

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th St. Boulder, CO 80302	DATE FILED: June 28, 2023 5:02 PM FILING ID: A888A02766195 CASE NUMBER: 2023CV30461
<hr/> <p>Plaintiff: X CORP., a Nevada corporation,</p> <p>v.</p> <p>Defendant: LOT 2 SBO, LLC, a Delaware limited liability company.</p> <hr/> <p><i>Attorneys for Plaintiff X CORP.</i></p> <p>ZUMBRENNEN LAW, LLC T. Damien Zumbrennen, #39791 damien@zumbrennen.com PO Box 271134 Superior, Colorado 80027 Telephone: 720-394-3898</p> <p>WHITE & CASE LLP J. Jonathan Hawk (Pro Hac Vice application forthcoming) jhawk@whitecase.com 555 South Flower Street, Suite 2700 Los Angeles, California 90071 Telephone: (213) 620-7700 Facsimile: (213) 687-0758</p>	<hr/> <p style="text-align: center;"><input type="checkbox"/> COURT USE ONLY <input type="checkbox"/></p> <hr/> <p>Case Number:</p> <p>Div. Ctrm:</p>
<p>COMPLAINT</p>	

Plaintiff X Corp., successor in interest to Twitter, Inc. (hereinafter referred to as “**Twitter**”) alleges against Defendant Lot 2 SBO, LLC (“**Defendant**,” together with Twitter, the “**Parties**”) as follows:

THE PARTIES, JURISDICTION, AND VENUE

1. X Corp. is a corporation organized and existing under the laws of Nevada, with its principal place of business in San Francisco, California. X Corp. is the successor in interest to Twitter, Inc.
2. Defendant Lot 2 SBO, LLC is, upon information and belief, a Delaware limited liability company authorized to do business in the State of Colorado, and the owner of the real

property located at 3401 Bluff Street, Suites 100, 200, 300, and 400 in Boulder, Colorado 80301 (the “**Premises**”).

3. Defendant leased the Premises to Twitter pursuant to a commercial lease dated February 14, 2020 (the “**Lease**”).

4. Jurisdiction is proper in this Court pursuant to Article VI, Section 9(1) of the Colorado Constitution and C.R.S. § 13-1-124 due to Defendant’s transaction of business and ownership of real property in Colorado. By signing the Lease, the Parties consented to personal jurisdiction in Colorado.

5. Venue is proper in Boulder County pursuant to C.R.C.P. 98(c)(2), as this matter flows from Defendant’s breach of a commercial lease involving the Premises, which is situated in Boulder County. By signing the Lease, the Parties consented to venue in Boulder County.

GENERAL ALLEGATIONS

6. After executing the Lease, Twitter paid for and constructed tens of millions of dollars’ worth of leasehold improvements to the Premises according to specifications to which Defendant agreed in advance.

7. Twitter completed its work and, after submitting the requisite documentation to Defendant, became entitled to the payment of approximately \$5.8 million from Defendant under the terms of the Lease as a tenant improvement allowance (the “**Tenant Improvement Allowance**”).

8. Twitter properly demanded disbursement of the Tenant Improvement Allowance on or before November 2022.

9. Defendant, however, refused to make any disbursement.

10. In a letter dated December 19, 2022 – well after Twitter demanded payment of its Tenant Improvement Allowance – Defendant wrongly and as a pretext, claimed that Twitter breached the lease by not paying its share of taxes and operating expenses for December 2022.

11. Defendant then ignored Twitter’s repeated demands for disbursement of the Tenant Improvement Allowance, ignored Twitter’s timely invocation of its rights under the lease to have the unused portions of the Tenant Improvement Allowance applied to any payments due to Defendant under the Lease, and proceeded to evict Twitter from the Premises for allegedly not paying amounts due under the terms of the Lease.

12. Twitter files this Complaint in response to Defendant’s wrongful conduct and breach of the Lease.

13. Twitter seeks to recover monetary damages for the Tenant Improvement Allowance owed to Twitter, and damages flowing from Twitter’s wrongful eviction including but not limited

to, the loss of the money that Twitter spent on tenant improvements.

