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

FILED DATE: 7/5/2023 1:25 PM 2022L010246

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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, and KENNETH MAYLE, an individual Plaintiffs, v. GP OPPORTUNITY FUND, LLC, an Illinois Limited Liability Company. Defendants.	)	No. 22 L 10246 Room 1906 Calendar I

DEFENDANT-COUNTER PLAINTIFFS COMPLAINT AT LAW

Now comes Defendant Counter-Plaintiff, GP OPPORTUNITY FUND, LLC, and brings this Counter-Complaint

PARTIES

1. 1. Defendant Counter-Plaintiff GP OPPORTUNITY FUND, LLC, (hereinafter "GP' or Counter-Plaintiff") is an Illinois Limited Liability Company located in Chicago, Illinois.

2. Plaintiff-Counter Defendant 30 DEGREE DESIGN, LLC is an Illinois Limited Liability Company located in Chicago, Illinois.

3. BRAD BEHMER is an individual residing in Chicago, Illinois.

4. KENNETH MAYLE is an individual residing in Chicago, Illinois.

VENUE AND JURISDICTION

5. This Court has jurisdiction pursuant to 735 ILCS 5/2-209

6. Venue in Cook County is proper pursuant to 735 ILCS 5/2-101 as the transaction

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giving rise to the causes of action occurred in the City of Chicago, Cook County, Illinois.

ALLEGATIONS COMMON TO ALL COUNTS

7. On or about, September 17, 2021 the Parties entered into a commercial lease agreement for property located at 4714A W. Lake Street, Chicago, Illinois, a copy of said lease is attached hereto as Exhibit A.

8. Counter-Plaintiff performed all duties and obligations as required under the lease.

9. At no time has Counter-Plaintiff received any written notice of default as required under the lease.

10. Throughout their occupancy, Counter-Defendants engaged in multiage violations of the lease agreement.

11. Almost immediately after Counter-Defendants took possession of the premises, GP began to receive complaints from other tenants.

12. Counter-Defendants engaged in numerous acts of impermissible conduct under the lease, including but not limited breaking into neighboring units, theft of materials on the property, property damage including illegal fires and the burning of wood and other materials in and around the premises, allowing an unrestrained animal outside the unit, failing to clean-up dog waste, unlawfully using the unit as a residence, illegally operating a public place of amusement, erecting illegal and unsafe partitions within the unit, and ultimately totally destroying the unit by fire.

13. On or about March 15th, 2022, GP sent its first formal notice to Counter-Defendants regarding violations to the lease agreement, a copy of which is attached hereto as Exhibit B.

14. In its March 15, 2022 notice, Counter-Plaintiffs notified Counter-Defendants that

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their use of the premises was in violation of multiple provisions of the lease.

15. Despite the notice of lease violations the behavior persisted.

16. Counter-Defendant Mayle, as the guarantor, contacted GP on or about March 14, 2022 to discuss the breakdown of his relationship with Counter-Defendant Behmer. In his communications with GP, Counter-Defendant Mayle indicated that Counter-Defendant Behmer, "…deceived me into signing the lease falsifying not only the reason he was removed from his previous space along with his capabilities on paying rent.." Mayle further indicated that they were no longer conducting business in the workshop and expressed a desire to have Counter-Defendant Mayle vacate the premises. A copy of the correspondence between GP and Mayle is attached hereto as Exhibit C.

17. Sometime in early to mid 2022 the City of Chicago became aware that Counter-Defendants were operating an illegal nightclub on the premises.

18. On or about June 17, 2022, the City of Chicago Department of Buildings Special Task Force (STF) conducted a raid on the unit occupied by Counter-Defendants.

19. The City of Chicago's Special Task Force, alleged that Counter-Defendants were illegally operating a Public Place of Amusement without a license in their unit.

20. The Special Task Force further found that Counter-Defendants had erected substandard walls and partitions in the unit and had obstructed the means of egress resulting in a fire hazard that was an "imminent and actual danger" to tenants and occupants.

21. As a result of the findings of the Special Task Force, the City of Chicago's Building Commissioner issued an emergency closure order for the premises, a copy of which is attached hereto as Exhibit D.

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22. Pursuant to the June 17, 2022 Emergency Closure Order, Counter-Defendants were prohibited from occupying the space.

23. Despite the closure order, Counter-Defendants continued to occupy the space unlawfully until February of 2023.

24. As a result of Counter-Defendants conduct a case was brought against GP by the City of Chicago Department of Buildings in the Circuit Court of Cook County under docket number 22-M1401400.

25. The Instagram social media account of 30 Degree Design depicts Counter-Defendants improper partitioning of the space and continued occupancy of the premises after the closure order.

26. On or about October 31, 2022 the Instagram account 30degreedesigns operated by Counter-Defendant Behmer posted a video of an on open fire on the premises with the comments of "#firestarter #burnmuthafuckaburn # burnitdown #burnittotheground #burn #firewalkwithme #pyromaniac #arsonist". A copy of the post is attached hereto as Exhibit E.

27. Pursuant to Section 6 of the lease agreement, Counter-Defendants were required to obtain and maintain an insurance policy for the premises.

28. Prior to signing the lease agreement, Counter-Defendants presented GP with a certificate of insurance dated 9/30/2021 and attached hereto as Exhibit F.

29. In late 2022, GP became aware that the insurance policy referenced in the certificate of insurance provided by Counter-Defendants had been cancelled and was inactive since November of 2021 due to non-payment.

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30. On or about January 6, 2023, GP again sent formal written notice of default to Counter-Defendants for failure to maintain the requisite insurance policy. A copy of the written notice is attached hereto as Exhibit G.

31. Despite instruction by City Building inspectors, a Circuit Court Order that the premises remain vacant (attached hereto as H) and numerous warnings by GP, Counter-Defendant Behmer continued to reside in the unit.

32. On or about February 6, 2023 a fire broke out in the unit occupied by Counter-Defendants.

33. At the time of the fire, Counter-Defendant Behmer was the only individual on site.

34. In Counter-Defendant verified complaint they claim that the origin of the fire was unknown, however, Counter-Defendant Behmer made contrary statements to the City of Chicago Office of Fire Investigation following the incident.

35. The fire was a direct result of Counter-Defendants unlawful occupancy of the unit at the time of the fire.

36. On or about February 6, 2023 Counter-Defendant Behmer was interviewed at Stroger Hospital after being injured during the fire. The narrative reported by the CFD investigator states in part that Behmer "….related in essence that he has lived in the building for over one year. Today, he observed a fire in the RV stored in the building. At this time, he grabbed a fire extinguisher and used it to extinguish the fire but it was of no use. He grabbed the dog to exit the building and it began biting him. ———————— (redacted) related that an electric space heater was in the RV and in use ————————(redacted) sleeps in the upstairs old locker-room which also contains two space heaters that are in use. He related no work has recently

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been done to the building. He is the only one living in the building and does not know the landlord's information.

37. As a result of the fire Counter-Defendant unit was totally destroyed.

38. Counter-Defendants prepaid rent through January of 2023 but have made no further payments thereafter.

39. The damages resulting from the fire are estimated to be in excess of $650,000.00

COUNT I- BREACH OF CONTRACT

40. Counter-Plaintiff's adopts and re-alleges the allegations of 1-39 above.

41. The parties lease agreement entered was a valid contract.

42. Counter-Plaintiff has fulfilled all of its obligations under the lease.

43. Counter-Defendant 30 Degree Designs, LLC as a party to the lease is obligated to fulfill all tenants obligations under the lease.

44. Counter-Defendants Behmer and Mayle as personal guarantors are jointly and severally liable for each and every provision of the lease.

45. Counter-Defendants have failed to pay rent as required under Section 4 of the lease agreement since February 2023.

46. The amount of monthly rental payments including late fees past due as of July 2023 is $43,500.00.

47. Pursuant to Section 9 of the lease agreement Counter-Defendants are required to maintain the premises.

48. Counter-Defendants failed to maintain the premises by obstructing fire exits and erecting partitions which the City of Chicago deemed a safety hazard.

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49. Counter-Defendants failed to maintain the premises by causing a fire which by their own admission has made the premises unusable.

50. Under Section 2 of the lease "Tenant agrees that it shall use the premises for business offices, storage of material and equipment, and manufacturing of home decor and other artistic objects."

51. Counter-Defendants breached Section 2 of the lease agreement by using the premises as an unlawful public place of amusement and/or as personal residence.

52. As a result of Counter-Defendants breach of Section 2 of the lease Counter-Plaintiffs were forced to incur costs related to defending the building code violations with the City of Chicago and incur the cost of repairs for damages caused by Counter-Defendants misuse of the premises.

53. Pursuant to Section 6 of the lease agreement, Counter-Defendants are required to obtain a comprehensive public liability insurance coverage of no less than $1,000,0000.

54. Counter-Defendants failed to maintain the requisite insurance coverage over the property.

55. As a result of Counter-Defendants failure to maintain the insurance coverage, Counter-Defendant has been forced to cover the cost of repairing the unit after the fire.

56. Section 16 of the lease states "Tenant agrees to indemnify, hold harmless, and defend Landlord from and against any and all losses, claims, liabilities, and expenses, including reasonable attorney fees, if any which Landlord may suffer or incur in connection with Tenant's possession, use or misuse of the Premises, except Landlord's acts or negligence."

57. Counter-Defendants were provided written notice of default of their lease obligations.

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58. Counter-Defendants have failed to cure the default of their obligations under the lease.

59. As a result of Counter-Defendants breach of contract Counter-Plaintiffs has incurred damages.

60. The cost of clean-up and initial repairs to the premises as a result of the fire incurred as of July 2023 were approximately $564,446.00.

61. The cost of additional repairs to the roof are estimated to be in excess of $90,000.00

WHEREFORE, Counter-Plaintiff GP Opportunity Fund, LLC prays for judgement against Counter-Defendants as follows:

A. An Order entering judgement for Counter-Plaintiff and against Counter-Defendants for past due rent as of the date of trial.

B. An Order entering judgement for Counter-Plaintiff and against Counter-Defendants for damages incurred to date of $564,446.00 as compensatory damages.

C. An Order entering judgement for Counter-Plaintiff and against Counter-Defendants as compensatory damages for the cost of additional repairs and expenses not yet incurred in an amount to be proven at trial.

D. An order requiring Counter-Defendant to pay Counter-Plaintiff's costs, interest and Attorney fees.

E. For any such further relief deemed necessary and proper.

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COUNT II- FRAUD

62. Counter-Plaintiff's adopts and re-alleges the allegations of 1-59 above.

63. During the course of preliminary discussions GP, Counter-Defendants represented that the use of the commercial space would be for a workshop. .

64. Counter-Defendants made such statements with the intent of inducing Counter-Plaintiff to lease the space to them.

65. Counter-Plaintiff GP reasonably relied on the statements made by Counter-Defendants that the space would be used for commercial purposes and that Counter-Defendants had obtained requisite insurance.

66. As a result of that reliance, Counter-Plaintiff entered into the lease agreement and turned over possession of the premises to Counter-Defendants.

67. Counter-Defendants misrepresented the intended use of the space as a workshop.

68. Counter-Defendants statements that the unit would be used for commercial purposes was false.

69. Counter-Defendants used the leased space for a personal residence, and a unlicensed public place of amusement.

70. Counter-Defendants further allowed the insurance policy lapse immediately after securing the lease by refusing to pay the premiums.

71. Counter-Defendants provided the certificate of insurance in order to convince GP that the property would be properly insured with the intent to induce Counter-Plaintiff to enter the lease.

72. As a result of Counter-Plainitff's reliance on Counter-Defendant's statements,

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Counter-Plaintiff has suffered damages, including but not limited to lost rent and damage caused to the unit.

WHEREFORE, Counter-Plaintiff GP Opportunity Fund, LLC prays for judgement against Counter-Defendants as follows:

A. An Order entering judgement for Counter-Plaintiff and against Counter-Defendants for compensatory damages in an amount to be proven at trial.

B. An Order requiring Counter-Defendant to pay punitive damages

C. An order requiring Counter-Defendant to pay Counter-Plaintiff's costs, interest and Attorney fees.

D. For any such further relief deemed necessary and proper.

Respectfully submitted,

GP OPPORTUNITY FUND, LLC

By: _____
One of its Attorneys

Zachary D. Limbaugh
The Limbaugh Law Firm
417 West Superior Street
Chicago, Illinois 60654
Phone:(312) 612-9225
Limbaugh@LimbaughLawFirm.com
Attorney ID # 49252
ARDC # 6306446

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Initials: BB KM
Brad Behmer Kenneth Mayle

COMMERCIAL LEASE
4714A West Lake Street

This Lease Agreement (this "Lease") is dated as of September 17th, 2021, by and between GP Opportunity Fund LLC ("Landlord"), and Brad Behmer ("Tenant") with Kenneth Mayle as a personal guarantor ("Guarantor"). The parties agree as follows:

1. PREMISES. Landlord, in consideration of the lease payments provided in this Lease, leases to Tenant 13,000 sqft industrial unit at 4714A W Lake St (the southern half of PIN 16-10-301-011) in Chicago, IL 60644 (the "Premises").

2. USE OF PREMISES. Tenant agrees that it shall use the Premises for business offices, storage of materials and equipment, and manufacturing of home decor and other artistic objects. Tenant represents and warrants that the foregoing use of the Premises is allowed by all applicable laws, codes and ordinances.

3. TERM. The lease term will begin on October 1st, 2021 and will terminate on September 31st, 2026.

4. LEASE PAYMENTS. Tenant shall pay Landlord lease payments of $7,150.00, payable in advance, on the first of each month. Lease payments shall be made to the Landlord at 1667 N Bissell St 3, Chicago, Illinois 60614.

A. PAYMENT OF MONTHLY RENT. During the term of this Lease and any extension therefor, Tenant agrees to pay Landlord on or before the 1st of each full calendar month during the term hereof. Rent for any period during the term which is less than one full month shall be a prorated portion of the monthly rent based on the total number of days in the month being prorated. Said rent shall be paid to the Landlord, without deduction or offset (except as otherwise provided herein or at law or in equity) and without notice or demand at the Landlord's address or to such person or at such address. The monthly rent shall commence on the commencement date of the term.

B. LATE FEES. Tenant recognizes that the late payment of monthly rent will result in administrative expense to Landlord, the extent of which additional expense is difficult and economically impractical to ascertain. Tenant therefore agrees that if the monthly rent has not been paid by the 5th day of the month, such unpaid amount shall be increased by a late charge in the amount of $100.

5. POSSESSION. Tenant shall be entitled to possession on the first day of the term of this Lease, and shall yield possession to the Landlord on the last day of the term of this Lease, unless otherwise agreed by both parties in writing. At the expiration of the term, Tenant shall remove its goods and effects and peaceably yield up the Premises to the Landlord in as good a condition as when delivered to Tenant, ordinary wear and tear excepted.

6. INSURANCE. During the term of the lease and extension thereof, Tenant agrees to maintain at its own expense liability and property insurance.

EXHIBIT A

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Initials: BB Brad Behmer KM Kenneth Mayle

A. LIABILITY. Tenant shall procure and maintain comprehensive public liability insurance to insure Tenant and Landlord against any liability arising out of Tenant's use of the Premises and all areas appurtenant thereto. Such insurance shall be in an amount of not less than $1,000,000 for injury or death to one person in any one accident or occurrence and not less than $3,000,000 in aggregate liability coverage. Such insurance shall insure Tenant and Landlord against any liability for property damage of at least $1,000,000. If the Tenant shall fail to procure and maintain said insurance, and such failure shall continue beyond all applicable notice and cure periods, the Landlord shall have the right, but shall not be required to procure and maintain the same, at the expense of the Tenant.

B. PROPERTY. Tenant shall procure and maintain property damage insurance covering loss or damage to Landlord's property located in the Premises, in the amount of full replacement value thereto, against all perils including within the classification of fire, extended coverage, vandalism, malicious mischief, and special extended perils (all risks).

C. CLAIMS. Tenant agrees that any claim against the Landlord for any loss, damage or injury to property which is covered by insurance carried by Tenant.

7. EXCLUSIVITY. Landlord shall not directly or indirectly, through any employee, agent, or otherwise, lease any space within the property (except the Premises herein described), or permit the use or occupancy of any such space whose primary business activity is in, or may result in, competition with the Tenants primary business activity. The Landlord hereby gives the Tenant the exclusive right to conduct their primary business activity on the property.

8. ALTERATIONS ADDITIONS AND IMPROVEMENTS. No alteration, addition or improvement to the demised premises shall be made by Tenant without the prior written consent of the Landlord, whose consent will not be unreasonably withheld or delayed. Any permanently affixed alteration, addition or improvement made by Tenant after such consent shall have been given, and any permanently affixed fixtures installed as part of thereof, shall at Landlord's option, become part of the real estate upon expiration or other sooner termination of this Lease. Landlord shall have the right, up thirty (30) days prior to written notice to Tenant but not later than the expiration or termination of the term, to require the Tenant to remove such fixtures at Tenant's cost and expense at termination of this Lease and restore the Premises to the condition prior to attachment and repair any damage. If Tenant fails to remove such fixture, restore the Premises to condition prior to attachment and repair any damage, Landlord may do so and Tenant shall be responsible for the cost thereof.

9. 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.

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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. Landlord shall provide snow removal, limited to the sidewalk area along Lake Street in front of the Premises.

10. TAXES. Taxes attributable to the Premises or the use of the Premises shall be allocated as follows:

A. REAL ESTATE TAXES. Landlord shall pay all real estate taxes and assessments for the Premises.

B. PERSONAL TAXES. Tenant shall pay all personal taxes and any other charges which may be levied against the Premises and which are attributable to Tenant's use of the Premises, along with all sales and/or use taxes (if any) that may be due in connection with lease Payments.

11. SECURITY DEPOSIT. Upon the execution of this Lease, Tenant shall deposit with the Landlord a security deposit in the amount of $42,900, equal to six months rent. The security deposit shall be held by the Landlord as security for the faithful performance of the Lease of all terms, covenants and conditions. In the event of any default on part of the Tenant that continues beyond all applicable notice and cure periods, the Landlord shall have the right to apply such security deposit or any portion thereof to cure such default. In the event the security deposit is reduced by reason of such application, then within five (5) days after written notice to Tenant, Tenant shall deposit with the Landlord such amount as may be necessary to restore the security deposit to its original amount.

12. DEFAULTS. Tenant shall be in default of this Lease if Tenant fails to fulfill any lease obligation or term by which Tenant is bound. Subject to any governing provisions of law to the contrary, if Tenant fails to cure any financial obligation within 5 days (or any other obligation within 10 days) after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice (to the extent permitted by law), and without prejudicing Landlord's rights to damages. In the alternative, Landlord may elect to cure any default and the cost of such action shall be added to Tenant's financial obligations under this Lease. Tenant shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by the Landlord by reason of Tenant's defaults. All sums of money or charges required to be paid by Tenant under this Lease shall be additional rent, whether or not such sums or charges are designated as "additional rent". The rights provided by this paragraph are cumulative in nature and are in addition to any other rights afforded by law.

13. COSTS AND EXPENSES OF ENFORCING LEASE. The defaulting party hereunder shall pay upon demand the defaulting party's costs, charges and expenses, including reasonable attorney's fees, incurred by the non-defaulting party in successfully enforcing any of the obligations of the defaulting party under this Lease or in any litigation, negotiation or transaction in which the non-defaulting party, without fault, becomes involved through or on account of this Lease.

14. CUMULATIVE RIGHTS. The rights of the parties under this Lease are cumulative, and shall not be construed as exclusive unless otherwise required by law.

15. ACCESS BY LANDLORD TO PREMISES. Subject to Tenant's consent (which shall not be

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unreasonably withheld), Landlord shall have the right to enter the Premises to make inspections, provide necessary services, or show the unit to prospective buyers, mortgagees, tenants or workers. However, the Landlord does not assume any liability for the care or supervision of the Premises. As provided by law, in the case of an emergency, Landlord may enter the Premises without Tenant's consent. During the last three months of this Lease, or any extension of this Lease, Landlord shall be allowed to display the usual "To Let" signs and show the Premises to prospective tenants.

16. INDEMNITY REGARDING USE OF PREMISES. To the extent permitted by law, Tenant agrees to indemnify, hold harmless, and defend Landlord from and against any and all losses, claims, liabilities, and expenses, including reasonable attorney fees, if any, which Landlord may suffer or incur in connection with Tenant's possession, use or misuse of the Premises, except Landlord's act or negligence.

17. DANGEROUS MATERIALS. Tenant shall not keep or have on the Premises any article or thing of a dangerous, flammable, or explosive character that might substantially increase the danger of fire on the Premises, or that might be considered hazardous by a responsible insurance company, unless the prior written consent of Landlord is obtained and proof of adequate insurance protection is provided by Tenant to Landlord.

18. COMPLIANCE WITH REGULATIONS. Tenant shall promptly comply with all laws, ordinances, requirements and regulations of the federal, state, county, municipal and other authorities, and the fire insurance underwriters. However, Tenant shall not by this provision be required to make alterations to the exterior of the building or alterations of a structural nature.

19. LIENS. Neither the Tenant nor anyone claiming through the Tenant shall have the right to file mechanics or materialmans liens or any other kind of lien on the Premises and the filing of this Lease constitutes notice that such liens are invalid. Further, Tenant agrees to (1) give actual advance notice to any contractors, subcontractors or suppliers of goods, labor, or services that such liens will not be valid, and (2) take whatever additional steps that are necessary in order to keep the premises free of all liens resulting from construction done by or for the Tenant.

20. DISPUTE RESOLUTION. The parties will attempt to resolve any dispute arising out of or relating to this Agreement through friendly negotiations amongst the parties. If the matter is not resolved by negotiation, the parties will resolve the dispute using the below Alternative Dispute Resolution (ADR) procedure. Any controversies or disputes arising out of or relating to this Agreement will be submitted to mediation in accordance with any statutory rules of mediation. If mediation does not successfully resolve the dispute, then the parties may proceed to seek an alternative form of resolution in accordance with any other rights and remedies afforded to them by law.

21. JURY WAIVER. In the event a dispute or litigation arises, the Tenant agrees to waive its rights to a trial by jury.

22. ASSIGNABILITY/SUBLETTING. Tenant may not assign or sublease any interest in the Premises, nor effect a change in the majority ownership of the Tenant (from the ownership existing at the inception of this lease), nor assign, mortgage or pledge this Lease, without the prior written consent of the Landlord, which shall not be unreasonably withheld.

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Initials: BB Brad Behmer JCM Kenneth Mayle

23. NOTICE. Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows:

LANDLORD:

GP Opportunity Fund LLC
1667 N Bissell St 3
Chicago, Illinois 60614

TENANT:

30 Degrees Design LLC
1034 N Karlov Ave
Chicago, IL 60651

Such addresses may be changed from time to time by any party by providing notice as set forth above. Notices mailed in accordance with the above provisions shall be deemed received on the third day after posting.

24. GOVERNING LAW. This Lease shall be construed in accordance with the laws of the State of Illinois.

25. ENTIRE AGREEMENT/AMENDMENT. This Lease Agreement contains the entire agreement of the parties and there are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Lease. This Lease may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

26. SEVERABILITY. If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

27. ENFORCEMENT. The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

28. BINDING EFFECT. The provisions of this Lease shall be binding upon and inure to the benefit of both parties and their respective legal representatives, successors and assigns.

29. MISCELLANEOUS.

A. UTILITIES. Tenant shall pay for all of its own gas, electric, water, internet, garbage and other utilities and services supplied to the Premises.

B. LIGHTING. Landlord will present the Tenant with replacement lighting no later than November 1st, 2021.

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Initials: BB (Brad Behmer) KM (Kenneth Mayle)

C. **PRE-PAYMENT REQUIREMENT.** Tenant agrees, prior to the Lease commencement, to pre-pay 18 months of rent.

D. **CRYPTO CURRENCY.** Tenant has the option to make any rent payment with crypto currency Bitcoin, via Bryon Finke as a Bitcoin to USD exchange.

E. **AGREEMENTS.** This Lease contains all agreements of the parties with respect to any matter mentioned hereon. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of modification.

LANDLORD:

Bryon Finke
Owner, GP Opportunity Fund LLC — Date: 10-1-21

TENANT:

Brad Behmer
President, 30 Degree Design LLC — Date: 10.2.21

PERSONAL GUARANTEES:

The undersigned, jointly and severally, hereby agree to personally guarantee each and every provision of this Lease for its duration.

Brad Behmer — Date: 10.2.21

Kenneth Mayle — Date: 10/1/2021

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30 Degree Design LLC
LLC
Brad Behmer
Finke
1034 N Karlov Ave.
#3
Chicago, IL 60651
60614

GP Opportunity Fund,

Bryon

1667 N. Bissell St.

Chicago, IL

Lease Violation Notice
March 15th, 2022

Mr. Brad Behmer,

We are writing to inform you of several recent violations of your lease, and to warn you any repeat occurrence will result in the termination of your lease and your removal from the property.

These violations are especially concerning, as they all involve standard rules of conduct & respect; several of which have been repeated after countless verbal warnings and requests. These violations include the following:

1. **Breaking & entering** - You are not permitted to access any space within the building located at 4700 W Lake St., other than the space you are leasing. This includes avoiding both spaces adjacent to yours and the 4744 W Lake St. space leased by MF Tops Inc. You have been verbally warned of this several times, yet continue to bypass and remove physical restrictions put in place.
2. **Theft of property** - You are not permitted to use or take possession of any property within the building located at 4700 w Lake St. that does not belong to you or was not offered to you for use by its owner. You have repeatedly taken it upon yourself to make use of whatever equipment or material you wish without contacting its owner to receive permission.
3. **Damage to property** - You are expected to respect and maintain the integrity of your unit and all of its fixtures and finishes. You have repeatedly damaged the building with your actions and/or desire for materials. For example, you damaged one of the south glass block windows with the use of an illegal wood burning fire.
4. **Material combustion** - You are not permitted to burn wood or other materials inside your unit, nor anywhere else around the building. You have been verbally warned of this several times, however the behavior continued to persist. This is especially serious as it could start a fire and cause considerable damage to the building.
5. **Unrestrained animal** - Your dog is not permitted anywhere outside of your unit without being restrained on a lease. This is serious, not only because he has repeatedly damaged property belonging to us and other building tenants, but because of the danger he presents to others. Your dog is of considerable size, with the ability to inflict considerable bodily harm.
6. **Hazardous biological waste** - You must clean-up after your dog at all times. You have been repeatedly warned of this, however his waste is constantly being found in and around the property.
7. **Unit as residence** - You are not permitted to treat the unit as your personal or primary residence. This is an industrial building and is not zoned as a residence.

Our hope is you can end this behavior and be a productive tenant. The behavior described above is entirely unacceptable and not such that generally requires this type of warning. Please respect our property and the people around you.

Sincerely,

EXHIBIT B

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Bryon Finke
Owner, GP Opportunity Fund LLC

EXHIBIT B

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Gmail Bryon Finke <bryon.finke@gmail.com>

Jeni / Brad Dog Bite Photos

Kenny Mayle <ken.mayle@gmail.com> Mon, Mar 14, 2022 at 12:05 PM
To: Bryon Finke <bryon.finke@gmail.com>

Sorry I got sidetracked this weekend. Let me know if this google drive link doesn't work. I have Jeni's contact info if we need it but we're kind of sworn enemies due to some of the stuff she pulled and probably the one that stole/ran up my credit card.

We should reconvene on this issue. Unless commercial evictions are much, much, much easier than residential I think Brad having a lease without clear "you can and can't do this" is going to be difficult to get him out if he just decides to squat. We need to state the rules he's breaking first and if not by like zoning/code he'd of needed to agree to them before we can tell him he's violated one. We (or I) might need to start filing something in court to get in-process and maybe go on the end he deceived me into signing the lease falsifying not only the reason he was removed from his previous space along with his capabilities on paying rent after what we verbally had in place related to effectively a rent abatement for 4-6 months and after that we'd reconvene to see if our business was going to sustain our efforts over there. I'm basically saying as the person paying for the lease we're closing up shop and he needs to vacate his property so we can sublease or work something out with you (the landlord). I said that at 4 months but he's trying to draw it out. Maybe we'd need to take part of that security deposit (used for actual damages vs. a traditional "deposit") and try buying him out?

I really don't know my legal rights as a guarantor on remedies to get him out. I'd have to check if I'm even on as an owner/whatever of his 30-degree designs LLC which he set up to shield himself personally right before signing the lease.

https://drive.google.com/drive/folders/1EM9rRLpEQh9ms_HGtVhyd_Gz6-026AV7?usp=sharing

EXHIBIT C

FILED DATE: 7/5/2023 1:25 PM 2022L010246

CITY OF CHICAGO

DEPARTMENT OF BUILDINGS

EFFECTIVE 06/17/22

Re: Commissioner Closure Order, **Entire Premises, located at 4700 W. Lake Street.**

EMERGENCY CLOSURE ORDER

I, Matthew Beaudet, Commissioner of the City of Chicago Department of Buildings, pursuant to Chicago Municipal Code Chapter 14A-3–307, hereby find that the property commonly known as **Entire Premises, located at 4700 W. Lake Street,** Chicago, Illinois is a public nuisance that is dangerous, hazardous and endangers the public health due to the violations as stated in the attached **Property Condition Report**. Please be advised that the **Property Condition Report** lists only the life safety violations and is not intended to be an exhaustive list of all of the violations that were cited during the inspection.

It has therefore been determined that the building constitutes an imminent and actual danger to the tenants and occupants, and to the public at large. THEREFORE, by the police powers vested in me Matthew Beaudet as Chicago Building Commissioner, I hereby order that **Entire Premises, located at 4700 W. Lake Street,** Chicago, Illinois, be immediately closed, and remain vacant, and that entry be denied except by licensed and bonded contractors engaged to examine, repair, and otherwise correct the aforementioned conditions, or otherwise by authorized City of Chicago personnel until further order. This closure order is to be enforced by the City of Chicago Police Department. Occupants may designate an individual to enter the premises on their behalf to remove personal items from said property, under the supervision of the Chicago Police Department.

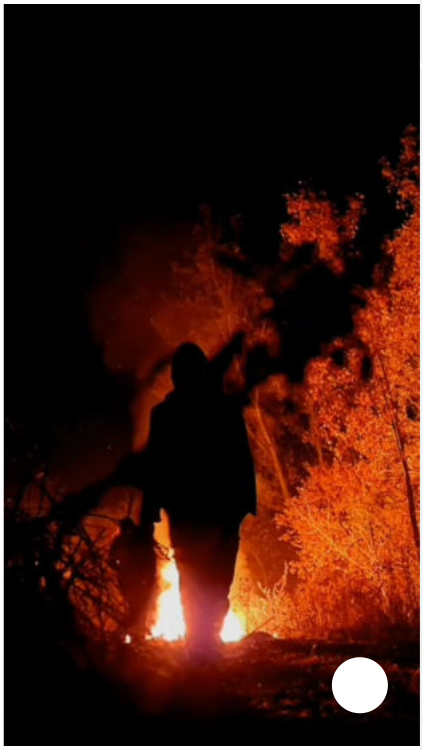
Respectfully,

Matthew Beaudet
Building Commissioner

cc: Annette Nance Holt, Commissioner, Chicago Fire Department
Celia Meza, Corporation Counsel, Department of Law
William Ramey, Office of Emergency Management and Communication
David O. Brown, Superintendent, Chicago Police Department
Kenneth Meyer, Commissioner, Dept. of Business Affairs & Consumer Protection
Tamara Starks, Deputy Commissioner, Dept. of Business Affairs & Consumer Protection
David Frueh, Assistant Commissioner, Dept. of Business Affairs & Consumer Protection
Ivan Capifali, Deputy Commissioner, Dept. of Business Affairs & Consumer Protection
Sherri Cianciarulo, Assistant Commissioner, Dept. of Business Affairs & Consumer Protection
Patrick Murphey, Zoning Administrator, Dept. of Planning and Development

EXHIBIT D

FILED DATE: 7/5/2023 1:25 PM 2022L010246



30degreedesigns • Follow
Metallica • Jump In The Fire (Remastered)

30degreedesigns #firestarter #burnmuthafuckaburn #burnitdown #burnittotheground #burn #firewalkwithme #pyromaniac #arsonist

25w

7 likes
OCTOBER 31, 2022

Add a comment... Post

FILED DATE: 7/5/2023 1:25 PM 2022L010246

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 09/30/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Dimond Bros. Insurance, LLC 301 N. Schuyler Ave. Kankakee IL 60901	**CONTACT NAME:** Debbie Metschuleit **PHONE (A/C, No, Ext):** (815) 932-6791 **FAX (A/C, No):** (815) 933-5921 **E-MAIL ADDRESS:** debbie.metschuleit@dimondbros.com
INSURED 30 Degree Design, LLC 1034 N Karlov Ave. Chicago IL 60651	**INSURER(S) AFFORDING COVERAGE** / **NAIC #** **INSURER A :** Acuity A Mutual Insurance Company / 14184 **INSURER B :** **INSURER C :** **INSURER D :** **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 21-22 Master **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PRO-JECT [ ] LOC [ ] OTHER:			2J6LK9	10/01/2021	10/01/2022	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 1,000,000 $ 10,000 $ 1,000,000 $ 3,000,000 $ 3,000,000
	AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $
A	[X] **UMBRELLA LIAB** [X] OCCUR [ ] **EXCESS LIAB** [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $			2J6LK9	10/01/2021	10/01/2022	EACH OCCURRENCE AGGREGATE	$ 2,000,000 $ 2,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					[ ] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ $ $

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Location: 4714 W Lake St., Chicago, IL. 60644.

CERTIFICATE HOLDER

Evidence of Insurance

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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EXHIBIT F

FILED DATE: 7/5/2023 1:25 PM 2022L010246

30 Degree Design LLC
Brad Behmer

GP Opportunity Fund, LLC
Bryon Finke
10 E. Delaware Pl. #10A
Chicago, IL 60611

Lease Violation Notice
January 6th, 2023

Mr. Brad Behmer,

We are writing to inform you of existing non-compliance with your lease agreement.

Per section 6 of your commercial lease agreement, executed on October 21st, 2021, states insurance shall be in an amount of not less than $1,000,000 for injury or death to one person in any one accident or occurrence and not less than $3,000,000 in aggregate liability coverage. Such insurance shall insure Tenant and Landlord against any liability for property damage of at least $1,000,000. Additionally, the lease requires you maintain property damage insurance covering loss or damage to Landlord's property located in the Premises, in the amount of full replacement value thereto, against all perils including within the classification of fire, extended coverage, vandalism, malicious mischief, and special extended perils (all risks).

On September 30th, 2021, you provided a certificate of insurance for a relevant policy from Acuity A Mutual Insurance company. It has been confirmed this policy became inactive shortly thereafter in November 2021, due to non-payment.

Please provide a certificate of insurance for your current policy that meets the required coverage outlined in your lease agreement, within 10 days.

Sincerely,

Bryon Finke
Owner, GP Opportunity Fund LLC

EXHIBIT G

FILED DATE: 7/5/2023 1:25 PM 2022L010246

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT--FIRST DISTRICT

THE CITY OF CHICAGO, a municipal corporation,
Plaintiff,

v. CILTC #800237888016 *et al.*,
Defendant(s).

No: 22 M1 401400
Re: 4700-14 N Cicero / 340-54 N Kilpatrick

Courtroom 11 05, Richard J. Daley Center

ORDER

This cause coming to be heard on the set call, the Court having jurisdiction over the subject matter and the below-named defendant(s), being fully advised in the premises, and having heard evidence and testimony:

IT IS HEREBY ORDERED THAT Defendant(s) CILTC #800237888016

[ ] Must appear in person or by Zoom before this Court on the next court date. Corporate entities must appear through an attorney.
[ ] Must file a written appearance within _____ days [ ] Is granted leave to file a written appearance instanter.
[✓] Must schedule and be present for an ~~interior~~ / ~~exterior~~ inspection of the entire premises with the Dept of Buildings with plans and permits on site, before the next court date or on _____. To schedule an inspection, contact the inspector at: Marc. Peterson @cityofchicago.org or (312) _____.
[ ] Must correct the following violations in the complaint: _____ before the next court date or by _____.
[ ] Must apply for / obtain all necessary permits for _____ by the next court date.
[ ] Must install all smoke and carbon monoxide detectors required by the Municipal Code within _____.
[ ] Shall be subject to a preliminary injunction not to rent, use, lease, or occupy the _____ until further order of court and keep same vacant and secure.
[✓] Must [✓] keep entire property vacant and secure [ ] board and secure the _____ by _____.
[ ] Must immediately post notice at all levels of the front / rear porch(es) and notify all tenants and occupants that the porch(es) are to be used for emergency exiting only and not for recreation or storage and maintain such notice until further order of court.
[✓] Zach Limbaugh on Zoom.

ADDITIONALLY, THAT:

[ ] All prior orders shall continue in full force and effect until further order of court.
[ ] An alias summons shall issue to: _____.
[ ] The following shall be joined as defendant(s) with summons waived / to issue: _____.
[ ] The following defendants are dismissed without prejudice, no fines, no costs: _____.
[ ] Defendant(s) _____ has / have failed to appear in court or otherwise answer the Complaint and is / are in default, and the Complaint herein is confessed against said Defendant(s) and
[ ] an ex parte judgment in the amount of $ _____.00 plus court costs of $_____.00 for a total amount of $ _____.00.is entered against said Defendant(s). | [ ] prove-up is continued to a later date.
[ ] Unknown owners and nonrecord claimants and _____ having failed to appear in court or otherwise plead as of the publication default date of ____/____/____ is/are in default and the complaint is confessed against said Defendant(s).
[ ] _____.

This cause be continued for: case management / trial, settlement, or dismissal / hearing / jurisdiction.

IT IS FURTHER ORDERED THAT this cause be continued to 8 / 17 / 2023 at 9:30 a.m. / p.m., Courtroom 11 05, Richard J. Daley Center, 50 W. Washington St., Chicago, without further notice.

HEARING DATE: 4 / 27 / 2023

Judge Leonard Murra

APR 27 2023
Circuit Court - 2100
Judge Ball-Reed

By: Greg Jones
Attorney for Plaintiff, Corporation Counsel #90909
2 N. LaSalle St., Ste. 320
Chicago, IL 60602 (312) 744-8791

Pink Copy for Defendant(s) (*photocopy if required*)
Yellow Copy for City of Chicago Department of Law
White Original for Court Records

EXHIBIT H

FILED DATE: 7/5/2023 1:25 PM 2022L010246

Chicago Fire Department
Office of Fire Investigations

53 E. Pershing Road.
Chicago, Illinois 60653

Phone: (312) 747-5017
Facsimile: (312) 747-1967

Report: Addendum

Progress Number: (1)
OFI Case #: 23-0123
Fire Marshal: King/Roman

Primary Address or Location: Stroger Hospital (4714 W. Lake St.)

Date of Incident: 2/6/2023 **Date of Report:** 2/6/2023

Narrative:

Sir,

Today, the RFM was dispatched to conduct a follow up interview at Stroger Hospital for a fire that occurred at 4714 W. Lake St. The RFM interviewed the victim in ER bed number 4. The RFM observed dried blood covering the victim's nose and a bloody right leg. The victim had soot covered hands and was off gassing acrid odors. The victim was taken via A15 to Stroger for an animal bite. According to ER Doctor [redacted] the victim is in guarded condition and has no burns on his body just soot covered hands and is being treated for animal bites.

[redacted] D.O.B. [redacted] Address: 4714 W. Lake St.;PH# [redacted] Insurance: Unknown; related in essence that he has lived in the building for over one year. Today, he observed a fire in the RV stored in the building. At this time, he grabbed a fire extinguisher and used it to extinguish the fire but it was of no use. He grabbed the dog to exit the building and it began biting him. [redacted]. [redacted] related that an electric space heater was in the RV and in use. [redacted] sleeps in the upstairs old locker-room which also contains two spacer heaters that are in use. He related no work has recently been done to the building. He is the only one living in the building and does not know the landlord's information.

Review and Approval:

BB

Bradley Batka **Date: 2/9/2023**
Assistant Commanding Fire Marshal

Ryan Rivera **Date:** Click here to enter a date.
Commanding Fire Marshal

EXHIBIT I

This report was prepared considering information available at the time its completion. The Chicago Fire Department's Office of Fire Investigation reserves the right to amend this report if additional information becomes available.
(Revised 3/1/16)

FILED DATE: 7/5/2023 1:25 PM 2022L010246

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

FILED DATE: 7/5/2023 1:25 PM 2022L010246

FILED
7/5/2023 1:25 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2022L010246
Calendar, I
23402040

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, and KENNETH MAYLE, an individual Plaintiffs, v. GP OPPORTUNITY FUND, LLC, an Illinois Limited Liability Company. Defendants.	)	No. 22 L 10246 Room 1906 Calendar I

DEFENDANT-COUNTER PLAINTIFFS COMPLAINT AT LAW

Now comes Defendant Counter-Plaintiff, GP OPPORTUNITY FUND, LLC, and brings this Counter-Complaint

PARTIES

1. 1. Defendant Counter-Plaintiff GP OPPORTUNITY FUND, LLC, (hereinafter “GP’ or Counter-Plaintiff”) is an Illinois Limited Liability Company located in Chicago, Illinois.

2. Plaintiff-Counter Defendant 30 DEGREE DESIGN, LLC is an Illinois Limited Liability Company located in Chicago, Illinois.

3. BRAD BEHMER is an individual residing in Chicago, Illinois.

4. KENNETH MAYLE is an individual residing in Chicago, Illinois.

VENUE AND JURISDICTION

5. This Court has jurisdiction pursuant to 735 ILCS 5/2-209

6. Venue in Cook County is proper pursuant to 735 ILCS 5/2-101 as the transaction

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giving rise to the causes of action occurred in the City of Chicago, Cook County, Illinois.

ALLEGATIONS COMMON TO ALL COUNTS

7. On or about, September 17, 2021 the Parties entered into a commercial lease agreement for property located at 4714A W. Lake Street, Chicago, Illinois, a copy of said lease is attached hereto as Exhibit A.

8. Counter-Plaintiff performed all duties and obligations as required under the lease.

9. At no time has Counter-Plaintiff received any written notice of default as required under the lease.

10. Throughout their occupancy, Counter-Defendants engaged in multiage violations of the lease agreement.

11. Almost immediately after Counter-Defendants took possession of the premises, GP began to receive complaints from other tenants.

12. Counter-Defendants engaged in numerous acts of impermissible conduct under the lease, including but not limited breaking into neighboring units, theft of materials on the property, property damage including illegal fires and the burning of wood and other materials in and around the premises, allowing an unrestrained animal outside the unit, failing to clean-up dog waste, unlawfully using the unit as a residence, illegally operating a public place of amusement, erecting illegal and unsafe partitions within the unit, and ultimately totally destroying the unit by fire.

13. On or about March 15th, 2022, GP sent its first formal notice to Counter-Defendants regarding violations to the lease agreement, a copy of which is attached hereto as Exhibit B.

14. In its March 15, 2022 notice, Counter-Plaintiffs notified Counter-Defendants that

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their use of the premises was in violation of multiple provisions of the lease.

15. Despite the notice of lease violations the behavior persisted.

16. Counter-Defendant Mayle, as the guarantor, contacted GP on or about March 14, 2022 to discuss the breakdown of his relationship with Counter-Defendant Behmer. In his communications with GP, Counter-Defendant Mayle indicated that Counter-Defendant Behmer, "…deceived me into signing the lease falsifying not only the reason he was removed from his previous space along with his capabilities on paying rent.." Mayle further indicated that they were no longer conducting business in the workshop and expressed a desire to have Counter-Defendant Mayle vacate the premises. A copy of the correspondence between GP and Mayle is attached hereto as Exhibit C.

17. Sometime in early to mid 2022 the City of Chicago became aware that Counter-Defendants were operating an illegal nightclub on the premises.

18. On or about June 17, 2022, the City of Chicago Department of Buildings Special Task Force (STF) conducted a raid on the unit occupied by Counter-Defendants.

19. The City of Chicago's Special Task Force, alleged that Counter-Defendants were illegally operating a Public Place of Amusement without a license in their unit.

20. The Special Task Force further found that Counter-Defendants had erected substandard walls and partitions in the unit and had obstructed the means of egress resulting in a fire hazard that was an "imminent and actual danger" to tenants and occupants.

21. As a result of the findings of the Special Task Force, the City of Chicago's Building Commissioner issued an emergency closure order for the premises, a copy of which is attached hereto as Exhibit D.

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22. Pursuant to the June 17, 2022 Emergency Closure Order, Counter-Defendants were prohibited from occupying the space.

23. Despite the closure order, Counter-Defendants continued to occupy the space unlawfully until February of 2023.

24. As a result of Counter-Defendants conduct a case was brought against GP by the City of Chicago Department of Buildings in the Circuit Court of Cook County under docket number 22-M1401400.

25. The Instagram social media account of 30 Degree Design depicts Counter-Defendants improper partitioning of the space and continued occupancy of the premises after the closure order.

26. On or about October 31, 2022 the Instagram account 30degreedesigns operated by Counter-Defendant Behmer posted a video of an on open fire on the premises with the comments of "#firestarter #burnmuthafuckaburn # burnitdown #burnittotheground #burn #firewalkwithme #pyromaniac #arsonist". A copy of the post is attached hereto as Exhibit E.

27. Pursuant to Section 6 of the lease agreement, Counter-Defendants were required to obtain and maintain an insurance policy for the premises.

28. Prior to signing the lease agreement, Counter-Defendants presented GP with a certificate of insurance dated 9/30/2021 and attached hereto as Exhibit F.

29. In late 2022, GP became aware that the insurance policy referenced in the certificate of insurance provided by Counter-Defendants had been cancelled and was inactive since November of 2021 due to non-payment.

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30. On or about January 6, 2023, GP again sent formal written notice of default to Counter-Defendants for failure to maintain the requisite insurance policy. A copy of the written notice is attached hereto as Exhibit G.

31. Despite instruction by City Building inspectors, a Circuit Court Order that the premises remain vacant (attached hereto as H) and numerous warnings by GP, Counter-Defendant Behmer continued to reside in the unit.

32. On or about February 6, 2023 a fire broke out in the unit occupied by Counter-Defendants.

33. At the time of the fire, Counter-Defendant Behmer was the only individual on site.

34. In Counter-Defendant verified complaint they claim that the origin of the fire was unknown, however, Counter-Defendant Behmer made contrary statements to the City of Chicago Office of Fire Investigation following the incident.

35. The fire was a direct result of Counter-Defendants unlawful occupancy of the unit at the time of the fire.

36. On or about February 6, 2023 Counter-Defendant Behmer was interviewed at Stroger Hospital after being injured during the fire. The narrative reported by the CFD investigator states in part that Behmer "….related in essence that he has lived in the building for over one year. Today, he observed a fire in the RV stored in the building. At this time, he grabbed a fire extinguisher and used it to extinguish the fire but it was of no use. He grabbed the dog to exit the building and it began biting him. ———————— (redacted) related that an electric space heater was in the RV and in use ————————(redacted) sleeps in the upstairs old locker-room which also contains two space heaters that are in use. He related no work has recently

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been done to the building. He is the only one living in the building and does not know the landlord's information.

37. As a result of the fire Counter-Defendant unit was totally destroyed.

38. Counter-Defendants prepaid rent through January of 2023 but have made no further payments thereafter.

39. The damages resulting from the fire are estimated to be in excess of $650,000.00

COUNT I- BREACH OF CONTRACT

40. Counter-Plaintiff's adopts and re-alleges the allegations of 1-39 above.

41. The parties lease agreement entered was a valid contract.

42. Counter-Plaintiff has fulfilled all of its obligations under the lease.

43. Counter-Defendant 30 Degree Designs, LLC as a party to the lease is obligated to fulfill all tenants obligations under the lease.

44. Counter-Defendants Behmer and Mayle as personal guarantors are jointly and severally liable for each and every provision of the lease.

45. Counter-Defendants have failed to pay rent as required under Section 4 of the lease agreement since February 2023.

46. The amount of monthly rental payments including late fees past due as of July 2023 is $43,500.00.

47. Pursuant to Section 9 of the lease agreement Counter-Defendants are required to maintain the premises.

48. Counter-Defendants failed to maintain the premises by obstructing fire exits and erecting partitions which the City of Chicago deemed a safety hazard.

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49. Counter-Defendants failed to maintain the premises by causing a fire which by their own admission has made the premises unusable.

50. Under Section 2 of the lease "Tenant agrees that it shall use the premises for business offices, storage of material and equipment, and manufacturing of home decor and other artistic objects."

51. Counter-Defendants breached Section 2 of the lease agreement by using the premises as an unlawful public place of amusement and/or as personal residence.

52. As a result of Counter-Defendants breach of Section 2 of the lease Counter-Plaintiffs were forced to incur costs related to defending the building code violations with the City of Chicago and incur the cost of repairs for damages caused by Counter-Defendants misuse of the premises.

53. Pursuant to Section 6 of the lease agreement, Counter-Defendants are required to obtain a comprehensive public liability insurance coverage of no less than $1,000,0000.

54. Counter-Defendants failed to maintain the requisite insurance coverage over the property.

55. As a result of Counter-Defendants failure to maintain the insurance coverage, Counter-Defendant has been forced to cover the cost of repairing the unit after the fire.

56. Section 16 of the lease states "Tenant agrees to indemnify, hold harmless, and defend Landlord from and against any and all losses, claims, liabilities, and expenses, including reasonable attorney fees, if any which Landlord may suffer or incur in connection with Tenant's possession, use or misuse of the Premises, except Landlord's acts or negligence."

57. Counter-Defendants were provided written notice of default of their lease obligations.

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58. Counter-Defendants have failed to cure the default of their obligations under the lease.

59. As a result of Counter-Defendants breach of contract Counter-Plaintiffs has incurred damages.

60. The cost of clean-up and initial repairs to the premises as a result of the fire incurred as of July 2023 were approximately $564,446.00.

61. The cost of additional repairs to the roof are estimated to be in excess of $90,000.00

WHEREFORE, Counter-Plaintiff GP Opportunity Fund, LLC prays for judgement against Counter-Defendants as follows:

A. An Order entering judgement for Counter-Plaintiff and against Counter-Defendants for past due rent as of the date of trial.

B. An Order entering judgement for Counter-Plaintiff and against Counter-Defendants for damages incurred to date of $564,446.00 as compensatory damages.

C. An Order entering judgement for Counter-Plaintiff and against Counter-Defendants as compensatory damages for the cost of additional repairs and expenses not yet incurred in an amount to be proven at trial.

D. An order requiring Counter-Defendant to pay Counter-Plaintiff’s costs, interest and Attorney fees.

E. For any such further relief deemed necessary and proper.

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COUNT II- FRAUD

62. Counter-Plaintiff's adopts and re-alleges the allegations of 1-59 above.

63. During the course of preliminary discussions GP, Counter-Defendants represented that the use of the commercial space would be for a workshop. .

64. Counter-Defendants made such statements with the intent of inducing Counter-Plaintiff to lease the space to them.

65. Counter-Plaintiff GP reasonably relied on the statements made by Counter-Defendants that the space would be used for commercial purposes and that Counter-Defendants had obtained requisite insurance.

66. As a result of that reliance, Counter-Plaintiff entered into the lease agreement and turned over possession of the premises to Counter-Defendants.

67. Counter-Defendants misrepresented the intended use of the space as a workshop.

68. Counter-Defendants statements that the unit would be used for commercial purposes was false.

69. Counter-Defendants used the leased space for a personal residence, and a unlicensed public place of amusement.

70. Counter-Defendants further allowed the insurance policy lapse immediately after securing the lease by refusing to pay the premiums.

71. Counter-Defendants provided the certificate of insurance in order to convince GP that the property would be properly insured with the intent to induce Counter-Plaintiff to enter the lease.

72. As a result of Counter-Plainitff's reliance on Counter-Defendant's statements,

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Counter-Plaintiff has suffered damages, including but not limited to lost rent and damage caused to the unit.

WHEREFORE, Counter-Plaintiff GP Opportunity Fund, LLC prays for judgement against Counter-Defendants as follows:

A. An Order entering judgement for Counter-Plaintiff and against Counter-Defendants for compensatory damages in an amount to be proven at trial.

B. An Order requiring Counter-Defendant to pay punitive damages

C. An order requiring Counter-Defendant to pay Counter-Plaintiff's costs, interest and Attorney fees.

D. For any such further relief deemed necessary and proper.

Respectfully submitted,

GP OPPORTUNITY FUND, LLC

By: _____
One of its Attorneys

Zachary D. Limbaugh
The Limbaugh Law Firm
417 West Superior Street
Chicago, Illinois 60654
Phone:(312) 612-9225
Limbaugh@LimbaughLawFirm.com
Attorney ID # 49252
ARDC # 6306446

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Initials: BB KM
Brad Behmer Kenneth Mayle

COMMERCIAL LEASE
4714A West Lake Street

This Lease Agreement (this "Lease") is dated as of September 17th, 2021, by and between GP Opportunity Fund LLC ("Landlord"), and Brad Behmer ("Tenant") with Kenneth Mayle as a personal guarantor ("Guarantor"). The parties agree as follows:

1. PREMISES. Landlord, in consideration of the lease payments provided in this Lease, leases to Tenant 13,000 sqft industrial unit at 4714A W Lake St (the southern half of PIN 16-10-301-011) in Chicago, IL 60644 (the "Premises").

2. USE OF PREMISES. Tenant agrees that it shall use the Premises for business offices, storage of materials and equipment, and manufacturing of home decor and other artistic objects. Tenant represents and warrants that the foregoing use of the Premises is allowed by all applicable laws, codes and ordinances.

3. TERM. The lease term will begin on October 1st, 2021 and will terminate on September 31st, 2026.

4. LEASE PAYMENTS. Tenant shall pay Landlord lease payments of $7,150.00, payable in advance, on the first of each month. Lease payments shall be made to the Landlord at 1667 N Bissell St 3, Chicago, Illinois 60614.

A. PAYMENT OF MONTHLY RENT. During the term of this Lease and any extension therefor, Tenant agrees to pay Landlord on or before the 1st of each full calendar month during the term hereof. Rent for any period during the term which is less than one full month shall be a prorated portion of the monthly rent based on the total number of days in the month being prorated. Said rent shall be paid to the Landlord, without deduction or offset (except as otherwise provided herein or at law or in equity) and without notice or demand at the Landlord's address or to such person or at such address. The monthly rent shall commence on the commencement date of the term.

B. LATE FEES. Tenant recognizes that the late payment of monthly rent will result in administrative expense to Landlord, the extent of which additional expense is difficult and economically impractical to ascertain. Tenant therefore agrees that if the monthly rent has not been paid by the 5th day of the month, such unpaid amount shall be increased by a late charge in the amount of $100.

5. POSSESSION. Tenant shall be entitled to possession on the first day of the term of this Lease, and shall yield possession to the Landlord on the last day of the term of this Lease, unless otherwise agreed by both parties in writing. At the expiration of the term, Tenant shall remove its goods and effects and peaceably yield up the Premises to the Landlord in as good a condition as when delivered to Tenant, ordinary wear and tear excepted.

6. INSURANCE. During the term of the lease and extension thereof, Tenant agrees to maintain at its own expense liability and property insurance.

EXHIBIT A

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A. LIABILITY. Tenant shall procure and maintain comprehensive public liability insurance to insure Tenant and Landlord against any liability arising out of Tenant's use of the Premises and all areas appurtenant thereto. Such insurance shall be in an amount of not less than $1,000,000 for injury or death to one person in any one accident or occurrence and not less than $3,000,000 in aggregate liability coverage. Such insurance shall insure Tenant and Landlord against any liability for property damage of at least $1,000,000. If the Tenant shall fail to procure and maintain said insurance, and such failure shall continue beyond all applicable notice and cure periods, the Landlord shall have the right, but shall not be required to procure and maintain the same, at the expense of the Tenant.

B. PROPERTY. Tenant shall procure and maintain property damage insurance covering loss or damage to Landlord's property located in the Premises, in the amount of full replacement value thereto, against all perils including within the classification of fire, extended coverage, vandalism, malicious mischief, and special extended perils (all risks).

C. CLAIMS. Tenant agrees that any claim against the Landlord for any loss, damage or injury to property which is covered by insurance carried by Tenant.

7. EXCLUSIVITY. Landlord shall not directly or indirectly, through any employee, agent, or otherwise, lease any space within the property (except the Premises herein described), or permit the use or occupancy of any such space whose primary business activity is in, or may result in, competition with the Tenants primary business activity. The Landlord hereby gives the Tenant the exclusive right to conduct their primary business activity on the property.

8. ALTERATIONS ADDITIONS AND IMPROVEMENTS. No alteration, addition or improvement to the demised premises shall be made by Tenant without the prior written consent of the Landlord, whose consent will not be unreasonably withheld or delayed. Any permanently affixed alteration, addition or improvement made by Tenant after such consent shall have been given, and any permanently affixed fixtures installed as part of thereof, shall at Landlord's option, become part of the real estate upon expiration or other sooner termination of this Lease. Landlord shall have the right, up thirty (30) days prior to written notice to Tenant but not later than the expiration or termination of the term, to require the Tenant to remove such fixtures at Tenant's cost and expense at termination of this Lease and restore the Premises to the condition prior to attachment and repair any damage. If Tenant fails to remove such fixture, restore the Premises to condition prior to attachment and repair any damage, Landlord may do so and Tenant shall be responsible for the cost thereof.

9. 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.

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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. Landlord shall provide snow removal, limited to the sidewalk area along Lake Street in front of the Premises.

10. TAXES. Taxes attributable to the Premises or the use of the Premises shall be allocated as follows:

A. REAL ESTATE TAXES. Landlord shall pay all real estate taxes and assessments for the Premises.

B. PERSONAL TAXES. Tenant shall pay all personal taxes and any other charges which may be levied against the Premises and which are attributable to Tenant's use of the Premises, along with all sales and/or use taxes (if any) that may be due in connection with lease Payments.

11. SECURITY DEPOSIT. Upon the execution of this Lease, Tenant shall deposit with the Landlord a security deposit in the amount of $42,900, equal to six months rent. The security deposit shall be held by the Landlord as security for the faithful performance of the Lease of all terms, covenants and conditions. In the event of any default on part of the Tenant that continues beyond all applicable notice and cure periods, the Landlord shall have the right to apply such security deposit or any portion thereof to cure such default. In the event the security deposit is reduced by reason of such application, then within five (5) days after written notice to Tenant, Tenant shall deposit with the Landlord such amount as may be necessary to restore the security deposit to its original amount.

12. DEFAULTS. Tenant shall be in default of this Lease if Tenant fails to fulfill any lease obligation or term by which Tenant is bound. Subject to any governing provisions of law to the contrary, if Tenant fails to cure any financial obligation within 5 days (or any other obligation within 10 days) after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice (to the extent permitted by law), and without prejudicing Landlord's rights to damages. In the alternative, Landlord may elect to cure any default and the cost of such action shall be added to Tenant's financial obligations under this Lease. Tenant shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by the Landlord by reason of Tenant's defaults. All sums of money or charges required to be paid by Tenant under this Lease shall be additional rent, whether or not such sums or charges are designated as "additional rent". The rights provided by this paragraph are cumulative in nature and are in addition to any other rights afforded by law.

13. COSTS AND EXPENSES OF ENFORCING LEASE. The defaulting party hereunder shall pay upon demand the defaulting party's costs, charges and expenses, including reasonable attorney's fees, incurred by the non-defaulting party in successfully enforcing any of the obligations of the defaulting party under this Lease or in any litigation, negotiation or transaction in which the non-defaulting party, without fault, becomes involved through or on account of this Lease.

14. CUMULATIVE RIGHTS. The rights of the parties under this Lease are cumulative, and shall not be construed as exclusive unless otherwise required by law.

15. ACCESS BY LANDLORD TO PREMISES. Subject to Tenant's consent (which shall not be

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unreasonably withheld), Landlord shall have the right to enter the Premises to make inspections, provide necessary services, or show the unit to prospective buyers, mortgagees, tenants or workers. However, the Landlord does not assume any liability for the care or supervision of the Premises. As provided by law, in the case of an emergency, Landlord may enter the Premises without Tenant's consent. During the last three months of this Lease, or any extension of this Lease, Landlord shall be allowed to display the usual "To Let" signs and show the Premises to prospective tenants.

16. INDEMNITY REGARDING USE OF PREMISES. To the extent permitted by law, Tenant agrees to indemnify, hold harmless, and defend Landlord from and against any and all losses, claims, liabilities, and expenses, including reasonable attorney fees, if any, which Landlord may suffer or incur in connection with Tenant's possession, use or misuse of the Premises, except Landlord's act or negligence.

17. DANGEROUS MATERIALS. Tenant shall not keep or have on the Premises any article or thing of a dangerous, flammable, or explosive character that might substantially increase the danger of fire on the Premises, or that might be considered hazardous by a responsible insurance company, unless the prior written consent of Landlord is obtained and proof of adequate insurance protection is provided by Tenant to Landlord.

18. COMPLIANCE WITH REGULATIONS. Tenant shall promptly comply with all laws, ordinances, requirements and regulations of the federal, state, county, municipal and other authorities, and the fire insurance underwriters. However, Tenant shall not by this provision be required to make alterations to the exterior of the building or alterations of a structural nature.

19. LIENS. Neither the Tenant nor anyone claiming through the Tenant shall have the right to file mechanics or materialmans liens or any other kind of lien on the Premises and the filing of this Lease constitutes notice that such liens are invalid. Further, Tenant agrees to (1) give actual advance notice to any contractors, subcontractors or suppliers of goods, labor, or services that such liens will not be valid, and (2) take whatever additional steps that are necessary in order to keep the premises free of all liens resulting from construction done by or for the Tenant.

20. DISPUTE RESOLUTION. The parties will attempt to resolve any dispute arising out of or relating to this Agreement through friendly negotiations amongst the parties. If the matter is not resolved by negotiation, the parties will resolve the dispute using the below Alternative Dispute Resolution (ADR) procedure. Any controversies or disputes arising out of or relating to this Agreement will be submitted to mediation in accordance with any statutory rules of mediation. If mediation does not successfully resolve the dispute, then the parties may proceed to seek an alternative form of resolution in accordance with any other rights and remedies afforded to them by law.

21. JURY WAIVER. In the event a dispute or litigation arises, the Tenant agrees to waive its rights to a trial by jury.

22. ASSIGNABILITY/SUBLETTING. Tenant may not assign or sublease any interest in the Premises, nor effect a change in the majority ownership of the Tenant (from the ownership existing at the inception of this lease), nor assign, mortgage or pledge this Lease, without the prior written consent of the Landlord, which shall not be unreasonably withheld.

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23. NOTICE. Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows:

LANDLORD:

GP Opportunity Fund LLC
1667 N Bissell St 3
Chicago, Illinois 60614

TENANT:

30 Degrees Design LLC
1034 N Karlov Ave
Chicago, IL 60651

Such addresses may be changed from time to time by any party by providing notice as set forth above. Notices mailed in accordance with the above provisions shall be deemed received on the third day after posting.

24. GOVERNING LAW. This Lease shall be construed in accordance with the laws of the State of Illinois.

25. ENTIRE AGREEMENT/AMENDMENT. This Lease Agreement contains the entire agreement of the parties and there are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Lease. This Lease may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

26. SEVERABILITY. If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

27. ENFORCEMENT. The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

28. BINDING EFFECT. The provisions of this Lease shall be binding upon and inure to the benefit of both parties and their respective legal representatives, successors and assigns.

29. MISCELLANEOUS.

A. UTILITIES. Tenant shall pay for all of its own gas, electric, water, internet, garbage and other utilities and services supplied to the Premises.

B. LIGHTING. Landlord will present the Tenant with replacement lighting no later than November 1st, 2021.

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Initials: BB Brad Behmer KM Kenneth Mayle

C. PRE-PAYMENT REQUIREMENT. Tenant agrees, prior to the Lease commencement, to pre-pay 18 months of rent.

D. CRYPTO CURRENCY. Tenant has the option to make any rent payment with crypto currency Bitcoin, via Bryon Finke as a Bitcoin to USD exchange.

E. AGREEMENTS. This Lease contains all agreements of the parties with respect to any matter mentioned hereon. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of modification.

LANDLORD:

Bryon Finke
Owner, GP Opportunity Fund LLC

10-1-21
Date

TENANT:

Brad Behmer
President, 30 Degree Design LLC

10.2.21
Date

PERSONAL GUARANTEES:

The undersigned, jointly and severally, hereby agree to personally guarantee each and every provision of this Lease for its duration.

Brad Behmer

10.2.21
Date

Kenneth Mayle

10/1/2021
Date

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30 Degree Design LLC
LLC
Brad Behmer
Finke
1034 N Karlov Ave.
#3
Chicago, IL 60651
60614

GP Opportunity Fund,

Bryon

1667 N. Bissell St.

Chicago, IL

Lease Violation Notice
March 15th, 2022

Mr. Brad Behmer,

We are writing to inform you of several recent violations of your lease, and to warn you any repeat occurrence will result in the termination of your lease and your removal from the property.

These violations are especially concerning, as they all involve standard rules of conduct & respect; several of which have been repeated after countless verbal warnings and requests. These violations include the following:

1. **Breaking & entering** - You are not permitted to access any space within the building located at 4700 W Lake St., other than the space you are leasing. This includes avoiding both spaces adjacent to yours and the 4744 W Lake St. space leased by MF Tops Inc. You have been verbally warned of this several times, yet continue to bypass and remove physical restrictions put in place.
2. **Theft of property** - You are not permitted to use or take possession of any property within the building located at 4700 w Lake St. that does not belong to you or was not offered to you for use by its owner. You have repeatedly taken it upon yourself to make use of whatever equipment or material you wish without contacting its owner to receive permission.
3. **Damage to property** - You are expected to respect and maintain the integrity of your unit and all of its fixtures and finishes. You have repeatedly damaged the building with your actions and/or desire for materials. For example, you damaged one of the south glass block windows with the use of an illegal wood burning fire.
4. **Material combustion** - You are not permitted to burn wood or other materials inside your unit, nor anywhere else around the building. You have been verbally warned of this several times, however the behavior continued to persist. This is especially serious as it could start a fire and cause considerable damage to the building.
5. **Unrestrained animal** - Your dog is not permitted anywhere outside of your unit without being restrained on a lease. This is serious, not only because he has repeatedly damaged property belonging to us and other building tenants, but because of the danger he presents to others. Your dog is of considerable size, with the ability to inflict considerable bodily harm.
6. **Hazardous biological waste** - You must clean-up after your dog at all times. You have been repeatedly warned of this, however his waste is constantly being found in and around the property.
7. **Unit as residence** - You are not permitted to treat the unit as your personal or primary residence. This is an industrial building and is not zoned as a residence.

Our hope is you can end this behavior and be a productive tenant. The behavior described above is entirely unacceptable and not such that generally requires this type of warning. Please respect our property and the people around you.

Sincerely,

EXHIBIT B

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Bryon Finke
Owner, GP Opportunity Fund LLC

EXHIBIT B

FILED DATE: 7/5/2023 1:25 PM 2022L010246

Gmail Bryon Finke <bryon.finke@gmail.com>

Jeni / Brad Dog Bite Photos

Kenny Mayle <ken.mayle@gmail.com> Mon, Mar 14, 2022 at 12:05 PM
To: Bryon Finke <bryon.finke@gmail.com>

Sorry I got sidetracked this weekend. Let me know if this google drive link doesn't work. I have Jeni's contact info if we need it but we're kind of sworn enemies due to some of the stuff she pulled and probably the one that stole/ran up my credit card.

We should reconvene on this issue. Unless commercial evictions are much, much, much easier than residential I think Brad having a lease without clear "you can and can't do this" is going to be difficult to get him out if he just decides to squat. We need to state the rules he's breaking first and if not by like zoning/code he'd of needed to agree to them before we can tell him he's violated one. We (or I) might need to start filing something in court to get in-process and maybe go on the end he deceived me into signing the lease falsifying not only the reason he was removed from his previous space along with his capabilities on paying rent after what we verbally had in place related to effectively a rent abatement for 4-6 months and after that we'd reconvene to see if our business was going to sustain our efforts over there. I'm basically saying as the person paying for the lease we're closing up shop and he needs to vacate his property so we can sublease or work something out with you (the landlord). I said that at 4 months but he's trying to draw it out. Maybe we'd need to take part of that security deposit (used for actual damages vs. a traditional "deposit") and try buying him out?

I really don't know my legal rights as a guarantor on remedies to get him out. I'd have to check if I'm even on as an owner/whatever of his 30-degree designs LLC which he set up to shield himself personally right before signing the lease.

https://drive.google.com/drive/folders/1EM9rRLpEQh9ms_HGtVhyd_Gz6-026AV7?usp=sharing

EXHIBIT C

FILED DATE: 7/5/2023 1:25 PM 2022L010246

CITY OF CHICAGO

DEPARTMENT OF BUILDINGS

EFFECTIVE 06/17/22

Re: Commissioner Closure Order, **Entire Premises, located at 4700 W. Lake Street.**

EMERGENCY CLOSURE ORDER

I, Matthew Beaudet, Commissioner of the City of Chicago Department of Buildings, pursuant to Chicago Municipal Code Chapter 14A-3–307, hereby find that the property commonly known as **Entire Premises, located at 4700 W. Lake Street,** Chicago, Illinois is a public nuisance that is dangerous, hazardous and endangers the public health due to the violations as stated in the attached **Property Condition Report**. Please be advised that the **Property Condition Report** lists only the life safety violations and is not intended to be an exhaustive list of all of the violations that were cited during the inspection.

It has therefore been determined that the building constitutes an imminent and actual danger to the tenants and occupants, and to the public at large. THEREFORE, by the police powers vested in me Matthew Beaudet as Chicago Building Commissioner, I hereby order that **Entire Premises, located at 4700 W. Lake Street,** Chicago, Illinois, be immediately closed, and remain vacant, and that entry be denied except by licensed and bonded contractors engaged to examine, repair, and otherwise correct the aforementioned conditions, or otherwise by authorized City of Chicago personnel until further order. This closure order is to be enforced by the City of Chicago Police Department. Occupants may designate an individual to enter the premises on their behalf to remove personal items from said property, under the supervision of the Chicago Police Department.

Respectfully,

Matthew Beaudet
Building Commissioner

cc: Annette Nance Holt, Commissioner, Chicago Fire Department
Celia Meza, Corporation Counsel, Department of Law
William Ramey, Office of Emergency Management and Communication
David O. Brown, Superintendent, Chicago Police Department
Kenneth Meyer, Commissioner, Dept. of Business Affairs & Consumer Protection
Tamara Starks, Deputy Commissioner, Dept. of Business Affairs & Consumer Protection
David Frueh, Assistant Commissioner, Dept. of Business Affairs & Consumer Protection
Ivan Capifali, Deputy Commissioner, Dept. of Business Affairs & Consumer Protection
Sherri Cianciarulo, Assistant Commissioner, Dept. of Business Affairs & Consumer Protection
Patrick Murphey, Zoning Administrator, Dept. of Planning and Development

EXHIBIT D

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30degreedesigns • Follow
Metallica • Jump In The Fire (Remastered)

30degreedesigns #firestarter #burnmuthafuckaburn #burnitdown #burnittotheground #burn #firewalkwithme #pyromaniac #arsonist

25w

7 likes
OCTOBER 31, 2022

Add a comment... Post

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ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
09/30/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Debbie Metschuleit	
Dimond Bros. Insurance, LLC 301 N. Schuyler Ave. Kankakee IL 60901	PHONE (A/C, No, Ext): (815) 932-6791	FAX (A/C, No): (815) 933-5921
	E-MAIL ADDRESS: debbie.metschuleit@dimondbros.com	

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Acuity A Mutual Insurance Company	14184
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
30 Degree Design, LLC
1034 N Karlov Ave.
Chicago IL 60651

COVERAGES **CERTIFICATE NUMBER:** 21-22 Master **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			2J6LK9	10/01/2021	10/01/2022	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 1,000,000 $ 10,000 $ 1,000,000 $ 3,000,000 $ 3,000,000
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION $			2J6LK9	10/01/2021	10/01/2022	EACH OCCURRENCE AGGREGATE	$ 2,000,000 $ 2,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y / N If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					☐ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Location: 4714 W Lake St., Chicago, IL. 60644.

CERTIFICATE HOLDER

Evidence of Insurance

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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EXHIBIT F

FILED DATE: 7/5/2023 1:25 PM 2022L010246

30 Degree Design LLC
Brad Behmer

GP Opportunity Fund, LLC
Bryon Finke
10 E. Delaware Pl. #10A
Chicago, IL 60611

Lease Violation Notice
January 6th, 2023

Mr. Brad Behmer,

We are writing to inform you of existing non-compliance with your lease agreement.

Per section 6 of your commercial lease agreement, executed on October 21st, 2021, states insurance shall be in an amount of not less than $1,000,000 for injury or death to one person in any one accident or occurrence and not less than $3,000,000 in aggregate liability coverage. Such insurance shall insure Tenant and Landlord against any liability for property damage of at least $1,000,000. Additionally, the lease requires you maintain property damage insurance covering loss or damage to Landlord's property located in the Premises, in the amount of full replacement value thereto, against all perils including within the classification of fire, extended coverage, vandalism, malicious mischief, and special extended perils (all risks).

On September 30th, 2021, you provided a certificate of insurance for a relevant policy from Acuity A Mutual Insurance company. It has been confirmed this policy became inactive shortly thereafter in November 2021, due to non-payment.

Please provide a certificate of insurance for your current policy that meets the required coverage outlined in your lease agreement, within 10 days.

Sincerely,

Bryon Finke
Owner, GP Opportunity Fund LLC

EXHIBIT G

FILED DATE: 7/5/2023 1:25 PM 2022L010246

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT--FIRST DISTRICT

THE CITY OF CHICAGO, a municipal corporation,
Plaintiff,

v. CTLTC #8002378801e *et al.*,
Defendant(s).

No: 22 M1 401400
Re: 4700-14 N Lerol
340-54 N Kilpatrick

Courtroom 11 05, Richard J. Daley Center

ORDER

This cause coming to be heard on the set call, the Court having jurisdiction over the subject matter and the below-named defendant(s), being fully advised in the premises, and having heard evidence and testimony:

IT IS HEREBY ORDERED THAT Defendant(s) CTLTC #8002378801e

[ ] Must appear in person or by Zoom before this Court on the next court date. Corporate entities must appear through an attorney.
[ ] Must file a written appearance within _____ days [ ] Is granted leave to file a written appearance instanter.
[✓] Must schedule and be present for an ~~interior~~ / ~~exterior~~ inspection of the entire premises with the Dept of Buildings with plans and permits on site, before the next court date or on _____. To schedule an inspection, contact the inspector at: Marc. Peterson @cityofchicago.org or (312) _____.
[ ] Must correct the following violations in the complaint: _____ before the next court date or by _____.
[ ] Must apply for / obtain all necessary permits for _____ by the next court date.
[ ] Must install all smoke and carbon monoxide detectors required by the Municipal Code within _____.
[ ] Shall be subject to a preliminary injunction not to rent, use, lease, or occupy the _____ until further order of court and keep same vacant and secure.
[✓] Must [✓] keep entire property vacant and secure [ ] board and secure the _____ by _____.
[ ] Must immediately post notice at all levels of the front / rear porch(es) and notify all tenants and occupants that the porch(es) are to be used for emergency exiting only and not for recreation or storage and maintain such notice until further order of court.
[✓] Zach Limbaugh on Zoom.

ADDITIONALLY, THAT:

[ ] All prior orders shall continue in full force and effect until further order of court.
[ ] An alias summons shall issue to: _____.
[ ] The following shall be joined as defendant(s) with summons waived / to issue: _____.
[ ] The following defendants are dismissed without prejudice, no fines, no costs: _____.
[ ] Defendant(s) _____ has / have failed to appear in court or otherwise answer the Complaint and is / are in default, and the Complaint herein is confessed against said Defendant(s) and
[ ] an ex parte judgment in the amount of $ _____.00 plus court costs of $_____.00 for a total amount of $ _____.00 is entered against said Defendant(s).
[ ] prove-up is continued to a later date.
[ ] Unknown owners and nonrecord claimants and _____ having failed to appear in court or otherwise plead as of the publication default date of ____/____/____ is/are in default and the complaint is confessed against said Defendant(s).
[ ] _____.

This cause be continued for: case management / trial, settlement, or dismissal / hearing / jurisdiction.

IT IS FURTHER ORDERED THAT this cause be continued to 8 / 17 / 2023 at 9:30 a.m. / p.m., Courtroom 11 05, Richard J. Daley Center, 50 W. Washington St., Chicago, without further notice.

HEARING DATE: 4 / 27 / 2023

By: Greg Jones
Attorney for Plaintiff, Corporation Counsel #90909
2 N. LaSalle St., Ste. 320
Chicago, IL 60602 (312) 744-8791

Judge Leonard Murra
APR 27 2023
Circuit Court - 2100
Ball-Reed

Pink Copy for Defendant(s) (*photocopy if required*)
Yellow Copy for City of Chicago Department of Law
White Original for Court Records

EXHIBIT H

FILED DATE: 7/5/2023 1:25 PM 2022L010246

Chicago Fire Department
Office of Fire Investigations

53 E. Pershing Road.
Chicago, Illinois 60653

Phone: (312) 747-5017
Facsimile: (312) 747-1967

Report: Addendum

Progress Number: (1**)**
OFI Case #: 23-0123
Fire Marshal: King/Roman

Primary Address or Location: Stroger Hospital (4714 W. Lake St.)

Date of Incident: 2/6/2023 **Date of Report:** 2/6/2023

Narrative:

Sir,

Today, the RFM was dispatched to conduct a follow up interview at Stroger Hospital for a fire that occurred at 4714 W. Lake St. The RFM interviewed the victim in ER bed number 4. The RFM observed dried blood covering the victim's nose and a bloody right leg. The victim had soot covered hands and was off gassing acrid odors. The victim was taken via A15 to Stroger for an animal bite. According to ER Doctor [redacted] the victim is in guarded condition and has no burns on his body just soot covered hands and is being treated for animal bites.

[redacted] D.O.B. [redacted] Address: 4714 W. Lake St.;PH# [redacted] Insurance: Unknown; related in essence that he has lived in the building for over one year. Today, he observed a fire in the RV stored in the building. At this time, he grabbed a fire extinguisher and used it to extinguish the fire but it was of no use. He grabbed the dog to exit the building and it began biting him. [redacted]. [redacted] related that an electric space heater was in the RV and in use. [redacted] sleeps in the upstairs old locker-room which also contains two spacer heaters that are in use. He related no work has recently been done to the building. He is the only one living in the building and does not know the landlord's information.

Review and Approval:

BB

_____

Bradley Batka **Date: 2/9/2023**
Assistant Commanding Fire Marshal

_____

Ryan Rivera **Date:** Click here to enter a date.
Commanding Fire Marshal

EXHIBIT I

This report was prepared considering information available at the time its completion. The Chicago Fire Department's Office of Fire Investigation reserves the right to amend this report if additional information becomes available.
(Revised 3/1/16)

FILED DATE: 7/5/2023 1:25 PM 2022L010246

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

FILED DATE: 11/28/2023 4:45 PM 2022L010246

FILED
11/28/2023 4:45 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2022L010246
Calendar, Y
25371271

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, and KENNETH MAYLE, an individual Plaintiffs, v. GP OPPORTUNITY FUND, LLC, an Illinois Limited Liability Company. Defendants.	)	No. 22 L 10246 Room 1906 Calendar I

RESPONSE TO COUNTER-DEFENDANTS' 2-615 MOTION TO DISMISS COUNTERCLAIM

Now comes Defendant Counter-Plaintiff, GP OPPORTUNITY FUND, LLC, and in response to Counter-Defendants 2-615 Motion to Dismiss Counterclaim states as follows:

Counter-Defendants Motion to Dismiss Counts I and II of the Counterclaim pursuant to 2-615, should be denied. In considering whether to grant a motion to dismiss pursuant to 2-615, this Court will consider whether the allegations in the complaint, viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted." *Dvorkin v. Soderquist*, 2022 Ill. App. 1st 201368, ¶75 (1st Dist. 2022).

. Here, Counter-Plaintiff has alleged sufficient facts to maintain both Count I and II of its Counterclaim. As more fully addressed below, Counter-Defendants improperly seek to have the breach of contract claim in Count I dismissed based on the false assertion that Counter-Plaintiffs' allegation that "all of its obligations under the lease were fulfilled" is untrue. *See.* Counter-Defendants' Motion to Dismiss at 3. Similarly, Counter-Defendants seek to have Count

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II dismissed on the grounds that Counter-Plaintiff has not specified which statements were fraudulent, (*Id.* at 4), while at the same time arguing that the specific statements Counter-Plaintiff did alleged were fraudulent were true (*Id.* at 7). Counter-Defendants not only misconstrue Exhibit H of the Counterclaim in its entirety but also improperly assert facts not contained in the pleadings in support of their motion. *See. Id.* at 3, 4 (Counter-Defendants make additional claims about their inability to obtain renters insurance). Even if these additional facts were properly raised as part of a Motion for Summary Judgement and supported by affidavit, when considering all allegations in the light most favorable to the non-moving party, dismissal would be improper. Therefore, Counter-Defendants Motion to Dismiss the Counterclaim should be denied.

I. COUNTER-PLAINTIFF BREACH OF CONTRACT CLAIM IS PROPER.

Counter-Defendants seek to have Count I dismissed on the grounds that Counter-Plaintiff has not properly alleged all elements of a breach of contract claim. Specifically, they attach the allegation that Counter-Plaintiff had satisfied its obligations under the lease. In so doing, Counter-Defendants argue that Exhibit H to the counterclaim somehow negates Counter Plaintiff's allegation that it had satisfied its obligations under the lease. *Id.* at 3. Exhibit H, is a copy of the Circuit Court of Cook Counties order in Case Number 2022-M1-401400. According to Counter-Defendants this order demonstrates that Counter-Plaintiff could not have fulfilled its obligations under the lease. In jumping to this conclusion, Counter-Defendants make several erroneous assumptions claims regarding Exhibit H. First, Counter-Defendants falsely assert that Counter-Plaintiff could not have satisfied its obligations unless the building was free from alleged building code violation. Second, Counter-Defendants claim that Exhibit H demonstrates (1) that there were building code violations, and (2) those violations were in

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existence when the lease was commenced. Both of these assertions are false because; (1) there is no finding on Exhibit H as to the existence of any building code violations, and (2) a review of the Circuit Court records indicates that case number 2022-M1-401400 was initiated ***after*** the lease had commenced and Counter-Defendants were in possession of the property. Third, Exhibit H does not include a finding that there were any building code violations on the property, but does not even list the alleged violations. *See. Counterclaim* Exhibit H. Had Counter-Defendants actually reviewed the *allegations* related to the Circuit Court building case they would discover that all but one of the cited code violations were pertaining to the illegal conduct of Counter-Defendants in operating an unlicensed public place of amusement on the premises. *See. Verified Complaint* 2022-M1-401400.

