

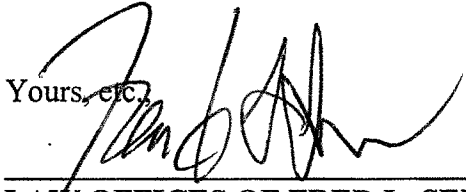
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X	:	
CHANGE YOUR LIFE LLC	:	Index No.:
	:	/2020
	:	
Plaintiff	:	Plaintiff designates New York
	:	County as the place of trial.
	:	
-against-	:	The basis of venue is the
	:	situs of the property
	:	
	:	<b><u>SUMMONS</u></b>
9E16 BY 1771 HOLDINGS LLC	:	
	:	Plaintiff's address is
	:	9 East 16 <sup>th</sup> Street
Defendant	:	New York, New York 10003
-----X	:	

**TO THE ABOVE NAMED DEFENDANT(S):**

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within 20 days after 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); and 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  
September 10, 2020

Yours, etc.  


**LAW OFFICES OF FRED L. SEEMAN**  
By: Fred L. Seeman, Esq.  
*Attorney for Plaintiff*  
32 Broadway, Suite 1214  
New York, New York, 10004  
Tel: (212) 608-5000

**DEFENDANT'S ADDRESS:**  
  
9E16 BY 1771 HOLDINGS LLC  
45 Cuttermill Road  
Great Neck, New York 112021

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

-----X	:	
CHANGE YOUR LIFE LLC,	:	Index No.:
	:	/2020
	:	
Plaintiff,	:	
	:	<b><u>VERIFIED</u></b>
-against-	:	<b><u>COMPLAINT</u></b>
	:	
9E16 BY 1771 HOLDINGS LLC,	:	
	:	
Defendant.	:	
-----X	:	

Plaintiff, Change Your Life LLC, complaining of the Defendant, by its attorney, Law Offices of Fred L. Seeman, alleges as follows:

**THE PARTIES**

1. Plaintiff is a duly organized limited liability company authorized to do business in the State of New York, with an address located at 9 East 16<sup>th</sup> Street, New York, New York 10003.
2. The Defendant, upon information and belief, is a duly organized limited liability company authorized to do business in the State of New York, with an address located at 45 Cuttermill Road, Great Neck, NY 11021.

**BACKGROUND**

3. Upon information and belief, the Defendant is the fee owner and landlord of the building located at 9 East 16<sup>th</sup> Street, New York, New York 10003 (“Premises”).
4. Plaintiff entered into possession of a Portion of the Ground Floor Store and Basement in the building located at 9 East 16<sup>th</sup> Street, New York, New York 10003, pursuant to a written Lease Agreement dated July 19, 2018 (the “Lease”).
5. That the Defendant is the Plaintiff’s landlord.
6. Plaintiff has invested approximately \$3,000,000.00 to create a boutique fitness center specializing in high intensity workouts with boxing sequences at its core.

7. That on or about August 25, 2020, the Defendant issued a Fifteen (15) Day Notice to Cure (the "Notice").
8. The Notice threatens to terminate Plaintiff's Lease if the alleged defaults are not cured by September 14, 2020.
9. That Plaintiff disputes certain leasehold dispute.
10. That Plaintiff is ready and willing to cure any actual leasehold default, if any.
11. That Plaintiff has no adequate remedy at law.

**AS AND FOR A FIRST CAUSE OF ACTION**

12. Plaintiff repeats and realleges the allegations of the foregoing paragraphs as if fully set forth below.
13. That Plaintiff is entitled to a preliminary and permanent injunction enjoining the Defendant from taking any steps to terminate Plaintiff's lease or remove the Plaintiff from possession of the Premises.

**AS AND FOR A SECOND CAUSE OF ACTION**

14. That Plaintiff repeats and realleges the foregoing allegations as if fully set forth below.
15. Plaintiff seeks a judicial determination that the Notice to Cure is defective, unconscionable, and unenforceable inasmuch as said action is prohibited by Executive Order 202.28 as extended.

**AS AND FOR A THIRD CAUSE OF ACTION**

16. That Plaintiff repeats and realleges the foregoing allegations as if fully set forth below.
17. That the law abhors a leasehold forfeiture.

