

SUPREME COURT OF THE STATE OF NEW YORK
COMMERCIAL DIVISION - COUNTY OF NEW YORK

STELLA AND CHARLES GUTTMAN
FOUNDATION, INC.,

Plaintiff,

-against-

THE CITY UNIVERSITY OF NEW YORK,

Defendant.

Index No.

Plaintiff Designates New York County as
the Place of Trial

SUMMONS

Plaintiff's Address:
c/o Emery Celli Brinckerhoff Abady
Ward & Maazel LLP
600 Fifth Avenue, 10th Floor
New York, NY 10020

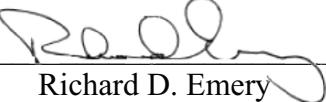
To the above-named Defendant:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer on the Plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York).

YOU ARE HEREBY NOTIFIED THAT should you fail to answer, a judgement will be entered against you by default for the relief demanded in the Complaint.

Dated: New York, New York
July 19, 2024

**EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP**

By: 

Richard D. Emery
Emily K. Wanger

600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000

*Attorneys for Plaintiff the Stella and
Charles Guttmann Foundation, Inc.*

To: THE CITY UNIVERSITY OF NEW YORK
205 East 42nd Street
New York, New York 10017

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**COMPLAINT AND
JURY DEMAND**

Plaintiff the Stella and Charles Guttman Foundation, Inc., by its attorneys Emery Celli Brinckerhoff Abady Ward & Maazel LLP, alleges as follows for its complaint:

INTRODUCTION

1. On April 29, 2013, Plaintiff the Stella and Charles Guttman Foundation, Inc. (the "Foundation") donated \$25 million to the City University of New York ("CUNY") to advance the cause of making college education available to highly motivated, low-income public school graduates.
2. In the agreement pursuant to which the Foundation made its donation (the "Agreement"), CUNY agreed to name one of its community colleges the Stella and Charles Guttman Community College ("GCC") and eventually to move GCC to a new, permanent site where it could grow to accommodate more students.
3. The Agreement gave the Foundation the right to require CUNY to return a portion of the donation if the new GCC facility was not under construction within ten years of the date of the Agreement.
4. More than ten years have passed since the Agreement was executed and CUNY has not begun construction on a new facility for GCC.

5. The Foundation is entitled to the return of the funds specified in the Agreement, and CUNY's failure to return those funds constitutes a breach of contract.

6. The Foundation brings this lawsuit to enforce its rights under the Agreement and recover the funds it is owed.

PARTIES

7. Plaintiff the Stella and Charles Guttman Foundation, Inc. is a not-for-profit corporation created under the laws of New York. It maintains its place of business at 45 Rockefeller Plaza, Suite 2000, New York, New York 10111.

8. Defendant the City University of New York is a corporate body established by Article 125 of the Education Law of the State of New York. It maintains its place of business at 205 East 42nd Street, New York, New York 10017.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action under New York Judiciary Law § 140-b and § 7 of Article VI of the Constitution of the State of New York.

10. This Court has personal jurisdiction over Defendant as set forth in CPLR § 301.

11. Venue is properly lodged in this Court pursuant to CPLR §§ 503, 505, and 509.

12. The Agreement stipulates that it shall be governed by New York law.

JURY DEMAND

13. Plaintiff demands a trial by jury.

FACTS

14. On April 29, 2013, the Foundation donated \$25 million to CUNY, pursuant to the Agreement, to advance the cause of making college education available to highly motivated, low-income public school graduates.

15. As part of the Agreement, attached hereto as Exhibit A, CUNY agreed to name one of its community colleges the Stella and Charles Guttman Community College, in perpetuity.

16. The Foundation's donation was comprised of three grants, including one \$15 million donation which established an endowment fund for GCC's benefit called the Guttman Student Success and Engagement Fund (the "Success Fund").

17. Under the Agreement, CUNY agreed that it would move GCC to a new, permanent site where it could grow to accommodate a larger number of students.

18. Paragraph 1(b)(iii) of the Agreement gives the Foundation the right to the refund of the entire balance of the Success Fund, including any additions to principal from income or realized gains, if CUNY fails to begin construction on the new GCC facility within ten years of the date of the Agreement.

19. As more than ten years have passed since the execution date of the Agreement without CUNY beginning construction on a new facility for GCC, the Foundation is entitled to the return of the entire balance of the Success Fund.

20. The Agreement states that, to initiate the return of the Success Fund, the Foundation shall notify CUNY and CUNY shall return to the Foundation the entire current balance of the Success Fund within 30 days after receipt of such notice.

21. On June 15, 2023, the Foundation sent CUNY a letter containing its demand that CUNY return the entire balance of the Success Fund in light of CUNY's failure to commence construction of a new facility for GCC within ten years of the date of the Agreement.

22. CUNY has not refunded any portion of the Success Fund to the Foundation.

23. With the interest, dividends, and realized capital gains that have accrued since the Agreement was executed, the entire balance of the Success Fund is approximately \$21,190,777.80 as of the date of this filing.

24. CUNY's failure to refund the entire balance of the Success Fund within 30 days of receiving the Foundation's notice constitutes a breach of the Agreement.

PROCEDURAL PREREQUISITES

25. Pursuant to the procedure outlined in the Agreement, the Foundation sent CUNY a notice on June 15, 2023 demanding the return of the entire balance of the Success Fund and setting forth the underlying basis for its claims.

26. Pursuant to the requirements of New York Education Law § 6224, the Foundation timely served a Notice of Claim on CUNY by registered mail on July 28, 2023 in accordance with New York General Municipal Law §§ 50-e and 50-i.

27. The Foundation has satisfied the requirements of New York Education Law § 6224(2), as more than 30 days have elapsed since both the Foundation's demand and Notice of Claim were presented to CUNY and CUNY has neglected or refused to make an adjustment or payment thereof.

First Cause of Action **Breach of Contract**

28. The Foundation repeats and realleges the above paragraphs as if fully set forth herein.

29. The Foundation and CUNY entered into the Agreement on April 29, 2013.

30. Paragraph 1(b)(iii) of the Agreement provides that if a new GCC facility is not under construction within ten years of the date of the Agreement, the Foundation has the right to require CUNY to refund to it the entire balance of the Success Fund.

31. More than ten years have passed since the Agreement was executed and CUNY has not begun construction of a new facility for GCC.

32. The Foundation notified CUNY that it was exercising its right under the Agreement to demand the refund of the entire balance of the Success Fund.

33. CUNY has not returned any portion of the Success Fund to the Foundation within the time period prescribed in the Agreement.

34. The Foundation has suffered damages in the form of the loss of the entire balance of the Success Fund, to which it is entitled as a result of CUNY's failure to fulfill its obligations under the Agreement.

35. The Foundation seeks to enforce its right under the Agreement to require CUNY to refund the entire current balance of the Success Fund, which amounts to approximately \$21,190,777.80 as of the date of this filing.

36. As CUNY has not responded to the Foundation's request to toll the Statute of Limitations regarding the claim set forth herein, Plaintiff has no choice but to commence this action in order to preserve its rights.

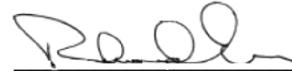
PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court grant Plaintiff the relief requested as follows:

- A. Summary judgment concluding that Plaintiff is entitled to the refund of the entire balance of the Success Fund;
- B. Compensatory damages in an amount to be determined at trial;
- C. Liquidated damages in an amount to be determined at trial;
- D. Prejudgment interest in an amount to be determined at trial; and

E. Such other and further relief as the Court may deem just and proper.

Dated: New York, New York
July 19, 2024



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