Lastly, Counter-Defendants, appear to assert the affirmative defense of recession based on mistake of fact. "The motion does not raise affirmative factual defenses, but rather alleges only defects on the face of the complaint." *Vernon v. Schuster*, 179 Ill.2d 338, 344 (1997). In addition to being improper grounds for a 2-615 motion, for the reasons discussed above, this is factually inaccurate. Not only were Counter-Defendants given an opportunity to discover any defects in the property prior to leasing, but the particular building code violations cited were caused by Counter-Defendants after taking possession. Accordingly, Counter-Defendants motion to dismiss count I should be denied.

II. COUNTER DEFENDANTS MOTION TO DISMISS COUNT II SHOULD BE DENIED.

Dismissal is proper under Section 2-615, where allegations, "when construed in a the light most favorable to the plaintiff, are [in]sufficient to establish a cause of action upon which relief may be granted." *Blumenthal v. Brewer, 2016 IL 119781,* ¶19. Such motions challenge the

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legal sufficiency of a pleading based on defects apparent on its face. *Id.* In this case, Counter-Plaintiff has alleged that Counter-Defendants committed fraud by (1) making false statements that they had obtained sufficient insurance coverage to satisfy the condition precedent to execute the lease, and (2) that Counter Defendants fraudulently concealed that they would be using the premises as a personal residence and illegal nightclub. In moving to dismiss the fraud claims Counter-Defendants ignore the allegations regarding the false certificate of insurance they provided and attempt to sidestep their fraudulent concealment of their intent to use the premises for an illegal nightclub because they occasionally used the premises for their stated purpose of a workshop. In each instance, Counter-Plaintiff has plead fraud with sufficient particularity to put Counter-Defendants on notice of which claims it is being called to defend. Accordingly, for the reasons more fully set forth below, Counter-Defendants Motion to Dismiss should be denied as to Count II.

A. USE OF THE PREMISES AS A WORKSHOP DOES NOT NEGATE THE FRAUDULENT CONCEALMENT OF THE INTENDED ILLEGAL USE

As to the first allegation regarding the use of the premises, Counter-Defendants argue in their Motion to dismiss that any use of the premises for the purported purpose negates their concealment of the fact that they intended to use the premises for an illegal nightclub and/or personal residence. In support Counter-Defendants rely on *Hirsch v. Feuer,* 299 Ill. App. 3d 1076, 1086-87, 702 N.E.2d 265, 273 (1st Dist. 1998).

. *In Hirsch,* the Court found the complaint facially insufficient because it "does not point to specific false representations so as to fairly apprise defendants of what they would be called upon to answer." *Id.* Unlike the present case, the plaintiff in *Hirsch* only alleged that defendant failed to make disclosures regarding the condition of the property, however, they did

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not specify which disclosures were allegedly false. *Id.* As a result of the ambiguity of the plaintiffs allegations in *Hirsch*, the court concluded that the complaint was not sufficient to put defendant on notice of which claims it was called upon to defend. *Id.* Unlike *Hirsch*, in this case Counter-Defendants do have sufficient notice of the specific statements Counter-Plaintiff alleges to be fraudulent. Namely, the representation (1) that Counter-Defendants had obtained the necessary insurance coverage, and (2) the concealment of their intended use of the premises for an illegal night club and personal residence when they indicated how they intended to use the premises. While Counter-Defendant asserts that silence in a transaction does not rise to the level of fraud. Silence accompanied by deceptive conduct or suppression of material facts, however, can give rise to concealment and "it is then the duty of the party which has concealed information to speak." *Heider*, 245 Ill. App.3d at 269; see also *Mitchell v. Skubiak*, 248 Ill. App.3d 1000, 1005 (1993). Here, Counter-Defendants specifically asserted their intended use of the property prior during negotiations prior to executing the lease and further affirmed in the lease agreement that the intended use was lawful. Counterclaim Exhibit A ¶2. Counter-Defendants in so asserting fraudulently concealed the material facts that they would be using the property as a personal residence and illegal night club.

B. COUNTER DEFENDANTS FRAUD WAS NOT LIMITED TO FUTURE CONDUCT

The fraudulent misrepresentation of Counter-Defendants regarding insurance coverage and the concealment of their intended illegal use of the property is actionable because; (1) it was referring to conditions in existence at the time the statements were made or concealed, and (2) because they were made as part of an overall scheme to induce Counter-Plaintiff to lease them the space. Therefore, Counter-Defendants argument that their statements are not actionable as

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fraud because they refer to future conduct fails.

First as to the use of the property, the pleadings indicates that it was Counter-Defendants intent to illegally use the premises as a personal residence and an illegal nightclub. Counter-Defendant Behmer's own statements to fire investigators just 14 months after the lease commenced that he "has lived in the building for over one year" indicates that Counter-Defendants had the intent to reside in the premises from the outset and fraudulently concealed that fact from Counter-Plaintiff in order to induce him to enter the lease. *See.* Counterclaim Exhibit I.

As to the certificate of insurance, in ¶28 of its Counterclaim, Counter-Plaintiff alleges that "Prior to signing the lease agreement, Counter-Defendants presented GP with a certificate of insurance dated 9/30/2021 and attached hereto as Exhibit F." *Id.* This insurance policy purports to provide the requisite umbrella coverage for the property required under the lease. *Id.* Counter-Plaintiff clearly alleges that statement of coverage was provided to induce it to believe that the building was properly insured. Counter-Defendants argue in their motion to dismiss that "due to the numerous safety and health issues present on the property prior to Counter-Defendant's occupation of the property, Counter-Defendants were not able to obtain renters insurance". Counter-Defendants 2-615 Motion at 3. Relying on Counter-Defendants own assertion, the "Certificate of Insurance" they provided indicating the building was insured would necessarily be false if they were "unable to obtain" insurance. Accordingly, Counter-Defendants argument fails.

C. COUNTER PLAINTIFF HAS PROPERLY PLEAD DAMAGES AS A RESULT OF COUNTER DEFENDANTS CONDUCT.

As to damages, Counter-Plaintiff alleges in ¶35 that the fire which destroyed the unit was

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a direct result of the Counter-Defendants' illegal occupancy and that it has incurred costs of defending a building code case as a result of Counter-Defendants' violations of the Chicago Municipal Code, extensive cost of repairs, and lost rent. As to the fraudulent statements of Counter-Defendants regarding insurance coverage, Counter-Defendant has been forced to cover the cost of repairing the unit after the fire instead of the damage being covered by insurance. Counterclaim at 55. Accordingly, Counter-Plaintiff has sufficiently alleged damages related to the fraudulent concealment and misrepresentations by Counter-Defendant which induced him to lease them the property.

WHEREFORE, for the reasons set forth above, Counter-Plaintiff respectfully request that this Court DENIES the Motion to Dismiss Counts I and II of its Counterclaim.

Dated: November 27, 2023

Respectfully submitted,

GP OPPORTUNITY FUND, LLC

By: _____
One of its Attorneys

Zachary D. Limbaugh
The Limbaugh Law Firm
417 West Superior Street
Chicago, Illinois 60654
Phone:(312) 612-9225
Limbaugh@LimbaughLawFirm.com
Attorney ID # 49252
ARDC # 6306446

FILED DATE: 11/28/2023 4:45 PM 2022L010246

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, and KENNETH MAYLE, an individual	)	
Plaintiffs,	)	No. 22 L 10246
v.	)	
GP OPPORTUNITY FUND, LLC	)	
Defendants.	)	

NOTICE OF FILING

TO: WEISS ORTIZ P.C.
Attorney for Plaintiffs
1011 E. 31st Street
La Grange Park, Illinois 60526
Info@weissortizlaw.com
Firm No. 40058

PLEASE TAKE NOTICE that on November 28, 2023 there was filed with the Clerk of the Law Division of the Circuit Court of Cook County Counter Plaintiffs Response to Counter Defendant's 2-615 Motion to Dismiss Counterclaim, a copy of which is included herewith and served upon you.

Respectfully submitted,

GP Opportunity Fund, LLC

By: _____
One of its Attorneys

CERTIFICATE OF SERVICE

On November 28, 2023, I, Zachary D. Limbaugh, an attorney, caused to be served via email and US Mail the foregoing Notice of Filing/Notice of Motion to the persons or firms listed above:

_____
Zachary D. Limbaugh

Zachary D. Limbaugh
The Limbaugh Law Firm
417 West Superior Street
Chicago, Illinois 60654
Phone:(312) 612-9225
Attorney ID # 49252
ARDC # 6306446
Limbaugh@LimbaughLawFirm.com

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, and KENNETH MAYLE, an individual	)	
	)	No. 22 L 10246
Plaintiffs,	)	
v.	)	
	)	Room 1906
GP OPPORTUNITY FUND, LLC, an Illinois Limited Liability Company.	)	Calendar I
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF GP OPPORTUNITY FUNDS MOTION TO DISMISS PLAINTIFFS SECOND AMENDED COMPLAINT

Plaintiff's seek to recover rental payments for the year and a half they occupied the unit before causing a fire which destroyed the unit.

FACTS ALLEGED IN COMPLAINT

Plaintiffs leased industrial warehouse space from Defendant and took possession on October 1, 2021. Plaintiffs' Second Amended Complaint ("Complaint") ¶8. Plaintiffs agreed that they would use the premises for business offices, storage of materials and equipment, and manufacturing of home decor and other artistic objects. Complaint Ex. A ¶2. On or about June 17, 2022 the City of Chicago Department of Buildings conducted a raid on Plaintiffs' unit, concluding that Plaintiffs were using to space for "HOSTING ONGOING RAVE PARTY EVENTS SERVING / SELLING ALCOHOL; PROVIDING LIVE MUSIC AND SELLING TICKETS FOR ADMISSION." Complaint Ex. E. Plaintiffs' do not allege that they ever surrendered possession of the unit to Defendant. *See.* Complaint. Plaintiffs allege that

Defendant locked them out of the unit without notice by removing doorknobs but they do not indicate when this allegedly happened. *Id.* at ¶69.

Plaintiffs' six-count Complaint seeks compensatory and punitive damages as well as attorneys' fees and costs for: alleged breach of contract of 9B and 29B of the Lease Agreement (Count I), Plaintiffs Second Amended Complaint at ¶¶ 28-34; breach of implied covenant of Quiet Enjoyment (Count II), Compl. *Id.* at ¶¶ 35-41; Fraud (Count III), *Id.* at ¶¶ 42-50; Unjust Enrichment (Count IV), *Id.* at. ¶¶ 51-57; Constructive Eviction (Count V), *Id.* at ¶¶ 58-64; Wrongful Eviction (Count VI), *Id.* at ¶¶ 65-72, and Negligence (Count VII) . *Id.* at ¶¶ 73- 79.

ARGUMENT

I. PLAINTIFFS HAVE FAILED TO STATE A CLAIM FOR BREACH OF CONTRACT

A. Plaintiffs' have not alleged proper notice to landlord to maintain a breach of contract claim.

Tenant must notify the landlord of the defects and allow him an opportunity to repair. *Risser v. O'Connell*, 172 Ill. App. 64 (1912). Paragraph 23 of the lease states "Notices under this lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows". *See* Plaintiff's Second Amended Complaint Ex. A ¶ 23. Here, Plaintiff has failed to allege that Defendant was given notice under the terms of the contract of any of the alleged defects or afforded an opportunity to repair them.

Moreover, many of the conditions of which Plaintiff complains are expressly the responsibility of Plaintiff to maintain under the Lease agreement. *See. Id.* at ¶ 9. Here, even if Plaintiff had alleged notice, which they did not, Defendant would not be responsible for repairing

any alleged conditions which were the responsibility of Plaintiffs to maintain under the lease.

B. Defendant is not responsible for damages caused by Plaintiffs under Paragraph 9.

Count I alleges that Defendants breached Section 9 B of the lease agreement. *See.* Complaint Count I. Section 9 of the lease states "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." Ex. A ¶9. Furthermore, Section 9A clarifies the responsibilities of Plaintiffs at tenant:

> "Tenant shall maintain repair or replace the interior space of the unit, including plumbing fixtures, lighting fixtures, mezzanine furnace, mezzanine air conditioner, hot water heaters, wall surfaces, floors, garage door and any alterations, additions or improvements." *Plainitff's Complaint Ex. A ¶ 9.*

Plaintiff's complaint ignores the remainder of 9(B) which states that Landlord is not responsible for damages caused by Tenant. Here, the total structure was destroyed by a fire, which according to Plaintiff Behmer originated inside a vehicle that Plaintiffs were storing in the unit. Plaintiffs' use or misuse of the premises caused the fire which destroyed the property. The mechanical systems, including plumbing, electrical, and lighting, and the entire roof structure were razed by the fire in Plaintiffs unit. Accordingly, Plaintiffs claims against Defendant pursuant to Section 9B fail as Plaintiffs are responsible for the total cost of repair and replacement of the structure they destroyed.

II. PLAINTIFFS HAVE FAILED TO ALLEGE SUFFICIENT FACTS TO STATE A CLAIM OF BREACH OF QUIET ENJOYMENT

A. Plaintiffs have failed to allege an act on behalf of Defendant to interfere with tenants use of the property.

A breach of the covenant of quiet enjoyment requires an intentional interference with a tenant's full enjoyment and use of the leased premises which interference is unreasonable, unwarranted or unlawful. *Illinois. Blue Cross Association v. 666 North Lake Shore Drive Associates*, 100 Ill.App.3d 647, 652, 56 Ill.Dec. 190, 193, 427 N.E.2d 270, 273 (1st Dist.1981). Here, Plaintiffs do not allege any act or undertaking on the behalf of Defendant to intentionally interfere with their enjoyment or use of the property. While Plaintiffs allege that Defendant failed to make certain improvements to the premises, there is no allegation that Defendant engaged in any intentional acts to create conditions within the property in order to interfere with Plaintiffs occupancy. Accordingly, Plaintiffs have failed to state a claim for breach of the covenant of quiet enjoyment.

B. Breach of Quiet Enjoyment requires an actual or constructive eviction.

The covenant of warranty or quiet enjoyment is prospective in nature and is breached only when there is an actual or constructive eviction of the covenantee by the paramount titleholder. *(Brown v. Lober* (1979), 75 Ill. 2d 547, 553, 389 N.E.2d 1188, 1191.). Here, as discussed further under III below, Plaintiffs have not suffered an actual or constructive eviction as a result of an act by landlord. In fact, Plaintiffs retained possession of the premises despite the alleged failure of landlord to cure supposed defects in the property. Not only did Plaintiffs continue to occupy the premises in violation of the City of Chicago's commissioner closure order but Plaintiff Behmer used it for his personal residence. Plaintiffs occupied the space up and until setting fire to it on February 6, 2023, when damage from the fire made the unit temporarily inaccessible. Accordingly, Plaintiffs cannot maintain an action for breach of quiet enjoyment

because there was no actual or constructive eviction.

III. PLAINTIFFS HAVE FAILED TO STATE A CLAIM FOR CONSTRUCTIVE EVICTION

Count V should be dismissed because Plaintiffs have not alleged an act by Defendant or undertaken with the intent to deprive Plaintiffs enjoyment of the preemies, or that they vacated the premises as a result of such act.

A. Plaintiffs have not alleged an act by landlord

A constructive eviction requires that the landlord have done something of a grave and permanent character with the intention of depriving the tenant of enjoyment of the premises. (Advertising Checking Bureau, Inc. v. Canal-Randolph Associates (1981), 101 Ill. App. 3d 140, 146, 427 N.E.2d 1039, 1044.) [***11]. Here, Plaintiffs have not alleged an act by Defendant done with the intent of depriving them of the enjoyment of the premises. In fact, Plaintiffs allege only that:

> **"**63. In As a result of the extensive damage to the premises, the Property cannot be utilized for until extensive repairs are completed.
>
> 64. At no time did Defendant attempt to make any necessary protective measures to ensure the safety of the premises and because of the fire, the space is no longer usable. " Complaint at ¶63-4.

In this case the aforementioned conduct does not rise to the level of act on the part of Defendant let alone an act of "grave and permanent character with the intention of depriving the tenant of enjoyment of the premises.

B. Plaintiffs did not vacate the premises.

There can be no constructive eviction, without the vacating of the premises. (Dell'Armi

Builders, Inc. v. Johnston (1988), 172 Ill. App. 3d 144, 148, 526 N.E.2d 409, 411-12.) Here, after Plainitffs had been under a lawful order to vacate the premises by the commissioner of the City of Chicago Department of Buildings on June 22, 2022 following the raid of their illegal night club, they continued to occupy the space until they caused a fire totally destroying the structure. Plaintiff's have no claim for constructive eviction based on building conditions prior to fire because they did not vacate the premises. Plaintiffs did not leave the unit until February 6, 2022 when the fire they caused prevented them from safely accessing it. Plaintiffs acknowledge that the fire caused them to leave the unit, not an act of Defendant, thus they have failed to state a claim for wrongful eviction.

IV. PLAINTIFFS HAVE FAILED TO STATE A CLAIM FOR WRONGFUL EVICTION

Plaintiff has failed to state a claim for wrongful eviction because they do not allege that Defendant terminated its tenancy. To state a claim for wrongful eviction plaintiffs must allege that the defendants terminated their tenancy without adhering to the procedures outlined in 735 ILCS 5/9-101, et. seq. Here, Plaintiffs allege that "as a result of the extensive damage to the premises, the Property cannot be utilized for until extensive repairs are completed." Complaint at ¶63. While Plaintiffs claim that they were "locked out" of the unit without notice, however they do not indicate when this allegedly occurred or for how long they were supposedly prevented access to the unit. In fact, Plaintiffs were in possession and present in the unit on February 6, 2023 when fire broke out and made the unit temporarily inaccessible due to safety concerns. Immediately after the fire, the City of Chicago Fire Department and Department of Buildings temporarily ordered that the premises be kept vacant and secure pending assessment of

the fire damage. Following the fire, on April 27, 2023, the Circuit Court of Cook County in case number 2022-M1-401400 Ordered that the property be kept vacant and secure until necessary permits were obtained and repairs completed. *See.* Counterclaim Ex. H.

Because Plaintiffs do not allege an act on behalf of Defendant to terminate the tenancy of Plaintiffs their claim for wrongful eviction fails. Moreover, Plaintiffs do not specify when they were allegedly "locked-out" of the unit, and Defendant denies that they ever were. However, even Plaintiff's allegations were true this would not constitute a wrongful eviction because Plaintiffs admit to being in possession up and until the fire broke out, at which time both Plaintiffs and Defendants have been under lawful orders to keep the premises vacant and secure pending repairs from the damage.

V. COUNT III SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM OF FRAUD

A. Plaintiffs have not alleged specific facts or statements necessary to state a claim of fraud.

A complaint for common-law fraud "must allege, with specificity and particularity, facts from which fraud is the necessary or probable inference, including what misrepresentations were made, when they were made, who made the misrepresentations and to whom they were made." Connick, 174 Ill.2d at 496-97, 221 Ill.Dec. 389, 675 N.E.2d 584. Conclusory allegations are insufficient. Time Savers, Inc. v. LaSalle Bank, N.A., 371 Ill.App.3d 759, 771, 309 Ill.Dec. 259, 863 N.E.2d 1156 (2007). Here, Plaintiffs do not specify what statements in the contract they alledge were fraudulent. *See.* Complaint at ¶¶42-50. There are no additional facts plead from which you could infer fraud from Plaintiffs allegations that Defendant did not abide by the terms of the contract. Accordingly, Plaintiffs have failed to state a claim.

B. Plaintiff has not alleged damages distinct from those of its breach of contract claim.

In cases involving both fraud and breach of contract claims, the plaintiff must plead and prove that: the fraud is more than just a contractual obligation the defendant failed to meet; and the plaintiff's damages stemming from the misrepresentation are independent of the damages the plaintiff sustained from the breach of contract. *Aasonn, LLC v. Delaney*, 2011 IL App (2d) 101125, ¶¶ 29-32. Here, the only statements Plaintiff claims were allegedly fraudulent are the representations made as to Defendants obligations under the contract. The claims here, and any alleged damages are identical to those for breach of contract. Accordingly, plaintiff has failed to establish a claim of fraud.

