

IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

LITTLE HAITI REALTY, LLC,
a Florida limited liability company,

CIVIL DIVISION

Plaintiff,

CASE NO.:2020-023211-CC-05

vs.

HISTORI, LLC
a Florida limited liability company,
and all others in possession,

Defendant.

--and--

HISTORI, LLC,
A Florida limited liability company

Counter-Plaintiff,

vs.

LITTLE HAITI REALTY, LLC,
A Florida limited liability company;
LEMON CITY REALTY, LLC,
A Florida Limited Liability Company;
LITTLE HAITI DEVELOPMENT PARTNERS, LP,
A Florida limited partnership;
and MALLORY KAUDERER,
an individual

Counter-Defendants.

_____ /

NOTICE OF FILING

Counter-Plaintiff/Defendant Histori, LLC by and through their undersigned counsel, hereby files its Affidavit in support of Defendant Histori, LLC's Response in Opposition to Plaintiff's Motion to Order Funds to be Paid into Court Registry and for Release of Said Funds. See "Affidavit" attached hereto.

GENOVESE JOBLOVE & BATTISTA, P.A.
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By: /s/ Omar K. Bradford
Omar K. Bradford, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Florida Courts e-filing portal to Hilary R. Zalman, Esq., eService@ZalmanLawFirm.com, Zalman Law, P.A. 7050 Montrico Drive, Boca Raton, FL 33433, on this 11th day of January, 2021.

By /s/ Omar K. Bradford
Omar K. Bradford, Esq.

IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

LITTLE HAITI REALTY, LLC,
a Florida limited liability company,

CIVIL DIVISION

Plaintiff,

CASE NO.:2020-023211-CC-05

vs.

HISTORI, LLC,
a Florida limited liability company,
and all others in possession,

Defendant.

--and--

HISTORI, LLC,
a Florida limited liability company; and
THE BEVERAGE GROUP, LLC
a Florida limited liability company

Counter-Plaintiffs,

vs.

LITTLE HAITI REALTY, LLC,
A Florida limited liability company;
LEMON CITY REALTY, LLC,
A Florida limited liability company;
LITTLE HAITI DEVELOPMENT PARTNERS, LP,
A Florida limited partnership; MALLORY KAUDERER

Counter-Defendants.

**DEFENDANT'S AFFIDAVIT IN SUPPORT OF RESPONSE IN OPPOSITION TO
PLAINTIFF'S MOTION TO ORDER FUNDS TO BE PAID INTO COURT REGISTRY
AND FOR RELEASE OF SAID FUNDS**

BEFORE ME, the undersigned authority, personally appeared, Franklin Dale, who, upon being duly sworn, deposes and states:

1. My name is Franklin Dale and I am the principal owner of Defendant/Counter-Plaintiffs Histori LLC, its parent companies SFS Hospitality Group LLC and

District Live Agency, LLC (“DLA”) as well as Counter-Plaintiff The Beverage Group, LLC (“TBG”) (which is DLA’s parent company)

2. I am over eighteen years of age and am authorized to attest to the matters set forth herein.

3. I have personal knowledge of the matters set forth herein.

4. This affidavit (“Affidavit”) is made in support of the following pleadings filed by Histori in the above referenced action: 1) the Response in Opposition to Plaintiff’s Motion to Order Funds to be Paid into Court Registry; 2) Answer and Affirmative Defenses; and 3) Counterclaim.

5. Over the course of six (6) years, DLA and TBG are owed hundreds of thousands of dollars from Counter-Defendant Mallory Kauderer (“Kauderer”) and/or Plaintiff/Counter-Defendant Little Haiti Realty LLC, and/or Counter-Defendant Lemon City Realty, and/or Counter-Defendant Little Haiti Development Partners LP.

6. The eviction proceedings at issue in this action are unlawful and being prosecuted in direct retaliation for my speaking out against the unlawful conduct of Kauderer in regards to his misappropriation and subsequent weaponization of CARES Act funds from my business as generally described herein.

7. In spite of my group’s best efforts to resolve this matter amicably and according to long-held agreements made in good faith over several years, I’ve only been met with repugnant retaliation and restraint of trade/self-help tactics that prohibit my rightful operation of the business and force this legal action. Additional details regarding this dispute, including a prior affidavit outlining it, are included in Miami-Dade County Civil Division Case #2020-018438-CC-05.

8. As reflected in this Affidavit, the stated claim for non-payment of rent as contained on the Three Day Notice served pursuant to the underlying action and the eviction complaint, is grossly inaccurate and in fact, there is no rent due or owing under these circumstances.

9. All rents have been paid in spite of the fact that since the lease commenced, all buildings comprising the properties had substantial leaks (pursuant to structural damage, which under the applicable leases is unequivocally the landlord/property owner's responsible) that rendered the property commercially unviable, and which the Landlord was immediately notified of and has neglected to repair in the 23 months since. The landlord, instead of meeting its contractual duties to repair, is instead effectuating a retaliatory scheme to help itself in these eviction proceedings.

