

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

VALENTINO U.S.A., INC.,

Plaintiff,

-against-

693 FIFTH OWNER LLC,

Defendant.

Date Filed: _____

Index No. _____
(NYSCEF Case)

SUMMONS

Plaintiff designates New York County as the place of trial. The basis of venue is the situs of the real property at issue in this action.

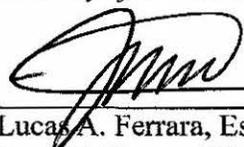
TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear and answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
June 21, 2020

Yours, etc.,

NEWMAN FERRARA LLP
Attorneys for Plaintiff

By: 

Lucas A. Ferrara, Esq.
Jarred I. Kassenoff, Esq.
1250 Broadway, 27th Floor
New York, New York 10001
Tel: 212-619-5400

Defendant's Addresses:

693 Fifth Owner LLC
c/o Savitt Partners LLC
530 Seventh Avenue, Suite 401
New York, New York 10018
Attn: Robert Conover

Corporation Service Company
80 State Street
Albany, New York 12207

Cyruli Shanks Hart & Zizmor LLP
420 Lexington Avenue, Suite 2320
New York, New York 10170
Attn: Robert J. Cyruli, Esq.

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

VALENTINO U.S.A., INC.,

Plaintiff,

-against-

693 FIFTH OWNER LLC,

Defendant.

Index No. _____

COMPLAINT

Plaintiff VALENTINO U.S.A., INC. (“Plaintiff” or “Valentino”), by its attorneys NEWMAN FERRARA LLP, as and for its complaint (“Complaint”) against defendant, 693 FIFTH OWNER LLC (“Defendant”), respectfully alleges as follows:

SUMMARY OF THE ACTION

Plaintiff is the American branch of “Valentino” – an internationally renowned luxury fashion company with retail boutiques located around the world. Like many retail businesses, the global COVID-19 pandemic, together with resulting governmental orders and mandatory closures, has massively disrupted Valentino’s sales. In fact, for the first time in recent history, all “non-essential” businesses in New York State have been completely shut down by executive order – frustrating the very purpose of Plaintiff’s lease for its Fifth Avenue subject premises. Accordingly, Plaintiff has been compelled to seek, *inter alia*, a declaratory judgment that, as a result of the COVID-19 pandemic and the resulting governmental orders and restrictions resulting in the mandatory closure of Plaintiff’s retail business, Plaintiff’s lease with Defendant has been terminated and/or voided.

THE PARTIES

1. At all relevant times mentioned herein, Plaintiff is a Delaware corporation, duly authorized to conduct business within the State of New York, having an address at 11 West 42nd

Street, New York, New York 10036.

2. Upon information and belief, at all relevant times mentioned herein, Defendant 693 Fifth Owner LLC, was and is a Delaware limited liability company, duly authorized to conduct business within the State of New York, having an address at c/o Savitt Partners LLC, 530 Seventh Avenue, New York, New York 10018.

THE LEASE

3. By a written agreement, dated May 3, 2013 (the “Lease”), between Valentino, as tenant, and Defendant’s predecessor-in-interest, Thor 693 LLC, as landlord, Valentino leased the lower level, ground floor, second floor and third floor (the “Premises”) of the building located at 693 Fifth Avenue, New York, New York 10022 (the “Building”), for a term of approximately fifteen (15) years, beginning on August 1, 2013, and ending on the later of July 31, 2029 or fifteen (15) years after the Rent Commencement Date, as defined in the Lease.

4. Prior to the events delineated herein, Plaintiff faithfully and diligently performed all of its obligations under the Lease, including the payment of rent, through the present date.