VI. PLAINTIFFS' FAILED TO STATE A CLAIM OF NEGLIGENCE

A. Plaintiff has not specified a duty owed to Plaintiffs.

Plaintiffs complaint does not specify the duty allegedly owed to Plaintiffs. Plaintiffs complaint states that "Defendant had a duty to mitigate damages arising from Plaintiffs failure to obtain insurance". Complaint at ¶ 76. However, as Plaintiff states, "the duty to mitigate damages imposes a duty on the injured party to "'exercise reasonable diligence and ordinary care in attempting to minimize his damages after injury has been inflicted.'" *Amalgamated Bank of Chicago v. Kalmus & Associates*, 318 Ill. App. 3d 648, 658-59, 741 N.E.2d 1078, 1086 (1st Dist. 2000). Plaintiffs misapply caselaw imposing a duty on an *injured party* to mitigate *his* damages to support an erroneous assertion that Defendant had a duty to prevent Plaintiffs from damaging themselves by failing to obtain insurance.

B. Defendant did not proximately cause the damages Plaintiff alleges.

Plaintiffs seek damages "for the inability to use the premises for the intended purpose as a place of business and for property damages as a result of the fire." Complaint ¶ 79. Again, Plaintiff does not allege any breach of duty by Defendant which was the proximate cause of the

fire giving rise to their alleged damages for inability to use the space and property damage. Therefore, Plaintiffs claim for negligence should be dismissed for failure to state a claim.

C. As landlord, Defendant is not liable for injury to the property of Plaintiffs.

Under common law, a landlord is not liable for injury to the property of a tenant caused by defects in the demised premises absent an express warranty as to the condition of the premises or a covenant to repair. *Wanland v. Beavers*, 130 Ill. App. 3d 731, 732, 474 N.E.2d 1327, 1328 (1st Dist. 1985) citing 52 C.J.S. Landlord & Tenant sec. 423(3)(a) (1968). Plaintiffs note "The general rules which shield a landlord from liability are not without exceptions. A landlord may be liable, even in the absence of control where (1) there was a latent defect existing at the date of the lease of the premises to the tenant, which defect was known to the landlord or could have been known by him in the exercise of reasonable care, and which defect could not have been discovered by a reasonable examination of the premises by the tenant; (2) there was a fraudulent concealment from the tenant by the landlord of a known, dangerous condition; (3) the thing which did the harm amounted in law to a nuisance; or (4) a promise to repair the premises made by the landlord to the tenant at the time of the leasing." Here, Plaintiffs' allege that their were latent defects known to Defendant, but do not allege that any of the defects were fraudulently concealed by Defendant, or that they could not have been discovered by a reasonable examination of the premises by Plaintiffs. Lastly, there is no allegation that there was a promise to repair any latent defects at the time of leasing. Accordingly, Plaintiffs' negligence claims should be dismissed for failure to state a claim pursuant to ILCS 2-615.

WHEREFORE, for the reasons set forth in more detail in this Memorandum of Law in Support of Defendant's Motion to Dismiss Plaintiffs' Complaint, Defendant respectfully request that the Court dismiss the Complaint with prejudice, and that Defendant be afforded such other and further relief as this Court deems proper.

Respectfully submitted,

GP OPPORTUNITY FUND, LLC

By: _____
One of its Attorneys

Zachary D. Limbaugh
The Limbaugh Law Firm
417 West Superior Street
Chicago, Illinois 60654
Phone:(312) 612-9225
Limbaugh@LimbaughLawFirm.com
Attorney ID # 49252
ARDC # 6306446

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, and KENNETH MAYLE, an individual Plaintiffs, v. GP OPPORTUNITY FUND, LLC, an Illinois Limited Liability Company. Defendants.	)	No. 22 L 10246 Room 1906 Calendar I

RESPONSE TO COUNTER-DEFENDANTS' 2-615 MOTION TO DISMISS COUNTERCLAIM

Now comes Defendant Counter-Plaintiff, GP OPPORTUNITY FUND, LLC, and in response to Counter-Defendants 2-615 Motion to Dismiss Counterclaim states as follows:

Counter-Defendants Motion to Dismiss Counts I and II of the Counterclaim pursuant to 2-615, should be denied. In considering whether to grant a motion to dismiss pursuant to 2-615, this Court will consider whether the allegations in the complaint, viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted." *Dvorkin v. Soderquist*, 2022 Ill. App. 1st 201368, ¶75 (1st Dist. 2022).

. Here, Counter-Plaintiff has alleged sufficient facts to maintain both Count I and II of its Counterclaim. As more fully addressed below, Counter-Defendants improperly seek to have the breach of contract claim in Count I dismissed based on the false assertion that Counter-Plaintiffs' allegation that "all of its obligations under the lease were fulfilled" is untrue. *See.* Counter-Defendants' Motion to Dismiss at 3. Similarly, Counter-Defendants seek to have Count

II dismissed on the grounds that Counter-Plaintiff has not specified which statements were fraudulent, (*Id.* at 4), while at the same time arguing that the specific statements Counter-Plaintiff did alleged were fraudulent were true (*Id.* at 7). Counter-Defendants not only misconstrue Exhibit H of the Counterclaim in its entirety but also improperly assert facts not contained in the pleadings in support of their motion. *See. Id.* at 3, 4 (Counter-Defendants make additional claims about their inability to obtain renters insurance). Even if these additional facts were properly raised as part of a Motion for Summary Judgement and supported by affidavit, when considering all allegations in the light most favorable to the non-moving party, dismissal would be improper. Therefore, Counter-Defendants Motion to Dismiss the Counterclaim should be denied.

I. COUNTER-PLAINTIFF BREACH OF CONTRACT CLAIM IS PROPER.

Counter-Defendants seek to have Count I dismissed on the grounds that Counter-Plaintiff has not properly alleged all elements of a breach of contract claim. Specifically, they attach the allegation that Counter-Plaintiff had satisfied its obligations under the lease. In so doing, Counter-Defendants argue that Exhibit H to the counterclaim somehow negates Counter Plaintiff's allegation that it had satisfied its obligations under the lease. *Id.* at 3. Exhibit H, is a copy of the Circuit Court of Cook Counties order in Case Number 2022-M1-401400. According to Counter-Defendants this order demonstrates that Counter-Plaintiff could not have fulfilled its obligations under the lease. In jumping to this conclusion, Counter-Defendants make several erroneous assumptions claims regarding Exhibit H. First, Counter-Defendants falsely assert that Counter-Plaintiff could not have satisfied its obligations unless the building was free from alleged building code violation. Second, Counter-Defendants claim that Exhibit H demonstrates (1) that there were building code violations, and (2) those violations were in

existence when the lease was commenced. Both of these assertions are false because; (1) there is no finding on Exhibit H as to the existence of any building code violations, and (2) a review of the Circuit Court records indicates that case number 2022-M1-401400 was initiated ***after*** the lease had commenced and Counter-Defendants were in possession of the property. Third, Exhibit H does not include a finding that there were any building code violations on the property, but does not even list the alleged violations. *See. Counterclaim* Exhibit H. Had Counter-Defendants actually reviewed the *allegations* related to the Circuit Court building case they would discover that all but one of the cited code violations were pertaining to the illegal conduct of Counter-Defendants in operating an unlicensed public place of amusement on the premises. *See. Verified Complaint* 2022-M1-401400.

Lastly, Counter-Defendants, appear to assert the affirmative defense of recession based on mistake of fact. "The motion does not raise affirmative factual defenses, but rather alleges only defects on the face of the complaint." *Vernon v. Schuster*, 179 Ill.2d 338, 344 (1997). In addition to being improper grounds for a 2-615 motion, for the reasons discussed above, this is factually inaccurate. Not only were Counter-Defendants given an opportunity to discover any defects in the property prior to leasing, but the particular building code violations cited were caused by Counter-Defendants after taking possession. Accordingly, Counter-Defendants motion to dismiss count I should be denied.

II. COUNTER DEFENDANTS MOTION TO DISMISS COUNT II SHOULD BE DENIED.

Dismissal is proper under Section 2-615, where allegations, "when construed in a the light most favorable to the plaintiff, are [in]sufficient to establish a cause of action upon which relief may be granted." *Blumenthal v. Brewer, 2016 IL 119781,* ¶19. Such motions challenge the

legal sufficiency of a pleading based on defects apparent on its face. *Id.* In this case, Counter-Plaintiff has alleged that Counter-Defendants committed fraud by (1) making false statements that they had obtained sufficient insurance coverage to satisfy the condition precedent to execute the lease, and (2) that Counter Defendants fraudulently concealed that they would be using the premises as a personal residence and illegal nightclub. In moving to dismiss the fraud claims Counter-Defendants ignore the allegations regarding the false certificate of insurance they provided and attempt to sidestep their fraudulent concealment of their intent to use the premises for an illegal nightclub because they occasionally used the premises for their stated purpose of a workshop. In each instance, Counter-Plaintiff has plead fraud with sufficient particularity to put Counter-Defendants on notice of which claims it is being called to defend. Accordingly, for the reasons more fully set forth below, Counter-Defendants Motion to Dismiss should be denied as to Count II.

A. USE OF THE PREMISES AS A WORKSHOP DOES NOT NEGATE THE FRAUDULENT CONCEALMENT OF THE INTENDED ILLEGAL USE

As to the first allegation regarding the use of the premises, Counter-Defendants argue in their Motion to dismiss that any use of the premises for the purported purpose negates their concealment of the fact that they intended to use the premises for an illegal nightclub and/or personal residence. In support Counter-Defendants rely on *Hirsch v. Feuer,* 299 Ill. App. 3d 1076, 1086-87, 702 N.E.2d 265, 273 (1st Dist. 1998).

. *In Hirsch,* the Court found the complaint facially insufficient because it "does not point to specific false representations so as to fairly apprise defendants of what they would be called upon to answer." *Id.* Unlike the present case, the plaintiff in *Hirsch* only alleged that defendant failed to make disclosures regarding the condition of the property, however, they did

not specify which disclosures were allegedly false. *Id.* As a result of the ambiguity of the plaintiffs allegations in *Hirsch*, the court concluded that the complaint was not sufficient to put defendant on notice of which claims it was called upon to defend. *Id.* Unlike *Hirsch*, in this case Counter-Defendants do have sufficient notice of the specific statements Counter-Plaintiff alleges to be fraudulent. Namely, the representation (1) that Counter-Defendants had obtained the necessary insurance coverage, and (2) the concealment of their intended use of the premises for an illegal night club and personal residence when they indicated how they intended to use the premises. While Counter-Defendant asserts that silence in a transaction does not rise to the level of fraud. Silence accompanied by deceptive conduct or suppression of material facts, however, can give rise to concealment and "it is then the duty of the party which has concealed information to speak." *Heider*, 245 Ill. App.3d at 269; see also *Mitchell v. Skubiak*, 248 Ill. App.3d 1000, 1005 (1993). Here, Counter-Defendants specifically asserted their intended use of the property prior during negotiations prior to executing the lease and further affirmed in the lease agreement that the intended use was lawful. Counterclaim Exhibit A ¶2. Counter-Defendants in so asserting fraudulently concealed the material facts that they would be using the property as a personal residence and illegal night club.

B. COUNTER DEFENDANTS FRAUD WAS NOT LIMITED TO FUTURE CONDUCT

The fraudulent misrepresentation of Counter-Defendants regarding insurance coverage and the concealment of their intended illegal use of the property is actionable because; (1) it was referring to conditions in existence at the time the statements were made or concealed, and (2) because they were made as part of an overall scheme to induce Counter-Plaintiff to lease them the space. Therefore, Counter-Defendants argument that their statements are not actionable as

fraud because they refer to future conduct fails.

First as to the use of the property, the pleadings indicates that it was Counter-Defendants intent to illegally use the premises as a personal residence and an illegal nightclub. Counter-Defendant Behmer's own statements to fire investigators just 14 months after the lease commenced that he "has lived in the building for over one year" indicates that Counter-Defendants had the intent to reside in the premises from the outset and fraudulently concealed that fact from Counter-Plaintiff in order to induce him to enter the lease. *See.* Counterclaim Exhibit I.

As to the certificate of insurance, in ¶28 of its Counterclaim, Counter-Plaintiff alleges that "Prior to signing the lease agreement, Counter-Defendants presented GP with a certificate of insurance dated 9/30/2021 and attached hereto as Exhibit F." *Id.* This insurance policy purports to provide the requisite umbrella coverage for the property required under the lease. *Id.* Counter-Plaintiff clearly alleges that statement of coverage was provided to induce it to believe that the building was properly insured. Counter-Defendants argue in their motion to dismiss that "due to the numerous safety and health issues present on the property prior to Counter-Defendant's occupation of the property, Counter-Defendants were not able to obtain renters insurance". Counter-Defendants 2-615 Motion at 3. Relying on Counter-Defendants own assertion, the "Certificate of Insurance" they provided indicating the building was insured would necessarily be false if they were "unable to obtain" insurance. Accordingly, Counter-Defendants argument fails.

C. COUNTER PLAINTIFF HAS PROPERLY PLEAD DAMAGES AS A RESULT OF COUNTER DEFENDANTS CONDUCT.

As to damages, Counter-Plaintiff alleges in ¶35 that the fire which destroyed the unit was

a direct result of the Counter-Defendants' illegal occupancy and that it has incurred costs of defending a building code case as a result of Counter-Defendants' violations of the Chicago Municipal Code, extensive cost of repairs, and lost rent. As to the fraudulent statements of Counter-Defendants regarding insurance coverage, Counter-Defendant has been forced to cover the cost of repairing the unit after the fire instead of the damage being covered by insurance. Counterclaim at 55. Accordingly, Counter-Plaintiff has sufficiently alleged damages related to the fraudulent concealment and misrepresentations by Counter-Defendant which induced him to lease them the property.

WHEREFORE, for the reasons set forth above, Counter-Plaintiff respectfully request that this Court DENIES the Motion to Dismiss Counts I and II of its Counterclaim.

Dated: November 27, 2023

Respectfully submitted,

GP OPPORTUNITY FUND, LLC

By: _____
One of its Attorneys

Zachary D. Limbaugh
The Limbaugh Law Firm
417 West Superior Street
Chicago, Illinois 60654
Phone:(312) 612-9225
Limbaugh@LimbaughLawFirm.com
Attorney ID # 49252
ARDC # 6306446

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, and KENNETH MAYLE, an individual	)	
Plaintiffs,	)	No. 22 L 10246
v.	)	
GP OPPORTUNITY FUND, LLC	)	
Defendants.	)	

NOTICE OF FILING

TO: WEISS ORTIZ P.C.
Attorney for Plaintiffs
1011 E. 31st Street
La Grange Park, Illinois 60526
Info@weissortizlaw.com
Firm No. 40058

PLEASE TAKE NOTICE that on November 28, 2023 there was filed with the Clerk of the Law Division of the Circuit Court of Cook County Counter Plaintiffs Response to Counter Defendant's 2-615 Motion to Dismiss Counterclaim, a copy of which is included herewith and served upon you.

Respectfully submitted,

GP Opportunity Fund, LLC

By: _____
One of its Attorneys

CERTIFICATE OF SERVICE

On November 28, 2023, I, Zachary D. Limbaugh, an attorney, caused to be served via email and US Mail the foregoing Notice of Filing/Notice of Motion to the persons or firms listed above:

_____
Zachary D. Limbaugh

Zachary D. Limbaugh
The Limbaugh Law Firm
417 West Superior Street
Chicago, Illinois 60654
Phone:(312) 612-9225
Attorney ID # 49252
ARDC # 6306446
Limbaugh@LimbaughLawFirm.com

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

FILED
2/20/2024 9:30 AM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2022L010246
Calendar, Y
26468162

FILED DATE: 2/20/2024 9:30 AM 2022L010246

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, and KENNETH MAYLE, an individual Plaintiffs, v. GP OPPORTUNITY FUND, LLC, an Illinois Limited Liability Company. Defendants.	)	No. 22 L 10246 Room 1906 Calendar I

GP OPPORTUNITY FUND, LLC'S 2-615 MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT

Now comes Defendant Counter-Plaintiff, GP OPPORTUNITY FUND, LLC, and moves this Honorable Court for entry of an Order dismissing Counts I, II, III, V, VI, and VII of Plaintiff's Second Amended Complaint with prejudice pursuant to 735 ILCS 2-615 and in support thereof states as follows:

1. 1. Plaintiffs' five-count Complaint against GP Opportunity Fund, LLC seeks compensatory and punitive damages as well as attorneys' fees and costs for: alleged breach of contract of 9B and 29B of the Lease Agreement (Count I), Plaintiffs Second Amended Complaint at ¶¶ 35-41; breach of implied covenant of Quiet Enjoyment (Count II), *Id.* at. ¶¶ 42-50; Unjust Enrichment (Count III), *Id.* at. ¶¶ 51-57; Constructive Eviction (Count IV), *Id.* at ¶¶ 58-64; and Negligence (Count V) . *Id.* at ¶¶ 65- 73.

2. Dismissal is proper under Section 2-615, where allegations, "when construed in a the

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light most favorable to the plaintiff, are [in]sufficient to establish a cause of action upon which relief may be granted." *Blumenthal v. Brewer, 2016 IL 119781*, ¶19. Such motions challenge the legal sufficiency of a pleading based on defects apparent on its face. *Id.*

3. If a claim or defense is founded upon a written instrument, a copy thereof, or of so much of the same as is relevant, must be attached to the pleading as an exhibit or recited therein, unless the pleader attaches to his or her pleading an affidavit stating facts showing that the instrument is not accessible. 735 ILCS 5/2-606

4. As to Count I, Plaintiffs allegations in Paragraphs 15-23 of their Complaint each rely upon written instruments which were not included in the complaint or attached as exhibits as required under 735 ILCS 5/2-606. While Plaintiff's have amended their compliant to include the allegation that "adequate and sufficient written request" was provided as to each of its claims, the written instrument Plaintiffs reference is not included and the exhibits referenced are not related. *See*. Plaintiff's Third Amended Compl. ¶¶15-23. Because Plaintiff's claims under Count I are reliant on the written instruments referenced which are not included, Count I should be dismissed for failure to state a claim.

5. Further, Plaintiffs have not stated a cause of action for breach of Section 9B of the lease agreement because Section 9 indicates that the Plaintiffs are responsible for repair and/ or replacement of the items in the building that they allege Defendant breached the lease by failing to repair or maintain.

6. Count II of Plaintiffs complaint fails to state a claim for breach of the covenant of quiet enjoyment because it contains no allegations asserting that Defendant engaged in any intentional acts constituting interference with the quiet enjoyment of the property. "A breach

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of the covenant of quiet enjoyment requires an intentional interference with a tenant's full enjoyment and use of the leased premises which interference is unreasonable, unwarranted or unlawful." *Illinois. Blue Cross Association v. 666 North Lake Shore Drive Associates*, 100 Ill.App.3d 647, 652, 56 Ill.Dec. 190, 193, 427 N.E.2d 270, 273 (1st Dist.1981). Here, Plaintiffs assert that Defendant interfered with their quiet enjoyment by not making improvements to the roof, or repairing and maintaining the plumbing, garage door, lighting, and heating as requested. Plaintiffs ignore that each of the items they complain Defendant did not maintain, with the exception of the roof, were the specific responsibility of Plaintiffs to repair and maintain under Section 9A of the lease. Accordingly, Plaintiffs claim for breach of quiet enjoyment is insufficient on its face.

7. Count III should be dismissed because, Plaintiffs allege that Defendant has been unjustly enriched by retaining $170,000. Plaintiffs Third Amend. Compl. at 53. Plaintiffs further allege the $170,000 was initially tendered to him as prepaid rent from October 2021 through March 2023 ($128,700) and $42,900 in the form of a security deposit. *Id. at 11*. Plaintiffs further admit in their complaint that they retained possession of the property until it destroying it by fire on or around February 6, 2023. As Plaintiffs occupied the space for 17 out of the 18 months they prepaid rent. Moreover, Plaintiffs are contractually responsible for the fire damage caused to the unit which far exceeds the security deposit. Here, Defendant has suffered extensive losses as a result of Plaintiffs occupancy and there are no set of facts which would entitle Plaintiffs to relief for unjust enrichment. Accordingly, Plaintiffs Count III should be dismissed for failure to state a claim.

8. Count IV should be dismissed because Plaintiffs did not surrender or abandon the

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property as the parties are currently under court order to keep the property vacant and secure while the damages caused by Plaintiffs are repaired. ("Constructive eviction cannot exist where the tenant does not surrender the property," at least within a reasonable time), appeal denied, 121 Ill. 2d 586, 122 Ill.Dec. 446, 526 N.E.2d 839 (1988); see also Advertising Checking Bureau, Inc. v. Canal-Randolph Associates, 101 Ill.App.3d 140, 56 Ill.Dec. 634, 639, 427 N.E.2d 1039, 1044 (1st Dist.1981).

