

YES / NO

EXHIBITS

CASE NO. 2020 L 5476

DATE: 5/20/20

CASE TYPE: CONTRACT

PAGE COUNT: 7

CASE NOTE

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2020L005476

HART 353 NORTH CLARK LLC,)	9291918
)	
Plaintiff,)	
)	Case No.
vs.)	
)	
JENNER & BLOCK LLP,)	
)	
Defendant.)	

COMPLAINT AT LAW

Plaintiff, HART 353 NORTH CLARK LLC (“Plaintiff”), by and through its attorneys, Taft Stettinius & Hollister, LLP, for its Complaint at Law against the Defendant, JENNER & BLOCK LLP (“Defendant”), by stating and alleging as follows:

Parties, Jurisdiction and Venue

1. Plaintiff is a limited liability company, duly organized and existing under and by virtue of the laws of the State of Illinois, with its principal office located at 191 N Wacker Drive, Suite 2500, Chicago, Illinois 60606.

2. Upon information and belief, Defendant is a limited liability partnership, duly organized and existing under and by virtue of the laws of the State of Illinois, with its principal office located at 353 North Clark Street in Chicago, Illinois.

3. This Court has personal jurisdiction over the Defendant in this action pursuant to 735 ILCS 5/2-209(a)(1) because the Defendant has engaged in business transactions within the State, and 735 ILCS 5/2-209(a)(7) because the written agreement at issue is a contract which was performed within the State.

4. Venue is proper in this Court pursuant to 735 ILCS 5/2-101 of the Illinois Code of Civil Procedure, in that all the occurrences alleged and complained of herein occurred in Cook County, Illinois.

Factual Allegations

5. On or about June 30, 2006, 351 Mortgage Loan Borrower LLC (“351”) entered into a Lease Agreement with Plaintiff for the premises then known as 351 North Clark Street in Chicago, Illinois, which address subsequently changed to 353 North Clark Street in Chicago, Illinois (the “Building”). Plaintiff took possession of several floors within the Building on or about November 1, 2009 (the ‘Premises”).

6. On or about December 15, 2010, 351 conveyed or otherwise transferred ownership of the Building, including the Lease to 353 N. Clark, L.P.

7. On or about December 4, 2014, 353 N. Clark, L.P. conveyed or otherwise transferred ownership of the Building, including the Lease to HART 353 North Clark LLC (“Plaintiff”).

8. At all times relevant herein, Plaintiff, as successor-in-interest to 351 Mortgage Loan Borrower LLC, is the holder of the interest of “Landlord” under the Lease. Defendant leases from Landlord, approximately 416,297 square feet of office space in the building commonly known as 353 North Clark Street, Chicago, Illinois 60411, pursuant to the terms of a written Lease Agreement, dated June 30, 2006, as amended by seven amendments dated December 29, 2006, September 2, 2008, January 13, 2009, January 21, 2010, November 1, 2010, July 13, 2011 and August 31, 2012 (collectively, the “Lease”).

9. Pursuant to 735 ILCS 5/2-606, Plaintiff recites herein the relevant portions of the Lease rather than attaching the entire Lease because of its voluminous nature.

10. Pursuant to the terms of the Lease, Defendant is obligated to make regular monthly payments of rent and other charges (collectively, the “Rent”) to Plaintiff (the “Required Payments”). Section 2 C (ii) of the Lease states, in relevant part, as follows:

(ii) all Rent shall be paid to Landlord without abatement, offset, set-off or deduction (except as otherwise specifically set forth in this Lease), and Tenant’s covenant to pay Rent hereunder shall be independent of every other covenant in this Lease (except for abatement, offset, set-off or deduction specifically set forth in this Lease);

11. Defendant has failed and refused to make the Required Payments on April 1, 2020, and May 1, 2020, (the “Delinquent Payments”).

12. As of the date of this Complaint, a total of Three Million Seven Hundred Twenty Six Thousand Four Hundred Fifteen Dollars and Seventy Four Cents (\$3,726,415.74) (the “Delinquent Rent”) in unpaid Rent is due and owing to Plaintiff.

13. Plaintiff (through its counsel) sent Defendant a written notice of nonpayment and demand for full payment of the Delinquent Rent within five (5) business days of Tenant’s receipt of the notice (the “Default Notice”).

14. A true, accurate and authentic copy of the Default Notice is attached hereto and incorporated herein as Exhibit A.

15. Defendant failed and refused to pay fully the Delinquent Rent within five (5) business days of its receipt of the Default Notice.

16. Defendant’s failure and refusal to pay fully the Delinquent Rent within such five (5) business days period constitutes a “Default” by Tenant under the Lease. *See Section 16 A (i) of the Lease*. Section 16 A (i) of the Lease provides, in relevant part, as follows:

TENANT DEFAULTS AND LANDLORD REMEDIES.

