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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Superior Court Department
Business Litigation Session (pending)

RAINBOWS POTTERY STUDIO LLC and
ALLISON CARROLL,

Plaintiffs,

v.

C.A. No. _____

216-218 NEWBURY STREET REALTY
LLC and HICHAM ALI HASSAN,
individually,

Defendants.

COMPLAINT AND JURY DEMAND

The plaintiff retail business and its principal bring this action for damages and permanent injunctive relief against their commercial landlord. This action arises from the landlord's wrongful and willful refusal to allow plaintiffs to implement or complete contracted-for improvements and alterations of the leased premises which are essential to plaintiff's business operations, and from the offensive, harassing, discriminatory, and unconscionable conduct of landlord and its principal. Plaintiffs assert claims of breach of contract and the covenant of good faith and fair dealing, intentional interference with advantageous relations, unjust enrichment, beach of covenant of quiet enjoyment, unfair trade practices, intentional infliction of emotional distress, and violation of the Massachusetts Civil Right Act.

Parties, Jurisdiction, And Venue

1. Plaintiff Rainbows Pottery Studio LLC (“Rainbows”) is a limited liability company organized according to the laws of the Commonwealth of Massachusetts with a principal place of business at 216 Newbury Street, Boston, Massachusetts.

2. Plaintiff Allison Carroll (“Carroll”) is a natural person who is the founder and owner of Rainbows and resides in Boston, Massachusetts.

3. Defendant 216-218 Newbury Street Realty LLC (“Newbury Realty”) is a limited liability company organized according to the laws of the Commonwealth of Massachusetts with a principal place of business located at 218 Newbury Street, Suite 3, Boston, Massachusetts.

4. Defendant Hicham Ali Hassan is a natural person who is the Manager of the Newbury Realty LLC and who, upon information and belief, resides at 220 Boylston Street #1001, Boston, Massachusetts.

5. This Court has jurisdiction over this matter pursuant to G.L. c. 212, § 3, as this is an action for damages whose principal amount substantially exceeds \$50,000.00.

6. Venue is proper in Suffolk County pursuant to G.L. c. 223, § 1, as the parties have their usual places of business or residence in Suffolk County and the acts complained of occurred and damages were incurred in Suffolk County.

7. This case is suitable for the Business Litigation Session of the Superior Court because it involves claims of breach of a commercial lease and, among other conduct, unfair or deceptive trade practices in violation of Chapter 93A on the part of a commercial landlord and that landlord’s principal officer.

Facts Relevant To All Claims

8. Carroll is the founder and owner of Rainbows, which operates a pottery studio and business where customers can shop for pottery pieces and create their own custom pottery pieces.

9. Carroll also is the mother of four children, one of them diagnosed with severe autism for whom she is the primary caregiver on a day-to-day basis.

10. Rainbows had operated its studio and business in the Beacon Hill neighborhood of Boston.

11. Rainbows sought to relocate to Boston's Back Bay and, as a result, in April 2022 entered into a commercial lease ("Lease") with Newbury Realty for approximately 1,125 square feet of space on the first, or "walk-up," floor of the building located at 216 Newbury Street ("Premises") ("Building"). A true copy of the Lease is attached hereto as **Exhibit 1**.

12. Pursuant to the Lease, the Rent Commencement Date was to be August 1, 2022, or, if earlier, the date on which the Tenant (Rainbows) opened for business at the Premises. Rent was first assessed as of August 1, 2022.

13. The term of the Lease term is ten (10) years.

14. The base rent begins at \$9,375/month, increasing by three (3) percent per year during the Lease term.

15. The Lease called for, and Rainbows timely paid to Newbury Realty, a security deposit of \$28,125, equivalent to three months' base rent.

16. In order to ensure that the Premises would be suitable for Rainbows' business, Rainbows negotiated and confirmed lease terms which permitted it to make specific alterations to the Premises.

17. The Lease thus expressly permitted Rainbows to install on the Premises, among other alterations, Pottery Ovens (or “Kilns”) to be used in Rainbows’ regular business operations, including the related and necessary venting and electrical work. *See* Lease (Exh. 1), Arts. 5.1, 6.8, and 10.

