

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR
SEMINOLE COUNTY, FLORIDA

J. & R. GYM, LLC, a Florida
Limited Liability Company

CASE NO.: 2017-CA-002566-15-L

Plaintiff

v.

GYMNASTICS USA LONGWOOD,
LLC; a Florida Limited Liability Company;
AUSTIN ARHTUR, an individual;
and ALEXANDER ARTHUR, an
individual.

Defendants.

**DEFENDANT, GYMNASTICS USA LONGWOOD, LLC, AUSTIN ARTHUR and
ALEXANDER ARHTUR, ANSWER AND AFFIRMATIVE DEFENSES**

COMES NOW, the Defendants, GYMNASTICS USA LONGWOOD, LLC, a Florida
Limited Liability Company ("GYMNASTICS USA"), AUSTIN ARTHUR, an individual, and
ALEXANDER ARTHUR, an individual, and states as follows:

GENERAL ALLEGATIONS

1. The Defendant, GYMNASTICS USA, admits that Plaintiff seeks damages which may exceed \$15,000.00, but denies that Plaintiff is entitled to any damages.
2. The Defendant, GYMNASTICS USA, admits that the subject matter jurisdiction is proper under Section 34.011, Florida Statutes, but denies that Plaintiff is entitled to any damages.
3. The Defendant, GYMNASTICS USA, admits the subject property is located in Seminole County, Florida, but denies that Plaintiff is entitled to any damages.
4. Defendant is without knowledge as to the allegations set forth in Paragraph 4 of the Complaint; therefore, denied.

5. Admitted.

6. Defendant is without knowledge as to the allegations set forth in Paragraph 6 of the Complaint; therefore, denied.

7. Admitted.

8. Admitted.

9. Denied.

10. Denied.

11. Denied.

12. Denied; however, in an abundance of caution Defendant, GYMNASTICS USA, has deposited the alleged past due rent with the Seminole County Clerk of the Court Seminole as of December 13, 2017.

13. The Defendants, AUSTIN ARTHUR and ALEXANDER ARTHUR, admit the allegations in Paragraph 13, but deny the Plaintiff is entitled to damages.

14. Denied.

15. Defendant is without knowledge as to the allegations set forth in Paragraph 15 of the Complaint; therefore, denied; however, however, in an abundance of caution Defendant, GYMNASTICS USA, has deposited the alleged past due rent with the Seminole County Clerk of the Court Seminole as of December 13, 2017.

16. Defendant is without knowledge as to the allegations set forth in Paragraph 16 of the Complaint; therefore, denied.

17. Denied.

18. Denied.

COUNT I — POSSESSION
(Against GYMNASTICS USA LONGWOOD, LLC)

19. Defendant restates the responses set forth in Paragraphs one (1) through eighteen (18) above, as if fully set forth herein.

20. Denied, however, however, in an abundance of caution Defendant, GYMNASTICS USA, has deposited the alleged past due rent with the Seminole County Clerk of the Court Seminole as of December 13, 2017.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

Defendant denies that Plaintiff is entitled to any of the relief requested in the WHEREFORE clause immediately following Paragraph Twenty-Four (24) of the Complaint.

COUNT II — DISTRESS FOR RENT
**(Against GYMNASTICS USA LONGWOOD, LLC and AUSTIN ARHTUR and
ALEXANDER ARTHUR, Guarantors)**

25. Defendant restates the responses set forth in Paragraphs one (1) through eighteen (18) above, as if fully set forth herein.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

Defendant denies that Plaintiff is entitled to any of the relief requested in the WHEREFORE clause immediately following Paragraph Thirty-Three (33) of the Complaint.

COUNT III — BREACH OF THE LEASE
(Against GYMNASTICS USA LONGWOOD, LLC)

34. Defendant restates the responses set forth in Paragraphs one (1) through eighteen (18) above, as if fully set forth herein.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

Defendant denies that Plaintiff is entitled to any of the relief requested in the WHEREFORE clause immediately following Paragraph Forty-One (41) of the Complaint.

COUNT IV - BREACH OF GUARANTY
(Against ALEXANDER ARTHUR and AUSTIN ARTHUR)

42. Defendant restates the responses set forth in Paragraphs one (1) through eighteen (18) above, as if fully set forth herein.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

Defendant denies that Plaintiff is entitled to any of the relief requested in the WHEREFORE clause immediately following Paragraph Forty-Eight (48) of the Complaint.

COUNT V – FORECLOSURE OF LANDLORD’S LIEN
(Against GYMNASTICS USA, LLC)

49. Defendant restates the responses set forth in Paragraphs one (1) through eighteen (18) above, as if fully set forth herein.

50. Denied.

51. Denied.

52. Denied.

Defendant denies that Plaintiff is entitled to any of the relief requested in the WHEREFORE clause immediately following Paragraph Fifty-Two (52) of the Complaint.

DEFENDANTS’ AFFIRMATIVE DEFENSES

The Defendants, GYMNASTICS USA LONGWOOD, LLC, AUSTIN ARTHUR, and ALEXANDER ARTHUR, assert and allege the following affirmative defenses to the claim set forth in Plaintiff’s Complaint:

FIRST AFFIRMATIVE DEFENSE
(Payment of Rent)

Plaintiff’s claims are barred to the extent that tenant has already paid or paid into the Court Registry the rent amount that is the basis of Plaintiff’s complaint for eviction.

