

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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223 AVENUE B, LLC,

Plaintiff,

-against-

**AMENDED VERIFIED
COMPLAINT**

Index No.: 613065/2020

SUBWAY REAL ESTATE, LLC D/B/A SUBWAY,
GEETA FASTFOOD ENTERPRISE INC,
and ABHIMANUE MANCHANDA,

Defendants.

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Plaintiff, 223 Avenue B, LLC, by its attorneys, Jaspn Schlesinger LLP, as and for its Amended Verified Complaint (the “Complaint”), complaining of defendants, Subway Real Estate, LLC d/b/a Subway, Geeta Fastfood Enterprise Inc, and Abhimanue Manchanda, alleges as follows:

PARTIES

1. Plaintiff, 223 Avenue B, LLC (“Plaintiff” or “landlord”), is a New York domestic limited liability company with a principal place of business in the County of Nassau, State of New York, 255 Glen Cove Road, Carle Place, New York, 11514.

2. Upon information and belief, defendant, Subway Real Estate, LLC d/b/a Subway (“Tenant”) is a Delaware limited liability company duly authorized to transact business in the State of New York.

3. Defendant, Geeta Fastfood Enterprise Inc (“Geeta Fastfood” or “Geeta”), is a New York domestic business corporation with a last known principal place of business at 223 Avenue B, Unit ST1, New York, New York 10009.

4. Upon information and belief, defendant, Abhimanue Manchanda (“Abhi” and together with Tenant and Geeta, collectively “Defendants”) is an individual residing in the State of New York and is a shareholder, director, officer, owner, and/or employee of Geeta Fastfood.

5. Upon information and belief, non-party Doctor's Associates Inc. (“DAI”) is a Florida corporation that owns the rights to award franchises for SUBWAY® sandwich shops.

6. Upon information and belief, Geeta was awarded a franchise/license for a SUBWAY® sandwich shop from DAI.

7. Upon information and belief, Abhi was awarded a franchise/license for a SUBWAY® sandwich shop from DAI.

FACTS RELEVANT TO ALL CAUSES OF ACTION

8. Plaintiff is the owner of the building located at, and known as, 223 Avenue B, New York, New York 10009 (the “Building”).

9. Plaintiff and Tenant entered into a 10-year lease agreement made as of April 1, 2011 for a portion of the Building including certain retail space and basement consisting of approximately 900 square feet (the “Premises”), which would be used for a SUBWAY® sandwich shop.

10. Pursuant to the terms of said lease (together with all riders, modifications, agreements and amendments, the “Lease”), the Lease expires on March 31, 2021. A copy of the Lease is annexed hereto as **Exhibit “A”**.

11. Pursuant to the Lease, Tenant agreed to pay rent and additional rent under the terms of the Lease.

12. The Lease also provides that the Tenant may assign the Lease or sublet the Premises to any bona-fide licensee/franchisee of DAI doing business as a SUBWAY® sandwich shop.

13. Pursuant to the Lease, such assignment or subletting “shall not alter the Tenant's responsibility to the [Plaintiff] under this Lease.”

14. Under the terms of the Lease, Plaintiff agreed to accept rent from Tenant, its assignee or sublessee.

15. Upon information and belief, at all relevant times Geeta Fastfood and/or Abhi held a franchise/license for a SUBWAY® sandwich shop from DAI.

16. In or around 2011, Tenant sublet the Premises to Geeta and/or Abhi.

17. For approximately 8 years, Geeta and/or Abhi have operated a SUBWAY® sandwich shop at the Premises, known as SUBWAY® Store # 50977-0.

18. Beginning in late 2018, Defendants started to become delinquent with payments that were due under the Lease. A copy of Plaintiff's tenant ledger for the Lease dated September 4, 2020 is annexed hereto as **Exhibit “B”** evidencing late payments and charges.

19. Under the Lease, monthly rent obligations for lease year April 1, 2018 to March 31, 2019, were \$5,524.00, plus additional rent and other monetary obligations as required under the Lease. See Exhibit “A”.

20. For lease year April 1, 2019 to March 31, 2020, the monthly rent obligations under the Lease were \$6,076.00, plus additional rent and other monetary obligations as required under the Lease. Id.

