

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

----- X  
ST. LUKE BAPTIST CHURCH, INC.,

Index No.

Plaintiff,

-against- :

**SUMMONS**

AZIMUTH DEVELOPMENT GROUP LLC, 99  
MORNINGSIDE LLC, AUF GANG  
ARCHITECTS LLC, GUIDO SUBOTOVSKY,  
HUGO SUBOTOVSKY

Venue based on CPLR § 503  
Plaintiff's Principal Office:

Defendants.

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**TO THE ABOVE-NAMED DEFENDANTS:**

**YOU ARE HEREBY SUMMONED** and required to serve upon Plaintiff's attorneys an Answer to the Complaint in this action within 20 days of service of this summons, exclusive of the day of service, or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated: New York, New York  
August 2, 2019

**BURGERGRAY LLP**

By: /s/ Don M. Tellock

Don M. Tellock  
1350 Broadway, Suite 406  
New York, New York 10018  
*Attorneys for Plaintiff  
St. Luke Baptist Church, Inc.*

**SUPREME COURT OF NEW YORK  
COUNTY OF NEW YORK**

----- X  
ST. LUKE BAPTIST CHURCH, INC.,

Index No. \_\_\_\_\_

Plaintiff,

-against-

**VERIFIED COMPLAINT**

AZIMUTH DEVELOPMENT GROUP LLC, 99  
MORNINGSIDE LLC, AUFANG  
ARCHITECTS LLC, GUIDO SUBOTOVSKY,  
HUGO SUBOTOVSKY

Defendants,

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Plaintiff, St. Luke Baptist Church (“St. Luke” or “Plaintiff”), by and through its undersigned counsel, BurgherGray LLP, as and for its Verified Complaint against Defendants Azimuth Development Group, LLC (“Azimuth”), 99 Morningside, LLC (“99 Morningside”), Aufgang Architects, LLC (“Aufgang”), Guido Subotovsky, and Hugo Subotovsky (collectively, “Defendants”), alleges as follows:

**NATURE OF THE ACTION**

1. This action arises out of a deal wrought with fraud, misrepresentations, and misconduct by Defendants, whose false promises and manipulation of a church’s goodwill have put a storied institution of faith in Harlem at the precipice of shuttering its doors for good.
2. Azimuth, a sophisticated development company that has made its fortune by targeting low-income neighborhoods for gentrification, has now used its expertise to take advantage of

a church whose unsuspecting nature and charitable parishioners left it vulnerable to the Defendants' predatory practices.

3. In late 2013, Azimuth bid in a Request for Proposal ("RFP") process initiated for the potential development of real estate owned by the Plaintiff in Harlem. Azimuth promised St. Luke a new state-of-the-art church, that would comprise no less than the amount of space that Plaintiff would convey to Azimuth. In turn, Azimuth would build luxury condominiums atop (and around) the new church by purchasing additional adjacent properties. What Azimuth promised, and what St. Luke is contracted to receive, however, are two very different things.
4. By colluding with a corrupt lawyer with a gambling habit who represented St. Luke<sup>1</sup>, Azimuth received a deal that Azimuth knew, or should have known, was too good to be true. As a result, Azimuth and St. Luke entered into a one sided Purchase and Sale Agreement (the "Contract") in February, 2014, that provided for the demolition of the original church and construction of a new church. During the construction period, St. Luke has relocated to temporary space that is significantly smaller than the original church it occupied, which has severely limited the size of the congregation and events Plaintiff can host<sup>2</sup>.
5. Pursuant to the Contract, the completion date of the new church was set for February 2017. The Contract provides that St. Luke is entitled to twenty thousand eight hundred thirty-three dollars (\$20,833) to be paid by Azimuth for every month beyond the completion date,

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<sup>1</sup> Subsequent to the events described in this Complaint, Plaintiff's attorney, John Shasanmi, who negotiated the deal with Azimuth, was charged and convicted of stealing over six hundred thousand dollars from Second Providence Baptist Church in a deal that is almost identical to the underlying transaction here. Not surprisingly, Azimuth is the developer/purchaser in both transactions.

<sup>2</sup> Two of the main sources of revenue for a church are 1) donations from congregation members, and 2) revenue from special events, such as wedding ceremonies performed in the facility. Consequently, Plaintiff's revenue stream is less than in the original church, and not expected to grow until St. Luke is relocated to the new church.

until the new church is completed (the “Delay Payments”). At the closing of the transaction in February 2014, Azimuth purportedly delivered three months of Delay Payments, totaling sixty-two thousand four hundred ninety-nine dollars (\$62,499.00) to Plaintiff’s counsel, Shasanmi, as an escrow holder, in the event construction was not completed on time. In fact, the funds were never escrowed, and were really a payment to Shasanmi to compensate him for his role in ensuring Plaintiff’s signature on the Contract, which is onerous and does not reflect what St. Luke had been promised in negotiations. Two glaring examples are 1) the Delay payments in the Contract never increase, no matter how long it takes to complete the new church, if ever, and 2) the square footage allocated for the church in the Contract (approximately 13,000) is significantly less than what was promised in negotiations between the principals (17,338).

