

In the Matter Of:

175 NE 55TH STREET vs FRANKLIN DALE

2020-021636-CC-0

HEARING

June 30, 2021



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1 IN THE COUNTY COURT OF THE ELEVENTH JUDICIAL CIRCUIT,

2 IN AND FOR MIAMI-DADE COUNTY, FLORIDA

3 CASE NO.: 2020-021636-CC-0

4 SECTION: CC02

5 175 NE 55TH STREET, LLC ,

6 Plaintiff,

7 vs.

8 FRANKLIN DALE et al,

9 DEFENDANTS.

10 _____/

11

12 HEARING BEFORE THE HONORABLE MIESHA DARROUGH

13

14 DATE TAKEN: June 30, 2021

15 TIME: 1:30 p.m. to 3:58 p.m.

16 PLACE: REMOTE HEARING

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19 Rule 1.310(g) Florida Rules of Civil Procedure
20 requires transcript of copies to be obtained
21 from the Court Reporter unless the Court rules
22 otherwise.

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24 REPORTED BY: LISA WILSON, FPR and NOTARY PUBLIC.

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1 (Thereupon, the following hearing was held:)

2 THE COURT: Okay, 175 Northeast 55th Street
3 versus Franklin Dale, et al, case number
4 2020-021636-CC-05. Would you please announce your
5 appearance?

6 MR. BRADFORD: Omar Bradford with the law firm
7 of Genovese, Joblove & Battista. I am here with my
8 associate, Elizabeth McIntosh and we are here on
9 behalf of the Defendants, District Live Agency and
10 Franklin Dale.

11 THE COURT: Thank you. And on behalf of the
12 Plaintiff?

13 MS. ZALMAN: Good afternoon, Hillary Zalman on
14 behalf of plaintiff, 175 Northeast 55th Street, LLC.
15 I am accompanied by attorney Arnaldo Velez. And my
16 client is here as well representing the Plaintiff,
17 Danita Levitt.

18 THE COURT: Okay, good afternoon. And I see we
19 have Ms. Lisa Wilson our court reporter, good
20 afternoon to you as well.

21 THE COURT REPORTER: Good afternoon.

22 THE COURT: Okay. So we are here today on --
23 Defense has filed a motion to determine rent, the
24 amount of rent due. It is the defense motion, so
25 what I will do is allow --

1 (Audio lost due to technical issue.)

2 (Audio resumed.)

3 MS. ZALMAN: -- and at last hearing I thought
4 this was Defendant's motion to determine rent in
5 response to our motion, not to change order, just for
6 procedural posture.

7 THE COURT: Wait, let me see. Let me go back
8 here. So this was previously heard?

9 MS. ZALMAN: Yes, we continued to today to allow
10 more time.

11 THE COURT: Oh, okay. Hold on. Let me refresh
12 my memory then. Give me one second. So I have here
13 that the last time it was motion for default? We
14 were trying to get a default in the case?

15 MR. BRADFORD: That is correct, your Honor.
16 That is what was previously heard. And that motion
17 was denied.

18 THE COURT: Right, I don't have any indication
19 that we dealt with the motion to determine rent.

20 MR. BRADFORD: No, we have not, your Honor. And
21 the motion that Counsel just referenced is not set
22 for hearing today, her motion for funds to be put
23 into the court registry.

24 THE COURT: Okay. Let me see.

25 MS. ZALMAN: I think we discussed at the last

1 hearing though, was it not? That we needed the
2 evidentiary, or Omar, am I mixing the two?

3 MR. BRADFORD: I'm not sure, I just know that
4 your motion is not set for hearing today, but mine
5 is.

6 THE COURT: Yeah, the only notes -- I'm just
7 going back to the notes that I have from then in the
8 MOD, I just have the motion for default is what we
9 heard. Okay, so the Court has not made any rulings
10 regarding to the to determine rent. I just wanted to
11 make sure. Okay, so if that is the case, then I'll
12 allow the Defense to proceed with the motion. And
13 then --

14 MS. ZALMAN: We propose that it's the same, for
15 us the same argument.

16 THE COURT: What do you mean, the same argument?

17 MS. ZALMAN: The motion to determine rent,
18 versus the motion to order funds. For us, it's the
19 same argument so I have no issue. Just bringing it
20 to the Court's attention. I thought his motion was
21 in response to ours as a piggy-back.

22 MR. BRADFORD: Well, to be crystal clear, and
23 that's not completely incorrect, but our motion to
24 determine rent, the full subject or style of that is
25 a motion to determine rent to be zero, or a motion to

1 dismiss. So, you know, functionally our argument is
2 that for a variety of reasons, which I'll express
3 here today, that there is no rent and accordingly
4 this matter should be dismissed. The issue of funds
5 being paid into the Court registry is a separate
6 issue for which Counsel has filed a motion, but that
7 motion is not set for hearing today.

8 THE COURT: And I understand that, but I think
9 in determining the rent amount, the Court would be
10 determining how much should go into the court
11 registry, if any.

12 MR. BRADFORD: Right --

13 THE COURT: Okay.

14 MR. BRADFORD: And to the extent your Honor
15 wants to consider that issue here today, we have no
16 objection. Ultimately, they are very much related.
17 But, if I may, may it please the Court?

18 THE COURT: Yes.

19 MR. BRADFORD: Okay, this is Omar Bradford,
20 Genovese, Joblove & Battista. You know, the
21 interesting thing here and we have submitted it in
22 our motion is that this case is, your Honor,
23 inextricably intertwined with another circuit court
24 action, or with a circuit court action that is styled
25 5501 Northeast Second Avenue, LLC V. District Live

1 Agency and there is a counterclaim there that we
2 filed that is District Live Agency and Beverage Group
3 versus 5501 Northeast Second Avenue, LLC and Little
4 Haiti Development Partners, and Mallory Kauderer.
5 The Plaintiff here, 175 Northeast 55th Street, LLC,
6 their parent company or closely related company,
7 could be one or the other, they do a lot of
8 switcheroos here with the companies, but we'll say
9 it's the parent company, is the counter-defendant in
10 that other action, Little Haiti Development Partners.
11 Now, I raise that because Little Haiti Development
12 Partners and Mallory Kauderer are being sued in
13 counterclaims to evictions in the aforementioned
14 circuit court action, as well as two other actions
15 based upon moneys owed to my client, Franklin Dale,
16 who is here in the court today, not only for services
17 rendered, which are well documented, but pursuant to
18 these entities theft o absconding or taking of funds
19 back or based on their representations to the federal
20 government to be applied to the business of
21 Churchill's Pub.

22 This case, you Honor, just like the other
23 related cases really all center around Churchill's
24 Pub. Churchill's Pub is the oldest bar in Miami-Dade
25 County. It's a place that pursuant to lease

1 agreements, so my client is the lessee at the pub and
2 there are agreements that his status as lessee of the
3 pub make him not just the operator of the pub, but
4 have an ownership interest in the pub as well.

5 Everything was moving along with a collective plan to
6 develop out a live music sort of venue district where
7 the parties were working together and had been
8 working together for years, and part of that working
9 together were agreements that the moneys that were
10 owed by Plaintiff, in this case Plaintiff's
11 principals to my client would be -- could be paid in
12 one of two ways. One, they could be paid in cash,
13 but if not based on the fact that my client leased
14 multiple properties in this area, they would serve as
15 prepayment on rents. There is no confusion as to
16 that whatsoever.

17 Well, then unfortunately for all of us the
18 pandemic happened. And particularly unfortunately
19 for those in the live music, you know, venue
20 operation business. As we all know that they were
21 hit almost the hardest, and continue to be hit very
22 hard. The subject business of Churchill's Pub
23 remains unopened today. Now, we know that bars have
24 reopened, but there has been a campaign of
25 restraining my client's trade by violating the

1 subject lease with respect to the liquor license,
2 letting it lapse, detaching it from the property.
3 There has been just a series of retaliatory acts that
4 have taken place here, your Honor, after my client
5 provided to -- or provided and provided authority to
6 Mallory Kauderer to utilize debts owed to it for
7 purposes -- so debts owed to my client to the extent
8 of \$128,000, which is basically as a vendor to the
9 business. My client is owed \$128,000, and again,
10 that could have been paid in one of two ways, cash or
11 the prepayment of rents, but instead it was utilized
12 to receive funds from the government under the Cares
13 Act.

14 So the Plaintiff in this action's principal
15 applies for Cares Act funding, used -- specifically
16 notating that it's getting these funds to pay back my
17 client. Instead -- now, they are successful as to
18 that, and they received the funds into their account,
19 but the day they received, it June 12, 2020, they
20 went in and then they went out. Where did they go,
21 your Honor? They actually did not go to the
22 business, they went to the parent company, the Little
23 Haiti Development Partners of the Plaintiff here
24 today. Accordingly, my client made written demand
25 for those funds to come into the business or to

1 otherwise get a use of -- a recitation of how those
2 funds would be used, and that is largely what brings
3 us here today. In retaliation for that demand, my
4 client's have been evicted across properties.

5 Now, that's just some background for you, your
6 Honor, sort of about the big picture here, but the
7 smaller picture here, the more narrow picture here
8 is, the reason that I say that this case inextricably
9 intertwined with that circuit court action is because
10 -- again, that case is styled 5501 Northeast Second
11 Avenue, LLC. V. District Live Agency, that the lease
12 underlying that action, your Honor, which I have here
13 today and we've submitted to your Honor to the extent
14 that this is an evidentiary hearing, even though it
15 was not previously noticed as an evidentiary hearing,
16 but in any event, you know, we are prepared either
17 way because we know that we've got the documents and
18 exhibits that reflect a very easy and narrow fact,
19 which is 175 Northeast 55th Street, LLC., as you will
20 see does not have a lease. They did not attach a
21 lease to any of their pleadings. The reason why
22 there is no lease, your Honor, is my client was not
23 specifically leasing from 175 Northeast 55th Street,
24 LLC. And in fact my client was not leasing the
25 property at 175 Northeast 55th Street. My client

1 only came to be operating an office out of that space
2 after the properties, one of the properties that is
3 subject to this lease was condemned by the City of
4 Miami.

5 So again, Franklin Dale is the operator,
6 owner/operator at Churchill's Pub, he is lessee and
7 there is a lease that reflects such. Reflects that
8 the only business that can be done at the property is
9 the operation of Churchill's Pub. Adjacent to the
10 pub -- so basically, just to the back, was a separate
11 structure whose address is 215 Northeast 55th Street.
12 That separate address where the operator of the
13 business used as an office was condemned by City of
14 Miami. Mallory Kauderer also owns the property at
15 175 Northeast 55th Street. It was agreed that while
16 the property for which is under a different lease,
17 right, for which they are paying rent, while that is
18 condemned that they would move the office operations
19 over to 175 Northeast 55th Street. Now, that doesn't
20 mean that suddenly a separate amount of rent is owed
21 there. No. They were already paying rent at,
22 essentially at 5501, so accordingly to the extent
23 that any rent would ever be charged at 175, then that
24 would be double dipping. Then that would be two --
25 applying two rents for one purpose, right, because

1 the office was behind the pub, it got condemned, so
2 the new office was across the street.

3 And they know this. And this is just part of
4 retaliatory, sort of motive that is going on here.
5 But in any event, your Honor, there is evidence of
6 this obviously because there is no lease, right,
7 there is no agreement that my client signed, and you
8 know we have reviewed the affidavit by Ms. Danita
9 Levitt, which is just chock full of inconsistencies
10 and things that are just simply inaccurate. There is
11 no tenancy agreement with my client on a
12 month-to-month basis here, there is only the lease at
13 5501, and that lease -- so just yesterday, your
14 Honor, and I want to make this clear at the onset,
15 just yesterday, your Honor, we began a hearing in
16 circuit court for a motion the deposit funds into the
17 court registry, slash, motion to determine rent, and
18 in that hearing -- it was an evidentiary hearing and
19 Danita Levitt, the person that provided the affidavit
20 that is before your Honor, she testified in direct
21 examination as to these circumstances. Ultimately,
22 and you know what, I want to make this clear while
23 we're on the topic, she testified in direct
24 examination as to circumstances that are again
25 inextricably intertwined with this action, so they

1 all relate to the same lease, yesterday and today,
2 circuit court and here in county court, but I want
3 the Court to be aware that following my multiple
4 objections to her being coached in a Zoom hearing,
5 the judge abruptly recessed the hearing and it's set
6 to be continued tomorrow in person in court.

7 MS. ZALMAN: I object to that wholeheartedly.
8 There is no evidence Ms. Levitt was being coached. I
9 do know that Counsel indicated that because it was
10 Zoom he thought she was talking to someone and Ms.
11 Levitt responded I'm looking over at my computer
12 screen. She has a double screen. So I do object to
13 that.

14 MR. BRADFORD: I appreciate to that Counsel, but
15 just to be clear, I said I objected to her being
16 coached and then the judge abruptly recessed the
17 hearing, which is unobjectionable because that's what
18 happened. But the only point that I'm making to the
19 Court right now is -- and I'm not certain again if we
20 are proceeding with an evidentiary hearing here today
21 or not. We are prepared either way, but it wasn't
22 noticed as an evidentiary hearing, but I believe the
23 Court must closely monitor the Plaintiff's witness
24 because it's certified fact that she is not in that
25 room alone and it's my position and with the

1 objection of Counsel noted, that she was being
2 coached along the way yesterday. So after what
3 occurred yesterday I don't believe that their witness
4 or their deponent can be trusted in a zoom setting.
5 But that's neither here or there.

6 THE COURT: All right, Mr. Bradford, just really
7 quickly, this affidavit that you're talking about,
8 the affidavit that I see on the docket is -- I see an
9 affidavit as to loss summons, but in this case is
10 there another affidavit that I'm not seeing?

11 MS. ZALMAN: Mr. Bradford is referring to
12 Plaintiff's affidavit of nonpayment.

13 MR. BRADFORD: It was filed June 23rd, your
14 Honor.

15 THE COURT: Okay. Wait, hold on. Oh, it was
16 just filed. Go ahead, you can proceed. I just
17 wanted to make sure I had the right document.

