

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

LITTLE FISH CORP. a/k/a LITTLE FISH INC.,
Plaintiff,
-against-
PARAMOUNT LEASEHOLD LP,
Defendant.
Index No. 150164/21
VERIFIED ANSWER WITH COUNTERCLAIMS

Defendant Paramount Leasehold LP ("Landlord"), by its attorneys, Rosenberg & Estis P.C., as and for its verified answer and counterclaims in response to the verified complaint herein (the "Complaint"), alleges as follows:

- 1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs "2," "6," "8," "18," "19," "20," "26," "27," "29," "30," "31," "35," "38," "39," "40," "70," "71," "72" and "75" of the Complaint.
2. Denies the allegations set forth in Paragraphs "1," "34," "41," "42," "43," "45," "46," "50," "51," "53," "60," "61," "65," "66," "67," "68," "73" and "74" of the Complaint.
3. Denies the allegations set forth in Paragraph "3" of the Complaint and respectfully refers the Court to the lease between the parties and the various amendments thereto (hereinafter, collectively, the "Lease").
4. Denies the allegation set forth in Paragraph "4" of the Complaint, except admits serving a Thirty (30) Day Notice of Default dated December 9, 2020 (the "Default Notice") on plaintiff, and respectfully refers the Court to the Default Notice for its content.
5. Denies the allegation set forth in Paragraph "5" of the Complaint and specifically denies that plaintiff is entitled to any of the relief sought in this action.

6. Denies the allegations set forth in Paragraphs “9,” “10,” “32,” “47” and “48” of the Complaint, and respectfully refers the Court to the Lease for its terms and legal effect.

7. Denies the allegations set forth in Paragraph “11” of the Complaint except admits that plaintiff previously operated a restaurant called “Carmines” at the premises.

8. Denies the allegations set forth in Paragraph “12” of the Complaint except admits that Landlord is the landlord of the building known as 1501 Broadway in Manhattan (the “Building”).

9. Denies the allegations referred to in Paragraphs “13,” “14,” “15,” “16” and “17” of the Complaint and respectfully refers the Court to the Default Notice for its contents.

10. Denies the allegations referred to in Paragraphs “21,” “22,” “23,” “24” and “25” of the Complaint and respectfully refers the Court to Executive Orders 202, 202.1, 202.3, 202.6 and 202.8, referred to in said paragraphs for the content and legal effect of said Executive Orders.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “28” of the Complaint except admits that plaintiff has ceased operations at the demised premises.

12. Denies the allegations set forth in Paragraph “33” of the Complaint except admits that outdoor dining was allowed in New York City on or about June 11, 2020.

13. Denies the allegations set forth in Paragraph “36” of the Complaint except admits that indoor dining was permitted on or about September 30, 2020 but at 25% of capacity.

14. Denies the allegations set forth in Paragraph “37” of the Complaint except admits that indoor dining was temporarily shut down in New York City on or about December 14, 2020.

15. Denies the allegations set forth in Paragraphs “44,” “52,” “62,” “69” and “78” of the Complaint and specifically denies that plaintiff is entitled to any of the relief requested in this action.

16. Denies the allegations set forth in Paragraph “49” of the Complaint and respectfully refers the Court to the Lease and applicable law for Landlord’s rights and remedies.

17. Denies the allegations set forth in Paragraphs “54” and “55” of the Complaint and respectfully refers the Court to New York City Local Law 26 (“Local Law 26”) for its contents and legal effect.

18. Denies the allegations set forth in Paragraphs “56” and “57” of the Complaint and refers the Court to Article 29 of the Lease for its terms and legal effect.

19. Denies the allegations referred to in Paragraph “58” of the Complaint and respectfully refers the Court to Article 6 of the Lease for its terms and legal effect.

20. Denies the allegations set forth in Paragraph “59” of the Complaint and respectfully refers the Court to Articles 6 and 29 of the Lease for their terms and legal effect.

21. Denies the allegations set forth in Paragraphs “63” and “64” of the Complaint and respectfully refers the Court to Article 17(1) of the Lease for its terms and legal effect.

