

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	Chapter 11 (Subchapter V)
ONH AFC CS INVESTORS, LLC, <i>et al.</i> , <sup>1</sup>	Case No. 23-10931 (CTG)
Debtors.	(Jointly Administered)
ANNA PHILLIPS, in her capacity as the Liquidating Trustee of the ONH Liquidating Trust,	Adv. Proc. No. 25-XXXXX
Plaintiff,	
v.	
REEC THIRD AVE LLC,	
Defendant.	

**COMPLAINT TO AVOID AND RECOVER TRANSFERS  
UNDER 11 U.S.C. §§ 544, 548, 550 OF THE BANKRUPTCY CODE AND  
APPLICABLE STATE LAW, AND OTHER RELATED RELIEF**

Anna Phillips (“Plaintiff” or the “Trustee”), in her capacity as the Liquidating Trustee of the ONH Liquidating Trust (ONH Trust”), hereby files this complaint against REEC Third Ave LLC (“Defendant” or “REEC”) for the relief requested below, and alleges as follows:

**NATURE OF THE PROCEEDING**

1. Elchonon “Elie” Schwartz (“Mr. Schwartz”) fraudulently induced 654 accredited investors to invest more than \$44 million (net of refunds) to finance the acquisition and redevelopment of the Atlanta Financial Center (defined below). As the scheme unraveled, Mr. Schwartz pillaged Investor Funds (defined below)—transferring Investor Funds to entities owned

<sup>1</sup> The last four digits of the Debtors’ federal tax identification numbers are 1199 (ONH AFC CS Investors LLC) and 6326 (ONH 1601 CS Investors LLC). The Debtors’ mailing address is 3445 Peachtree Road, Suite 1225 Atlanta, GA 30326.

and/or controlled by Mr. Schwartz, misappropriating funds through such entities to Mr. Schwartz personally, using Investor Funds to finance extravagant purchases of luxury jewelry and watches, and paying Mr. Schwartz's personal debts and/or obligations of one of his entities, including, as relevant here, \$1,042,083.19 to Defendant.

2. By and through this adversary proceeding (the "Adversary Proceeding"), the Trustee seeks (i) to avoid and recover the Fraudulent Transfers (defined below) from Defendant pursuant to Sections 544(b), 548(a), and 550 of the Bankruptcy Code and NY Debt. & Credit. Law §§ 270, *et. seq.*, and (ii) to obtain a judgment directing the Defendant and/or any other defendant determined to be an initial, subsequent or mediate transferee, or party for whose benefit the avoided transfers were made, to pay the Trustee an amount to be determined at trial, but not less than \$1,042,083.19 plus interest and costs.

### **JURISDICTION AND VENUE**

3. This adversary proceeding is brought pursuant to sections 544, 548, and 550 of title 11 of the of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), Rule 7001 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules" and each a "Bankruptcy Rule"), NY Debt. & Cred. Law §§ 270 *et. seq.* (the "NY UVTA"), and the *Amended Small Business Debtors' Plan of Liquidation* [see Bankr. D.I. 202-1]<sup>2</sup> (the "Plan") confirmed in the Chapter 11 Cases, to avoid and recover for the benefit of creditors, including the Investors, \$5.25 million in fraudulent or otherwise voidable transactions.

4. This Court has jurisdiction over this Adversary Proceeding under 28 U.S.C. §§ 157(b) and 1334(b).

---

<sup>2</sup> As used herein, "Bankr. D.I." refers to instances and entries on the docket in *In re ONH AFC CS Investors LLC*, case no. 23-10931 (Bankr. D. Del.), "Adv. D.I." refers to instances and entries on the docket in this Adversary Proceeding, and "Crim. D.I." refers to instances and entries on the docket in the Criminal Case (defined below).

5. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (H), and (O).
6. Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.
7. In accordance with Bankruptcy Rule 7008(a), the Trustee consents to entry of final orders and judgments by the Court in this Adversary Proceeding, regardless of whether it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

### **PROCEDURAL BACKGROUND**

8. On July 14, 2023, (the “Petition Date”), ONH AFC CS Investors LLC (“ONH AFC CS”) and ONH 1601 CS Investors, LLC (collectively, the “Debtors”) filed voluntary petitions for relief pursuant to chapter 11 of the Bankruptcy Code and elected to proceed under Subchapter V of the Bankruptcy Code (the “Bankruptcy Cases”) [Bankr. D.I. 1].

9. Additional factual background relating to the Debtors’ businesses and the commencement of the Bankruptcy Cases is set forth in detail in the *Declaration of Eric Lee in Support of Chapter 11 Petitions and First Day Motions* [Bankr. D.I. 2]. Factual background more specific to this complaint is set forth below.

10. This adversary proceeding is part of the Trustee’s continuing obligation to recover assets for the benefit of the Debtors’ respective bankruptcy estates.

11. This Adversary Proceeding relates to ONH AFC CS and the ONH Trust, as successor to the ONH AFC CS bankruptcy estate (“ONH Estate”).

### **PARTIES**

12. Debtor ONH AFC CS was a Delaware limited liability company. At the time of the Fraudulent Transfers, ONH AFC CS’s principal place of business was 1430 Broadway, Suite 1605, New York, New York 10018.

13. Plaintiff Anna Phillips is the Liquidating Trustee of the ONH Trust. The ONH Trust is the successor in interest to ONH AFC CS's claims and causes of action under the Plan confirmed by the Bankruptcy Court by an order entered December 14, 2023 [Bankr. D.I. 214] (the "Confirmation Order"). Under the Plan and Confirmation Order, certain investors assigned to the ONH Trust their claims and causes of action related to the Debtors.

14. Upon information and belief, Defendant REEC Third Ave LLC is a Delaware limited liability company, having an address c/o Real Estate Equities Corp., 18 East 48<sup>th</sup> Street, Penthouse, New York, NY 10017.

