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Judge: Calendar, Y

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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,

v.

GP OPPORTUNITY FUND, LLC, managed by Bryon Finke,

an Illinois Limited Liability Company, and

THE CITY OF CHICAGO,

Defendants.

Case No. 2022L010246

Calendar Y, Courtroom 2004

Hon. Judge Tully

PLAINTIFF KENNETH MAYLE'S MOTION FOR RECONSIDERATION AND TO DECLARE LEASE VOID AB INITIO, OR IN THE ALTERNATIVE, RESCINDED AND UNENFORCEABLE, AND TO BAR ENFORCEMENT OF THE PERSONAL GUARANTY

NOW COMES Plaintiff Kenneth Mayle, pro se, pursuant to 735 ILCS 5/2-1203, and moves this Court to reconsider its prior ruling on the prior motion concerning the lease agreement and personal guaranty. In support, Plaintiff states:

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I. INTRODUCTION

The prior motion was captioned as a motion to "strike" the lease agreement. Plaintiff clarifies at the outset that the relief sought is not procedural removal of the lease document from the record. Rather, Plaintiff seeks a declaration that the lease agreement and personal guaranty are void ab initio, or in the alternative, rescinded and unenforceable, and that GP Opportunity Fund LLC may not use those instruments as the basis for its counterclaim or any claimed damages against Plaintiff.

The prior motion presented the lease's invalidity primarily as a formation defect arising from the nonexistence of the tenant entity at signing. Plaintiff does not abandon that ground. However, the more decisive and independently sufficient basis for relief—active fraudulent concealment of a known, government-noticed fire protection failure committed during the pre-lease tour—was not developed as a standalone claim. This motion corrects that omission.

II. STANDARD FOR RECONSIDERATION AND WHY THIS THEORY WAS NOT RAISED EARLIER

A trial court retains inherent authority to reconsider any interlocutory ruling prior to final judgment. *Bright v. Dicke*, 166 Ill. 2d 204, 210 (1995). Reconsideration is appropriate where the movant presents a legal theory or material issue that was not adequately developed in the prior filing, or where the failure to develop that theory was itself the product of the opposing party's concealment. *Pekin Ins. Co. v. Wilson*, 237 Ill. 2d 446, 457 (2010).

This is precisely such a case. The fraudulent concealment theory was not developed in the prior motion—and was not developed by prior counsel—because GP concealed the very evidence on which the theory depends. The concealment operated across both of Plaintiff's discovery vehicles simultaneously:

- In May 2024, Plaintiff served GP with 19 Interrogatories and 63 Requests to Produce

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(RTPs) seeking information on the lease dispute, the February 6, 2023 fire, insurability issues, lease validity, and GP's ownership structure. Prior counsel (Weiss and Ortiz) received GP's responses on July 11, 2024 and failed to transmit them to Plaintiff. Plaintiff did not learn of the extent of GP's non-compliance until taking over pro se.

- **RTP No. 22** expressly requested "all code violations received, all documents demanding repairs to the space." GP objected as "unclear" and "irrelevant" and produced nothing. That objection was false: open violation FP2148 existed, had never been closed, and was directly responsive.

- **RTP No. 26** requested purchase and sale documents, including—as Plaintiff's Motion to Compel specifically noted—"any disclosures related to fire protection upon purchasing the building." GP objected as overbroad and produced nothing.

- **Interrogatory No. 17** asked GP to disclose code violations at the property within five years prior to the occurrence. GP answered that it "had not been cited for any building code violations at the property in the 5 years prior to the June 17, 2022 raid." Exhibit E, p. 7. That answer is false: violation FP2148 was cited August 11, 2016 and was never closed. GP submitted this answer with a *blank, unsigned verification page*—the "Verification by Certification" page (Exhibit E, p. 9) contains the statutory certification language required by 735 ILCS 5/1-109 but bears no signature from Bryon Finke or any authorized representative of GP. This Court recognized that deficiency in its May 18, 2026 Order, ¶ 8, granting Plaintiff's Motion for Verification and ordering GP to provide signed verification within seven days. As of the date of this filing, GP has not done so.

- GP has never produced or acknowledged the May 4, 2021 CFD Second Notice in its discovery responses, despite that document being addressed to the property GP owned and managed, and despite GP bearing an affirmative duty under the CFD's own notice language to either comply or correct the responsible-party designation with BRYCER.

