

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

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**ALEXANDRIA GAYLE WILLIAMS, and
JIMMY JON WILLIAMS AS GUARANTOR**

Plaintiffs,

Index No.

SUMMONS

- against -

4545 EAST COAST LLC

**Plaintiffs Address:
ALEXANDRIA GAYLE WILLIAMS
650 Hilltop Drive, #8
Redding, CA 96003**

**JIMMY JON WILLIAMS
P.O. Box 795
321 S. 3rd St., Suite 4
McAlester, OK 74502-0795**

Defendant.

**Basis of venue designated
is Plaintiff's choice of forum
and location of subject
premises.**

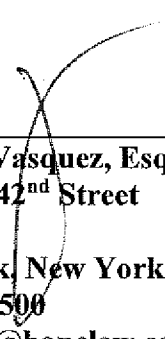
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TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to appear in the Supreme Court of the City of New York, County of Queens at the office of the Clerk of said Court at 88-11 Sutphin Boulevard, Jamaica, New York in the County of Queens, City and State of New York, to file an answer to the complaint in this action and to serve a copy of your answer on the Plaintiff's attorney within 20 days after 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); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

**Dated: New York, New York
August 20, 2020**

**Yours, etc.
HEIBERGER & ASSOCIATES, P.C.
Attorneys for Plaintiffs**

By:



**Ricardo Vasquez, Esq.
205 East 42nd Street
6th Floor
New York, New York 10017
212.532.0500
rvasquez@hapclaw.com**

**DEFENDANT'S ADDRESS:
4545 East Coast LLC
ATTN: GENERAL COUNSEL
387 PARK AVENUE SOUTH, 7TH FL.
NEW YORK, NEW YORK 10016**

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

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**ALEXANDRIA GAYLE WILLIAMS and
JIMMY JON WILLIAMS AS GUARANTOR**

Index No.

Plaintiffs,

VERIFIED COMPLAINT

- against -

4545 EAST COAST LLC

Defendant,

-----X

Plaintiffs **ALEXANDRIA GAYLE WILLIAMS, and JIMMY JON WILLIAMS as GUARANTOR**, (hereinafter, referred to as Plaintiffs), by their attorneys Heiberger & Associates, P.C., with offices located at 205 East 42nd Street, 6th Floor, New York, New York, 10017, herein sets forth their claims against Defendant, **4545 EAST COAST LLC**, (hereinafter, referred to as "4545 East") by respectfully alleging as follows:

THE PARTIES

1. That Plaintiff Alexandria Gayle Williams (hereinafter "Ms. Williams") is an individual who is a current resident of the State of California. That Plaintiff Jimmy Jon Williams as Guarantor (hereinafter "Mr. Williams") is an individual who at all relevant times herein was and is still a resident of the State of Oklahoma, and the Guarantor of the Lease

between 4545 East Coast LLC and Alexandria Gayle Williams.

2. At all times herein, Defendant 4545 East Coast LLC was and still is a limited liability company duly authorized to conduct business in the State of New York, with an address of c/o TF Cornerstone Inc., 387 Park Avenue South, New York, New York 10016

3. 4545 East Coast LLC is the Landlord of the subject premises located at Apartment 3505 in the building at 4545 Center Blvd., Long Island City, New York 11109 (hereinafter the “subject premises”).

4. The parties entered into a lease for the subject premises dated March 2, 2020 (hereinafter “the lease”).

5. Venue is proper in Queens County as that is the location of the subject premises and “the lease” which gives rise to this dispute.

FACTUAL BACKGROUND

6. On or about March 2, 2020, 4545 East as Landlord and Ms. Williams as Tenant entered into a residential lease for 4545 Center Blvd., Apartment # 3505 on the 35th Floor, Long Island City, New York 11109, 10th Floor, New York, New York 10018 for living purposes. (*See “Exhibit A” attached hereto for a copy of the Lease*).

7. The lease between 4545 East and Ms. Williams has as Guarantor Plaintiff Mr. Williams.

8. In December 2019, COVID-19 was detected in Wuhan, China and swelled over the coming months into a *force majeure* pandemic of epic proportions throwing the entire world economy into disarray.

9. Upon information and belief, prior to the pandemic, the closure of the courts, and the rejection of non-essential filings, Plaintiff Ms. Williams was securing employment in New

York City and the subject premises was to be her residence at that time.

