

UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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535-545 FEE LLC,

20 Civ.

Plaintiffs,

-against-

COMPLAINT

NBA MEDIA VENTURES, LLC,

WITHOUT JURY DEMAND

Defendant.

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Plaintiff, 535-545 FEE LLC (“Plaintiff”), by and through its attorneys, Klein Law Group, PLLC, as and for its Complaint against NBA MEDIA VENTURES, LLC (“Defendant”), alleges as follows:

NATURE OF THE CLAIMS

1. In this action, Plaintiff seeks monetary damages against Defendant as a result of Defendant’s failure to comply with the terms and conditions of the “Lease” (as such term is hereinafter defined), including, but not limited to, Defendant’s failure to pay to Plaintiff the fixed monthly rent and additional rent due and owing under the “Lease.” Plaintiff also seek monetary damages against Defendant in the form of attorneys’ fees and expenses incurred in connection with the prosecution of this action.

2. Plaintiff is the owner and landlord of the building and real property located at and known as 545 Fifth Avenue, New York, New York 10017 (the "Building").

3. On or about November 10, 2014, Plaintiff entered into a written commercial lease, dated as of November 10, 2014 (the “Lease”).

4. Pursuant to the terms of the Lease, Defendant was demised portions of the ground floor, lower level, and entire second floor, in the Building (collectively the “Premises”).

5. Defendant breached the terms and conditions of the Lease by failing to pay the fixed rent and additional rent due under the Lease in the amount of One Million Two Hundred and Fifty-Seven Thousand Four Hundred and Twelve Dollars and Ninety-Six Cents (\$1,257,412.96).

PARTIES

6. Plaintiff is a citizen of the State of New York. Plaintiff is a Delaware limited liability company, organized and existing under the laws of the State of New York, and authorized to conduct business in the State of New York, maintaining its principal place of business and office at c/o The Moinian Group, 3 Columbus Circle, Suite 2300, New York, New York 10019.

7. Upon information and belief, Defendant is a citizen of the States of Delaware and New Jersey. Defendant is a Delaware limited liability company, organized and existing under the laws of the State of Delaware, maintaining its principal place of business and office at 100 Plaza Drive, Secaucus, New Jersey 07094.

JURISDICTION AND VENUE

8. This Court has jurisdiction over Defendant pursuant to 28 U.S.C. §1332(a)(1) because the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of different states, as none of the Plaintiff's members are citizens of the States of Delaware or New Jersey.

9. Venue is appropriate in this Court under 28 U.S.C. §1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this District.

THE RELEVANT TERMS AND CONDITIONS OF THE LEASE

10. Pursuant to the terms of the Lease, in consideration for its possession and use of the Premises, Defendant covenanted and agreed to pay certain rent and additional rent to

Plaintiff, and its successors and assigns, on the first day of each month, in the amounts specified in the Lease

11. Pursuant to the terms of the Lease, Defendant had an absolute and unconditional obligation to pay to Plaintiff the rent due and owing thereunder, without any abatement, deduction, counterclaim, offset or setoff for any reason whatsoever, except as specifically set forth in the Lease.

12. Article 2, Section 2.4 of the Lease provides: “Tenant shall pay the Fixed Rent and Additional Rent when due[.]”

13. Article 2, Section 2.2 of the Lease provides: “Commencing upon the Commencement Date, Tenant shall pay to Landlord, in lawful money of the United States of America, without notice or demand (except as may be expressly set forth herein), by good and sufficient check drawn to the Landlord’s order on a bank or trust company with an office in the Borough of Manhattan, the City of New York, at the office of Landlord or such other space as Landlord may designate from time to time . . . Fixed Rent . . . [and] . . . Additional Rent.”

14. Article 2, Section 2.2 (A) of the Lease provides: “Tenant shall pay to Landlord . . . the Fixed Rent, at the annual fixed rental rate set forth in the Reference Page, which shall be payable in equal monthly installments of Fixed Rent in advance on the first day of each and every calendar month after the Rent Commencement Date during the Term[.]”

15. Pursuant to Paragraph 5(a) of the Reference Page of the Lease, the annual Fixed Rent (for the relevant period at issue in this dispute/action) was \$7,500,000.00 per year, or \$625,000.00 per month.

16. Article 2, Section 2.2 (B) of the Lease provides: “Tenant shall pay to Landlord . . . “additional rent (“Additional Rent”) consisting of all other sums of money (including, without limitation, Escalation Rent) as shall become due from and be payable by Tenant hereunder (for

an Event of Default in the payment of which Landlord shall have the same remedies as for an Event of Default in the payment of Fixed Rent).”

DEFENDANT’S FAILURE, IN BREACH OF THE LEASE, TO PAY THE RENT

17. In breach of Defendant’s obligations under Article 2, Section 2.2 of the Lease, and Paragraph 5(a) of the Reference Page of the Lease, Defendant failed to pay Plaintiff the fixed monthly rent due and owing under the Lease for the months of April and May, in the amount of Six Hundred and Twenty Five Thousand Dollars and No Cents (\$625,00.00) per month, in addition to metered water charges, which constitute Additional Rent, in the amount of Three Hundred and Forty-Nine Dollars and Ninety-One Cents (\$349.91), metered steam charges, which constitute Additional Rent, in the amount of Three Thousand Eight Hundred and Thirty-Nine Dollars and Sixty-Four Cents (\$3,839.64), and late interest charges, which also constitute Additional Rent, in the amount of Three Thousand Two Hundred and Twenty-Three Dollars and Forty-One Cents (\$3,223.41), totaling One Million Two Hundred and Fifty-Seven Thousand Four Hundred and Twelve Dollars and Ninety-Six Cents (\$1,257,412.96).