6. In February 2017, Azimuth and Shasanmi acted in a concerted effort to keep their conspiracy concealed from Plaintiff. As the completion date for the project approached, Shasanmi knew that he had already gambled the money from the pre-paid three months of Delay Payments. Azimuth knew the money was not an escrow payment, but was merely a ruse to compensate Shasanmi for his participation in the fraudulent scheme. Yet, the conspiracy was about to be exposed, since Azimuth had not completed the new church on schedule, and Delay Payments were going to come due imminently. Accordingly, Shasanmi and Azimuth drafted a letter agreement, dated February 15, 2017, which circumvented the Delay Payments clause in the Contract by directing that Delay Payments would be paid directly to Plaintiff beginning May 1, 2017, and provided an additional payment of over twenty-three thousand dollars (\$23,000.00) by Azimuth to cover the shortfall of funds from the pre-paid “escrow” for Shasanmi that he had already spent. Shasanmi had represented to

Azimuth in early February that he had thirty-nine thousand dollars (\$39,000.00), which he could contribute to make Plaintiff whole for the first three months of Delay Payments. Azimuth, however, did not know that it was dealing with a co-conspirator who was too deep into the grips of a gambling addiction. Between the time he made the representation and when the money was due, Shasanmi gambled away the thirty-nine thousand dollars (\$39,000.00), which left him with no choice, but to inform Plaintiff that it would not receive the first three months of Delay Payments, as per the contract. St. Luke forgave Shasanmi, and agreed not to prosecute him for the theft. Nevertheless, Shasanmi did not disclose his collusion with Azimuth. Since that time, Delay Payments have been paid directly to Plaintiff.

7. It is now more than two and a half years past the completion date of February 2017, and more than five and a half years since construction began on the site. Yet, the new church is nowhere near complete, and there is no reasonable expectation of when the project will be done<sup>3</sup>. To further exacerbate the problem, at the end of June, Guido Subotovsky, Azimuth's President and Founder, contacted the Pastor of St. Luke in a vicious text and informed Plaintiff that Azimuth will not make any more Delay Payments going forward. Azimuth's refusal to continue Delay Payments is a clear breach of the Contract.

8. Azimuth's breach and tortious conduct have caused, and continue to cause, severe financial harm to St. Luke. The combination of non-escalating Delay Payments over the years, the rising cost of rent and other expenses for St. Luke, a dwindling congregation due to space limitations in the temporary space, and now the complete stoppage of Delay Payments, has left the church in a dire financial situation that threatens the very existence of

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<sup>3</sup> Azimuth's web site lists the completion date for the project as Fall 2018. See, <http://azimuthdg.com/portfolio.php>.

the church.

9. By this action, St. Luke seeks a temporary restraining order and preliminary injunctive relief, including the continuation of Delay Payments (at an inflation adjusted rate dating back to February, 2014) until the new church is completed, the appointment of a receiver to oversee construction of the new church, an Order prioritizing completion of the new church and halting all other construction on the site until the new church is finished, and permanent relief in the form of a money judgment in an amount to be determined at trial, but not less than twenty million dollars (\$20,000,000), (or in the alternative rescinding the Contract in its entirety) punitive damages, restitution and pre-judgment interest, costs and reasonable attorneys fees.

#### PARTIES

10. Plaintiff St. Luke is a New York not-for-profit corporation with its principal place of business in New York, NY and is temporarily located at 1916 Park Avenue, New York, NY 10037.
11. Defendant Azimuth is a business incorporated under the laws of the State of New York, with its principal place of business in New York, NY, with offices located at 40 Fulton Street, 20<sup>th</sup> Floor, New York, NY 10038
12. Defendant 99 Morningside is a business incorporated under the laws of the State of New York, with its principal place of business in New York, NY, with offices located at 40 Fulton Street, 20<sup>th</sup> Floor, New York, NY 10038.
13. Defendant Aufgang is a business incorporated under the laws of the State of New York, with its principal place of business in Suffern, NY, with offices located at 74 Lafayette Avenue, Suite 301, Suffern, NY 10901.

14. Defendant Guido Subotovsky is the president and founder of Azimuth, and regularly transacts business in New York, NY.
15. Upon information and belief, Defendant Hugo Subotovsky is a project manager for Azimuth, and regularly transacts business in New York, NY, and is the father of Guido Subotovsky.

### **JURISDICTION AND VENUE**

16. This Court has personal jurisdiction pursuant to CPLR § 302. Defendant Azimuth is a business incorporated under the laws of New York, which conducts business and has transacted business in New York, NY. Defendant 99 Morningside is a business incorporated under the laws of New York, which conducts business and has transacted business in New York, NY. Defendant Aufgang is a business incorporated under the laws of New York, which conducts business and has transacted business in New York, NY. Defendant Guido Subotovsky conducts business and has transacted business in New York, NY, and the acts complained of herein were committed in New York, NY. Defendant Hugo Subotovsky conducts business and has transacted business in New York, NY, and the acts complained of herein were committed in New York, NY. The amount of damages sought in this action exceeds the jurisdictional limit of all lower courts that might otherwise have jurisdiction.
17. Venue is properly laid in this Court pursuant to CPLR § 503(a) and § 503(c) because Azimuth, 99 Morningside, and Aufgang are residents of New York County, as they primarily do business in New York County. The majority of the events that took place leading up to this Complaint occurred in New York County.