10. On March 16, 2020, in an attempt to stem the spread of COVID-19, the New York State Office of Court Administration halted court appearances in New York City Civil Court/Landlord Tenant Court.

11. On March 20, 2020, in response to the COVID-19 pandemic emergency circumstances Governor Andrew Cuomo issued Executive Order 202.8 which provides in pertinent part:

The provisions of Executive Order 202.6 are hereby modified to read as follows: Effective on March 22 at 8 p.m.: All businesses and not-for-profit entities in the state shall utilize, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize. Each employer shall reduce the in-person workforce at any work locations by 100% no later than March 22 at 8 p.m. Any essential business or entity providing essential services or functions shall not be subject to the in-person restrictions.... Any business violating the above order shall be subject to enforcement as if this were a violation of an order pursuant to section 12 of the Public Health Law.

There shall be no enforcement of either an eviction of any tenant residential or commercial, or a foreclosure of any residential or commercial property for a period of ninety days. (See Exhibit "C" for a copy of Executive Order 202.8). Emphasis added.

12. It should be noted that each violation of NYS Public Health Law 12 carries a penalty of \$2000-\$10,000 plus injunctive relief.¹

¹ 1. (a) Except as provided in paragraphs (b) and (c) of this subdivision, any person who violates, disobeys or disregards any term or provision of this chapter or of any lawful notice, order or regulation pursuant thereto for which a civil penalty is not otherwise expressly prescribed by law, shall be liable to the people of the state for a civil penalty of not to exceed two thousand dollars for every such violation.

(b) The penalty provided for in paragraph (a) of this subdivision may be increased to an amount not to exceed five thousand dollars for a subsequent violation if the person committed the same violation, with respect to the same or any other person or persons, within twelve months of the initial violation for which a penalty was assessed pursuant

13. In implementing Executive Order 202.8, Chief Administrative Judge Lawrence K. Marks issued Administrative Order 78/20 which directed that; “immediately and until further notice, no papers shall be accepted for filing by a county clerk or a court in any matter not in the list of essential matters.”

14. Due to the outset of the pandemic striking New York City during the same period as the date the lease between Ms. Williams and 4545 East was entered into, has for all intents and purposes the city where Ms. Williams was intending to live and work ceased to function. NBC, Ms. Williams employer at the time of the lease ordered her to not return to her place of employment at the outset of the pandemic in New York City, and ultimately Ms. Williams had to seek unemployment assistance.

15. Furthermore, employers that were not essential were not allowed to function in a normal capacity due to the pandemic.

16. The force majeure of the COVID-19 pandemic and the laws passed by New York State in reaction thereto have destroyed all of Ms. Williams personal and economic value in the Lease, and made Ms. Williams use of the subject premises under the lease impossible and has frustrated the intended purpose of the Lease due to health safety and economic impact of the pandemic.

17. Clearly, this pandemic of epic proportions which has smothered the economy and all but shuttered the court system could not have been foreseen by the Plaintiff Ms. Williams and Defendant 4545 East at the time of drafting of the lease.

to paragraph (a) of this subdivision and said violations were a serious threat to the health and safety of an individual or individuals.

(c) The penalty provided for in paragraph (a) of this subdivision may be increased to an amount not to exceed ten thousand dollars if the violation directly results in serious physical harm to any patient or patients.

18. Moreover, the pandemic has caused the lease to be frustrated with Ms. Williams having no ability to use the Demised Premise or to generate income out of obvious health and safety concerns. Plaintiff has never occupied the subject premises.

AS AND FOR A FIRST CAUSE OF ACTION

19. Plaintiffs repeat and reallege each and every allegation set forth above as if more fully set forth herein.

20. The Lease and the Guaranty must be rescinded due to Frustration of Purpose. Due to no fault of the Plaintiffs, the unforeseen change of circumstances from the force majeure of COVID-19 pandemic and New York State's response thereto has completely frustrated the purpose of the lease between the Parties.

21. It cannot be disputed that the COVID-19 and the resulting laws has cancelled all court appearances, forced massive lay-offs in New York City, shuttered many businesses, and caused many people to flee the city out of concern for their health. This also impacts Ms. Williams income generating opportunities, which are squarely related to why Ms. Williams contemplated moving to New York City which was career related and the subject premises was to be her residence during such effort. As such, the change in circumstances has frustrated the basis of the lease making performance worthless to Plaintiff Ms. Williams.

