

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re Chapter 11
316 Bowery Next Generation LLC Case no. 24-11237 (MEW)
Debtor.
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LOCAL RULE STATEMENT

Ephraim Diamond, CRO of Walsam 316, LLC, Walsam 316 Bowery LLC, Walsam
Bleecker LLC, Lawber Bowery LLC and 316 Bowery Next Generation LLC (each a "Debtor" and
collectively the "Debtors") deposes and says under penalty of perjury, as follows:

1. I am submitting this affidavit under the local rules of this Court in support
of each Debtors' chapter 11 filings.
2. On July 15, 2024 ("Petition Date"), Walsam 316, LLC, Walsam 316
Bowery LLC, Walsam Bleecker LLC, Lawber Bowery LLC filed Chapter 11 petitions under Title
11 of the United States Code, 11 U.S.C. 101 et seq. (the "Bankruptcy Code") and on July 16,
2024, 316 Bowery Next Generation LLC filed its chapter 11 petition (collectively, the "Chapter 11
Cases").
3. In July 2015, the Debtors purchased as tenants in common, the adjoining
properties at 316 Bowery, New York New York (the "316 Bowery") and 4-6 Bleecker Street, New
York, New York ("4-6 Bleecker," with 316 Bowery, the "Properties"). The seller was 316
Bowery Realty Corp. ("Prior Owner").
4. On April 15, 2012, years before the Debtors' purchase, the Prior Owner had
entered into a long-term master lease ("Master Lease") under which 4-6 Bleecker Street LLC

(“Master Lease Tenant”) is the net lessee and the landlord of the nine (9) residential apartments on the 2nd through 4th floor of 4-6 Bleecker. The Debtors acquired the Properties with the understanding that the 4-6 Bleecker property would be converted to a condominium after which the Debtors would own the commercial space and the Master Lease Tenant would own the residential space.

5. Indeed, the planned condominium conversion plan pre-dated the Master Lease. The Prior Owner and the Master Lease Tenant had originally entered into a purchase and sale agreement for the residential apartments. That sale was to close after the Prior owner obtained approval for the condominium conversion. But the Prior Owner was unable to timely complete the condominium conversion as planned. Pending condominium conversion therefore, the Prior Owner and the Master Lease Tenant instead entered into the Master Lease for the stated purpose of giving the Master Lease Tenant a long-term lease having an initial 99 year term, renewable for a second 99 year term.

6. Importantly, a rider to the initial purchase and sale agreement between the Prior Owner and the Master Lease Tenant provided that all of the apartments were properly registered with New York Division of Housing and Community Renewal (“DHCR”), that the Prior Owner had complied with all applicable DHCR regulations and that the rents for the residential tenants did not exceed those permitted under then existing law.

7. Certain residential tenants brought a rent overcharge action. By decision entered on October 15, 2015 by the New York County Supreme Court, later affirmed by the Appellate Division in 2018, the rents were reset drastically lower, and the tenants were awarded about \$3,000,000 in damages, including treble damages. The rent overcharge proceeding was

eventually settled, with the prior Tenants receiving \$2.3 million, \$1.6 million of which was paid by the Prior Owner and \$700,000 of which was paid by the Debtors.

8. The Debtors sued the Prior Owner and Master Tenant to recover a portion of the \$700,000 payment. The Supreme Court determined, however, that the limitation on liability in the Debtors' purchase agreement controlled and dismissed the Debtors' claims. Worse, in that action, the Master Tenant counterclaimed, asserting that the Supreme Court-ordered rent reductions breached the purchase and sale agreement provision between the Master Tenant and the Prior Owner (cited above) as incorporated into the Master Lease. The Supreme Court thus held the Debtors liable (as successor interest to the Prior Owner) to the Master Tenant for the drop in rental income. The Court referred the determination of damages to a special referee. The inquest has not yet been held. But for five years, the Master Tenant has paid the Debtors nothing on its obligations under the Master Lease. Thus, the Master Lease Tenant owes the Debtors hundreds of thousands of dollars in overdue payments.

9. When they purchased the Properties, the Debtors entered into a Promissory Note in the amount of \$6,850,000 dated July 15, 2015 (the "Note") with Northeast Bank, as assignee of Investors Bank (the "Lender"). The Note is secured by a Mortgage, Assignment of Lease and Rents and Security Agreement and Fixture Filing. The Note is also guaranteed by certain Debtors' members.

10. In March of 2023, the Lender declared a default. The Lender accelerated and demanded payment in full from the Debtors and the guarantors. By early 2024, the Properties were producing no revenue and the Debtors' obligations could only be satisfied with payments by the guarantors.