10. Notwithstanding, all rents have been paid since the commencement of the leases at 5524 NE 2 Ave ("5524") and 5528 NE 2 Ave ("5528"), which together I leased from Kauderer through Histori LLC in February 2019.

11. Prior to that (since 2017), I rented 5524 NE 2 Ave from Kauderer through my company Lemon City Standard LLC. Throughout that time, a critical precedent was set - Kauderer offset rents due from monies owed to me for management consulting services I rendered to him through The Beverage Group LLC. Over \$60,000 in rents for this lease were abated this way. With over \$120,000 still owing from Kauderer to me/TBG for advisory services, it was understood in practice and words of Kauderer's reflecting a direct inducement, that any rent payments considered due would be additionally offset in the same manner consistent with the historical precedent, regarding the rents at Histori.

12. With the new Histori leases at 5524/5528 being established at \$4,800/month, Histori LLC paid the rent to Lemon City Realty LLC from February 2019-July 2020, when Kauderer initiated his retaliatory sham evictions

13. This sham eviction has sowed further confusion as to Landlord's malfeasance since Histori's records show that all deposits and rent payments were made to Lemon City Realty LLC and not to Plaintiff for the months starting February 2019 through March 2020.

14. All of Histori's rent payments were made to Lemon City Realty LLC until April 2020 when Landlord, with no signed addendum to lease provided, requested that rent monies now be paid to "new company" Little Haiti Development Partners LP, owned wholly by Mallory Kauderer and which otherwise has no legal relationship with Plaintiff "Little Haiti Realty LLC" or "Lemon City Realty LLC". To-date, the Rent has been timely paid.

15. Histori's continued timely payment of all Rent obligations under the Lease and under Florida law is despite the fact that on June 26, 2019 Landlord was made aware of substantive structural deficiencies in the form of roof leaks in all buildings leased (5524 Building and 5528 Buildings 1 & 2) on the Properties, which Histori informed Plaintiff of and for which Histori demanded remedy. Under the Lease, this obviated Histori's requirements to make rent payments. Nonetheless, all rent due has been paid.

16. On June 29, 2020, Plaintiff's owner/authorized representative Donita Leavitt was informed and acknowledged the condition of both roofs and represented that Landlord would remedy the leaks. Donita stated, "Let me get our roofer, the doctor (Owner/Dr. Pierre Blemur) may want to file an insurance claim." Again, on July 7, 2020 Donita Leavitt communicated "I have a roofer that needs access to 5528 to have a look at both buildings. Please let me know if you're available for this tomorrow. Thank you!". Affirmative attempts by Tenant's representative

to accommodate were ignored.

17. To date these roof leak deficiencies, which directly violate the terms of the Lease, have not been remedied.

18. Leading up to and during the Covid-19 pandemic, Histori rent was being paid fully and while undertaking critical investments to improve the property as a restaurant by installing a grease trap (approx. \$25,000) and absorbing City of Miami change of Use Impact Fees to change the use to a restaurant (approx. \$45,000).

19. I have at all times acted in reasonable reliance on the terms and understandings of the binding agreements I have made on behalf of Histori (among other entities) with Kauderer (and the entities he controls, owns and/or operates).

20. Kauderer's course of conduct and express representations during the subject period ratified the terms and understandings of our agreements.

21. Because the understandings and the agreements were express, I at all times material to the Lease, reasonably relied upon the representations made by Kauderer and Donita Leavitt.

22. Attached hereto as "Exhibit A" is a ledger (the "Histori Reconciliation Ledger"), which accurately reflects all rent payments and other credits and considerations that were expressly agreed to by Kauderer and relied upon by Histori.

23. Accordingly, there is no rent due or owing to Plaintiff in this action.

24. The underlying eviction action is without merit or a supportable factual basis and is being used in an attempt to devalue the amounts owed to Counter-Plaintiffs.

25. As such, the underlying eviction action should be dismissed.

26. **FURTHER AFFIANT SAYETH NAUGHT.**

Signed, sealed and delivered in our presence:

Franklin Dale

STATE OF)
) ss:
COUNTY OF)

The foregoing instrument was acknowledged before me, by physical presence, this 11th day of ~~October 2020~~, by Franklin Dale, who is personally known to me and who did take an oath.
January 2021

Produced ID

Notary Public
My commission expires:



EXHIBIT “A”

