

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

ROSLYN EVENTS CORP.,

Plaintiff,

-against-

BER DUR REALTY CORP.,

Defendant.

Index No.:

SUMMONS

Plaintiff designates Nassau County as the place of trial.

Basis of Venue: This action will affect the possession, use, and/or enjoyment of property situated in Nassau County.

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Verified Complaint in this action and to serve a copy of your answer upon Plaintiff's attorney within twenty (20) days after service of the summons, exclusive of the day of service (or within thirty (30) days after service is complete if this summons is not personally served upon you within the State of New York); and should you fail to appear or answer within the specified time period, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
August 4, 2020**BRONSTER LLP**

By _____

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COMPLAINT

Plaintiff designates Nassau County as the place of trial. The basis of venue is that this action will affect the possession, use, and/or enjoyment of real property situated in Nassau County.

Plaintiff, Roslyn Events Corp. ("**Plaintiff**"), by and through its attorneys, Bronster LLP, as and for its Complaint against defendant, Ber Dur Realty Corp. ("**Defendant**" or "**Landlord**") alleges as follows:

NATURE OF THE ACTION

1. This is an action seeking, *inter alia*, injunctive and declaratory relief under New York Civil Practice Law and Rules ("CPLR") §3001 arising out of Defendant's improper attempt terminate its lease (defined below) with Plaintiff for allegedly failing to make certain rent payments in the midst of the COVID-19 pandemic, as set forth in a purported notice to cure dated July 29, 2020 (the "**Notice to Cure**").
2. Contrary to the allegations in the Notice to Cure, Plaintiff is not in default of the Lease and does not owe the rental amounts claimed therein.
3. Specifically, Plaintiff does not owe rent as claimed by Defendant by operation of the force majeure clause in the Plaintiff's lease; under the doctrine of frustration of purpose of the Lease; by operation of the casualty clause in Plaintiff's lease; and as a result of Plaintiff's on-going legal obligation to comply with state and

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local governmental regulations concerning public safety during the COVID-19 pandemic, which event was unforeseeable and not contemplated under the lease at the time the parties entered into the agreement.

4. Additionally, as the underlying purpose of the lease agreement has been so frustrated by the unforeseeable outbreak of the novel coronavirus and the government's response to it, namely through New York State's executive orders, the lease agreement is void and terminable at the Plaintiff's option.
5. Further, the Defendant owes Plaintiff a refund or rent credit for rent that was overpaid during the period of time between March 16, 2020 and March 31, 2020.
6. Lastly, Defendant, by its actions, has breached the implied covenant of good faith and fair dealing.

PARTIES

7. Plaintiff is a New York corporation authorized to do business in the State of New York and having a place of business in Nassau County in the State of New York.
8. Upon information and belief, Defendant is a New York corporation authorized to do business in the State of New York and having a place of business in Nassau County in the State of New York.

JURISDICTION AND VENUE

9. Upon information and belief, Defendant is the landlord of the premises described as 1 Railroad Avenue, Roslyn, New York (the "**Premises**").
10. Pursuant to the lease (as defined more particularly *infra*), Plaintiff is the commercial tenant of the Premises.

11. Thus, jurisdiction is proper under CPLR §302(a)(4), and venue is proper in Nassau County pursuant to CPLR §507.

THE LEASE

12. Plaintiff became the tenant of the Premises pursuant to a ten (10) year lease agreement executed on May 19, 2017 by and between Defendant, as landlord, and Plaintiff, as tenant (the “**Lease**”). A copy of the Lease is annexed hereto as **Exhibit A**.
13. Plaintiff has invested over \$500,000.00 in the buildout and development of the Premises for its business purpose. Plaintiff operates the Premises, in compliance with the underlying purpose of the Lease, as an event space and lounge for social and corporate events. The Plaintiff’s business was fully operational at the time that the COVID-19 pandemic struck New York in early 2020.

THE COVID-19 PANDEMIC

14. In March 2020, New York State catalogued its first known cases of the novel coronavirus known as COVID-19, an event which has since risen to the level of a global pandemic. As of the date of this filing, more than thirty thousand (30,000) people have died from COVID-19 in New York State alone, and the global death toll numbers over half a million souls.
15. In response to the severity of this deadly crisis, New York State Governor Andrew Cuomo issued a series of executive orders (the “**Executive Orders**”) which, among other things, declared a state disaster emergency for the entire state of New York (“Executive Order No. 202”); mandated that restaurants and bars cease serving patrons food or beverage on-premises from March 16, 2020 onward

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