SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
----------X
ITS SOHO LLC,

Plaintiff, Index No.:

-against-

598 BROADWAY REALTY ASSOCIATES INC., **VERIFIED COMPLAINT**

Defendant.
----------X

Plaintiff ITS SOHO LLC (the "Plaintiff"), by and through its attorneys, the Law Offices of Paul S. Haberman LLC, complaining of defendant 598 BROADWAY REALTY ASSOCIATES INC. (the "Defendant"), alleges, upon information and belief, as follows:

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1. At all times relevant hereunder, Plaintiff was and is a New York limited liability company with a principal place of business located in New York County, New York.
2. At all times relevant hereunder, Defendant was and is a New York domestic business corporation with a principal place of business located in New York County, New York.
3. At all times relevant hereunder, Defendant was the owner and/or manager and/or exclusive realtor and/or exclusive broker for a property located at 598 Broadway, New York, New York 10012.
4. This action is being commenced within six (6) years of the accrual of Plaintiff's causes of action against Defendant.

5. On or about March 15, 2020, the Parties entered into a seven (7) year lease agreement (the "Subject Lease") for a second-floor space in Defendant's property located at 598 Broadway, New York, New York in order to utilize the space as a fitness club.
6. Plaintiff provided Defendant with the amount of Ninety-One Thousand Three Hundred and Forty Dollars ($91,340.00), Sixteen Thousand Five Hundred Dollars ($16,500.00) for the first month's rent plus Seventy-Four Thousand Eight Hundred and Forty Dollars ($74,840.00), an amount equal to four (4) months' rent for the final year as the security deposit, simultaneous with the execution of the Subject Lease.
7. Just one (1) day later, on March 16, 2020, New York State Governor Andrew Cuomo issued a statewide order that all gyms and fitness facilities would have to close as of March 17, 2020 as part of New York State's initial efforts to stop the spread of the COVID-19 virus. Then, just five (5) days after signing the Subject Lease, on or about March 20, 2020, Governor Cuomo issued a statewide "shelter-in-place" order which directed all non-essential retailers and businesses to close and for New York State residents to stay home as much as feasible in an effort to stop the spread of the COVID-19 virus.
8. The aforementioned orders directly impacted all fitness clubs, gyms, and similar institutions, among myriad other types of businesses, all of which were immediately closed for an indefinite period of time.
9. Despite the timing of the Subject Lease's signing, with COVID-19 already making headway in the United States as of late February/early March 2020, the Subject Lease, which is noted as Defendant's "Standard Form of Loft Lease" and thus seemingly not open to any real negotiation of its terms, did not contain a "force

majeure" clause, or any other similar provision which would allow either of the Parties to terminate the Subject Lease for such occurrences as, inter alia, a once in a generation pandemic such as COVID-19.

10. As a result of the COVID-19-related orders, the Parties agreed subsequent to the execution of the Subject Lease that leased space would begin to be occupied the week of June 15, 2020 and that the first three (3) months would be rent-free while it was built-out.

11. It was hoped at the time that the Parties agreed to this subsequent accommodation that the COVID-19 pandemic would be under control to such an extent by June 15, 2020 that Plaintiff could stay on schedule with its planned build-out and opening of the fitness club.

12. However, as the Court could readily take judicial notice of, a large majority of the COVID-19 related orders, including the aforementioned orders, as well as subsequent directives put in place by the City of New York, continue to remain in place as New York State and the rest of the country endeavors to successfully contain the continued spread of the COVID-19 virus. More importantly here, the aforementioned orders and directives remained in place as of June 15, 2020, thus disallowing Plaintiff from timely commencing any build-out or operation of its fitness club.

13. Seeing no immediate end in sight to the aforementioned orders and directives, and/or the prospect of a limited reopening subject to social distancing guidelines which would curtail, if not entirely destroy, the ability of Plaintiff to operate its eventual fitness club, with or without any modification to the Subject Lease, Plaintiff retained

counsel to attempt to terminate the Subject Lease in early June 2020 and recollect the security deposit that had previously been provided to Defendant.

14. As Plaintiff was inevitably aware of the challenges faced by a new fitness club with no prior clientele and no prior goodwill trying to open and operate, if it were able to do either, in the midst of a pandemic, and plainly aware that Plaintiff would not even start paying rent until September 2020, it was hoped that Defendant would negotiate with Plaintiff in good faith in order to allow Plaintiff to exit the Subject Lease.

15. Over a month-and-a-half after Plaintiff's counsel first engaged Defendant about the prospect of terminating the Subject Lease, however, Plaintiff continues to be invoiced for rent, despite the subsequent agreement, and Plaintiff's counsel has not been able to engage either Defendant itself, or Defendant's counsel, in substantive talks about the prospect of termination, despite repeated written and telephonic correspondence.

16. The instant matter follows and is timely.

NATURE OF THE ACTION

17. This is an action seeking a declaratory judgment invalidating, or otherwise terminating, the Subject Lease based upon the total frustration of its purpose for the foreseeable future pursuant to the COVID-19 pandemic and the related return of Plaintiff's security deposit as a result of same, and for Defendant's breach of the Subject Lease by virtue of its breach of the implied covenant of good faith and fair dealing.

AS AND FOR A FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT)

18. Plaintiff repeats and re-alleges each and every allegation contained in those paragraphs of the Verified Complaint marked and designated 1 through 17, inclusive, with the same force and effect as if hereinafter set forth at length.

19. Pursuant to CPLR § 3001, the Court has the authority to declare the rights, status, or other legal relations of the Parties before it.

20. There exists a genuine and justiciable controversy concerning the rightful status of Parties' contractual relationships arising from the Subject Lease as a result of its timing versus the measures taken by New York State and the City of New York to combat the COVID-19 pandemic.

21. The Subject Lease, and Defendant's subsequent refusal to engage in any substantive, good faith discussion to terminate it pursuant to the COVID-19 pandemic creates a genuine and justiciable controversy in which Plaintiff has an interest sufficient to constitute standing in order to maintain the instant matter.

22. The Subject Lease, and Defendant's subsequent refusal to engage in any substantive, good faith discussion to terminate it pursuant to the COVID-19 pandemic creates a present controversy that can greatly prejudice Plaintiff, including the prospect of its bankruptcy, if it were compelled to stay in the Subject Lease despite its indefinite inability to open and operate.

23. Plaintiff is accordingly entitled to relief, to wit: (1) a finding that the purpose of the Parties entering into the Subject Lease has been frustrated in its entirety, such that compelling Plaintiff to continue to be held to it would be unjust, or otherwise inequitable, in this unique and uncertain time in the nation's recent history created by

DOCKET ALARM

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.