18. The Lease specifically contemplated that Rainbows would either use the Landlord’s existing electrical and plumbing systems for Rainbow’s operations, or would install enhanced electrical and plumbing systems to facilitate those operations, with Rainbows contractually indemnifying Newbury Realty from any damages or liability arising from such alterations or installations. *See* Lease Arts. 6 and 8.1.

19. From the date the Lease was executed, Rainbows diligently and timely provided Newbury Realty with comprehensive plans for the alterations which the Lease expressly permitted.

Electrical Matters

20. Although Newbury Realty notified Rainbows that the existing electrical systems of the 216-218 Newbury Street would be burdened by Rainbows’ expected electrical needs, Newbury Realty nonetheless agreed that, if Rainbows so chose, Rainbows could make use of those existing systems and communicated that agreement in writing to Rainbows.

21. Nonetheless, Rainbows instead opted to install - consistent with the Lease terms and at Rainbows’ sole expense, initially exceeding \$48,000 - an entirely new and improved electrical system to service the Premises and, in the process, the entire Building.

22. Due to the long-term nature of the Lease, and Rainbows’ intention to occupy the Premises long-term, that option was selected as the best way to service its business operations, as well as the best result for the Building.

23. Rainbows commissioned and paid for professionally drawn plans for the upgraded electrical system, which plans were included as “Exhibit B” to the Lease.

24. The City of Boston Inspectional Services Department (“ISD”) duly issued a permit for work to install the upgraded electrical system.

25. Rainbows’ licensed and insured general contractor, who also is its duly licensed electrical contractor, arranged for and oversaw the installation of the upgraded electrical system.

26. The electrical work was completed and inspected by ISD, whose inspectors fully signed off on and approved that work.

27. Following the ISD inspection and approval, Rainbows requested that Newbury Realty cooperate to schedule and effectuate the connection from the old electrical system to the new system. This process included a meeting among the ISD Electrical Inspector, Rainbows’ general contractor/electrician, Newbury Realty, Hasan, and Newbury’s electrical representative.

28. Despite the completion of all necessary work, and all necessary City inspections and sign-offs, Newbury Realty denied Rainbows permission and access to complete the connection. Newbury Realty even changed all of the locks to the Building’s electrical cabinet to actively prevent it from being accessed for that purpose.

29. To date, Newbury Realty has continued to wrongfully and intentionally deny that permission and access or to otherwise enable the electrical connection.

30. Upon information and belief, that action by Newbury Realty has been willful, intentional, and made in bad faith.

Ventilation Matters

31. As Newbury Realty has been aware, the Pottery Ovens are a necessary and essential component of Rainbows’ business operations at the Premises.

32. The Lease specifically provided for installation of the Pottery Ovens. *See* Lease Sections 5, 6, & 10 *et seq.*

33. Consistent with the Pottery Ovens' ordinary use, and to enhance their useful life, Rainbows opted to fully vent them (i.e., to have exhaust venting to the outside of the Premises) for its Kiln operations.

34. In order to create outside venting, permission from Newbury Realty and from the Back Bay Architectural Commission ("BBAC") was required.

35. Again, at its sole expense, Rainbows had prepared at its own expense full professional engineered plans and options for the Pottery Ovens venting. It submitted those materials to Newbury Realty and to the BBAC.

36. After meeting on-site with Rainbows, Newbury Realty identified where at the Premises it required the venting apparatus to be placed. Rainbows proceeded to obtain BBAC necessary approvals according to Newbury Realty's requirements.

37. Final BBAC approvals for the venting location, type, and installation procedures were received in May 2023.

38. ISD issued a permit for the ventilation work.

39. Rainbows then repeatedly asked Newbury Realty for necessary access and permission for Rainbows' licensed and insured general contractor and subcontractors to complete the ventilation work.

40. As of the filing of this Complaint, Newbury Realty has refused to provide necessary access and permissions for Rainbows to complete the permitted work on the ventilation systems, despite its contractual obligation to do so in a commercially reasonable manner.

41. Upon information and belief, that denial of access and permissions has been willful, intentional, and made in bad faith.

