

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

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

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850 THIRD AVENUE OWNER, LLC,

Plaintiff,

- v -

DISCOVERY COMMUNICATIONS, LLC,

Defendant.

INDEX NO.	654148/2020
MOTION DATE	
MOTION SEQ. NO.	001

DECISION + ORDER ON MOTION

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HON. BARRY R. OSTRAGER

The motion by plaintiff 850 Third Avenue Owner, LLC (“Owner”) for summary judgment, declaring defendant Discovery Communications, LLC to be a holdover tenant and/or liable for two months unpaid rent for the months of June and July 2020, is denied, as is its motion to dismiss defendant’s counterclaims seeking reimbursement of the security deposit and declaratory relief.

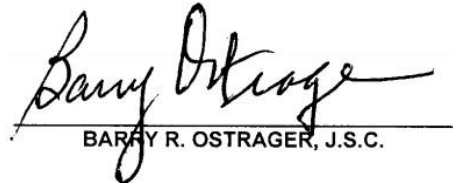
If ever a case cried out to be mediated and not litigated, this is such a case. The defendant’s lease at 850 Third Avenue expired on May 31, 2020 at the height of the COVID-19 pandemic. Consequently, the defendant, Discovery Communications, LLC (“the Tenant”), claims it could not relocate its very substantial office furnishings and equipment until the end of July, 2021. The plaintiff Owner claims that the defendant Tenant simply opportunistically delayed moving because the premises to which the Tenant planned to move were not ready for the Tenant’s occupancy.

There are substantial questions of fact, including, but not limited to: (1) whether the COVID-19 pandemic triggered the force majeure provision of the lease, *see JN Contemporary*

Art LLC v. Phillips Auctioneers LLC, 2020 WL 7405262 (S.D.N.Y. Dec. 16, 2020); (2) whether movers were precluded by New York State Executive Orders from operating from March 20, 2020 to May 18, 2020 and beyond; and (3) the extent to which the defendant Tenant could and did utilize the demised premises during the relevant time period. Consequently, the motion is, in all respects, denied and the May 14, 2021 oral argument on the motion is cancelled.

A Preliminary Conference is scheduled for April 22, 2021 at 10:30 a.m. The parties will provide dial in access for that conference by efiled correspondence. Alternatively, counsel shall download the Preliminary Conference Order form available on the Court’s web page <http://ww2.nycourts.gov/courts/comdiv/ny/newyork.shtml>. Counsel are directed to meet and confer and complete and efile the form by April 14 with a Note of Issue deadline no later than 22 months after the date of the Order and interim deadlines agreed to by the parties. A compliance conference date should be selected by counsel for a Tuesday in July. If the proposed Preliminary Conference Order is acceptable to the Court, no appearance will be necessary on April 22.

Dated: March 22, 2021


BARRY R. OSTRAGER, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE