Hearing Date: No hearing scheduled
Location: <<CourtRoomNumber>>
Judge: Calendar, Y

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IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

30 DEGREE DESIGN LLC,	)	
an Illinois Limited Liability Company,	)	
BRAD BEHMER, an individual,	)	
KENNETH MAYLE, an individual,	)	
	)	
Plaintiffs,	)	**Case No. 2022L010246**
and	)	
	)	**Cal. I**
GP OPPORTUNITY FUND, LLC,	)	
an Illinois Limited Liability Company,	)	
and the City of Chicago	)	
	)	
Defendants.	)	

PLAINTIFF'S THIRD AMENDED COMPLAINT AT LAW

NOW COME Plaintiffs, 30 DEGREE BY DESIGN, LLC, BRAD BEHMER and KENNETH MAYLE, by and through their Attorney, Adeena Weiss Ortiz of WEISS ORTIZ P.C., and for their THIRD AMENDED COMPLAINT AT LAW against DEFENDANTS, GP OPPORTUNITY FUND, LLC and THE CITY OF CHICAGO, complain as follows:

PARTIES

1. Plaintiff, 30 DEGREE BY DESIGN, LLC ("30 Degree"), is an Illinois Limited Liability Company with address located in Wheaton, DuPage County, Illinois.

2. Plaintiff, BRAD BEHMER ("Behmer"), is an individual residing in Chicago, Cook County, Illinois. Behmer is the president and manager of 30 Degree.

3. Plaintiff, KENNETH MAYLE ("Mayle"), is an individual residing in Chicago, Cook County, Illinois.

4. Defendant, GP OPPORTUNITY FUND, LLC ("GP"), is an Illinois limited liability company with address located in Chicago, County of Cook, Illinois. The owner and manager of

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GP is Byron Finke ("Finke"), who upon information and belief also resides in Chicago, County of Cook, Illinois.

5. Defendant CITY OF CHICAGO ("CITY"), is a municipal corporation duly incorporated and duly organized under the laws of the State of Illinois. The CITY is located in Cook County.

VENUE AND JURISDICTION

6. Jurisdiction is proper pursuant to 735 ILCS 5/2-209(a)(1), (a)(3), (a)(10), (b)(1)-(b)(4) and (c). Venue in Cook County is appropriate under 735 ILCS 5/2-101 as the transaction giving rise to the causes of action occurred in the City of Chicago, Cook County, Illinois.

FACTS COMMON ON ALL COUNTS

7. On or about September 17, 2021, 30 Degree and GP entered into a Commercial Lease, to lease a 13,000 square foot industrial unit located at certain real property commonly known as 4714A West Lake Street, Chicago, Illinois, 60644 ("Property"). A copy of the Lease is attached hereto as **Exhibit A.** The Property is over one hundred years old.

8. On information and belief, the Property was formerly the site of a glass factory and still contains dilapidated utility systems related to such use including gas lines.

9. The Lease was executed by Behmer as President of 30 Degree for the Tenant and Finke as owner of GP for the Landlord. Mayle signed the Lease as a Guarantor as did Behmer, both in their respective individual capacity. *Id*.

10. The term of the Lease was for a five-year period, beginning on October 1, 2021 and terminating on September 31 (sic), 2026. *Id*.

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11. The monthly payment is $7,150.00. Mayle tendered eighteen months of pre-paid rent ($128,700.00) as a condition precedent as well as a six-month security deposit in the amount of $42,900.00.

12. Plaintiffs' intended use of the Property is for business offices, storage of materials and equipment and in the manufacturing of home décor and other artistic objects.