Newbury Realty's Bad Faith

42. For several months following the Lease signing in April 2022, each time that Rainbows submitted requests and appropriate materials supporting approval of work allowed for and contemplated by the Lease, Newbury Realty responded with unreasonable requests for additional detailed information not required by customary commercial business practices in negotiations for lease build-out approvals.

43. In a final good faith attempt to have Newbury Realty honor its Lease obligations, a "Zoom" meeting was arranged for January 12, 2023 (nine months after Lease signing) to review the plans, permits, and matters concerning Rainbow's build-out.

44. Although that Zoom meeting concerned renovations of Premises containing merely 1,125 square feet, it was attended by 12 people:

- a. Rainbows, including its principal Allison Carroll;
- b. Rainbows' general contracting team, including licensed and insured professional engineers;
- c. Newbury Realty;
- d. Newbury's legal counsel;
- e. Newbury's electrician; and
- f. Newbury's former realtors who had been involved in the Lease. See list of participants annexed hereto as **Exhibit 2**.

45. During the Zoom meeting, Rainbows presented a "Complete Submittal" document (attached hereto as **Exhibit 3**), which included:

- a. Copies of all duly issued Permits and Engineered Stamped Plans;
- b. Copies of the BBAC venting approval;
- c. Its engineer's detailed written responses to Newbury Realty's queries about the ventilation plans and specifications;
- d. Newbury Realty's numbered and itemized "conditional approval" alleged deficiencies in Rainbows' prior plans and specification submissions;
- e. Rainbow's numbered and itemized responses to each and every conditional approval alleged deficiency; and
- f. A status (to the date of the meeting) of ISD inspections under the permits ISD had issued.

46. During the Zoom meeting, the Rainbows representatives again reviewed in detail their compliance with every term of the Lease, and the associated plans and permits for the allowed build-out of the Premises.

47. Subsequent to the Zoom meeting, and despite repeated further requests by Rainbows and its representatives, Newbury Realty wrongfully has withheld approval for access and permission to complete the work.

48. Rainbows nonetheless has made each and every payment of Minimum Rent under the Lease since the Rent Commencement Date, without deduction, interruption, or discount.

49. Rainbows was forced to retain counsel to make demand upon Newbury Realty to honor the terms and conditions of the Lease.

50. In response to that demand, Newbury Realty through its counsel asserted yet more vague and illusory excuses for its non-cooperation and falsely claimed that Rainbows is not in compliance, even though Rainbows has:

- a. Submitted duly issued permits based upon stamped, engineers plans;
- b. Submitted sign-offs by any and all required city inspectors;
- c. Provided all necessary insurance coverages and licenses and identifications of work persons; and
- d. Provided the “Complete Submittal” package; and
- e. Made repeated calls for simple cooperation and good faith by Newbury Realty in accordance with the terms of the Lease.

Rainbows’ Losses and Mitigation Efforts

51. As a direct and foreseeable result of Newbury Realty’s delays and refusal to allow for these necessary electrical and ventilation connections, and in order to attempt to mitigate its resulting financial losses, Rainbows has been forced to hire a third-party vendor at considerable expense to perform outside the Premises the Kiln operations which Rainbows otherwise would have performed at the Premises with the Pottery Ovens.

52. Rainbows thereby has incurred substantial fees to that vendor (approximately \$2,500 per week), increased shipping and transportation costs, loss from breakage and damage to product in the course of shipping, and logistical inconveniences. It also has lost the ability to fully and directly “quality control” the Kiln process for its products, and therefore has suffered a diminution in the value of its products, has received complaints and refund requests from some of its customers, and has suffered a reduced rate of repeat business from its existing customers.

53. Defendants’ conduct also has caused Rainbows to incur increased construction, engineering and professional fees to address defendants’ unreasonable demands for additional or redundant documentation and meetings.

54. All of these losses were foreseeable due to Newbury Realty's wrongful and breaching conduct.

Improper And Actionable Conduct Of Hicham Ali Hassan, Individually

55. Upon information and belief, Hassan not only is Manager of Newbury Realty limited liability company, but also is an owner of it.

56. Hassan executed the Lease on behalf of Newbury Realty.

57. Hassan has been directly involved in and privy to matters relating to the Lease, its terms, and the Parties' communications concerning the Lease and build-out, including communications with Rainbows' principal Allison Carroll concerning those matters.