5. Plaintiff’s use of the Subject Premises is limited, in relevant part, as set forth in Section 5.01 of the Lease:

Tenant shall use and occupy the entire Premises solely and exclusively for the display and retail sale of luxury women’s wear, menswear, accessories, shoes, fragrances and handbags and/or such other luxury items as may, from time to time, be sold in a majority of stores operated by Tenant, and an ancillary use as a cafe, which may include the lawful sale of alcoholic beverages for on premises consumption (the “Permitted Use”), all such uses by Tenant to be consistent with the luxury, prestigious, high-quality reputation of the immediate Fifth Avenue neighborhood (i.e. Fifth Avenue between 59th Street and 50th Street) in general, and for no other use or purposes.

6. The Lease clearly contemplated that Plaintiff would be able to operate as a boutique

retail store for customers to view and sample Valentino's merchandise in a luxurious setting, in addition to experiencing high-quality service -- and amenities.

7. In that regard, consistent with the prestige and reputation of the immediate Fifth Avenue neighborhood, Valentino provided its clientele with a world-renowned array of products including clothing, shoes and bags, and also offered expert fittings and tailoring at the Premises.

8. Notably, pursuant to the Lease, Valentino is purportedly required to open for business and "continuously operate" under the "Valentino" brand.

9. In that regard, Section 5.4 of the Lease provides, in pertinent part, as follows:

Section 5.4. Continuous Operations. Tenant covenants and agrees that throughout the Term of this Lease it shall occupy and use the entire Premises for the Permitted Use and conduct Tenant's business therein in a reputable manner. Tenant shall be required to open a luxury "Valentino" store for business, fully fixtured and staffed for at least one (1) day, as soon as is reasonably practical after the completion of Tenant's Work.

10. The parties clearly understood that the Building's prime retail location on Fifth Avenue, was a heavily trafficked area, and that it also served a focal point of high-end New York City fashion buyers, and that those factors were the justification for the correspondingly substantial rent paid by Valentino.

11. In the current social and economic climate, filled with COVID-19-related restrictions, social-distancing measures, a lack of consumer confidence, and a prevailing fear of patronizing, in person, "non-essential" luxury retail boutiques, Valentino's business at the Premises has been substantially hindered, rendered impractical, unfeasible and no longer workable.

THE COVID-19 PANDEMIC

12. The COVID-19 pandemic has had a devastating impact on New York City,

tragically resulting in over 24,600 fatalities and 385,000 positive cases, statewide, to date.¹

13. To combat this ongoing public health crisis, unprecedented governmental restrictions have prohibited and/or severely restricted local businesses, schools, and places where people can eat, shop and assemble.

14. By the end of January 2020, the federal government had declared a public health emergency for the entire United States.

15. As New York City became the national epicenter of the COVID-19 pandemic, the Honorable Andrew Cuomo, Governor of the State of New York, issued a series of increasingly restrictive executive orders (“EOs”) limiting and/or prohibiting “non-essential” business operations, such as Valentino’s retail business at the Premises.

16. On March 7, 2020, Governor Cuomo issued EO 202, declaring a statewide disaster emergency.

17. By March 20, 2020, Governor Cuomo’s subsequent EO 202.8 required all non-essential employees to remain at home, to seek to “flatten the curve,” and stem the health crisis. Accordingly, Valentino’s Premises has been closed since March 17, 2020 due to the COVID-19 pandemic.

18. Despite the recent lifting of some limitations imposed by EO 202.8 and subsequent governmental restrictions, Valentino’s boutique is unable to offer in-boutique retail sales, or associated services such as fittings, as originally contemplated by the parties, and as the company operated before the COVID-19 pandemic, services which are vital to its business and central to the Lease’s purpose.

19. Furthermore, even in a post-pandemic New York City (should such a day arrive),

¹ See New York State Department of Health COVID-19 Tracker, available at <https://covid19tracker.health.ny.gov/>, accessed June 19, 2020.

the social and economic landscapes have been radically altered in a way that has drastically, if not irreparably, hindered Valentino's ability to conduct high-end retail business at the Premises.

