

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

-----X  
DHG MANAGEMENT COMPANY LLC

Plaintiff

Index No. 654319/2020

-against-

**VERIFIED ANSWER &  
COUNTERCLAIMS**

FRENCH PARTNERS LLC and NEW YORK  
FRENCH BUILDING CO-INVESTORS, LLC [n/k/a  
New York French Soundview LLC], TENANTS-IN  
COMMON

Defendants

-----X  
Defendants, FRENCH PARTNERS LLC and NEW YORK FRENCH BUILDING CO-  
INVESTORS, LLC [n/k/a New York French Soundview LLC], TENANTS-IN COMMON, (the  
“Defendants”), by their attorneys, HORING WELIKSON ROSEN & DIGRUGILLIERS PC,  
answering the Plaintiff’s complaint, allege as follows:

1. Defendants deny the truth of the allegations contained in Paragraph 1 of Complaint.
2. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint.
3. Defendants deny the allegation asserted in Paragraph 5 of the Complaint that Paragraph 66 of the Lease contains an “unusual” express warranty and refer the Court to the Lease for its content and meaning.
4. Paragraphs 6 and 7 of the Complaint assert conclusions of law to which Defendants neither admit nor deny the truth of the allegations set forth therein.
5. Defendants neither admit nor deny the truth of the allegations contained in Paragraph 8 of the Complaint and refer the Court to the Lease for its content and meaning and leave legal conclusions to the Court for ultimate determination.

6. Defendants neither admit nor deny the allegations contained in Paragraphs 9, 10 and 11 of the Complaint and refer the Court to the referenced Executive Orders for their terms and conditions.

7. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 12, 13 and 14 of the Complaint.

8. Defendants admit that Plaintiff paid rent for the months of April, May and June, 2020 as asserted in Paragraph 15 of the Complaint, but otherwise deny knowledge or information sufficient to form a belief as to the remaining allegations.

9. With respect to the allegations asserted in Paragraph 16 of the Complaint, Defendants refer the Court to the letter dated August 5, 2020 for its terms and conditions and except as so referred, Defendants deny each and every allegation set forth therein.

10. Defendants deny the truth of the allegations contained in Paragraph 17 of the Complaint.

11. With respect to the allegations asserted at Paragraphs 18, 19 and 20, Defendants do not interpose a response inasmuch as the Second Cause of Action was dismissed by Order of the Court dated October 21, 2020.

12. Defendants neither admit nor deny the footnotes contained in the Complaint as they are improperly interposed and additionally, assert conclusions of law to which no response is necessary.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

13. Plaintiff has failed to state a cause of action upon which relief can be based as Plaintiff has failed to allege Defendants took any affirmative action to deny access to the subject premises.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

14. Defendants have a defense based upon documentary evidence, ie. the Lease dated July 31, 2020.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

15. The voluntary payment doctrine bars Plaintiff's recovery of rents paid pursuant to the terms of the Lease for the months of April, May and June, 2020, without an express reservation of rights.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

16. Plaintiff's cause of action is barred by reason of the various Executive Orders issued by the Governor of the State of New York.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

17. By letter dated June 17, 2020, Plaintiff anticipatorily breached the Lease, thereby relieving the Defendants of any obligations thereunder.

**AS AND FOR A FIRST COUNTERCLAIM**

18. Plaintiff and Defendants entered into a written Lease dated July 31, 2007, as amended or modified (the "Lease") for the use and occupancy of Suites 900, 1000 and 2700 located in the building known as 551 Fifth Avenue, situated within the County of New York, City and State of New York (hereinafter referred to as the "subject premises").

19. Pursuant to the terms of the Lease Plaintiff is obligated to pay the monthly rent on or before the first day of each month without set off or deduction.

20. Plaintiff has failed and refused to pay rent which has become due pursuant to the terms of the Lease through November 30, 2020 in the sum of \$912,814.70.

21. Plaintiff's failure to pay rent which has come due pursuant to the terms of the Lease constitutes a breach thereof.

22. As a result of the foregoing, Defendants have incurred and will continue to incur damages in an amount to be determined by the Court, but no less than \$912,814.70.