58. Throughout his involvement, Hassan has been aware of the nature of Rainbows' business, including its need for on-site Kiln operations in the form of the Pottery Ovens to properly implement its business model and serve the needs of its retail customers at the Premises.

59. Despite that knowledge, Hassan intentionally, willfully and improperly has directed that Newbury Realty withhold from Rainbows and its contractors access and permission necessary for those contractors to install or complete installation of the contracted-for, permitted, and documented ventilation systems for the Pottery Ovens and to implement the connection of the installed, upgraded electrical system for which Rainbows has paid.

60. During meetings and communications with Carroll, Hassan has engaged in offensive, harassing, and unconscionable conduct, including, but not limited to:

- a. Calling Carroll a "stupid little bitch";
- b. Stating that he had much more money than Rainbows and Carroll and repeatedly threatening to "drown you [Rainbows and Carroll] in legal fees";
- c. Threatening to "lock you [Rainbows and Carroll] out" of the Premises; and

d. Threatening Rainbows and Carroll with unjustified allegations of trespass.

61. At other on-Premises meetings, Hassan engaged in inappropriate, harassing, and despicable conduct including, but not limited to:

e. Insulting Rainbows' employees and addressing them with profanity ("get the f%^\$k out of my space");

f. Insulting and addressing contractors of Rainbows with like profanity and threats;

g. Claiming that Carroll's autistic son was "sleeping" at the Premises; and

h. Engaging in offensive behavior in the presence of Carroll, Rainbows' employees, and BBAC representatives.

62. Hassan undertook that conduct not only as an agent or representative of Newbury Realty, but also willfully and intentionally as an individual, thus subjecting him to liability in his personal capacity.

63. Upon information and belief, Hassan made those statements and engaged in that conduct intending to cause emotional distress to Carroll.

64. As a direct and proximate result of Hassan's statements and conduct, Carroll in fact has suffered severe emotional distress, including but not limited to extreme stress, anxiety, loss of sleep, and fear of further harassment and threatened consequences.

COUNT I

BREACH OF CONTRACT **(Rainbows v. Newbury Realty)**

65. Rainbows repeats and realleges Paragraphs 1-64 above as if set forth fully herein.

66. The Lease is a valid and binding contract.

67. Rainbows has complied with all material terms of the Lease, including payment of all amounts due and owing under the Lease to date

68. Newbury Realty's actions, inaction, delays, and refusals to grant Rainbows and its contractors access and permissions necessary to implement or complete contracted-for and otherwise permitted alterations and improvements to the Premises constitute material breaches of the Lease

69. There is no valid or legal excuse for Newbury Realty's contractual breaches.

70. Rainbows has incurred substantial financial losses as a direct and proximate result of those breaches.

71. Rainbows has acted reasonably in an effort to mitigate its losses.

COUNT II

BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

(Rainbows v. Newbury Realty)

72. Rainbows repeats and realleges Paragraphs 1-71 above as if set forth fully herein.

73. Newbury Realty's conduct as alleged, including but not limited to making unnecessary, repeated, unduly burdensome and bad-faith demands upon Rainbows in order to undertake and complete its bargained-for and otherwise permitted improvements and alterations to the Premises, constitutes a breach of the covenant of good faith and fair dealing implied in the Lease.

74. Rainbows has incurred substantial financial losses as a direct and proximate result of that breach.

75. Rainbows has acted reasonably in an effort to mitigate its losses.

COUNT III

INTENTIONAL INTERFERENCE WITH ADVANTAGEOUS RELATIONS (Rainbows v. Newbury Realty)

76. Rainbows repeats and realleges Paragraphs 1-75 above as if set forth fully herein.

77. At all material times, Newbury Realty was aware of Rainbows' business model and relationships with its customers and prospective customers and the essential function served by Kiln operations, hence the contracted-for Pottery Ovens, to cultivate and maintain retail customer relationships and to properly and cost-effectively serve its customers.

78. Nonetheless, without valid excuse and in order to frustrate Rainbows and cause it financial harm, Newbury Realty intentionally and actively has withheld access and permissions needed to install and operate on-Premises Pottery Ovens.