20. New Yorkers have suffered unprecedented financial disruptions in their everyday lives, including layoffs that have driven New York City's unemployment rate to an astronomical 18.3%, as of May, 2020² – a figure that is only projected to increase in the months ahead.

21. Consumer spending has plummeted – driven by the COVID-19 pandemic, EOs shuttering businesses, and, rampant unemployment and reductions in take-home pay for workers who still have jobs.³

22. Unparalleled unemployment, financial and social disruptions, ongoing business restrictions, EOs and COVID-19-related protocols have severely impacted brick-and-mortar retail sales, and will continue to do so, indefinitely.

23. In effect, even if such restrictions are eased (at some point), continued social distancing, as well as other limitations, will make it impossible for Valentino to operate its boutique as initially envisioned under the Lease.

24. Taken together, the very purpose of the Lease, Plaintiff's ability to use of the Premises to operate a high-end fashion retail boutique along a prestigious section of Fifth Avenue, has been completely frustrated.

25. In fact, the COVID-19 pandemic, associated EOs and regulations have made Plaintiff's continued operation at the Premises impracticable, infeasible, unworkable and/or impossible.

26. Accordingly, Valentino has given notice to Defendant that it will be vacating and

² New York State Department of Labor, "Labor Statistics for the New York City Region," accessed at <https://www.labor.ny.gov/stats/nyc/> on June 19, 2020.

³ "Coronavirus Prompts Record Drop in Consumer Spending," Wall Street Journal, April 30, 2020, <https://www.wsj.com/articles/personal-income-household-spending-coronavirus-march-2020-11588197997>.

surrendering the Premises by December 31, 2020.

27. In response, by letter dated June 19, 2020, Defendant's counsel advised that Defendant would not accept such a surrender, and, notwithstanding the COVID-19 pandemic, disputed that Valentino's obligations under the Lease have been excused, leaving Valentino with no alternative but to commence this action.

AS AND FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment of Frustration of Purpose – Lease Termination)

28. Plaintiff respectfully repeats and re-alleges each and every allegation contained in paragraphs "1" through "27" of this Complaint, with the same force and effect as if fully set forth herein.

29. The COVID-19 pandemic and/or the related EOs have prevented Plaintiff from occupying the Premises and operating its business as contemplated under the Lease, which occupancy and operation is the Lease's principal, if not sole, purpose.

30. The COVID-19 pandemic and/or the related EOs were not caused by Plaintiff, or by any of Plaintiff's acts or omissions.

31. As a result of the foregoing, there has been a frustration of the Lease's purpose.

32. The resultant frustration of the Lease's purpose renders it void, voidable, or otherwise legally unenforceable.

33. An actual case and justiciable controversy exist since Defendant, as noted in its counsel's June 19, 2020 letter, disputes that Plaintiff's Lease is terminable and/or voidable.

34. Prior to the events delineated herein, Plaintiff has fully and completely complied with all of its obligations under the Lease.

35. Plaintiff lacks an adequate remedy at law.

36. By reason of the foregoing, Plaintiff requests a judgment in its favor declaring that

(a) the purpose of the Lease has been frustrated, and (b) Plaintiff's Lease obligations were fully excused, voided and/or terminated as of March 17, 2020.

37. There has been no prior request for the relief sought in this cause of action.

AS AND FOR A SECOND CAUSE OF ACTION

(In the Alternative - Declaratory Judgment of Frustration of Purpose – Rent Abatement)

38. Plaintiff respectfully repeats and re-alleges each and every allegation contained in paragraphs "1" through "37" of this Complaint, with the same force and effect as if fully set forth herein.

39. The COVID-19 pandemic and/or the related EOs have prevented Plaintiff from occupying the Premises and operating its business as originally contemplated under the Lease, which occupancy and operation is the Lease's principal, if not sole, purpose.

40. The COVID-19 pandemic and/or the related EOs and/or the resulting economic ramifications therefrom, were not caused by Plaintiff, or by any of Plaintiff's acts or omissions.

