

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

-----X
1650 BROADWAY ASSOCIATES INC.,

Index No. 653340/2020

Plaintiff,

Date Purchased: July 30, 2020

-against-

SUMMONS

STERLING LANDLORD CORP., UNITED
STATES REALTY & INVESTMENT COMPANY
and C&I BROADWAY, L.L.C.,

**PLAINTIFF DESIGNATES NEW YORK
COUNTY AS THE PLACE OF TRIAL**

Defendants.
-----X

**VENUE IS BASED UPON THE SITUS OF
THE PROPERTY AND PLAINTIFF'S
AND DEFENDANTS' BUSINESS**

TO THE ABOVE NAMED DEFENDANTS:

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 Plaintiff's attorney within 20 days after the service of this Summons, exclusive of the day of service (or within 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 or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
July 30, 2020

SILLS CUMMIS & GROSS P.C.
Attorneys for Plaintiff

By: David B. Newman
David B. Newman, Esq.
Lori K. Sapir, Esq.
101 Park Avenue, 28th Floor
New York, New York 10178
(212) 643-7000

TO:

STERLING LANDLORD CORP.
1650 Broadway, Suite 1200
New York, New York 10019

UNITED STATES REALTY & INVESTMENT COMPANY
c/o Sterling Landlord Corp.
1650 Broadway, Suite 1200
New York, New York 10019

C&I BROADWAY, L.L.C.
c/o Sterling Landlord Corp.
1650 Broadway, Suite 1200
New York, New York 10019

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

-----X
1650 BROADWAY ASSOCIATES INC.,

Plaintiff,

Index No. 653340/2020

-against-

VERIFIED COMPLAINT

STERLING LANDLORD CORP., UNITED STATES
REALTY & INVESTMENT COMPANY and C&I
BROADWAY, L.L.C.,

Defendants.
-----X

Plaintiff-Tenant 1650 Broadway Associates Inc. (“Tenant”), by its attorneys Sills Cummis & Gross P.C., as and for its Complaint against defendants Sterling Landlord Corp., United States Realty & Investment Company and C&I Broadway, L.L.C. (collectively, the “Landlord”), alleges as follows:

1. This is an action seeking, *inter alia*, injunctive and declaratory relief arising out of Landlord’s improper attempt to terminate its Lease (as defined below) with Tenant for allegedly failing to make certain rent payments in the midst of the COVID-19 pandemic, as set forth in the purported notice of default dated July 16, 2020 (the “Default Notice”). Contrary to the allegations in the Default Notice, Tenant does not owe the rent claimed therein. In fact, Tenant is owed a rent credit in the amount of \$72,580.65 for a portion of the March 2020 rent it paid.

PARTIES

2. Tenant is a domestic business corporation, and occupies approximately 2,742 square feet on the ground floor, 1,398 square feet on the mezzanine floor, and 5,375 square feet in the basement (collectively, the “Premises”) of the building known as and located at 1650 Broadway a/k/a 200 West 51st Street, New York, New York (the “Building”).

3. Upon information and belief, defendant Sterling Landlord Corp. is a domestic business corporation with offices located at 1650 Broadway, Suite 1200, New York, New York.

4. Upon information and belief, defendant United States Realty & Investment Company is a New Jersey business corporation located c/o Sterling Landlord Corp., 1650 Broadway, Suite 1200, New York, New York.

5. Upon information and belief, defendant C&I Broadway L.L.C. is a limited liability company duly authorized to do business in New York located c/o Sterling Landlord Corp., 1650 Broadway, Suite 1200, New York, New York.

THE LEASE

6. Tenant had leased the Premises from Landlord's predecessor-in-interest pursuant to a lease dated October 8, 1992, as thereafter amended (the "Original Lease").

7. Pursuant to the terms of the Original Lease, Tenant operated "Ellen's Stardust Diner."

8. "Ellen's Stardust Diner" is an iconic New York City restaurant located in the heart of Broadway.

9. Pursuant to a written commercial Agreement of Lease made effective as of June 1, 2017 (the "Lease"), Landlord leased to Tenant the Premises for use as a full-service restaurant, consistent with the quality of "Ellen's Stardust Diner," on the terms and conditions more fully set forth in the Lease.

10. The term of the Lease is ten (10) years, expiring on May 31, 2027.

**TENANT DOES NOT OWE RENT UNDER THE CASUALTY CLAUSE
OF THE LEASE**

11. Paragraph 9(b) of the Lease provides, in pertinent part:

If the Premises are partially damaged or rendered partially unusable by fire or other casualty...the Rent...shall be apportioned from the day following the casualty according to the part of the Premises which is usable...; provided, however, if a substantial portion of the Premises is damaged and Tenant cannot operate any part of the business previously operated in the balance of the Premises in an economically feasible manner, Base Rent and Additional Rent will abate for the entire Premises...

12. Paragraph 9(c) of the Lease provides, in pertinent part:

If the Premises are totally damaged or rendered wholly unusable by fire or other casualty, then the Rent shall be proportionately paid up to the time of the casualty and thenceforth shall cease until the date when the Premises shall have been repaired and restored by Landlord...

13. Tenant paid rent through March 2020.

14. On March 16, 2020, pursuant to state and local government mandates, businesses were forced to close in light of the property damage caused by the COVID-19 virus and the dangerous propensity of such damage to the public.

15. On March 16, 2020, New York City Mayor Bill De Blasio specifically noted the “property loss and damage” caused by the COVID-19 virus, which has resulted in forced closure of many businesses due to such property damage.

16. On March 16, 2020, Tenant was forced to cease operating its restaurant due to COVID-19.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.