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- Upon taking over pro se, Plaintiff immediately filed a Motion to Compel on July 30, 2025. On September 12, 2025, Plaintiff personally conducted a meet-and-confer call with GP's counsel, Zachary Limbaugh, specifically to address the outstanding RTP and interrogatory responses. GP produced nothing following that call.
- By order dated March 31, 2026, this Court denied Plaintiff's Motion to Compel while noting that "the parties have an obligation to supplement outstanding discovery." The February 18, 2026 Order reflects the Court's awareness of multiple outstanding motions. GP has not supplemented. Fire pump records, ITM history, operating agreement, and CFD correspondence remain unproduced as of the date of this filing.

The evidence Plaintiff now presents—the May 4, 2021 CFD Second Notice, the DOB violation history, and the Acuity Insurance cancellation—was obtained by Plaintiff independently through public records and third-party subpoena, not through GP's disclosures. This is not a case of Plaintiff sitting on a known theory. It is a case where the party that committed the underlying fraud has continued that concealment through litigation, withholding the very documents that would have revealed it to prior counsel and to this Court at the time of the original motion.

Where a party's own discovery non-compliance prevents the timely development of a legal theory, that party cannot benefit from a ruling obtained in the absence of that evidence. *Suttles v. Vogel*, 126 Ill. 2d 186, 197 (1988); *Kubian v. Alexian Brothers Medical Center*, 272 Ill. App. 3d 246 (1st Dist. 1995).

GP's concealment through discovery extends further. Interrogatory No. 17 asked GP to state whether it had been subject to any City of Chicago code violations at the subject premises within five years prior to the occurrence. GP answered that it "had not been cited for any building code violations at the property in the 5 years prior to the June 17, 2022 raid." Exhibit E, p. 7. That answer is false. Department of Buildings records establish that fire pump violation FP2148 was cited on August 11, 2016 and was never closed—an open,

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uncured code violation that ran continuously through the date of the fire on February 6, 2023. GP submitted this answer with a blank, unsigned verification page. This Court's May 18, 2026 Order, ¶ 8, confirms this: Plaintiff's Motion for Verification was *granted*, and GP was ordered to provide signed verification within seven days. As of the date of this filing, GP has not done so. GP's false unverified answer to Interrogatory No. 17 is precisely why neither Plaintiff nor prior counsel identified and developed the fire pump concealment theory at the time of the original motion. GP denied the existence of a violation it knew had existed for years—yet would not sign its name to that denial. A party that obtains a favorable ruling by concealing evidence and refusing to verify its discovery answers cannot benefit from that ruling.

III. THE CONTROLLING FRAUD THEORY

Illinois law recognizes fraud by active concealment where: (1) the defendant concealed a material fact; (2) the defendant had a duty to disclose that fact; (3) the plaintiff did not know of the concealed fact; (4) the defendant intended to induce the plaintiff's reliance; and (5) the plaintiff suffered damages as a result. *Connick v. Suzuki Motor Co.*, 174 Ill. 2d 482, 496 (1996); *Zimmerman v. Northfield Real Estate, Inc.*, 156 Ill. App. 3d 154 (1st Dist. 1987). Active concealment includes conduct calculated to prevent the other party from discovering a material fact. *Heller v. Relnick*, 45 Ill. App. 3d 417 (1st Dist. 1977).

Fraud in the inducement renders a contract voidable and subject to rescission. *Eisenberg v. Goldstein*, 29 Ill. 2d 617 (1963). Rescission disaffirms the contract and restores the parties to their pre-contract positions. Each element of fraudulent inducement is satisfied here.

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IV. GP HAD PRE-LEASE ACTUAL NOTICE OF THE FIRE PUMP FAILURE

A. The May 4, 2021 CFD Second Notice

On May 4, 2021—five months before the October 1, 2021 lease signing—the Chicago Fire Department, Fire Prevention Bureau, issued a formal **Second Notice – Action Required** to 4700 W. Lake Street, Chicago, IL 60644. The notice states:

> *"Our records indicate the Fire Pump located at 4700 W LAKE ST, CHICAGO, IL 60644-2709 is PAST DUE for inspection by a licensed company, have been due on 09/01/2018. In order to avoid penalties, as provided by law for such violations, you must take immediate action."*

The notice required immediate inspection, testing, and maintenance by a licensed contractor, and submission of results to the City's compliance portal. GP took no action.

B. GP Cannot Disclaim Receipt

The CFD notice was addressed to "Columbia Glass, 4700 W Lake St." The notice itself resolves any argument about the addressee: *"If you are a tenant in the building/structure or are otherwise not the responsible party... please contact BRYCER, LLC... and provide the correct name, address, and phone number of the responsible party... If no update is provided, it will be assumed that this notice has reached the responsible party and will be addressed."*

The subject property has been held in Chicago Title Land Trust No. 8002378806 since August 14, 2018, with G.P. Opportunity Corp. as sole beneficiary and Bryon Finke, as President of G.P. Opportunity Corp., holding the sole power of direction over the trust property. No correction was ever submitted to BRYCER or the CFD. Under the CFD's own operative language, notice is therefore presumed to have reached the responsible party—GP —and to have been addressed. It was not.

