

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

SUFFOLK, ss

SUPERIOR COURT

C.A. No. 23-0461H

SHIGO CENTER PLAZA OWNER, LLC,

Plaintiff,

v.

TWITTER, INC.,

Defendant.

COMPLAINT FOR BREACH OF LEASE AND MONETARY DAMAGES

Landlord, SHIGO Center Plaza Owner, LLC, seeks to enforce its written lease agreement against Tenant, Twitter, Inc. Beginning in December 2022, Tenant failed to pay rent and has not maintained the required letter of credit, which together resulted in four, independent, continuing Events of Default under the parties' lease. Despite breaching its monetary obligations, Tenant continued operations in this leased office premises, with its employees utilizing the premises on a daily basis while defaults continued. As a result of Tenant's multiple breaches of its lease, Landlord is entitled to recover its monetary damages, including costs and expenses, and is entitled to an order that Tenant specifically perform its obligations under the parties' agreement, including, but not limited to, timely payment of rent and replenishment of the letter of credit.

PARTIES

1. Plaintiff, SHIGO Center Plaza Owner, LLC ("Landlord"), is a Delaware limited liability company, with a principal office located at 10 Post Office Square, Boston, Suffolk County, Massachusetts.

SUFFOLK SUPERIOR COURT
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JOHN E. POWER III
ACTING CLERK MANAGER

2. Defendant, Twitter, Inc. ("Tenant"), is a Delaware corporation, with a principal office, as listed with the Secretary of the Commonwealth of Massachusetts, Corporations Division, to be at 1355 Market Street, Suite 900, San Francisco, California 94103.

3. Locally, Tenant maintains an office at 1-3 Center Plaza, Boston, Massachusetts, 02108.

LEASE AGREEMENT FOR OFFICE AT 1-3 CENTER PLAZA

4. By deed dated April 11, 2017 and recorded at the Suffolk County Registry of Deeds in Book 57794, Page 142, Landlord is the record owner of the property known and numbered as 1-3 Center Plaza, Boston, Massachusetts.

5. By Office Lease Agreement dated August 23, 2019 (the "Lease"), Landlord agreed to lease to Tenant approximately 44,302 rentable square feet comprised of a portion of the third floor (the "Premises") in the buildings known and numbered as 1 Center Plaza, 2 Center Plaza, and 3 Center Plaza, all in Boston, Suffolk County, Massachusetts (the "Building"). A true and accurate copy of the Lease is attached as Exhibit A.

6. Tenant uses the Premises to operate its business, "Twitter."

7. The Lease provides that Tenant's "Permitted Use" of the Premises is for "[g]eneral office use, which may include lawfully permitted uses ancillary to such general office use...". See Exh. A, at p. 3.

8. As stated in the parties' Commencement Agreement, available at Exh. B, the Lease Commencement Date was October 18, 2019.

9. The Lease's Rent Commencement Date was January 16, 2020.

10. The Lease has a scheduled expiration date of January 31, 2027.

11. On September 28, 2021, Tenant entered into a written Sublease with Lookout, Inc., a California corporation (the "Subtenant"), by which Subtenant agreed to sublet 10,583

rentable square feet of the Premises from Tenant within the third floor of 2 Center Plaza and 3 Center Plaza. A true and accurate copy of the Sublease is attached as Exhibit C.

12. On November 22, 2021, Landlord consented to that Sublease, by the Consent to Sublease between Landlord, Tenant, and Subtenant. A true and accurate copy of the Consent to Sublease is also attached at Exhibit C, with the Sublease.

13. As provided by Section 3(a) of the Sublease, the Subtenant's current Base Rent payment to Tenant is \$47,676.42 per month.

14. As provided by Section 5 of the Consent to Sublease:

The Sublease shall be subject and subordinate at all times to the Master Lease and all of its provisions, covenants and conditions. Sublandlord absolutely and unconditionally assigns and transfers to Landlord all of Sublandlord's interest in all rentals and income arising from the Sublease, and Landlord may collect such rent and income and apply the same toward Sublandlord's obligations under the Master Lease; provided, however, that until a Monetary Default occurs in the performance of Sublandlord's obligations under the Master Lease which is not cured within any applicable cure period, Sublandlord may receive, collect and enjoy (subject to the provisions of the Master Lease regarding the sharing of excess Sublease rent) the rents accruing under the Sublease.

15. To date, the parties have not otherwise executed any written amendment of the Lease.

16. To date, no party has provided written notice that it was exercising any rights to terminate the Lease.

17. Section 6.1 of the Lease requires Tenant to pay Base Rent and Additional Rent, collectively called "Rent," to Landlord, without notice or demand, and without deduction, offset or abatement.