**FACTUAL BACKGROUND RELATED  
TO ONH AFC CS AND THE BANKRUPTCY CASES**

15. ONH AFC CS was formed on April 25, 2022. Prior to and concurrent with the events described herein, Mr. Schwartz formed and operated several unrelated companies (collectively, the "Nightingale Companies" and each a "Nightingale Company") that invested in commercial real estate and were organized under either One Night Holdings LLC ("One Night Holdings") or The Nightingale Group, LLC ("Nightingale Group" and, together with One Night Holdings and their respective affiliates, the "Nightingale Companies"). Nightingale Properties LLC ("Nightingale Properties") and ONH AFC LLC ("Prop. Co.") are two such companies.

16. At the time of the AFC Offering (defined below) and the occurrence of each Fraudulent Transfer, One Night Holdings was manager of ONH AFC CS. Upon information and belief, Mr. Schwartz was manager of One Night Holdings and controlled One Night Holdings at all relevant times.

17. ONH AFC CS was created to raise equity from investors to fund, in part, the purchase of the Atlanta Financial Center, a large commercial real estate complex in Atlanta, Georgia, located at 3333 Peachtree Road NE, 3343 Peachtree Road NE, and 3353 Peachtree Road

NE (the “Atlanta Financial Center”). ONH AFC CS’s limited liability company agreement (the “ONH AFC CS Operating Agreement”) provided for the governance of ONH AFC CS’s affairs, the conduct of its business, and the relations among its members. Based on documents provided to investors, Mr. Schwartz stated that he intended that ONH AFC CS would enter into a series of transactions that, together with other entities, would establish a capital structure for an anticipated transaction involving the purchase of the Atlanta Financial Center. Mr. Schwartz stated that these transactions were to occur when all of the capital providers and entities raised their portion of capital for the overall transaction.

18. Mr. Schwartz, through ONH AFC CS, informed potential investors that Prop. Co. planned to purchase and renovate the Atlanta Financial Center using money raised from the following sources: (1) funds from investors whom ONH AFC CS solicited through a capital raising platform owned and operated by CrowdStreet, Inc. (“CrowdStreet”); (2) equity from other investors; (3) equity from certain of the Nightingale Group; and (4) senior secured indebtedness.

19. ONH AFC CS planned to raise funds from accredited investors solicited using the CrowdStreet investor platform, which qualified as a private placement under Regulation D of the Securities Act of 1933.

**A. The AFC Proposed Transaction**

20. On May 3, 2022, Prop. Co.—not ONH AFC CS—entered into a purchase agreement with USPO Atlanta LLC for the acquisition of the Atlanta Financial Center (the “AFC Sale Contract”).

21. Upon information and belief, Mr. Schwartz and ONH AFC CS represented that Prop. Co. would arrange senior secured debt financing in connection with that purchase of the Atlanta Financial Center (the “AFC Transaction”) and, thereafter, use Investor Funds to acquire

an interest in Prop. Co. as one of two members of ONH AFC CS Mezz, LLC, a Delaware limited liability company (“AFC Mezz”), which, in turn, would acquire Prop. Co. Private Placement Memorandum (“PPM”), pp. 7-8.

22. But, at no time did ONH AFC CS execute any contract that contained, or otherwise obtain, a legal right to any interest in any property (including the Atlanta Financial Center or otherwise) or rights under the AFC Sale Contract. And, at no time did ONH AFC CS acquire any of the membership interests (or right to them) as provided in the AFC Offering documents or contemplated deal structure.

23. From the start of the subscription process until just before the Petition Date, the Nightingale Companies published notes to investors through CrowdStreet Marketplace providing updates on the Atlanta Financial Center project, including alleged issues and difficulties encountered in closing the AFC Transaction.

24. Despite never executing contracts for the purchase of assets and despite the project never closing, Mr. Schwartz caused ONH AFC CS to make certain transfers of Investor Funds to JOSMIC (*i.e.*, the Fraudulent Transfers) in satisfaction of Mr. Schwartz’s personal obligations under the JOSMIC Loan.

25. the Debtors caused certain Fraudulent Transfers (defined below) to be made from the funds deposited by the Creditors.

**B. The CrowdStreet Platform Arrangement**

26. To raise capital via CrowdStreet, a company must enter into a marketplace services agreement with CrowdStreet (the “MSA”), which grants users access to its community of accredited investors using CrowdStreet’s services. Pursuant to the MSA, companies would then execute additional term sheets related to specific offerings.

27. Upon information and belief, Mr. Schwartz, directly or through one or more Nightingale Companies, executed such a term sheet for the Atlanta Financial Center project (the “CrowdStreet Term Sheet”)—thereby launching the AFC Offering. The CrowdStreet Term Sheet referred to the AFC Offering as being categorized under “Specific Project Offerings.” Such offerings limit the use of proceeds to only certain pre-identified and selected properties which were readily identifiable from the offering materials. CrowdStreet Term Sheet, n. 1.

28. The MSA required that all funds raised from investors be held in a segregated account until the closing of the Atlanta Financial Center project. In particular, Section 5.3 of the MSA, as applicable to ONH AFC CS, provides:

[ONH AFC CS] agree[s] to establish a separate bank account or escrow account for each Project Offering and to provide funding instructions to investors through the Management Console. [ONH AFC CS] shall deposit all User contributions, funds, or subscriptions into the bank account or escrow account you establish and hold it or have it held in trust until the closing of each Project Offering. If a Project Offering fails to close for any reason, [ONH AFC CS] agree[s] to return investor contributions in full and promptly but no later than thirty (30) calendar days following failure of the Project Offering to close.

MSA, § 5.3.