18. That plaintiff requests that this Court exercise its equitable powers and relief the Plaintiff from any alleged uncured leasehold default inasmuch as any alleged uncured default is *de minimis*, non-prejudicial, or susceptible of ready cure or alternatively extend the time to cure any leasehold default as determined by the Court.

**AS AND FOR A FOURTH CAUSE OF ACTION**

19. That Plaintiff repeats and realleges the foregoing allegations as if fully set forth below.
20. Plaintiff and the Defendant entered into the Lease with the expectation that the Plaintiff could operate a fitness center with classes at the Premises.
21. That, Article 41 of the Lease obligates the Plaintiff to operate “solely as and for a fitness center/boutique boxing gym and for no other use or purpose. . . .”.
22. That both the Plaintiff and the Defendant recognized that the principal purpose of the Lease was the operation of a fitness center at the Premises.
23. That Plaintiff’s fitness center has been and remains closed by virtue of a governmental decree.
24. That the Lease would not have been executed if the Plaintiff was unable to operate a fitness center at the Premises.
25. That as a result of the COVID-19 pandemic, the Governor issued Executive Order 202 which declared a State disaster emergency for the State of New York.
26. That as a result of Executive Order 202.28 as extended, the State has mandated the closure of Plaintiff’s business which remains in effect for fitness establishments like Plaintiff’s with individualized fitness training.
27. The pandemic and the resulting closures frustrated the very purpose of the Lease.
28. Plaintiff’s inability to be open for business is beyond its control. It was neither foreseen, nor foreseeable, at the time of the execution of the Lease.

29. Had the parties been able to anticipate a global pandemic and the shutdown of New York City, a specific clause would have been negotiated to account for said contingency.
30. That an actual controversy exists and there is no adequate remedy at law.
31. Plaintiff seeks a declaration that the Defendant wrongfully declared a default under the lease.
32. That Plaintiff seeks a declaration of the parties' rights and obligation under the Lease based upon the doctrine of frustration of purpose and impossibility of performance, including, but not limited to, a reformation or rescission of the lease to suspend the obligation to pay the rent and additional rent reserved under the Lease while governmental regulations restrict occupancy at the Premises.

**AS AND FOR A FIFTH CAUSE OF ACTION**

33. That Plaintiff repeats and realleges the foregoing allegations as if fully set forth below.
34. That pursuant to Article 9 of the Lease, the Plaintiff is not required to pay rent or additional rent where, as here, the premises is damaged by a casualty and unusable.
35. That the Plaintiff seeks a judicial declaration that the Covid-19 pandemic is a casualty rendering the premises unusable within the meaning of Article 9 of the Lease thereby suspending the Plaintiff's obligation to pay rent and additional rent.

**AS AND FOR A SIXTH CAUSE OF ACTION**

36. That Plaintiff repeats and realleges the foregoing allegations as if fully set forth below.
37. Plaintiff's ability to operate a fitness center and bar at the premises, the purpose of the Lease was frustrated and rendered impossible by virtue of the pandemic due to no fault of the Plaintiff.
38. That Plaintiff invested approximately \$3,000,000.00 to improve the premises and create a boutique combination fitness center and bar with based upon a long term lease.

39. That the mandatory closure of gyms and fitness center by the Governor's executive orders was not contemplated by the parties at the time of the execution of the Lease.
40. That should the Plaintiff's lease be terminated and Plaintiff removed from possession, the Defendant would be unjustly enriched as Plaintiff's improvements would inure to the benefit of the Defendant.
41. Under principles of good conscience and fair dealings, Defendant should not be allowed to retain the value of the improvements added by the Plaintiff to the Premises.
42. Based upon the foregoing, Plaintiff demands judgment in an amount to be determined by the Court but no less than \$3,000,000.00 plus statutory interest and costs.

**AS AND FOR A SEVENTH CAUSE OF ACTION**

43. That Plaintiff repeats and realleges the foregoing allegations as if fully set forth below.
44. That the Plaintiff's obligation to pay rent and additional rent is excused by virtue of the pandemic being a force majeure event.
45. That the Plaintiff seeks a judicial declaration that the Covid-19 pandemic is a force majeure event casualty thereby suspending the Plaintiff's obligation to pay rent and additional rent during the pandemic.