22. 4545 East would be unjustly enriched by allowing the lease to be enforced as Ms. Williams never took possession of the subject premises and now resides in the State of California. Ms. Williams has sought directly to the Landlord that she be relieved from the lease but that has been denied.

23. As a direct and proximate result of the unforeseeable force majeure of COVID-19

and NYS's response, the basic purpose of the Lease is frustrated and this court is required to issue an order rescinding the Lease and the Guaranty which is based thereon.

AS AND FOR A SECOND CAUSE OF ACTION

24. Plaintiffs repeat and reallege each and every allegation set forth above as if more fully set forth herein.

25. The Lease and its Guaranty must be rescinded due to Impossibility. Due to no fault of the Plaintiffs, the unforeseen change of circumstances from the force majeure of COVID-19 pandemic and New York State's response thereto has completely made Plaintiff's performance under the office Lease impossible.

26. Paragraph 9.1 of the Lease states that requires that Ms. Williams "will obey comply with all (.1) present and future laws which affect the Building or the Apartment or the occupancy or use thereof..."

27. Executive Order 202.8 requires:

Effective on March 22 at 8 p.m.: All businesses and not-for-profit entities in the state shall utilize, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize. Each employer shall reduce the in-person workforce at any work locations by 100% no later than March 22 at 8 p.m.

Any business violating the above order shall be subject to enforcement as if this were a violation of an order pursuant to section 12 of the Public Health Law.

28. Due the change in circumstances under COVID-19, it is impossible for Ms. Williams to conduct business in an environment that is subject to the pandemic. Ms. Williams never received any notification from 4545 East of any precautionary measures taken to protect

the health of the residents at the subject building.

29. Moreover, it cannot be disputed that the COVID-19 and the resulting laws had the drastic effect of cancelling all court appearances, forced multiple lay-offs in the New York City and has cut off Plaintiff Ms. Williams ability to generate revenue stream further making performance impossible.

30. As such the Lease and the Guaranty must be rescinded for Impossibility.

31. Moreover, Defendant 4545 East would be unjustly enriched by being allowed to collect rent under these circumstances and where Ms. Williams never took possession of the subject premises out of in part legitimate fear for her health and safety during the pandemic which has killed thousands of people in New York City.

32. As a direct and proximate result of the force majeure of COVID-19 and NYS's response thereto, it is impossible for Ms. Williams to perform under the lease and this court is required to issue an order rescinding the Lease and the Guaranty which is based thereon.

AS AND FOR A THIRD CAUSE OF ACTION

33. Plaintiffs repeat and reallege each and every allegation set forth above as if more fully set forth herein.

34. In the alternative, the Lease and the Guaranty must be reformed and rescinded.

35. Due to the unforeseen force majeure of COVID-19 and its disastrous effects on the economy, this court has great equitable powers and should read an implied force majeure clause into the lease.

36. Clearly, neither party could expect a pandemic would wipe out all economic consideration for Plaintiff and/or make performance of occupying the premises untenable. To

hold Plaintiffs to such a lease and, even worse, to unjustly enrich Defendant including by holding Plaintiff Mr. Williams personally liable for a subject premises she cannot use nor derive any work base therefrom would be simply inequitable.

37. Based on the foregoing the court should issue an order reforming the lease to include an implied Force Majeure clause therein and rescind the Lease and the Guaranty.

AS AND FOR A FOURTH CAUSE OF ACTION

38. Plaintiffs repeat and reallege each and every allegation set forth above as if more fully set forth herein.

39. In the alternative, if the Lease and Guaranty are not rescinded for a) Frustration of Purpose or b) Impossibility, or c) reformed and rescinded based on an Implied Force Majeure clause, then the Lease and Guaranty should be reformed providing a stay from: i) Defendant holding Plaintiffs in default under the payment terms therein, and ii) Defendant commencing any collections proceedings against Plaintiffs.

40. Again, the court has great equitable powers in such times of national emergency. Such a reformation is due because of the unfortunate and unforeseeable Force Majeure pandemic of COVID -19 and the responding NY State laws which have smothered the economy and Plaintiffs' ability to use the premises in any meaningful way.

