

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

ALEXANDRIA GAYLE WILLIAMS and JIMMY JON  
WILLIAMS AS GUARANTOR

Plaintiffs,

-against-

4545 EAST COAST LLC

Defendants.

Index No. 713984/2020

**VERIFIED ANSWER WITH  
COUNTERCLAIMS**

Defendant, 4545 EAST COAST LLC by their attorneys, Belkin Burden Goldman, LLP, as and for their answer to Plaintiffs' verified complaint dated August 20, 2020 (the "Complaint"), alleges as follows:

1. Defendant lacks knowledge or information sufficient to form a belief regarding the allegations in paragraph 1 of the Complaint.
2. Defendant admits the allegations set forth in paragraph 2 of the Complaint.
3. Defendant admits the allegations set forth in paragraph 3 of the Complaint.
4. Defendant admits the allegations set forth in paragraph 4 of the Complaint and refers the Court to Lease annexed to Plaintiffs' Complaint as Exhibit A. (the "Lease").
5. Defendant admits the allegations set forth in paragraph 5 of the Complaint.
6. Defendant admits the allegations set forth in paragraph 6 of the Complaint.

7. Defendant admits the allegations set forth in paragraph 7 of the Complaint.

8. Defendant denies the allegations set forth in paragraph 8 of the Complaint.

9. Defendant lacks knowledge or information sufficient to form a belief regarding the allegations in paragraph 9 of the Complaint.

10. Defendant admits the allegations set forth in paragraph 10 of the Complaint.

11. Defendant lacks knowledge or information sufficient to form a belief regarding the allegations in paragraph 11 of the Complaint and refers the Court to the text of New York State Executive Order 202.8 for the terms thereof.

12. Defendant lacks knowledge or information sufficient to form a belief regarding the allegations in paragraph 12 of the Complaint and refers the Court to the text of New York State Executive Order 202.8 for the terms thereof.

13. Defendant lacks knowledge or information sufficient to form a belief regarding the allegations in paragraph 13 of the Complaint and refers the Court to the text of Administrative Order 78/20 for the terms thereof.

14. Defendant denies the allegations set forth in paragraph 14 of the Complaint.

15. Defendant lacks knowledge or information sufficient to form a belief regarding the allegations in paragraph 15 of the Complaint.

16. Defendant denies the allegations set forth in paragraph 16 of the Complaint.

17. Defendant denies the allegations set forth in paragraph 17 of the Complaint.

18. Defendant denies the allegations set forth in paragraph 18 of the Complaint.

19. Defendant denies each and every allegation re-alleged within paragraph 19 of the Complaint.

20. Defendant denies the allegations set forth in paragraph 20 of the Complaint.

21. Defendant denies the allegations set forth in paragraph 21 of the Complaint.

22. Defendant denies the allegations set forth in paragraph 22 of the Complaint.

23. Defendant denies the allegations set forth in paragraph 23 of the Complaint.

24. Defendant denies each and every allegation re-alleged in paragraph 24 of the Complaint.

25. Defendant denies the allegations set forth in paragraph 25 of the Complaint.

26. Defendant denies the allegations set forth in paragraph 26 of the Complaint.

27. Defendant denies the allegations set forth in paragraph 27 of the Complaint.

28. Defendant denies the allegations set forth in paragraph 28 of the Complaint.

29. Defendant denies the allegations set forth in paragraph 29 of the Complaint.

30. Defendant denies the allegations set forth in paragraph 30 of the Complaint.

31. Defendant denies the allegations set forth in paragraph 31 of the Complaint.

32. Defendant denies the allegations set forth in paragraph 32 of the Complaint.

33. Defendant denies each and every allegation re-alleged in paragraph 33 of the Complaint.

34. Defendant denies the allegations set forth in paragraph 34 of the Complaint.

35. Defendant denies the allegations set forth in paragraph 35 of the Complaint.

36. Defendant denies the allegations set forth in paragraph 36 of the Complaint.

37. Defendant denies the allegations set forth in paragraph 37 of the Complaint.

38. Defendant denies each and every allegation re-alleged in paragraph 38 of the Complaint.

39. Defendant denies the allegations set forth in paragraph 39 of the Complaint.

40. Defendant denies the allegations set forth in paragraph 40 of the Complaint.

41. Defendant denies the allegations set forth in paragraph 41 of the Complaint.

42. Defendant denies the allegations set forth in paragraph 42 of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

43. Plaintiffs fails to state a cause of action against 4545 East Coast LLC.

44. Plaintiffs' complaint alleges that as a result of mass layoffs, shuttered businesses, and an economic downturn in the City of New York caused by the COVID-19 pandemic, the purpose of her underlying lease contract was frustrated and/or it was impossible for Ms. Williams to conduct business in New York State thereby mandating the rescission of the Lease.

45. In order to invoke the doctrine of frustration of purpose, the frustrated purpose must be so completely the basis of the contract that, as both parties understood, without it, the transaction would have made little sense.