**WHEREFORE**, Plaintiff respectfully requests a judgment in Plaintiff's favor as follows:

- (i) on its first cause of action, a preliminary and permanent injunction enjoining the Defendant from taking any steps to terminate the Plaintiff's lease based upon the purported defaults contained within the Fifteen (15) Day Notice to Cure dated August 25, 2020;
- (ii) on the second cause of action, that Defendant's predicate Notice is improper;
- (iii) on the third cause of action that the Court exercise its equitable powers and relieve the plaintiff from any alleged leasehold default or extend the time to cure as determined by the court;

(iv) on the fourth cause of action, a declaration rescinding or reforming the lease to the extent that the Plaintiff is not required to pay rent or additional rent at the rent reserved under the lease while governmental regulations restrict occupancy at the Premises;

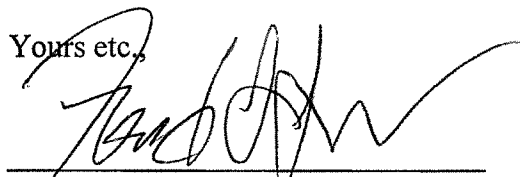
(v) on the fifth cause of action a judicial declaration that Article 9 of the Lease, the casualty clause, relieves the Plaintiff of the obligation to pay rent and additional rent during the COVID-19 pandemic and resulting governmental closure of Plaintiff's business;

(vi) on the sixth cause of action, Plaintiff demands judgment in an amount to be determined by the Court but no less than \$3,000,000.00 plus statutory interest and costs

(vii) on the seventh cause of action, a declaration that the Plaintiff is not required to pay rent or additional rent based upon the doctrine of force majeure.

Dated: New York, New York  
September 10, 2020

Yours etc.,



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Law Offices of Fred L. Seeman  
By: Fred L. Seeman, Esq.  
*Attorney for Plaintiff*  
32 Broadway, Suite 1214  
New York, New York 10004  
Tel: (212) 608-5000

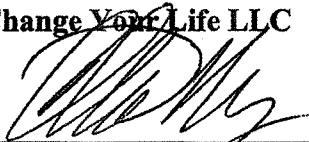
**VERIFICATION**

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

Christopher Murray, being duly sworn, deposes and say:

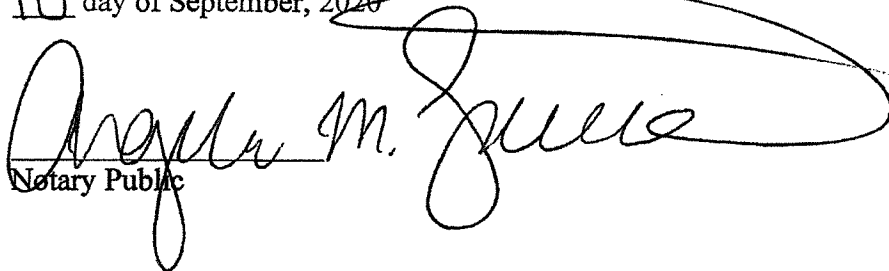
I am the chief operating officer of Change Your Life LLC, the Plaintiff herein. I have read the foregoing Complaint and know the contents thereof; and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

**Change Your Life LLC**



**By: Christopher Murray  
Its: Chief Operating Officer**

Sworn to before me this  
10 day of September, 2020

  
Notary Public

O:\Office\Clients\F10622\Complaint.docx

ANGELA M. SPECIALE  
Notary Public - State of New York  
No. 019P6390180  
Qualified in Richmond County  
My Commission Expires: 04/08/2023



Index No. Year /2020 RJI No. Hon.

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

CHANGE YOUR LIFE LLC,

Plaintiff,

-against-

9E16 BY 1771 HOLDINGS LLC,

Defendant.

SUMMONS & VERIFIED COMPLAINT

FRED L. SEEMAN

ATTORNEY AT LAW

Attorney for Plaintiff

Office and Post Office Address, Telephone

32 BROADWAY, SUITE 1214

NEW YORK, NEW YORK 10004

TEL: (212) 608-5000

FAX: (212) 385-8161

To

Compliance Pursuant to 22NYCRR § 130-1.1(a)

To the best of the undersigned's knowledge, information and belief formed after an inquiry reasonable under the circumstances, the within document(s) and contentions contained herein are not frivolous as defined in 22NYCRR § 130-1.1-a

Attorney(s) for

Print name beneath Fred L. Seeman

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

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 settlement to the HON. of the within named court, at on

of which the within is a true copy will be presented for one of the judges

at 1 M

Dated,

Yours, etc.