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C. GP Was Required by Law to Know

Beyond actual notice, GP bore an affirmative, non-delegable legal duty to know the condition of its fire pump:

- **NFPA 25 § 4.1.1** places responsibility for properly maintaining water-based fire protection systems on the property owner or designated representative.
- **NFPA 25 § 4.1.5.1** assigns deficiency correction exclusively to the property owner.
- **NFPA 25 § 4.3.2** requires the owner to maintain inspection, testing, and maintenance records and make them available to the Authority Having Jurisdiction—here, the City of Chicago Department of Buildings.
- **Chicago Municipal Code §§ 13-76-120, 15-16-190, 15-16-210, 15-16-220, 15-16-280, 15-16-310** codify fire pump inspection, testing, and maintenance obligations enforceable against the building owner.

GP produced no ITM records in discovery—no inspection logs, no test results, no maintenance records for the fire pump or sprinkler system. The absence of such records is not a defense; it is an independent violation of GP's own legal obligations. An owner who violates its affirmative duty to inspect and maintain its fire suppression system for nine consecutive years cannot claim ignorance of the deficiency those duties were designed to surface.

D. The Documented Failure History

City of Chicago Department of Buildings inspection records establish:

- Fire pump violation **FP2148** was cited on August 11, 2016 and **never closed**.
- Two inspections in November and December 2013 noted **"NO POWER"**— the pump had no operational power.
- The last **passed** annual witnessed performance test was **September 29, 2015**—more than six years before lease execution.

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- No fire pump inspection, witnessed test, or fire protection compliance record appears in Department of Buildings records after August 11, 2016.

Under NFPA 25 § 8.3.3, annual witnessed performance tests are mandatory. A fire pump that documented "NO POWER" on two separate inspections in 2013 and has not passed a witnessed test since 2015 cannot be presumed operable.

V. FINKE SHOWED THE FIRE PUMP DURING THE TOUR AND INDUCED PLAINTIFF TO SIGN

During the pre-lease tour of the premises at 4714A West Lake Street, Bryon Finke walked Plaintiff through the building, including the fire pump room, and showed Plaintiff the fire pump. By concealing the pump's documented noncompliance, the open CFD violation FP2148, and the May 4, 2021 Second Notice demanding immediate action, Finke induced Plaintiff to sign the personal guaranty believing the building's fire protection systems were operational.

This is not a case of a landlord passively failing to volunteer information about a latent condition. Finke actively directed Plaintiff's attention to the fire pump—the specific equipment that was the subject of a government-noticed compliance failure—while concealing every material fact about its condition. That conduct is active concealment under *Connick* and *Zimmerman*.

The causal chain is direct: Plaintiff was shown the pump, was given no warning, and was induced to sign as guarantor (and directly pay Finke). Had Plaintiff known that the fire pump had been cited as failed since 2016, had not passed inspection since 2015, and had received a formal Second Notice just five months earlier demanding immediate action, Plaintiff would not have signed.

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VI. THE CHRONOLOGY IS CONCLUSIVE

Date	Event
Nov. & Dec. 2013	Two CFD inspections note "NO POWER" on fire pump
Sept. 29, 2015	Last passed fire pump annual inspection
Aug. 11, 2016	CFD inspection—fire pump failed; violation FP2148 cited; never closed
2018	Property placed in Chicago Title Land Trust No. 8002378806; G.P. Opportunity Corp. identified as sole beneficiary; Bryon Finke holds power of direction
May 4, 2021	CFD issues Second Notice: pump past due since 09/01/2018; immediate action required
Sept.–Oct. 2021	Pre-lease tour: Finke shows Mayle the fire pump; induces Plaintiff to sign; no disclosures made
Oct. 1, 2021	Mayle signs as guarantor; prepays 18 months rent + 6-month security deposit in Bitcoin (directly to Finke)
Oct. 22, 2021	Acuity Insurance loss control inspection: sprinkler FDC stuffed with trash; system operability uncertain; property rated below average
∼Nov. 2021	Acuity cancels Policy ZL0716; cites inability to confirm sprinkler system operability
Feb. 6, 2023	Fire. NFIRS codes AES Presence as "None"—no automatic extinguishing system operated. Roof collapses. Building substantially destroyed.
July 11, 2024	GP serves evasive interrogatory answers and RTP responses with blank, unsigned verification page; prior counsel fails to transmit them to Plaintiff
July 30, 2025	Plaintiff files Motion to Compel pro se
Sept. 12, 2025	Plaintiff conducts meet-and-confer with GP's counsel;

