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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.:

22-2950 A

CHINESE CONSOLIDATED BENEVOLENT
ASSOCIATION OF NEW ENGLAND, INC.,

Plaintiff,

v.

C-MART HERALD STREET, INC.,

Defendant.

SUFFOLK SUPERIOR COURT
CIVIL CLERKS OFFICE
2022 DEC 30 P 1:31
MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE

VERIFIED COMPLAINT

INTRODUCTION

Plaintiff Chinese Consolidated Benevolent Association of New England, Inc. ("CCBA") initiates this matter seeking a Declaratory Judgment, pursuant to MASS. GEN. LAWS c. 231A §1, as the actions of Defendant C-Mart Herald Street, Inc. ("C-Mart") have deliberately caused and created an actual case and legal controversy which necessitates the Court's resolution.

The Parties' relationship is straightforward. CCBA owns the commercial property located at 50 Herald Street in Boston (the "Premises"), which C-Mart presently occupies as a tenant pursuant to a certain commercial Lease dated June 11, 2012 (the "Lease"). The Lease has an Initial Term of August 1, 2013 through July 31, 2023. The Lease includes a Renewal Option which CCBA possesses the unilateral right to terminate if CCBA determines, in its sole discretion, that it desires to redevelop the Premises. CCBA reached such a determination and has undertaken significant legal and economic efforts in furtherance of such determination, including but not limited to securing Planned Development Area approval from the Boston

Planning and Development Authority to redevelop the Premises in accordance with Article 80 of the Boston Zoning Code. CCBA thus elected to terminate the Renewal Option.

CCBA properly notified C-Mart of its termination of the Renewal Option in July 2019, and subsequently served upon C-Mart more than 14 express reiterations of its termination of the Renewal Option. Despite CCBA's proper termination of the Renewal Option, and the repeated notices to C-Mart that followed thus precluding any ambiguity or dispute that C-Mart's legal right to occupy the Premises terminates upon the expiration of the Initial Term, C-Mart incredibly sent CCBA notice in November 2021 of its purported exercise of the Renewal Option. CCBA promptly and repeatedly reminded C-Mart that the Renewal Option was terminated in July 2019 and thus requested C-Mart acknowledge its attempt to exercise the Renewal Option was legally inoperative and that its right to lawfully occupy the Premises would terminate at the expiration of the Initial Term: C-Mart has repeatedly refused to provide such acknowledgement.

The Initial Term of the Lease expires on July 31, 2023, and CCBA has properly terminated the only lawful right C-Mart had under the Lease to extend such Initial Term. Notwithstanding, C-Mart has indicated its clear intent to unlawfully remain in the Premises after the expiration of the Initial Term. C-Mart's deliberate refusal to acknowledge the valid termination of the Renewal Option and deliberate refusal to withdraw its legally inoperative purported exercise of the terminated Renewal Option has created an actual case and controversy and destructive commercial uncertainty concerning the term of the Lease and the remaining time that C-Mart has to legally occupy the Premises.

PARTIES, JURISDICTION, AND VENUE

1. CCBA is a non-profit corporation, organized in 1923 under the laws of the Commonwealth of Massachusetts, registered to do business in the Commonwealth of Massachusetts, with a principal office located in Boston, Massachusetts.

2. C-Mart is a for-profit corporation, organized in 2008 under the laws of the Commonwealth of Massachusetts, registered to do business in the Commonwealth of Massachusetts, with a principal office located in Boston, Massachusetts. C-Mart's President, Director, and Registered Agent is Miao Kun Fang, an individual who resides in Weston, Massachusetts.

3. The Superior Court has original jurisdiction over this action under MASS. GEN. LAWS c. 212, § 4 and c. 214, § 1.

4. Venue is proper in this Court pursuant to MASS. GEN. LAWS c. 214, § 5; and c. 223, § 1.

FACTS

5. CCBA is a non-profit organization that serves as the umbrella organization of the entire Chinese community in New England with the stated purpose of uniting all members of the Chinese community, promoting and preserving Chinese culture and tradition, furthering the cause of freedom and democracy, safeguarding the rights and ensuring equality of members of the Chinese community, providing affordable and other housing to the Chinese community, and enhancing the general welfare of the Chinese community.

6. CCBA entered into the Lease with C-Mart for C-Mart's rental of the Premises on June 11, 2012. A true and accurate copy of the Lease is attached hereto as Exhibit 1.

7. The Initial Term of the Lease is defined as August 1, 2013 to July 31, 2023.

8. The Renewal Option is set forth at Exhibit F of the Lease and permitted C-Mart to renew the Lease "for two (2) additional periods of five (5) years" on the conditions that "no Event of Default exists and [C-Mart] is occupying the entire Premises at the time of such election."

9. The Renewal Option also set forth a “Redevelopment Termination Right By Landlord”:

Before the commencement of and/or during any Extended Term, if the Landlord makes a determination, in its sole discretion, that it will elect to develop the Property and Premises which development may include, but is not limited to, demolition of the current Premises/Property, then the Landlord shall have the right to terminate the Renewal Options if the Extended Term has not commenced.

10. CCBA determined that it has elected to redevelop the 50 Herald Street location and has publicly-disclosed its intent to do so by, among other ways, participating in filings with the Boston Planning and Development Authority as early as 2017 in conjunction the Davis Companies and the Boston Chinese Evangelical Church in relation to a proposed three-building development that would provide over 500 units of housing, significant community space, commercial retail space, and expansive public open space in a joint parcel comprised of 50 Herald Street (the Premises), 112 Shawmut Avenue, and 120 Shawmut Avenue.

11. On July 12, 2018, the BPDA issued is approved “Development Plan for Planned Development Area No. 114,” effective September 14, 2018. Relevant to the proposed building to be developed at 50 Herald Street, the BPDA approved the construction of a 9-14 story building containing up to 313 units of residential housing, up to 14,600 square feet of retail / commercial / cultural / community space, and an underground parking garage designed to accommodate up to 120 parking spaces.

12. In accordance with its right under the Lease, by notice to C-Mart dated July 15, 2019, postmarked July 16, 2019 (the “July 2019 Renewal Option Termination Notice”), CCBA notified C-Mart that CCBA had elected, in its sole discretion, to develop 50 Herald Street and that it had received Planned Development Area approval from the Boston Planning and Development Authority concerning the same such that CCBA was properly terminating the

Renewal Option in accordance with the terms of the Lease. A true and accurate copy of the July 2019 Renewal Option Termination Notice is attached hereto as **Exhibit 2**.

13. The July 2019 Renewal Option Termination Notice was explicit and left no question that CCBA was terminating the Renewal Option by stating: “**CCBA hereby terminates C-Mart’s Renewal Options under Exhibit F of the Lease.**” (Emphasis in original). **Exhibit 2**.

14. C-Mart never objected to or even responded to the July 2019 Renewal Option Termination Notice.

15. Over the course of the next two (2) years, CCBA served upon C-Mart numerous formal Notices that C-Mart was in material default under the Lease. While identifying with specificity the material defaults that C-Mart had committed, each Notice also called attention to and expressly reiterated CCBA’s July 2019 termination of the Renewal Option such that C-Mart was repeatedly reminded that its only legal right to extend the Initial Term of the Lease had been terminated such that its lawful ability to occupy the Premises would expire on July 31, 2023. By certified mail, CCBA properly served C-Mart with each of the following Notices:

- a. September 10, 2019 Notice, a true and accurate copy of which is attached hereto as **Exhibit 3**;
- b. November 20, 2019 Notice, a true and accurate copy of which is attached hereto as **Exhibit 4**;
- c. January 28, 2020 Notice, a true and accurate copy of which is attached hereto as **Exhibit 5**;
- d. May 26, 2020 Notice, a true and accurate copy of which is attached hereto as **Exhibit 6**;
- e. September 9, 2020 Notice, a true and accurate copy of which is attached hereto as **Exhibit 7**;
- f. October 26, 2020 Notice, a true and accurate copy of which is attached hereto as **Exhibit 8**;

- g. January 25, 2021 Notice, a true and accurate copy of which is attached hereto as **Exhibit 9**;
- h. April 19, 2021 Notice, a true and accurate copy of which is attached hereto as **Exhibit 10**;
- i. July 12, 2021 Notice, a true and accurate copy of which is attached hereto as **Exhibit 11**;
- j. August 16, 2021 Notice, a true and accurate copy of which is attached hereto as **Exhibit 12**; and
- k. October 18, 2021 Notice, a true and accurate copy of which is attached hereto as **Exhibit 13**.