18 MR. BRADFORD: No, thank you, your Honor. So,
19 you know, the reality is we don't believe that this
20 hearing should proceed today because it's our firm
21 position that it is beyond question that the property
22 that is the subject of today's hearing in fact part
23 and parcel to the lease that is the subject of the
24 circuit court action. And because we're in the
25 middle of an evidentiary hearing as to whether or not

1 -- or to what extent rent should be paid into the
2 court registry, it is not appropriate for us move
3 forward here until it is determined how much, if any,
4 rent is to be paid in that circuit court action. And
5 we'll also seek a specific determination from the
6 Court that this property at 175 Northeast 55th Street
7 is a part of the lease, or should be considered a
8 part of the lease pursuant to the condemnation of the
9 office at the pub and the replacement for purposes of
10 operating the pub into the property at 175. To the
11 extent that both courts were to order my client to
12 pay into the court registry, we just believe that
13 would essentially result in a windfall to the
14 Plaintiff here, which would be inappropriate.

15 THE COURT: Okay, and let me make sure, does
16 5501 circuit court case, is that the address of the
17 pub?

18 MR. BRADFORD: That is in fact the address of
19 the pub, your Honor, yes.

20 THE COURT: Okay. And you're saying is at that
21 address where the pub is at, that's the property that
22 was condemned?

23 MR. BRADFORD: Correct.

24 THE COURT: Okay.

25 MR. BRADFORD: There is an associated property

1 -- it's all on the same sort of plot of land, but
2 there was a separate, yet adjacent space that was --
3 that served as the office. And the address for that
4 is 215 Northeast 55th Street, but it's essentially
5 all the same right there.

6 THE COURT: Okay --

7 MR. BRADFORD: The City of Miami -- and we're
8 prepared to provide your Honor --

9 THE COURT: Okay, because of that condemned
10 property, the office he's using there, you're saying
11 that is why he's using the 175?

12 MR. BRADFORD: That is exactly right, your
13 Honor.

14 THE COURT: Okay. And so the 175, the same
15 owners of 175 are the owners of 5501?

16 MR. BRADFORD: That is correct, your Honor.

17 THE COURT: Okay.

18 MR. BRADFORD: That is why --

19 THE COURT: Okay.

20 MR. BRADFORD: Yes, your Honor. So the lease at
21 5501 covered the operation and ownership interest at
22 Churchill's Pub, but also to the adjacent building of
23 the pub that served as the office. Now, in
24 April 2019 the building across the street located at
25 175 Northeast 55th Street was completely delapidated.

1 In fact, it was occupied by a drug-addict vagrant,
2 squatter named Dexter Glover. However, the building
3 lacked electricity, air conditioning, water, you
4 know, functioning plumbing. It was essentially a
5 mere sheller. So while I wish I could tell you, your
6 Honor, that this was some simple eviction matter,
7 it's far from it. This is in fact a cultural war and
8 in many ways a sign of the times. Some, not most --
9 and probably only a fraction of landlords during this
10 pandemic have let greed and perceived desperation get
11 the best of them.

12 THE COURT: Okay. Let me ask you this, so at
13 the 5501 property that has the office that your
14 client was in, was there -- there was an agreement
15 that he would use the 175 spot -- property, because
16 of being condemned?

17 MR. BRADFORD: That is correct, your Honor.

18 THE COURT: I just wanted to make sure that I
19 was right about that -- or that is what I heard you
20 say. Okay, and so the hearing in the circuit court
21 case is to determine how much rent is due at the
22 condemned property?

23 MR. BRADFORD: Well, it's the lease -- it's how
24 much money id due to paid, if any, to the court
25 registry under the subject lease. That lease, your

1 Honor, covers -- yes, it covers the condemned
2 property, as well as the pub.

3 THE COURT: Okay --

4 MR. BRADFORD: So the answer to -- the simple
5 answer to your question is, yes.

6 THE COURT: And for this 175 property, you're
7 saying there is no lease because I guess it's more of
8 a temporary property while this other property is
9 condemned?

10 MR. BRADFORD: That is exactly right, your
11 Honor, it's a temporary property while the property
12 is condemn. Now, again remember the property in and
13 of itself was -- at 175, was completely dilapidated,
14 completely uninhabitable. The fact that they are
15 suggesting in their affidavit that they were charging
16 rent during the time that this place was a complete
17 den of iniquity is --

18 THE COURT: And you're talking about the 175
19 spot?

20 MR. BRADFORD: Yeah.

21 THE COURT: You're saying also, this is a
22 dilapidated property?

23 MR. BRADFORD: Yeah. Again, so remember, these
24 are folks that are doing business with one another in
25 variety of ways. So what happened after the -- what

1 happened was determined after the property was
2 condemned over here is that okay, they needed some
3 place to work out of, but the place at 175 was
4 completely dilapidated. So my client actually
5 performed renovation services as to that property at
6 175 to the extent of \$76,000, which resulted in
7 further rent credits, prepaid rent credits. There
8 was never an invoice for any rent due at 175. There
9 was never any notice that -- of some expectation of
10 rent being paid, because everyone knew that this was
11 not only a replacement, so therefore the rent that
12 was being paid at 5501 covered the rent at 175, but
13 also my clients were doing 75 -- you know, ultimately
14 in what resulted in \$76,000 in renovations to that
15 property. The fact they are turning around knowing
16 that this isn't even its own individual property
17 subject to its own lease, they know that it's subject
18 to the 5501 property. They know that my client did
19 \$76,000 in renovations for property that he doesn't
20 own. Certainly, he's not in the business of doing
21 pro-bono work or charity work for these folks. The
22 fact they turned around and tried to evict him
23 separately out of this place shows you the
24 retaliatory nature, and shows you why this is not
25 just a simple eviction unfortunately.

1 And it all goes back to, again, my client's
2 blowing the whistle to the misappropriation of the
3 Cares Act funds. It began when Mallory Kauderer,
4 aided and abetted by Danita Levitt, the Midguard
5 Group and others on my list, used my clients, the
6 defendants, District Live Agency and Franklin Dale's
7 financial information listing the debts owed to him
8 and his entities in the amount of \$128,000, not to
9 mention the 75,000 for purposes of getting small
10 business funding. Taking advantage of the government
11 in a once-in-a-lifetime pandemic.

12 Now, had they accurately utilized the funds for
13 which they reflected in the application, well then at
14 that point the 128,000 owed to my client could have
15 been applied as rent credits, and again, all of this,
16 your Honor, we're talking about a different case.
17 I'm actually making arguments to you that are
18 actually the arguments in a different case, but in
19 any event, they've sort of forced us to do this. But
20 in any event, those funds would have been applied to
21 rents and they would have gone back to the business.
22 So it's really, the level of brinksmanship here is
23 remarkable the fact that they would go to these
24 lengths to retaliate against my client, shooting
25 themselves dead in the knee for what reason I don't

1 fully understand. But in nay event, this is the path
2 that they have chosen and this is why we are here
3 today.

4 Ut the bottom line is, you know, naturally my
5 client put it in writing, complained about the fact
6 that Kauderer, Levitt and the Midguard Group sought
7 to use his financial information for purposes of
8 enriching themselves through fraudulent refinancing
9 schemes with the bank, and again as a result it was a
10 summary eviction cross properties.