FACTUAL ALLEGATIONS

The Amended Lease

14. A true and correct copy of the Lease is Exhibit A.
15. The Premises consists of approximately 64,557 square feet.
16. The Lease is for a term of ten (10) years, with a “**Base Rent**” beginning at \$199,866.88, and entitles Twitter to possession of the Premises until April 30, 2032, subject to the terms set forth in the Lease.
17. The building in which the Premises is located was still under construction when Twitter and Defendant executed the Lease.
18. When they executed the Lease, the Parties contemplated that, even once the building was complete, the construction of significant additional leasehold improvements (hereinafter (“**Tenant’s Work**”)) would be necessary to satisfy Twitter’s needs.
19. To induce Twitter to execute the Lease, Defendant made several concessions.
20. First, Twitter would enjoy a rent abatement period of ten (10) months beginning on the “**Commencement Date**” of April 10, 2022, for Suites 200, 300, and 400 and June 20, 2022, for Suite 100. Twitter thus did not owe Net Rent to Defendant until February 2023.
21. Second, Defendant agreed to offset Twitter’s costs to construct leasehold improvements in the Premises by paying the Tenant Improvement Allowance pursuant to the terms of a Workletter, attached to the Lease as Exhibit E and incorporated therein by reference (the “**Workletter**”).
22. The Workletter provides for the Tenant Improvement Allowance and states, in relevant part, that:

Provided that no Event of Default by Tenant has occurred and is then continuing, Landlord shall cause to be disbursed to Tenant’s general contractor or subcontractors (or to Tenant, if requested by Tenant) in a single lump-sum an amount equal to Five Million Seven Hundred Sixty Thousand and No/100 Dollars (\$5,760,000) (calculated by multiplying \$90.00 by 64,000, being the Rental Area of the Premises) (the “**Tenant Improvement Allowance**”) for Costs of Tenant’s Work and certain related “soft costs” associated with Tenant’s Work and Tenant’s relocation to the Premises, including, without limitation, moving expenses, architectural design, engineering, project management, and similar fees and expenses, and relocation consultants. The Tenant Improvement Allowance shall be so disbursed to Tenant’s general contractor or subcontractors (or to Tenant, if

requested by Tenant) within sixty (60) days following the later of (A) the date of substantial completion of Tenant's Work, or (B) the date of Landlord's confirmed receipt of all of the following: (i) a contractor's Certified Application for Payment in AIA G702/703 form; (ii) final, complete, executed, and acknowledged lien waivers and sworn statements from all of Tenant's general contractors, subcontractors, and other applicable parties; (iii) a certification from Tenant's Architect and general contractor or other similar professionals (reasonably satisfactory to Landlord) certifying that Tenant's Work has been performed substantially in conformance with the approved Schematic Drawings and Permit Drawings; (iv) a statement of account executed by Tenant identifying any and all material additions or deletions to the budgeted total Costs of Tenant's Work and confirming that, to Tenant's knowledge, Tenant has no claims against Landlord hereunder (or identifying such claims); (v) title insurance insuring against mechanic's liens relating to Tenant's Work; (vi) such additional commercially reasonable and customary documents as may be reasonably requested by Landlord and/or Landlord's construction lender and are readily available to, or readily obtainable by, Tenant; and (vii) all of the items required under Subparagraph 12.f of this Workletter (collectively, the "**Draw Documentation**"). If any such Draw Documentation is either missing or incomplete, Landlord shall promptly notify Tenant in writing of the same.

Ex. A at Exhibit E, § 4.b.

23. The Tenant's Work was to be performed after Defendant completed its own improvements to the building and the Premises, and after the "**Turnover Date**" of October 11, 2021.

24. In addition to the Tenant Improvement Allowance, the Workletter required Defendant to pay Twitter's architect a "**Space Planning Allowance**" in the amount of \$9,600 within thirty (30) days of Twitter's submission of invoices therefor. The Tenant Improvement Allowance and Space Planning Allowance are collectively referred to hereafter as the "**Allowances**."