### PERTINENT FACTS

#### **A. In the Beginning**

18. Founded in 1937, St. Luke has been a bedrock of Christian worship in Harlem for over 80 years. St. Luke thrived and experienced rapid growth at the turn of the century under the guidance of Rev. Dr. Johnnie G. McCann, Sr.
19. Founded in 2009, Azimuth is a development firm operating in New York. Guido Subotovsky, a real estate professional, is the founder and president of Azimuth. Azimuth's expansive portfolio comprises a combination of projects primarily in New York City with total value of approximately four hundred fifty-eight million eight hundred thousand dollars (\$458,800,000).
20. Upon information and belief, Azimuth targets traditionally low-income neighborhoods and purchases real estate in those communities with the intention of replacing existing properties with new, luxury rental and condominium units.
21. Azimuth has recently been in the business of targeting churches for investment opportunities.<sup>4</sup>
22. Upon information and belief, Azimuth purchases the property owned by the churches at prices significantly under market-value, and in return, promises to deliver these churches a

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<sup>4</sup> See, Lisa Chamoff, *Bless This Condo: Developers And Churches Share Space in NYC*, Forbes, February 22, 2019, available at: <https://www.forbes.com/sites/lisachamoff/2019/02/22/bless-this-condo-developers-and-churches-share-space-in-nyc/#4125032b2cbc>; See also, Peter S. Green, *Houses of Worship Grappling with Harlem's Development Boom*, Crain's New York, March 18, 2019 available at: <https://www.crainsnewyork.com/features/houses-worship-grappling-harlems-development-boom>



brand new state-of-the-art space for worship. Azimuth is then able to develop condominiums or rental units on the property conveyed to them by the churches.

23. In late 2013, Azimuth bid in a RFP process initiated for the potential development of real estate owned by the church in Harlem. Azimuth was one of several bidders in the RFP process. During numerous conversations between the principals, Azimuth promised St. Luke a brand new, state-of-the-art church which would comprise space equal to the amount of buildable square footage that St. Luke would be conveying to Azimuth, and Azimuth would build luxury condominiums atop the new church, and on adjacent properties it would purchase. Azimuth enlisted Defendant Aufgang as the architectural firm in charge of design for this project.
24. St. Luke entered into the Contract with Azimuth in February, 2014. As part of the deal, St. Luke conveyed its property at 99 Morningside Avenue and 103-105 Morningside Avenue to Azimuth. A true and correct copy of the Contract is attached hereto as **Exhibit A** and incorporated herein by reference. In addition, Azimuth acquired properties located at 369 West 123rd Street and 371 West 123rd Street.
25. Upon information and belief, the Contract was later assigned to Defendant 99 Morningside by Azimuth, pursuant to a separate agreement dated April 9, 2014.
26. In early 2015, St. Luke relocated to a temporary space, located at 1916 Park Avenue, New York, NY 10037 to house the congregation during the construction period. The temporary space is significantly smaller than the properties that Plaintiff conveyed to Azimuth.

**B. The Conspiracy in Plain View: the Book of John**

27. St. Luke was represented by an attorney named John Shasanmi in the negotiation and drafting of the Contract with Azimuth. At the time, Shasanmi was working as a solo practitioner, and unbeknownst to St. Luke, suffering from a major gambling addiction.

28. Upon information and belief, Shasanmi is currently incarcerated after having been convicted for Grand Larceny in the Second Degree and Possession of a Forged Instrument. His conviction stems from an incident involving his representation of another Harlem Church, Second Providence Baptist Church, in a separate deal, also with Azimuth, which subsequent to the St. Luke deal.
29. During Shasanmi's representation of Second Providence, he stole over six hundred thousand dollars (\$600,000) that was supposed to be placed in escrow for the benefit of Second Providence. In fact, Shasanmi placed these funds in a personal account under his name. He used that money to fund his gambling addiction.
30. Upon information and belief, Azimuth was aware of Shasanmi's corrupt practices during the transaction with St. Luke, and colluded with Shasanmi by providing him benefits in exchange for his cooperation during the negotiation and drafting of the Contract.
31. Upon information and belief, Azimuth compensated Shasanmi for this side deal by cleverly drafting into the Contract a Delay Payments clause, whereby Azimuth agreed to pay St. Luke twenty thousand eight hundred thirty-three dollars (\$20,833.00) per month, for every month, beyond the completion date. The completion date was calculated to be February, 2017. As written in the Contract, the Delay Payments never increase, no matter how long it takes to complete the new church, if ever.
32. The Delay Payments clause provided for the first three months of Delay Payments to be placed into an escrow account under the exclusive control of Shasanmi upon closing. Upon information and belief, Shasanmi placed these funds in a personal account. If the Church was completed on time, the first three months of Delay Payments that were controlled exclusively by Shasanmi would never have to be transferred to St. Luke.

33. The clause in the Contract relating to the Delay Payments reads as follows:

9.6 Delay Payments

In the event that Developer fails to deliver the Church Condominium on or before the Completion Date, Owner shall be entitled to additional compensation in the amount of approximately Twenty Thousand Eight Hundred Thirty-Three Dollars (\$20,833.00) per month for every month, or portion thereof, beyond the Completion Date until Developer has delivered the Church Condominium to Owner ("Delay Payments"). Delay Payments shall be delivered by Owner to Escrow Holder in advance in three (3) month increments with the first three (3) months of Delay Payments being placed into the Escrow Account at the Closing with the Escrow Holder. The Escrow Holder shall release the Delay Payments on a monthly basis to Owner for each month beyond the Completion Date until Developer has delivered the Church Condominium to Owner. In the event there are Delay Payments still in escrow at the time Developer delivers the Church Condominium to Owner Escrow Holder shall return those funds to Developer within three (3) days' prior written notice to Escrow Holder that the Church Condominium has been delivered.