41. As a result of the foregoing, there has been a frustration of the Lease's purpose, and, in the alternative to Plaintiff's First Cause of Action, any and all of Plaintiff's obligations under the Lease (including all rent, additional rent and/or other monetary and/or non-monetary obligations) are minimally suspended and/or fully excused until such time as Plaintiff is able to fully occupy the Premises and resume its business, as originally contemplated by the Lease.

42. An actual case and justiciable controversy exist since Defendant, as noted in its counsel's June 19, 2020 letter, disputes that Plaintiff's Lease obligations have been excused.

43. Prior to the events delineated herein, Plaintiff has fully and completely complied with all of its obligations under the Lease.

44. Plaintiff lacks an adequate remedy at law.

45. By reason of the foregoing, Plaintiff requests a judgment in its favor declaring that,

in the alternative to Plaintiff's First Cause of Action, (a) the purpose of the Lease has been frustrated, and (b) Plaintiff's Lease obligations are fully excused, abated, and/or suspended from March 17, 2020 until such time as it is able to fully occupy the Premises and fully resume its business, as originally contemplated by the Lease.

AS AND FOR A THIRD CAUSE OF ACTION
(Impossibility of Performance – Lease Rescission)

46. Plaintiff respectfully repeats and re-alleges each and every allegation contained in paragraphs "1" through "45" of this Complaint, with the same force and effect as if fully set forth herein.

47. As a result of the COVID-19 pandemic and/or the EOs, performance of Plaintiff's obligations under the Lease has been rendered impossible, as it is no longer able to fully use or occupy or conduct its business from the Premises, as originally contemplated under the Lease.

48. Based on such impossibility of performance, Plaintiff's obligations under the Lease (including all rent, additional rent and/or other monetary and/or non-monetary obligations) are permanently abated and/or excused, and the Lease must be rescinded.

49. An actual and justiciable controversy exists since Defendant, as noted in its counsel's June 19, 2020 letter, disputes that Plaintiff's Lease obligations are abated and/or otherwise excused.

50. Prior to the events delineated herein, Plaintiff has fully and completely complied with all of its obligations under the Lease.

51. Plaintiff lacks an adequate remedy at law.

52. By reason of the foregoing, Plaintiff requests a judgment in its favor declaring that (a) Plaintiff's obligations under the Lease have been rendered impossible, and (b) Plaintiff's Lease and all obligations memorialized therein have been rescinded as of March 17, 2020, and are no

longer in force and effect.

AS AND FOR A FOURTH CAUSE OF ACTION
(In the Alternative - Impossibility of Performance – Rent Abatement)

53. Plaintiff respectfully repeats and re-alleges each and every allegation contained in paragraphs “1” through “52” of this Complaint, with the same force and effect as if fully set forth herein.

54. As a direct and proximate result, *inter alia*, of the COVID-19 pandemic and/or the EOs, performance of Plaintiff’s obligations under the Lease has been rendered impossible, as Plaintiff is no longer able to fully use or occupy, or viably conduct its business from the Premises, as originally contemplated under the Lease.

55. Based on such impossibility of performance, Plaintiff’s obligations under the Lease, in the alternative, (including all rent, additional rent and/or other monetary and/or non-monetary obligations) are suspended, abated and/or excused minimally until such time as Plaintiff is able to fully occupy the Premises and fully resume its business, as originally contemplated by the Lease.

56. Alternatively, the impossibility of performance, as aforescribed, has rendered the lease void, voidable, or otherwise unenforceable as a matter of law.

57. An actual case and justiciable controversy exist since Defendant, as noted in its counsel’s June 19, 2020 letter, disputes that Plaintiff’s Lease obligations are temporarily and/or permanently suspended, abated and/or otherwise excused.

58. Prior to the events delineated herein, Plaintiff has fully and completely complied with all of its obligations under the Lease.

