

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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NY VETERINARY OPERATING P.C.,

Index No.: 701304/2021

Plaintiff,

VERIFIED ANSWER

-against-

(NYSCEF Case)

BRICKS & NAILS, LLC,

Defendant.

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Defendant, BRICKS & NAILS, LLC (“Landlord”), by its attorneys, as and for its Answer to the Verified Complaint herein (the “Complaint”), alleges as follows, upon information and belief:

1. Denies the allegations contained in paragraph 1 of the Complaint to the extent said paragraph alleges traversable allegations of fact, and respectfully refers all questions of law to this Court for determination.
2. Lacks knowledge or information to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint.
3. Denies the allegations contained in paragraph 3 of the Complaint except admits that no notice of Tenant’s election to exercise the Renewal Option was sent to or received by Landlord at least 180 days prior to expiration of the lease by its own terms.
4. Denies the allegations contained in paragraphs 4 and 5 of the Complaint to the extent said paragraphs allege traversable allegations of fact, and respectfully refers all questions of law to this Court for determination.

5. Lacks knowledge or information to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint except admits that North Shore Animal Hospital (“NSAH”) has been in operation for many years.

6. Denies the allegations contained in paragraphs 7, 8, 9, 10, and 11 of the Complaint to the extent said paragraphs allege traversable allegations of fact, and respectfully refers all questions of law to this Court for determination.

7. Lacks knowledge or information to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint.

8. Denies the allegations contained in paragraph 13 of the Complaint, except admits that landlord is a domestic limited liability company.

9. Denies the allegations contained in paragraph 14 of the Complaint except admits that there is a written agreement of lease entered into as of the 27th day of May 2010 (the “Lease”), between Landlord, as landlord, and North Shore Animal Hospital, Inc., as tenant, for the rental of premises described as 42-02 215th Street, Ground Floor, Bayside, New York 11361 and respectfully refers this Court to the original of the Lease for its covenants, terms, conditions, and limitations, and its content, meaning and import.

10. Denies the allegations contained in paragraph 15 of the Complaint except admits that there is a written assignment and assumption of lease entered into as of the 11th day of October 2016, (the “Assignment”), between North Shore Animal Hospital, Inc., as Assignor, and NY Veterinary Operating LLC, and respectfully refers this s Court to the original of the Assignment for its covenants, terms, conditions, and limitations, and its content, meaning and import.

11. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint.

12. Denies the allegations contained in paragraph 17 of the Complaint except admits that the Lease expired by its own terms on October 31, 2020.

13. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 18 through 22 of the Complaint except admits that that there was a VitalPet Bankruptcy Proceeding, denies that the Lease was part of the bankruptcy estate, and denies that the Debtor assumed and assigned the Lease to anyone.

14. Denies the allegations contained in paragraphs 23 through 28 of the Complaint, except admits that a writing dated September 20, 2020, purporting to be a (late) exercise of the option to renew was sent to Landlord.

15. Lacks knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 29 and 30 of the Complaint.

16. Denies the allegations contained in paragraphs 31 through 37 of the Complaint to the extent it contains traversable allegations of fact, respectfully refers this Court to the Governor's various executive orders for their content, meaning, and import and to the Lease for its covenants, terms, conditions, and limitations and their content, meaning and import.

17. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 38 through 41 of the Complaint.

18. Denies the allegations contained in paragraphs 42 and 43 of the Complaint except admits that the filing of a petition for relief under the United States Bankruptcy Code is listed as an event of default under the Lease and further admits that the writing dated September 20, 2020, was not in compliance with the terms of the Lease.

19. Denies the allegations contained in paragraphs 44 through 47 of the Complaint to the extent said paragraphs contain traversable allegations of fact and respectfully refers all questions of law to this Court for determination.

ANSWERING THE FIRST CAUSE OF ACTION

20. Repeats and realleges the allegations contained in paragraphs 1 through 19 above in response to the repeated and realleged allegations contained in paragraph 48 of the Complaint.

21. Denies the allegations contained in paragraphs 49 through 54 of the Complaint to the extent said paragraphs contain traversable allegations of fact and respectfully refers all questions of law to this Court for determination.

ANSWERING THE SECOND CAUSE OF ACTION

22. Repeats and realleges the allegations contained in paragraphs 1 through 21 above in response to the repeated and realleged allegations contained in paragraph 55 of the Complaint.

23. Denies the allegations contained in paragraphs 56 through 58 of the Complaint the extent said paragraphs contain traversable allegations of fact and respectfully refers all questions of law to this Court for determination.

24. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 59 through 62 of the Complaint.

25. Denies the allegations contained in paragraphs 62 through 71 of the Complaint the extent said paragraphs contain traversable allegations of fact and respectfully refers all questions of law to this Court for determination.

ANSWERING THE THIRD CAUSE OF ACTION

26. Repeats and realleges the allegations contained in paragraphs 1 through 25 above in response to the repeated and realleged allegations contained in paragraph 72 of the Complaint.

27. Denies the allegations contained in paragraphs 72 through 79 of the Complaint the extent said paragraphs contain traversable allegations of fact and respectfully refers all questions of law to this Court for determination.

ANSWERING THE FOURTH CAUSE OF ACTION

28. Repeats and realleges the allegations contained in paragraphs 1 through 27 above in response to the repeated and realleged allegations contained in paragraph 80 of the Complaint.

