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Cook County, IL

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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION**

GWC INJURY LAWYERS, LLC,)
An Illinois Limited Liability Corporation,) 9516497
f/k/a, GOLDBERG WEISMAN CAIRO, LLC)
and GWC ADMIN, LLC,)
An Illinois Limited Liability Corporation.) No. 2020CH04606
Plaintiffs,)
v.)
ONE EAST WACKER PARTNERS, LLC,)
A New York Limited Liability Corporation;)
AMTRUST REALTY CORPORATION,)
A New York Corporation.)
Defendants.)

COMPLAINT

NOW COME the PLAINTIFFS, GWC INJURY LAWYERS, LLC, formerly known as GOLDBERG WEISMAN CAIRO, LLC, and GWC ADMIN, LLC (hereinafter and collectively, “GWC”), for its Complaint against Defendants, ONE EAST WACKER PARTNERS, LLC and AMTRUST REALTY CORPORATION, who state as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, GWC Injury Lawyers, LLC (hereinafter, “GWC”), is an Illinois corporation and law firm that focuses primarily on personal injury and workers’ compensation matters.
2. At all times relevant hereto, Plaintiffs, GWC Injury Lawyers, LLC was the successor entity of the law firm GOLDBERG WEISMAN CAIRO, LLC and the true party at interest for purposes of this dispute.
3. Plaintiff, GWC ADMIN, LLC, is an Illinois limited liability corporation and co-successor entity of GWC Injury Lawyers, LLC engaged in, *inter alia*, management and support of the administrative functions of GWC Injury Lawyers, LLC.

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4. Defendant, ONE EAST WACKER PARTNERS, LLC (hereinafter, "OEWP"), is a New York Limited Liability Corporation engaged in the business of, *inter alia*, the leasing of commercial office space in downtown Chicago at the location of One East Wacker Drive, Chicago, Illinois.
5. Defendant, AMTRUST REALTY CORPORATION (hereinafter, "AMTRUST"), is a New York Corporation engaged in the business of, *inter alia*, the leasing and/or management of commercial office space in downtown Chicago, including the location of One East Wacker Drive, Chicago, Illinois.
6. Jurisdiction and venue are proper in this Court as all events that gave rise to the current controversy took place in Cook County, Illinois and the subject property is in Cook County.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

7. On February 28, 1990, Plaintiffs and Defendant OEWP executed a commercial lease (hereinafter, "the Lease" for office space to provide a central location to house all of GWC's operations. *A redacted copy of the Lease and its subsequent amendments is attached hereto as Exhibit A.*
8. As GWC grew over the course of more than 30 years, the lease was extended via various written amendments signed by the then-principals of the corporate predecessors of GWC.
9. The fifth and most recent amendment to the Lease was signed lease was signed on November 1, 2017 with a specified termination date of October 31, 2022. See, *Exhibit A.*
10. As set forth in the Lease and the Fifth Amendment to the Lease, the intended purpose of the Lease was to provide 30,378 of usable office space for GWC that consisted of the entirety of the 38th and 39th floors at One East Wacker, as well as a portion of the 20th floor (hereinafter and collectively, "the Premises").

11. By design and pursuant to the terms of the Lease, the Premises is intended for use as high-end office space that is leased by GWC through a formula whereby the payment of base rent and “additional” rent is tendered to OEWP on a monthly basis.
12. Given the location in downtown Chicago and the high floors that GWC’s headquarters occupy, the collective monthly rent obligation is substantial.
13. Under the terms of the Fifth Amendment to the Lease, all of the original terms, conditions and provisions of the original Lease remained unmodified and were specifically ratified, with the exception of those discrete terms that were changed by the Fifth Amendment itself.
14. Among those terms in full force and effect are the provisions of Section V, Paragraph H of the Lease, which states:

H. Unlawful Use. Neither Tenant nor Landlord shall make or permit any use of the Premises and Tenant shall not commit or permit to be committed any act therein or elsewhere in the Building, which, directly or indirectly, is forbidden by law, ordinance or governmental rule, regulation or order, or which may be dangerous to person or property.

15. At all times relevant hereto, the explicit prohibition prohibiting “any” use of the Premises that “may be dangerous” to persons or property as set forth in Paragraph H, above, remains in full force and effect.

Onset of the COVID-19 Pandemic

16. COVID-19 is a highly contagious disease that causes acute respiratory symptoms that often leads to life-threatening complications and death.
17. The COVID-19 pandemic reached the United States in January 2020, with the first known deaths in the U.S. occurring in February 2020.