13. Pursuant to Paragraph 9 of the Lease:

> Maintenance Repairs and Replacements. Tenant and Landlord shall share in the maintenance of the premises. However if it is found that any damage is caused by Tenant and such damage is not covered by insurance carried by Tenant, the Tenant will be responsible for all replacements or repairs.
>
> A. Tenant. Tenant shall maintain repair or replace the interior space of the unit, including all plumbing fixtures, lighting fixtures, mezzanine furnace, mezzanine air conditioner, hot water heaters, wall surfaces, floors, garage door and any alterations, additions or improvements.
> B. Landlord. Landlord shall maintain, repair or replace, with exception to Tenant caused damages, the exterior of the premises, including roof, exterior walls, and access to utility services, water, gas and electricity." See **Exhibit A.**

14. Additionally, pursuant to Paragraph 29B of Lease:

> Landlord will present the Tenant with replacement lighting no later than November 1, 2021. See **Exhibit A**.

15. Since the execution of the Lease, Plaintiffs became aware of various roof leaks in the Property warehouse structure causing significant water damage to the interior of the Property, diminishing Plaintiffs' ability to work effectively and efficiently in the space. Plaintiffs have made adequate and sufficient written request for GP to repair the roof pursuant to paragraphs 9B and 23 of the Lease. However, GP has failed to repair. *See* **Exhibit B** attached hereto.

16. Exterior drainage and venting issues of the Property have caused flooding in the interior Property warehouse space during heavy rains making it impossible for Plaintiffs to use the space as intended. Plaintiffs have made adequate and sufficient written request for GP to repair

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same pursuant to paragraphs 9B and 23 of the Lease. However, GP has failed to repair. *See* **Exhibit C** attached hereto.

17. Since November 1, 2021, GP has failed to provide replacement lighting pursuant to paragraph 29B of the Lease. Plaintiffs have made adequate and sufficient written request for GP to provide replacement lighting pursuant to paragraphs 23 and 29B however, GP has failed to provide same.

18. The electrical system to supply lighting in the Property is sourced from an extension cord with two bare wires stripped and inserted into the extension cord and is inadequate, incomplete, improper and dangerous. Plaintiffs have made adequate and sufficient written request for GP to provide electrical repair pursuant to paragraphs 9B and 23 of the Lease, however, GP has failed to repair.

19. Since Lease inception, the Property has remained without heat or adequate plumbing facilities. Plaintiffs have made adequate and sufficient written request for GP to provide repair pursuant to paragraphs 9B and 23 of the Lease, however, GP has failed to repair.

20. People's Gas refused to start gas service to Property due to gas piping modifications made by GP, which caused inadequate supply to the main room heaters. As a result of the lack of heat, the water pipes broke in various places in the warehouse unit causing cracking and leakage. Plaintiffs have made adequate and sufficient written request for GP to provide repair pursuant to paragraphs 9B and 23 of the Lease, however, GP has failed to repair. *See* **Exhibit D** attached hereto.

21. Since inception of the Lease, Plaintiffs have been paying an electric bill that reflects service for the entire building and not its own space. Plaintiffs have made adequate and sufficient written request for GP to correct same, however, GP has failed to address the issue.

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22. On or about January 28, 2022, a car accident occurred on Lake Street damaging the rollup garage door of the Property. Despite adequate and sufficient written request pursuant to paragraph 23 by Plaintiffs to repair the garage door, GP failed to repair same, causing Plaintiffs to spend approximately $2,300 in repairs, even though said repair is not maintenance under the Lease.

23. Additionally, while GP's electricians were working on the space adjacent to the Property, the electricians turned off power to the Property's garage door which continues to be inoperable despite adequate and sufficient written request by Plaintiffs pursuant to paragraph 23 to fix the door.

24. The Property is the subject of multiple building code violations. A list of Open Violations for 4700-4714 W. Lake Street is attached hereto as **Exhibit E**. These violations include but are not limited to: exposed electrical wiring at numerous outlets, open electrical panel with no cover, excessive debris, obstructions in exit way, failure to maintain the roof structure which may admit rain, failure to install an exit sign, and more dangerous conditions. GP failed to remedy said code violations and/or failed to obtain permits or inspections for work performed to repair code violations. Any repairs performed were performed by unlicensed, uninsured, unqualified, non-union workers. See **Exhibit E.**

25. Since the inception of the lease, the Property has contained unsafe, unsanitary and uninhabitable conditions.

26. As a result of the above, Plaintiff is unable to use the leased space as contracted and Plaintiffs implied rights to quiet use and enjoyment have been severely curtailed.