16. C-Mart never objected or even responded to the any of the above **eleven (11)** Notices that CCBA properly served upon it as each Notice related to reiteration of CCBA's termination of the Renewal Option.

17. Despite the July 2019 Renewal Option Termination Notice unequivocally and properly terminated the Renewal Option no later than July 16, 2019, and despite the subsequent **eleven (11)** notices that CCBA properly served on C-Mart which each reiterated the termination of the Renewal Option, without any prior notice or discussion C-Mart transmitted to CCBA "a Notice of Renewal of Lease" dated November 3, 2021, through which C-Mart served notice of its intent to purportedly exercise the long since extinguished and revoked Renewal Option under the Lease. A true and accurate copy of C-Mart's November 3, 2021 Notice is attached hereto as **Exhibit 14**.

18. CCBA responded to C-Mart's attempt to exercise the terminated Renewal Option by certified mail dated January 18, 2022. CCBA reiterated—now for the twelfth time—that it had long ago terminated the Renewal Option and requested that C-Mart acknowledge not only that the Option was terminated but that the Lease term expired on July 31, 2023. CCBA also highlighted for C-Mart that its purported exercise of the terminated Renewal Option was legally

inoperative for the additional and independent reason that C-Mart was then (and remains now) in material default of numerous provisions of the Lease, thus expressly precluding C-Mart from exercising the Renewal Option, if indeed the Renewal Option even still existed to be exercised (which of course it did not). A true and accurate copy of CCBA's January 18, 2022 correspondence is attached hereto as **Exhibit 15**.

19. Despite this further notice and request from CCBA, C-Mart refused to acknowledge that it had attempted to exercise a terminated Renewal Option and instead stood by its assertion that it had the right—and indeed had exercised such right—to extend the Lease term and remain on the Premises past the July 31, 2023 Lease expiration date.

20. By certified mail dated March 25, 2022, CCBA sent C-Mart a Notice of material default under the Lease. In addition to placing C-Mart on notice of various events of material default under the Lease, the Notice called attention to and expressly reiterated CCBA's July 2019 Notice terminating C-Mart's Renewal Option under the Lease. This Notice also once more requested that C-Mart acknowledge that its purported exercise of the Renewal Option was legally inoperative, and requested C-Mart's acknowledgement of the July 31, 2023 Lease term expiration and that C-Mart had no legal right to occupy the Premises after such date. A true and accurate copy of this March 25, 2022 Notice is attached hereto as **Exhibit 16**.

21. C-Mart once more refused to acknowledge that CCBA had terminated the Renewal Option. Rather, C-Mart requested the opportunity to negotiate the continuation of the parties' relationship and its continued occupation of the Premises.

22. By certified mail dated December 6, 2022, CCBA sent C-Mart a Notice of material default under the Lease. In addition to placing C-Mart on notice of various events of material default under the Lease, the Notice called attention to and expressly reiterated CCBA's

July 2019 Notice terminating C-Mart's Renewal Option under the Lease. A true and accurate copy of this most recent Notice is attached hereto as **Exhibit 17**.

23. C-Mart has repeatedly refused to acknowledge CCBA's termination of the Renewal Option, thus creating the legal case and controversy regarding C-Mart's clear intent to impermissibly and illegally remain on the premises following the expiration of Lease term on July 31, 2023. C-Mart has made this controversy all the more concerning by boldly continuing to reference its desire to occupy the Premises beyond the July 31, 2023 expiration date.

COUNT I – DECLARATORY JUDGMENT

24. CCBA repeats and incorporates by reference the allegations in Paragraphs 1 through 23 as if the same were fully made at length herein.

25. CCBA and C-Mart entered into the Lease, dated June 11, 2012.

26. CCBA has performed all obligations it owed C-Mart under the Lease.

27. Further to its unilateral right under the Lease, and in accordance with all requirements of the Lease, CCBA properly terminated the Renewal Option under the Lease by written notice to C-Mart dated July 15, 2019, postmarked July 16, 2019.