59. Plaintiff lacks an adequate remedy at law.

60. By reason of the foregoing, in the alternative, Plaintiff requests a judgment in its

favor declaring that (a) Plaintiff's obligations under the Lease have been rendered impossible, and (b) Plaintiff's Lease and all obligations memorialized therein are suspended, abated, and/or excused from March 17, 2020 until such time as it is able to fully occupy the Premises and resume its business, as originally contemplated by the Lease.

AS AND FOR A FIFTH CAUSE OF ACTION
(Rescission Based on Failure of Consideration)

61. Plaintiff respectfully repeats and re-alleges each and every allegation contained in paragraphs "1" through "60" of this Complaint, with the same force and effect as if fully set forth herein.

62. The Lease permits, and requires, Plaintiff to use the Premises and operate its high-end fashion retail business in a particular manner.

63. As consideration for the Lease, Defendant is required to provide the Premises for the use specified and as contemplated by the parties' Lease.

64. The COVID-19 pandemic, related EOs and other governmental restrictions, have completely deprived Plaintiff, *inter alia*, of the beneficial use and occupancy of the Premises.

65. Accordingly, there has been a failure of consideration.

66. Plaintiff lacks an adequate remedy at law.

67. Plaintiff has promptly sought rescission following the COVID-19 pandemic and the related EOS and other governmental restrictions, and its ground for relief is addressed to the equitable jurisdiction of this Court.

68. Accordingly, Plaintiff is entitled to a declaration that the Lease is rescinded based on failure of consideration.

AS AND FOR A SIXTH CAUSE OF ACTION
(Constructive Eviction)

69. Plaintiff respectfully repeats and re-alleges each and every allegation contained in paragraphs “1” through “68” of this Complaint, with the same force and effect as if fully set forth herein.

70. Defendant has failed to properly maintain the Building and Premises pursuant to the Lease and/or take reasonable and/or necessary precautions and/or measures in light of the COVID-19 pandemic, to ensure that Plaintiff could safely occupy the Premises and/or operate, as originally contemplated by the Lease.

71. As a result of the foregoing, Defendant has breached the Lease’s covenant of quiet enjoyment and/or has actually or constructively evicted Plaintiff from all and/or part of the Premises.

72. An actual case and justiciable controversy exist since Defendant, as noted in its counsel’s June 19, 2020 letter, disputes that Plaintiff’s Lease is terminated and/or voided.

73. Prior to the events delineated herein, Plaintiff has fully and completely complied with all of its obligations under the Lease.

74. Plaintiff lacks an adequate remedy at law.

75. By reason of the foregoing, Plaintiff requests a judgment in its favor declaring that (a) Defendant has breached the Lease’s covenant of quiet enjoyment, (b) Plaintiff has been actually or constructively evicted from all and/or part of the Premises, and (c) Plaintiff’s Lease is terminated and/or voided.

AS AND FOR AN SEVENTH CAUSE OF ACTION
(Declaratory Judgment – Guaranty Void)

76. Plaintiff respectfully repeats and re-alleges each and every allegation contained in

paragraphs “1” through “75” of this Complaint, with the same force and effect as if fully set forth herein.

77. Valentino Fashion Group S.p.A. (“Valentino S.p.A.”) purportedly guaranteed certain of Valentino’s obligations with respect to the Lease, pursuant to a Guaranty, dated May 6, 2013 (the “Guaranty”), annexed to the Lease as Exhibit “F.”

78. The parties never contemplated that a world-wide COVID-19 pandemic and related EOs would utterly frustrate and/or render impracticable, infeasible, unworkable, and/or impossible Valentino’s performance under the Lease.

79. Had Valentino S.p.A. known of or contemplated such a catastrophic event, it would not have guaranteed Valentino’s obligations.

80. An actual case and justiciable controversy exist since Defendant, as noted in its counsel’s June 19, 2020 letter, disputes that Valentino S.p.A.’s Guaranty obligations have been excused or otherwise rendered null and void or otherwise unenforceable.