41. If no such equitable relief is granted, Defendant will be unjustly enriched by reaping the benefit of collecting rent on a leasehold that is worthless to Plaintiffs.

42. Based on the foregoing the court should issue an order declaring the Lease and Guaranty reformed to provide a stay from: i) Defendant holding Plaintiffs in default under the payment terms therein, and ii) Defendant commencing any collections proceedings against Plaintiffs.

WHEREFORE, Plaintiffs respectfully requests judgment as follows:

On the First Cause of Action declaring the Lease and Guaranty Rescinded on the grounds of Impossibility;

On the Second Cause of Action Order declaring the Lease and Guaranty Rescinded on the grounds of Frustration of Purpose;

On the Third Cause of Action declaring the Lease and Guaranty Reformed and Rescinded based on an Implied Force Majeure clause;

On the Fourth Cause of Action declaring the Lease and Guaranty Reformed to provide a stay from: i) Defendant holding Plaintiffs in default under the payment terms therein, and ii) Defendant commencing any collections proceedings against Plaintiffs;

Together with any further relief the court finds just and proper under the circumstances.

**Dated: New York, New York
August 19, 2020**

Yours, etc.

HEIBERGER & ASSOCIATES, P.C.

By: _____

**Ricardo Vasquez, Esq.
Attorneys for Plaintiffs
205 East 42nd Street, 6th Floor
New York, New York 10017
212.532.0500**

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer[s], not Notary)

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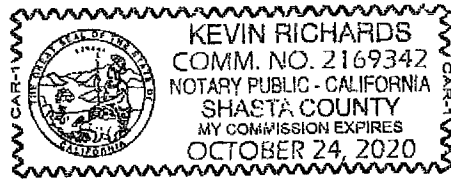
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Signature of Document Signer No. 1 Signature of Document Signer No. 2 (if any)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
 County of SHASTA

Subscribed and sworn to (or affirmed) before me
 on this 21st day of Aug, 2020
 by _____
 (1) ALEXANDRIA GAYLE WILLIAMS
 (and (2) _____),
 Name(s) of Signer(s)



proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.
 Signature [Signature]
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document _____
 Title or Type of Document: _____ Document Date: _____
 Number of Pages: _____ Signer(s) Other Than Named Above: _____

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Jimmy Jon Williams, being duly sworn, deposes and says:
I am a Plaintiff named in the above referenced action.

I have read the annexed Summons and Complaint the contents
which are, upon information and belief, true to the best of my knowledge, except as to the
matters therein alleged to be on information and belief, and as to those matters I believe to be
true is based upon a review of my records and documents.


JIMMY JON WILLIAMS

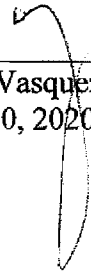
Sworn to before me this
20th day of August, 2020.


Notary Public



CERTIFICATION PURSUANT TO 22 NYCRR s. 130-1.1

Ricardo Vasquez, an attorney duly admitted to practice before the Courts of New York State hereby certifies that the annexed papers are to best of my knowledge not frivolous as defined by 22 NYCRR s. 130-1.1.



Ricardo Vasquez
August 20, 2020

CIVIL COURT STATE OF NEW YORK, COUNTY OF QUEENS Index No. Year

ALEXANDRIA GAYLE WILLIAMS, and JIMMY JON WILLIAMS AS GUARANTOR

Plaintiffs

-against-

4545 EAST COAST LLC

Defendant

SUMMONS AND COMPLAINT

HEIBERGER & ASSOCIATES, P.C. ATTORNEYS AT LAW Attorney(s) for PLAINTIFFS

Office and Post Office Address, Telephone

589 Eighth Avenue 205 42nd St. 6th 10th Floor NEW YORK, N.Y. 10018 10017 (212) 532-0500

To

Signature (Rule 130-1.1-a)

Print name Ernesto Vasquez, Esq.

Service of a copy of the within is hereby admitted.

Attorney(s) for

Dated:

PLEASE TAKE NOTICE:

NOTICE OF ENTRY

that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on

NOTICE OF SETTLEMENT

that an order will be presented for settlement to the HON. within named Court, at

of which the within is a true copy one of the judges of the

on at M. Dated. 16 of 16