11 THE COURT: Okay.

12 MR. BRADFORD: Today we're prepared to go
13 forward either evidentiary or non-evidentiary. This
14 has not been set as an evidentiary hearing. We
15 actually think that it would be inappropriate to do
16 so, but we defer to your Honor as a result, but you
17 know one thing is clear, the Plaintiffs and their
18 principals are towing the line of criminality, or at
19 the very least, a real estate broker, such as Mallory
20 Kauderer is violating Florida statutes and rules and
21 regulations regulating the department of Business and
22 Professional Regulation with these sorts of acts.

23 THE COURT: Okay.

24 MR. BRADFORD: And --

25 THE COURT: Hold on, you -- is your motion --

1 you just made the comment that you think it would be
2 inappropriate to go forward. To go forward on what?

3 MR. BRADFORD: To go -- we believe that, and let
4 me be clear, thank you for that. We believe that
5 this case should be dismissed, period. We believe
6 that this is -- there should be a dismissal because
7 this is duplicative of a different action. But to
8 the extent that your Honor was inclined to order any
9 funds to be placed into the court registry today, we
10 believe that should be continued to a later date
11 because we need to understand what the circumstances
12 are in the 5501 action, and we will seek a
13 determination from the judge in this case and
14 counsel, Ms. Zalman, can work with me, you know, we
15 can work together to make sure that the judge knows
16 that we are seeking such a determination as well.
17 And once we get a determination we believe that it's
18 going to be beyond question that the judge is going
19 to determine that the 175 property is a replacement
20 for the office; but if the judge, you know, sort of
21 rules otherwise, well then we can sort of go forward
22 because then this is an appropriate, separate action,
23 even though there is no lease, and even though, you
24 know, my clients are owed 128,000 in services, as
25 well as the 76,000 in renovations which would cover,

1 you know, any amounts potentially due and owing
2 anyway. But it would be most appropriate for that to
3 be Crystal clear or we have duplicative results here
4 to the detriment of my client.

5 THE COURT: Okay.

6 MR. BRADFORD: So that is sort of our position
7 as to the possibilities here, but you know, we are
8 ready really for anything.

9 THE COURT: Okay.

10 MR. BRADFORD: The reality --

11 THE COURT: Okay, at this point let me hear from
12 Ms. Zalman.

13 MR. BRADFORD: Thank you, your Honor.

14 THE COURT: Certainly. Okay.

15 MS. ZALMAN: Okay. Good afternoon. I respect
16 my cocounsel on this case, it has been pending over a
17 year. This is the very first time I've heard this
18 specific argument played out. I'm glad that opposing
19 counsel just filed a copy of the 5501 lease, it's
20 their evidence admission 1, because that is a
21 different case, and if we're, you know, telling a
22 story, this is a story for separate evictions for a
23 failing tenant and this one has nothing to do with
24 the related -- unrelated properties.

25 We are talking about other evictions that are

1 happening down the street, across the street, and
2 several buildings away, different property. The
3 lease that opposing counsel filed just about half an
4 hour ago shows there is a 5501 lease. There is no
5 mention of 175 in there. This issue of a very, small
6 condemned property on the back of the lot which is,
7 I'm not going to testify for my client, was to --
8 Defendant chose to tear down, it was always a
9 condemned, smaller property and they wanted more
10 courtyard space. Unrelated, separate entities,
11 separate actions. If this was a shopping center, one
12 eviction happening at address number one has nothing
13 to do with an eviction happening at address number
14 four.

15 The other three evictions have bound-commercial
16 leases because they are larger properties. One is a
17 nightclub, et. cetera, but none of three mention this
18 property across the street, 175, which is a separate
19 commercial lease. And honestly, if I refer this back
20 to just Florida statutes, first of all under Chapter
21 83, there is no requirement that a lease between
22 landlord and tenant has to be in writing. They can
23 have a verbal tenancy, and I can refer your Honor to
24 that portion. And pursuant to 83.232, if we are
25 talking about determining rent, a determination of

1 rent is only supposed to be limited under subsection
2 2, to two factors. Factor one, is if the tenant has
3 been properly credited for any payments made. And in
4 subsection 2, which is little B, is what properly
5 constitutes rent between the agreement between the
6 parties.

7 The 83.232 goes on that if the Defendant has
8 filed counter-claims, and here they're arguing other
9 claims, other actions, that in no way waives a
10 tenant's requirement to put rent into the registry to
11 preserve those defenses and go forward. This again
12 has been pending for over a year and we vehemently
13 disagree that there is a relation between these
14 properties.

15 THE COURT: Ms. Zalman, let me ask you this,
16 because I'm looking at the complaint here, and I see
17 here it says, they entered into a month-to-month
18 tenancy.

19 MS. ZALMAN: Yes.

20 THE COURT: What is the terms of the tenancy?

21 MS. ZALMAN: So back in April 2019, Mr. Dale and
22 the office company used this and they originally
23 agreed to make repairs and upgrades instead of paying
24 what would be less than market rental rate. So that
25 was the agreement, and then once those were

1 completed, they would still get to continue to pay
2 less than market rental rate. And I believe, and I
3 have my client here to testify, that was supposed to
4 last about year and a half of repairs and upgrades
5 and then the discounted rate would continue
6 month-to-month. And what has occurred here is, they
7 did commence, there is no -- there is no disagreement
8 here that Mr. Dale did commence with repairs and
9 upgrades, which is fantastic, but at some point
10 ceased. And upon requesting for any receipts, any
11 invoices which still haven't been filed today, they're
12 stating over 70,000 were done, we don't even have one
13 contractor agreement, one proof of anything. So the
14 question is, how long do you think you are going to
15 stay? What's really hard is, we have for evictions
16 pending because they've just failed, these are failed
17 businesses, and my client who has mortgages on all of
18 them is suffering. We haven't had rental income on
19 any of them for a long time.

20 And the second --

21 THE COURT: Well, wait a minute, for the 5501
22 property, there is no rent being paid?

23 MS. ZALMAN: There is no rent being paid, and in
24 fact the second mortgage for my client, who is also
25 here today, is in default. The landlord is really

1 facing a hardship of losing these properties and they
2 have been -- these cases have been pending for a long
3 time. They got stuck in the system. You know, it
4 was hard to get evidentiary hearings or even extended
5 hearings. The courts are bogged down, I do not have
6 to tell you, and we are here today and to keep
7 extending this out, my client could face foreclosure.

8 The fact is, and my question is to the
9 Defendant, what date does he feel that he has to
10 vacate? But there is no end in sight.

11 THE COURT: Okay.

12 MS. ZALMAN: We have terminated the
13 month-to-month, we sent a letter and he still has not
14 provided possession or any proof or invoices of what
15 has been spent on this property. I don't have one
16 invoice.

17 THE COURT: And so, just to make sure, I know
18 you said April 19th of 2019, that is when this
19 repair/upgrade agreement --

20 MS. ZALMAN: Yes, and he definitely did start.

21 THE COURT: Okay, so April of 2019, no rent has
22 been paid since then?

23 MS. ZALMAN: No. He was getting a
24 month-to-month credit at below-market rental rate of
25 3,000 per month and the credit stops at about 45,000

1 when my client repeatedly asked, can you show us the
2 status of any permits pulled, any repairs, and
3 nothing was provided. So then they said, we are
4 going to switch back to the 3,000 a month. The
5 market rental rate is about 5,500, he didn't pay that
6 either and they said, we are going to terminate the
7 month-to-month because nothing is happening on this
8 property and we are financially suffering here.

