

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

CHANGE YOUR LIFE LLC,

*Plaintiff,*

-against-

E16 BY 1771 HOLDINGS LLC,

*Defendant.*

Index No. 157335/2020

**Verified Answer,  
Affirmative Defenses,  
& Counterclaims**

Defendant 9E16 By 1771 Holdings LLC (“Defendant”), by its attorneys, Adam Leitman Bailey, P.C., as and for its Verified Answer to the Complaint states as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraphs “1”, “6”, “9”, “15”, “17”, “18”, “22”, “23”, “24”, “26”, “28”, “29”, “31”, “32”, “35”, “38”, “39”, “41”, and “45” of the Complaint.
2. Denies the allegations contained in paragraphs “10”, “11”, “13”, “27”, “30”, “40”, “42”, and “44” of the Complaint.
3. Admits the allegations contained in paragraphs “2”, “3”, “4”, “5”, and “25” of the Complaint.

4. Denies the allegation contained in paragraphs “7” and “8” of the Complaint but admits that Plaintiffs was served with a 15 day Notice to Cure and begs leave to refer to the original document at trial for its terms and conditions.
5. Denies the allegations contained in paragraph “21” and “34” of the Complaint but admits the existence of a lease agreement between the parties and begs leave to refer to the original document at trial for its terms and conditions.
6. Paragraphs “12”, “14”, “16”, “19”, “33”, “36” and “45” of the Complaint do not contain any allegations but instead repeat and re-allege prior allegations in the Complaint which Defendant has provided a response to already and does not need to respond to again.

#### **FIRST AFFIRMATIVE DEFENSE**

7. Plaintiff’s complaint fails to state a cause of action upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

8. Plaintiff’s complaint and the damages alleged therein are barred by Plaintiff’s unclean hands.

#### **THIRD AFFIRMATIVE DEFENSE**

9. Plaintiff’s claims are barred by documentary evidence.

**FOURTH AFFIRMATIVE DEFENSE**

10. Plaintiff's claims are barred, in whole or in part, by virtue of Plaintiff's bad faith.

**FIFTH AFFIRMATIVE DEFENSE**

11. Plaintiff has not sustained any damages or injuries as a result of any action on the part of the Defendant.

**SIXTH AFFIRMATIVE DEFENSE**

12. At all times, Defendant has acted in good faith and in full compliance with its contractual and statutory rights and without motive or intent to injure plaintiff.

**SEVENTH AFFIRMATIVE DEFENSE**

13. Plaintiff's claims are barred due to its breaches under the lease between the parties.

**FIRST COUNTERCLAIM  
(UNJUST ENRICHMENT)**

14. Defendant repeats all prior paragraphs as if set forth at length herein.
15. Plaintiff has been unjustly enriched at Defendant's expense by maintaining an interest in the Lease for which it has failed to pay base rent and additional rent.

16. As a result of the foregoing, Plaintiff is liable to Defendant for damages in the sum of at least \$168,238.08, together with interest from October 1, 2019.

**SECOND COUNTERCLAIM  
(ATTORNEYS FEES)**

17. Defendant repeats all prior paragraphs as if set forth at length herein.
18. Pursuant to the Lease between the parties, and in light of Plaintiff's breaches under the Lease, Defendant is entitled to recover its attorneys fees and expenses in an amount to be determined by the Court.

**THIRD COUNTERCLAIM  
(LOSS OF RENTAL REVENUE)**

19. Defendant repeats all prior paragraphs as if set forth at length herein.
20. Three rental apartments exist on the floor above the Plaintiff's business.
21. As a result of Plaintiff's installation of inferior noise and vibration dampening insulation together with the shoddy installation of same, excessive noise and vibrations have been emitted from Plaintiff's space and have traveled to the three apartments above.
22. The tenant of apartment 2B in the subject building entered into a lease with the Defendant which was set to expire on May 31, 2020 with a monthly rental rate of \$7,750.
23. Due to the excessive noise and vibration emitted from the Plaintiff's space into apartment 2B, Defendant released that tenant from the lease in December 2019 and paid the tenant's moving expenses.