18. By the end of March 2020 and contemporaneous with the declaration of a national emergency, COVID-19 cases had been reported in all 50 U.S. states, the District of Columbia, and all inhabited U.S. territories with the exception of American Samoa.
19. At present, the U.S. has the highest level of active cases and deaths in the world, with a death rate of 285 per one million people. As of this filing, more than 2 million Americans have been afflicted and over 110,000 have died of COVID-19 related complications.
20. Illinois ranks among the hardest-hit states for COVID-19 cases, with over 110,000 cases and more than 5,000 deaths.
21. Cook County is the epicenter of the COVID-19 outbreak in Illinois, with more than 65,000 cases and a reported infection rate that is ten times higher than any other Illinois county. To place this number in context, if Cook County were an independent country, it would be within the top twenty nations with the highest infection rate.
22. The contagious nature of COVID-19 is linked to the small infectious dose a person can be exposed to for successful transmission to occur.
23. Medical experts have opined that exposure to as few as 1000 SARS-CoV2 infectious viral particles could trigger infection, such that transmission may occur from an infectious dose received by merely inhaling or rubbing one's eye in an environment where viral sufficient particles are present.
24. Competent modes of transmission include a single cough, which releases at least 3,000 droplets that travel at 50 miles per hour; a single sneeze, which releases at least 30,000 droplets that travel at up to 200 miles per hour; or a single breath, which can expel between 50 to 5000 droplets.

25. While it is estimated that as many as 44% of all COVID-19 infections present with little to no symptoms, the droplets in a single cough or sneeze may contain as many as 200,000,000 virus particles which are immediately discharged into the surrounding environment and can rapidly infiltrate every corner of an average-sized room or elevator.
26. A person may also shed COVID-19 for days prior to becoming symptomatic, with average viral loads reaching their highest level just prior to symptom onset.
27. Based on the high level of transmissions that occur in the absence of symptoms, a symptom-based system of disease detection and prevention is essentially futile for purposes of ensuring a safe workplace environment.
28. Epidemiological studies into workplace outbreaks by the CDC and other authoritative bodies have underscored the grave risk to office workers, particularly in an enclosed environment where with limited air exchange and/or where the air is recycled through HVAC systems.¹
29. The official position of The American Society of Heating, Refrigerating and Air-Conditioning Engineers reflects the reality of prevailing COVID-19 science: “*Transmission of SARS-CoV-2 through the air is sufficiently likely that airborne exposure to the virus should be controlled. Changes to building operations, including the operation of heating, ventilating and air-conditioning systems, can reduce airborne exposures.*”²
30. The Federation of European Heating, Ventilation and Air Conditioning Associations (REHVA) has issued guidance based upon evidence gathered from the World Health Organization and 27 European countries that concludes that airborne transmission through small particles (< 5 microns) may stay airborne for hours and can be transported long distances

1. <https://www.ashrae.org/file%20library/technical%20resources/covid-19/does-ashrae-s-guidance-agree-with-guidance-from-who-and-cdc.pdf>.

2. *Id.*

through HVAC systems and that coronavirus particles can remain active for many hours or couple of days in the absence of a specific cleaning and based upon the presence of certain conditions.

31. Earlier outbreaks of similar strains of coronavirus such as SARS also support airborne transmission as a cause of disease transmission.
32. On March 17, 2020, the National Institute for Health (NIH) concluded that “scientists found that severe acute respiratory syndrome coronavirus 2 was detectable in aerosols for up to three hours.”
33. Other studies of documented “super-spreader” events by the CDC and other authoritative bodies underscore the grave risks associated with closed environments with minimal ventilation where COVID-19 can be transmitted through airborne particles. *See, e.g.,* 2020 CDC Publication, Vol. 26, No. 7, “*COVID-19 Outbreak Associated with Air Conditioning in Restaurant, Guangzhou, China, 2020,*”; Dr. Joseph Allen, Director of Healthy Buildings Program, Harvard University, “*Your Building Can Make You Sick or Keep You Well,* **New York Times**, March 4, 2020.
34. In light of the overwhelming body of competent evidence demonstrating the risks associated with COVID-19 transmission through HVAC systems, REHVA recommended “no use of recirculation” in any building with a mechanical ventilation system insofar as “[v]irus particles in return ducts can also re-enter a building when centralized air handling units are equipped with recirculation sectors.”
35. In discussing the feasibility of return air filters in HVAC systems, REHVA noted that, “. . . most of these filters, even HEPA filters may not filter out virus size particles effectively. Ultraviolet

light can be used to disinfect indoor spaces and could be installed to destroy viruses, but has not yet been proven effective against COVID-19.”