46. Examples of a lease's purposes being declared frustrated have included situations where the tenant was unable to use the premises as a restaurant until a public sewer was completed, which took nearly three years after the lease was executed (*see Benderson Dev. Co. v Commenco Corp.*, 44 AD2d 889, 355 N.Y.S.2d 859 [4th Dep't 1974], *aff'd* 37 NY2d 728, 337 N.E.2d 130, 374 N.Y.S.2d 618 [1975]), and where a tenant who entered into a lease of premises for office space could not occupy the premises because the certificate of occupancy allowed only residential use and the landlord refused to correct it (*Jack Kelly Partners*, 140 AD3d 79, 33 N.Y.S.3d 7).

47. The law of temporary and/or partial impossibility flows from the theory that when a promisor has obligated himself to perform certain acts, which, when taken together are impossible, the promisor should not be excused from being called upon to perform insofar as he is able to do so.

48. Plaintiffs' argument that an economic downturn in New York City serves as a basis to rescind her lease agreement due to frustration of purpose or impossibility is without basis in law.

49. Plaintiff was able to use 4545 Center Blvd., Apartment #3505, Long Island City, New York 11109 (the "Apartment") for the same reasons she foresaw when she entered into the Lease Agreement.

50. In fact, given the stay at home orders issued by New York State and local Governments, Plaintiff Williams probably was required to use the Apartment *even more so* than she originally contemplated.

51. Notably, Plaintiff restates at paragraph twenty-two (22) of her Complaint that she has relocated to California-- a State facing a similar economic downturn to New York.

52. Accordingly, Plaintiffs' complaint seeking rescission based on frustration of purpose, impossibility and unjust enrichment fails to state a legally cognizable cause of action. Moreover, Plaintiffs' fourth cause of action seeking a stay of any enforcement actions likewise fails to state a cause of action as a matter of law.

53. Based on the foregoing, the Complaint should be dismissed in its entirety.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

54. Plaintiffs' complaint is belied by the documentary evidence attached to their complaint at Exhibit "A" as well as the personal guaranty ("Guaranty") executed by Plaintiff Jimmy Jon Williams.

55. Neither the parties' lease nor the Guaranty included any provision allowing any party to terminate the respective agreement in the event of an economic downturn or pandemic.

56. Plaintiffs' Complaint does not identify any basis under the Lease or Guaranty whereby the respective Plaintiff had the right to "early termination" or rescission of the Lease or Guaranty for the reasons enunciated in the Complaint.

57. Plaintiff Alexandria Gayle Williams remains liable for the entire term of the Lease.

58. Plaintiff Jimmy Jon Williams remains liable as a guarantor for the entire term of the Lease.

59. Accordingly, Plaintiffs' Complaint must be dismissed in its entirety.

**AS AND FOR A FIRST COUNTERCLAIM AS AGAINST  
PLAINTIFF ALEXANDRIA GAYLE WILLIAMS  
(Breach of Contract)**

60. Defendant repeats and realleges the foregoing paragraphs as if fully set forth herein.

61. Plaintiff Williams admits she entered into a Lease with Defendant for the Apartment and attached the Lease as Exhibit A to her Complaint.

62. According to the Lease, Plaintiff Williams agreed to pay Defendant \$4,010.00 per month for the period spanning April 1, 2020 through March 31, 2020.

63. The Lease remains in full force and effect.



64. Plaintiff Williams currently is indebted to Defendant in the sum of \$16,423.55 through October 31, 2020 representing \$16,320.91 in base rent and \$102.64 in base electric charges.

65. Based on the foregoing, Defendant demands judgment be entered against Plaintiff in the sum of \$16,423.55.

**AS AND FOR A SECOND COUNTERCLAIM AS AGAINST PLAINTIFF  
ALEXANDRIA GAYLE WILLIAMS  
(Continuing Damages Under Lease)**

66. Defendant repeats and realleges the foregoing paragraphs as if fully set forth herein.

67. Pursuant to, *inter alia*, section fourteen (14) of the Lease, Plaintiff Williams remains liable, jointly and severally, to Plaintiff for fixed rent and additional rent that accrues after the commencement of this action.

68. Defendant is entitled to the amendment of this complaint to include all sums of fixed rent and additional rent that accrue through the date of judgment in this action and a judgment against Tenant for all rent and additional rent which accrues during the pendency of this action.

69. Based on the foregoing, Defendant demands judgment be entered against Plaintiff in a sum to be determined by this Court at trial.



**AS AND FOR A THIRD COUNTERCLAIM AS AGAINST PLAINTIFF  
ALEXANDRIA GAYLE WILLIAMS  
*(Attorney's Fees due Under Lease)***

70. Defendant repeats and realleges the foregoing paragraphs as if fully set forth herein.

71. Pursuant to section eighteen (18) of the Lease, Plaintiff Williams is liable to Defendant for all fees and expenses paid by Owner to hire legal counsel to enforce the terms of the Lease.

72. Upon finding Plaintiff to have breached her lease, Defendant will seek entry of a money judgment representing all reasonable legal fees incurred through time of trial.

73. Based on the foregoing, Defendant demands judgment be entered against Plaintiff in a sum to be determined by the Court but reasonably believed to be no less than \$20,000.00.

