

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

-----	X
HUGO BOSS RETAIL, LLC,	:
	:
Plaintiff,	:
	:
-against-	:
	:
A/R RETAIL LLC,	:
	:
Defendant.	:
-----	X

Index No. 655166/20

**ANSWER WITH  
COUNTERCLAIM**

Defendant, by its attorneys, Rosenberg & Estis, P.C., alleges the following as its Answer with Counterclaim to plaintiff’s Amended Complaint, dated November 25, 2020 (the “Complaint”):

1. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 1, 3, 5, 6, 12, 13, 14, 18, 41, 43, 48, 49, 51, 53, 72, 73, 74, 75, 89, 95, 98, 112, 121 and 122 of the Complaint.

2. Denies the allegations set forth in paragraph 2 of the Complaint, except admits that (i) plaintiff was and is operating a “HUGO BOSS” retail store (the “Premises”) in the shopping center on the west side of Manhattan known as The Shops at Columbus Circle pursuant to the Indenture of Lease, made December 15, 2012 (the “Lease”), between plaintiff, as tenant, and defendant, as landlord, and refers thereto for its terms and content, and (ii) the Premises’ monthly fixed rent is \$441,666.67, the monthly “Tenant’s Tax Share” is \$121,303.46, the monthly “Tenant’s Share of Expenses” (or CAM) is \$120,589.00, the monthly marketing contribution is \$7,851.69 and the monthly sprinkler charges are \$615.25.

3. Denies the allegations set forth in paragraphs 4, 7, 8, 9, 10, 11, 15, 16, 17, 19, 20, 21, 25, 26, 27, 30, 31, 32, 33, 35, 36, 42, 57, 58, 59, 60, 61, 62, 63, 64, 67, 70, 81, 82, 87,

88, 94, 99, 100, 101, 102, 113, 114, 115, 116, 117, 123, 124, 125, 126, 127 and 129 of the Complaint.

4. Denies the allegations set forth in paragraphs 22, 23, 34, 66, 68, 69, 71, 76, 80, 83, 85, 90, 92, 96, 103, 104, 106, 107, 108, 109, 111, 118, 119 and 128 refer all issues of law to the Court.

5. Denies the allegations set forth in paragraph 29 of the Complaint and refers to the terms of the Lease for its terms and content, except admits that for each of the months for the period of March 2020 through and including October 2020, the monthly fixed rent was \$441,666.67, the monthly “Tenant’s Tax Share” was \$121,303.46, the monthly “Tenant’s Share of Expenses” (or CAM) was \$120,589.00, the monthly marketing contribution was \$7,851.69 and the monthly sprinkler charges were \$615.25.

6. Denies the allegations set forth in paragraphs 24, 28, 37, 38, 39, 40, 44, 45, 46, 47, 50, 52, 54, 55, 56, 78, 79, 86 and 93 of the Complaint, and refers to the Lease and/or other document(s) referred to therein for its/their respective terms and content.

7. Repeats and realleges the responses to the allegations incorporated into paragraphs 65, 77, 84, 91, 97, 105, 110 and 120 of the Complaint.

**FIRST AFFIRMATIVE DEFENSE**

8. The Complaint fails to state a cause of action upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

9. Plaintiff has no right to rescind the Lease by serving any notice or otherwise.

**THIRD AFFIRMATIVE DEFENSE**

10. Plaintiff has not served any notice upon defendant rescinding the Lease.

**FOURTH AFFIRMATIVE DEFENSE**

11. The terms of the Lease have been ratified and/or affirmed by plaintiff.

**FIFTH AFFIRMATIVE DEFENSE**

12. Plaintiff's claims are barred, in whole, or in part, by documentary evidence, including, without limitation, the Lease.

**SIXTH AFFIRMATIVE DEFENSE**

13. Plaintiff's claims are barred, in whole, or in part, by the applicable statute of limitations.

**SEVENTH AFFIRMATIVE DEFENSE**

14. Plaintiff has breached the Lease.

**EIGHTH AFFIRMATIVE DEFENSE**

15. The Lease states that plaintiff's obligation to pay rent and other monies due under the Lease is not excused by, *inter alia*, "order or regulations of or by any governmental authority."

**NINTH AFFIRMATIVE DEFENSE**

16. Plaintiff has not provided defendant with any notice of any "Force Majeure" as such term is defined in the Lease.

**FIRST COUNTERCLAIM**

17. Upon information and belief, plaintiff is Delaware corporation authorized to do business in the State of New York, and does business at 10 Columbus Circle, New York, New York.

18. Defendant is a Delaware limited liability company authorized to do business in the State of New York, and does business at 10 Columbus Circle, New York, New York.

19. Pursuant to Lease § 26.14(c), plaintiff is liable to defendant for the attorneys' fees, costs and expenses that defendant has incurred and will incur in connection with this action.

20. Defendant has incurred and will continue to incur attorneys' fees, costs and expenses in connection with this action.

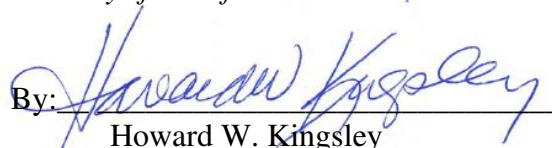
21. By reason of the foregoing, defendant is entitled to a money judgment against plaintiff in an amount to be determined by the Court, plus interest.

**WHEREFORE**, defendant requests that a judgment be entered:

- A. Dismissing the Complaint in its entirety;
- B. On the first counterclaim, a money judgment in favor of defendant in an amount to be determined, plus pre- and post-judgment interest; and
- C. Granting defendant such other and further relief as this Court deems just and proper.

Date: New York, New York  
December 14, 2020

**ROSENBERG & ESTIS, P.C.**  
*Attorneys for Defendant*

By:   
Howard W. Kingsley  
733 Third Avenue  
New York, New York 10017  
(212) 867-6000