**C. The Subscription Process for ONH AFC CS**

29. On or about May 26, 2022, ONH AFC CS launched an offering (the “AFC Offering”) on the CrowdStreet Marketplace to obtain third-party funds in exchange for membership interests in ONH AFC CS.

30. Accredited investors could then review AFC Offering materials via CrowdStreet Marketplace, learn more about the Atlanta Financial Center proposed transaction, and, if interested in investing, complete their investment documents through the CrowdStreet Marketplace.

31. CrowdStreet Marketplace provided potential investors with a list of permitted uses for the funds provided by subscribers to the AFC Offering (the “Investor Funds”). Per the AFC Offering, Investor Funds were only to be used for the purchase price of the Atlanta Financial Center and certain fees and costs specifically identified therein.

32. Additionally, upon information and belief, ONH AFC CS, directly or indirectly, through Mr. Schwartz or CrowdStreet Marketplace, made numerous representations to Investors and potential investors.

33. In connection with the AFC Offering, a private placement memorandum (the “Atlanta Financial Center PPM” or “PPM”) was provided to prospective investors, including those who ultimately transferred funds to ONH AFC CS.

34. The PPM outlined the terms of the purported investment.

35. The PPM informed investors that Mr. Schwartz was the contact person for ONH AFC CS and directed investors to direct inquiries to him. PPM, pp. 2-3.

36. ONH AFC CS represented to prospective investors that One Night Holdings and/or its affiliates were making capital contributions of no less than ten percent (10%) of the investment capital ONH AFC CS was seeking. PPM, p. 7.

37. Specifically, the Atlanta Financial Center PPM stated: “The proceeds from this Offering will be used to purchase, lease, reposition, and extensively renovate [the Atlanta Financial Center].” PPM, p.8.

38. The Subscription Agreement, PPM, and MSA each made clear that investors’ subscription money would only be used on or after the closing of the purchase of the Atlanta Financial Center and, if not so utilized, returned to investors. For example, the Atlanta Financial

Center PPM provides that: “If the Manager elects not to close on the Property for any reason by September 11, 2022, subscription funds from potential Investors will be returned.” PPM, p. 8.

39. Accredited investors who opted to participate in response to the AFC Offering were required to execute a subscription agreement (the “Subscription Agreement”) governing their investments to fund the purchase, leasing, reposition, and renovation of the Atlanta Financial Center.

40. ONH AFC CS promised in the Subscription Agreement that it would “use any proceeds from this Offering, net of any organizational and offering expenses, to fund through its direct or indirect subsidiaries” the Atlanta Financial Center “Managed by One Night Holdings LLC.” Subscription Agreement, p. 1.

41. In addition to the PPM and Subscription Agreement, potential investors in the AFC Offering were also provided access to the ONH AFC CS Investors LLC Limited Liability Company Agreement (i.e. the ONH AFC CS Operating Agreement). Creditors who executed the Subscription Agreement expressly acknowledged that they reviewed the ONH AFC CS Operating Agreement. Subscription Agreement, p. 6.

42. The ONH AFC CS Operating Agreement, which was provided to potential investors as an attachment to the PPM, informed potential investors that One Night Holdings would be diligent in its “efforts to promote and protect the interests of the Company [ONH AFC CS] ... [and that t]he Manager shall act in the best economic interests of the Company and the Property, shall engage in only arm’s-length transactions (even with Affiliates), will comply with all of its fiduciary duties to the Company...” Operating Agreement, § 7.3.

43. Investors were also assured that ONH AFC CS would only use the funds for its own “benefit” and not for the benefit of others. Specifically, Section 12.3 of the ONH AFC CS

Operating Agreement provided: “[t]he Manager shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the Company, whether or not in their immediate possession or control. The Company’s funds shall not be commingled with the funds of any other Person and the Manager shall not use, or permit use of, the Company’s funds in any manner except for the benefit of the Company.”

44. Many of these representations, however, were false or inaccurate in material respects. ONH AFC CS and Mr. Schwartz made untrue statements of fact and/or omitted material facts concerning their financial wherewithal, Mr. Schwartz’s intended use of the funds from the AFC Offering, and Prop. Co.’s assignment of the AFC Sale Contract to a third party—*i.e.*, JOSMIC—as security for Mr. Schwartz’s personal debts.

45. Mr. Schwartz and ONH AFC CS made false statement regarding the segregation and restrictions on the use of Investor Funds; in fact, Mr. Schwartz admitted that he always knew that he would need to use Investor Funds keep the AFC Transaction “afloat” prior to the closing. ONH AFC CS also represented that One Night Holdings and/or its affiliates would make a capital contribution to ONH AFC CS; however, ONH AFC CS and Mr. Schwartz knew that this representation was false when it was made.

46. Contrary to making capital contributions, Mr. Schwartz caused ONH AFC CS to transfer substantial amounts of Investor Funds to Mr. Schwartz and his other entities. As an example, on June 10, 2022, the same day that ONH AFC CS made the First Fraudulent Transfer (defined below), ONH AFC CS transferred \$1.2 million to One Night Holdings. Based upon the Debtors’ books and records, the transfer was unconnected to any purpose related to ONH AFC CS and did not provide any benefit to ONH AFC CS. Instead, that same day, One Night Holdings

transferred \$1.2 million to Mr. Schwartz's personal account—thereby facilitating Mr. Schwartz's misappropriation of Investor Funds.

47. Upon information and belief, the foregoing representations, among others, were designed and intended to induce prospective investors, including those who ultimately transferred funds to ONH AFC CS (the "Investors"), to participate in the AFC Offering. ONH AFC CS, controlled by Mr. Schwartz, knew these representations were false when they were made—a fact that Mr. Schwartz admitted in the Criminal Case.