**AS AND FOR A FIRST COUNTERCLAIM AS AGAINST PLAINTIFF  
JIMMY JON WILLIAMS  
*(Breach of Contract)***

74. Defendant repeats and realleges the foregoing paragraphs as if fully set forth herein.

75. Plaintiff Jimmy Jon Williams personally guaranteed Alexandria Gayle Williams' performance of the Lease including but not limited to the full and punctual payment of all monthly base rent.

76. The Guaranty is absolute and unconditional.

77. As set forth above, Alexandria Gayle Williams currently owes Defendant the sum of \$16,423.55 under the terms of the Lease and will continue to owe

Defendant monthly rent as it accrues on the first of each month through March 31, 2021.

78. Based on the foregoing, Defendant demands judgment be entered against Plaintiff in the sum of \$16,423.55.

**AS AND FOR A SECOND COUNTERCLAIM AS AGAINST PLAINTIFF  
JIMMY JON WILLIAMS  
(Continuing Damages under Lease)**

79. Defendant repeats and realleges the foregoing paragraphs as if fully set forth herein.

80. Plaintiff Alexandria Gayle Williams remains liable for all rent, additional rent, legal fees and other charges set forth in the Lease through March 31, 2021.

81. Plaintiff Jimmy Jon Williams has guaranteed the performance of these obligations.

82. Accordingly, Plaintiff Jimmy Jon Williams remains liable for any and all charges incurred under the Lease through March 31, 2020.

83. Based on the foregoing, Defendant demands judgment be entered against Plaintiff in a sum to be determined by this Court at trial.

**AS AND FOR A THIRD COUNTERCLAIM AS AGAINST PLAINTIFF  
JIMMY JON WILLIAMS  
(Attorney's Fees under the Guaranty)**

84. Defendant repeats and realleges the foregoing paragraphs as if fully set forth herein.

85. Paragraph 1.3 of the Guaranty states "I also guarantee to Owner the full and punctual payment, on demand, of all costs, expenses, fees and charges

incurred by Owner in the enforcement of and collection upon this Guaranty, including, without limitation, reasonable attorneys' fees and disbursements.”

86. Upon finding Plaintiff to have breached her lease, Defendant will seek entry of a money judgment representing all reasonable legal fees incurred through time of trial.

87. Based on the foregoing, Defendant demands judgment be entered against Plaintiff in a sum to be determined by the Court but reasonably believed to be no less than \$20,000.00.

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

- (a) dismissing the Complaint in its entirety; and
- (b) on Defendant's first counterclaim, granting Defendant a money judgment against Plaintiff Alexandria Gayle Williams in the sum certain amount of \$16,423.55 representing fixed rent and additional rent incurred under the Lease through October 31, 2020; and
- (c) On Defendant's second counterclaim, granting Defendant a money judgment against Plaintiff Alexandria Gayle Williams for costs incurred under the Lease between November 1, 2020 through March 31, 2021; and
- (d) On Defendant's third counterclaim, granting Defendant a money judgment against Plaintiff Alexandria Gayle Williams for attorney's fees incurred under the Lease as a result of Plaintiff's default; and
- (e) On Defendant's fourth counterclaim, granting Defendant a money judgment against Plaintiff Jimmy Jon Williams in the sum certain amount of \$16,423.55 representing fixed, unpaid rent and additional rent due to Defendant under the terms of the Guaranty; and
- (f) On Defendant's fifth counterclaim, granting Defendant a money judgment against Plaintiff Jimmy Jon Williams for costs to be incurred between November 1, 2020 through March 31, 2021; and

- (g) On Defendant's sixth counterclaim, granting Defendant a money judgment against Plaintiff Jimmy Jon Williams for attorney's fees incurred and promised to be paid under the terms of the Guaranty; and
- (h) for such other and further relief as this Court deems just and proper.

Dated: New York, New York  
October 9, 2020

BELKIN BURDEN GOLDMAN, LLP  
Attorneys for Plaintiff  
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(212) 867-4466

By: Scott Loffredo  
Scott F. Loffredo

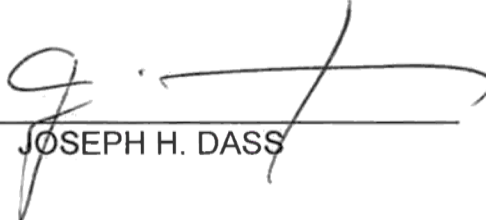
**VERIFICATION**

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

**JOSEPH H. DASS**, being duly sworn, deposes and says:

1. Deponent is the registered managing agent for 4545 Center Boulevard, Long Island City New York 11109.

2. Deponent has read the foregoing Verified Answer and knows the content thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, deponent believes them to be true.

  
\_\_\_\_\_  
JOSEPH H. DASS

Sworn to before me this  
9 day of October, 2020

  
\_\_\_\_\_  
NOTARY PUBLIC

**ANA M. SANCHEZ-CASTRO**  
Notary Public, State of New York  
No. 01SA6031259  
Qualified in New York County  
Commission Expires 09/27/20 21