79. As a direct and proximate result of Newbury Realty's actions and interference, Rainbows has suffered damage to its advantageous business relations and substantial financial losses. Those include but are not limited to loss of business revenue and profits due to a reduction in quality in its final products for customers, requests for refunds, and reduced repeat business from existing customers. .

80. Rainbows has made reasonable efforts to mitigate its losses.

COUNT IV

UNJUST ENRICHMENT (Rainbows v. Newbury Realty)

81. Rainbows repeats and realleges Paragraphs 1-80 above as if set forth fully herein.

82. Newbury Realty intentionally has caused Rainbows to confer on it substantial financial benefits, including the payment of rent and a physical upgrade in the electrical system

for the Building, while intentionally and wrongfully withholding from Rainbows substantial bargained-for benefits under the Lease, including installation and use of the Pottery Ovens and related venting and use of the upgraded electrical system which Rainbows paid to install.

83. Newbury Realty thus has procured unjustly a benefit which it has wrongfully retained.

84. Rainbows has incurred substantial financial losses as a direct and proximate result of that misconduct.

COUNT V

BREACH OF THE COVENANT OF QUIET ENJOYMENT (Rainbows v. Newbury Realty)

85. Rainbows repeats and realleges Paragraphs 1-84 above as if set forth fully herein.

86. Despite executing the Lease and benefiting from Rainbows' rent payments, Newbury Realty has intentionally and materially interfered with Rainbows' ability to make use of the Premises without undue interruption or inconvenience and in the manner and to the full extent contemplated by the Lease.

87. Newbury Realty thus has breached the covenant of quiet enjoyment contained or implied in the Lease.

88. Rainbows has incurred substantial financial losses as a direct and proximate result of that misconduct.

COUNT VI

UNFAIR OR DECEPTIVE TRADE PRACTICES IN VIOLATION OF M.G.L. c. 93A (Rainbows v. Newbury Realty and Hassan)

89. Rainbows repeats and realleges Paragraphs 1-88 above as if set forth fully herein.

90. Newbury Realty and Rainbows each is engaged in trade or commerce within the Commonwealth of Massachusetts.

91. As alleged herein, Newbury Realty intentionally and in bad faith has induced Rainbows to enter into the Lease and to undertake improvements to the Premises and to the Building; willfully and without valid legal excuse has denied Rainbows access and permissions needed to install, complete or make use of those and other bargained-for improvements and alterations to the Premises; and has fabricated excuses, conditions and demands relative to those otherwise permitted activities.

92. That conduct constitutes unfair or deceptive conduct in trade or commerce in violation of the Massachusetts Unfair Trade Practices Act, M.G.L. c.93A, §§ 2 and 11.

93. Because Hassan is the Manager and principal officer of Newbury Realty, and was instrumental to that intentional, improper and unfair or deceptive conduct, directed that conduct, and did so knowingly, he is personally liable for it.

94. Rainbows has incurred substantial financial losses as a direct and proximate result of that misconduct.

95. Because the unfair or deceptive conduct was engaged in willfully, the defendants are liable to Rainbows for treble damages and attorney fees.

COUNT VII

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (Carroll v. Newbury Realty and Hassan)

96. Rainbows repeats and realleges Paragraphs 1-95 above as if set forth fully herein.

97. Acting both as the Manager of Newbury Realty and in his personal capacity beyond the arguable business needs of Newbury Realty, Hassan intentionally, willfully, and

maliciously has made statements and engaged in conduct, directed at Rainbows and its principal Allison Carroll, which amount to extreme and outrageous conduct, beyond the bounds of decency, and which were grossly harassing, discriminatory, misogynist, threatening, and offensive.

98. Upon information and belief, Hassan made those statements and engaged in that conduct intending to cause Carroll severe emotional distress.

99. As a direct and proximate result of those statements and conduct, Carroll in fact has incurred severe emotional distress, including physical symptoms as alleged herein.