27. The CITY has conducted several inspections of the Property since the inception of the Lease, and is aware of the myriad code violations. However, the CITY did not withhold Defendant's certifications to allow occupancy. A list of Open Violations for 4700-4714 W. Lake

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Street is attached hereto as **Exhibit E**. These violations include but are not limited to: exposed electrical wiring at numerous outlets, open electrical panel with no cover, excessive debris, obstructions in exit way, failure to maintain the roof structure, failure to install an exit sign, and more dangerous conditions. See **Exhibit E.**

28. The multiple code violations prevented Plaintiff from obtaining insurance on the Property.

29. On February 6, 2023 there was a two-alarm fire at the Property. See Incident Report attached hereto as **Exhibit F**. The Incident Report indicates that on February 6, 2023, no smoke detectors and/or automatic extinguishment system/sprinkler system were present. See **Exhibit F.**

30. Plaintiffs suffered extensive damage to their property and persons as a result of the fire. See Behmer's medical records attached hereto as **Exhibit G**.

31. GP failed to maintain, repair, replace or otherwise remediate the Property despite adequate and sufficient notice pursuant to the Lease and opportunity to repair. Additionally, GP failed to provide and/or maintain a working smoke detector and/or automatic extinguishment system/sprinkler system.

32. GP's failure to maintain, repair, replace or otherwise remediate the Property and/or failure to provide and/or maintain a working smoke detector and/or automatic extinguishment system/sprinkler system is willful.

33. As a result of GP's failure to maintain, repair, replace or otherwise remediate the Property and/or maintain a working smoke detector and/or automatic extinguishment system/sprinkler system, Plaintiffs have been caused to vacate the Property and their furniture and lighting components and tools have been destroyed.

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34. On February 13, 2023, Plaintiffs returned to the Property and discovered that Defendant had removed the doorknobs from the building, effectively denying Plaintiffs access to the Property without notice and that they were constructively evicted.

COUNT I –BREACH OF CONTRACT v. GP OPPORTUNITY FUND

35. Plaintiff adopts and re-alleges paragraphs 1 through 34 of the facts common to all counts as if fully set forth herein.

36. "The essential elements of a breach of contract are: (1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) breach of the contract by the defendant; and (4) resultant injury to the plaintiff." *Mack Industries v. Village of Dolton*, 2015 IL App (1st) 133620, Pg. 29, 30 N.E.3d 518. *Citing Batson v. The Oak Tree, Ltd*., 2013 IL App (1st) 123071, Pg. 35, 377 Ill. Dec. 489, 2 N.E.3d 405.

37. In the case at bar, Plaintiffs entered into a written lease agreement with GP for the lease of industrial warehouse space at the Property. See **Exhibit A.**

38. Plaintiffs tendered to GP the sum of $171,600 in security deposits and pre-paid rent in consideration of said Lease.

39. To date, Plaintiffs have performed its obligations under the terms of the Lease.

40. As set forth above, GP is in violation of Paragraphs 9 and 29B of said Lease in breach of the agreement.

41. As a result of GP's breach, Plaintiff has suffered damages, including but not limited to inability to use the Property as contracted, inability to safely remain in the space without significant repairs, physical and emotional injury, pain and suffering and has incurred monetary damages.