29. Denies the allegations contained in paragraphs 81 through of 85 the Complaint the extent said paragraphs contain traversable allegations of fact and respectfully refers all questions of law to this Court for determination.

ANSWERING THE FIFTH CAUSE OF ACTION

30. Repeats and realleges the allegations contained in paragraphs 1 through 29 above in response to the repeated and realleged allegations contained in paragraph 86 of the Complaint.

31. Denies the allegations contained in paragraphs 87 through of 89 the Complaint the extent said paragraphs contain traversable allegations of fact and respectfully refers all questions of law to this Court for determination.

ANSWERING THE SIXTH CAUSE OF ACTION

32. Repeats and realleges the allegations contained in paragraphs 1 through 31 above in response to the repeated and realleged allegations contained in paragraph 90 of the Complaint.

33. Denies the allegations contained in paragraphs 91 through of 95 the Complaint the extent said paragraphs contain traversable allegations of fact and respectfully refers all questions of law to this Court for determination.

ANSWERING THE SEVENTH CAUSE OF ACTION

34. Repeats and realleges the allegations contained in paragraphs 1 through 33 above in response to the repeated and realleged allegations contained in paragraph 96 of the Complaint.

35. Denies the allegations contained in paragraphs 97 through of 99 the Complaint the extent said paragraphs contain traversable allegations of fact and respectfully refers all questions of law to this Court for determination.

FIRST AFFIRMATIVE DEFENSE

36. Plaintiff lacks standing to commence or to maintain this proceeding as there was no assignment or proof of assumption and assignment pursuant to an order of any Court.

SECOND AFFIRMATIVE DEFENSE

37. The option to renew was not timely exercised in accordance with the terms of the Lease.

38. Plaintiff has not offered any excuse for the failure to exercise the option to renew timely.

39. Plaintiff's failure to exercise the option to renew timely is not excusable.

THIRD AFFIRMATIVE DEFENSE

40. Plaintiff lacked any authority to exercise the option to renew.

FOURTH AFFIRMATIVE DEFENSE

41. Landlord will be unduly prejudiced if this Court determines that the untimely, defective attempt to exercise the option to renew is excused and deemed to be valid.

FIFTH AFFIRMATIVE DEFENSE

42. Repeats and realleges the allegations contained in paragraphs 36 through 41 above as if set firth fully herein at length.

43. Veterinarian services are essential services.

44. Plaintiffs have not suffered any significant COVID related diminishment in business.

45. There was no harassment.

SIXTH AFFIRMATIVE DEFENSE

46. Plaintiff was fully familiar with the covenants, terms, conditions, and limitations of the Lease and never received any representation from the Landlord that the option to renew had been exercised or that any failure to exercise the option to renew properly or timely would be excused or waived.

SEVENTH AFFIRMATIVE DEFENSE

47. According to the attorneys for the Debtors in the VitalPet Bankruptcy Proceeding, the Lease was not part of the estate and was never assumed by any of the Debtors or assumed and assigned to Plaintiff or any third party.

48. There was no valid assignment of the Lease.

49. The entity or person attempting to exercise the option to renew lacked any standing or authority to exercise the option to renewal.

50. The Lease was not renewed.

WHEREFORE, Defendant demands judgment in its favor against Plaintiff dismissing the Verified Complaint and this action and requests that this Court grant Defendant such other and further relief as this Court deems just, proper and equitable under the circumstances.

Dated: Williston Park, New York
February 24, 2021

Yours, etc.

HORING WELIKSON ROSEN &
DIGRUGLIERS PC

By: 

Richard T. Walsh

Attorneys for Defendant

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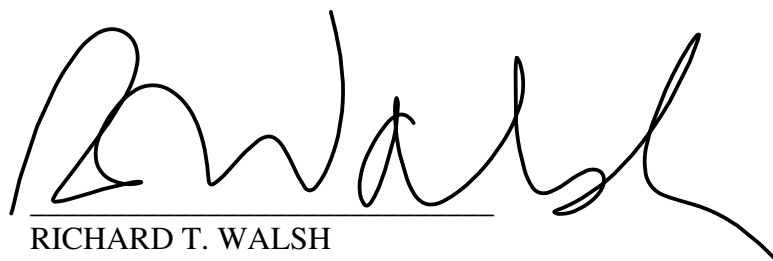
TO: NEWMAN FERRARA LLP
Attorneys for Plaintiff
1250 Broadway, 27th Floor
New York, New York 10001

VERIFICATION

RICHARD T. WALSH, an attorney duly admitted to practice law in this State and not a party to this proceeding, hereby affirms the truth of the following under penalty of perjury, pursuant to CPLR 2106:

I am a member of Horing Welikson Rosen & Digruilliers PC, the attorneys of record for Defendant. I have read the foregoing Answer and the same is true to my knowledge, except as to those matters alleged upon information and belief and, as to those matters, I believe it to be true. The sources of my information and the basis of my belief are my conversations with a member of Defendant, and the managing agent of 1347 ocean, LLC, and my review of our office file relating to this matter. I make this verification on Defendant's behalf because Defendant does not reside or have a place of business in Nassau County where our firm maintains its office for the practice of law.

Dated: Williston Park, New York
February 24, 2021



RICHARD T. WALSH