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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

HART 353 NORTH CLARK LLC, Plaintiff, v. JENNER & BLOCK LLP, Defendant.	No. 2020 L 005476 Cal. S / Hon. Jerry A. Esrig

PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S ANSWER AND AFFIDAVIT

Plaintiff, HART 353 North Clark LLC ("Plaintiff"), through its attorneys, Taft Stettinius & Hollister, LLP, moves this Honorable Court pursuant to Section 2-615(a) of the Illinois Code of Civil Procedure (the "Code"), 735 ILCS 5/1-101, *et seq.*, to strike Defendant's "Preliminary Statement" and the Declaration of Richard Stein (the "Declaration") included in Defendant's Answer, Affirmative and Other Defenses, and Counterclaims, a copy of which is appended as **Exhibit 1**. In support of its Motion, Plaintiff states:

INTRODUCTION

Plaintiff owns the building located at 353 North Clark Street in Chicago in which Defendant law firm rents approximately 400,000 square feet of office space (the "Premises") pursuant to the terms of a commercial lease between the parties (the "Lease"). By letter dated April 3, 2020, Defendant declared to Plaintiff that, as of March 26, 2020, it would no longer pay any of its monthly $1,863,207.87 rental obligation due to what Defendant characterized as the "effect on [Defendant] arising from the current developments with respect to COVID-19." Defendant claimed that it was "in fact not conducting its business from the Premises." Defendant further claimed that the Premises were "untenantable" under the Lease because, during a March 20, 2020 press briefing, Illinois Governor J.B. Pritzker announced that "[i]f you can work from home and

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aren't already doing so, now is the time when you must." (*See* Defendant's April 3, 2020 letter to Plaintiff, appended as **Exhibit 2**).[1]

On April 10, 2020, in response to Defendant's declaration that it would no longer pay rent, Plaintiff's counsel reminded Defendant that, despite Governor Pritzker's comments during his press briefing, his March 20, 2020 Executive Order ("COVID-19 Executive Order No. 8") specifically deemed legal services an Essential Business that were *expressly authorized* and, in fact, *encouraged to remain open*. Moreover, at that time and through today, Defendant was and is freely accessing and using the Premises at its pleasure and in its sole discretion. There is no government directive, law, or other event prohibiting or otherwise restricting Defendant from using or occupying any portion of the Premises. Section 2 of COVID-19 Executive Order No. 8 expressly provides: "No provision in this Executive Order shall be construed as relieving any individual of the obligation to pay rent."[2]

Despite Plaintiff's efforts through direct discussions between its representatives and Defendant's leadership team, the parties could not reach a resolution regarding the dispute, ultimately prompting Plaintiff to formally declare a default under the Lease and file suit. (A copy of Plaintiff's Complaint is appended hereto as **Exhibit 3**.)

PROCEDURAL POSTURE

Defendant's Answer opens with a five-page narrative that is styled as a "Preliminary Statement." Defendant also includes the Declaration, which is from an individual that Defendant

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[1] Capitalized terms have the meanings as those defined in the documents to which they refer, *i.e.*, the Lease or the COVID-19 Executive Order No. 8.

[2] COVID-19 Executive Order No. 8 expired on April 30, 2020. On June 22, 2020, Governor Pritzker released plans to safely continue reopening even non-essential businesses under Phase 4 of the Restore Illinois plan. (*See* https://www2.illinois.gov/dceo/Media/PressReleases/Pages/PR06222020.aspx). Despite these developments, Defendant still has not paid, and has not committed to pay, any of its rent under the Lease.

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presumably intends to call as a witness in this case who provides a lengthy recollection of events dating back to the 2005 Lease negotiations.

Through this Motion, Plaintiff moves to strike the Preliminary Statement and Declaration from Defendant's pleading because they are improper, immaterial and squarely at odds with the requirements for proper pleading practice set forth in Section 2-610 of the Code.[3]

ARGUMENT

Section 5/2-610 provides as follows:

> **§ 2-610. Pleadings to be specific.** (a) Every answer and subsequent pleading shall contain an explicit admission or denial of each allegation of the pleading to which it relates.
> (b) Every allegation, except allegations of damages, not explicitly denied is admitted, unless the party states in his or her pleading that he or she has no knowledge thereof sufficient to form a belief, and attaches an affidavit of the truth of the statement of want of knowledge, or unless the party has had no opportunity to deny.
> (c) Denials must not be evasive, but must fairly answer the substance of the allegation denied.
> (d) If a party wishes to raise an issue as to the amount of damages only, he or she may do so by stating in his or her pleading that he or she desires to contest only the amount of the damages.

735 ILCS 5/2-610

Section 2-610 of the Code governs the form of answers to complaints. 735 ILCS 5/2-610. That section does not permit defendants to raise affirmative matters in answers through preliminary statements or declarations of purported witnesses. This is not a novel concept. The oft-enunciated purpose of requiring specific pleadings is to determine and clarify issues for trial. *Am. Nat. Bank*

[3] Under Supreme Court Rule 182, a party may properly attack a pleading other than a complaint by motion filed within 21 days after the last day allowed for the filing of the pleading attacked. Ill. S. Ct. R. 182.