34. Upon information and belief, this arrangement by Azimuth led to Azimuth receiving a deal that they knew, or should have known was too good to be true, and not reflective of the discussion between the principals.

**C. Azimuth Reaps the Benefits of the Conspiracy: What Happens When Lions Lay With Lambs**

35. St. Luke owned two properties prior to the transaction with Azimuth, located at 99 Morningside Avenue and 103-105 Morningside Avenue. During the entirety of the negotiations between the principals, St. Luke was promised that they would be receiving a new church at the end of construction that represented the amount of buildable square footage from the lots they conveyed to Azimuth. Specifically, the buildable square footage of the two lots that St. Luke had was seventeen thousand three hundred thirty-eight (17,338) square feet. Upon information and belief, Shasanmi, Guido, and Hugo were aware that this promise would

never come to fruition, since the new church described in the Contract was comprised of significantly less space than the property conveyed to Azimuth. Importantly, Shasanmi knew that he could secure his client's signature because of the trusting nature of the church members.<sup>5</sup>

36. Upon information and belief, Aufgang was complicit in this fraud with Azimuth and Shasanmi against St. Luke, and prepared design plans and schematics for a new church totaling thirteen thousand one hundred twenty-five (13,125) square feet, despite being aware that St. Luke was promised space totaling over seventeen thousand (17,000) square feet.

37. The deviations in representations by Azimuth are startling. In 2014, Azimuth contracted to provide Plaintiff a new church that is approximately thirteen thousand (13,000) square feet. The design schematics from Aufgang, which are attached to the Contract, show that the new church will comprise thirteen thousand one hundred twenty-five (13,125) square feet. Earlier this year, Guido Subotovsky, is cited in an article in Forbes, stating that Plaintiff would receive twelve thousand five hundred (12,500) square feet for their new church, which is a breach of the Contract. A true and correct copy of the Forbes article is attached hereto as **Exhibit B** and incorporated herein by reference. These inconsistent representations have left St. Luke perplexed and unsure what to expect at the end of construction.

38. A new church that is twelve thousand five hundred (12,500) square feet would result in a discrepancy of four thousand eight hundred thirty-eight (4,838) square feet less than the seventeen thousand three hundred thirty-eight (17,338) Plaintiff expects to receive. The four

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<sup>5</sup> Shasanmi was a member of St. Luke and over the years developed a close relationship with St. Luke's Board of Trustees and Pastor McCann.

thousand eight hundred thirty-eight (4,838) square foot discrepancy has an estimated fair market value of between \$5.3 million and \$5.8 million. Even if the square footage in the schematics provided by the Contract were correct, which they are not, there still is a discrepancy of six hundred twenty-five (625) square feet. A six hundred twenty-five (625) square foot discrepancy has an estimated fair market value of between six hundred eighty-seven thousand five hundred dollars (\$687,500) and seven hundred fifty thousand dollars (\$750,000) and still constitutes a breach of contract.

39. The Contract negotiated by Shasanmi also heavily favors Azimuth, but offers very little protection for St. Luke. In addition to deceiving St. Luke on the issue of square footage to be allocated to the new church, Shasanmi and Azimuth fraudulently induced Plaintiff into an unconscionable Delay Payments clause, which entitles St. Luke to only twenty thousand eight hundred thirty-three dollars (\$20,833) per month to be paid by Azimuth for every month beyond the negotiated completion date, until Azimuth delivers the completed new church. Shasanmi was aware that the first three months of those Delay Payments were going to be in his exclusive control. If the new church was completed on time, he would not have to transfer the Delay Payments to St. Luke, and his co-conspirators would not require him to return the funds.

40. Shasanmi also failed to include any type of escalation in the amount of the Delay Payments Azimuth must pay to St. Luke in the event that any delays in delivery become more prolonged. St. Luke could be nomads for twenty years, face rising rent costs and inflation, but the Delay Payments would never be subject to an increase. In fact, Azimuth could never complete the new church, and continue to pay St. Luke the same amount in Delay Payments in perpetuity, and Plaintiff would have no recourse.

41. Upon information and belief, these major flaws in Shasanmi's representation of the Church were caused by Azimuth's side agreement with Shasanmi. The misconduct committed by Guido and Hugo Subotovsky in this transaction is not out of line with their history.<sup>6</sup>

**D. The Conspiracy Revealed: That Which is Done in the Dark Comes to the Light**

42. Upon information and belief, the conspiracy between Azimuth and Shasanmi nearly unraveled in February, 2017.

43. When the new church was not completed by February, 2017, the Delay Payments to St. Luke became due. Plaintiff contacted Shasanmi for weeks regarding the Delay Payments, but Shasanmi was unable to provide the Delay Payments because he had stolen the money in order to fund his gambling addiction.

44. Upon information and belief, in an attempt to further their conspiracy to defraud Plaintiff, Azimuth agreed to provide Shasanmi with a significant amount of the missing funds that were owed to Plaintiff.

45. Upon information and belief, Azimuth and Shasanmi drafted the Letter Agreement dated February 15, 2017, in order to facilitate Azimuth's payment to cover Shasanmi's shortfall.