28. CCBA's July 2019 Renewal Option Termination Notice, together with each of the fourteen (14) Notices it subsequently sent to C-Mart, unequivocally establish that the Renewal Option under the Lease was terminated no later than July 16, 2019.

29. The Lease term expires on July 31, 2023.

30. C-Mart never objected or responded to either the July 2019 Renewal Option Termination Notice or any of the fourteen (14) additional notices that CCBA sent C-Mart between 2019-2022, which each expressly reiterated CCBA's termination of the Renewal Option.

31. C-Mart's November 3, 2021 claim to exercise the Renewal Option blatantly disregards the termination of the Renewal Option and was legally inoperative to begin with given the numerous material defaults of the Lease by C-Mart that existed at the time C-Mart purported to exercise the terminated Renewal Option. C-Mart's conduct of purporting to exercise a terminated Renewal Option that it was precluded from exercising in the first place as C-Mart was in material default of the Lease at the time of its purported exercise, and its refusal to withdraw such purported exercise after being placed on notice again that the Renewal Option was terminated and therefore C-Mart has no ability to extend the Initial Term of the Lease beyond its July 31, 2023 expiration, has created an actual case and controversy as to the period of time remaining during which C-Mart is legally permitted to occupy the Premises and whether, as CCBA maintains, the Lease will expire at the conclusion of the Initial Term (i.e., July 31, 2023) at which point C-Mart's ability to lawfully occupy the Premises ceases and any continued presence by C-Mart constitutes an unlawful holdover tenancy.

32. CCBA has denied and continues to deny C-Mart's exercise of the option to renew subsequent to CCBA's effective and proper termination of its Renewal Options under the Lease.

33. MASS. GEN. LAWS c. 231A §1 provides, in relevant part, that this Court is empowered to "make binding declarations of right, duty, status and other legal relations ... either before or after a breach or violation thereof has occurred in any case in which an actual controversy has arisen..."

34. There is an actual controversy within the meaning of G.L. c. 231A as to the expiration date of the Lease given C-Mart's refusal to acknowledge CCBA's termination of the Renewal Option and C-Mart's purported attempt to exercise such terminated right.

35. CCBA is entitled to a judgment declaring that the Lease between CCBA and C-Mart dated June 11, 2012, expires on July 31, 2023, such that following July 31, 2023, C-Mart has no further lease with CCBA as to the Premises and therefore has no lawful right to continue to occupy the Premises.

DEMAND FOR JUDGMENT

WHEREFORE, based on the foregoing allegations made herein, CCBA hereby demands judgment in its favor as follows:

1. Entering judgment in favor of CCBA on all counts of the Complaint;
2. Entering a judgment in favor of CCBA declaring that the Lease expires on July 31, 2023 such that CCBA has no further lease, contract or tenancy with C-Mart, notwithstanding any attempts by the tenant C-Mart to extend the Lease, unless it is earlier terminated as the result of the parties' agreement or tenant's breach, and that CCBA has satisfied any and all duties and obligations it owed to C-Mart and that CCBA owes no further or other duties or obligations to C-Mart;
3. Awarding CCBA its attorneys' fees and costs, and pre-judgment and post-judgment interest; and
4. Granting CCBA such other and further relief as the Court deems just and proper.

Respectfully submitted,
CHINESE CONSOLIDATED
BENEVOLENT ASSOCIATION
OF NEW ENGLAND, INC.,

By its attorneys,

/s/ *Brian M. Haney*

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Dated: December 29, 2022

VERIFICATION

I, Kwok Fai Lui, President of the Chinese Consolidated Benevolent Association of New England, Inc., hereby depose and state as follows: I have read the foregoing Verified Complaint, and, knowing the contents thereof, have found that the allegations of fact set forth therein are based on my own personal knowledge and are true, except as to those allegations stated to be based on information and belief, which I believe to be true, and that no material facts have been omitted therefrom.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 29 DAY
OF DECEMBER, 2022

Kwok Fai Lui

Kwok Fai Lui, President
Chinese Consolidated Benevolent
Association of New England, Inc.
Duly Authorized