9 THE COURT: Okay, all right. I get it. I get
10 what you are saying, both sides. So what I'm going
11 to do now, I'm going to go back to Mr. Bradford, and
12 I believe you want to put on evidence as far as your
13 position? Because right now I just realized I'm
14 letting the attorneys talk, but you can put on
15 whatever testimony or evidence you want the Court to
16 consider.

17 MR. BRADFORD: Okay, just a couple quick
18 responses to what Counsel just mentioned. Again,
19 first of all, she is laying out the standard for the
20 Statute 83.232 as if to say her motion is at issue
21 today, it's not. We are here on our motion to
22 dismiss, just to be crystal clear.

23 THE COURT: Well, I think that we have to be
24 clear, we are here on a motion to determine rent.
25 And I know that it says in the alternative, a motion

1 to dismiss. But remember, to dismiss I can only look
2 at the four corners of the A form and would have to
3 say that this case has to be dismissed. And if I
4 look at just the four corners of the A form, I can't
5 consider anything else. So all this other stuff you
6 are talking about would not be considered. So I do
7 not think that the Court would be in a position to
8 dismiss at this point.

9 MR. BRADFORD: And that is fair, your Honor --

10 THE COURT: Okay.

11 MR. BRADFORD: We appreciate that.

12 THE COURT: Okay.

13 MR. BRADFORD: And just for clarity, you know,
14 ours is a motion to determine rent to be zero, so
15 it's sort of, you know --

16 THE COURT: Okay.

17 MR. BRADFORD: -- essentially a motion to
18 dismiss. But with that in mind, and I appreciate
19 that, your Honor, Counsel just suggested that
20 immediately upon beginning the repairs to this
21 completely dilapidated, uninhabitable, no water, no
22 electricity, no plumbing space that rent was supposed
23 to have been paid, and that my client received some
24 reduced amount as to the rent, and that my client
25 actually agreed to that --

1 THE COURT: Well, Mr. Bradford --

2 MR. BRADFORD: Yeah --

3 THE COURT: And I don't mean to cut you off, but
4 the only reason I say it here is now I'm going back
5 and forth. I let Ms. Zalman speak because I gave you
6 an opportunity to speak. Right now you are making
7 arguments that is not in evidence yet. So that is
8 why I am saying we can let the witnesses testify so
9 then you can argue based off the evidence that is
10 before the Court.

11 MR. BRADFORD: Okay, and that is certainly
12 understood. I did just want to make sure that --
13 well, I'll just let my client testify to it.

14 THE COURT: Right.

15 MR. BRADFORD: Okay. So at the moment we will
16 call Franklin Dale.

17 THE COURT: Okay, so Mr. Dale, would you raise
18 your right hand?

19 THE WITNESS: (Witness complies.)

20 THE COURT: Do you swear or affirm that the
21 testimony you are about to give will be the truth,
22 the whole truth, and nothing but the truth so help
23 you God? You are muted, sir.

24 THE WITNESS: Yes, I do.

25 THE COURT: Okay, you may proceed.

1 MR. BRADFORD: Thank you.

2 Thereupon,

3 FRANKLIN DALE,

4 was duly sworn and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BRADFORD:

7 Q. Good afternoon, Mr. Dale.

8 A. Good afternoon.

9 Q. So are you -- you are familiar that you have
10 been listed as a defendant in this case, which is styled
11 175 Northeast 55th Street, LLC versus District Live
12 Agency, LLC, and yourself, correct?

13 A. That is correct.

14 Q. And you also in my open I made reference to a
15 different case styled 5501 Northeast Second Avenue, LLC.
16 versus District Live Agency and the counterclaims there
17 which is District Live Agency and the Beverage Group
18 versus 5501 Northeast Second Avenue, LLC., and Little
19 Haiti Development Partners. Can you tell the Court what
20 the nature of that action is, and specifically which
21 properties it involves?

22 A. The action at 5501, is that correct?

23 Q. Yes?

24 A. It involves 215 Northeast 55th Street as well.

25 Q. Okay, but could you tell the Court all of the

1 properties that are involved in that litigation?

2 A. It's 5501, 215 and 175, 55.

3 Q. Okay, so can you explain to the Court -- this is
4 a simple, direct question. What is 5501 Northeast Second
5 Avenue?

6 A. Churchill's Pub.

7 Q. Okay. And what is, or what was I should say 215
8 Northeast 55th Street?

9 A. That was the office, the working office for
10 Churchill's Pub.

11 Q. Okay. Can you pull up Exhibit 2?

12 MR. BRADFORD: Your Honor, I am going to have my
13 associate share her screen for purposes of
14 introducing a document into evidence that is relevant
15 to this portion of my client's testimony. If that is
16 okay with your Honor?

17 THE COURT: That's fine. It's showing.

18 BY MR. BRADFORD:

19 Q. Okay. I am showing you, Mr. Dale, what has been
20 pre marked as defendant's Exhibit 2. Are you familiar
21 with this document?

22 A. Yes, I am.

23 Q. How are you familiar with this document?

24 A. I discovered this document while going through
25 the history of the unsafe structure located at 5501

1 Northeast Second Avenue. What I found is this is a notice
2 of unsafe structure that was actually delivered in 2018,
3 prior to me leasing the property. So they didn't share
4 the unsafe structure that our staff worked out of daily,
5 our promoters our guests came into daily, they were
6 notified of this property being an unsafe structure in
7 2018 and never notified us of the building being unsafe.

8 Q. Did you sign a lease at 5501 Northeast Second
9 Avenue and this place 215 Northeast 55th Street on or
10 about April of 2019?

11 A. Yes, I did.

12 Q. And as a part of that lease, or included in that
13 lease were you able to occupy and utilize both the pub
14 space and the adjacent office?

15 A. We did occupy it, but in July of 2019 we were
16 served with a notice of unsafe structure from the City of
17 Miami. I then became aware that the property was unsafe
18 and, you know, I was quite upset about it for the fact
19 that we were also paying rent on an unsafe structure.

20 Q. Okay, so at the time that you signed the lease,
21 is it your testimony today here, sir, that you had not
22 been provided any notice as to the unsafeness of the
23 building, which is addressed at 215 Northeast 55th Street?

24 A. I was not aware of the condition of the
25 property.

1 Q. Would you have entered into this lease under
2 these terms had you known the unsafeness of this
3 structure?

4 A. I would not. And it's worth noting, your Honor,
5 they also failed to complete the 40-50 year
6 recertification, not just for that unsafe structure, but
7 also for the entirety of the property that I leased. And
8 when I notified them that I got this, you know unsafe
9 structure, that is when they decided to start taking
10 action in doing the 40-50 year recertification.

11 MS. ZALMAN: Your honor, for a moment I'm just
12 going to object. I don't understand the relevance to
13 this line of questioning for this.

14 THE COURT: Sustained. You can go to your next
15 question.

16 MR. BRADFORD: Okay, but I guess before we do
17 that, your Honor, we would like to move what was
18 premarked as Defense Exhibit 2 into evidence, and it
19 can be our Exhibit 1.

20 MR. VELEZ: Seems like hearsay. I'm sorry, your
21 Honor.

22 THE COURT: All right, is there any objection?

23 MR. VELEZ: Yes, hearsay.

24 THE COURT: Mr. Bradford?

25 MR. BRADFORD: This is a business record, your

1 Honor, relative to the business is the subject of
2 this action.

3 MR. VELEZ: That is a document issued by the
4 City of Miami, not his business record. So that is
5 not -- that does not qualify under the business
6 record exception to the hearsay rule.