25. The Lease provides as follows regarding the Space Planning Allowance:

In addition to the Tenant Improvement Allowance as hereinabove provided, and to the extent not heretofore paid by Landlord, Landlord shall reimburse Tenant's Architect in an amount up to Nine Thousand Six Hundred and No/100 Dollars (\$9,600.00) (calculated by multiplying \$0.15 by 64,000, being the Rentable Area of the Premises) towards the cost of the initial Schematic Design and any revisions thereto (collectively, the "**Space Planning Allowance**"). Such payment, if not paid prior to execution of the Lease, shall be made within thirty (30) days after Tenant's submission of the invoice(s) therefor, together with reasonable supporting documentation.

Ex. A at Exhibit E, § 4.d.

26. The Lease provides that, upon substantial completion of the Tenant's Work, Twitter could elect to have unused portions of the Allowances applied against rent owed under the Lease.

27. With regard to Twitter's non-exclusive right to credit the unpaid Allowances against rent, the Workletter provides:

Tenant shall also have the right to apply any of the Tenant Improvement Allowance which remains unused as a credit against the next payments of Rent due under the Lease until exhausted by giving written notice of such election to Landlord not earlier than the date of substantial completion of Tenant's Work and not later than the seventeenth (17th) full calendar month following the Commencement Date (the "**Allowance Application Deadline**"). In the event that Tenant fails to so request or apply all or any portion of the Tenant Improvement Allowance on or before the Allowance Application Deadline, Landlord shall, without further notice to Tenant, automatically apply any of the Tenant Improvement Allowance which remains unused as a credit against the next payments of Rent due under the Lease until exhausted.

Ex. A at Exhibit E, § 4.d.

28. On October 6, 2021, the Parties executed a First Amendment of Office Lease to, among other things, confirm the square footage of the Premises and Defendant's obligation to pay the Tenant Improvement Allowance in the amount of \$5,810,130.

29. A true and correct copy of the First Amendment of Office Lease is Exhibit B.

30. The Lease provides that, in the event of litigation between the Parties, the prevailing party shall be entitled to reasonable attorney's fees, costs, and expenses:

In the event of any litigation between Landlord and Tenant, the prevailing party shall be entitled to obtain, as part of the judgment, all reasonable attorneys' fees, costs, and expenses incurred in connection with such litigation, except as may be limited by applicable Law. IN THE INTEREST OF OBTAINING A SPEEDIER AND LESS COSTLY HEARING OF ANY DISPUTE, LANDLORD AND TENANT HEREBY EACH IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, OR TENANT'S USE OR OCCUPANCY OF THE PREMISES.

Ex. A at Article 15

31. Twitter is also entitled to an award of reasonable attorney's fees and costs pursuant to C.R.S. § 13-40-123.

Twitter Substantially Completed the Tenant's Work

32. The Turnover Date occurred on October 11, 2021.

33. Thereafter, Twitter undertook the Tenant's Work as approved or accepted by Defendant, and consistent with the terms of the Lease.

34. The Tenant's Work on the Premises included, but was not limited to, excavation, demolition, and construction of new slabs, mechanical systems, plumbing systems, framing, electrical systems, sanitation systems, and finishing work.

35. The Tenant's Work also included construction of a full cooking kitchen, installation of security systems for the Premises, and building out Exclusive Use Common Areas, as that term is defined in the Lease.

36. In completing the Tenant's Work, Twitter spent more than \$40 million of its own money.

37. Consistent with the terms of the Workletter, Twitter substantially completed the Tenant's Work in or before November 2022.

38. No later than November 2022, Twitter requested that Defendant disburse the Allowances, in full, to Twitter.

39. Following Twitter's request for payment, Defendant did not "promptly notify [Twitter] in writing" as to whether Defendant believed Twitter had failed to submit or had submitted incomplete documents in connection with demanding that disbursement.

40. Defendant improperly, and in breach of the Lease, refused to disburse those funds, despite Twitter having sufficiently satisfied all conditions for payment thereof under the Lease.

41. As required under the Lease, Defendant did not "promptly notify [Twitter] in writing" as to whether, once Twitter demanded disbursement of the Tenant Improvement Allowance and Space Planning Allowance, Defendant believed Twitter had failed to submit or had submitted incomplete documents in connection with demanding that disbursement.

