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IRIS Y. MARTINEZ
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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

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

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