48. In addition to misrepresentations, ONH AFC CS and Mr. Schwartz omitted material information from the AFC Offering. The AFC Offering materials did not inform potential investors that funds would, or even could, be used for Mr. Schwartz's personal debts and expenses. The AFC Offering materials failed to disclose that Prop. Co. had entered into the AFC Sale Contract and, simultaneously, assigned its rights under the AFC Sale Contract to JOSMIC as security for a \$5 million personal loan from JOSMIC to Mr. Schwartz (*i.e.*, the JOSMIC Loan), or that Mr. Schwartz had taken out a personal loan (*i.e.*, the JOSMIC Loan) to make any payment(s) under the AFC Sale Contract. Indeed, upon information and belief, ONH AFC CS knew when it represented to potential investors, among other things, that Prop. Co. planned to purchase and renovate the Atlanta Financial Center, that Prop. Co. had already assigned its interest in the AFC Sale Contract to JOSMIC, that Prop. Co. held no interest in or to the AFC Sale Contract or AFC Transaction, and that there was no certainty that Prop. Co. would ever reacquire the assigned rights.

49. Upon information and belief, Investors relied on these fraudulent representations and omissions, among others, to their detriment in deciding whether to enter into Subscription Agreements and invest in ONH AFC CS and the AFC Transaction.

50. ONH AFC CS violated the terms of the Subscription Agreements and Operating Agreements by using Investor Funds for impermissible purposes, including, but not limited to, using funds to pay for Mr. Schwartz's personal obligations, jewelry, and a residence for Mr. Schwartz's personal use, as well as applicable securities laws, including Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, due to the material misrepresentations and omissions made in connection with the AFC Offering. As a result, Investors were and are defrauded investors and, as such, creditors of ONH AFC CS at all relevant times.

51. On May 31, 2023, CrowdStreet provided Investors an update regarding the AFC Transaction and, due to concerns over the management of ONH AFC CS, requested that Investors appoint a new, independent manager for ONH AFC CS.

**D. Independent Manager**

52. Ms. Anna Phillips was appointed by an overwhelming majority of the Investors as independent manager of ONH AFC CS, effective June 7, 2023 (in this capacity, the "Independent Manager"). At the same time, Mr. Schwartz caused One Night Holdings to resign as manager of ONH AFC CS.

53. Ms. Phillips immediately began an independent investigation into the location and use of ONH AFC CS's assets and the funds raised through the CrowdStreet Marketplace (*i.e.*, the Investor Funds).

54. Ms. Phillips learned that almost all of the Investor Funds (the sole source of funding for ONH AFC CS) had been withdrawn from bank accounts in the name of ONH AFC CS and dissipated prior to her appointment as Independent Manager, including via unauthorized transfers of Investor Funds to Mr. Schwartz and his entities as well as payments to creditors of Mr. Schwartz, including JOSMIC.

55. Several weeks later, on July 14, 2023, the Debtors filed the Bankruptcy Cases.

56. After the appointment of the Independent Manager and during the Bankruptcy Cases, ONH AFC CS investigated how the its assets, including Investor Funds, were dissipated and, based thereon, commenced efforts to negotiate resolutions with Mr. Schwartz, other entities held closely by Mr. Schwartz, and the Nightingale Group.

57. On October 12, 2023, the Independent Manager filed a Notice of Settlement attaching a Settlement and Conditional Release Agreement documenting the terms of a settlement reached between the Debtors, Mr. Schwartz, and entities and trusts related to Mr. Schwartz [Bankr. D.I. 148] (the “Schwartz Nightingale Settlement”). Among the claims settled in the Schwartz Nightingale Settlement were the Debtors’ potential claims against Mr. Schwartz and the Schwartz Nightingale Parties “under section 544 of the Bankruptcy Code or otherwise.”

58. On May 7, 2024, following numerous breaches of the Schwartz Nightingale Settlement, the Court entered final judgments in favor of the ONH Trust [Bankr. D.I. 271] (the “Final Judgments”).

**E. Mr. Schwartz Pleads Guilty and Admits to Defrauding Creditors**

59. On December 4, 2024, the United States Attorney for the Northern District of Georgia and the United States Department of Justice (the “Government”) filed a Criminal Information against Mr. Schwartz due to his misconduct in connection with the AFC Offering in the United States District Court for the Northern District of Georgia, which was assigned case number 1:24-cr-00371-SDG (the “Criminal Case”).

60. The Government alleged, in part, that Mr. Schwartz knowingly and intentionally devised:

a scheme and artifice to defraud investors using CrowdStreet Marketplace, and to obtain money and property from those victims

by means of materially false and fraudulent pretenses, representations, and promises, and by omission of material facts, well knowing and having reason to know that said pretenses, representations, and promises were and would be false and fraudulent when made and caused to be made and that said omissions were and would be material.

Crim. Info. [Crim. D.I. 1] ¶ 1, *U.S. v. Schwartz*, No. 1:24-CR-00371 (N.D. Ga. Dec. 4, 2024).

61. The Government also alleged that “[c]ontrary to the representations made to CrowdStreet investors regarding the restrictions on the use of investor funds, and before ... the Atlanta Financial Center ... transaction closed, defendant SCHWARTZ misappropriated and converted CrowdStreet investor funds for his own use.” Crim. D.I. 1, ¶ 8.

62. As set forth in the Criminal Information, Mr. Schwartz stole funds he promised would be restricted to the AFC Transaction to buy luxury watches, stocks and other securities personally, and pay personal expenses and expenses for his other business ventures—facts Mr. Schwartz admitted. *See* Crim. D.I. 1, pp. 4-5; Crim. D.I. 19, at pp. 5, 9.