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& Tr. Co. of Chicago v. City of Chicago, 4 Ill. App. 3d 127, 130 (1st Dist. 1971), *citing Neff v. Davenport Packing Co*., 131 Ill. App. 2d 791 (1st Dist. 1971).

The "Preliminary Statement" consists of a legal argument detailing, among other things, Defendant's version of settlement discussions with Plaintiff, prior details of negotiations concerning the Lease, and the declarant's opinion on the legal meaning and application of the "Untenantability" provision on which Defendant relies in not paying rent.[4]

For a number of reasons, this Court should strike Defendant's Preliminary Statement and Declaration. First, details regarding settlement discussions are never admissible as evidence and never should have been set forth in the Answer. Ill. R. Evid 408; *Cundiff v. Patel*, 2012 IL App. (4th) 120031 (2012); *County of Cook v. Illinois Labor Relations Bd*., 2012 IL App (1st) 111514, ¶ 32.

Further, Defendant, on the one hand, claims that the "Untenantability" provision is "plain and enforceable as written" and "clear and unambiguous on [its] face[.]" (*See* Answer, p.4; Counterclaim, ¶ 56). Yet, on the other hand, Defendant ignores well-settled Illinois law prohibiting the use of parol evidence (and even the express terms of the Lease itself) because Defendant offers the Declaration for interpretive guidance and clarification on the meaning of a provision it admittedly characterizes as "clear and unambiguous." (*See* Id., *citing* Declaration). Setting aside the myriad of reliability issues raised by the Declaration, the Declaration contains entirely extrinsic

[4] Defendant suggests that Plaintiff had some type of improper motive in not attaching the entire Lease to its Complaint. This suggestion is wholly misplaced. To the contrary, Plaintiff did not attach the Lease to the Complaint out of respect for Defendant's right to confidentiality—as set forth in Section Y of the Lease. In addition, Plaintiff followed the Code to the letter because it cited with specificity those provisions from the written instrument on which its claims are based. 735 ILCS 5/2-606. Defendant did not argue that Plaintiff's decision to safeguard proprietary information makes the Complaint deficient. As such, this Court also should strike this spurious allegation from the Answer.

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matter that should not be included in the Answer under Section 2-610.[5]

In any event, the integration clause found in Section 25B of the Lease precludes the use of the Declaration to interpret the "Untenantability" provision. As the Illinois Supreme Court has recognized, "where parties formally include an integration clause in their contract, they are explicitly manifesting their intention to protect themselves against misinterpretations which might arise from extrinsic evidence." *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457, 464 (1999).

While it is clear that the Preliminary Statement and Declaration should be stricken from Defendant's pleading, if they are not, the Court will then be needlessly burdened by review of Plaintiff's reply to what effectively constitutes a Defendant issued press release. In that event, the issues in this case will become muddled by extrinsic and irrelevant matter, which is precisely what Section 2-610 of the Code was designed to avoid. *Am. Nat. Bank & Tr. Co. of Chicago*, 4 Ill. App. 3d at 130. Rather, the Code requires the Answer to contain only an explicit admission, denial, or statement of want of knowledge of the specific allegations of the Complaint. 735 ILCS 5/2-610. Thus, this Court should strike Defendant's Preliminary Statement and Declaration because they

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[5] Assuming the Court finds that the Lease is unambiguous, then the Court would not consider the Declaration or any extrinsic evidence. Illinois courts repeatedly have held that parol evidence may not be considered in interpreting unambiguous terms in contracts. *See, e.g., W. Bend Mut. Ins. Co. v. Athens Const. Co.*, 2015 IL App (1st) 140006, ¶ 28 (declining to consider affidavit or testimony of individual who negotiated and drafted contract who opined about meaning of unambiguous contract); *Cabrera v. ESI Consultants, Ltd.*, 2015 IL App (1st) 140933, ¶ 131 (affirming decision to strike affidavit of expert witness who purported to offer opinion about contract where contract was unambiguous), *overruled on other grounds by Andrews v. Metro. Water Reclamation Dist. of Greater Chicago*, 2019 IL 124283, ¶ 131. Likewise, because the interpretation of the contract is a question of law, the declarant's opinion about how the Lease should be interpreted is irrelevant. *See William J. Templeman Co. v. Liberty Mut. Ins. Co.*, 316 Ill. App. 3d 379, 390 (1st Dist. 2000) ("[A]s the construction and interpretation of [a contract] is a question of law, we fail to see the relevance of plaintiffs' expert witness."); *Baker v. Indian Prairie Cmty. Unit, Sch. Dist. 204*, No. 96 C 3927, 1999 WL 988799, at *6 (N.D. Ill. Oct. 27, 1999) (applying Illinois law, striking portion of expert witness's affidavit, and explaining that "[a]n expert may not ordinarily interpret the meaning of a contract").

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clearly violate the Code's pleading requirements.

WHEREFORE, Plaintiff, HART 353 North Clark LLC, respectfully requests that this Honorable Court strike the Preliminary Statement and the Declaration from Defendant Jenner & Block LLP's Answer, Affirmative and Other Defenses, and Counterclaims, and grant such other and further relief to Plaintiff as this Court deems just and reasonable.

HART 353 North Clark LLC

By: /s/ John M. Riccione
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