18. Currently, Base Rent for the Premises is \$227,232.35 per month.

19. Section 6.1(1) of the Lease provides that "From and after the Rent Commencement Date, Tenant shall pay Base Rent in equal monthly installments as set forth in

Section 1 above in advance on the first day of each calendar month occurring during the Term....”

20. Section 6.1(3) of the Lease provides:

If Tenant fails to pay Base Rent or Additional Rent on the date when due, Tenant shall pay to Landlord (a) a late payment fee of five percent (5%) of the unpaid amount (“Late Payment Fee”) and (b) interest at the lesser of the annual rate of twelve percent (12%) or the maximum lawful rate of interest (such lesser rate, the “Default Rate”) on the unpaid amount from the date when due until the date when paid; provided, however, that on the first occasion only during any calendar year, Landlord shall furnish Tenant with written notice of such failure and permit Tenant a five (5)-day period to cure such failure prior to charging the Late Payment Fee and interest at the Default Rate. All charges other than Base Rent which Tenant is required to pay in accordance with this Lease shall be deemed to be “Additional Rent” and, in the event of non-payment thereof by Tenant, Landlord shall have all the rights and remedies as would accrue to Landlord for non-payment of Base Rent....

21. Under Section 25.1(1) of the Lease, an Event of Default shall occur on “[f]ailure by Tenant to pay any installment of Base Rent, or regularly scheduled installment of Additional Rent, upon the date when said payment is due; provided, however, that on the first two (2) occasions only during any calendar year, Landlord shall furnish Tenant with written notice of such failure and permit Tenant a five (5)-day period to cure such failure (such failure under this Section 25.1(1), a ‘Monetary Default’).”

22. Under Section 25.1(2) of the Lease, an Event of Default shall occur on “[f]ailure by Tenant to pay any other amount, deposit, reimbursement, or sum due and payable hereunder, upon the date when said payment is due, which failure is not cured within five (5) days after written notice from Landlord thereof (such failure under this Section 25.1(2), a ‘Monetary Default’).”

TWITTER DEFAULTS ON MONETARY OBLIGATIONS UNDER LEASE

23. On or before December 1, 2022, Tenant did not pay its monthly installment of Base Rent and Additional Rent due for the Premises.

24. By Notice of Default dated December 15, 2022 (the "December Default Notice"), Landlord informed Tenant that it had failed to pay Base Rent and Additional Rent due under the Lease, and that if Tenant failed to pay in full such arrearage within the cure period, Tenant would cause an Event of Default. A true and accurate copy of the December Default Notice is attached as Exhibit D.

25. Under Section 6.1(3) of the Lease, five days after December 15, 2022, Landlord was then entitled to charge Tenant the Late Payment Fee and the Default Rate interest.

26. Notwithstanding Tenant's failure to pay Base Rent and Additional Rent due for the Premises in December 2022, Tenant continued to benefit from the Lease and use of the Premises with Tenant's employees continuing to access the Premises and operate in the Premises, Tenant's Subtenant continuing to use the Subleased Premises, and Tenant receiving payment from Subtenant for rent under the Sublease.

27. Tenant did not cure its arrearage within the five days following Landlord's December Default Notice.

28. By Notice of Event of Default dated December 27, 2022 (the "December Event of Default Notice"), Tenant was provided written notice that it had failed to cure a monetary default after written notice, which constitutes an Event of Default under the Lease, and that Landlord would be entitled to commence litigation against Tenant to enforce Tenant's obligations. A true and accurate copy of that December Event of Default Notice is attached as Exhibit E.

29. With that December Event of Default Notice, Tenant and Subtenant were given written notice, also dated December 27, 2022, that due to Tenant's Event of Default the Subtenant should make payment of rent under the Sublease to Landlord (the "Subtenant Notice"). A true and accurate copy of that Subtenant Notice is attached as Exhibit F.

30. On or before January 1, 2023, Tenant did not pay its monthly installment of Base Rent and Additional Rent due for the Premises.

31. By Notice of Default dated January 5, 2023 (the "January Default Notice"), Landlord informed Tenant that it had failed to pay Base Rent and Additional Rent due under the Lease, and that if Tenant failed to pay in full such arrearage within the cure period, Tenant would cause an Event of Default. A true and accurate copy of the January Default Notice is attached as Exhibit G.

32. Under Section 6.1(3) of the Lease, five days after January 5, 2023, Landlord was then entitled to charge Tenant the Late Payment Fee and the Default Rate interest.

33. Notwithstanding Tenant's failure to pay Base Rent and Additional Rent due for the Premises in January 2023, Tenant continued to benefit from the Lease and use of the Premises with Tenant's employees continuing to access the Premises, Tenant's business and equipment continuing to operate in the Premises, and Tenant's Subtenant continuing to use the Subleased Premises.