63. On February 12, 2025, Mr. Schwartz pled guilty to wire fraud. In the Guilty Plea and Plea Agreement, Mr. Schwartz admitted that he made representations to creditors (*i.e.*, the Investors) that Investor Funds would only be used “to purchase, lease, reposition, and extensively renovate” the Atlanta Financial Center, that ONH AFC CS would “use any proceeds from this [AFC Offering] net of any organizational and offering expenses, to fund the investment...” in the Atlanta Financial Center, and that Mr. Schwartz “had a fiduciary duty to safeguard the funds and prohibit commingling or use of the money that did not benefit ONH AFC [CS]...” Crim. D.I. 13 p. 8.

64. Mr. Schwartz also admitted in his guilty plea that “[n]otwithstanding [his] representations and restrictions on the use of funds, and before [the AFC Transaction] closed, [he] misappropriated and converted the funds raised through CrowdStreet.” Crim. D.I. 19, p. 8. Mr.

Schwartz admitted (a) that, at all relevant times, he knew the representations to the Investors were false, (b) he was acting as the representative of ONH AFC CS when he made, or caused ONH AFC CS to make, statements regarding the restrictions on the uses of Investor Funds and capital contribution from One Night Holdings and/or its affiliates, and when he committed the acts to which he pled guilty, and (c) he knew Investors would rely upon, and intended such reliance on CrowdStreet's requirement that investor funds remain untouched until the closing of the AFC Transaction in order "to protect their money and prevent exactly the kind of catastrophic losses which occurred...." Crim. D.I. 19, p. 3.

65. In fact, Mr. Schwartz admitted that "he knew going in that he was going to need to access that [Investor Funds] to keep the [AFC Transaction] afloat" and that "from the outset" his promises to the Investors to leave the funds they transferred for the AFC Offering untouched were fraudulent. Crim.D.I 19, p. 5.

66. Upon information and belief, had the creditors been aware that ONH AFC CS was going to be used to perpetuate a fraud, they would not have transferred money to it or participated in the AFC Offering.

67. In sum, Mr. Schwartz admitted that he, directly or through ONH AFC CS, defrauded Investors and induced Investors to enter into the Subscription Agreement and participate in the AFC Offering through the use of fraudulent representations and omissions; thereby, rendering Investors creditors of ONH AFC CS.

#### **FACTUAL BACKGROUND RELATED TO THE FRAUDULENT TRANSFERS**

68. Upon information and belief, payments were made to REEC utilizing funds traceable to ONH AFC CS in connection with an unrelated agreement between REEC and ONH 2226 Third Avenue LLC ("ONH 2226"), a non-debtor entity.

69. Upon information and belief, Mr. Schwartz is a managing member of ONH 2226.

70. Based upon the Independent Manager's investigation carried out after her appointment and during the Bankruptcy Cases, the Debtors' books and records reflect that ONH AFC CS transferred money to or for the benefit of the Defendant, including the transfers listed below (collectively, the "Fraudulent Transfers"):

*The First Fraudulent Transfer*

<b>Transferor</b>	<b>Amount</b>	<b>Transferee</b>	<b>Date of Transfer</b>
<b>ONH AFC CS Investors LLC</b>	<b>\$1,000,000.00</b>	One Night Holdings	July 18, 2022
One Night Holdings	\$1,000,000.00	Schwartz Personal Bank Account	July 18, 2022
Schwartz Personal Bank Account	\$1,000,000.00	One Night Holdings	August 9, 2022
One Night Holdings	\$1,000,000.00	<b>REEC Third Ave LLC</b>	<b>August 9, 2022</b>
<b>First Fraudulent Transfer:</b>	<b>\$1,000,000.00</b>		

71. Upon information and belief, as detailed in the chart above, Mr. Schwartz, using an entity that he controlled and his personal bank account, arranged for a transfer of \$1 million from ONH AFC CS to Defendant (the "First Fraudulent Transfer").

72. Upon information and belief, on July 18, 2022, ONH AFC CS, an entity then-controlled by Mr. Schwartz, transferred \$1 million, amongst other funds, to One Night Holdings, an entity managed and controlled by Mr. Schwartz.

73. After a series of transfers of the \$1 million in funds traceable to ONH AFC CS, using bank accounts held by One Night Holdings and Mr. Schwartz (as detailed in the chart above), on August 9, 2022, One Night Holdings transferred the \$1 million traced to ONH AFC CS to REEC (the "First Fraudulent Transfer").

*The Second Fraudulent Transfer*

<b>Transferor</b>	<b>Amount</b>	<b>Transferee</b>	<b>Date of Transfer</b>
<b>ONH AFC CS Investors LLC</b>	<b>\$ 42,083.19</b>	One Night Holdings	June 10, 2022
One Night Holdings	\$ 42,083.19	Schwartz Personal Bank Account	June 10, 2022
Schwartz Personal Bank Account	\$ 42,083.19	ES28 Investments LLC	June 23, 2022
ES28 Investments	\$ 42,083.19	Schwartz Personal Bank Account	October 26, 2022
Schwartz Personal Bank Account	\$ 42,083.19	One Night Holdings	October 26, 2022
One Night Holdings	\$ 42,083.19	<b>REEC Third Ave LLC</b>	<b>October 26, 2022</b>
<b>Second Fraudulent Transfer:</b>	<b>\$ 42,083.19</b>		

74. Upon information and belief, as detailed in the chart above, Mr. Schwartz, using entities that he controlled and his personal bank account, arranged for a transfer of \$42,083.19 from ONH AFC CS to Defendant (the “Second Fraudulent Transfer”, and, with the “First Fraudulent Transfer”, the “Fraudulent Transfers”).

75. Upon information and belief, as detailed in the chart above, on June 10, 2022, ONH AFC CS, controlled by Mr. Schwartz, transferred \$42,083.19, amongst other proceeds, to One Night Holdings.