9. Further, Count IV should be dismissed for failure to state a claim because any restriction on accessing the property is pursuant to court order. Furthermore, Plaintiffs fail to allege when they were locked out or denied access to the unit. However, Plaintiffs do indicate that they were occupying the unit at the time when the 2-alarm fire destroyed the premises. As a result of the emergency closure order by the City of Chicago Department of Buildings Commissioner, and the Circuit Court of Cook County's order that the building be kept vacant and secure while repairs are completed neither party is permitted to access the property for any other purpose at this time. Accordingly, Plaintiffs allegations are insufficient on their face to state a claim for constructive eviction.

10. Lastly, Plaintiffs have failed to state a claim for negligence against Defendant GP Opportunity Fund, LLC in Count V, because they have not specified a duty on the behalf of Defendant, the breach of which was the proximate cause of their alleged damages. Plaintiffs wrongly assert that Defendants duty to mitigate its own damages, imposed upon it duty to safeguard Plaintiffs from damages they incurred as a result of their own actions. Further, Plaintiffs claims of negligence are legally insufficient because they have not alleged any facts to support a finding that Defendant proximately caused the damages asserted.

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11. Contemporaneously with the filing of this motion, Defendant is filing its separate memorandum of law and exhibits in support of the motion, which are incorporated by reference into this motion.

WHEREFORE, for the reasons set forth in more detail in its Memorandum of Law in Support of the Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint, the Defendant respectfully request that the Court dismiss the Complaint with prejudice, and that Defendants be afforded such other and further relief as this Court deems proper.

Dated: October 23, 2023

Respectfully submitted,

GP OPPORTUNITY FUND, LLC

By: _____
One of its Attorneys

Zachary D. Limbaugh
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Phone:(312) 612-9225
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Attorney ID # 49252
ARDC # 6306446

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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, and KENNETH MAYLE, an individual	)	
Plaintiffs,	)	No. 22 L 102246
v.	)	
GP OPPORTUNITY FUND, LLC	)	
Defendants.	)	

NOTICE OF FILING

TO: **WEISS ORTIZ P.C.**
Attorney for Plaintiffs
1011 E. 31st Street
La Grange Park, Illinois 60526
Info@weissortizlaw.com
Firm No. 40058

PLEASE TAKE NOTICE that on February 20, 2024 there was filed with the Clerk of the Law Division of the Circuit Court of Cook County Defendant's 2-615 Motion to Dismiss Plaintiffs' Second Amended Complaint a copy of which is included herewith and served upon you.

Respectfully submitted,

GP Opportunity Fund, LLC

By: _____
One of its Attorneys

CERTIFICATE OF SERVICE

On February 20, 2024, I, Zachary D. Limbaugh, an attorney, caused to be served via email and US Mail the foregoing Notice of Filing/Notice of Motion to the persons or firms listed above:

_____
Zachary D. Limbaugh

Zachary D. Limbaugh
The Limbaugh Law Firm
417 West Superior Street
Chicago, Illinois 60654
Phone:(312) 612-9225
Attorney ID # 49252
ARDC # 6306446
Limbaugh@LimbaughLawFirm.com

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

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IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2022L010246
Calendar, Y
26792777

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. 2022 L 010246**
and	)	
	)	**Cal. I**
GP OPPORTUNITY FUND, LLC,	)	
an Illinois Limited Liability Company,	)	
	)	
Defendant.	)	

PLAINTIFFS' RESPONSE TO DEFENDANT'S 2-615
MOTION TO DISMISS THIRD AMENDED COMPLAINT

NOW COME Plaintiffs, 30 DEGREE BY DESIGN, LLC, BRAD BEHMER, and KENNETH MAYLE, by and through their attorneys, WEISS ORTIZ P.C., and for Response to Defendant's 2-615 Motion to Dismiss Third Amended Complaint, respectfully state as follows:

INTRODUCTION

Defendant has filed a Section 5/2-615 Motion to Dismiss and many of the arguments set forth therein are not applicable to Plaintiffs' Third Amended Complaint. As the court is aware, in responding to a Sectio 5/2-615 Motion to Dismiss Plaintiff must simply satisfy the pleading requirements in their complaint by setting forth facts establishing the prima facie elements of each cause of action. Plaintiffs have done so. Moreover, Defendant rests on his Motion to Dismiss Plaintiffs Second Amended Complaint as and for his Motion to Dismiss Plaintiffs Third Amended Complaint, however many of those arguments have been cured by the filing of Plaintiffs Third Amended Complaint rendering Defendant's arguments moot. Accordingly, since Plaintiff has satisfied all their pleading requirements for all their causes of action, Defendant's Motion to Dismiss should be denied.

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STANDARD

"A cause of action should not be dismissed pursuant to §2-615 Motion unless it is clearly apparent *that no set of facts* can be proved that would entitle the petitioner to relief." *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). Emphasis added. Plaintiffs are not required to prove their case at the pleading stage; they are merely required to allege sufficient facts to state all elements which are necessary to constitute each cause of action in their complaint. *Visvardis v. Eric P. Ferleger, PC*, 375 111. App. 3d 719, 724 (1st Dist. 2007). "*[N]o pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim which he is called upon to meet." Browning v. Heritage Ins. Co.*, 33 Ill. App. 3d 943, 946–47 (1975). Emphasis added. Pleadings shall be liberally construed with a view to doing substantial justice between the parties. 735 ILCS 5/2-603. Allegations in a complaint are construed in the light most favorable to the plaintiff. *See King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 11–12 (2005). Conclusions of law will also be taken as true if properly supported by specific factual allegations. *See Jarvis v. South Oak Dodge*, 201 Ill. 2d 81, 86 (2002).

Plaintiffs "are not required to prove their case at the pleading stage; they are merely required to allege sufficient facts to state *all elements* which are necessary to constitute each cause of action in their complaint." *See Visvardis v. Eric P. Ferleger, PC*, 375 111. App. 3d 719, 724 (1st Dist. 2007) (emphasis added).

ARGUMENT

RESPONSES TO ALLEGATIONS

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1. Plaintiffs filed a *Six* Count Complaint against GP Opportunity Fund, LLC ("GP") seeks compensatory and punitive damages as well as attorneys' fees and costs for: alleged breach of contract of Sections 9B and 29B of the Lease Agreement (Count I), Plaintiffs Second Amended Complaint at ¶¶ 35-41; breach of implied covenant of Quiet Enjoyment (Count II), *Id.* at. ¶¶ 42-50; Unjust Enrichment (Count III), *Id.* at. ¶¶ 51-57; Constructive Eviction (Count IV), *Id.* at ¶¶ 58-64; and Negligence (Count V). *Id.* at ¶¶ 65- 73. However, this is not an argument sufficient to support a Motion to Dismiss.

2. Plaintiffs agree and Defendant has conceded that dismissal is improper under Section 2-615 where allegations, "when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted." *Blumenthal v. Brewer, 2016 IL 119781, ¶*19. Moreover, Plaintiffs' Third Amended Complaint is sufficient to establish a cause of action upon which relief should be granted. *Visvardis v. Eric P. Ferleger, PC*, 375 111. App. 3d 719, 724 (1st Dist. 2007). "*[N]o pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim which he is called upon to meet." Browning v. Heritage Ins. Co.*, 33 Ill. App. 3d 943, 946–47 (1975). Emphasis added. Nothing in Defendant's motion argues otherwise.

3. Plaintiffs meet the requirement of section 735 ILCS 5/2-606. Plaintiffs are unsure what Defendant is referring to when it states that Plaintiffs failed to include a copy of the written instrument at issue. To wit, see Exhibit A of Plaintiffs' Third Amended Complaint which the contracts at issue, and is also attached hereto as **EXHBIT A** to this response for the Court's convenience. Plaintiffs entered into a written lease agreement with GP for the lease of industrial warehouse space at the Property. See also Plaintiffs allegation that "adequate and sufficient written request" was provided as to each of its claims, the written instrument. See the Third

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Amended Compl. ¶¶15-23. Because Plaintiffs Complaint conforms with the rule and Section 5/2-606, Defendant's Motion to Dismiss Count I must be denied.

4. Plaintiff adopts and incorporates its response to paragraph 3, *supra*, as and for their response to paragraph 4, as though fully set forth herein.

5. Plaintiffs deny Paragraph 5 of Defendant's Motion to Dismiss and further state that the allegations in ¶¶ 13-26 of the Third Amended Complaint sufficiently outline the various repairs that Defendant was responsible for and failed to make, including but not limited to, exterior damage and draining issues which have caused flooding. *Id.* at ¶ 16. Furthermore, 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. *Id.* at ¶ 17. *See also* Paragraph 13 of Plaintiff's Third Amended Complaint which states**:**

> 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."
>
> Additionally, pursuant to Paragraph 29B of Lease:
>
> Landlord will present the Tenant with replacement lighting no later than November 1, 2021.

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Id.

6. As to Count II, Plaintiff satisfies the elements for breach of the covenant of quiet enjoyment. 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. Plaintiffs alleged that Defendants breached the Covenant of Quiet Enjoyment by refusing to make repairs to the roof, garage, and exterior of the property, which was clearly the responsibility of the Defendants under the language of the lease.

Specifically, allegation 46 of Plaintiff's Third Amended Complaint states:

> 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.

Id. at 46.

Therefore, Plaintiffs maintain that Count II of their Third Amended Complaint should not be dismissed.

7. As to Count III, Plaintiff have likewise met the elements for a claim of unjust enrichment. 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. *See* Plaintiff's

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Amended Complaint at ¶ 52. Plaintiff has paid GP over $170,000.00 in prepaid rent and security deposits for a commercial space that was otherwise unrentable and uninhabitable. *Id*. at 53. As alleged, due to Defendants various breaches of the terms of the lease, the conditions affected Plaintiff's ability to work and use the space. *Id*. at 55. Therefore, Plaintiffs have sufficiently set forth facts to allege that Defendants have been unjustly enriched due to its failure to provide habitable space. Accordingly, Count III of the Complaint should not be dismissed.

8. As to Count IV, Plaintiffs; Complaint alleges that 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. GP willfully refused to perform repairs or so negligently performed, that what it did was of no benefit in protecting Plaintiffs in the use and quiet enjoyment of the Property. As a result of the fire and 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. *See* Plaintiff's Amended Complaint at ¶¶ 61-63. Therefore, Defendants constructively evicted Plaintiffs and interfered with their quiet enjoyment of the Property since the inception of the lease. Plaintiff's Complaint alleges sufficient facts to survive dismissal of Count IV of the Complaint and accordingly should not be dismissed.

9. Plaintiff adopts and incorporates its response to paragraph 8, *supra,* as and for their response to paragraph 9, as though fully set forth herein.

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10. Plaintiffs have stated a claim for negligence against Defendant GP Opportunity Fund, LLC in Count V. *See* Paragraphs 66-73 of its Third Amended Complaint. Plaintiff further states that Defendant knew about certain defects to the property since the inception of the Lease and continuously failed to make improvements that would have prevented or mitigated the damages to the Property caused by the fire. "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) 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.

Additionally, under common law, a landlord is not liable for injury to the property of a tenant caused by defects in the demised premises absent an express warranty as to the condition of the premises or a covenant to repair. *Wanland v. Beavers*, 130 Ill. App. 3d 731, 732, 474 N.E.2d 1327, 1328 (1st Dist. 1985) *citing* 52 C.J.S. Landlord & Tenant sec. 423(3)(a) (1968).). However:

> "The general rules which shield a landlord from liability are not without exceptions. A landlord may be liable, even in the absence of control where (1) there was a latent defect existing at the date of the lease of the premises to the tenant, which defect was known to the landlord or could have been known by him in the exercise of reasonable care, and which defect could not have been discovered by a reasonable examination of the premises by the tenant; (2) there was a fraudulent concealment from the tenant by the landlord of a known, dangerous condition; (3) the thing which did the harm amounted in law to a nuisance; or (4) a promise to repair the premises made by the landlord to the tenant at the time of the leasing."

Renier v. Prauss, 2021 IL App (1st) 200138-U, ¶ 26. *Citing Woods v. Lawndale Theatre Corp*., 302 Ill. App. 570, 573-74, 24 N.E.2d 193 (1939).

Here, Defendant knew about certain defects to the property since the inception of the Lease and continuously failed to make improvements that would have prevented or mitigated the

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damages to the Property caused by the fire. GP knew of latent defects on the premises. For Example, GP knew that the lighting was defective at the time of the execution of the Lease and promised replacement lighting by November 1, 2021, pursuant to the lease, which it failed to do. Id. at ¶67. Furthermore, GP was issued various City ordinance violations over the course of the Lease which Defendants failed to correct and thus were on actual notice and knew of the defects on the property. Id. at ¶68. As such, Plaintiff's Count V alleging Negligence on the Part of GP Opportunity Fund should not be dismissed.

11. Defendant states that it has filed contemporaneously with the filing of their Motion to Dismiss of February 20, 2024, a separate memorandum of law and exhibits in support of the Motion, however, nothing was attached to the Motion, the Clerk's portal also does not show that a memorandum and or exhibits were filed. Plaintiff requested same on March 11, 2024, and none was received. Therefore, *no response* to the memorandum or exhibits has been made by Plaintiff.

WHEREFORE, Plaintiffs, 30 DEGREE BY DESIGN, LLC, BRAD BEHMER, and KENNETH MAYLE, respectfully request that Defendant's Section 5/2-615 Motion to Dismiss the Third Amended Complaint be denied and for any other relief this court deems equitable, including leave to file an amended complaint if the court should find Plaintiffs' Complaint is deficient in any regard.

Respectfully Submitted,

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

By: /s/Adeena Weiss Ortiz
Attorney for Plaintiffs

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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

WEISS ORTIZ P.C.
1011 E. 31st Street
La Grange Park, Illinois 60526
708-937-9223
info@weissortizlaw.com
Firm No. 40058

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

FILED
5/13/2024 2:57 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2022L010246
Calendar, Y
27667333

FILED DATE: 5/13/2024 2:57 PM 2022L010246

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, and KENNETH MAYLE, an individual	)	
Plaintiffs,	)	No. 22 L 10246
v.	)	
GP OPPORTUNITY FUND, LLC, an Illinois Limited Liability Company.	)	
Defendants.	)	

DEFENDANT'S VERIFIED ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S THIRD AMENDED COMPLAINT

Now comes Defendant, GP OPPORTUNITY FUND, LLC, and for its Answer to Plaintiff's First Amended Complaint at Law states as follows:

1. Admit.

2. Admit.

3. Admit.

4. Admit

5. Admit.

6. Admit.

7. The lease agreement speaks for itself, as such Defendant neither admits nor denies.

To the extent an answer is required Defendant denies.

8. Denied.

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9. Admit.

10. Admit.

11. Denied.

12. Denied.

13. The lease agreement speaks for itself, as such Defendant neither admits nor denies. To the extent an answer is required Defendant denies.

14. The lease agreement speaks for itself, as such Defendant neither admits nor denies. To the extent an answer is required Defendant denies.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

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29. Admit that there was a fire on the property. The fire report speaks for itself, as such Defendant neither admits nor denies. To the extent an answer is required Defendant denies.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

COUNT I- BREACH OF CONTRACT

35. Paragraph 35 contains the allegations of 1-34 above, to the extent an answer is required, Defendant Answers the same as 1-34 above.

36. Defendant neither admits nor denies, to the extent an answer is required Defendant denies and demands strict proof thereof.

37. Admit.

38. Admit.

39. Denied.

40. Denied.

41. Denied.

COUNT II- BREACH OF IMPLIED COVENANT OF QUIET ENJOYMENT

42. Paragraph 42 contains the allegations of 1-34 above, to the extent an answer is required, Defendant Answers the same as 1-34 above.

43. Defendant neither admits nor denies, to the extent an answer is required Defendant denies and demands strict proof thereof.

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44. Defendant neither admits nor denies, to the extent an answer is required Defendant denies and demands strict proof thereof.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Denied

50. Denied.

COUNT III- UNJUST ENRICHMENT

51. Paragraph 51 contains the allegations of 1-34 above, to the extent an answer is required, Defendant Answers the same as 1-34 above.

52. Defendant neither admits nor denies, to the extent an answer is required Defendant denies and demands strict proof thereof.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

COUNT IV-CONSTRUCTIVE EVICTION

58. Paragraph 58 contains the allegations of 1-33 above, to the extent an answer is required, Defendant Answers the same as 1-33 above.

59. Denied.

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60. Denied.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

COUNT V- NEGLIGENCE

65. Paragraph 65 contains the allegations of 1-34 above, to the extent an answer is required, Defendant Answers the same as 1-34 above.

66. Denied.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

COUNT VI- NEGLIGENCE v. CITY OF CHICAGO

74.- 80. Defendant GP Opportunity fund is not a party to Count VI and accordingly makes no answer thereto, to an extent an answer is required Defendant denies each and every allegation in paragraphs 74-80 and demands strict proof thereof.

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Respectfully submitted,

GP OPPORTUNITY FUND, LLC

By: _____
One of its Attorneys

Zachary D. Limbaugh
The Limbaugh Law Firm
417 West Superior Street
Chicago, Illinois 60654
Phone:(312) 612-9225
Limbaugh@LimbaughLawFirm.com
Attorney ID # 49252
ARDC # 6306446

FILED DATE: 5/13/2024 2:57 PM 2022L010246

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth herein are true and correct.

S/ Bryon Finke
Bryon Finke, GP Opportunity Fund, LLC

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AFFIRMATIVE DEFENSES

First Affirmative Defense -- Ratification

Plaintiff's claims are barred, in whole or in part, by the doctrine of ratification. Plaintiff ratified the actions of which they now complain. Plaintiff had knowledge of the material facts of the disputed transactions and took positions and engaged in actions that were inconsistent with non-affirmation of them. These acts of ratification include, but are not limited to, Plaintiffs consent, approval and/or failure to object to taking possession of the leased premises, continued use and occupancy of the space, and acquiescence to the conditions therein.

Second Affirmative Defense – Consent/Waiver/Estoppel/Acquiescence

Plaintiffs' claims are barred, in whole or in part, by the affirmative defenses of consent, waiver, acquiescence and/or estoppel. Plaintiffs consented, acquiesced, took positions and engaged in conduct ,which are inconsistent with the positions they now take, and/or failed to timely object to them. These acts include, but are not limited to, taking possession, continued occupancy and use of the leased premises, and taking action to resolve claims asserted by third parties. Defendant reasonably relied on Plaintiffs' consent, waiver, acquiescence and failure to object to these actions and would suffer unfair prejudice if Plaintiffs are now permitted to challenge them.

Third Affirmative Defense – Plaintiffs' Own Acts

Plaintiff's claims are barred, in whole or in part, on grounds that some or all of the damages claimed by Plaintiffs were brought about by reason of its own acts, actions or negligence, including, but not limited to, destruction and damage to the property caused by Plaintiffs own acts, negligence or intentional acts; improper use of the premises, illegal operation of a public

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place of amusement, failure to provide Defendant with timely, accurate or complete information regarding the condition of the premises, and misrepresentation about the intended and continued use or occupancy of the premises, among other acts.

Fifth Affirmative Defense-Indemnification

Plaintiff's claims are barred, in whole or in part, on the grounds that they are subject to Section 16 of the Agreement, which provides for indemnification of Defendants for claims arising out of Plaintiffs' Possession, use, or misuse of the premises.

Respectfully submitted,

GP OPPORTUNITY FUND, LLC

By: _____
One of its Attorneys

Zachary D. Limbaugh
The Limbaugh Law Firm
417 West Superior Street
Chicago, Illinois 60654
Phone:(312) 612-9225
Limbaugh@LimbaughLawFirm.com
Attorney ID # 49252
ARDC # 6306446

FILED DATE: 5/13/2024 2:57 PM 2022L010246

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, and KENNETH MAYLE, an individual	)	
Plaintiffs,	)	No. 22 L 102246
v.	)	
GP OPPORTUNITY FUND, LLC	)	
Defendants.	)	

NOTICE OF FILING

TO: **Adeena Weiss Ortiz**
Attorney for Plaintiff
1011 E. 31st Street
LaGrange Park, Illinois 60526
708-937-9223
info@weissortizlaw.com

PLEASE TAKE NOTICE that on May 13, 2024 there was filed with the Clerk of the Law Division of the Circuit Court of Cook County Defendant's Answer and Affirmative Defenses a copy of which is included herewith and served upon you.