WHEREFORE, Plaintiff prays for judgment against Defendant GP Opportunity Fund as follows:

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A. An Order entering judgment for Plaintiff and against Defendant in an amount in excess of $171,600.00;

B. An Order requiring Defendant to pay Plaintiff punitive damages;

C. An Order requiring Defendant to pay Plaintiff's costs, charges and expenses, including reasonable attorney's fees, pursuant to paragraph 13 of the Lease. See **Exhibit A.**

D. An Order requiring Defendant to pay Plaintiff's interests allowed by law; and

E. For such other and further relief in premises as this Court deems just and proper.

COUNT II -BREACH OF IMPLIED COVENANT OF QUIET ENJOYMENT v. GP OPPORTUNITY FUND

42. Plaintiff adopts and re-alleges paragraphs l-34 of the facts common to all counts as fully set forth herein.

43. A covenant of quiet enjoyment is implied in all lease agreements. *Illinois Blue Cross Association v. 666 North Lake Shore Drive Associates,* 100 Ill. App. 3d 647, 652, 427 N.E. 2d 270, 273 (1st Dist. 1981). Quiet enjoyment is the right to the undisturbed use and enjoyment of the property. A landlord may not interfere with the tenant's quiet enjoyment.

44. Quiet enjoyment includes the right to peace and quiet and the right to basic services such as heat, water and electricity. A landlord may not cause utility services to a tenant to be interrupted or terminated.

45. The intent of the Lease is for Plaintiffs to have quiet enjoyment in the effective, efficient and safe use of the warehouse space.

46. GP's failure to provide and/or maintain and/or repair and/or replace mechanical systems including but not limited to heat, lighting, gas, electric, plumbing, drainage, smoke detectors, automatic extinguishment system/sprinkling system, ventilation as well as roof, exterior walls and exterior premises has interfered with Plaintiffs' implied right to quiet enjoyment.

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47. GP's interference with Plaintiff's implied right to quiet enjoyment is unreasonable.

48. The Property issues in need of repair/maintenance/replacement were and continue to be the responsibilities of GP and could have been remedied. Despite numerous requests and demands made by Plaintiffs to fix the unsafe conditions, GP failed to remedy.

49. GP's failure to repair/maintain/replace the Property systems and structures have rendered the Property useless to Plaintiffs, or, Plaintiffs have been deprived in whole or in part of the possession and enjoyment thereof, resulting in constructive eviction.

50. Breach of the covenant of quiet enjoyment in a leasehold may be found without finding that the lessor intended to deprive the lessee of possession. *Illinois Blue Cross Association v. 666 North Lake Shore Drive Associates,* 100 Ill. App. 3d 647, 652, 427 N.E. 2d 270, 273 (1st Dist. 1981). Here, GP willfully refused to perform repairs or so negligently performed on his promise that what it did was of no benefit in protecting Plaintiffs in the quiet enjoyment of the Property.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

A. An Order entering judgment for Plaintiff against Defendant in damages in an amount to be proven at trial;

B. An Order requiring Defendant to pay Plaintiff's costs, charges and expenses, including reasonable attorney's fees, pursuant to paragraph 13 of the Lease. See **Exhibit A.**

C. For such other and further relief in premises as this Court deems just and proper.

COUNT III – UNJUST ENRICHMENT v. GP OPPORTUNITY FUND

51. Plaintiff adopts and re-alleges paragraphs 1-34 of the facts common to all counts as if fully set forth herein.

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52. To state a claim for unjust enrichment under Illinois law, a plaintiff must allege that the defendant has unjustly retained a benefit to the plaintiff's detriment, and that the defendant's retention of that benefit violates fundamental principles of justice, equity, and good conscience.

53. In the case at bar, Plaintiffs paid GP over $170,000.00 in prepaid rent and security deposits for a commercial space that was otherwise unrentable and uninhabitable.

54. Plaintiffs have suffered a unit with inadequate lighting, limited or no heat, insufficient plumbing, leaky roof and fire.

55. These conditions have affected Plaintiffs ability to work and use the space as intended.

56. GP has unjustly retained a benefit to the Plaintiffs' detriment in that it received over $170,000.00 without providing the benefit of a safe and habitable commercial space.