22. Denies that plaintiff is entitled to a civil penalty pursuant to 22 NYC Admin. Code § 22-903(a) as alleged in Paragraph “76” of the Complaint.

23. Denies that plaintiff is entitled to an order restraining Landlord from engaging in commercial tenant harassment pursuant to 22 NYC Admin. Code § 22-903(a)(1) as alleged in Paragraph “77” of the Complaint, and expressly denies that Landlord has engaged in any commercial tenant harassment within the scope of said code provision.

FIRST AFFIRMATIVE DEFENSE

24. Plaintiff has failed to state a legally sufficient cause of action for any of the declaratory or other relief requested in this action.

SECOND AFFIRMATIVE DEFENSE

25. Plaintiff’s claims are barred by documentary evidence, including but not limited to the Lease.

THIRD AFFIRMATIVE DEFENSE

26. Plaintiff is precluded from obtaining any of the relief requested in this action because plaintiff has come into Court in bad faith and with unclean hands based, among other things, on plaintiff's substantial breach of its obligations under the Lease and its receipt of between \$2-5 million in PPP Funds without thereafter meeting its monetary and other obligations under the Lease.

FOURTH AFFIRMATIVE DEFENSE

27. Plaintiff is precluded from obtaining any of the relief requested in this action because plaintiff remains in substantial breach of the Lease, including but not limited to plaintiff's default in the payment of rent and additional rent since June 2019.

FIFTH AFFIRMATIVE DEFENSE

28. Plaintiff has breached the Lease based on the acts and conduct described in the Default Notice and Landlord is entitled to a declaration to that effect herein.

SIXTH AFFIRMATIVE DEFENSE

29. Landlord is not guilty of any commercial tenant harassment pursuant to 22 NYC Admin. Code § 22-903(a)(1) or any other statute or provision of law because Landlord is merely enforcing its legal rights under the Lease.

COUNTERCLAIMS**FACTS COMMON TO ALL COUNTERCLAIMS**

30. Landlord is a New York limited partnership, with an office in the City, County and State of New York.

31. Upon information and belief, plaintiff is a New York corporation, with an office in the City, County and State of New York.

32. Plaintiff is the tenant of certain premises located on the first floor, basement, second floor and storage areas in the Building at 1501 Broadway, New York, New York, with an additional

address of 200 West 44th Street in Manhattan (hereinafter, collectively, the “Premises”), pursuant to a commercial lease originally dated as of August 1, 1991 and most recently amended by a Tenth Amendment of Lease made as of August 2, 2017 by and between Landlord and plaintiff (hereinafter, collectively, the “Lease”).

33. This action arises as a result of plaintiff’s violation of the Lease and substantial obligations of its tenancy at the Premises for the reasons specified in the Default Notice.

34. Plaintiff’s violations of the Lease include, but are not limited to, plaintiff’s failure, despite Landlord’s repeated demands, to comply with its obligations under the Lease to install, at plaintiff’s sole cost and expense, a Code-compliant and working sprinkler system in the Premises as required by and in conformity with applicable laws, rules, ordinances and regulations affecting sprinkler systems, including but not limited to Local Law 26; and plaintiff’s cessation of its operations at the Premises notwithstanding plaintiff’s ability, to the extent permitted under various Executive Orders of Governor Cuomo in effect during the pandemic, to have take-out and delivery service and outdoor and indoor dining facilities at the Premises, in violation of plaintiff’s obligations under the Lease, pursuant to the provisions specified below, to remain in continuous operation during the days and hours specified in the Lease.

35. Plaintiff’s obligation to commence and complete the installation of Code-compliant sprinkler system within the Premises springs, *inter alia*, from Article 6 of the Lease, whereby plaintiff was obligated, at its sole cost and expense, to

“promptly comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards and any directions of any public officer pursuant to law and all orders, rules and regulations of the New York Board of Fire Underwriters or the Insurance Services Office, or any similar body which shall impose any violation, order a duty upon owner or tenant with respect to the demised premises.”