18. By reason of the foregoing, there is presently due to Plaintiff from Defendant the sum of at least One Million Two Hundred and Fifty-Seven Thousand Four Hundred and Twelve Dollars and Ninety-Six Cents (\$1,257,412.96), and other items of additional rent which may become due and payable under the Lease.

FIRST CLAIM FOR RELIEF
(Breach of Contract/Money Damages)

19. Plaintiff repeats, realleges and reiterates each and every allegation contained in paragraphs “1” through “18” above, with the same force and effect as if fully set forth below.

20. A valid contract, *i.e.*, the Lease, existed between Plaintiff and Defendant.

21. Plaintiff complied with its obligations under the terms of the Lease, and has performed any and all conditions on its part to be performed, as required by the Lease.

22. Defendant failed to comply with the terms and conditions of the Lease.

23. Specifically, in breach of Defendant's obligations under Article 2, Section 2.2 of the Lease and Paragraph 5(a) of the Reference Page of the Lease, Defendant has defaulted under the Lease, by failing to pay to Plaintiff rent, in the amount of One Million Two Hundred and Fifty-Seven Thousand Four Hundred and Twelve Dollars and Ninety-Six Cents (\$1,257,412.96), which amount comprises Fixed Rent in the amount of Six Hundred and Twenty-Five Thousand Dollars (\$625,000.00) per month, for the months of April and May 2020, plus metered water charges, in the amount of Three Hundred and Forty-Nine Dollars and Ninety-One Cents (\$349.91), metered steam charges, in the amount of Three Thousand Eight Hundred and Thirty-Nine Dollars and Sixty-Four Cents (\$3,839.64), and late interest charges, in the amount of Three Thousand Two Hundred and Twenty-Three Dollars and Forty-One Cents (\$3,223.41).

24. By reason of the foregoing, Defendant is liable to Plaintiff for money damages, in the sum of at least One Million Two Hundred and Fifty-Seven Thousand Four Hundred and Twelve Dollars and Ninety-Six Cents (\$1,257,412.96), through the date hereof, together with interest thereon from the date on which said payment obligation accrued, no part of which has been paid.

25. In addition, Plaintiff reserves the right to obtain a money judgment for damages for all rent due and owing under the Lease through and including the date of judgment.

SECOND CLAIM FOR RELIEF
(Attorneys' Fees)

26. Plaintiff repeats, realleges and reiterates each and every allegation contained in paragraphs "1" through "25" above, with the same force and effect as if fully set forth below.

27. Pursuant to Article 20, Section 20.1 (A) of the Lease, Defendant is liable to Plaintiff for all attorneys' fees and expenses incurred in connection with the prosecution of this action.

28. Section 20.1 (A) of the Lease provides, in relevant part:

Subject to the notice requirements set forth below, if (i) Tenant shall default under this Lease after notice and the expiration of the applicable cure period hereunder . . . Landlord may . . . make any expenditure or incur any obligation for the payment of money in connection with any obligation owed to Landlord, including, but not limited to, attorneys' fees and disbursements in instituting, prosecuting or defending any action or proceeding ("Landlord's Self-Help Right"). In either case the cost thereof, shall be deemed to be Additional Rent hereunder and shall be paid by Tenant to Landlord within thirty (30) days after rendition of any bill or statement to Tenant therefor, which shall be accompanied by reasonable supporting documentation therefor.

29. Plaintiff has commenced this action against Defendant in order to enforce its rights and remedies under the Lease, including, but not limited to, the right to receive and recover all rent and additional rent due and owing thereunder.

30. Plaintiff has incurred, and will continue to incur, expenses in the form of, *inter alia*, attorneys' fees and expenses, all as a result of the Defendant's default of its payment obligations pursuant to the Lease, the precise sum of which will be determined at trial or earlier conclusion of this action.

31. Defendant is liable for Plaintiff's expenses and legal fees under the terms of the Lease.

32. Accordingly, Plaintiff is entitled to judgment against Defendant for its attorneys' fees and expenses incurred in prosecuting this action, the precise sum of which will be determined at trial or earlier conclusion of this action, but in an amount no less than Twenty Thousand (\$20,000) Dollars.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court grant judgment against Defendant as follows:

- (1) On The First Claim for Relief, granting Plaintiff a money judgment against Defendant, in the sum of One Million Two Hundred and Fifty-Seven Thousand Four Hundred and Twelve Dollars and Ninety-Six Cents (\$1,257,412.96);
- (2) On The Second Claim for Relief, granting Plaintiff a money judgment for attorneys' fees against Defendant, in the sum of at least Twenty Thousand (\$20,000.00) Dollars, with interest; and
- (3) That the Court grant Plaintiff such other, further, and different relief to which it may be entitled.

Dated: New York, New York
May 26, 2020

KLEIN LAW GROUP CRE, PLLC

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