

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION NO.

SMILEY WADLEIGH ELLERY LLC,  
Plaintiff,

v.

FALCO K9, LLC AND TYLER  
FALCONER,  
Defendants.

**COMPLAINT**

**I. Introduction**

Plaintiff Smiley Wadleigh Ellery LLC (“Landlord”) and Defendant Falco K9, LLC (“Tenant” or “Falco K9”) entered into a written lease, dated January 3, 2019 (the “Lease”), for the commercial property located at 6-8 Wadleigh Place, South Boston, Massachusetts (the “Property”), which Lease was guaranteed by Defendant Tyler Falconer (“Guarantor” or “Falconer”). Defendants breached the Lease and Guaranty by, *inter alia*, failing to pay rent. By this action, Landlord seeks monetary damages, costs, and attorney’s fees arising from Defendants’ breaches of contract.

**II. Parties, Jurisdiction, and Venue**

1. Plaintiff Smiley Wadleigh Ellery LLC is a Massachusetts limited liability company with an address c/o Core Investments, Inc., 800 Boylston Street, 30<sup>th</sup> Floor, Boston MA 02199.

2. Upon information and belief, Defendant Falco K9 is a Massachusetts limited liability company with an address of 362 K Street, South Boston, MA 02127.

3. Upon information and belief, Defendant Falconer is a natural person with an address at 186 Mill Street, Burlington, MA 01803.

4. Jurisdiction is obtained in this action pursuant to G.L. c. 223A, § 2 and G.L. c. 212, § 4. Pursuant to G.L. c. 223, § 1, venue is proper in Suffolk County as this is a transitory action and Plaintiff has a usual place of business in Suffolk County.

### **III. Factual Background**

5. On or about January 3, 2019, Landlord and Tenant executed a written Lease for the Property.

6. Defendant Falconer signed an Unlimited Guaranty guarantying the obligations of Tenant under the Lease.

7. Pursuant to Sections 3.01 and 3.04 of the Lease, Tenant was required to pay monthly installments of rent in advance on the first day of each month.

8. By written notice dated April 6, 2023, Landlord provided Tenant a notice of default for certain payment defaults under the Lease.

9. Notwithstanding such written notice, Tenant failed to cure its defaults and has failed to pay Landlord.

10. By written notice dated May 17, 2023, Landlord provided Tenant with a Notice of Termination as a result of the uncured payment defaults under the Lease and demanded that Tenant vacate the Property.

11. Although Tenant has vacated and voluntarily surrendered possession of the Property, Tenant has failed to pay to Landlord sums due under the Lease.

12. Pursuant to Section 14.02 of the Lease, rent unpaid when due shall, at the option of Landlord, bear interest at a rate equal to the lessor of: (i) the rate announced by Bank of

America, N.A. (or its successor) from time to time as its prime or base rate, plus three percent (3%), and (ii) the maximum applicable legal rate.

13. Pursuant to Section 14.02 of the Lease, Tenant is obligated to pay Landlord an administrative fee equal to five percent (5%) of the overdue amount if in any event the rent is not paid within five (5) business days after the date on which the same was due.

14. Pursuant to Section 14.18 of the Lease, Tenant and Guarantor are obligated to pay Landlord its reasonable expenses, court costs, and reasonable attorney's fees where Landlord prevails in a suit in connection with enforcement of its rights under the Lease.

15. Pursuant to Section 1 of the Unlimited Guaranty, Falconer shall pay all of Landlord's legal and other fees, expenses, and costs reasonably incurred in enforcing the Lease and/or Unlimited Guaranty.

16. Tenant and Guarantor also remain liable to Landlord for continuing damages under the Lease, including rent, late charges, and attorney's fees and costs, through the end of the Lease term.

17. By letter dated September 6, 2023, Landlord made a demand for payment. Notwithstanding such demand, Tenant and Guarantor have failed to pay sums due and owing to Landlord.

18. Although Tenant has vacated the Property, there remains an unpaid balance of \$83,769.27 as of September 1, 2023, and the total amount due for the remaining Lease term exceeds \$186,000, exclusive of interest, late charges, attorney's fees, and an anticipated increase in Operating Costs and Taxes.

#### **IV. Claims**

##### **Count I – Breach of Contract (the Lease)**

19. Landlord repeats and re-alleges the allegations contained in Paragraphs 5 through 18 of the Complaint, as if fully set forth herein.

20. Landlord and Tenant entered into a valid and binding contract, i.e., the Lease, which contained all material terms concerning Landlord and Tenant's relationship related to the Property.

21. Tenant's failure to pay sums due under the Lease constitutes breaches of its contractual obligations to Landlord.

22. As a result thereof, Landlord is entitled to damages, interest, costs, and attorneys' fees.

##### **Count II – Breach of Contract (the Unlimited Guaranty)**

23. Landlord repeats and re-alleges the allegations contained in Paragraphs 5 through 22 of the Complaint, as if fully set forth herein.

24. Landlord and Guarantor entered into a valid and binding contract, i.e., the Unlimited Guaranty, which contained all material terms concerning Landlord and Tenant's relationship related to the Property.

25. Guarantor's failure to pay sums due under the Lease constitutes breaches of its contractual obligations to Landlord.

26. As a result thereof, Landlord is entitled to damages, interest, costs, and attorneys' fees.

**WHEREFORE**, Landlord respectfully requests the following relief:

1. Pursuant to Count I, enter judgment against Tenant and award Landlord its damages, interest, attorneys' fees, and costs as allowed by law and the terms of the Lease; and
2. Pursuant to Count II, enter judgment against Guarantor and award Landlord its damages, interest, attorneys' fees, and costs as allowed by law and the terms of the Lease; and
3. Grant such other relief as may be just and proper.

PLAINTIFF,  
SMILEY WADLEIGH ELLERY LLC,  
By its attorney,



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