SECOND AFFIRMATIVE DEFENSE
(Tenants Timely Cure of Breach)

Plaintiff's claims are barred to the extent tenant cured the claim breach in a timely manner, including, but not limited to, the making payment for rent, plus charges with the court registry.

THIRD AFFIRMATIVE DEFENSE
(Lack of Opportunity to Cure Breach Pursuant to 3-Day Notice)

Plaintiff's claims are barred to the extent Plaintiff failed to give Defendants a reasonable opportunity to cure the breach including but not limited to Plaintiff's failure to provide in its notice an exact amount that was due by the tenant that would cure the breach and a failure to give a reasonable opportunity to comply with any other alleged deficiencies by the tenant.

FOURTH AFFIRMATIVE DEFENSE
(Accord and Satisfaction)

Plaintiff's claims are barred to the extent tenant has satisfied any past due amounts that plaintiff communicated to defendant.

FIFTH AFFIRMATIVE DEFENSE
(Waiver of Right to Proceed with Eviction Claim)

Plaintiff's claims are barred to the extent Plaintiff accepted or may accept payment by Defendant for the amount of past due rent and retain such payment. Plaintiff also requested and subsequently approved, either affirmatively, or by omission, or by both, the continued possession of the premises by the Defendant, Gymnastics USA Longwood, LLC.

SIXTH AFFIRMATIVE DEFENSE
(Landlord's Breach of Lease)

Plaintiff's claims are barred to the extent that Plaintiff failed to perform its part of the lease agreement.

SEVENTH AFFIRMATIVE DEFENSE
(Landlord's Misrepresentations)

Plaintiff's claims are barred to the extent that its actions constituted material misrepresentations, which wrongfully caused tenant to appear to submit improper payment amounts on due dates, including but not limited to Plaintiff's numerous false or mistaken statements of fact, which induced Defendants to make overpayments or underpayments to Plaintiff. Plaintiff also misrepresented to tenant that the premises tenant was leasing was designed, constructed, and sufficient for use as a gymnastics gymnasium which would provide a safe and healthy environment for the customers of the Defendant, Gymnastics USA Longwood, LLC, in that the heating, ventilation, and air conditioning (HVAC) system failed to provide adequate indoor environmental comfort and created a dangerous condition for the customers of Gymnastics USA Longwood, LLC.

EIGHTH AFFIRMATIVE DEFENSE
(Unclean Hands)

Plaintiff's claims are barred by its contributing to its own damages, if any, including but not limited to by knowing and accepting overpayments by tenant, knowingly accepting payments that seemed to be less than the amount due, if any, not off-setting the amount of rent actually due, not properly communicating to the tenant the amount due, including extra charges, wrongfully causing unpaid rent balances, if any, and thereby wrongfully adding late fees, interest, and penalties; and/or knowingly representing to tenant that the building was designed, constructed, and sufficient to operate as a gymnastics gymnasium for the customers and clients of Gymnastics USA Longwood, LLC, in a safe and sufficient manner given that the heating ventilation and air conditioning system was insufficient to provide a safe and healthy environment for the customers and clients of Gymnastics USA Longwood, LLC.

NINTH AFFIRMATIVE DEFENSE
(Doctrine of Laches)

Plaintiff's claims are barred to the extent its action for eviction is based on a claim of noncompliance to the contract when Plaintiff waited approximately four (4) months to bring an action based on an alleged nonpayment as a wrongful attempt to push tenant out of the lease and force acceleration of rent under the agreement.

TENTH AFFIRMATIVE DEFENSE
(Anticipatory Repudiation Pursuant to FLA.STAT.)

To the extent that tenant has rightfully suspended its performance of the contract as landlord has failed to cure a material breach of the lease agreement in that it has failed to provide an adequate heating, ventilation, and air conditioning system to make the premises safe for customers and clients of Gymnastics USA Longwood, LLC.

ELEVENTH AFFIRMATIVE DEFENSE
(Off-set of Damages)

Any damages awarded to the plaintiff are subject to set off for amounts that Defendants might be awarded in counterclaims or other proceedings.

TWELFTH AFFIRMATIVE DEFENSE
(Estoppel)

Plaintiff's claims are barred because its own actions (or lack of actions) prevent it from seeking a remedy in court, including but not limited to by knowingly accepting overpayments by tenants; knowingly accepting payments that seem to be less than the amount due, if any; not off-setting the amount of rent actually due; not promptly communicating to the tenant the amount due, including extra charges; wrongfully causing unpaid rent balances, if any, and thereby wrongfully adding late fees, interest, and penalties; and/or knowingly representing to tenant that tenant should continue to utilize the premises even though it was not properly constructed and the heating

ventilation and air conditioning system installed in the building was not designed or constructed to maintain a safe and adequate environment for the customers and clients of Gymnastics USA Longwood, LLC, and then knowingly inducing the tenant to lease the premises when in fact the landlord knew, or should have known that the building was not properly designed or constructed with adequate heating, ventilation, and air conditioning system to adequately maintain safe temperatures within the premises.

DEMAND OF TRIAL BY JURY

Defendants, GYMNASTICS USA LONGWOOD, LLC, AUSTIN ARTHUR, and ALEXANDER ARTHUR, request a trial by jury on all issues so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 14, 2017, I filed the foregoing with the Clerk of the Court utilizing the State of Florida E-Filing Portal and served via electronic mail service to Jeffrey Kahn, PO Box 934788, Margate, FL 33093 to: service@huntkahnlaw.com.

MARK P. CRESSMAN, P.A., dba
CRESSMAN LAW

By: /s/ Mark P. Cressman //s/

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