Respectfully submitted,

GP Opportunity Fund, LLC

By: _____
One of its Attorneys

CERTIFICATE OF SERVICE

On May 14, 2024, Zachary D. Limbaugh, an attorney, caused to be served via email and US Mail the foregoing Answer and Notice of Affirmative Defenses to the persons or firms listed above:

_____
Zachary D. Limbaugh

Zachary D. Limbaugh
The Limbaugh Law Firm
417 West Superior Street
Chicago, Illinois 60654
Phone:(312) 612-9225
Attorney ID # 49252
ARDC # 6306446
Limbaugh@LimbaughLawFirm.com

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

FILED
10/16/2024 11:30 AM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2022L010246
Calendar, Y
29799514

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
LAW DIVISION

30 DEGREE DESIGN, LLC, an Illinois limited liability company, BRAD BEHMER, an individual, and KENNETH MAYLE, an individual	)	No. 22 L 10246
Plaintiffs,	)	
v.	)	
GP OPPORTUNITY FUND, LLC, an Illinois Limited Liability Company.	)	Calendar I Room 2004
Defendant.	)	

COUNTER-PLAINTIFF GP OPPORTUNITY FUND'S MOTION FOR DEFAULT

Now comes Defendant Counter-Plaintiff G.P. Opportunity Fund, LLC, ("GP Opportunity Fund") and moves this Court to find Plaintiff Counter-Defendants 30 Degree Design, LLC, Brad Behmer and Kenneth Mayle ("Counter-Defendants") in default. In support thereof Counter-Plaintiff states as follows.

1. On July 5, 2023, GP Opportunity Fund filed its Counterclaim a copy of which is attached hereto as Ex. A.

2. A defendant to a counterclaim must answer the counterclaim consistent with the procedures for answering a complaint. 735 ILCS § 5/2-608(d). Judgment by default may be entered for want of an appearance, or for failure to plead, but the court may in either case, require proof of the allegations of the pleadings upon which relief is sought. 735 ILCS § 5/2-1301(d).

3. On August 6, 2024, Plaintiffs' Counsel Ms. Weiss-Ortiz' filed a motion for leave to withdraw as counsel for Counter-Defendants. As grounds for her motion Ms. Weiss-Ortiz indicated to the Court on August 13, 2024 that she had been unable to get in touch with the Counter-Defendants. A copy of the motion to withdraw is attached hereto as Ex. B

4. On August 20, 2024, Ms. Wiess Ortiz' motion to withdraw was granted for 30 Degree Design, LLC Kenneth Mayle and this Court entered an Order for those parties to appear within 28 days. Ex.C

5. Subsequently, on September 10, 2024, Ms. Weiss-Ortiz' motion to withdraw as counsel for Counter-Defendant Brad Behmer was granted and Brad Behmer was ordered to appear within 28 days. Ex. D

6. Pursuant 735 ILCS § 5/2-1301(d) a default judgment may be entered for failing to appear. 735 ILCS § 5/2-1301(d). Attached to this motion are affidavits in support of the counterclaim, damages, and attorneys fees sought in support of this motion.

7. None of the Counter-Defendants have appeared in court or complied with the Courts order to file an appearance. The 28 day deadline to appear has expired, accordingly, Counter-Plaintiff GP Opportunity Fund, LLC respectfully requests this Court enter a default judgment in its favor against the Counter-Defendants.

8. Attached as Ex. H is a affidavit from Plaintiff verifying the Counterclaim Complaint and judgement amount. Attached as Ex. I is an affidavit from Counter-Plaintiff's counsel detailing the attorneys' fees and costs being sought herewith. An affidavit of Military Service as to the individual defendants is attached hereto as Exhibit J.

9. Based on these submissions, Counter-Plaintiff requests the Court to find Counter-Defendants in default. As fully set fourth in the Counterclaim, Counter-Defendants contracted to rent commercial space from GP Opportunity Fund. A copy of the lease is attached hereto as Exhibit A to the Counterclaim and incorporated by reference. *See*. Ex. A. Almost immediately after Counter-Defendants took possession of the premises, GP Opportunity Fund began to receive complaints from other commercial tenants in the building regarding Counter-Defendants conduct including but not limited to claims of harassing other tenants, trespassing into other tenants units, stealing items from other tenants and units, having fires in and around the building, misusing the commercial unit as a personal residence, misusing the unit to operate an illegal public place of amusement, allowing an unrestrained animal on the property, failing to clean-up after animals and guests, and causing damage to the property. A number of these issues were initially brought to GP Opportunity Fund's attention by Counter-Defendant Mayle who admitted that Counter-Defendant Behmer was not using the property as authorized under the lease, was causing damage to the unit, and had lied about his ability and/or willingness to honor his agreements with Mayle. *See*. Counterclaim Ex. C.

   Counter-Defendants breached the terms of their lease by operating an illegal public place of amusement in the unit. *See*. Counterclaim Ex. A, Ex A.. As a result of Counter-Defendants operation of an illegal nightclub in the unit, the City of Chicago Department of Buildings Special Task Force conducted a raid of Counter-Defendants unit on June 17, 2022. The Special Task Force concluded that Counter-Defendants operation of an unlawful public place of amusement, in conjunction with Counter-Defendants unauthorized alterations to the interior of the unit constituted a dangerous and hazardous condition. *Id*. Ex. D. Accordingly the Commissioner of the City of Chicago Department of Buildings issued its "Emergency Closure Order" following the raid and ordered that the unit be kept vacant and secure until further notice. *Id*.

   Despite the Commissioner's closure order, Counter-Defendants continued to occupy the premises unlawfully. Counter-Defendant Behmer continued to reside in the commercial unit in violation of Sections 2 and 18 of the parties lease agreement and in violation of the building commissioners closure order. GP Opportunity Fund sent multiple notices of default to Counter-Defendants by mail as required under Section 23 of the lease, however Counter-Defendants failed to cure any default, vacate the

premises or cease violating the lease agreement.

On or about February 6, 2023 Counter-Defendants caused a 2-alarm fire in the unit resulting in its near total destruction. The Chicago Fire Department Investigator Report indicates that Counter-Defendant Behmer was the only person in the building at the time of the fire, and that according to Behmer, a space heater Behmer was operating caught fire inside the motorhome he had been occupying inside the unit. Counterclaim Ex.

Following the fire the Chicago Fire Department and Circuit Court of Cook County ordered that the unit be kept vacant and secure until permits are obtained and repairs are completed.

The lease agreement Section 16 indicates that Counter-Defendants agree to indemnify GP Opportunity Fund for any loss related to their use or misuse of the premises. *Id.* Ex. A at 4. Lastly, under the lease agreement Counter-Defendants are responsible for all damage it causes to the property, under Section 9 and for attorneys' fees and costs associated with enforcement of the lease agreement under Section 13. *Id.* Ex. A at 2-3.

The lease agreement requires that Counter-Defendant maintain $1,000,000.00 comprehensive insurance coverage for the building. Counter-Defendants presented a proof of insurance coverage prior to the execution of the lease which GP Opportunity Fund later learned Counter-Defendants had allowed to lapse by failing to pay the premiums. *Id.* At Ex. F. Upon learning that Counter-Defendants insurance policy had lapsed in January 2023, GP Opportunity Fund sent a notice by mail to Counter-Defendants that they were in violation of the lease agreement and demanded that they obtain insurance. *Id.* at Ex. G. Counter-Defendants ignored the demand, did not obtain the required insurance coverage, and set fire to the building a few weeks later.

10. For the above reasons GP Opportunity Fund requests a default judgement for breach of contract against Counter-Defendants.

11. Additionally, Counter-Defendants fraudulently induced GP Opportunity fund to enter into the contract by misrepresenting that it had obtained insurance coverage for the premises in order to satisfy a condition precedent that they obtain insurance on the buildings prior to GP Opportunity Fund entering the lease agreement. To its detriment, GP Opportunity Fund, reasonably relied on the Counter-Defendants statements that they had obtained the insurance coverage and on the certificate of insurance that they presented prior to entering the lease. Additionally, Counter-Defendants misrepresented that they would be using the commercial space as a workshop for the lawful purpose of workshop for the design and manufacture of art work and decor. Instead, Counter-Defendant Behmer chose to use the space unlawfully as his personal residence and operate an illegal nightclub out of the space.

12. Counter-Plaintiffs engaged in reckless and dangerous behavior on the premises despite demands to cease. Just before the initial prepaid rent expired Counter-Defendants either intentionally or recklessly set fire to the unit.

13. Counter-Plaintiff GP Opportunity Fund seeks the following compensatory damages:

Board-up Expenses day of fire	$2,000.00
Exterior clean-up day of fire	$800.00
Interior clean-out	$20,000.00
Interior board-up	$2,325.00
Restore electrical service	$3,100.00
TPO Roof Layover	$87,321.00
Water Line	$2,000.00
Glass Block Window Replacement	$10,000.00
Garage Door Replacement	$15,900.00
Smoke Remediation Cleaning	$11,500.00
Structural Engineer Design/Drawings and Repair	$372,900.00
Electrical	$49,500.00
Plumbing	$43,000.00
Ventilation	$12,000.00
Architect	$36,500.00
Masonry damage repairs from fire	$25,000.00
Cement repair, mezzanine windows, misc. fire repairs	$13,500.00
Permit Expeditor Fees	$2,500.00
Legal Expenses related to Commissioner Closure Case	$3,500.00
Past Due Rental Payments February 2023-March 2024	$257,400.00
Late Fees on Rental Payments	$800.00
2055106.24	$971,546.00

14. GP Opportunity Fund also requests the Court to award punitive damages for its claim of fraud. Counter-Plaintiff requests the Court award punitive damages of $1,000,000.00

15. Lastly, GP Opportunity Fund seeks an award of attorneys' fees of $83,160.00 incurred by Counter-Plaintiff as well as $400.24 in court costs for this action pursuant to Section 13 of the Lease Agreement. *See. Id.* Ex. A at 3.

16. The total amount therefore being sought by Counter-Plaintiff is:

    1. $971,546.00 in compensatory damages
    2. $1,000,000.00 in punitive damages
    3. $83,160.00 in attorneys' fees, and
    4. $400.24 in court costs

TOTAL: $2,055,106.24

17. For these reasons, the Court should find Counter-Defendants in default and, after a hearing on prove up, enter default judgment in favor of Counter-Plaintiff and against Defendants. A proposed default order is attached as Exhibit K. A proposed default judgment order to be entered after a prove up hearing is attached as Ex. L.

WHEREFORE, Counter-Plaintiff GP Opportunity Fund, LLC respectfully requests the Court to find Counter-Defendants 30 Degree Design, LLC, Brad Behmer and Kenneth Mayle in default and, after a hearing for prove up, to enter a judgment against them.

Respectfully Submitted,

GP Opportunity Fund, LLC

By: _____
one if it's attorneys

Zachary D. Limbaugh
Attorney for Defendant
417 West Superior Street
Chicago, Illinois 60654
Phone:(312) 612-9225
Attorney ID # 49252
ARDC # 6306446
limbaugh@LimbaughLawFirm.com

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

FILED
10/16/2024 11:30 AM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2022L010246
Calendar, Y
29799514

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
LAW DIVISION

30 DEGREE DESIGN, LLC, an Illinois limited liability company, BRAD BEHMER, an individual, and KENNETH MAYLE, an individual	)	No. 22 L 10246
Plaintiffs,	)	
v.	)	
GP OPPORTUNITY FUND, LLC, an Illinois Limited Liability Company.	)	Calendar I Room 2004
Defendant.	)	

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8. Attached as Ex. H is a affidavit from Plaintiff verifying the Counterclaim Complaint and judgement amount. Attached as Ex. I is an affidavit from Counter-Plaintiff's counsel detailing the attorneys' fees and costs being sought herewith. An affidavit of Military Service as to the individual defendants is attached hereto as Exhibit J.

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12. Counter-Plaintiffs engaged in reckless and dangerous behavior on the premises despite demands to cease. Just before the initial prepaid rent expired Counter-Defendants either intentionally or recklessly set fire to the unit.

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2055106.24	$971,546.00

14. GP Opportunity Fund also requests the Court to award punitive damages for its claim of fraud. Counter-Plaintiff requests the Court award punitive damages of $1,000,000.00

15. Lastly, GP Opportunity Fund seeks an award of attorneys' fees of $83,160.00 incurred by Counter-Plaintiff as well as $400.24 in court costs for this action pursuant to Section 13 of the Lease Agreement. *See. Id.* Ex. A at 3.

16. The total amount therefore being sought by Counter-Plaintiff is:

    1. $971,546.00 in compensatory damages
    2. $1,000,000.00 in punitive damages
    3. $83,160.00 in attorneys' fees, and
    4. $400.24 in court costs

TOTAL: $2,055,106.24

17. For these reasons, the Court should find Counter-Defendants in default and, after a hearing on prove up, enter default judgment in favor of Counter-Plaintiff and against Defendants. A proposed default order is attached as Exhibit K. A proposed default judgment order to be entered after a prove up hearing is attached as Ex. L.

WHEREFORE, Counter-Plaintiff GP Opportunity Fund, LLC respectfully requests the Court to find Counter-Defendants 30 Degree Design, LLC, Brad Behmer and Kenneth Mayle in default and, after a hearing for prove up, to enter a judgment against them.

Respectfully Submitted,

GP Opportunity Fund, LLC

By: _____
one if it's attorneys

Zachary D. Limbaugh
Attorney for Defendant
417 West Superior Street
Chicago, Illinois 60654
Phone:(312) 612-9225
Attorney ID # 49252
ARDC # 6306446
limbaugh@LimbaughLawFirm.com

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

FILED
10/16/2024 11:30 AM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2022L010246
Calendar, Y
29799514

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
LAW DIVISION

30 DEGREE DESIGN, LLC, an Illinois limited liability company, BRAD BEHMER, an individual, and KENNETH MAYLE, an individual	)	No. 22 L 10246
Plaintiffs,	)	
v.	)	
GP OPPORTUNITY FUND, LLC, an Illinois Limited Liability Company.	)	Calendar I Room 2004
Defendant.	)	

COUNTER-PLAINTIFF GP OPPORTUNITY FUND'S MOTION FOR DEFAULT

Now comes Defendant Counter-Plaintiff G.P. Opportunity Fund, LLC, ("GP Opportunity Fund") and moves this Court to find Plaintiff Counter-Defendants 30 Degree Design, LLC, Brad Behmer and Kenneth Mayle ("Counter-Defendants") in default. In support thereof Counter-Plaintiff states as follows.

1. On July 5, 2023, GP Opportunity Fund filed its Counterclaim a copy of which is attached hereto as Ex. A.

2. A defendant to a counterclaim must answer the counterclaim consistent with the procedures for answering a complaint. 735 ILCS § 5/2-608(d). Judgment by default may be entered for want of an appearance, or for failure to plead, but the court may in either case, require proof of the allegations of the pleadings upon which relief is sought. 735 ILCS § 5/2-1301(d).

3. On August 6, 2024, Plaintiffs' Counsel Ms. Weiss-Ortiz' filed a motion for leave to withdraw as counsel for Counter-Defendants. As grounds for her motion Ms. Weiss-Ortiz indicated to the Court on August 13, 2024 that she had been unable to get in touch with the Counter-Defendants. A copy of the motion to withdraw is attached hereto as Ex. B

4. On August 20, 2024, Ms. Wiess Ortiz' motion to withdraw was granted for 30 Degree Design, LLC Kenneth Mayle and this Court entered an Order for those parties to appear within 28 days. Ex.C

5. Subsequently, on September 10, 2024, Ms. Weiss-Ortiz' motion to withdraw as counsel for Counter-Defendant Brad Behmer was granted and Brad Behmer was ordered to appear within 28 days. Ex. D

6. Pursuant 735 ILCS § 5/2-1301(d) a default judgment may be entered for failing to appear. 735 ILCS § 5/2-1301(d). Attached to this motion are affidavits in support of the counterclaim, damages, and attorneys fees sought in support of this motion.

7. None of the Counter-Defendants have appeared in court or complied with the Courts order to file an appearance. The 28 day deadline to appear has expired, accordingly, Counter-Plaintiff GP Opportunity Fund, LLC respectfully requests this Court enter a default judgment in its favor against the Counter-Defendants.

8. Attached as Ex. H is a affidavit from Plaintiff verifying the Counterclaim Complaint and judgement amount. Attached as Ex. I is an affidavit from Counter-Plaintiff's counsel detailing the attorneys' fees and costs being sought herewith. An affidavit of Military Service as to the individual defendants is attached hereto as Exhibit J.

9. Based on these submissions, Counter-Plaintiff requests the Court to find Counter-Defendants in default. As fully set fourth in the Counterclaim, Counter-Defendants contracted to rent commercial space from GP Opportunity Fund. A copy of the lease is attached hereto as Exhibit A to the Counterclaim and incorporated by reference. *See*. Ex. A. Almost immediately after Counter-Defendants took possession of the premises, GP Opportunity Fund began to receive complaints from other commercial tenants in the building regarding Counter-Defendants conduct including but not limited to claims of harassing other tenants, trespassing into other tenants units, stealing items from other tenants and units, having fires in and around the building, misusing the commercial unit as a personal residence, misusing the unit to operate an illegal public place of amusement, allowing an unrestrained animal on the property, failing to clean-up after animals and guests, and causing damage to the property. A number of these issues were initially brought to GP Opportunity Fund's attention by Counter-Defendant Mayle who admitted that Counter-Defendant Behmer was not using the property as authorized under the lease, was causing damage to the unit, and had lied about his ability and/or willingness to honor his agreements with Mayle. *See*. Counterclaim Ex. C.

   Counter-Defendants breached the terms of their lease by operating an illegal public place of amusement in the unit. *See*. Counterclaim Ex. A, Ex A.. As a result of Counter-Defendants operation of an illegal nightclub in the unit, the City of Chicago Department of Buildings Special Task Force conducted a raid of Counter-Defendants unit on June 17, 2022. The Special Task Force concluded that Counter-Defendants operation of an unlawful public place of amusement, in conjunction with Counter-Defendants unauthorized alterations to the interior of the unit constituted a dangerous and hazardous condition. *Id*. Ex. D. Accordingly the Commissioner of the City of Chicago Department of Buildings issued its "Emergency Closure Order" following the raid and ordered that the unit be kept vacant and secure until further notice. *Id*.

   Despite the Commissioner's closure order, Counter-Defendants continued to occupy the premises unlawfully. Counter-Defendant Behmer continued to reside in the commercial unit in violation of Sections 2 and 18 of the parties lease agreement and in violation of the building commissioners closure order. GP Opportunity Fund sent multiple notices of default to Counter-Defendants by mail as required under Section 23 of the lease, however Counter-Defendants failed to cure any default, vacate the

premises or cease violating the lease agreement.

On or about February 6, 2023 Counter-Defendants caused a 2-alarm fire in the unit resulting in its near total destruction. The Chicago Fire Department Investigator Report indicates that Counter-Defendant Behmer was the only person in the building at the time of the fire, and that according to Behmer, a space heater Behmer was operating caught fire inside the motorhome he had been occupying inside the unit. Counterclaim Ex.

Following the fire the Chicago Fire Department and Circuit Court of Cook County ordered that the unit be kept vacant and secure until permits are obtained and repairs are completed.

The lease agreement Section 16 indicates that Counter-Defendants agree to indemnify GP Opportunity Fund for any loss related to their use or misuse of the premises. *Id.* Ex. A at 4. Lastly, under the lease agreement Counter-Defendants are responsible for all damage it causes to the property, under Section 9 and for attorneys' fees and costs associated with enforcement of the lease agreement under Section 13. *Id.* Ex. A at 2-3.

The lease agreement requires that Counter-Defendant maintain $1,000,000.00 comprehensive insurance coverage for the building. Counter-Defendants presented a proof of insurance coverage prior to the execution of the lease which GP Opportunity Fund later learned Counter-Defendants had allowed to lapse by failing to pay the premiums. *Id.* At Ex. F. Upon learning that Counter-Defendants insurance policy had lapsed in January 2023, GP Opportunity Fund sent a notice by mail to Counter-Defendants that they were in violation of the lease agreement and demanded that they obtain insurance. *Id.* at Ex. G. Counter-Defendants ignored the demand, did not obtain the required insurance coverage, and set fire to the building a few weeks later.

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By: _____
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Attorney for Defendant
417 West Superior Street
Chicago, Illinois 60654
Phone:(312) 612-9225
Attorney ID # 49252
ARDC # 6306446
limbaugh@LimbaughLawFirm.com

learing Date: No hearing scheduled
ocation: <<CourtRoomNumber>>
udge: Calendar, Y

FILED
10/16/2024 11:30 AM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2022L010246
Calendar, Y
29799514

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
LAW DIVISION

30 DEGREE DESIGN, LLC, an Illinois limited liability company, BRAD BEHMER, an individual, and KENNETH MAYLE, an individual Plaintiffs, v. GP OPPORTUNITY FUND, LLC, an Illinois Limited Liability Company. Defendant.	No. 22 L 10246 Calendar I Room 2004

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