24. As a result, Defendant has lost \$38,750 in rental income for the five (5) months remaining on the lease and paid \$1,440 in moving expenses to facilitate the tenant's move.
25. Since December 2019, Defendant has been unable to rent apartment 2B resulting in a further loss of rental income.
26. As a result of the foregoing, the Defendant has been damaged in a sum to be determined at trial.

**FOURTH COUNTERCLAIM**  
(Specific Performance of Lease Clause  
Requiring Removal of Mechanics' Liens)

27. Defendant repeats all prior paragraphs as if set forth at length herein.
28. Defendant does not believe that Plaintiff has the desire and ability to cure its defaults under the lease between the parties.
29. Defendant therefore believes that the lease between the parties will be terminated as a result of Plaintiff's failure to comply with the notice cure served upon it.
30. However, in the event that the lease is not terminated, it would be Plaintiff's obligations to comply with its obligations under the lease in all respects not otherwise the subject of this action.
31. Amongst these obligations is the obligation to remove Mechanics' Liens.

32. Section 3 of the governing lease states, *inter alia*,

If any mechanic's lien is filed against the demised premises, or the building of which the same forms a part, for work claimed to have done for, or materials furnished to, Tenant, whether or not done pursuant to this article, the same shall be discharged by Tenant within 30 days thereafter, at Tenant's expense, by payment or filing the bond required by law.

33. In spite of such provision, Plaintiff suffered to be filed against the real property in which the subject premises are located a Mechanic's Lien from B In Power Mechanical Inc. in the sum of \$40,500, filed on October 30, 2019.

34. More than 30 days have passed since the filing of such Mechanic's Lien and it has not been discharged by Tenant in any manner at all.

35. In spite of such provision, Plaintiff suffered to be filed against the real property in which the subject premises are located a Mechanic's Lien from Quietstar Industries L.L.C. in the sum of \$15,228.23, filed on or about December 3, 2019.

36. More than 30 days have passed since the filing of such Mechanic's Lien and it has not been discharged by Tenant in any manner at all.

37. In spite of such provision, Defendant is informed and verily believes that Defendant is about to suffer to be filed against the real property in which

the subject premises are located a Mechanic's Lien from Nathan Bright Architect, PLLC in the sum of \$34,524.00.

38. Based on the failure to satisfy the previously mentioned liens, it appears that more than 30 days shall pass since the filing of such Mechanic's Lien and it will remain undischarged by Tenant in any manner at all.
39. Such liens and potential lien constitute a cloud on the title of Defendant's property.
40. Defendant has performed all relevant actions it is required to perform under the lease to be entitled to the specific performance of the clause requiring discharge of liens.
41. Defendant has no adequate remedy at law.
42. If the lease is held to be valid and subsisting, Defendant would be entitled to a decree commanding the Plaintiff to specifically perform its obligations with respect to the discharge of mechanics' liens.

**FIFTH COUNTERCLAIM**  
(Specific Performance of Lease Clause  
Requiring Dignified Appearance)

43. Defendant repeats all prior paragraphs as if set forth at length herein.
44. Defendant does not believe that Plaintiff has the desire and ability to cure its defaults under the lease between the parties.



45. Defendant therefore believes that the lease between the parties will be terminated as a result of Plaintiff's failure to comply with the notice cure served upon it.
46. However, in the event that the lease is not terminated, it would be Plaintiff's obligations to comply with its obligations under the lease in all respects not otherwise the subject of this action.
47. Plaintiff caused the windows on the ground floor premises to be covered with unsightly plywood protection.
48. Such plywood has been in place for many months.
49. Section 41(b) of the governing lease states, *inter alia*,

Tenant acknowledges that the Building includes first-class residential apartment dwellings and agrees that, at all times, the business to be conducted at, through and from the Demised Premises and the kind and quality of the merchandise and services offered in the conduct thereof will be reputable in every respect and will be dignified and consistent with the highest standards for high end residential buildings that contain ground floor retail space.

50. In spite of such provision, Plaintiff suffers to continue the presence of such plywood coverings of its windows.
51. Such plywood is not "dignified and consistent with the highest standards for high end residential buildings that contain ground floor retail space."