A. Default. The occurrence of any of the following shall constitute a default (a “**Default**”) by Tenant under this Lease: (i) Tenant fails to pay any Rent when due and such failure is not cured within five (5) business days after receipt of written notice from Landlord to Tenant that such Rent is past due;

17. The Lease provides, among other things, that upon the occurrence of any Default, Plaintiff is entitled to enforce the provisions of the Lease by a suit or suits in equity or at law, for the recovery of all monies due, or to become due, from Defendant under any of the provisions of the Lease. *See Section 16 B (iii) of the Lease.* Section 16 (B) (iii) of the Lease provides, in relevant part, as follows:

B. Rights and Remedies of Landlord. Upon the occurrence of any Default, Landlord may, with or without notice or demand of any kind to Tenant or any other person, have any one or more of the following described remedies in addition to all other rights and remedies provided at law or in equity or otherwise or elsewhere herein:

* * *

(iii) Landlord may enforce the provisions of this Lease and may enforce and protect the rights of Landlord hereunder by a suit or suits in equity or at law for the specific performance of any covenant of agreement contained herein; and for the enforcement of any other appropriate legal or equitable remedy, including without limitation: (a) injunctive relief, (b) recovery of all monies due or to become due from Tenant under any of the provisions of this Lease, and (c) any other damage (excluding consequential, indirect and punitive damages) incurred by Landlord by reason of Tenant’s Default under this Lease. For purposes hereof, damages arising out of (x) Landlord’s loss of a tenant or a default of Landlord caused by Tenant’s holding over for a period in excess of one hundred twenty (120) days, and (y) Landlord’s default or failure of a condition under a financing commitment by reason of Tenant’s wrongful failure to deliver an estoppel letter for any reason other than *bona fide* disagreement as to a factual or legal issue required to be set forth therein within the time periods required under Sections 16A and 21C of this Lease, shall not be considered consequential or indirect damages, either for purposes of this Section 16B or for purposes of Section 18 below.

18. Section 2 C (iv) provides that Defendant is entitled to interest and late fees as a result of Defendant’s Default under the Lease. Section 2 C (iv) provides, in relevant part, as follows:

2 C. Payment of Rent. “(iv) any sum due from Tenant to Landlord, or from Landlord to Tenant, which is not paid within five (5) days of when due shall bear interest from the date due until the date paid at the annual interest rate of the

Interest Rate (as defined hereinafter) plus three percent (3%) per annum, but in no event higher than the maximum rate permitted by law (such lesser rate, the "Default Rate"), and, in addition, Tenant shall pay Landlord a late charge for the second and each subsequent Rent payment which is paid more than ten (10) business days after its due date in any calendar year equal to two percent (2%) of such payment;

19. The Default Rate of interest under the Lease is 6.25% based upon the formula provided in Section 2 of the Lease. The relevant provision provides as follows:

For the purposes of this Lease, the term "Interest Rate" shall mean a rate equal to the corporate base rate announced from time to time by JPMorgan Chase Bank, NA ("JPMC"), at its principal office in New York, New York. The Interest Rate shall change on the same day as any change in the corporate base rate occurs. The corporate base rate shall be the rate "announced" notwithstanding that other rates may actually be charged. The written statement or notice from JPMC as to what the corporate base rate was on any given day shall be conclusive, and, in the event that JPMC should cease to publish a corporate base rate, the corporate base rate (or the prime rate) announced by a major bank with a Chicago presence, selected by Landlord, with notice of such selection given to Tenant, shall be an acceptable substitute therefor.

20. Defendant is entitled to Late Payments under the Lease. Section 16 G provides, in relevant part, as follows:

16 G. Late Payments. (i) All payments becoming due from Tenant to Landlord under this Lease and remaining unpaid as and when due shall bear interest until paid at the Interest Rate, and from and after written notice from Landlord to Tenant that such payments are due and payable and after the expiration of any grace period provided for herein, at the Default Rate.

(ii) The provisions of this Section 16 shall in no way relieve Tenant of the obligation to pay Base Rent, Adjustment Rent or other amounts due and owing by Tenant under this Lease on or before the date on which they are due, nor shall the collection by Landlord of any amount under this Section 16 impair (a) the ability of Landlord to collect any other amount charged under this Section 16 or (b) Landlord's remedies set forth in this Section 16.

21. Defendant is entitled to reasonable attorneys' fees and court costs if it prevails in any litigation in connection with the Lease. Section 25 G provides, in relevant part, as follows:

25 G. Attorneys' Fees. The losing party shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in connection with any action between Landlord and Tenant arising out of this Lease or incurred by the prevailing party as a result of any litigation to which the prevailing party becomes a party as a result of this Lease or Tenant's use and occupancy of the Premises or any portion thereof.

22. All conditions precedent to Plaintiff's enforcement of the Lease have been performed by Plaintiff or have been excused by Defendant.

23. As of the date of this Complaint, Defendant has failed to cure, and Plaintiff has not excused Defendant from, its Default under the Lease.

24. Plaintiff brings this action to recover the Delinquent Rent, and any and all other unpaid sums that become due and owing to Plaintiff under the Lease through the date of judgment.

25. As of the date of this Complaint, there is currently due and owing to Plaintiff by Defendant under the Lease:

- a. Rent for the months of April, 2020, and May, 2020 in the amount of \$3,726,415.74;
- b. \$67,719.89 in unpaid reconciliations from 2018;
- c. \$92,293.34 in unpaid café charges;
- d. Late fees and interest to be proven at trial; and
- e. Reasonable attorneys' fees and court costs incurred by Plaintiff in this action.

WHEREFORE, Plaintiff requests judgment in its favor and against Defendant, JENNER & BLOCK, LLP, in the sum of **\$3,886,428.97**, or such other amount to be proven at trial, interest, late fees, Plaintiff's reasonable attorneys' fees and costs of suit, and grant any other relief this Court deems just and reasonable.

HART 353 North Clark LLC

By: /s/ John M. Riccione
One of its attorneys

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