7 THE COURT: So I'm going to sustain the
8 objection. He's testified to the document, so the
9 information is there.

10 MR. BRADFORD: Okay. No problem, your Honor.
11 Can you pull up our Number 3?

12 BY MR. BRADFORD:

13 Q. Okay, I am showing you what we had premarked as
14 Exhibit 3. Mr. Dale, do you -- you have made mention of
15 July 2019 receiving notice of an unsafe structure, do you
16 recognize this document to be that notice that you
17 referenced?

18 A. Yes, it is.

19 Q. Okay. And this document also reflects the need
20 for the 40-50 year recertification that you just mentioned
21 as well, right?

22 A. That is correct.

23 Q. Okay, so what happened after you received this
24 notice in July of 2019 concerning this unsafe structure?

25 MR. VELEZ: Your Honor, I must object to the

1 form of the question it, it doesn't say it's an
2 unsafe structure. Besides, the document is not in
3 evidence, so he is not able to ask questions from it.

4 THE COURT: I think, Mr. Velez, I believe if I
5 remember the last question, it was after receiving
6 this document what happened next?

7 MR. VELEZ: That is about all he can testify to.

8 THE COURT: Right.

9 MR. BRADFORD: That's all we're asking.

10 MR. VELEZ: But his characterization saying that
11 the building is unsafe, that's Counsel's words, that
12 is not actually what the document says.

13 MR. BRADFORD: It's beyond question that the
14 building is unsafe.

15 THE COURT: Well, I'm going to sustain --
16 listen, I just need you all to stick with the facts
17 of the case here, okay. The question is, for Mr.
18 Dale, after you received this notice, what happened
19 next? Let's go from there.

20 THE WITNESS: Understood. I notified the owner,
21 Mallory Kauderer. Mallory Kauderer too
22 responsibility -- can you hear me? Am I muted?

23 THE COURT: I can hear you.

24 THE WITNESS: Okay. Mallory Kauderer took
25 responsibility for the failure of the 40-50 year

1 inspection, and then requested that the 40-50
2 inspection happen at the location.

3 THE COURT: Any other questions for him?

4 MR. BRADFORD: Yes.

5 BY MR. BRADFORD:

6 Q. So once that happened, Mr. Dale, what was the
7 decision as far as remedying the office space that was a
8 part of the lease?

9 A. Well, we decided to move to 175 Northeast 55th
10 Street to have that location substitute the condemned
11 building, the unsafe structure as we continued to pay rent
12 full use of the property at 5501.

13 Q. Did you ever enter into any tenancy agreement
14 with the Plaintiff in regards to the property at 175
15 Northeast 55th street?

16 A. No we did not.

17 Q. Was there -- Strike that.

18 Did you understand that you were paying rent,
19 vis-a-vis the lease, at 5501?

20 A. Yes, I did.

21 MR. VELEZ: Objection. His mental impression is
22 immaterial, that is what he's being asked.

23 THE COURT: Okay.

24 MR. VELEZ: And I move to strike it.

25 THE COURT: Re-ask the question, Mr. Bradford,

1 so I can hear.

2 MR. BRADFORD: I'm curious. We are here in
3 county court, so I'm not certain that the rules of
4 evidence apply, nor did we stipulate to such just to
5 be crystal clear.

6 THE COURT: Wait, wait, excuse me? The rules of
7 evidence apply in county court.

8 MR. BRADFORD: Okay, I apologize. But, in any
9 event, I will rephrase the question.

10 THE COURT: Do you still need screen share?

11 MR. BRADFORD: No, you can take this down.

12 THE COURT: Okay, thank you.

13 MR. BRADFORD: We will have other documents to
14 put up in a bit.

15 THE COURT: Okay.

16 BY MR. BRADFORD:

17 Q. But in any event, what was the agreement between
18 yourself and the landlord with respect to your moving from
19 the building that had been noticed as condemned to 175?

20 MR. VELEZ: I object to the form of that
21 question. There is no condemnation notice. This is
22 improper of Counsel using that terminology.

23 THE COURT: We'll strike the condemnation notice
24 and just ask the question, please.

25

1 BY MR. BRADFORD:

2 Q. What was the agreement between the parties when
3 you moved from 215 Northeast 55th Street to 175?

4 A. The agreement was 175 would be replacing the
5 office under the lease of 5501 Northeast Second Avenue.

6 Q. And what did that mean in regards to any rent
7 that you might pay with respect to 175 Northeast 55th
8 Street?

9 A. We were already paying rent at 175 through the
10 Churchill's pub lease. We continued with the full rent
11 payment, not a reduced rent for the condemned -- or,
12 excuse, sorry about that, for the office area.

13 Q. Okay. Now, Counsel made reference earlier to
14 some renovations that were made to 175, can you speak to
15 those renovations that you made? Absolutely. You know
16 the property was, it was uninhabitable. It was, you know,
17 floor to ceiling trash and dog feces on the walls, no
18 running water, no electricity, no plumbing, no doors, no
19 copper, nothing. Absolutely nothing. But the building
20 was, you know, being squatted in by a vagrant and, you
21 know, we undertook making improvements in order to even be
22 able to office out of there. So when we agreed to come
23 over here, our landlord said they had an infestation of
24 termites and they were going to tent to building. They
25 said that they would put air-conditioners into the

1 building in order for us to make the transition, but when
2 the time came, they welshed on me and they didn't do
3 anything. They didn't put one dollar, not one dollar in
4 improvements into making this a capable space to
5 substitute for our office at Churchill's.

6 THE COURT: Okay, if I could. I want to make
7 sure I get what I need. Mr. Dale, when you moved to
8 the 175, you said you continued to pay rent for the
9 pub which included the office that you were paying
10 rent for; is that correct?

11 THE WITNESS: That is correct.

12 THE COURT: Okay. All right, go ahead.

13 MR. BRADFORD: I'm going to -- we are going to
14 share our screen. I'm sorry bear with us, it's
15 loading at the moment.

16 BY MR. BRADFORD:

17 Q. I'll show you premarked as Defense Exhibit 4.
18 Mr. Dale, are you familiar with the pictures that are
19 being scrolled on the screen right now?

20 A. Yes, I am.

21 Q. And how are you familiar with these pictures?

22 A. I took the pictures.

23 Q. Okay. And are these picture that you took of
24 the property which is the subject of this action here
25 today, 175 Northeast 55th Street, LLC.?

1 A. I'm sorry, can you repeat it? I was focused on
2 the pictures.

3 Q. Are these -- do these pictures fairly and
4 accurately depict the property that is subject of this
5 action at 175 Northeast 55th Street?

6 A. They do.

7 Q. When were these pictures taken?

8 A. Approximately, between -- I want to say June and
9 July of 2019.

10 Q. Between June and July of 2019?

11 A. Yeah, it was -- you know, there is some ongoing
12 photos as we got area by area. You know, we started with
13 having to rent, you know, large dumpsters. You know, we
14 spent a lot of money and a lot of labor just trying to
15 clear their property, just trying to clean the property,
16 just trying to disinfect the property how bad and where it
17 was with leaking water through the ceilings. I mean, we
18 have some videos that I didn't have -- you know, I don't
19 know that I've uploaded to show all the water leaks coming
20 from the second floor into the first floor. All stuff
21 that, you know, the landlords are well aware of.