76. After a series of transfers of the \$42,083.19 traceable to ONH AFC CS, using bank accounts for entities controlled by Mr. Schwartz and his own personal bank account (as detailed in the chart above), on October 26, 2022, One Night Holdings transferred the \$42,083.19 traced to ONH AFC CS to Defendant.

77. Upon information and belief, ONH AFC CS made the Fraudulent Transfers to or for the benefit of the Defendant to pay amounts in connection with an unrelated agreement for which ONH AFC CS had no responsibility or obligation to pay, but which were the obligations of Mr. Schwartz personally and/or ONH 2226.

78. Upon information and belief, the Fraudulent Transfers were for the personal benefit of Mr. Schwartz and/or the benefit of ONH 2226.

79. Upon information and belief, ONH AFC CS was not and was never party to any agreement or contract with the Defendant.

80. Upon information and belief, ONH AFC CS has no relationship and never had a relationship with or to the Defendant.

81. Upon information and belief, ONH AFC CS received no benefit or equivalent value for the \$1,042,083.19 in Fraudulent Transfers.

82. ONH AFC CS was insolvent at the time of, or was rendered insolvent due to, the Fraudulent Transfers.

83. ONH AFC CS continued to solicit creditor funds while simultaneously making fraudulent transfers. For example, ONH AFC CS accepted \$2,970,000 in Investor Funds on June 10, 2022—the same day ONH AFC CS transferred \$42,083.19, amongst other proceeds, to One Night Holdings which resulted in the Second Fraudulent Transfer. ONH AFC CS continued to accept Investor Funds despite knowing it was using Investor Funds for unauthorized purposes in violation of the AFC Offering materials, including the use of Investor Funds entrusted to ONH AFC CS to pay the personal obligations of Mr. Schwartz.

84. From and after June 9, 2022, ONH AFC CS was insolvent due to a lack of sufficient assets to pay and/or repay all of its obligations as well as sufficient capital to meet anticipated

expenses, including those related to the AFC Transaction or, if the AFC Transaction failed, the return of Investor Funds to Investors, as required under the AFC Offering Documents.

85. Furthermore, ONH AFC CS was insolvent at the time of, or was rendered insolvent as a result of, the Fraudulent Transfers on a balance sheet basis. On June 10, 2022, the date ONH AFC CS fraudulently transferred \$1.2 million to One Night Holdings, of which \$42,083.19 was ultimately transferred to or for the benefit of the Defendant on October 26, 2022, ONH AFC CS had \$13,014,929 in assets and \$19,715,000 in liabilities. As such, ONH AFC CS was insolvent, or as a result of the Second Fraudulent Transfer, became insolvent, in the total amount of at least \$6,700,071, of which \$42,083.19 is attributable to the Second Fraudulent Transfer.<sup>3</sup>

86. On July 18, 2022, the date ONH AFC CS fraudulently transferred \$7 million to One Night Holdings, of which \$1 million was ultimately transferred to or for the benefit of the Defendant on August 9, 2022, ONH AFC CS had \$32,399,845 in assets and \$47,660,000 in liabilities. As such, ONH AFC CS was insolvent, or as a result of the First Fraudulent Transfer, became insolvent, in the total amount of \$15,260,155, of which \$1 million is attributable to the First Fraudulent Transfer.

87. The Fraudulent Transfers were made while ONH AFC CS was insolvent, or caused ONH AFC CS to become insolvent, because: (i) all of the Investors were defrauded by ONH AFC CS and Mr. Schwartz and, as such, were creditors of ONH AFC CS; (ii) ONH AFC CS had an obligation to repay all Investor Funds to Investors upon its failure to close the AFC Transaction; and (iii) each of the Fraudulent Transfers depleted the Investor Funds and, in so doing, left ONH

---

<sup>3</sup> The calculation of liability herein and below does not include, but is without prejudice to establishing, any damages or other losses on the part of investors and third parties for which ONH AFC CS would have liability in connection with the breach of contract, fraud-related claims and securities-related claims for which liability exists.

AFC CS unable to pay the claims of defrauded investors or return the Investor Funds per the terms of the AFC Offering Documents.

88. Indeed, ONH AFC CS's sole source of money was derived from the Investor Funds, all of which were subject to either investment in the Atlanta Financial Center purchase or return in full to Investors. Each of the Fraudulent Transfers depleted the Investor Funds available for either completion of the proposed AFC Transaction or return the Investor Funds. ONH AFC CS had no alternative means to earn funds to repay Investors, except through means that would have simultaneously increased ONH AFC CS's liabilities. The Trustee's investigation of ONH AFC CS has established that ONH AFC CS had insufficient means to satisfy all of the Investors' claims or return Investor Funds due to the Fraudulent Transfers. As a result, ONH AFC CS was insolvent as of the date of, or as a result of, the First Fraudulent Transfer, and such insolvency persisted and increased with each further misappropriation and fraudulent transfer.

89. Upon information and belief, the Fraudulent Transfers were also made when certain of the Nightingale Companies were facing default on loans that financed various real estate projects (projects unrelated to ONH AFC CS or the AFC Transaction) and when such entities were under threat of imminent foreclosure in connection therewith.

### **CLAIMS FOR RELIEF**

#### **COUNT I**

#### **(Avoidance of Fraudulent Transfers from ONH AFC CS to Defendant Pursuant to 11 U.S.C. § 548(a)(1)(A))**

90. The Trustee repeats and realleges all allegations contained in paragraphs 1 through 87 as though fully set forth herein.

91. Each of the Fraudulent Transfers constitutes a transfer of an interest of ONH AFC CS in property made to or for the benefit of the Defendant, or subsequent transfers thereof.

92. The Fraudulent Transfers were made with the knowledge that they would hinder, delay and/or defraud creditors, and thus with the actual intent to hinder, delay and/or defraud creditors.