Defendant's Events of Default

42. In a letter dated December 19, 2022, Defendant attempted to justify its refusal to pay the Allowances by claiming that an "**Event of Default**" had occurred due to Twitter's purported failure to timely pay \$101,104.11 for Twitter's Pro Rata Share of Taxes and of Operating Expenses for the month of December 2022.

43. Defendant's December 19, 2022 letter was not served via overnight mail until December 20, 2022.

44. Article 29 of the Lease, as amended, provides that "[e]very notice or other communication hereunder shall be deemed to have been given: ... (ii) if sent by overnight courier for next Business Day delivery, on the next Business Day following the date such notice was sent."

“Notice” was thus not effectively “given” to Twitter of Defendant’s demand for those rent monies until December 21, 2022 and, under Article 22 of the Amended Lease, Twitter had five days thereafter -- i.e., until December 26, 2022 -- to cure before any “Event of Default” occurred. Indeed, the Amended Lease in Article 22 provides that an Event of Default cannot occur unless Twitter’s alleged failure to pay Rent is not “cured within five (5) days after Landlord shall have delivered to Tenant written notice thereof.” Exh. A at Art. 29.

45. In a letter dated December 26, 2022, counsel for Twitter responded to Defendant and timely invoked Twitter’s rights under the Lease to apply the unused Allowances to satisfy any amount owed under Lease.

46. Twitter’s December 26, 2022, letter further informed Defendant that Twitter had substantially completed the Tenant’s Work, complied with all requirements to receive the Allowances, and demanded that Defendant pay to Twitter the full \$5,819,813.55 within ten (10) business days.

47. As of the date of this Complaint, Defendant has not disbursed the unused portions of the Allowances to Twitter.

48. Defendant instead responded via letter, dated January 5, 2023, disputing Twitter’s statements, refusing to disburse the Allowances, and demanding that Twitter pay an additional \$101,105.59 in rent for January 2023.

49. Defendant’s January 5, 2023, letter also asserted that Twitter had “not yet submitted all of the Draw Documentation required in order to trigger Landlord’s obligation to disburse the Tenant Improvement Allowance.”

50. Twitter is informed and believes that Defendant simply did not want to release the nearly \$5.8 million in Allowances to Twitter, despite Twitter being entitled to it under the terms of the Lease.

**FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)**

51. Twitter realleges and incorporates the allegations in the forgoing paragraphs, as though fully set forth herein.

52. Twitter and Defendant are parties to the Lease, as amended.

53. The Lease provides that Twitter is entitled to payment of the Allowances and to possession of the Premises under the terms set forth in the Lease.

54. Twitter has performed all material obligations under the Lease entitling it to disbursement of the Allowances.

55. No later than November 2022, Twitter properly notified Defendant of its obligation

to disburse the Allowances.

56. Defendant has wrongfully refused, in breach of its obligations under the Lease.

57. Twitter provided Defendant with a Notice of Default via a letter dated December 26, 2022, in which Twitter demanded that Defendant disburse the Allowances as required under the terms of the Lease.

58. Defendant has not, as of the date of this Complaint, disbursed the Allowances to Twitter.

59. Defendant has breached its obligations under the Lease by not “promptly notify[ing] [Twitter] in writing” as to whether Defendant believed Twitter had failed to submit or had submitted incomplete documents in connection with demanding that disbursement.

60. Defendant has breached its obligations under the Lease by failing to use portions of the Allowances to satisfy the rent obligations of Twitter under the Lease.

61. Defendant has further breached its obligations under the Lease by wrongfully depriving Twitter of possession of the Premises.

62. As a direct and proximate result of Defendant’s breaches of the Lease, Twitter has suffered damages and losses in an amount to be proved at trial, to include all unused portions of the Allowances and compensation for Twitter’s losses of all monies used for the construction the Tenant’s Work.

**SECOND CAUSE OF ACTION
(DECLARATORY RELIEF)**

63. Twitter realleges and incorporates the allegations in the forgoing paragraphs, as though fully set forth herein.

64. There presently exists a dispute and controversy over the rights, liabilities and duties of Twitter and Defendant under the Lease.

