

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

VICTORIA’S SECRET STORES, LLC successor in interest to VICTORIA’S SECRET STORES, INC.; and L BRANDS INC., successor in interest to THE LIMITED, INC. and INTIMATE BRANDS, INC.,

Plaintiffs,

-against-

HERALD SQUARE OWNER LLC successor in interest to 1328 BROADWAY, LLC,

Defendant.

Index No.: 651833/2020

REPLY TO COUNTERCLAIMS

Plaintiffs, Victoria’s Secret Stores, LLC successor in interest to Victoria’s Secret Stores, Inc. (“VS”); and L Brands Inc., successor in interest to The Limited, Inc. and Intimate Brands, Inc. (“L Brands” and collectively “Plaintiffs”), by and through their attorneys, Davidoff Hutcher & Citron LLP, as and for their Reply to the Counterclaims of Defendant Herald Square Owner LLC successor in interest to 1328 Broadway, LLC (“Defendant”), which Defendant has alleged in its Answer, Affirmative Defenses, and Counterclaims, dated June 29, 2020 (the “Answer”), alleges as follows:

NATURE OF OWNER’S COUNTERCLAIMS

1. Neither admits nor denies the allegations set forth in paragraph 135 of the Answer as it merely describes the relief sought therein; to the extent a response is required, Plaintiffs deny that Defendant is entitled to the relief set forth in paragraph 135 of the Answer.

PARTIES

- 2. Admits the allegations set forth in paragraph 136 of the Answer.
- 3. Admits the allegations set forth in paragraph 137 of the Answer.

4. Admits the allegations set forth in paragraph 138 of the Answer.

5. Neither admits nor denies the allegations set forth in paragraph 139 of the Answer, which state legal conclusions to which no response is required; to the extent a response is required, Plaintiffs deny the allegations contained in paragraph 139 of the Answer.

FACTUAL BACKGROUND

The Underlying Lease

6. Denies the allegations set forth in paragraph 140 of the Answer and respectfully refers the Court to the document referenced therein, which speaks for itself, for a true and accurate recitation of its contents.

7. Denies the allegations set forth in paragraph 141 of the Answer and respectfully refers the Court to the document referenced therein, which speaks for itself, for a true and accurate recitation of its contents.

8. Denies the allegations set forth in paragraph 142 of the Answer, including its subparts, and respectfully refers the Court to the document referenced therein, which speaks for itself, for a true and accurate recitation of its contents.

9. Denies the allegations set forth in paragraph 143 of the Answer, including its subparts and footnotes, and respectfully refers the Court to the document referenced therein, which speaks for itself, for a true and accurate recitation of its contents.

10. Denies the allegations set forth in paragraph 144 of the Answer, and its footnote, and respectfully refers the Court to the document referenced therein, which speaks for itself, for a true and accurate recitation of its contents.

11. Denies the allegations set forth in paragraph 145 of the Answer and respectfully refers the Court to the document referenced therein, which speaks for itself, for a true and accurate recitation of its contents.

The Guaranty

12. Denies the allegations set forth in paragraph 146 of the Answer, and its footnote, and respectfully refers the Court to the document referenced therein, which speaks for itself, for a true and accurate recitation of its contents.

13. Denies the allegations set forth in paragraph 147 of the Answer, and its subparts, and respectfully refers the Court to the document referenced therein, which speaks for itself, for a true and accurate recitation of its contents.

Tenant's Default, and Owner's Termination of the Lease in Respect of the Premises

14. Denies the allegations set forth in paragraph 148 of the Answer.

15. Denies the allegations set forth in paragraph 149 of the Answer and respectfully refers the Court to the document referenced therein, which speaks for itself, for a true and accurate recitation of its contents.

16. Denies the allegations set forth in paragraph 150 of the Answer.

17. Admit the allegations set forth in paragraph 151 of the Answer. However, Plaintiffs neither admit nor deny the allegations set forth in footnote 5 of paragraph 151 of the Answer, which state legal conclusions to which no response is required; to the extent a response is required, Plaintiffs deny the allegations contained in in footnote 5 of paragraph 151 of the Answer.

18. Denies the allegations set forth in paragraph 152 of the Answer and respectfully refers the Court to the document referenced therein, which speaks for itself, for a true and accurate recitation of its contents.

19. Denies the allegations set forth in paragraph 153 of the Answer and respectfully refers the Court to the document referenced therein, which speaks for itself, for a true and accurate recitation of its contents.

20. Denies the allegations set forth in paragraph 154 of the Answer and respectfully refers the Court to the document referenced therein, which speaks for itself, for a true and accurate recitation of its contents.

21. Denies the allegations set forth in paragraph 155 of the Answer.

**FIRST COUNTERCLAIM
BREACH OF LEASE (AS AGAINST TENANT)**

22. In response to paragraph 156 of the Answer, Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs 1 through 125 of the Complaint, and repeats and realleges their responses to each of the allegations set forth in paragraphs 136 through 155 of the Answer, all as though fully set forth at length herein.

23. Neither admits nor denies the allegations set forth in paragraph 157 of the Answer, which state legal conclusions to which no response is required; to the extent a response is required, Plaintiffs deny the allegations contained in paragraph 157 of the Answer.

24. Denies the allegations set forth in paragraph 158 of the Answer.

25. Denies the allegations set forth in paragraph 159 of the Answer.

26. Denies the allegations set forth in paragraph 160 of the Answer.

**SECOND COUNTERCLAIM
BREACH OF GUARANTY (AS AGAINST GUARANTOR)**

27. In response to paragraph 161 of the Answer, Plaintiffs repeat and re-allege each and every allegation set forth in paragraphs 1 through 125 of the Complaint, and repeats and

realleges their responses to each of the allegations set forth in paragraphs 136 through 160 of the Answer, all as though fully set forth at length herein.

28. Denies the allegations set forth in paragraph 162 of the Answer and respectfully refers the Court to the document referenced therein, which speaks for itself, for a true and accurate recitation of its contents.

29. Denies the allegations set forth in paragraph 163 of the Answer.

30. Denies the allegations set forth in paragraph 164 of the Answer.

FIRST AFFIRMATIVE DEFENSE

31. The Counterclaims fail to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

32. The Counterclaims are barred, in whole or in part, based on the doctrine of equitable estoppel, waiver, and laches.

THIRD AFFIRMATIVE DEFENSE

33. The Counterclaims are barred, in whole or in part, based on the doctrine of frustration of purpose.

FOURTH AFFIRMATIVE DEFENSE

34. The Counterclaims are barred, in whole or in part, based on the doctrine of impossibility of performance.

FIFTH AFFIRMATIVE DEFENSE

35. The Counterclaims are barred, because to the extent that Defendant has suffered any damages, it has failed to mitigate such damages.

SIXTH AFFIRMATIVE DEFENSE

36. The relief Defendant requests would result in unjust enrichment.

SEVENTH AFFIRMATIVE DEFENSE

37. The Counterclaims are barred by reason of Defendant's failure to deliver performance that served as a condition for the contract.

WHEREFORE, Plaintiffs demand judgment as follows:

- (a) Dismissing the Counterclaims with prejudice and denying each and every request for relief set forth therein;
- (b) Awarding Plaintiffs judgment against the Defendant for all the relief sought in the Complaint; and
- (c) Granting Plaintiffs such other and further relief as the Court deems just and proper.

Dated: August 19, 2020
New York, New York

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