46. Azimuth and Plaintiff entered into a separate agreement on February 15, 2017 (the "Letter Agreement"), that governs the manner in which the Delay Payments would be issued and

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<sup>6</sup> In 2006, Hugo Subotovsky completed a home project for then Bronx Borough President, Adolfo Carrion, at no cost, while Hugo was seeking approval of several development projects in the Bronx from the borough president's office. Hugo subsequently received the necessary approvals for his developments from Carrion's office. Carrion later admitted to violating city laws and was fined \$10,000 by the City's Conflicts of Interest Board. See David Seifman, Former Bx. Borough President Carrion agreed to pay \$10k fine for architect deal, NY Post, December 1, 2011, available at: <https://nypost.com/2011/12/01/former-bx-borough-president-carrion-agrees-to-pay-10k-fine-for-architect-deal/>

supersedes the Contract's requirement for Delay Payments to be placed in escrow. A true and correct copy of the Letter Agreement is attached hereto as **Exhibit C** and incorporated herein by reference. The Letter Agreement requires that, commencing May 1, 2017, all Delay Payments be made directly to St. Luke.

47. In relevant part, the Letter Agreement states:

By this Letter the Parties hereby agree, notwithstanding the terms of the Agreement, that Delay Payments to the Seller shall commence effective February 1, 2017, in the amount of \$20,833.00 per month. The first quarterly payment in the amount of \$62,499.00 shall be released upon execution of this letter as follows:

1. Escrow Holder shall immediately release the \$39,000.20 being held in Escrow to Seller.
2. Purchaser shall immediately deliver the balance of \$23,498.80 to Seller by cash, check or wire.

Purchaser shall make subsequent Delay Payments directly to Seller commencing May 1, 2017 in accordance with provisions 9.6 of the Agreement.

48. A review of this conveniently sudden amendment to the Contract reveals that there is something dubious about its details. First, the division of the amounts being held in escrow and the amounts being paid by the Purchaser are completely arbitrary. Twenty-three thousand four hundred ninety-eight dollars and eighty cents (\$23,498.80) does not equal the amount of one month of a Delay Payment, or have any other significance in the Contract. Upon information and belief, twenty-three thousand four hundred ninety-eight dollars and eighty cents (\$23,498.80) is the amount paid by Azimuth in order to cover Shasanmi's shortfall and further their conspiracy.

49. Second, pursuant to the Contract, Azimuth already provided Shasanmi with the entirety of the first three months of Delay Payments which were supposed to be placed in an escrow

account upon closing. There is no legitimate reason that Azimuth, the same party who is now unwilling to provide Plaintiff with a Delay Payment unless they acquiesce to new terms, would suddenly pay an additional twenty-three thousand four hundred ninety-eight dollars and eighty cents (\$23,498.80) to Plaintiff without any explanation.

50. Upon information and belief, the reasons that Azimuth paid this significant amount of additional money, were to avoid scrutiny that could uncover their side deal with Shasanmi, and further the goals of their conspiracy to defraud St. Luke.
51. Finally, the swift resolution and eagerness of Azimuth to provide these additional funds to resolve Shasanmi's criminal conduct should be a cause for concern. The Delay Payments became due on February 1, 2017. The Letter Agreement was completed by February 15, 2017. It took a mere two weeks for Azimuth to memorialize an agreement to provide an additional twenty-three thousand four hundred ninety-eight dollars and eighty cents (\$23,498.80). Upon information and belief, Azimuth acted swiftly to attempt to conceal Shasanmi's criminal conduct, in order to avoid scrutiny that could uncover their involvement with Shasanmi, and further their conspiracy to defraud St. Luke.
52. On February 27, 2019, Deacon William Cofield, Chairman of the Board of Trustees of St. Luke, visited Shasanmi in jail. He was days away from being sentenced for his crimes involving the Second Providence Baptist Church transaction with Azimuth.
53. During the emotional meeting at the jail, Shasanmi expressed remorse for his role in placing St. Luke in such a precarious situation, and expressed willingness to help the church. He acknowledged that Azimuth knew he took the pre-paid Delay Payments, yet he was adamant that his gambling addiction did not affect his legal advice.
54. Shasanmi informed Deacon Cofield that he hoped to practice law again someday and any



public admission of what happened during the transaction would derail his chances of practicing again.

55. It was clear to Deacon Cofield that Shasanmi was still in denial about his gambling addiction and how much he had hurt St. Luke. Nevertheless, believing in forgiveness as the Bible teaches, Deacon Cofield told Shasanmi that the church had forgiven him, and would welcome him back into the congregation upon his completion of his jail sentence. Deacon Cofield still prays for Shasanmi.

56. Ultimately, the sinister actions taken by the Defendants and Shasanmi, led to the very situation St. Luke finds themselves in today: displaced from their home indefinitely, and facing rising costs that put their very existence in peril.

**E. Azimuth's Attempt to Destroy a Harlem Institution: Guido's Old Testament Vengeance**

57. The one-sided Contract entered into between Azimuth and St. Luke was finalized in February, 2014. The principals negotiated a completion date of February, 2017.

58. More than five years after the formation of the Contract, and more than two years after the completion date, Azimuth has failed to deliver the new church it promised to St. Luke. In addition, there is no indication that the new church is anywhere near being completed.

59. Given the delay in Azimuth's completion of the new church, they are contractually bound to provide the church with Delay Payments for every month after February, 2017 until the new church is completed.

60. Not only has Azimuth taken more than double the time negotiated to complete the church that was promised to St. Luke, with no end in sight, but Azimuth is now trying to impose new terms on Plaintiff.