93. The Fraudulent Transfers were made to satisfy obligations of Mr. Schwartz, who was an insider of and controlled ONH AFC CS at all relevant times.

94. ONH AFC CS was insolvent at the time the Fraudulent Transfers were made or became insolvent as a result of the Fraudulent Transfers.

95. The Fraudulent Transfers were not disclosed to third parties.

96. The Fraudulent Transfers, or certain of them, were made while ONH AFC CS attempted to pacify Investors through inaccurate and/or overly optimistic updates sent through CrowdStreet Marketplace, which may have induced Investors to refrain from requesting refunds of their investments and allowed additional investors, all of whom are creditors, to fall victim to ONH AFC CS's fraudulent scheme.

97. The Fraudulent Transfers were made for Mr. Schwartz's personal benefit or for the benefit of one or more non-debtor entities which he controlled (and would continue to control).

98. ONH AFC CS transferred and dissipated almost all of its funds prior to the appointment of the Independent Manager.

99. **WHEREFORE**, the Trustee respectfully requests this Court enter a judgment against the Defendant: (i) finding that the Fraudulent Transfers were made with the intent to hinder, delay or defraud Investors and, therefore, are avoidable pursuant to Section 548(a)(1)(A) of the Bankruptcy Code; (ii) avoiding and recovering the Fraudulent Transfers in their entirety for the benefit of ONH Trust beneficiaries, including Investors; and (iii) granting any other and further relief as the Court determines is just and appropriate under the circumstances.

**COUNT II**  
**(Avoidance of Fraudulent Transfers from ONH AFC CS to Defendant Pursuant to 11 U.S.C. § 548(a)(1)(B))**

100. The Trustee repeats and realleges all allegations contained in paragraphs 1 through 99 as though fully set forth herein.

101. Each of the Fraudulent Transfers constitutes a transfer of an interest of ONH AFC CS in property made to or for the benefit of the Defendant, or a subsequent transfer thereof.

102. Upon information and belief, ONH AFC CS was never legally obligated to pay any amounts to any of the Defendant and ONH AFC CS had no relationship whatsoever with the Defendant. Thus, the Defendant was not a creditor of ONH AFC CS.

103. The Defendant did not provide goods, services, or value of any type to ONH AFC CS in exchange for the Fraudulent Transfers.

104. The Defendant did not provide ONH AFC CS with reasonably equivalent value in exchange for any of the Fraudulent Transfers.

105. ONH AFC CS was insolvent at the time the Fraudulent Transfers were made or became insolvent as a result of the Fraudulent Transfers.

106. At the time the Fraudulent Transfers were made, ONH AFC CS was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining constituted unreasonably small capital.

107. The Defendant was the initial transferee of the Fraudulent Transfers, or the party for the benefit of whom such Fraudulent Transfers were made.

**WHEREFORE**, the Trustee respectfully requests this Court enter a judgment against the Defendant: (i) finding that the Fraudulent Transfers are avoidable as constructively fraudulent transfers pursuant to Section 548(a)(1)(B) of the Bankruptcy Code; (ii) avoiding and recovering

the Fraudulent Transfers in their entirety for the benefit of the ONH Trust beneficiaries, including Investors; and (iii) granting any other and further relief as the Court determines is just and appropriate under the circumstances.

**COUNT III**

**(Avoidance of Fraudulent Transfers from ONH AFC CS to Defendant Pursuant to 11 U.S.C. § 544(b)(1) and NY Debt. & Cred. Law §§ 270 *et. seq* (270-281-A))**

108. The Trustee repeats and realleges all allegations contained in paragraphs 1 through 107 as though fully set forth herein.

109. Each of the Fraudulent Transfers constitutes a transfer of an interest of ONH AFC CS in property made to or for the benefit of the Defendant, or a subsequent transfer thereof.

110. The Fraudulent Transfers were made with the knowledge that they would hinder, delay and/or defraud creditors, and thus with the actual intent to hinder, delay and/or defraud creditors, including the Investors.

111. The Fraudulent Transfers were made to satisfy obligations of Mr. Schwartz, who was an insider of and controlled ONH AFC CS.

112. ONH AFC CS was insolvent at the time of the Fraudulent Transfers or became insolvent as a result of the Fraudulent Transfers.

113. The Fraudulent Transfers were not disclosed to third parties.

114. The Fraudulent Transfers, or certain of them, were made while ONH AFC CS attempted to pacify Investors through inaccurate and/or overly optimistic updates sent through CrowdStreet Marketplace, which may have induced Investors to refrain from requesting refunds of their investments and allowed additional investors, all of whom are creditors, to fall victim to ONH AFC CS's fraudulent scheme.

115. The Fraudulent Transfers were made for Mr. Schwartz's personal benefit or to benefit those entities which he controlled and would continue to control.

116. ONH AFC CS transferred and dissipated almost all of its funds prior to the appointment of the Independent Manager.

117. The Fraudulent Transfers were made when the Nightingale entities were facing defaults on loans that financed various real estate projects and when the Nightingale entities were threatened with foreclosure in connection therewith.

118. The Fraudulent Transfers are avoidable, and the Trustee is entitled to an order and judgment against the Defendant avoiding the Fraudulent Transfers.

**WHEREFORE**, the Trustee respectfully requests this Court enter a judgment against the Defendant: (i) finding that the Fraudulent Transfers were made with the intent to hinder, delay or defraud creditors, including the Investors and, therefore, are avoidable pursuant Section 544(b)(1) of the Bankruptcy Code and NY Debt. & Cred. Law §§ 270 *et. seq*; (ii) avoiding and recovering the Fraudulent Transfers in their entirety for the benefit of the ONH Trust beneficiaries, including Investors; and (iii) granting any other and further relief as the Court determines is just and appropriate under the circumstances.