34. Tenant did not cure its arrearage within the five days following Landlord's January Default Notice.

35. By Notice of Event of Default dated January 11, 2023 (the "January Event of Default Notice"), Tenant was provided written notice that it had failed to cure a monetary default after written notice, which constitutes an Event of Default under the Lease, and that Landlord would be entitled to commence litigation against Tenant to enforce Tenant's obligations. A true and accurate copy of that January Event of Default Notice is attached as Exhibit H.

36. With that January Event of Default Notice, Tenant and Subtenant were given written notice, also dated January 11, 2023, that due to Tenant's Event of Default the Subtenant

should make payment of rent under the Sublease to Landlord (the "Second Subtenant Notice").

A true and accurate copy of that Second Subtenant Notice is attached as Exhibit I.

37. During the month of January 2023, security card swipes and occupancy counts confirm that the Premises was accessed by Tenant and Subtenant employees on each and every weekday (Monday through Friday).

38. In both the December Event of Default Notice and January Event of Default Notice, Tenant was provided written notice that Landlord was entitled to exercise its rights under the Lease and draw against a portion of a Letter of Credit equal to the Tenant's arrearage. *See Exhs. E & H.*

39. On August 19, 2019, Tenant had provided Landlord with a Letter of Credit in the amount of \$681,697.74.

40. On February 3, 2022, as contemplated by Section 26.6 of the Lease, the Letter of Credit was amended to be reduced to a new letter of credit amount totaling \$454,465.16.

41. Under Section 26.2(1) of the Lease:

Landlord may, at any time and from time to time, without prejudice to any other rights or remedies, draw upon the Letter of Credit (a) to the extent necessary to cure or attempt to cure, in whole or in part, any failure by Tenant to perform any of Tenant's covenants or obligations [under the Lease]...

42. Further, at Section 26.4:

If, as result of any application or use by Landlord of all or any part of the Letter of Credit, the amount of the Letter of Credit shall be less than the Letter of Credit Amount, Tenant shall, within ten (10) Business Days thereafter, provide Landlord with additional letter(s) of credit in an amount equal to the deficiency (or a replacement letter of credit in the total Letter of Credit Amount), and any such additional (or replacement) letter of credit shall comply with all of the provisions of Section 26, and if Tenant fails to comply with the foregoing, notwithstanding anything to the contrary contained in this Lease, the same shall constitute an uncurable Event of Default by Tenant hereunder....

43. On or about January 19, 2023, Landlord drew upon the Letter of Credit in its full amount: \$454,465.16.

44. In accordance with the Lease, by written notice dated January 20, 2023, Landlord demanded that Tenant replenish or replace the letter of credit amount within ten (10) Business Days, as failure to do so would constitute an additional default under the Lease (the "Replenishment Notice"). A true and accurate copy of that Replenishment Notice is attached as Exhibit J.

45. Following Landlord's Replenishment Notice, Tenant did not replenish, restore, or replace the Letter of Credit.

46. As of the date of this Complaint, Tenant has failed to provide a replacement Letter of Credit.

47. On February 6, 2023, more than ten business days after January 20, 2023, Tenant was provided written notice that Tenant had caused an independent and incurable Event of Default due to its failure to replenish, restore, or replace the Letter of Credit (the "Letter of Credit Event of Default Notice"). A true and accurate copy of that Letter of Credit Event of Default Notice is attached as Exhibit K.

48. On or before February 1, 2023, Tenant did not pay its monthly installment of Base Rent and Additional Rent due for the Premises.

49. By Notice of Default dated February 3, 2023 (the "February Default Notice"), Landlord informed Tenant that it had failed to pay Base Rent and Additional Rent due under the Lease, and that if Tenant failed to pay in full such arrearage within the cure period, Tenant would cause an Event of Default. A true and accurate copy of the February Default Notice is attached as Exhibit L.

50. Under Section 6.1(3) of the Lease, five days after February 3, 2023, Landlord was then entitled to charge Tenant the Late Payment Fee and the Default Rate interest.

51. Notwithstanding Tenant's failure to pay Base Rent and Additional Rent due for the Premises in February 2023, Tenant continues to benefit from the Lease and use of the Premises.

52. Tenant did not cure its arrearage within the five days following Landlord's February Default Notice.

53. By Notice of Event of Default dated February 10, 2023 (the "February Event of Default Notice"), Tenant was provided written notice that it had failed to cure a monetary default after written notice, which constitutes an Event of Default under the Lease, and that Landlord would be entitled to commence litigation against Tenant to enforce Tenant's obligations. A true and accurate copy of that February Event of Default Notice is attached as Exhibit M.

TWITTER'S EVENTS OF DEFAULT CONTINUE

54. Following Landlord's February Event of Default Notice, Tenant failed to cure its arrearage.

55. After Landlord's Letter of Credit Event of Default Notice, Tenant did not restore its Letter of Credit.

56. As of the date of this Complaint, Tenant's past due arrearage balance totals \$632,183.64, as shown on the ledgers attached at Exhibit N.