57. GP's retention of Plaintiffs' funds violates the fundamental principles of justice, equity and good conscience.

WHEREFORE, Plaintiffs pray for judgment against GP as follows:

A. An Order entering judgment for Plaintiff and against GP for compensatory damages in an amount to be proven at trial;

B. An Order requiring Defendant to pay Plaintiff punitive damages;

C. An Order requiring Defendant to pay Plaintiff's costs, charges and expenses, including reasonable attorney's fees, pursuant to paragraph 13 of the Lease. See **Exhibit A.**

D. For such other and further relief as this Court deems just and proper.

COUNT IV – CONSTRUCTIVE EVICTION v. GP OPPORTUNITY FUND

58. Plaintiff adopts and re-alleges paragraphs 1-33 of the facts common to all counts as if fully set forth herein.

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59. GP's failure to provide and/or maintain and/or repair and/or replace mechanical systems including but not limited to heat, lighting, gas, electric, plumbing, drainage, smoke detectors, automatic extinguishment system/sprinkling system, ventilation as well as roof, exterior walls and exterior premises has interfered with Plaintiffs' implied right to quiet enjoyment of the Property and constitute an act of grave and permanent character.

60. The Property issues in need of repair/maintenance/replacement were and continue to be the responsibilities of GP and could have been remedied. Despite numerous requests and demands made by Plaintiffs to fix the unsafe conditions, GP failed to remedy.

61. GP's failure to repair/maintain/replace the Property systems and structures have rendered the Property useless to Plaintiffs, or, Plaintiffs have been deprived in whole or in part of the possession and enjoyment thereof, resulting in constructive eviction.

62. GP willfully refused to perform repairs or so negligently performed on his promise that what it did was of no benefit in protecting Plaintiffs in the quiet enjoyment of the Property.

63. As a result of the damage to the premises, the Property cannot be utilized until extensive repairs are completed. Even before the fire caused damage to the Property, said Property could not be utilized for its intended purpose until extensive repairs were completed.

64. At no time did Defendant attempt to make any necessary protective measures to ensure the safety of the premises and the Property is no longer usable.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

A. An Order entering judgment for Plaintiff and against Defendant for compensatory damages in an amount to be proven at trial;

B. An Order requiring Defendant to pay Plaintiff punitive damages;

E. An Order requiring Defendant to pay Plaintiff's costs, charges and expenses,

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including reasonable attorney's fees, pursuant to paragraph 13 of the Lease. See **Exhibit A.**

C. For such other and further relief in premises as this Court deems just and proper.

COUNT V – NEGLIGENCE v. GP OPPORTUNITY FUND

65. Plaintiff adopts and re-alleges paragraphs 1-34 of the facts common to all counts as if fully set forth herein.

66. Pursuant to the Lease, GP owed a duty to Plaintiffs to maintain, repair or replace the exterior of the premises, including roof, exterior walls and access to utility services water, gas, electricity. See **Exhibit A.** Additionally, GP owed a duty to Plaintiffs to present Plaintiffs with replacement lighting by November 1, 2021. See **Exhibit A.** Pursuant to fire safety codes and regulations, GP owed a duty to Plaintiffs to provide and maintain working smoke detector, automatic extinguishment system/sprinkler system.

67. GP knew of certain latent defects on the premises. GP knew lighting was defective at the time of the execution of the Lease and promised replacement lighting by November 1, 2021 pursuant to the Lease for which it failed to do. See **Exhibit A.**

68. GP was issued various ordinance violations over the course of the Lease which Defendants failed to correct and thus knew of defects on the Property. See **Exhibit E.**

69. GP breached its duty owed to Plaintiffs by failing to provide and/or maintain and/or repair and/or replace mechanical systems including but not limited to heat, lighting, gas, electric, plumbing, drainage, smoke detectors, automatic extinguishment system/sprinkler system, ventilation as well as roof, exterior walls and exterior premises.