11. The Debtors engaged a broker, therefore, to sell 316 Bowery. On or about April 15, 2024, before filing these cases, the Debtors sold the 316 Bowery Property for \$3,200,000, and used the net sale proceeds to pay down the Note, leaving \$3,138,630 due. Lawland Bleecker LLC (“Mortgagee”), an entity formed by the guarantors then purchased the Note and is now the 4-6 Bleecker mortgagee. The Note and mortgage remain in default. The Debtors have no means to satisfy any part of the loan absent a sale 4-6 Bleecker.

12. Meanwhile, the Debtors have been consumed by collateral litigation. In October 2021, the residential tenants sued the Master Lease Tenant and the Debtors over living conditions. In 2020, the Debtors sued the law firm of Rosenberg & Estis, P.C. for malpractice and fraud. The Debtors alleged that although the firm ostensibly represented both the Debtors and the Prior Owner on the Properties’ acquisition, the firm concealed the scope of the rent overcharge issues from the Debtors to benefit of the Prior Owner. Rosenberg & Estis counterclaimed. The Debtors also sued the law firm of Holland & Knight, LLP for advising the Debtors to settle the rent overcharge damages claims. The complaint was dismissed. The Debtors appealed but did not perfect the appeal. Holland & Knight sued Debtor Walsom 316, LLC for legal fees. Walsom 316’s counterclaim was dismissed. The actions remain pending.

13. In addition to the \$3,138,630 mortgage claim, the Debtors estimate \$59,603 of New York City lien claims and about \$11,941,622 of total general unsecured claims. Among the general unsecured claims are disputed and unliquidated claims of \$10,000,000 asserted by the Master Lease Tenant, \$10,000 asserted by certain residential tenants, \$227,338 asserted by Rosenberg & Estis and \$410,539 asserted by Holland & Knight. Given the tenant litigation and

the Master Lease issues concerning the residential units, the 4-6 Bleecker Property value is speculative.

14. The Debtors concluded that further litigation of the pending lawsuits will neither save the beneficial owners' investment nor benefit creditors, so they decided to liquidate. The Mortgagee, who would likely be the primary beneficiary of increased value through further litigation, agrees. The Debtors, therefore, are making a motion to reject the Master Lease, a motion to sell the 4-6 Bleecker Property (subject any Master Lease Tenant's post-rejection rights) and ultimately, the Debtors intend to file a liquidating plan to wind up the Debtors' business.

15. In the meantime, since the Master Lease Tenant is not paying rent, the Debtors do not anticipate substantial ongoing operating income, and debtor in possession financing may be needed unless the Property can be sold quickly.

16. Given the Property's tenants in common ownership by five entities owned by three investor groups, on April 16, 2024 each of the Debtors retained Arbel Capital Advisors LLC to provide strategic and restructuring consultancy services and its managing member, Ephraim Diamond as chief restructuring officer ("CRO"). Since then, I have familiarized myself with the Debtors' operations, reviewed the claims being asserted against the Debtors, spoken with the principals of the Debtors and their advisors and have worked with the Debtors' bankruptcy counsel to prepare and file these cases. My background includes nearly two decades as a bankruptcy lawyer and a distressed business analyst. I founded Arbel Capital Advisors in September 2018 to provide restructuring, bankruptcy, and independent fiduciary advisory and related services. Since then, I have assumed restructuring officer roles for mixed portfolios of income producing, stalled and pre-development multi-family assets in New York valued in excess of \$2 billion. The Debtors principals paid Arbel a \$25,000 initial engagement fee and subsequently paid \$32,500 before filing the cases based on the following fee

structure: \$20,000 monthly fee for each of May and June 2024, and \$12,500 per month thereafter, subject to a minimum fee of \$65,000. \$7,500 of the initial fee, \$7,500 of the May and June fees, and \$5,000 of each of the following months' fees are deferred until the earlier of the consummation of a sale or December 31, 2024.

17. No creditors committee was formed prior to the filing of this case.

18. The Debtors' schedules, statements of financial affairs and schedules of equity holders are filed herewith, and incorporated herein by reference. Those documents detail the holders of each Debtor's twenty largest unsecured claims, the holders of each Debtor's five largest secured claims, a summary of each Debtor's assets and liabilities, and the identity of each Debtor's members and managers. The Debtors' business operations are conducted at 419 Park Avenue South, New York, New York and their books and records are at that location.

19. The Debtors have no shares, debentures or other securities that are publicly held, no property in the possession or custody of any custodian, public officer, mortgagee, pledgee, assignee of rents or secured creditor, and no pending seizures of assets.

Dated: New York, New York
July 16, 2024

s/Ephraim Diamond, CRO