COUNT VIII

VIOLATION OF MASSACHUSETTS CIVIL RIGHTS ACT, M.G.L. c. 12, §§ 11H and 11I (Rainbows and Carroll v. Newbury Realty and Hassan)

100. Rainbows repeats and realleges Paragraphs 1-99 above as if set forth fully herein.

101. By threatening to “drown [Rainbows and Carroll] in legal fees,” and by making and engaging in related bullying and intimidating statements and conduct (including statements that “you don’t know who you’re dealing with,” and “I have daughters too”), Hassan personally and on behalf of Newbury Realty used and/or attempted to use threats, intimidation, and coercion to interfere with the exercise by Rainbows and Carroll of a right conferred upon them by the Massachusetts Constitution and statutes, namely the right to bring and maintain a lawsuit to vindicate their rights under the Lease and otherwise.

102. Newbury Realty and Hassan therefore are liable to Rainbows and Carroll for compensatory money damages, legal costs, and reasonable attorneys’ fees in this action pursuant to the Massachusetts Civil Rights Act, M.G.L. c.12, §§ 11H and 11I.

COUNT IX

REQUEST FOR PERMANENT INJUNCTIVE RELIEF

(Rainbows and Carroll v. Newbury Realty and Hassan)

103. Rainbows repeats and realleges Paragraphs 1-102 above as if set forth fully herein.

104. Absent a court order, Newbury Realty and Hassan will persist in denying Rainbows necessary and bargained-for access, permission, and cooperation to enable Rainbows to install, complete, connect, and make use of the bargained-for ventilation and electrical system connections.

105. Defendants' wrongful conduct would continue to impair Rainbows' business operations, degrading its financial performance and eventually placing it in financial jeopardy.

106. As such, money damages alone are not an adequate remedy for the indefinite further withholding of such access, permission, and cooperation.

107. A permanent injunction requiring defendants to provide Rainbows and its contractors and other agents with that access, permission, and cooperation, and prohibiting Newbury Realty and Hassan from further disturbing or interfering with Rainbows' access to, use and quiet enjoyment of the Premises pursuant to the Lease, is in the interests of justice.

JURY DEMAND

Pursuant to Rule 38 of the Massachusetts Rules of Civil Procedure, Plaintiffs hereby demand trial by jury of all matters so triable.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that, following trial by jury, the Court grant them the following relief:

- A. As to Count I, award to Rainbows and against Newbury Realty money damages sufficient to fully compensate Rainbows for its losses;
- B. As to Count II, award to Rainbows and against Newbury Realty money damages sufficient to fully compensate Rainbows for its losses;
- C. As to Count III, award to Rainbows and against Newbury Realty money damages sufficient to fully compensate Rainbows for its losses;
- D. As to Count IV, award to Rainbows and against Newbury Realty money damages sufficient to fully compensate Rainbows for its losses;
- E. As to Count V, award to Rainbows and against Newbury Realty money damages sufficient to fully compensate Rainbows for its losses;
- F. As to Count VI, award to Rainbows and against Newbury Realty and against Hassan personally money damages sufficient to fully compensate Rainbows for its losses;
- G. Additionally as to Count VI, find and declare that defendants' conduct was knowing and willful, and that Hassan directed or was instrumental to such conduct and acted intentionally or without due regard for Rainbows' rights, and thereupon treble Rainbows' damages and award Rainbows attorneys' fees, pursuant to M.G.L. c.93A;
- H. As to Count VII, award to Carroll and against Newbury Realty and Hassan money damages sufficient to fully compensate Carroll for her losses;
- I. As to Count VIII, award to Rainbows and Carroll and against Newbury Realty and Hassan money damages sufficient to fully compensate Rainbows and Carroll for their

losses and award them attorneys' fees and costs pursuant to M.G.L. c.12, §§ 11H and 11I;
and

J. As to Count IX, enter a PERMANENT INJUNCTION (i) requiring Newbury Realty and Hassan to forthwith provide Rainbows and its contractors and other agents with access, permission, and cooperation to enable Rainbows and its contractors to install, complete, connect, and make use of the bargained-for ventilation and electrical system connections, and (ii) prohibiting Newbury Realty and Hassan from further disturbing or interfering with Rainbows' access to, use and quiet enjoyment of the Premises pursuant to the Lease;
and

K. Such other and further relief as the Court deems just and proper.

Dated: February 2, 2024

Respectfully submitted.

RAINBOWS POTTERY STUDIO LLC and
ALLISON CARROLL
By their attorney(s),

/s/ Daniel R. Deutsch

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