36. Plaintiff's continued failure to install and complete a Code-compliant sprinkler system at the Premises at plaintiff's sole cost and expense also violates Article 29 of the Lease, which provides in part as follows:

"29. **Sprinklers:** Anything elsewhere in this lease to the contrary notwithstanding, if the New York Board of Fire Underwriters or the Insurance Services Office or any bureau, department or official of the federal, state or city government require or recommend the installation of a sprinkler system or that any changes, modifications, alterations, or additional sprinkler heads or other equipment be made or supplied in an existing sprinkler system by reason of Tenant's business, or the location of partitions, trade fixtures, or other contents of the demised premises, or for any other reason, or if any such sprinkler system installations, changes, modifications, alterations, additional sprinkler heads or other such equipment, become necessary to prevent the imposition of a penalty or charge against the full allowance for a sprinkler system in the fire insurance rate set by any said Exchange or by any fire insurance company. Tenant shall, at Tenant's expense, promptly make such sprinkler system installations, changes, modifications, alterations, and supply additional sprinkler heads or other equipment as required whether the work involved shall be structural or non-structural in nature."

37. Despite repeated notification from Landlord, plaintiff has failed to complete the installation, at plaintiff's sole cost and expense, of a Code-compliant and working sprinkler system at the Premises in accordance with all applicable laws, rules, ordinances and regulations, including but not limited to Local Law 26.

38. Plaintiff's default of its obligations relating to the sprinkler system at the Premises has perpetuated a condition that is hazardous to the life, health and safety of plaintiff's employees, the other tenants and/or occupants and/or invitees at the Building, in addition to subjecting Landlord to potential liability and violations from the State and/or the City.

39. Plaintiff's failure to remain in "continuous operation" at the Premises to the extent permitted under the various Executive Orders in effect during the pandemic violates Article 7(f) of the Second Amendment of the Lease (the "Second Amendment"), which provides in part as follows:

“Continuous Operation. Tenant shall cause its business to be conducted and operated in good faith and in such manner as shall assure the transaction of a maximum volume of business and sales in and at the demised premises. Unless other hours are approved by Landlord in writing, Tenant shall cause the demised premises to be open continuously for business, fully fixtured, staffed and stocked, at least during the days and hours of operation that Tenant’s restaurant business at the demised premises is currently open to the public (**“Operating Hours”**). Tenant shall furnish and install all trade fixtures which may be necessary or desirable for carrying on Tenant’s business, shall maintain adequately trained personnel for efficient service to customers, and shall operate the demised premises, and Tenant’s business, in a first-class manner.”

40. Article 7(g) of the Second Amendment is also pertinent and provides as follows:

“Fee for Failure to Operate. In the event Tenant shall vacate, abandon or desert the demised premises, or cease operating or conducting Tenant’s business in the demised premises or any material portion thereof (except during any period that the demised premises are made untenable by reason of fire, casualty, condemnation or other similar causes beyond the control of Tenant, provided that Tenant shall be using due diligence to effectuate all repairs to the demised premises to restore same to tenantability, except for those repairs for which Landlord is responsible under the provisions of the Lease), or fail or refuse to remain open for business during Operating Hours on such days or nights or any part thereof as provided in subparagraph 7(f) hereof, then and in any such event (hereinafter collectively referred to as **“failure to do business”**), in addition to such failure to do business constituting a default hereunder, Tenant shall pay to Landlord, as additional rent, an amount equal to the Non-Operation Per Diem Rent (as hereinafter defined) for each day during the period of Tenant’s failure to do business; and such additional rent shall be deemed to be damages to Landlord, and not a penalty, in lieu of any Percentage Rent that might have been payable to Landlord had such failure to do business not occurred, it being agreed that Landlord’s actual damages would be impossible to ascertain and the foregoing amount is a reasonable estimate thereof. Landlord’s claim that Tenant has vacated, abandoned or deserted the Premises shall not be defeated solely because Tenant may have left all or any part of its trade fixtures or other personal property in the Premises. The term **“Non Operation Per Diem Rent”** means, in the event of a failure to do business by Tenant in any Lease Year, one hundred fifty percent (150%) of the highest annual Percentage Rent paid or payable by Tenant for any of the Lease Years preceding the Lease Year in which the failure to do business occurred (based on the Annual Gross Sales Statement submitted by Tenant to Landlord for such preceding Lease Year) divided by 365; *provided, however*, that if the

failure to do business occurs prior to Landlord's having received any Annual Gross Sales Statement from Tenant, then the "**Non Operation Per Diem Rent**" shall mean one hundred fifty percent (150%) of the annual rate of Fixed Rent in effect from time to time during the period of such failure to do business, divided by 365."