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VII. THE VOID AB INITIO GROUND IS PRESERVED

Plaintiff preserves the formation-failure theory from the original motion. 30 Degree Design LLC was not organized until January 26, 2022—nearly four months after lease execution on October 1, 2021. A nonexistent entity has no legal capacity to contract. *Polloway v. Glinz*, 107 Ill. App. 3d 1095 (1st Dist. 1982); 805 ILCS 180/5-1. Because the tenant did not legally exist at signing, the lease is void ab initio—not merely voidable. A personal guaranty requires a valid underlying obligation; where the principal contract is void from inception, the guaranty fails with it. 735 ILCS 5/9-201.

Finke checked Plaintiff's personal driver's license on October 3, 2021, but never verified 30 Degree Design LLC's formation status—a search that takes minutes on the Illinois Secretary of State's public website. As President/Secretary of G.P. Opportunity Corp and manager of GP Opportunity Fund LLC, Finke had the means and the motive to make that check. The inference that he deliberately avoided it, knowing Plaintiff would not re-sign once the LLC's nonexistence was apparent, is consistent with every other documented act of concealment in this record.

VIII. THE PERSONAL GUARANTY IS INDEPENDENTLY UNENFORCEABLE

Even if the Court declines to declare the lease void on either ground, the personal guaranty is separately unenforceable:

Fraudulent Inducement / Rescission. Plaintiff's decision to sign as guarantor was induced by Finke's active concealment—Plaintiff was shown a fire pump room without being told that the pump had been cited as failed for years, that the City had issued a formal Second Notice five months earlier, and that no licensed contractor had ever been called to correct the violation. That concealment voided Plaintiff's consent to the guaranty and entitles

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Plaintiff to rescission. *Eisenberg v. Goldstein*, 29 Ill. 2d 617 (1963); *People ex rel. Hartigan v. Kennedy*, 215 Ill. App. 3d 880 (1st Dist. 1991).

Impossible Insurance Obligation. Lease § 6 required Tenant to maintain fire and property insurance. Acuity Insurance's cancellation of Policy ZL0716 within 30 days of its loss control inspection—citing inability to confirm sprinkler system operability— demonstrates that compliant insurance was not obtainable for this building in its actual condition. A guaranty of an obligation that was impossible to perform, where the impossibility was known to the drafting party, cannot be enforced. *YPI 180 N. LaSalle Owner, LLC v. 180 N. LaSalle II, LLC*, 403 Ill. App. 3d 1, 10 (1st Dist. 2010) (performance excused where condition making performance impossible was known to the party seeking to enforce the obligation).

Public Policy. A contract whose performance requires continued occupancy of a building that lacked operational fire suppression—as confirmed by government notice and the owner's own non-compliance—violates the public policy codified in Chicago Municipal Code Chapter 15-16 and NFPA 25. *O'Brien v. Hazelet & Erdal*, 299 Ill. App. 3d 694 (1st Dist. 1998); 735 ILCS 5/9-201.

IX. THE LEASE IS FURTHER VOID FOR LACK OF AUTHORITY ON THE PART OF BOTH PARTIES

A contract requires parties with legal capacity and authority to bind the entities on whose behalf they purport to act. The lease at issue fails this requirement on both sides simultaneously.

Tenant Side—No Legal Entity Existed. As developed in Section VII, 30 Degree Design LLC did not exist as a legal entity on the date of lease execution. A signatory cannot confer authority on a nonexistent entity, and a nonexistent entity cannot authorize a signatory. There was no tenant with legal capacity to enter the lease. *Polloway v. Glinz*, 107 Ill. App. 3d 1095

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(1st Dist. 1982); 805 ILCS 180/5-1.

Landlord Side—Finke's Authority to Bind GP Has Never Been Established. Bryon Finke signed the lease purportedly on behalf of GP Opportunity Fund LLC. However, GP has never produced its operating agreement, any corporate resolution, or any written authorization establishing that Finke had authority to execute a lease on behalf of the LLC. Under Illinois law, a member or manager of an LLC does not automatically have authority to bind the company in all transactions; authority depends on the operating agreement and the company's management structure. 805 ILCS 180/13-5. Where a party executes a contract purportedly on behalf of an LLC without documented authority to do so, the contract may be void or voidable for lack of authority. *Chisholm v. Ultima Nashua Industrial Corp.*, 304 Ill. App. 3d 895 (1st Dist. 1999).