36. What has emerged is an ominous reality that the safety of office workers is gravely compromised whenever a finite volume of airspace within a given environment is shared by several individuals gathered together for any appreciable length of time. In this regard, “social distancing” practices that are highly effective in preventing COVID-19 infection in an outdoor setting are meaningless where people are sharing recycled air within a given space.

Office Closures and Defendants’ Response to the COVID-19 Pandemic

37. One East Wacker Drive is a 522 foot-tall skyscraper at the intersection of State Street and Wacker Drive in Chicago. Completed in 1962, it has 41 floors that are accessed by approximately thirty 6’ x 6’ elevators divided into two separate elevator banks.
38. The intended use of the GWC offices – as envisaged pursuant to the Lease and as practiced in more than 30 years of continuous operation at One East Wacker Drive, is that of a robust, fast-paced litigation firm that any one time accommodated between 60 and 130 employees, in addition to subtenants and contract personnel who routinely work on one or more of the three occupied floors for extended periods of time.
39. GWC employs a diverse workforce and draws on the collective talents of its people who live throughout the metro Chicagoland area and northern Indiana. GWC accommodates many employees who face various health challenges, including heart disease, asthma, high blood pressure, diabetes, and cerebral palsy.
40. Many of GWC’s employees, including most senior partners, fall within a heightened risk category for death and severe COVID-related complications by virtue of their age and/or pre-existing medical condition(s).

41. On March 12, 2020, Illinois governor J.B. Pritzker announced the first of many executive actions that effectively shuttered most Illinois business with a stay-at-home order designed to avoid the unchecked spread of COVID-19.
42. Although law firms were deemed to be “essential services” under the order, GWC and the vast majority of all Chicago-based law firms followed the guidance of the CDC and epidemiological experts by electing to close their office until it became safe to have employees return.
43. Accordingly, on March 13, 2020, GWC owner and managing partner Louis Cairo instructed all GWC personnel to begin the process of gathering their essential files and preparing to work remotely for an indefinite period of time. All support staff were ordered to work remotely that day.
44. As the COVID-19 pandemic began its rapid spread in Illinois and Cook County, GWC personnel initiated contact with OEWP to inform them of GWC’s decision to close the office in furtherance of ensuring their employees’ safety and to monitor OEWP’s efforts with respect to what steps, if any, were being taken to facilitate tenants’ concerns regarding the unfolding crisis.
45. On Friday, March 13, 2020, an Amtrust manager sent a letter via email to GWC and other One East Wacker tenants informing them that that they were keeping apprised of the guidelines promulgated by the “New York City Department of Health.” (hereinafter, “First Amtrust Letter”). *A copy of the First Amtrust Letter is attached hereto as **Exhibit B**.*
46. The letter – apparently citing unspecified guidance from the New York City Department of Health – erroneously suggested that “no special ventilation procedures are recommended, as the spread of COVID-19 from person-to-person over long distances, such as through HVAC

systems, has not been shown.” Notwithstanding said guidance, the First Amtrust Letter vowed to take “heightened measures” that included an unspecified process to increase “outside air intake to the building to promote higher amounts of fresh air.”

47. Whether it was the byproduct of a simple lack of knowledge or a desire to justify an across-the-board demand of full rent payments for a building that was unsafe to occupy at full capacity, the attempts by OEWP/Amtrust to suggest that HVAC systems played no role in potential disease transmission was dangerously misplaced.
48. As tenant inquires as to the safety of the building and the claimed obligation to pay rent continued throughout the next week, OEWP/Amtrust turned to a more threatening approach to demand full rent payments, irrespective of tenants’ individual lease terms and/or a comprehensive analysis of the relative safety risks involved.
49. On March 20, 2020, an Amtrust manager again sent a letter via email to GWC and other One East Wacker tenants (hereinafter, “the Second Amtrust Letter”). While nearly all of the tenants at One East Wacker had effectively evacuated the building over safety concerns, the Second Letter claimed, “[t]he building remains open and operational, and we at AmTrust are striving to keep our buildings, our staff and our tenants, safe and functional.” *A copy of the Second Amtrust Letter is attached hereto as Exhibit C.*
50. The Second Letter then issued a very clear warning to GWC and other tenants who were mobilizing to continue their business operations remotely at a time when it was dangerous to do so from the location of One East Wacker: “Accordingly, we anticipate that all parties will continue to abide by the terms of their lease and reserve all of our rights and remedies for any failures to do so.”