57. As of the date of this Complaint, the Tenant's Letter of Credit has been fully drawn against and provides no remaining balance for Landlord to draw against as future security.

58. Despite Tenant's monetary defaults, its employees continued to access the Premises and Tenant's furniture, electronic equipment, IT equipment, computers, signage, and other property remain in the Premises.

59. Tenant has no right to unilaterally withhold Rent.

60. Tenant has no right to unilaterally terminate the Lease prior to its expiration of term on January 31, 2027.

COUNT I
DECLARATORY JUDGMENT

61. Landlord repeats and restates the allegations in the preceding paragraphs as if stated here.

62. Landlord and Tenant are parties to an enforceable Lease for the Premises.

63. The Lease remains in full force and effect as a binding agreement between the parties.

64. The Lease has not been terminated.

65. The Lease is set to expire on January 31, 2027.

66. Tenant is obligated to pay Rent on or before the first day of each calendar month occurring during the Term.

67. Tenant has failed to pay Rent, despite prior written notice, constituting a breach of Tenant's monetary obligations under the Lease.

68. Tenant is obligated to provide Landlord with additional or replacement letter(s) of credit within ten Business Days after Landlord's application or use of all or any part of the Letter of Credit.

69. Tenant has failed to maintain its Letter of Credit, despite prior written notice, constituting a breach of Tenant's obligations under the Lease.

70. Tenant has caused at least one material Event of Default under the parties' Lease for which Landlord is entitled to monetary damages.

71. Tenant's obligation to pay Rent is not based on Tenant's income or profit derived from the Premises.

72. The Lease provides Tenant no right to unilaterally terminate the Lease or to withhold Rent, including, but not limited to, Tenant's concerns with monetary constraints of its business, changes in ownership of Tenant's business, or Tenant's evaluation of its current real estate and office needs.

COUNT II
BREACH OF CONTRACT

73. Landlord repeats and restates the allegations in the preceding paragraphs as if stated here.

74. Tenant has failed to pay Base Rent for the months of December 2022, January 2023, and February 2023.

75. Tenant has failed to replenish or replace its Letter of Credit.

76. Each month that Tenant fails to pay Base Rent and such other sums due under the Lease constitutes an independent and continuing Event of Default under the Lease.

77. Tenant's past due arrearage balance currently totals \$632,183.64.

78. Tenant remains liable to Landlord for all unpaid, past-due Base Rent, Additional Rent, and other sums, including without Late Payment Fee, Default Rate interests, attorneys' fees, and costs.

79. Tenant remains liable to Landlord for all monetary damages proximately caused by Tenant's breach of its obligations under the Lease.

80. As of the date of this Complaint, Tenant has failed to replenish or replace its Letter of Credit, which has been drawn down in its entirety.

81. Tenant remains liable for those future amounts due under the Lease.

82. Landlord has been damaged as a result of Tenant's breach of its obligations under the Lease.

83. Tenant is liable for Landlord's costs and expenses, including attorneys' fees, incurred as a result of Landlord's enforcement of its rights under the Lease.

COUNT III
SPECIFIC PERFORMANCE

84. Landlord repeats and restates the allegations in the preceding paragraphs as if stated here.

85. Tenant is obligated to pay Rent on or before the first day of each calendar month occurring during the Term.

86. Tenant is obligated to provide Landlord with additional or replacement letter(s) of credit within ten Business Days after Landlord's application or use of all or any part of the Letter of Credit.

87. Tenant shall specifically perform its monetary obligations under the Lease for the remainder of the Lease's term.

88. Tenant shall replenish and restore the security to which Landlord is entitled, by that Letter of Credit, for the remainder of the Lease's term.

WHEREFORE, Landlord respectfully requests that this Court:


- A. Declare that Tenant is in default of its obligations under the Lease;
- B. Enter judgment against Tenant for Tenant's breach of its obligations to pay Base Rent, Additional Rent, and other sums due under the Lease;
- C. Order Tenant to replenish or replace its Letter of Credit in the manner required by the Lease;
- D. Order Tenant to make timely payment of Base Rent and Additional Rent on the first day of each month;
- E. Determine and award damages in an appropriate amount, plus costs, interest, and attorneys' fees as permitted under the Lease, at law, and/or in equity;
- F. Enter judgment for Tenant reserving Landlord's rights to pursue future amounts as may be permitted under the Lease; and,
- G. Grant such other relief as the Court deems just and equitable.

As provided by Section 25.5 of the Lease, Landlord requests a bench trial in this Action.

Respectfully submitted,

SHIGO CENTER PLAZA OWNER, LLC,

By its attorneys,



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Dated: February 21, 2023