**COUNT IV**

**(Avoidance of Fraudulent Transfers from ONH AFC CS to Defendant Pursuant to 11 U.S.C. § 544(b)(1) and NY Debt. & Cred. Law §§ 270 *et. seq* (270-281-A))**

119. The Trustee repeats and realleges all allegations contained in paragraphs 1 through 118 as though fully set forth herein.

120. Each of the Fraudulent Transfers constitutes a transfer of an interest of ONH AFC CS in property made to or for the benefit of the Defendant, or a subsequent transfer thereof.

121. The Fraudulent Transfers were made with the knowledge that they would hinder, delay and/or defraud creditors, and thus with the actual intent to hinder, delay and/or defraud creditors, including Investors.

122. Upon information and belief, ONH AFC CS was never legally obligated to pay amounts to the Defendant and ONH AFC CS had no relationship whatsoever with the Defendant. Thus, the Defendant was not a creditor of ONH AFC CS.

123. The Defendant did not provide goods, services, or value of any type to ONH AFC CS in exchange for the Fraudulent Transfers.

124. The Defendant did not provide ONH AFC CS with reasonably equivalent value in exchange for any of the Fraudulent Transfers.

125. ONH AFC CS was insolvent at the time the Fraudulent Transfers were made or became insolvent as a result of the Fraudulent Transfers.

126. At the time the Fraudulent Transfers were made, ONH AFC CS was engaged in business or a transaction, or each was about to engage in business or a transaction, for which any property remaining constituted unreasonably small capital.

127. The Defendant was the initial transferee of the Fraudulent Transfers, or party for the benefit of whom such Fraudulent Transfers were made.

**WHEREFORE**, the Trustee respectfully requests this Court enter a judgment against the Defendant: (i) finding that the Fraudulent Transfers are avoidable as constructively fraudulent transfers pursuant to Section 544(b)(1) of the Bankruptcy Code and NY Debt. & Cred. Law §§ 270 *et. seq*; (ii) avoiding and recovering the Fraudulent Transfers in their entirety for the benefit of the ONH Trust beneficiaries, including Investors; and (iii) granting any other and further relief as the Court determines is just and appropriate under the circumstances.

**COUNT V**

**(Recovery of Avoided Transfers Pursuant to 11 U.S.C. § 550(a))**

128. The Trustee repeats and realleges all allegations contained in paragraphs 1 through 126 as though fully set forth herein.

129. The Trustee is entitled to avoid the Fraudulent Transfers pursuant to Section 548 of the Bankruptcy Code and applicable state law.

130. Defendant was the initial transferee or subsequent transferee of the Fraudulent Transfers, or the person(s) for whose benefit the Fraudulent Transfers were made. Accordingly, pursuant to Section 550(a) of the Bankruptcy Code and applicable state law, the Trustee is entitled to recover from Defendant an amount to be determined at trial, but not less than **\$1,042,083.19**, plus interest thereon to the date of payment.

**WHEREFORE**, the Trustee respectfully requests this Court enter a judgment against the Defendant: (i) allowing the Trustee to avoid and recover for the benefit of the ONH Trust and its beneficiaries, including Investors, the Fraudulent Transfers from the Defendant, or any other initial or subsequent transferees, or any party for whose benefit the Fraudulent Transfers were made; (ii) awarding pre- and post-judgment interest on any of the avoided transfers at the maximum legal rate; and (iii) granting any other and further relief as the Court determines is just and appropriate under the circumstances..

**RESERVATION OF RIGHTS**

131. This complaint is not intended to be, nor should it be construed as, a waiver of the ONH Trust's rights to object to any claims or interests for any reason. Except as prohibited under applicable law and rules, the Trustee reserves the right to further amend this complaint at any time and in any manner, including, without limitation, adding additional claims or causes of action

against the Defendant, and that any and all such amendments relate back to the date of the original complaint filed in the Adversary Proceeding.

**WHEREFORE**, the Trustee respectfully requests that the Court enter judgment against Defendant:

- (a) Avoiding and recovering the Fraudulent Transfers pursuant to Sections 544, 548, and 550 of the Bankruptcy Code and applicable state law;
- (b) Granting judgment in favor of the Trustee and directing the Defendant, and/or any other party determined to be an initial transferee, a subsequent or mediate transferee, or for whose benefit the Fraudulent Transfers were made, to pay to the ONH Trust an amount to be determined at trial, but no less than **\$1,042,083.19**, plus interest;
- (c) Awarding pre- and post-judgment interest at the maximum legal rate; and
- (d) Granting any other and further relief that is appropriate under the circumstances.

Dated this 11th day of July, 2025.

**LANDIS RATH & COBB LLP**

/s/ Matthew R. Pierce  
Adam G. Landis (No. 3407)  
Matthew B. McGuire (No. 4366)  
Matthew R. Pierce (No. 5946)  
919 Market Street, Suite 1800  
Wilmington, Delaware 19801  
Telephone: (302) 467-4400  
Facsimile: (302) 467-4450  
Email: [landis@lrclaw.com](mailto:landis@lrclaw.com)  
[mcguire@lrclaw.com](mailto:mcguire@lrclaw.com)  
[pierce@lrclaw.com](mailto:pierce@lrclaw.com)

- and -

**BAKER & HOSTETLER LLP**

Jorian L. Rose  
(admitted *pro hac vice*)

45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
Email: [jrose@bakerlaw.com](mailto:jrose@bakerlaw.com)

Michael T. Delaney  
(admitted *pro hac vice*)  
Key Tower  
127 Public Square, Suite 2000  
Cleveland, Ohio 44114  
Telephone: (216) 621-0200  
Facsimile: (216) 696-0740  
Email: [mdelaney@bakerlaw.com](mailto:mdelaney@bakerlaw.com)

*Counsel for the ONH Liquidating  
Trust*