22 THE COURT: If I could ask, Mr. Bradford, from
23 what was stated prior to his testimony I didn't think
24 that there was any dispute that Mr. Dale had made
25 improvements to the property and that he was supposed

1 to be given credit for the improvements that were
2 made, am I wrong?

3 MR. BRADFORD: I can't speak to the positions
4 that my opposition takes here --

5 THE COURT: Well, hold on, Ms. Zalman, am I
6 correct?

7 MS. ZALMAN: Correct.

8 THE COURT: Okay.

9 MS. ZALMAN: We stipulate and agree and do not
10 object to the fact that Mr. Dale has made
11 improvements and repairs to the premises and credits
12 were provided.

13 MR. BRADFORD: But the purpose of this, your
14 Honor -- I'm sorry.

15 THE COURT: Go ahead.

16 MR. BRADFORD: The purpose of this, your Honor,
17 is to reflect the condition when he first began
18 making the repairs. Counsel has made the argument
19 that rent, a separate amount of rent was somehow
20 immediately due and owing despite the fact that the
21 building's condition is completely dilapidated and
22 uninhabitable. And this is being put into evidence,
23 your Honor --

24 THE COURT: No, but I thought Counsel said --
25 Ms. Zalman, correct me if I'm wrong, let me go back,

1 was that when he moved in, in April of 2019, there
2 was the agreement that he would be credited, it was
3 at a below-market rate for the work that he was doing
4 at the 175 location?

5 MS. ZALMAN: Yes, your Honor, for about a
6 year-and-a-half's time.

7 THE COURT: Right, for a year-and-a-half's time.

8 MR. BRADFORD: Right, but the point, your Honor,
9 is that they cannot -- it is beyond reason to be
10 assessing rent. My clients would not have agreed to
11 the assessment of rent to be paid on something that
12 is uninhabitable. He was then at that point paying
13 rent to repair the Plaintiff's property. That
14 doesn't make any sense. My client was not paying any
15 rent simply for the privilege to repair property that
16 he didn't own. That's their argument, and that is
17 what I want to make clear, and that is what these
18 pictures are being put up to reflect, your Honor.

19 MS. ZALMAN: Your Honor, I think that if the
20 testimony that will be provided is that the tenant
21 took possession a little bit before April 2019,
22 before the ledger started accruing. So they actually
23 were provided keys, which is standard in commercial
24 properties, to start repairing even before. And I
25 don't have the exact date he was handed the keys, but

1 we can ask, you know, on testimony about that.

2 MR. BRADFORD: Well, for starters, your Honor,
3 we would like to move to enter what has been
4 premarked as Defense Exhibit 4 into evidence.

5 THE COURT: Okay, is there any objection to the
6 pictures?

7 MS. ZALMAN: No, your Honor.

8 THE COURT: Okay, the pictures will be admitted
9 without any objection. So this will be Defendant's
10 Composite 1.

11 MR. BRADFORD: Thank you, your Honor.

12 (Thereupon, the exhibit was entered into
13 evidence.)

14 BY MR. BRADFORD:

15 Q. Mr. Dale, we've just scrolled through pictures
16 that have been entered as Defense Composite Exhibit 1, can
17 you let us know -- can you let the Court know whether or
18 not at the time that you received the keys, whatever date
19 that was, if that was pursuant to a separate leasing
20 agreement that had ever been agreed upon by the parties.

21 A. Can you repeat the question, Omar?

22 Q. Sure. Was there a separate lease agreement that
23 was agreed to for purpose of you beginning to have the
24 keys --

25 A. No.

1 Q. -- at this location?

2 A. No, there was not.

3 Q. Can you repeat that, your answer?

4 A. No, there was not. There was no separate
5 agreement.

6 Q. Why was there not a separate agreement? Because
7 Counsel is arguing that you had the keys and under
8 standard commercial real estate practice that once you
9 have the keys you, by definition, should have started
10 paying rent; isn't that right?

11 A. I was already paying rent at Churchill's pub for
12 the office.

13 Q. And therefore, what did -- when you were given
14 the keys for what purpose were you giving these keys?

15 A. Well, I agreed to help clean up the property
16 first off because of the condition that it was in and our
17 need to have an office space for business. We had a
18 larger strategy for growth of the area, we needed an
19 office area so I knew it could substitute for the
20 structure that we were in with the violation until we
21 remedied that, and then we could figure out what we were
22 going to do as far as a lease regarding 175 if we chose to
23 write a lease at 175. But we first had to remedy our
24 office situation which we were paying our full rent on.

25 Q. We are going to share the screen to reflect some

1 additional pictures. I am showing what we have marked for
2 identification as Defense Exhibit 5, are you familiar with
3 these pictures?

4 A. Yes, I am.

5 Q. And how are you familiar with these pictures?

6 A. I took the pictures.

7 Q. What are these pictures of?

8 A. Pictures of the office. Pictures of, you know,
9 the full renovation, exterior, interior.

10 Q. When were these pictures taken?

11 A. Over the course of 2019 into 2020.

12 Q. Is this what the office looks like today?

13 A. Yes, it is. You'll notice plumbing, from
14 toilets, to doors, to air conditioning units, to drywall,
15 you know, absolutely everything needed for the renovation.

16 Q. And these pictures fairly and accurately depict
17 that, right?

18 A. Yes, sir.

19 MR. BRADFORD: Your Honor, we would like to move
20 what was pre marked as Defense Exhibit 5 into
21 evidence as Defense Composite Exhibit 2.

22 THE COURT: Any objection?

23 MS. ZALMAN: No, your Honor.

24 THE COURT: Okay, so this will be admitted as
25 Defense Number 2.

1 (Thereupon, the exhibit was moved into
2 evidence.)

3 BY MR. BRADFORD:

4 Q. Mr. Dale, how much did you and your partners
5 expend for purposes of taking us from the pictures in
6 Defense Composite Exhibit 1 to the pictures in Defense
7 Composite Exhibit 2?

8 A. Approximately \$76,000.

9 Q. And how are you -- how do you know that that is
10 fair and accurate amount of what you have expended?

11 A. Because of our ledger.

12 Q. Okay. Have you provided your ledger reflecting
13 that amount to Mallory Kauderer and/or Danita Levitt?

14 A. I have not.

15 Q. Okay, have you made them aware that the amount
16 that you guys spent in these renovations is \$76,000?

17 A. Oh, I have.

18 Q. And how did you make them aware of that?

19 A. I submitted an affidavit with my ledger. I
20 believe it was part of the memo of understanding as well.
21 When I looked to, you know, try to come to the resolution
22 with these guys.

23 Q. Okay, let's back up. You mentioned a memo of
24 understanding; what is that?

25 A. That is correct. After, you know, finding out

1 that Mallory had absconded the A funds and we had, you
2 know, some very contentious conversations where he
3 actually demanded my financial records of not only 175 but
4 5524 Northeast Second Avenue, 5528 Northeast second
5 Avenue, and 5501 Northeast Second Avenue, so he demand the
6 four properties that I had that I provide him all of my
7 financial records from improvements, for my concept,
8 renderings of my concepts, my pro forma budget; he
9 demanded all of that. And he stated that the purpose of
10 it was for him to refinance the package portfolio of all
11 the properties to the banks and represent my improvements
12 as his own and to be credited into his opportunities own
13 fund program.