41. Upon information and belief, plaintiff has always been able to use and operate the Premises for take-out and deliveries in compliance with applicable law and/or Executive Orders and has conducted such operations at the Upper West Side branch of Carmines, including outdoor dining and indoor dining when indoor dining was permitted.

42. Notwithstanding the foregoing, plaintiff has nonetheless refused to engage in any operations at the Premises despite plaintiff's obligation under the Lease to remain in continuous operation and plaintiff's legal right to conduct its operations at the Premises in conformity with and to the extent permitted under applicable laws and/or Executive Orders.

43. Plaintiff is also in default in the payment of rent and additional rent due pursuant to the Lease, with arrears through January 2021 totaling no less than \$3,322,481.79, and is also liable for Non-Operation Per Diem Rent (as defined in Article 7(g) of the Second Amendment), based on plaintiff's default under Article 7(f) of the Second Amendment, in the amount of \$706,739.10 through January 31, 2021 and increasing at the rate of \$2,201.68 per day thereafter as long as plaintiff remains in violation of its "continuous operation" obligation under the Lease.

44. In accordance with Article 1 of the Original Lease made as of August 1, 1991 ("Original Lease"), the rent was to be paid "in equal monthly installments in advance on the first day of each month during said term, ... without any set off or deduction whatsoever"

45. Pursuant to Article 2(d) of the Tenth Amendment of Lease made as of August 2, 2017 (the "Tenth Amendment"), the Fixed Rent for the period beginning February 2020 was set at the annual rate of \$3,062,550.00 (\$255,212.50 per month), plus an additional amount computed in

accordance with the formula set forth in Article 2(d)(v) of the Tenth Amendment based on the Consumer Price Index (as defined in Paragraph 4 of the Second Amendment).

46. Pursuant to Article 40G of the Original Lease, Tenant was obligated to pay or cause to be paid

“without demand therefor or notice in each case without any set-off, counterclaim, abatement or deduction whatsoever, as additional rent, all costs, fees, taxes, interest, charges, expenses, reimbursements and obligations, and all interest and penalties thereon, which Tenant in any of the provisions of this Lease has assumed or agreed to pay or which Tenant agrees are to be at the cost or expense of Tenant or as to which Landlord shall legally become entitled pursuant to the terms of the Lease (all of which are hereinafter sometimes referred to as ‘additional rent’), and in the event of non-payment thereof, Landlord shall have, in addition to all other rights and remedies, all of the rights and remedies provided for herein or by law in the case of non-payment of Fixed Rent.”

47. Pursuant to Article 42 of the Original Lease, Tenant was obligated to pay real estate tax escalation charges, as additional rent, at the rates and in the manner specified in said Article 42.

48. Under Article 46 of the Original Lease, Tenant agreed to “pay all charges for water, gas and other utilities furnished to the Demised Premises throughout the term of this Lease, and shall install and maintain at its own expense, any meters necessary to measure the consumption of such utilities.”

49. Article 59 of the Original Lease provides for a late charge, and reads as follows:

“It is agreed that the rental under this Lease is due and payable in equal monthly installments in advance on the first day of each month during the entire lease term. In the event that any monthly installment of Fixed Rent, or any other payment required to be made by the Tenant under this Lease shall be made after the tenth business day of the month in the case of Fixed Rent, or more than five days after the due date for any other charge, a late charge equal to the greater of (i) three percent (3%) for each dollar so overdue may be charged by the Landlord for each month, or fraction of each month, from its due date until paid, or (ii) \$250.00 for the purpose of defraying the expenses incurred in handling delinquent payments.”