61. Upon information and belief, Azimuth is seeking additional investors and financing for

the project.

62. Upon information and belief, Azimuth's financiers are requiring certain assurances from Azimuth prior to providing Azimuth with any further funding.
63. On June 26, 2019, more than five years after the signing of the Contract, Azimuth requested that St. Luke provide them with an acknowledgment of every past payment St. Luke has received from Azimuth. Such an acknowledgment is not required by the Contract, and no such acknowledgment has ever been requested of St. Luke in the five years since the Contract was formed. Azimuth is aware that St. Luke is not in possession of all of the documents related to the transaction because their lawyer during the transaction, John Shasanmi, was subsequently incarcerated. Azimuth is also well aware that Shasanmi stole the first three months of Delay Payments that were supposed to be in an escrow account under his control, affecting the accuracy of the record of payments by Azimuth to Plaintiff. St. Luke, however, responded by agreeing to provide Azimuth with acknowledgment of any future payments made subsequent to their request.
64. Despite this good faith offer, Azimuth responded by stating that if St. Luke did not accept these new terms, and comply with their request, Azimuth would cease making Delay Payments.
65. On July 1, 2019, Guido Subotovsky, the president and founder of Azimuth, maliciously directed disparaging and defamatory insults to Rev. Dr. J.G. McCann Sr., a highly respected member of the clergy and the pastor for St. Luke. Specifically, Guido baselessly accused Pastor McCann of being an extortionist, and reaffirmed Azimuth's intention to breach the Contract and cease meeting their contractual obligations to provide Delay Payments. A true and correct copy of the messages from Guido to Pastor McCann are attached hereto as

**Exhibit D** and incorporated herein by reference.

66. In July, in retaliation for St. Luke's refusal to acquiesce to Azimuth's strong-arm tactics, Azimuth ceased making Delay Payments to St. Luke.
67. Since that time, Azimuth has made multiple attempts to lure Plaintiff to their offices to impose the new terms by promising checks. Those attempts, however, are strong arm tactics by Azimuth because Azimuth knows St. Luke cannot survive without the Delay Payments. Without a court order in place, Azimuth can continue to stop payment at will without any repercussions.<sup>7</sup>
68. St. Luke now faces extreme hardship as a result of being in a smaller, temporary space for longer than was contemplated by the Contract. Plaintiff originally leased its temporary space at approximately nine thousand seven hundred dollars (\$9,700) monthly in 2015. The rent has now increased to fourteen thousand four hundred fifty-eight dollars and fifty-eight cents (\$14,458.58) monthly. In addition to the temporary space, St. Luke hosts a separate weekly service on Wednesdays. The cost of renting the space for this Wednesday service is five hundred dollars (\$500) monthly. Other monthly expenses have also increased during that same time period.
69. St. Luke has also had to bear the costs associated with not being able to host certain events in the new church. For instance, Pastor McCann's daughter planned to have her wedding ceremony in the new church in the fall of 2018. As a result of the Defendants'

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<sup>7</sup> Section 11.2 of the Contract entitled "Owner Remedies" provides that St. Luke is entitled to seek specific performance in the event that Azimuth fails to make any payments as and when such payments become due and payable under the Contract. Section 12.5 of the Contract entitled "Injunctive Relief" provides that St. Luke is entitled to injunctive relief with respect to any breach of the Contract, and such relief shall include an order enjoining a party from any threatened or actual breach.

unreasonable delay, the ceremony had to be moved to another venue.

70. St. Luke has also had several key members of their congregation pass away since 2017, and while their families wished to have had their funeral services take place at the new church, this was not possible because the Defendants have not yet delivered the new church.
71. Additionally, St. Luke planned to host an annual conference, which would have generated additional revenue for an institution of limited means, but again, this is impossible because the Defendants have not completed the new church that they represented would be completed over two years ago.
72. The rising cost of rent and other expenses for St. Luke, a dwindling congregation caused by space limitations in the temporary space, and now the complete cessation of Delay Payments has left the church in a dire financial situation. An institution that has served its congregation for over 80 years, now finds itself in imminent danger of closing its doors for good.
73. As a result of Azimuth's conduct, St. Luke has suffered damages in an amount to be determined at trial, but no less than twenty million dollars (\$20,000,000).

#### **FIRST CAUSE OF ACTION**

(Breach of Contract Against Defendants Azimuth, 99 Morningside, and Guido Subotovsky)

74. Plaintiff repeats and realleges each and every allegation set forth above as if set forth fully and at length herein.
75. Plaintiff entered into a Contract with Azimuth, whereby Plaintiff conveyed its properties at 99 Morningside Avenue and 103-105 Morningside Avenue to Azimuth.
76. Upon information and belief, the Contract was later assigned to 99 Morningside by Azimuth, pursuant to a separate agreement dated April 9, 2014.

77. On these properties, Azimuth was to construct a new church, for St. Luke, and a luxury condominium building with units above (and surrounding) the new church.
78. Pursuant to the Contract, Plaintiff is entitled to Delay Payments in the amount of twenty thousand eight hundred thirty-three dollars and no cents (\$20,833.00) for every month after the negotiated completion date until the church is completed.
79. The negotiated completion date was February, 2017.
80. Plaintiff fully complied with the Contract between the parties and performed all its required obligations under the Contract.
81. Azimuth breached the Contract by ceasing to provide Plaintiff with further Delay Payments beginning in July, 2019.
82. As a result of this breach, Plaintiff is entitled to damages in an amount to be determined at trial.