70. GP's breach as set forth above ultimately caused and/or contributed to the fire.

71. GP's negligent acts and/or omissions prevented Plaintiffs from obtaining insurance.

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72. As a direct and proximate result of one or more of GP's negligent acts and/or omissions, Plaintiffs suffered injuries including but not limited to pain and suffering, emotional pain and suffering, mental anguish, property damage, monetary damage, economic loss, inability to utilize the premises for its intended purpose as a place of business.

73. As a direct and proximate result of one or more of GP's negligent acts and/or omissions, Plaintiffs sustained damages of a pecuniary nature, past, present and future, including but not limited to pain and suffering, emotional pain and suffering, mental anguish, property damage, monetary damage and economic loss and inability to utilize the premises for its intended purpose as a place of business.

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

A. An Order entering judgment for Plaintiff and against Defendant for compensatory damages in an amount to be proven at trial;

B. An Order requiring Defendant to pay Plaintiff punitive damages;

C. An Order requiring Defendant to pay Plaintiff's Attorneys fees and costs; and

D. For such other and further relief in premises as this Court deems just and proper.

COUNT VI – NEGLIGENCE v. CITY OF CHICAGO

74. Plaintiff adopts and re-alleges paragraphs 1-34 of the facts common to all counts as if fully set forth herein.

75. "To state a cause of action for negligence, a plaintiff must allege that (1) the defendant owed plaintiff a duty, (2) the defendant breached this duty, and (3) that this breach was the proximate cause of plaintiff's resulting injuries." Id. ¶ 45. Whether a duty exists under a particular set of circumstances is a question of law for the court to decide." *Hutson v. Pate*, 2022 IL App (4th)

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210696, pg. 39. *Citing Choate v. Indiana Harbor Belt R.R. Co*., 2012 IL 112948, ¶ 22, 980 N.E.2d 58, 366 Ill. Dec. 258.

76. The CITY owed a duty to Plaintiffs in upholding the standards for building safety applicable to the Property.

77. The CITY was aware of the defective and dangerous conditions of the Property as it issued numerous Code violations. See **Exhibit E.**

78. The CITY breached its duty to Plaintiffs by allowing GP to continue to lease the Property despite the issuance of numerous Code violations. See **Exhibit E.**

79. As a direct and proximate result of one or more of the CITY's negligent acts and/or omissions, Plaintiffs suffered injuries including but not limited to physical and emotional pain and suffering, mental anguish, property damage, monetary damage, economic loss, inability to utilize the premises for its intended purpose as a place of business.

80. As a direct and proximate result of one or more of the CITY's negligent acts and/or omissions, Plaintiffs sustained damages of a pecuniary nature, past, present and future, including but not limited to physical and emotional pain and suffering, mental anguish, property damage, monetary damage and economic loss and inability to utilize the premises for its intended purpose as a place of business.

WHEREFORE, Plaintiff prays for judgment against Defendant, City of Chicago, as follows:

A. An Order entering judgment for Plaintiff and against Defendant, City of Chicago for compensatory damages in an amount to be proven at trial;

B. An Order requiring Defendant, City of Chicago, to pay Plaintiff's Attorneys fees and costs; and

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C. For such other and further relief in premises as this Court deems just and proper.

Respectfully Submitted,

30 DEGREE BY DESIGN, LLC,
BRAD BEHMER, and
KENNETH MAYLE

By: /s/Adeena Weiss Ortiz
Attorney for Plaintiffs

VERIFICATION

Under penalties as provided by law pursuant to Section 735 ILCS 5/1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to the matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

* * * * * FURTHER AFFIANT SAYETH NOT * * * * *

/s/ 30 DEGREE BY DESIGN, LLC,

/s/ BRAD BEHMER

/s/ KENNETH MAYLE

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