81. Prior to the events delineated herein, Plaintiff has fully and completely complied with all of its obligations under the Lease.

82. Prior to the events delineated herein, Valentino S.p.A. has fully and completely complied with all of its obligations under the Guaranty.

83. Plaintiff lacks an adequate remedy at law.

84. By reason of the foregoing, Plaintiff requests a judgment declaring that the Guaranty is void, and of no further force and effect.

AS AND FOR AN EIGHTH CAUSE OF ACTION
(Injunctive Relief)

85. Plaintiff respectfully repeats and re-alleges each and every allegation contained in paragraphs “1” through “84” of this Complaint, with the same force and effect as if fully set forth

herein.

86. Because, upon information and belief, Defendant is threatening to terminate Plaintiff's valuable commercial interest in the Premises, Plaintiff would be irreparably harmed absent the grant of an injunction.

87. Plaintiff lacks an adequate remedy at law.

88. By reason of the foregoing, Plaintiff is entitled to an order and judgment temporarily, preliminarily, and permanently enjoining Defendant from (a) terminating Plaintiff's tenancy and/or interest in the Premises prior to December 31, 2020 or such other term as the court may otherwise deem applicable, in order to permit Plaintiff to wind down its operations and deliver possession of the Premises to Defendant as required by the Lease, or for such other use as the court may deem appropriate under the circumstances, and/or (b) otherwise removing Plaintiff from possession of the Premises.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands the following relief:

- a. on the First Cause of Action, a declaration from this Court that (a) the purpose of the Lease has been frustrated, and (b) Plaintiff's Lease obligations were fully excused, voided and/or terminated as of March 17, 2020;
- b. on the Second Cause of Action, a declaration from this Court that (a) the purpose of the Lease has been frustrated, and (b) Plaintiff's Lease obligations are fully excused, abated, and/or suspended from March 17, 2020 until such time as it is able to fully occupy the Premises and fully resume its business, as originally contemplated by the Lease;
- c. on the Third Cause of Action, a declaration from this Court that (a) Plaintiff's obligations under the Lease have been rendered impossible, and (b) Plaintiff's Lease and all obligations memorialized therein have been rescinded as of March 17, 2020, and are no longer in force and effect;

- d. on the Fourth Cause of Action, a declaration from this Court that (a) Plaintiff's obligations under the Lease have been rendered impossible, and (b) Plaintiff's Lease and all obligations memorialized therein are suspended, abated, and/or excused from March 17, 2020 until such time as it is able to fully occupy the Premises and resume its business, as originally contemplated by the Lease;
- e. on the Fifth Cause of Action, a declaration from this Court that the Lease is rescinded based on failure of consideration;
- f. on the Sixth Cause of Action, a declaration from this Court that (a) Defendant has breached the Lease's covenant of quiet enjoyment, (b) Plaintiff has been constructively evicted from all and/or part of the Premises, and (c) Plaintiff's Lease is terminated and/or voided;
- g. on the Seventh Cause of Action, a declaration from this Court that the Guaranty is void, and of no further force and effect; and
- h. on the Eighth Cause of Action, an order and judgment temporarily, preliminarily, and permanently enjoining Defendant from (a) terminating Plaintiff's tenancy and/or interest in the Premises prior to December 31, 2020 or such other term as the court may otherwise deem applicable, in order to permit Plaintiff to wind down its operations and deliver possession of the Premises to Defendant as required by the Lease, or for such other use as the court may deem appropriate under the circumstances, and/or (b) otherwise removing Plaintiff from possession of the Premises.

Dated: New York, New York
June 21, 2020

Yours, etc.,

NEWMAN FERRARA LLP
Attorneys for Plaintiff

By: 

Lucas A. Ferrara, Esq.
Jarred I. Kassenoff, Esq.
1250 Broadway, 27th Floor
New York, New York 10001
Tel: 212-619-5400