**SECOND CAUSE OF ACTION**

(Breach of Contract Against Defendants Azimuth, 99 Morningside, and Guido Subotovsky)

83. Plaintiff repeats and realleges each and every allegation set forth above as if set forth fully and at length herein.
84. Plaintiff entered into a Contract with Azimuth, whereby Plaintiff conveyed its properties at 99 Morningside Avenue and 103-105 Morningside Avenue to Azimuth.
85. Upon information and belief, the Contract was later assigned to 99 Morningside by Azimuth, pursuant to a separate agreement dated April 9, 2014.
86. On these properties, Azimuth was to construct a new church, for St. Luke, and a luxury condominium building with units above (and surrounding) the new church.
87. The Contract states that Azimuth shall construct for Plaintiff a new church that comprises

approximately thirteen thousand (13,000) square feet.

88. The schematics attached to the Contract state that the new church being built would be comprised of thirteen thousand one hundred twenty-five (13,125) square feet.
89. Plaintiff fully complied with the contract between the parties and performed all its required obligations under the contract.
90. On February 22, 2019, Forbes Magazine published an article citing Guido Subotovsky as stating that Azimuth would be providing St. Luke twelve thousand five hundred (12,500) square feet for the new church.
91. Defendants Azimuth, 99 Morningside, and Guido Subotovsky have breached the contract by failing to provide Plaintiff with the required square footage for its new church.
92. Even if the square footage in the schematics provided by the Contract were correct, which they are not, there still is a discrepancy of six hundred twenty-five (625) square feet.
93. A six hundred twenty-five (625) square foot discrepancy has an estimated fair market value of between six hundred eighty-seven thousand five hundred dollars (\$687,500) and seven hundred fifty thousand dollars (\$750,000), and is a clear breach of Contract.
94. As a result of this breach, Plaintiff is entitled to damages in an amount to be determined at trial.

### **THIRD CAUSE OF ACTION**

(Unjust Enrichment Against Defendants Azimuth, 99 Morningside, and Guido Subotovsky)

95. Plaintiff repeats and realleges each and every allegation set forth above as if set forth fully and at length herein.
96. Plaintiff entered into a Contract with Azimuth, whereby Plaintiff conveyed its properties at 99 Morningside Avenue and 103-105 Morningside Avenue to Azimuth.

97. On these properties, Azimuth was to construct a new church, for St. Luke, and a luxury condominium building with units above (and surrounding) the new church.
98. During the entirety of the negotiations between the principals, St. Luke was promised that they would be receiving a new church at the end of construction that represented the combined amount of buildable square footage from the lots they conveyed to Azimuth.
99. The total buildable square footage of the two lots that St. Luke had was seventeen thousand three hundred thirty-eight (17,338) square feet.
100. The Contract states that Azimuth shall construct for Plaintiff a new church that comprises approximately thirteen thousand (13,000) square feet.
101. The schematics attached to the Contract state that the new church being built would be comprised of thirteen thousand one hundred twenty-five (13,125) square feet.
102. On February 22, 2019, Forbes Magazine, published an article citing Guido Subotovsky as stating that Azimuth would be providing twelve thousand five hundred (12,500) square feet for the new church.
103. Even if the square footage in the schematics provided by the Contract were correct, which they are not, there still is a discrepancy of six hundred twenty-five (625) square feet.
104. A six hundred twenty-five (625) square foot discrepancy has an estimated fair market value of between six hundred eighty-seven thousand five hundred dollars (\$687,500) and seven hundred fifty thousand dollars (\$750,000), and is a clear breach of Contract.
105. As a result of the foregoing, Defendants Azimuth, 99 Morningside, and Guido Subotovsky have been unjustly enriched at Plaintiff's expense and should make restitutions in an amount proven at trial.

**FOURTH CAUSE OF ACTION**

(Unjust Enrichment Against Defendants Azimuth, 99 Morningside, and Guido Subotovsky)

106. Plaintiff repeats and realleges each and every allegation set forth above as if set forth fully and at length herein.
107. Plaintiff entered into a Contract with Azimuth, whereby Plaintiff conveyed its properties at 99 Morningside Avenue and 103-105 Morningside Avenue to Azimuth.
108. Upon information and belief, the Contract was later assigned to 99 Morningside by Azimuth, pursuant to a separate agreement dated April 9, 2014.
109. On these properties, Azimuth was to construct a new church, for St. Luke, and a luxury condominium building with units above (and surrounding) the new church.
110. Pursuant to the Contract, Plaintiff is entitled to Delay Payments in the amount of twenty thousand eight hundred thirty-three dollars and no cents (\$20,833.00) for every month after the negotiated completion date until the church is completed.
111. Azimuth ceased making Delay Payments to Plaintiff in July, 2019.
112. Azimuth is now in possession of the properties conveyed to them by Plaintiff, and Delay Payments that are due to Plaintiff.
113. As a result of the foregoing, Defendants Azimuth, 99 Morningside, and Guido Subotovsky have been unjustly enriched at Plaintiff's expense and should make restitutions in an amount proven at trial.

**FIFTH CAUSE OF ACTION**

(Fraudulent Inducement against all Defendants)

114. Plaintiff repeats and realleges each and every allegation set forth above as if set forth fully and at length herein.