51. In response to a swift backlash over the Second Amtrust Letter, OEWP/Amtrust issued yet another letter (hereinafter, the “Third Amtrust Letter”) in which it attempted to disavow its threat to sue GWC and/or other tenants without actually withdrawing the threat of legal action:

“On Friday evening we sent you an email that was intended as a general response to communications received from many tenants asking for a variety of information including building access and lease implications. We have heard from a few tenants that they were upset by the tone of the letter which included a reservation of landlord’s rights under the leases. That language was certainly not intended to offend or threaten anyone.”

*A copy of the Third Amtrust Letter is attached hereto as **Exhibit D**.*

52. As the shutdown and office closures continued with no signs of abating, GWC executive staff formed a working group to monitor the unfolding guidance from local, state, federal and world health officials relating to the risks of disease transmission within an office environment.

53. Contemporaneous with this effort, GWC attempted to formulate a structure whereby remote office operations might resume, with a “skeleton crew” coming to the office to execute vital functions, with only three or fewer lawyers being allowed on one floor at any one time.

54. On Friday, May 22, 2020, Amtrust building management revealed to GWC that, despite its amorphous claims to increase “outside air intake to the building to promote higher amounts of fresh air,” the ineffective HVAC systems at One East Wacker uses recycled air between 80% and 100% of the time.

55. It was further explained that while the One East Wacker HVAC systems use filtration systems that can help remove “particulate matter” there is nothing whatsoever within the HVAC system and/or any filtration apparatus used in conjunction with the HVAC system that has any effect whatsoever on the transmission of aerosolized viral particles, such as COVID-19.

56. When challenged as to how GWC could ever ensure the safety of its employees – particularly those who are most vulnerable to severe COVID complications and/or death – it was suggested that the wearing of masks and/or “deep cleaning” would suffice.

57. Ultimately, GWC determined that even a drastic reduction to in-office staff as a gateway to a partial re-opening of the office was still untenable insofar as it ignored the myriad threats to employees' safety that Defendants refused to address.
58. In communications with OEWP and Amtrust, Defendants' representatives have since taken the position that they are owed 100% of the stated base rent and additional rent as set forth in the Lease, despite the fact that the intended purpose of GWC in securing the lease has been nullified, with no foreseeable endpoint in sight.
59. In communications with OEWP and Amtrust, Defendants' representatives have taken the position that the negotiated Lease provision that prohibits "*any* use of the Premises"...that "*may* be dangerous to person or property"³ somehow does not apply to Defendants.
60. In communications with OEWP and Amtrust, Defendants' representatives have taken the position that GWC must pay for an office that is unsafe for its employees to use.
61. In light of the above, there exists an intractable controversy between Plaintiffs and Defendants such that an adjudication of the rights and responsibilities of the parties on an expedited basis is urgently needed.

COUNT I:
DECLARATORY JUDGMENT OF THE LEASE AS VOID AND UNENFORCEABLE

62. Plaintiffs re-allege Paragraphs 1-61 of this Complaint as fully set forth herein.
63. The terms of the Lease between GWC and OEWP and the Fifth Amendment to the Lease, constitute a valid, binding, and enforceable contract.
64. At all times relevant hereto, GWC has demonstrated full compliance with the terms of the Lease and has made all of its scheduled rent payments as demanded, albeit under protest.

3. *See, Lease*, Section V, Paragraph H (emphasis added).

65. Defendant OEWP has refused to abide by the negotiated terms of its own Lease, particularly Section V, Paragraph H prohibiting any use of the Premises that, *inter alia*, may be dangerous to persons or property.
66. The actions of Defendants in attempting to enforce those terms of the Lease that accrue to its advantage, while turning its back on the safety of Plaintiffs' employees and denying Plaintiffs a vested right of relief under the Lease has been made in bad faith and in open defiance of the very contractual terms they agreed to.
67. In light Defendants' intransigence and the facts set forth above, there has been a total frustration of purpose of the subject Lease, such that its rescission is the only remaining equitable remedy.
68. Insofar as there now exists a controversy as to the obligations of OEWP to perform under the lease, Plaintiffs therefore seek a declaration that OEWP is in material breach of the Lease for the reasons as set forth herein.

WHEREFORE, Plaintiffs pray that judgment be entered in its favor and against Defendants OEWP and AMTRUST and that that this Court enter an Order:

- (1) Declaring that the continued operation of GWC Injury Lawyers, LLC within the Premises at the One East Wacker location presents a danger to persons employed by GWC;
- (2) Declaring that Defendant OEWP is in material breach of its obligations pursuant to the Lease;
- (3) Declaring that Plaintiffs are relieved of any further obligation under the Lease, including the payment of any rents and fees, effective from the date Plaintiffs have surrendered the Premises pursuant to the Court's order;

- (4) Declaring that the Lease is terminated based on frustration of purpose for the reasons as set forth herein;
- (5) Awarding any fees and costs incurred in this litigation pursuant to Section XIII(G) of the Lease;
- (6) Any such other legal and equitable relief as the interests of justice may allow.