65. Twitter seeks a judicial determination of those rights, liabilities, and duties.

66. An actual controversy exists between Twitter and Defendant as to the Parties’ payment obligations under the Lease.

67. Twitter seeks a judicial determination of the Parties’ respective payment obligation under the Lease.

68. Twitter seeks an order granting such further relief as the Court deems appropriate, including damages against the Defendant and an award of reasonable attorney fees, costs, and expenses.

**THIRD CAUSE OF ACTION
(WRONGFUL EVICTION)**

69. Twitter realleges and incorporates allegations in the forgoing paragraphs, as though fully set forth herein.

70. Twitter is entitled to possession of the Premises under the terms of the Lease.

71. Defendant has wrongly claimed that Twitter owed it money under the Lease for its Pro Rata Share of December 2022 and January 2023 Taxes and Operating Expenses.

72. Defendant wrongfully refused to use unpaid portions of the Allowances to satisfy any of Twitter's rent obligations under the Lease.

73. Defendant asserted these erroneous claims in the Boulder County District Court lawsuit, Case No. 2023CV30342, entitled *Lot 2 SBO, LLC v. Twitter, Inc.*, to wrongfully secure a writ of restitution enabling Defendant to evict Twitter from the Premises.

74. Defendant did not make diligent efforts to obtain personal service of its summons and complaint in Case No. 2023CV30342.

75. For example, Defendant did not attempt to personally serve Defendant with a copy of its summons and complaint at Twitter's principle office street address as published in the records of the Colorado Secretary of State.

76. By failing to make diligent efforts to obtain personal service, Defendant violated the provisions of Section 13-40-112(2), C.R.S., which require such efforts before service by posting/ mailing is authorized.

77. Defendant improperly obtained a writ of restitution and judgment for possession of the Premises and intends to carry through with the eviction on June 30, 2023, despite Twitter having warned Defendant, including via letter dated June 14, 2023, that Twitter was not in Default under the Lease, that eviction was improper, and that Twitter would pursue all legal recourse, including for damages, if Defendant carried out the eviction.

78. As a direct and proximate result, Twitter has suffered damages and losses in an amount to be proved at trial, to include all unused portions of the Allowances and compensation for Twitter's losses of all monies used for the construction of the Tenant's Work.

**FOURTH CAUSE OF ACTION
(BREACH OF THE IMPLIED COVENANT OF GOOD
FAITH AND FAIR DEALING)**

79. Twitter realleges and incorporates the allegations in the forgoing paragraphs, as though fully set forth herein.

80. The Lease contains an implied duty of good faith and fair dealing.

81. Defendant breached the duty of good faith and fair dealing by failing to use the unpaid portions of the Allowances to satisfy Twitter's payment obligations under the Lease.

82. Defendant has breached its obligations under the Lease by failing to "promptly notify [Twitter] in writing" as to whether Defendant believed Twitter had failed to submit or had submitted incomplete documents in connection with demanding that disbursement.

83. Defendant breached the duty of good faith and fair dealing by refusing to pay the Allowances despite Twitter's satisfaction of all material preconditions for such payment under the lease.

84. As a direct and proximate result of Defendant's breach, Twitter has suffered damages and losses in an amount to be proved at trial, to include all unused portions of the Allowances and compensation for Twitter's losses of all monies used for the construction the Tenant's Work.

PRAYER FOR RELIEF

WHEREFORE, Twitter prays for judgment against Defendant as follows:

- a. Damages according to proof;
- b. An award of all amounts due to Twitter under the Lease, as amended;
- c. A declaration that, under the terms of the Amended Lease, Defendant is obligated to pay to Twitter the Allowances, and that Twitter is entitled to its reasonable attorney's fees, costs and expenses, in pursuing this Complaint;
- d. An award of pre- and post-judgment interest on all monetary relief prayed for above, and as may be permitted by law;
- e. An award of reasonable attorneys' fees, costs and expenses in connection with this lawsuit, as permitted by the Amended Lease between the Parties and at law; and
- f. All such other and further relief as the Court may deem just and proper.

Dated: June 28, 2023

Respectfully submitted,
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