardner LLP
111 N. Orange Avenue, Suite 1800
Orlando, Florida 32801
Attn: Matthew E. Jassak, Esq.
Email: mjassak@foley.com

Stewart Title Guaranty Company
3402 W. Cypress Street
Tampa, FL 33607
Attn: Beth Book, Commercial Escrow Officer
Email: Beth.Book@stewart.com

614 Pressley LLC
197 Plymouth Street
Brooklyn, NY 11201
Attn: Aaron Marcus
Email: aaron@studiotack.com

Re: Agreement of Purchase and Sale between 614 Pressley LLC (“Purchaser”) and Priory Hospitality, Inc., Priory Holdings, LLC and Historic St. Mary’s, Inc. (collectively, the “Seller”), dated as of May 28, 2019, as amended (the “Agreement”). Stewart Title Guaranty Company is holding \$300,000 (the “Deposit”) as escrow agent (“Escrow Agent”) pursuant to the terms of the Agreement. Capitalized terms not defined herein shall have the meanings provided in the Agreement.

Ladies and Gentlemen:

Pursuant to Section 2.1 of the Agreement, the Purchaser agreed to purchase the Property for the Purchase Price in accordance with the terms of the Agreement. Purchaser gave notice to Seller by telephone calls Friday, July 24, 2020, and Monday, July 27, in absolute and unequivocal terms, that the Purchaser refuses to perform its obligation to so purchase the Property. In addition, Purchaser has on a number of occasions communicated in distinct and positive statements that the Purchaser does not have sufficient financing available to pay the Purchase Price, and is thus unable to perform its obligation to purchase the Property. Each of the foregoing constitutes an anticipatory breach of the Purchaser’s obligations under the Agreement, and thus a default by Purchaser in performing such obligations.

Section 5.2 (b) of the Agreement provides as a condition of closing that all of Purchaser’s representations and warranties made in the Agreement shall be true and correct in all material respects as of the date of the Agreement, and as of the Closing Date. Pursuant to Section 4.6 of the Agreement, Purchaser represented that it, “and its parent, affiliates and subsidiaries will have [as of the Closing Date] the financial wherewithal to purchase, or obtain financing to purchase, the Property pursuant to the terms of [the] Agreement and to meet all of Purchaser’s obligations under [the] Agreement”. Purchaser has informed Seller that Seller does not have the financial wherewithal to meet its obligations to purchase the Property as of the Closing Date, and thus this

July 30, 2020

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representation was untrue when made. Pursuant to the terms of the Agreement, Purchaser made the representations in Article IV thereof, including the representation in Section 4.6, “(t)o induce Seller to enter into [the] Agreement and to sell the Property,” and “upon each of which Purchaser acknowledges and agrees that Seller is entitled to rely and has relied”. Seller in fact did rely upon such representations by Purchaser (including the representation made in Section 4.6, and many more besides), when Seller entered into the Agreement, and more than a dozen amendments thereto, much to Seller’s disappointment, economic harm and substantial detriment. Purchaser’s representation in Section 4.6 was not true, and making such a false representation is a default by Purchaser under the Agreement.

By letter dated July 29, 2020, Purchaser provided notice that Purchaser intends to terminate the Agreement. Seller rejects the basis upon which Purchaser purports to support such termination, due to Purchaser’s prior actions and course of conduct, and by virtue of its prior defaults under the Agreement. Purchaser’s expressed intention in its July 29, 2020 letter to terminate the Agreement on an invalid basis, and thus to fail to perform its obligation to purchase the Property, thus constitutes an anticipatory breach of and a default under the Agreement.

Notice of the foregoing defaults by Purchaser is hereby given by Seller, pursuant to the second sentence of Section 9.4 of the Agreement. Subject to Purchaser’s cure rights set forth in Section 9.4, Seller intends to terminate the Agreement and demand immediate delivery of the Deposit to Seller. Seller reserves all rights and remedies under the Agreement, whether or not referenced herein.

Sincerely,

TUCKER ARENSBERG, P.C.

By: 

Name: Eric M. Schumann
(counsel to Seller)

cc: John E. Graf (via email)
Alexandra Verbeck (via email and FedEx)
Andrew Turbide, Esquire (via email)
Lois Tosi (via email)
Jasmine Esmailbegui, Esq. (via email)

VERIFICATION

I, John E. Graf, President & CEO of Priory Hospitality, Inc., one of the Plaintiffs herein, have read the foregoing Complaint for Declaratory Judgment and verify that the statements contained therein are true and correct to the best of my knowledge, information and belief. This statement and verification is made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.


John E. Graf