21. For lease year April 1, 2020 to March 31, 2021, the monthly rent obligations under the Lease were and are \$6,076.00, plus additional rent and other monetary obligations as required under the Lease. Id.

22. In or about 2019, James V. Guarino (“Guarino”), a member of Plaintiff, discussed the delinquent payments with Geeta and/or Abhi. Geeta and/or Abhi expressed an interest in finding a new entity to operate a SUBWAY® sandwich shop at the Premises.

23. In an effort to mitigate its damages and assist Geeta and/or Abhi in securing a subtenant for the Premises and operator of a SUBWAY® sandwich shop, Plaintiff signed an exclusive listing agreement for the Premises with Meridian Capital Group, LLC d/b/a Meridian Retail Leasing (the “Broker”) on or about December 16, 2019. The Broker began showing the Premises in January 2020.

24. However, Geeta and/or Abhi often failed to cooperate with Plaintiff and the Broker in showing the Premises in violation of the Lease by making it difficult to obtain a copy of the key and complaining about posting signage in the window.

25. With rent arrearage accruing, on or about August 7, 2020, Plaintiff mailed default notices as required under the Lease to Tenant and non-party development agent, Subcon, Inc. (“Subcon”), by certified mail (return receipt requested) reflecting rental arrears in the sum of \$44,138.31 (the “Notice”). Plaintiff also mailed the Notice to Geeta Fastfood by certified mail (return receipt requested).

26. The Notice was received by Subcon on August 10, 2020, and by Tenant on August 14, 2020.

27. However, the Notice mailed to Geeta Fastfood at the Premises was returned to Plaintiff by the United States Postal Service and marked “return to sender vacant unable to forward”.

28. When the Broker had a showing of the Premises in August 2020, the Premises was vacant and abandoned, and left in shambles. As depicted in the photographs annexed hereto as **Exhibit “C”**, Tenant, Geeta and/or Abhi failed to leave the Premises broom clean or in good order and condition.

29. On or about August 26, 2020, Plaintiff received a letter from Tenant advising that it would not be exercising its option to renew the Lease and acknowledging that the current term will expire on March 31, 2021.

30. As of the date hereof, Geeta and/or Abhi have ceased operations at the Premises and abandoned the Premises.

31. According to Plaintiff's tenant ledger dated September 4, 2020, the total sum of arrears and rent remaining on the Lease is in an amount no less than \$87,707.64. See Exhibit “B”.

32. Despite due demand, Tenant, Geeta Fastfood and Abhi have failed to respond to the Notice and/or otherwise cure the default under the Lease.

33. As of the date hereof, Plaintiff has been unable to find a new subtenant for the Premises and operator of a SUBWAY® sandwich shop.

34. Based on due diligence, Plaintiff estimates that it will cost approximately \$35,500.00 to clean out and repair the Premises as a result of Geeta and/or Abhi's actions.

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

35. Plaintiff repeats, reiterates and realleges the preceding allegations asserted in this Complaint, as though set forth in their entirety herein.

36. The Lease constitutes a valid contract by and between Plaintiff and Tenant.

37. The Lease contains all of the essential elements of a binding contract.

38. The Lease is signed by Plaintiff and Tenant.

39. The terms of the Lease are complete, clear and unambiguous.

40. For lease year April 1, 2018 to March 31, 2019, the monthly rent obligations under the Lease were \$5,524.00, plus additional rent and other monetary obligations as required under the Lease.

41. For lease year April 1, 2019 to March 31, 2020, the monthly rent obligations under the Lease were \$6,076.00, plus additional rent and other monetary obligations as required under the Lease.

42. For lease year April 1, 2020 to March 31, 2021, the monthly rent obligations under the Lease were and are \$6,076.00, plus additional rent and other monetary obligations as required under the Lease.

43. On or about August 7, 2020, Plaintiff mailed the Notice as required under the Lease to Tenant and Subcon reflecting rental arrears in the sum of \$44,138.31.

44. Certified mail receipts evidence that the Notice was received by Subcon on August 10, 2020, and by Tenant on August 14, 2020.

45. Tenant has failed to respond to the Notice, as well as Subcon.

46. Pursuant to the Lease, assignment or subletting “shall not alter the Tenant's responsibility to the [Plaintiff] under this Lease.”

47. Therefore, Tenant has breached the Lease and is in default thereunder by failing to cure the default under the Lease.