52. Defendant has performed all relevant actions it is required to perform under the lease to be entitled to the specific performance of the clause requiring dignified appearance.
53. Defendant has no adequate remedy at law.
54. If the lease is held to be valid and subsisting, Defendant would be entitled to a decree commanding the Plaintiff to specifically perform its obligations with respect to the maintenance of the premises consistent with the highest standards for high end residential buildings that contain ground floor retail space.

**SIXTH COUNTERCLAIM**  
(Specific Performance of Lease Clause  
Requiring Sound Insulation)

55. Defendant repeats all prior paragraphs as if set forth at length herein.
56. Defendant does not believe that Plaintiff has the desire and ability to cure its defaults under the lease between the parties.
57. Defendant therefore believes that the lease between the parties will be terminated as a result of Plaintiff's failure to comply with the notice cure served upon it.

58. However, in the event that the lease is not terminated, it would be Plaintiff's obligations to comply with its obligations under the lease in all respects not otherwise the subject of this action.
59. Section 41(c) of the lease between the parties sets forth detailed explanations of the noise issues potentially caused by the Plaintiff's operation of a gymnasium.
60. Such section requires the study of the noise issues, engineering of solutions to such issues, and implementation of noise mitigation measures.
61. Plaintiff has failed to abide by these obligations with respect to noise sufficient to prevent the operation of Plaintiff's facility in a way such as not to prove a nuisance with respect to the generation of noise (at times when it is open for business).
62. Such noise makes Defendant's building partially uninhabitable and violates numerous legal standards, subjecting Defendant to liability therefor.
63. Defendant has performed all relevant actions it is required to perform under the lease to be entitled to the specific performance of the clause requiring noise mitigation.
64. Defendant has no adequate remedy at law.

65. If the lease is held to be valid and subsisting, Defendant would be entitled to a decree commanding the Plaintiff to specifically perform its obligations with respect to noise mitigation.

### **SEVENTH COUNTERCLAIM**

66. Defendant repeats all prior paragraphs as if set forth at length herein.
67. Because Plaintiff's insufficient and shoddy noise and vibration dampening insulation caused a vacancy in apartment 2C, Plaintiff rented that apartment from Defendant for a term that expired on September 30, 2020, at a monthly rate of \$7,500 for which Defendant has granted a monthly discount of \$1,500.
68. Plaintiff is in default of the payment of rent for apartment 2C and owes \$44,498.52 through September 2020 plus one month in holdover rent at the rate of \$6,000, totaling at least \$50,498.52 in damages.
69. As a result, Defendant is entitled to damages in an amount to be determined at trial.

WHEREFORE, Defendant demands dismissal of the Complaint in its entirety and judgment on its counterclaims as follows:

- a) On the first counterclaim, judgement in the amount of \$168,238.08, plus rent and additional rent that accrues the pendency of this action together with interest from October 1, 2019;

- b) On the second, and third counterclaims, judgment in an amount to be determined by the Court;
- c) On the fourth counterclaim, a decree commanding the Plaintiff to specifically perform its obligations with respect to the discharge of mechanics' liens;
- d) On the fifth counterclaim, a decree commanding the Plaintiff to specifically perform its obligations with respect to the maintenance of the premises consistent with the highest standards for high end residential buildings that contain ground floor retail space;
- e) On the sixth counterclaim, a decree commanding the Plaintiff to specifically perform its obligations with respect to noise mitigation;
- f) On the seventh counterclaim, judgment in an amount to be determined by the Court together with such other and further relief as the Court deems necessary and proper;
- g) The costs and disbursements of this action;
- h) together with such other and further relief as the Court deems necessary and proper.

Dated: New York, New York  
October 6, 2020

Yours, etc.  
ADAM LEITMAN BAILEY, P.C.,  
*Attorneys for Defendants*



By: \_\_\_\_\_

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**VERIFICATION**

Carolyn Z. Rualo, being an attorney duly licensed to practice law before the Courts of the State of New York affirms under penalties of perjury: that she is an attorney for the Defendant in the foregoing Answer; that she has read the foregoing Answer; that she knows the contents thereof; and that, to her knowledge, the Answer is true, except as to matters stated therein to be alleged upon information and belief, and, as to those matters, she believes it to be true. She makes this Verification because her office is located in a county other than the county where the Defendant is located.

Dated: New York, N.Y.  
October 6, 2020



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CAROLYN Z. RUALO