

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

ISZO CAPITAL LP,

Plaintiff,

-against-

JEFFERIES LLC,

Defendant.

Index No. _____/2024

SUMMONS

To: Jefferies LLC:

PLEASE TAKE NOTICE THAT YOU ARE SUMMONED to answer the complaint of the plaintiff herein and to serve a copy of your answer on the plaintiff at the address indicated below within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons was not personally delivered to you or within the State of New York.

Dated: March 26, 2024
Omaha, Nebraska

BAIRD HOLM LLP



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**SUPREME COURT OF THE STATE OF NEW YORK
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-against-

JEFFERIES LLC,

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COMPLAINT

Plaintiff, IsZo Capital LP (“**Plaintiff**”), for its complaint against defendant, Jefferies LLC (“**Defendant**”), states as follows:

INTRODUCTION

1. Over a decade ago, Plaintiff took a short position on the common stock of a retail department store chain that left Plaintiff with the obligation to return shares of that stock to Defendant in order to close out its position. In 2017, the department store chain went out of business and all of its common stock was canceled pursuant to federal bankruptcy law. Notwithstanding that cancelation of stock, Defendant has repeatedly refused requests to close out Plaintiff’s position, and has continued to collect monthly fees from Plaintiff since the stock was canceled in 2017. In turn, Plaintiff’s broker is continuing to hold approximately \$1.6 million of Plaintiff’s own funds in a margin account which will not be released to Plaintiff as long as the short position is open. As a result, absent the relief requested herein, Plaintiff will remain stuck in a kind of perpetual purgatory – obligated *ad infinitum* to pay fees to Defendant and maintain a seven figure security deposit with its broker – all because, through no fault of its own, Plaintiff’s ability to return the stock in question to Defendant has been rendered impossible. Accordingly, for the reasons Plaintiff alleges herein and will substantiate with evidence, the law requires and

equity demands declaratory and injunctive relief that Plaintiff's obligation to return the stock is excused and that its short position with Defendant must be closed.

THE PARTIES

2. Plaintiff is a Delaware limited partnership authorized to do business within the State of New York and with its principal place of business in New York County, New York.

3. Defendant is a Delaware limited liability company authorized to do business within the State of New York and with its principal place of business in New York County, New York.

JURISDICTION AND VENUE

4. This Court has jurisdiction over Defendant pursuant to New York CPLR §§ 301 and 302(a)(1) because Defendant is registered to do business and has its principal place of business and/or transacts business within the State of New York.

5. Venue is proper in this Court pursuant to New York CPLR § 503 because (a) Defendant resides in this county by virtue of being a foreign entity authorized to transact business in the State of New York with its principal office located in New York County, and/or (b) a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in New York County.

FACTUAL ALLEGATIONS

Plaintiff's Short Sales of Stock

6. In July of 2013, Plaintiff – acting through a broker – short sold certain shares of common stock of Gordmans Stores, Inc. n/k/a G-Estate Liquidation Stores, Inc. (“**Gordmans Stores**”). Hereinafter, the shares of Gordmans Stores stock that Plaintiff short sold will be referred to as the “**Gordmans Stock**”.

7. In connection with its short sales of the Gordmans Stock, Plaintiff – acting through a broker – borrowed the Gordmans Stock and subsequently sold it on the market.

8. Plaintiff borrowed some or all of the Gordmans Stock from Defendant. Hereinafter, Plaintiff's short sale of Gordmans Stock borrowed from Defendant will be referred to as the "**Short Sale**".

9. Ordinarily, in order to close a short sale of stock, the short seller – here, Plaintiff – must repurchase the subject stock and return it to the party from which it borrowed the stock – here, Defendant.

10. Although Plaintiff handled the Short Sale through a broker, Plaintiff's agreement with its broker provides that Plaintiff is ultimately responsible for the delivery of Gordmans Stock back to Defendant in order to close the Short Sale, and Plaintiff is also responsible for any consequences of a failure to deliver the Gordmans Stock back to Defendant.

Gordmans Stores' Bankruptcy Case and Cancellation of the Gordmans Stock

11. On March 13, 2017, Gordmans Stores and various related entities filed Chapter 11 bankruptcy cases in the United States Bankruptcy Court for the District of Nebraska (the "**Bankruptcy Court**"), which were jointly administered in Case No. 17-80304 (the "**Bankruptcy Case**"). Hereinafter, Gordmans Stores and its related entities in the Bankruptcy Case may be referred to collectively as the "**Debtors**".

12. In connection with the Bankruptcy Case, Gordmans Stores liquidated all of its assets.

13. On August 11, 2017, the Debtors filed their Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code (the "**Liquidation Plan**").

14. On October 18, 2017, the Bankruptcy Court entered an order confirming the Debtors' Liquidation Plan.

15. Pursuant to the Liquidation Plan, all interests in Gordmans Stores, including all equity or shares in Gordmans Stores, and including all options, warrants, or other rights to obtain such an interest or share in Gordmans Stores, whether or not certificated, transferable, preferred, common, voting, or denominated "stock" or a similar security – and including but not limited to the Gordmans Stock – were canceled, released, and extinguished as of the Liquidation Plan's "Effective Date", and are of no further force or effect.

16. On November 15, 2017, the Debtors filed a notice in the Bankruptcy Case indicating the Plan's "Effective Date" occurred on November 15, 2017.