**AS AND FOR A SECOND COUNTERCLAIM**

23. Defendants repeat and reallege the allegations contained in paragraphs 18 through 22 as if fully set forth at length herein.

24. The reasonable value of use and occupancy of the subject premises is at least the amount of rent set forth in the Lease and more specifically \$366,449.65.

25. Since July 1, 2020, Plaintiffs have failed and refused to pay rent to the Defendants for the use and occupation of the subject premises.

26. Although due demand has been made therefore, Plaintiff has failed to remit payment for the use and occupation of the subject premises thereby resulting in arrears totaling \$912,814.70.

27. Plaintiff continues to use and occupy the subject premises and conduct its business from the subject premises without compensating Defendants for such use and occupancy as required by the Lease.

28. Pursuant to Real Property Law Section 220, a “landlord may recover a reasonable compensation for the use and occupation of real property . . . under an agreement. . . and a parol lease or other agreement may be used as evidence of the amount to which [landlord] is entitled.”

29. Consequently, Plaintiff is liable to Defendants in the sum of \$912,814.70 through November 1, 2020 and an additional \$366,449.65 per month as it accrues, together with all Additional Rent due under the Lease.

**AS AND FOR A THIRD COUNTERCLAIM**

30. Defendants repeat and reallege the allegations contained in paragraphs 18 through 29 as if fully set forth at length herein.

31. Plaintiff is and continues to be, liable to Defendants for rent, additional rent, and other monetary obligations under the Lease (collectively, the “Monetary Obligations”), as same continue to accrue *pendente lite* in an amount to be determined by the Court.

32. Defendants are entitled to a Declaration that Plaintiff is, and continues to be, liable to Defendants for the Monetary Obligations, as same continue to accrue *pendente lite*, in an amount to be determined by this Court.

33. Defendants have no adequate remedy at law.

**AS AND FOR A FOURTH COUNTERCLAIM**

34. Defendants repeat and reallege the allegations contained in paragraphs 18 through 33 as if fully set forth at length herein.

35. Plaintiff has been unjustly enriched by virtue of its continuing to use, occupy, and enjoy the Premises without paying rent and additional rent while conducting its business in the subject premises.

36. Plaintiff has failed to remit rent and additional rent to Defendants while it simultaneously continues to occupy and conduct its business in the subject premises.

37. Plaintiff’s enrichment from the use and enjoyment of the subject premises, without appropriately compensating Defendants, has been to the detriment of Defendants and at Defendants’ expense.

38. Plaintiff has therefore retained the benefits relating to the subject premises without adequately compensating Defendants therefor.

39. It is against equity and good conscience to permit Plaintiff to retain the moneys that Defendants are entitled to and should have received in exchange for Plaintiff’s use of the premises and benefits received therefrom.

40. As a result of the foregoing, Plaintiff has been unjustly enriched at the expense of Defendants.

41. Defendants are therefore entitled to a judgment in the amount of its monetary detriment caused by Plaintiff's unjust enrichment in an amount to be determined by the Court but not less than \$366,449.65 per month, together with all Monetary Obligations under the Lease.

**AS AND FOR A FIFTH COUNTERCLAIM**

42. Defendants repeat and reallege the allegations contained in paragraphs 18 through 41 as if fully set forth at length herein.

43. Pursuant to the Rider to Lease, Paragraphs 37 (C) and 62 (C), Plaintiff and Defendants agreed that for a limited time period Plaintiff would be relieved of a portion of its payment obligations under the Lease ("Free Rent").

44. For the 9<sup>th</sup> and 10<sup>th</sup> Floor Premises, the parties agreed as follows:

. . . that provided Tenant is not in default of any of the terms, covenants and conditions of the Lease beyond the expiration of any applicable notice and cure periods, for the twenty-four (24) month period commencing with the 9<sup>th</sup> and 10<sup>th</sup> Floor Premises Rent Commencement Date, Tenant shall receive an additional credit against Fixed Rent that Tenant shall be obligated to pay for the 9<sup>th</sup> and 10<sup>th</sup> Floor Premises, in the amount of \$31,162.08 per month.