GP's operating agreement was requested in discovery and never produced. GP cannot simultaneously withhold the document that would establish Finke's authority and assert the enforceability of a contract Finke executed. The absence of produced authority documentation, combined with GP's ongoing discovery non-compliance, raises the inference that no such authorization exists or that its production would be adverse to GP's position.

The result is that the lease is void or voidable for lack of authority on both sides: no authorized tenant, and no documented authority on the part of the executing landlord representative.

This conclusion is reinforced by evidence obtained by Plaintiff through third-party subpoena to Chicago Title Land Trust Company. That subpoena returned Trust No. 8002378806, dated August 14, 2018, which establishes that the sole beneficiary of the trust holding legal and equitable title to 4714–18 W. Lake Street, Chicago, IL 60644 is **G.P. Opportunity Corp.**—not GP Opportunity Fund LLC, the entity that signed the lease. Bryon Finke signed the trust documents as both President and Secretary of G.P. Opportunity Corp., giving himself sole power of direction over the trust property. The lease, however, was executed by Finke purportedly on behalf of GP Opportunity Fund LLC—a legally distinct entity with no

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documented beneficial interest in the property. GP has never produced any assignment of beneficial interest, authorization, or documentation establishing that GP Opportunity Fund LLC had authority to lease property held in trust for the benefit of G.P. Opportunity Corp. A party that produces no such documentation cannot enforce a lease executed by an entity that did not hold the beneficial interest in the property being leased.

X. RELIEF REQUESTED

WHEREFORE, Plaintiff Kenneth Mayle respectfully requests that this Court:

1. Grant reconsideration of the prior ruling on Plaintiff's motion concerning the lease agreement and personal guaranty;

2. Declare that, although the prior motion was captioned as a motion to "strike" the lease, the operative relief sought—and now granted—is a declaration of invalidity and nonenforceability, not removal of the document from the record;

3. Declare the lease agreement executed on or about October 1, 2021 **void ab initio** on the ground that the named tenant, 30 Degree Design LLC, did not legally exist at the time of execution;

4. In the alternative, **rescind** the lease agreement and declare it **unenforceable** on the grounds of active fraudulent concealment, fraudulent inducement, impossibility, public policy, and lack of authority;

5. Declare the lease agreement and **all terms thereof**—including but not limited to rent obligations, default provisions, repair and maintenance obligations, insurance requirements, indemnity clauses, and attorneys' fees provisions—**void, rescinded, and/or unenforceable** against Plaintiff Kenneth Mayle, and further declare that GP may not use the lease or any term thereof as the basis for enforcing the personal guaranty or recovering contractual damages from Plaintiff Mayle;

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6. Declare the personal guaranty **unenforceable** against Kenneth Mayle on all grounds stated herein;

7. Declare that GP Opportunity Fund LLC may not enforce the lease agreement where GP has not established, and has not produced discovery establishing, Bryon Finke's authority to bind GP Opportunity Fund LLC to the lease;

8. Dismiss GP Opportunity Fund LLC's counterclaim, or bar GP from recovering under any lease term or the personal guaranty, including any claim for rent, default damages, repair costs, insurance-related damages, indemnity, attorneys' fees, or any other contractual obligation arising from the lease;

9. Declare that GP Opportunity Fund, LLC's answers to Plaintiff's First Set of Interrogatories, served July 11, 2024, were submitted with a blank, unsigned verification page and therefore carry no evidentiary weight as sworn interrogatory answers until GP files signed verification compliant with 735 ILCS 5/1-109 and this Court's May 18, 2026 Order;

10. Order GP Opportunity Fund, LLC to furnish, within seven (7) days, an affidavit of completeness pursuant to Illinois Supreme Court Rule 214(c), stating whether its production in response to Plaintiff's July 11, 2024 Requests to Produce is complete, and identifying any responsive documents withheld, not located, or claimed to be unavailable;

11. Declare that to the extent GP Opportunity Fund, LLC's Omnibus Response in Opposition to Plaintiff's Motions, filed January 26, 2026, contains unsworn factual assertions contradicting Plaintiff's verified evidence concerning the lease, fire pump condition, GP's authority, or GP's discovery non-compliance, such assertions shall be given no evidentiary weight in this Court's reconsideration analysis; and

12. Grant any further relief this Court deems just and equitable.

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CERTIFICATE OF SERVICE

I, Kenneth Mayle, certify that on the date stamped on this filing, I caused a true and correct copy of the foregoing to be served on counsel for Defendant GP Opportunity Fund, LLC, via eFileIL through the Cook County Circuit Court electronic filing system.

VERIFICATION

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

/s/ Kenneth Mayle

Kenneth Mayle, Pro Se

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Date: _____