115. On multiple occasions, Defendants represented to Plaintiff that Plaintiff would be receiving a new church that would be equal in square footage to the buildable square footage that Plaintiff conveyed to Defendants.
116. Defendants knew this fact to be false.
117. Defendants made this false representation of a material fact with the intention of inducing Plaintiff to rely on this promise, and convey its property to Defendants.
118. Plaintiff justifiably relied upon the false representation by Defendants, and conveyed its properties to Defendants, with the expectation that they would be receiving a state-of-the-art new church that would be equal in size to the buildable square footage they conveyed to Defendants.
119. Defendants are currently building a church that is significantly smaller in square footage than the buildable square footage conveyed to Defendants.
120. As a result of the foregoing, Plaintiff has suffered damages in an amount to be determined at trial.

#### **SIXTH CAUSE OF ACTION**

(Tortious Interference with Contract against Azimuth, 99 Morningside, Guido Subotovsky)

121. Plaintiff repeats and realleges each and every allegation set forth above as if set forth fully and at length herein.
122. Plaintiff entered into a contract with Shasanmi to act as its counsel in the transaction with Azimuth.
123. Azimuth knew that Plaintiff had retained Shasanmi to act as its counsel for the transaction.
124. Upon information and belief, Azimuth intentionally induced Shasanmi to breach his contract with Azimuth by enticing him, through a promise of monetary benefits, to draft the

Contract using language favorable to Azimuth.

125. As a result of the foregoing, Plaintiff has suffered damages in an amount to be determined at trial.

**SEVENTH CAUSE OF ACTION**

(Tortious Interference with Prospective Contractual Relations against all Defendants)

126. Plaintiff repeats and realleges each and every allegation set forth above as if set forth fully and at length herein.
127. There was a bidding process to determine which entity Plaintiff would engage to construct its new church.
128. The bidding process involved several entities, including Azimuth, bidding for the opportunity to contract with Plaintiff to build its new church.
129. Had Defendants not fraudulently induced Plaintiff to enter into the Contract, Plaintiff would have entered into a contract with one of the other bidders to construct its new church.
130. Upon information and belief, Defendants intended to prevent Plaintiff from entering into a contract with one of the other bidders because they wanted Azimuth to get the Contract.
131. As a result of the foregoing, Plaintiff has suffered damages in an amount to be determined at trial.

**EIGHTH CAUSE OF ACTION**

(For a TRO and Preliminary Injunction)

132. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs of this Complaint as if set forth fully and at length herein.
133. Defendants' wrongful acts will cause further immediate irreparable injury to Plaintiff's

goodwill, and to Plaintiff's standing and reputation in its community as a stable place of worship, and immediately threaten the existence of the church. Such injuries are substantial and cannot be remedied completely through compensatory damages.

134. Plaintiff is likely to succeed on the merits and has no adequate remedy at law. Defendants' misconduct to date causes the equities to weigh heavily in favor of granting Plaintiff relief.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully demands judgment against Defendants as follows:

- A. A TRO and preliminary injunction against the Defendants as follows:
- i. Enjoining Azimuth from ceasing the Delay Payments to Plaintiff;
  - ii. Ordering the prioritization of the completion of the new church, and stoppage of all other construction until the church is complete;
  - iii. Ordering the appointment of a receiver to oversee the construction of the new church and protect Plaintiff from any further misconduct by Defendants;
- B. Awarding compensatory damages on Plaintiff's claims in an amount to be determined at trial;
- C. Awarding punitive damages on Plaintiff's claims in an amount to be determined at trial;
- D. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorney's fees; and

E. Granting such other relief as the Court may deem just and proper under the circumstances;

or;

F. In the alternative, rescinding the Contract in its entirety.

DATED: New York, NY  
August 2, 2019

Respectfully submitted,

**BURGERGRAY LLP**


By: /s/ Don M. Tellock  
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New York, NY 10018  
(646) 513 – 3231  
DTellock@burgergray.com  
*Attorneys for Plaintiff*  
*St. Luke Baptist Church, Inc.*

VERIFICATION


STATE OF NEW YORK )  
 )  
 ) :SS  
COUNTY OF NEW YORK )

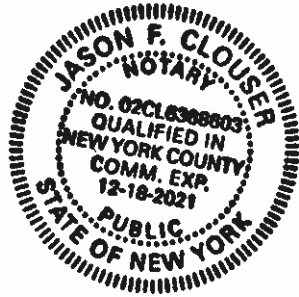
William H. Cofield, being duly sworn, states:

I am the Chairman of the Board of Trustees of St. Luke Baptist Church, Inc., plaintiff in the above-entitled proceeding. I have read and understand the statements contained in the foregoing Verified Complaint, which statements are true to my own knowledge, except as to matters stated to be alleged on information and belief, and as to those matters, I believe them to be true.

  
WILLIAM H. COFIELD

Sworn to before me this  
2nd day of August, 2019

  
Notary Public



VERIFICATION


STATE OF NEW YORK            )  
  :SS  
COUNTY OF NEW YORK        )

Johnnie G. McCann, being duly sworn, states:

I am the pastor of St. Luke Baptist Church, Inc., plaintiff in the above-entitled proceeding. I have read and understand the statements contained in the foregoing Verified Complaint, which statements are true to my own knowledge, except as to matters stated to be alleged on information and belief, and as to those matters, I believe them to be true.

  
\_\_\_\_\_  
JOHNNIE G. McCANN

Sworn to before me this  
2nd day of August, 2019

  
\_\_\_\_\_  
Notary Public