45. For the 27<sup>th</sup> Floor Premises, the parties agreed as follows:

. . . that for the twenty-four (24) month period commencing with the 27<sup>th</sup> Floor Rent Commencement Date, provided Tenant is not in default of any of the terms, covenants and conditions of the Lease beyond the expiration of any applicable notice to cure period, Tenant shall receive an additional rent credit against Fixed Rent that Tenant shall be obligated to pay for the 27<sup>th</sup> Floor Premises in accordance with Exhibit "B" attached hereto in the amount of \$8,604.44 per month.

46. By virtue of Plaintiff's default in the payment of rent as required by the terms of the Lease, Plaintiff is not entitled to the benefit of the Free Rent.

47. By virtue of Plaintiff's default in the payment of rent as required by the terms of the Lease, Defendants are entitled to recover the amount of the Free Rent for which Plaintiff benefitted.

48. Defendants are, therefore, entitled to a monetary judgment in an amount to be determined by the Court.

**AS AND FOR A SIXTH COUNTERCLAIM**

49. Defendants repeat and reallege the allegations contained in paragraphs 1 through 48 as if fully set forth at length herein.

50. As a result of Plaintiffs default under the Lease, Plaintiff is liable to Defendant for those attorneys' fees and costs incurred for the defense of the underlying proceeding and prosecution of the counterclaims asserted herein.

51. By reason of the foregoing, Defendants are entitled to a money judgment against Plaintiff for the reasonable legal fees, costs and expenses associated with this proceeding, in an amount to be determined by the Court.

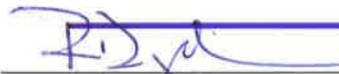
WHEREFORE, Defendants request dismissal of the underlying Complaint and judgment against the Plaintiff as follows:

1. On Defendants' First Counterclaim, a judgment in favor of Defendants and against Plaintiff for all arrears that came due through this date and those continuing to accrue through the final determination of this proceeding, in an amount to be determined by the Court;
2. On Defendants' Second Counterclaim, a judgment in favor of Defendants and against Plaintiff in the sum of \$912,814.70 through November 1, 2020 and an additional \$366,449.65 per month as it accrues, together with all additional rent due pursuant to the Lease;
3. On Defendants' Third Counterclaim, a declaratory judgment that Plaintiff is and continues to be, liable to Defendants for the Monetary Obligations, as same continue to accrue *pendente lite*, in an amount to be determined by this Court;

4. On Defendants' Fourth Counterclaim, judgment in the amount of its monetary detriment caused by Plaintiff's unjust enrichment in an amount to be determined by the Court but not less than \$366,449.65 per month, together with all Monetary Obligations pursuant to the Lease;
5. On Defendants' Fifth Counterclaim, a judgment in favor of Defendants and against Plaintiff for the Free Rent, in an amount to be determined by the Court;
6. On Defendants' Sixth Counterclaim, a judgment in favor of Defendants and against Plaintiff for Attorneys' Fees, costs and expenses in an amount to be determined by this Court, as same continue to accrue; and
7. For such other and further relief in favor of Defendants as this Court deems just and proper.

Dated: Nassau, New York  
November 18, 2020

**Horing Welikson Rosen & Digrugilliers PC**  
*Attorneys for Defendants*



---

By: Renee Digrugilliers, Esquire  
11 Hillside Avenue  
Williston Park, NY 11596  
516 535-1700  
rdigrugilliers@hwrpc.com

To: Horwitz & Zim Law Group PC  
*Attorneys for Plaintiff*  
260 Madison Avenue  
16<sup>th</sup> Floor  
New York, NY 10016  
212 644-1857  
ezim@hzlaw.com



**VERIFICATION**

**Renee Digrugilliers**, an attorney duly licensed to practice law in the Courts of the State of New York, affirms and states as follows:


Affiant is the attorney for the Defendants and as such is fully familiar with the facts of this matter.

Affiant has read the foregoing Verified Answer & Counterclaims and knows the contents thereof to be true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

This verification is made by the undersigned pursuant to CPLR §3020 (d)(3) as the Defendants named herein are not located in the County in which affiant maintains her office.

The grounds of my belief as to all matters not stated upon my own knowledge are based upon conversations with the Defendants and a review of Defendants books and records which are relevant to this proceeding.

Dated: Nassau, New York  
November 18, 2020

  
\_\_\_\_\_  
Renee Digrugilliers