50. In conjunction with Article 46 of the Original Lease, whereby the Tenant was responsible for the cost of all utilities provided to the Premises, Article 66 of the Original Lease provides as follows:

“Landlord shall not supply to the Demised Premises any utilities or building services of any kind, except as otherwise specifically set forth herein. Tenant agrees to make its own arrangements with the public utility company servicing the Demised Premises for the furnishing of and payment of all charges for electricity and other utilities consumed by Tenant in the Demised Premises, and, if necessary, for the installation of meters therefor. In no event shall Landlord be responsible for charges for electricity, steam, heat, water or any other utilities consumed in the Demised Premises by Tenant.”

51. Article 17(1) of the Lease describes various Events of Default and provides in part as follows:

“17. (1) Default: If Tenant defaults in fulfilling any of the covenants of this lease other than the covenants for the payment of rent or additional rent; or if the demised premises become vacant or deserted; ... then, in any one or more of such events, upon Owner serving a written thirty (30) day’s notice upon Tenant specifying the nature of said default and upon the expiration of said thirty (30) days, if Tenant shall have failed to comply with or remedy such default, or if the said default or omission complained of shall be of a nature that the same cannot be completely cured or remedied within said thirty (30) day period, and if Tenant shall not have diligently commenced curing such default within such thirty (30) day period, and shall not thereafter with reasonable diligence and in good faith proceed to remedy or cure such default, then Owner may serve a written three (3) day’s notice of cancellation of this lease upon Tenant, and upon the expiration of said three (3) days, this lease and the term thereunder shall end and expire as fully and completely as if the expiration of such three (3) day period were the day herein definitely fixed for the end and expiration of this lease and the term thereof and Tenant shall then quit and surrender the demised premises to Owner but Tenant shall remain liable as hereinafter provided.”

52. Plaintiff was advised, under the terms of the Default Notice, that pursuant to Article 17(1) of the Lease, plaintiff was required to cure the defaults specified in the Default Notice by no later than January 11, 2021, that being more than thirty (30) days after service of the Default Notice

upon plaintiff, in default of which Landlord would avail itself of the remedies afforded to Landlord under the Lease and applicable law, including but not limited to seeking an injunction to compel plaintiff's compliance with its obligations under the Lease and/or terminating the Lease.

53. The Default Notice was served upon plaintiff without prejudice to all of Landlord's rights and remedies under the Lease and applicable law, including but not limited to Landlord's claims for any unpaid rent, additional rent and/or use and occupancy, loss of rent and other damages (including attorneys' fees, costs and disbursements) incurred and to be incurred by Landlord.

54. Landlord's rights and remedies thereby reserved in the Default Notice include, without limitation, plaintiff's rights and remedies under Article 17(2) of the Lease, which provides as follows:

"17(2) If the notice provided for in (1) hereof shall have been given, and the term shall expire as aforesaid; or if Tenant shall make default in the payment of the rent reserved herein or any item of additional rent herein mentioned or any part of either or in making any other payment herein required; then and in any of such events Owner may without notice, re-enter the demised premises either by force or otherwise, and dispossess Tenant by summary proceedings or otherwise, and the legal representative of Tenant or other occupant of demised premises and remove their effects and hold the premises as if this lease had not been made, and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end."

FIRST COUNTERCLAIM

55. Landlord repeats and realleges Paragraphs "30" through "54" above, as if fully set forth herein.

56. Plaintiff's continued failure to commence and complete the installation of a sprinkler system within the Premises violates Articles 6 and 29 of the Lease.

57. As alleged above, and as plaintiff was informed in the Default Notice, plaintiff's failure to commence and complete the installation of the sprinkler system within the Premises detrimentally affects the life, health and safety of plaintiff's employees, customers, and other tenants and occupants of the Building.

58. In addition to the foregoing, plaintiff's failure to commence and complete the installation of a sprinkler system within the Premises as required under applicable laws, rules, codes and regulations, including but not limited to Local Law 26, subjects the Landlord to potential fines and violations, as well as potential damage claims.