COUNT II:
PRELIMINARY INJUNCTION AGAINST ALL DEFENDANTS

69. Plaintiffs re-allege Paragraphs 1-61 of this Complaint as fully set forth herein.
70. The individual and collective actions of Defendants OEWP and AMTRUST as more fully detailed herein present the risk of ongoing and irreparable harm to GWC, its employees and the families of GWC employees given the exigencies of the COVID-19 epidemic.
71. Reasonable attempts have been made by GWC to dissuade Defendants from continuing with their untenable course of conduct to no avail.
72. In light of the above, prompt intervention of the Court is required to prevent further harm.

WHEREFORE, Plaintiffs pray that judgment be entered in its favor and against Defendants OEWP and AMTRUST and that that this Court enter an Order:

- (1) Enjoining Defendants from any attempt to enforce the rent provisions of the Lease until the rights and responsibilities of the parties can be adjudicated by the Court;
- (2) Entering a schedule for expedited discovery regarding the physical and mechanical structures of the One East Wacker building, as well as any remedial measures taken by Defendants to reduce the risk of COVID-19 infection, so that the Court may have the benefit of a fully developed factual record to adjudicate these claims;
- (3) Awarding any fees and costs incurred in this litigation pursuant to Section XIII(G) of the Lease;

(4) Any such other legal and equitable relief as the interests of justice may allow.

COUNT III:
INJUNCTIVE RELIEF AGAINST OEWP FOR SPECIFIC
PERFORMANCE OF THE LEASE

73. Plaintiffs re-allege Paragraphs 1-61 of this Complaint as fully set forth herein.

74. The individual and collective actions of Defendants OEWP and AMTRUST as more fully detailed herein present the risk of ongoing and irreparable harm to GWC, its employees and the families of GWC employees given the exigencies of the COVID-19 epidemic.

75. Reasonable attempts have been made by GWC to dissuade Defendants from continuing with their untenable course of conduct to no avail.

76. In light of the above, prompt intervention of the Court is required to prevent further harm.

WHEREFORE, Plaintiffs pray that judgment be entered in its favor and against Defendants OEWP and AMTRUST and that that this Court enter an Order:

- (1) Enjoining Defendants from enforcing any further obligation under the Lease, including the payment of any rents and fees, effective from the date Plaintiffs has surrendered the Premises pursuant to the Court's order;
- (2) Terminating the Lease based upon the danger posed to GWC employees and their families;
- (3) Awarding any fees and costs incurred in this litigation pursuant to Section XIII(G) of the Lease;
- (4) Any such other legal and equitable relief as the interests of justice may allow.

COUNT V:
BREACH OF CONTRACT AGAINST OEWP

77. Plaintiffs re-allege Paragraphs 1-61 of this Complaint as fully set forth herein.
78. The terms of the Lease between GWC and OEWP and the subsequent Fifth Amendment to the Lease, constitutes a valid, binding, and enforceable contract.
79. The mutual assent of GWC and OEWP to the terms of the Lease and the subsequent Fifth Amendment to the Lease created a legally binding obligation on the part of OEWP to honor its obligations under the lease, including the prohibition on use of the Premises that may be dangerous to persons or property.
80. Notwithstanding the above, Defendant OEWP violated the terms of the Lease by requiring the payment of full rent at a time when use of the Premises may present a danger to GWC employees.
81. This refusal on the part of Defendant OEWP to abide by the terms of the Lease is a material breach of the Lease.
82. As a direct and proximate result of Defendant's breach, Plaintiffs have suffered and will continue to suffer, harm of a personal and pecuniary nature which will be proven at trial.

WHEREFORE, Plaintiffs pray that judgment be entered in its favor and against Defendant OEWP and that that this Court enter an Order:

- (1) awarding compensatory Plaintiffs damages to fully compensate for any failure of OEWP to perform under the Lease, to the extent those damages are capable of being measured;
- (2) Awarding any fees and costs incurred in this litigation pursuant to Section XIII(G) of the Lease;
- (3) Any such other legal and equitable relief as the interests of justice may allow.

RESPECTFULLY SUBMITTED,

s./ *Lance Northcutt*

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