HISTORI (5524/5528 NE 2ND AVE) RENT LEDGER 2019-2021

MONTH	RENT DUE	RENT PAID	BALACE DUE	MEMO
2/19	\$2,000.00	\$2,000.00	\$0.00	Histori to Lemon City
3/19	\$2,000.00	\$2,000.00	\$0.00	Histori to Lemon City
4/19	\$2,000.00	\$2,000.00	\$0.00	Histori to Lemon City
5/19	\$2,000.00	\$2,000.00	\$0.00	Histori to Lemon City
6/19	\$2,000.00	\$2,000.00	\$0.00	Histori to Lemon City
7/19	\$2,000.00	\$2,000.00	\$0.00	Histori to Lemon City
8/19	\$2,000.00	\$2,000.00	\$0.00	Histori to Lemon City
9/19	\$2,000.00	\$2,000.00	\$0.00	Histori to Lemon City
10/19	\$2,000.00	\$2,000.00	\$0.00	Histori to Lemon City
11/19	\$2,000.00	\$2,000.00	\$0.00	Histori to Lemon City
12/19	\$2,000.00	\$2,000.00	\$0.00	Histori to Lemon City
1/20	\$2,000.00	\$2,000.00	\$0.00	Histori to Lemon City
2/20	\$2,000.00	\$2,000.00	\$0.00	Histori to Lemon City
3/20	\$2,000.00	\$2,000.00	\$0.00	Histori to Lemon City
4/20	\$2,000.00	\$2,000.00	\$0.00	Histori to Little Haiti Development
5/20	\$2,000.00	\$2,000.00	\$0.00	Histori to Little Haiti Development
6/20	\$2,000.00	\$2,000.00	\$0.00	Histori to Little Haiti Development
7/20	\$2,000.00	\$2,000.00	\$0.00	TBG to Lemon City
8/20	\$2,000.00	\$2,000.00	\$0.00	TBG to Lemon City
9/20	\$2,000.00	\$2,000.00	\$0.00	TBG to Lemon City
10/20	\$2,000.00	\$2,000.00	\$0.00	TBG to Lemon City
11/20	\$2,000.00	\$2,000.00	\$0.00	TBG to Lemon City
12/20	\$2,000.00	\$2,000.00	\$0.00	TBG to Lemon City
1/21	\$2,000.00	\$2,000.00	\$0.00	TBG to Lemon City
2/21	\$2,000.00	\$2,000.00	\$0.00	TBG to Lemon City
3/21	\$2,000.00	\$2,000.00	\$0.00	TBG to Lemon City
4/21	\$2,000.00	\$2,000.00	\$0.00	TBG to Lemon City
	\$50,000.00	\$50,000.00	\$0.00	

HISTORI (5528 NE 2ND AVE) RENT LEDGER 2019-2021

MONTH	RENT DUE	RENT PAID	BALACE DUE	MEMO
2/19	\$2,800.00	\$2,800.00	\$0.00	Histori to Lemon City
3/19	\$2,800.00	\$2,800.00	\$0.00	Histori to Lemon City
4/19	\$2,800.00	\$2,800.00	\$0.00	Histori to Lemon City
5/19	\$2,800.00	\$2,800.00	\$0.00	Histori to Lemon City
6/19	\$2,800.00	\$2,800.00	\$0.00	Histori to Lemon City
7/19	\$2,800.00	\$2,800.00	\$0.00	Histori to Lemon City
8/19	\$2,800.00	\$2,800.00	\$0.00	Histori to Lemon City
9/19	\$2,800.00	\$2,800.00	\$0.00	Histori to Lemon City
10/19	\$2,800.00	\$2,800.00	\$0.00	Histori to Lemon City
11/19	\$2,800.00	\$2,800.00	\$0.00	Histori to Lemon City
12/19	\$2,800.00	\$2,800.00	\$0.00	Histori to Lemon City
1/20	\$2,800.00	\$2,800.00	\$0.00	Histori to Lemon City
2/20	\$2,800.00	\$2,800.00	\$0.00	Histori to Lemon City
3/20	\$3,000.00	\$3,000.00	\$0.00	Histori to Lemon City
4/20	\$3,000.00	\$3,000.00	\$0.00	Histori to Little Haiti Development
5/20	\$3,000.00	\$3,000.00	\$0.00	Histori to Little Haiti Development
6/20	\$3,000.00	\$3,000.00	\$0.00	Histori to Little Haiti Development
7/20	\$3,000.00	\$3,000.00	\$0.00	TBG to Lemon City
8/20	\$3,000.00	\$3,000.00	\$0.00	TBG to Lemon City
9/20	\$3,000.00	\$3,000.00	\$0.00	TBG to Lemon City
10/20	\$3,000.00	\$3,000.00	\$0.00	TBG to Lemon City
11/20	\$3,000.00	\$3,000.00	\$0.00	TBG to Lemon City
12/20	\$3,000.00	\$3,000.00	\$0.00	TBG to Lemon City
1/21	\$3,000.00	\$3,000.00	\$0.00	TBG to Lemon City
2/21	\$3,000.00	\$3,000.00	\$0.00	TBG to Lemon City
3/21	\$3,000.00	\$3,000.00	\$0.00	TBG to Lemon City
4/21	\$2,800.00	\$2,800.00	\$0.00	TBG to Lemon City
	\$78,200.00	\$78,200.00	\$0.00	