

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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MEDFORD EQUITIES, LLC,

Index No.: 2020-

Plaintiff,

COMPLAINT

-against-

MICHAELS STORES INC., a/k/a MICHAELS
COMPANIES,

Defendant.

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Plaintiff, **MEDFORD EQUITIES, LLC**, by its attorneys, **Rosenberg Calica & Birney LLP**, as and for their Complaint herein, alleges:

1. At all pertinent times alleged herein, plaintiff Medford Equities, LLC (“Medford Equities”) was and is a duly organized New York limited liability company and is the owner of a shopping center comprising approximately 111,000 square feet of retail space occupied by multiple tenants located on Route 112 in Medford, New York (the “Center”).

2. At all pertinent times alleged herein, defendant Michaels Stores Inc. a/k/a Michaels Companies was and is a Delaware corporation duly authorized to conduct business in the State of New York with its principal offices at 8000 Bent Branch Drive, Irving, Texas, 75063 (“Michaels”).

3. Michaels occupies an approximately 23,000 square foot (inclusive of the mezzanine) retail store premises in the Center (the “Michaels Premises”) at 2799 Route 112, Medford, New York (Store 7774) pursuant to a Lease executed on September 5, 2006, as amended (the “Lease”).

4. Pursuant to the Lease, Michaels is currently required to pay Minimum Rent and Additional Rent in the amount of \$36,029.95 per month.

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5. Michaels has breached the Lease by failing to pay Minimum Rent and Additional Rent for the months of April 2020 and May 2020 for a total of \$72,059.90 (the "Unpaid Rent").

6. Due written Notice of Default was given to Michaels on June 24, 2020, but not cured.

7. Michaels purports to justify its failure to pay the Unpaid Rent upon "the COVID-19 pandemic, and in response to landlord orders and government mandates in certain locations that tenant has been forced to close its store" for limited periods which included the months of April and May 2020 (the "COVID-19 Event").

8. The COVID-19 Event does not justify the failure to pay the Unpaid Rent because the Lease contains an express and limited *Force Majeure* provision in Section 17.17 which provides:

"Notwithstanding anything to the contrary contained in the Lease, in no event shall this Section 17.17 be construed to: (i) excuse or delay the performance of a monetary obligation by either party, including the timely payment by Tenant of all Minimum Rent and all other items of Additional Rent."

9. Further, Section 17.17 of the Lease further provides that:

"The financial ability of a party to perform an obligation shall not be construed as an 'Uncontrollable Event'".

10. Further, Section 17.6 of the Lease entitled "**Implications As To Operation**"

provides:

"Nothing in this Lease shall be interpreted to obligate Tenant to open or operate a business in the Premises. No implication will be made concerning the use or operation of the Premises from the manner in which rent is paid or from the amounts of rent paid."

11. By reason of the express provisions of the parties' Lease quoted above, and otherwise as a matter of law, neither the COVID-19 Event, nor principles of *Force Majeure*,

impossibility of performance, frustration of purpose nor any other circumstance or principle of law justify the non-payment of the Unpaid Rent.

12. By reason of the foregoing, Michaels is indebted to Medford Equities for Unpaid Rent in the amount of \$72,059.90, demand for payment of which is made hereby, together with recovery of Medford Equities' "Litigation, Court Costs and Attorneys' Fees" pursuant to §14.5 of the Lease.

WHEREFORE, plaintiff demands judgment against Michaels Stores Inc., a/k/a Michaels Companies Inc. as follows:

- a. Awarding plaintiff the sum of \$72,059.90;
- b. Awarding plaintiff all "Litigation, Court Costs and Counsel Fees" incurred in prosecuting this action in accordance with §14.5 of the Lease;
- c. Awarding plaintiff interest at the statutory rate from the earliest ascertainable rate pursuant to CPLR 5001 and 5004; and
- d. Granting plaintiff such other and further relief as to the Court may deem appropriate, together with the costs and disbursements hereof.

Dated: Garden City, New York
July 10, 2020

ROSENBERG CALICA & BIRNEY LLP
Attorneys for Plaintiff

By: _____

Robert M. Calica

100 Garden City Plaza, Suite 408
Garden City, New York 11530
(516) 747-7400

TO: Michaels Stores Inc. a/k/a The Michaels Companies
8000 Bent Branch Drive
Irving, Texas 75063

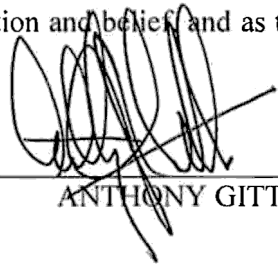
VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF SUFFOLK)

ANTHONY GITTO, being duly sworn deposes and says:

I am the Manager of Plaintiff, Medford Equities LLC.

I have read the foregoing Complaint, and the same is true of own knowledge, except as to those matters therein stated to be alleged upon information and belief and as to those matters, I believe them to be true.



ANTHONY GITTO

Sworn to before me this
10 day of July, 2020



Notary Public

JACQUELINE MONETTE
NOTARY PUBLIC, STATE OF NEW YORK
REG NO 01MC6081358
QUALIFIED IN SUFFOLK COUNTY
COMMISSION EXPIRES OCTOBER 07, 2022

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