59. Under the terms of Article 29 of the Lease, any obligation on the part of the owner or Landlord with respect to the installation of sprinkler systems pursuant to Local Law 26 was shifted to plaintiff.

60. Pursuant to Article 18 of the Lease, which sets forth the remedies available to Landlord, Landlord was specifically granted the remedy of injunction in the event of plaintiff's failure to comply with its leasehold obligations.

61. Based on the foregoing facts and circumstances as above alleged, and as specifically set forth in the Default Notice, plaintiff has breached its substantial obligation under the Lease to commence and complete the installation of a sprinkler system within the Premises.

62. As a result thereof, and in accordance with the provisions of Article 18 of the Lease entitling Landlord to the remedy of injunction, and in accordance with applicable law, Landlord is entitled to and is hereby seeking a decree of specific performance in Landlord's favor directing plaintiff forthwith to commence and complete the installation of a sprinkler system within the Premises and further directing plaintiff and its agents or contractors to continue diligently with the installation of such sprinkler system through completion, testing and actual operation.

SECOND COUNTERCLAIM

63. Landlord repeats and realleges Paragraphs "30" through "62" above, as if fully set forth herein.

64. Based on the facts and circumstances alleged above, and as specifically set forth in the Default Notice, plaintiff has breached a substantial obligation of its tenancy at the Premises under the

Lease by its failure to keep the Premises in “continuous operation” as required under Article 7 of the Second Amendment, to the extent permissible under the various Executive Orders in effect during the pandemic.

65. As a result thereof, and in accordance with the provisions of Article 18 of the Lease entitling Landlord to the remedy of injunction, and in accordance with applicable law, Landlord is entitled to and is hereby seeking (a) a money judgment against plaintiff for the Non Operation Per Diem Rent due pursuant to Article 7(g) of the Second Amendment, which amounts to \$706,739.10 for the period from March 17, 2020 through January 31, 2021 and continues to increase at the rate of \$2,201.68 for each day thereafter that the Premises is not in “continuous operation” as required under Article 7 of the Second Amendment, plus interest from March 17, 2020; and (b) a decree of specific performance in Landlord’s favor directing plaintiff forthwith to resume “continuous operation” of the Premises to the extent permissible under the various Executive Orders as may be in effect from the date of such direction and further directing plaintiff to keep the Premises in such “continuous operation” during the days and hours specified in Article 7 of the Lease.

THIRD COUNTERCLAIM

66. Landlord repeats and realleges Paragraphs “30” through “65” above, as if fully set forth herein.

67. Plaintiff has defaulted in the payment of rent and additional rent for the period from June 2019 up through and including the present date.

68. According to the Aging Detail annexed hereto and made a part hereof as Exhibit “A”, the amount of rent and additional rent owed by plaintiff under the terms of the Lease totals \$3,322,481.79 as of January 1, 2021.

69. It is anticipated that plaintiff will continue to default in the payment of rent and additional rent leading to an increase in the amount outstanding and due and owing to Landlord, and

Landlord hereby reserves the right to amend its pleadings herein to conform with the proof to include all subsequent arrears.

70. Plaintiff's aforesaid default in payment is deliberate and willful and has continued despite plaintiff's receipt of between \$2-5 million in PPP funds on or about April 10, 2020.

71. As a result of plaintiff's continuing default in payment, causing ever-increasing arrearages in rent and additional rent to accrue, Landlord is entitled to exercise its remedies under Article 17(2) of the Lease, which provides as follows:

“17(2) If the notice provided for in (1) hereof shall have been given, and the term shall expire as aforesaid; or if Tenant shall make default in the payment of the rent reserved herein or any item of additional rent herein mentioned or any part of either or in making any other payment herein required; then and in any of such events Owner may without notice, re-enter the demised premises either by force or otherwise, and dispossess Tenant by summary proceedings or otherwise, and the legal representative of Tenant or other occupant of demised premises and remove their effects and hold the premises as if this lease had not been made, and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end.”