48. Additionally, Tenant has breached the Lease by failing to vacate, surrender or abandon the Premises broom clean and in good order and condition.

49. Further, Tenant has breached the Lease by failing to use the Premises for a SUBWAY® sandwich shop.

50. Under the Lease, Plaintiff and Tenant understood that in the event of default, Plaintiff “may seek damages or any remedies under this or any other document in which the landlord and tenant or landlord and sublessee are parties, whether for unpaid rent and associated damages...or any other theory of recovery of any kind or nature” against Tenant or a sublessee.

51. At all relevant times, Geeta and/or Abhi were sublessees and operated a SUBWAY® sandwich shop, known as Store # 50977-0, at the Premises.

52. Notwithstanding the return of the Notice mailed in August 2020, at all relevant times, Geeta and/or Abhi were on notice that rent arrears were owed to Plaintiff as they engaged in communications with Plaintiff and/or Guarino.

53. Further at all relevant times, Geeta and/or Abhi were on notice that rent arrears were owed to Plaintiff as monthly rent obligations were paid directly by Geeta and/or Abhi.

54. Geeta Fastfood and/or Abhi have breached the Lease and are in default thereunder by failing to cure the default under the Lease.

55. Geeta Fastfood and/or Abhi have breached the Lease by failing to vacate, surrender or abandon the Premises broom clean and in good order and condition, excepting reasonable wear and tear as required under the Lease.

56. Geeta Fastfood and/or Abhi have breached the Lease by failing to operate a SUBWAY® sandwich shop, known as Store # 50977-0, at the Premises.

57. Geeta Fastfood and/or Abhi have breached the Lease by failing to surrender all of their alterations and fixtures broom clean, in good order and condition, excepting reasonable wear and tear as required under the Lease.

58. By hiring the Broker, Plaintiff has sought to mitigate its damages.

59. By reason of the foregoing, Defendants are liable to Plaintiff for the remaining rent due under the Lease through March 31, 2021.

60. By reason of the foregoing, Defendants are liable to Plaintiff for the costs associated with clean out and repair of the Premises.

61. As a result of the foregoing, Plaintiff has been damaged in an amount to be determined at trial but in an amount not less than Two Hundred Thousand and 00/100 (\$200,000.00) Dollars, plus attorneys' fees, costs, and disbursements.

AS AND FOR A SECOND CAUSE OF ACTION

(Alternatively, Anticipatory Breach/Anticipatory Repudiation of Contract)

62. Plaintiff repeats, reiterates and realleges the preceding allegations asserted in this Complaint, as though set forth in their entirety herein.

63. Further, on or about March 24, 2020, Plaintiff received an e-mail from Beth Koppell, Regional Manager of Leasing and Development, Restaurex Developments Inc., on behalf of Tenant requesting rent relief in light of the novel coronavirus pandemic (COVID-19) (the “March 24 Email”). A copy of the March 24 Email is attached hereto as **Exhibit “D”**. Upon information and belief, Geeta and/or Abhi were copied on the March 24 Email.

64. Attached to the March 24 Email was a letter purportedly dated March 16, 2020 from Michael E. Donahue, Senior Managing Corporate Counsel for Tenant (the “March Letter”),

which claimed, among other things, that “in the event the Subway® Restaurant must cease operations or modify its operations due to . . . (ii) by mandate of a governmental authority, including by way of example and not limitation, the Centers of Disease Control, or other such quasi-governmental authority, Tenant shall deem such cessation or diminution of operation as an event of casualty or force majeure which may excuse Tenant from performance, commercial impracticability or frustration of the purpose of the Lease.” See Exhibit “D”.

65. Plaintiff, by and through Guarino, engaged in telephone communications with Ms. Koppell about the March 24 Email but never received additional information or details about the request for rent relief or a return telephone call.

66. Up to, and including the time of Tenant's abandonment and repudiation of the Lease, Plaintiff was ready, willing and able to continue performance under the Lease.

67. By the March Letter, Tenant expressed intent not to perform its obligations under the Lease. The March Letter states that the purpose was to “provide [Plaintiff] notice that, in the event the Subway® Restaurant must cease operations or modify its operations due to . . . (ii) by mandate of a governmental authority, including by way of example and not limitation, the Centers of Disease Control, or other such quasi-governmental authority, Tenant shall deem such cessation or diminution of operation as an event of casualty or force majeure which may excuse Tenant from performance, commercial impracticability or frustration of the purpose of the Lease.”