17. In recognition of the cancellation, release, and extinguishment of the Gordmans Stores common stock, Gordmans Stores filed the following with the United States Securities and Exchange Commission:

- a. Form 8-K filed November 15, 2017 reporting cancellation of Gordmans Stores common stock for no consideration and confirming that all of Gordmans Stores' assets were liquidated, a true and correct copy of which is attached hereto as **Exhibit A** and incorporated herein by this reference; and
- b. Form 15 filed November 15, 2017 reporting that Gordmans Stores' common stock was cancelled pursuant to its plan of reorganization and reporting there are zero holders of Gordmans Stores common stock, a true and correct copy of which is attached hereto as **Exhibit B** and incorporated herein by this reference.

18. On March 25, 2024, the Bankruptcy Court entered an Order Approving Motion for Clarifying Order Regarding Cancellation of Gordmans Stores Inc. Commons Stock, a true and correct copy of which is attached hereto as Exhibit C and is incorporated herein by this reference (the “**Bankruptcy Court Clarifying Order**”). The Bankruptcy Court Clarifying Order confirms:

- a. any and all shares of Gordmans Stores common stock were canceled, released, extinguished and of no further force or effect as of November 15, 2017;
- b. there are no remaining interests whatsoever in Gordmans Stores common stock as of November 15, 2017, including but not limited to any residual interests; and
- c. there have not been and cannot be any holders of Gordmans Stores common stock as of November 15, 2017.

Plaintiff’s Efforts to Close Short Sale

19. As a result of the Bankruptcy Case, the Gordmans Stock that Plaintiff borrowed and short sold has been cancelled, released and extinguished as of November 15, 2017, and there have not been and cannot be any holders of the Gordmans Stock as of November 15, 2017.

20. It is impossible for Plaintiff to repurchase any Gordmans Stock and return Gordmans Stock to Defendant.

21. Despite Plaintiff’s multiple requests – through its broker – Defendant refuses to close the Short Sale.

22. While Plaintiff’s Short Sale remains open, Plaintiff’s broker has required and continues to require Plaintiff to maintain a margin account with its broker, and Plaintiff is

required to hold almost \$1.6 million of its funds in its margin account in connection with Plaintiff's Short Sale.

23. In addition, while Plaintiff's Short Sale remains open, Plaintiff is required to pay Defendant monthly fees in connection with the Short Sale.

FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT PURSUANT TO N.Y. CPLR § 3001

24. Plaintiff repeats and re-alleges each and every allegation set forth in all prior paragraphs, as though fully set forth at length herein in support of this cause of action.

25. Pursuant to New York's declaratory judgment statute, N.Y. CPLR § 3001, "the supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy...."

26. Plaintiff is entitled to a declaratory judgment determining: (a) it is objectively impossible for Plaintiff to purchase Gordmans Stock, (b) Plaintiff's obligation to purchase Gordmans Stock and return it to Defendant pursuant to the Short Sale is excused, and (c) due to the impossibility of further performance, the Short Sale shall be deemed to be completed and closed.

SECOND CAUSE OF ACTION
INJUNCTIVE RELIEF

27. Plaintiff repeats and re-alleges each and every allegation set forth in all prior paragraphs, as though fully set forth at length herein in support of this cause of action.

28. Plaintiff has and will continue to suffer irreparable harm and ongoing damage if Defendant continues refusing to take necessary action to close the Short Sale. In particular, as long as the Short Sale remains open, Plaintiff will be forced to maintain approximately \$1.6

million of its own funds in its margin account, and Plaintiff will continue being forced to pay Defendant monthly fees.

29. Plaintiff has no adequate remedy at law, as Plaintiff's broker will continue to hold Plaintiff's funds in its margin account and continue charging Plaintiff monthly fees – payable to Defendant – so long as the Short Sale remains open.

30. Considering the balance of hardships between Plaintiff and Defendant, an injunction is warranted. The Gordmans Stock no longer exists, and it is impossible for Plaintiff to purchase Gordmans Stock to return to Defendant. Plaintiff should not be forced to continue paying Defendant monthly fees in perpetuity under these circumstances when Plaintiff has no ability to redeliver the Gordmans Stock to Defendant.

31. The public interest would not be disserved by a permanent injunction. On the contrary, it will benefit the public interest to confirm that a short seller will not be forced to maintain funds in a margin account and pay monthly fees *ad infinitum* in the event the stock purchased in a short sale is subsequently cancelled in a bankruptcy case. A contrary result in which it is literally impossible for a short seller – like Plaintiff – to secure the return of its funds in its margin account and stop paying monthly fees is not equitable and borders on absurd.

32. By contrast, denying Plaintiff's requested relief would not further the public interest. For almost seven years now, Defendant has collected fees for an outstanding loan of shares of stock that have been cancelled and thereby rendered forever valueless. Even assuming its motives are benign – a questionable assumption – Defendant's continued refusal of Plaintiff's requests to close the Short Sale is unjustifiable and inconsistent with the principles of equity.

33. Accordingly, Plaintiff is entitled to an injunction commanding Defendant to take any and all action necessary to close Plaintiff's Short Sale of the Gordmans Stock.

PRAYER FOR RELIEF

WHEREFORE, by reason of the foregoing, Plaintiff respectfully requests the following relief:

A. A declaratory judgment from this Court declaring (i) it is objectively impossible for Plaintiff to purchase Gordmans Stock, (ii) Plaintiff's obligation to purchase Gordmans Stock and return it to Defendant pursuant to the Short Sale is excused, and (iii) due to the impossibility of further performance, the Short Sale shall be deemed to be completed and closed;

B. An injunction requiring Defendant to take any and all action necessary to close the Short Sale; and

C. Such other and further relief the Court deems proper.

Dated: March 26, 2024
Omaha, Nebraska

Respectfully submitted,

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