72. While Landlord referred to plaintiff's default in payment in the Default Notice, Landlord did not seek to terminate the Lease on that basis pursuant to Article 17(1), but rather reserved all of Landlord's rights and remedies with respect thereto.

73. Among the rights and remedies available to Landlord, in addition to obtaining a money judgment for the rent and additional rent ultimately found to be due to Landlord, is a judgment of ejectment, awarded in accordance with Article 17(2) of the Lease quoted above.

74. By reason of the foregoing, and pursuant to Article 17(2) of the Lease, Landlord should be awarded a judgment of ejectment, removing plaintiff from possession of the Premises and restoring possession thereof to Landlord, together with a money judgment against plaintiff, in an amount to be determined by the Court but no less than \$3,322, 481.79 plus interest from June 1, 2019, representing all unpaid rent and additional rent due under the Lease since June 2019.

FOURTH COUNTERCLAIM

75. Landlord repeats and realleges Paragraphs “30” through “74” above, as if fully set forth herein.

76. Under the terms of the Lease, and in the event of litigation between the parties, Landlord is entitled to recover the attorneys’ fees, costs and disbursements incurred in such litigation, as well as any attorneys’ fees, costs and disbursements incurred as a result of any default by plaintiff in performing its obligations under the Lease.

77. As a result of the foregoing, Landlord is entitled to an award of attorneys’ fees, costs and disbursements herein, in an amount to be determined by the Court.

WHEREFORE, Landlord respectfully requests judgment herein as follows:

- (a) Dismissing the Complaint in its entirety, with costs and disbursements;
- (b) On the First Counterclaim, an order and judgment directing and compelling plaintiff to commence and complete the installation of a Code-compliant sprinkler system within the Premises in compliance with all laws, rules and regulations including but not limited to Local Law 26, said installation to begin forthwith and continue from day-to-day thereafter until the system is complete, tested and fully operational;
- (c) On the Second Counterclaim, (i) a money judgment in favor of Landlord and against plaintiff, in an amount to be determined by the Court but no less than \$706,739.10, plus interest from March 17, 2020, and (ii) an order and judgment directing and compelling plaintiff to keep the Premises in “continuous operation” in compliance with Article 7 of the Second Amendment of the Lease to the extent permissible under the various Executive Orders in effect from the date of such decree;
- (d) On the Third Counterclaim, a monetary and possessory judgment in favor of Landlord and against plaintiff, in an amount to be determined by the Court but no less than \$3,322,481.79, plus interest from June 1, 2019, and providing for the ejectment if plaintiff from the Premises and the restoration of Landlord to possession thereof;
- (e) On the Fourth Counterclaim, a money judgment in favor of Landlord and against plaintiff in an amount to be determined by the Court, representing the attorneys’ fees, costs and disbursements incurred herein by Landlord; and

(f) Awarding Landlord such other and further relief as the Court deems just and proper, including but not limited to the costs and disbursements of this action.

Respectfully submitted,

Dated: New York, New York
January 28, 2021

ROSENBERG & ESTIS, P.C.
Attorneys for Defendant

Norman Flitt

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LIMITED PARTNERSHIP VERIFICATION

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

CHARLES L. ROSENBERG, being duly sworn, deposes and says:

1. I am a Vice President of Paramount Leasehold Management LLC, the General Partner of Paramount Leasehold, L.P., the defendant herein.
2. I have read the foregoing Verified Answer and Counterclaims and know the content 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 them to be true. The source of my information and belief is the books and records of Paramount Leasehold Management LLC and Paramount Leasehold, L.P.
3. This Verification is made by me because Paramount Leasehold, L.P. is a limited partnership and I am an officer of the General Partner thereof.

[Handwritten signature] 1/28-2021

CHARLES L. ROSENBERG

Sworn to before me this
27 day of January, 2021

[Handwritten signature]

NOTARY PUBLIC

ANGELA M FERNANDEZ
Notary Public - State of New York
NO. 01FE6161092
Qualified in Bronx County
My Commission Expires Feb 20, 2023