68. Tenant stated in the March 24 Email that it was requesting “any type of relief that [Plaintiff] may be able to provide, whether it be abatement, deferment, partial deferment, commencing April 1, 2020 until the COVID-19 pandemic is over and normalcy has resumed.”

69. Plaintiff, by and through Guarino, engaged in telephone communications with Tenant in an effort to work out a rent relief agreement, indicating an ability and willingness to perform. However, Tenant ultimately failed to return Guarino's calls.

70. After Plaintiff mailed the Notice, Plaintiff received a letter from Tenant dated August 26, 2020 advising that Tenant would not be exercising its option to renew the Lease.

71. Despite the Notice, Tenant has indicated intent to breach the Lease by not using the Premises for a SUBWAY® sandwich shop and not taking the Premises back from Geeta Fastfood and/or Abhi and replacing them with a different franchisee/licensee.

72. Based on the foregoing, Plaintiff seeks a declaration that Tenant has anticipatorily breached the Lease entitling Plaintiff to all sums due and owing under the Lease from March 16, 2020 (the date of the March Letter) through the balance of the Lease term.

73. During the summer of 2020, Abhi told Guarino that he did not feel he had any obligation to pay rent under the Lease and that Plaintiff would have to commence a lawsuit against Tenant, thereby expressing intent to breach the Lease.

74. Geeta and/or Abhi further expressed intent to breach the Lease and its obligations thereunder by not using the Premises for a SUBWAY® sandwich shop and abandoning the Premises on or around August 1, 2020.

75. Up to, and including the time Geeta and/or Abhi's abandonment and repudiation of the Lease, Plaintiff was ready, willing and able to continue performance under the Lease.

76. Based on the foregoing, Plaintiff seeks a declaration that Geeta and/or Abhi have anticipatorily breached the Lease entitling Plaintiff to all sums due and owing under the Lease from August 1, 2020 through the balance of the Lease term.

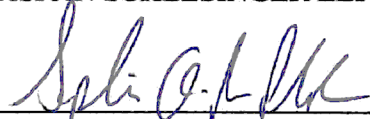
77. As a result of the foregoing, Plaintiff has been damaged in an amount to be determined at trial but in an amount not less than Two Hundred Thousand and 00/100 (\$200,000.00) Dollars, plus attorneys' fees, costs, and disbursements.

WHEREFORE, Plaintiff respectfully demands judgment against Defendants as follows:

1. On the First Cause of Action, in an amount to be determined at trial but in an amount not less than Two Hundred Thousand and 00/100 (\$200,000.00) Dollars;
2. On the Second Cause of Action, in an amount to be determined at trial but in an amount not less than Two Hundred Thousand and 00/100 (\$200,000.00) Dollars;
3. Attorneys' fees, costs, and disbursements;
4. Together with applicable interest, and such other and further relief as this Court deems just, necessary and proper.

Dated: Garden City, New York
November 16, 2020

JASPAN SCHLESINGER LLP

By: 

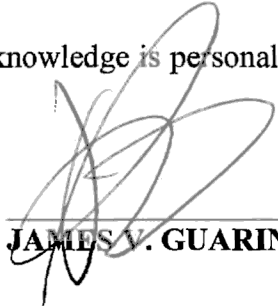
STEVEN R. SCHLESINGER
SOPHIA A. PERNA-PLANK
Attorneys for Plaintiff
300 Garden City Plaza, 5th Floor
Garden City, New York 11530
(516) 746-8000

VERIFICATION

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

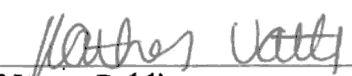
JAMES V. GUARINO, on behalf of **223 AVENUE B, LLC**, being duly sworn, deposes and says:

I am a member of 223 AVENUE B, LLC, the Plaintiff in this action, and I have read the annexed **AMENDED VERIFIED COMPLAINT**, and that the allegations therein are true to my own knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true. The basis of my knowledge is personal knowledge and in my capacity as a member of 223 Avenue B, LLC.



JAMES V. GUARINO

Sworn to before me on this
16th day of November, 2020.



Notary Public

