

Nightingale Faces Foreclosure on Whale Building in Brooklyn

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Developer suing lenders to save troubled Sunset Park office conversion



Capstone Equities' Joshua Zamir, Nightingale Properties' Elie Schwartz; Whale Building (Loopnet, Getty, Nightingale Properties)

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By

Keith Larsen

Nightingale Properties is facing foreclosure on the historic Whale Building in Brooklyn after a deal to buy its own debt on the hulking waterfront property fell apart.

Joshua Zamir's Capstone Equities, which acquired the loan on the property from lender TPG Real Estate Finance Trust last month, has initiated a Uniform Commercial Code foreclosure on Nightingale's equity stake in the building at 14 53rd Street in Sunset Park, about 20 blocks south of Industry City.

Bankruptcy and foreclosure specialist Greg Corbin is marketing the UCC sale. An auction is set for Aug. 9.

The quest to redevelop the 420,000-square-foot former Whale Oil Company headquarters began in 2015. That year, Madison Realty Capital and JPMorgan acquired the sprawling, century-old property from investor Harry Skydell, with plans to convert it to offices. They paid \$82 million and spent \$30 million on renovations, according to a court filing by Capstone.

Madison Realty's Josh Zegen told Crain's in 2015 that he was hoping to attract medical and biotech-type tenants. That didn't work out.

Madison and JPMorgan instead sold the property to Elie Schwartz's Nightingale for \$84 million in 2020. Madison said it retained a 25 percent stake in the deal, but a spokesperson for the firm said this week that the firm no longer has an ownership interest in the property.

Nightingale planned a creative office conversion and assumed an \$88 million loan that Madison had secured from TPG. But Nightingale's vision similarly failed to materialize. Only 27 percent of the property was occupied as of October, a month after Nightingale fell into default on the loan, according to court filings.

Capstone, which had already acquired two non-performing loans on hotels in New York City, sought to buy the debt for a 30 percent discount. It eventually acquired the loans in May, Argentic Real Estate providing the loan-on-loan financing.

Nightingale wasn't willing to give up on the project so easily, claiming it was close to a deal to acquire its own debt.

The firm sued TPG in January, alleging that the lender had offered it a chance to buy the debt for \$60 million — a nearly \$20 million discount from the balance. Nightingale claims TPG breached that agreement and refused to let the developer hire brokers from Cushman & Wakefield, who it said were essential to getting the deal finalized. Nightingale also said TPG's actions put a \$5 million deposit at risk. A judge dismissed all of Nightingale's allegations last month, but the firm has filed a notice of appeal.

Nightingale is also suing Capstone, alleging it misused confidential information to acquire the loan. Capstone's attorney responded by claiming that Nightingale's "narrative is so unfounded, illogical and unsupported, it collapses of its own weight."

Capstone argues that Nightingale couldn't come up with the money to buy the debt and is playing the role of spoiler. A judge dismissed Nightingale's tortious interference claims, a decision Nightingale is also appealing, but allowed its claim of unfair competition to go forward.

In a court filing, Capstone said it had planned to convert the building back to industrial use and have its industrial operator, Portal Warehousing, manage it. The ground floor would be converted to flexible warehouse suites and floors two through four would be converted to warehousing suites ranging from 5,000 to 10,000 square feet. Floors five through seven would remain as full-floor, 28,000-square-foot suites.

It's unclear, however, if Capstone still plans to follow through with those plans should it succeed with the UCC foreclosure.

Capstone and Nightingale's Schwartz did not return a request to comment.

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