14 Q. Did you believe that he had admitted to you that
15 he was seeking to enrich himself based on your documents?

16 MR. VELEZ: Object to the form.

17 MS. ZALMAN: Objection.

18 THE COURT: Sustained.

19 MR. BRADFORD: I'll restate the question.

20 BY MR. BRADFORD:

21 Q. What did you believe that to mean after Mr.
22 Bauderer told you that?

23 MR. VELEZ: Objection. His state of mind is
24 immaterial for purposes of this hearing.

25 THE COURT: Sustained.

1 MR. BRADFORD: All right. I'll move on from
2 that.

3 BY MR. BRADFORD:

4 Q. But in any event -- so he let you know that he
5 was using this for purposes of refinancing, correct?

6 MR. VELEZ: Objection. Your Honor, this is the
7 same question. I object as being repetitious.

8 THE COURT: Okay. All right. Overruled. Mr.
9 Bradford ask the next question.

10 BY MR. BRADFORD:

11 Q. What else was -- well, you just mentioned an
12 affidavit and a ledger, what in what court was the
13 affidavit and ledger laying out the expenses related to
14 this property, in what court was that affidavit filed?

15 A. That was submitted for 5501 Northeast second
16 Avenue.

17 Q. Right. Why did you file an affidavit and a
18 ledger reflecting the work at 175 Northeast 55th Street in
19 the 5501 litigation?

20 MR. VELEZ: Your Honor, we are going -- this is
21 -- I object. We are going far beyond the scope of
22 this hearing. This is all irrelevant.

23 MR. BRADFORD: That's not.

24 MR. VELEZ: He's trying to try his case. We are
25 not here to try the case, we are here to try the

1 issue of rent.

2 THE COURT: Overruled. I'll let him answer this
3 question.

4 MR. BRADFORD: Omar, could you repeat the
5 question? I'm sorry.

6 BY MR. BRADFORD:

7 Q. Why did you file your affidavit and ledger that
8 reflects what you spent on the renovation at 175, why did
9 you file that in the 5501 action?

10 A. Because the improvements at 175 were reflective
11 of our office which was part of the lease at 5501.
12 They're hand-in-hand.

13 Q. What else did you address in your memo of
14 understanding that you just referenced that was served on
15 Mr. Bauderer?

16 MR. VELEZ: Objection. The best evidence of
17 that is the so-called memo of understanding. Now
18 we're going far outfield.

19 THE COURT: I'm sorry, what was the question,
20 Mr. Bradford?

21 MR. BRADFORD: Mr. Dale had made reference to a
22 memo of understanding, and he had explained some of
23 which was contained in that --

24 THE COURT: Right, I want to --

25 MR. BRADFORD: -- I was just asking for the

1 remainder.

2 THE COURT: Okay, the question is what else was
3 in the memo?

4 MR. VELEZ: Testifying from a document not in
5 evidence.

6 MR. BRADFORD: Okay, well then we will come back
7 to that.

8 THE COURT: Wait, wait. Isn't this a statement
9 he gave, Mr Dale? You're talking about a statement
10 he gave?

11 MR. BRADFORD: That is correct, your Honor.

12 THE COURT: Okay. Go ahead. I'll overrule and
13 allow you to ask the question.

14 THE WITNESS: The memorandum of understanding
15 laid out numerous things, your Honor. First,
16 rendition of all the properties that I leased from
17 the landlord, you know. We also have a property
18 under lease at 5528 Northeast Second Avenue that is
19 adjacent to 175.

20 THE COURT: Anything else about the 175
21 property?

22 THE WITNESS: Yeah, we asked for improvements to
23 be made to be brought up to code so that we could
24 have the office operational. So we made a lot of
25 renovations to the property, but a lot of renovations

1 are still needed. Right now bathrooms don't work,
2 electricity doesn't work in areas of the building --

3 THE COURT: Mr. Dale, Mr. Dale, let me ask this
4 because, okay, you said you moved into this property
5 because the other one was -- because of the notice
6 you got from the City of Miami in the other one; so
7 by moving into this one, you made renovations, but
8 there is no agreement about you making these
9 renovations; is that correct? That is what I thought
10 you said.

11 THE WITNESS: No, we had an agreement. Our
12 agreement was that we would make renovations and we
13 would be provided with rent credits.

14 THE COURT: And when I asked that about 20
15 minutes ago and I was told, no, that was not what
16 happened, it was that you were paying rent through
17 the pub. So then there was no explanation of
18 anything at this property --

19 THE WITNESS: Future, you Honor, future rent
20 credits.

21 THE COURT: At what point was this agreement
22 made?

23 THE WITNESS: Well, this went hand-in-hand with
24 my agreement with the landlord that any of my
25 services that were provided would either be paid in

1 full, the balance paid in full, or I would see
2 prepaid rent credits. Otherwise, I would not have
3 entered into the rental agreements.

4 THE COURT: When was this agreement made?

5 THE WITNESS: I would say after July when we had
6 the initial conversations in 2019.

7 THE COURT: In July of 2019, that is when the
8 agreement was raised that the renovations you did
9 would be used for -- either you would be paid the
10 amount for the work you did, or you would get future
11 rental credits?

12 THE WITNESS: That is correct.

13 THE COURT: Okay, any other questions for him?
14 Oh, you're muted Mr. Bradford.

15 MR. BRADFORD: I apologize.

16 BY MR. BRADFORD:

17 Q. So you made the agreement at that time that you
18 would receive rent credits; for what property was it
19 contemplated that you would receive these rent credits
20 for?

21 A. 175 Northeast 55th Street, or any of the
22 properties, 5524, 5528, or 5501.

23 Q. Okay.

24 A. We had an outstanding balance, a ledger of
25 dollars owed to me that I could utilize across properties

1 in prepaid rent credit, your Honor.

2 MR. BRADFORD: Okay. And when you say, 175
3 Northeast 55th Street, again just for clarity, what
4 lease governs that property?

5 A. 5501 Northeast Second Avenue and District Live
6 Agency.

7 MR. BRADFORD: Okay. No for the questions for
8 now, your Honor.

9 THE COURT: Thank you. Any questions for Mr.
10 Dale from the Plaintiff?

11 MS. ZALMAN: Yes, your Honor.

12 CROSS-EXAMINATION

13 BY MS. ZALMAN:

14 Q. Mr. Dale, do you currently have possession of
15 the premises?

16 A. That is correct.

17 Q. What is your understanding of when this tenancy
18 agreement is to end for the 175 premises?

19 A. We have the anticipation that we would look at
20 175 lease separately of the 5501 lease when the building
21 was renovated at Churchill's pub at 5501. So, you know,
22 honestly you know, we should have never gotten derailed --

23 THE COURT: Mr. Dale, I understand your
24 frustration with having to move properties, but I
25 just need to know -- answer the question so we can

1 move on, please.

2 THE WITNESS: I'm doing my best. Can you repeat
3 the question?

4 BY MS. ZALMAN:

5 Q. What date do you feel is the termination date
6 for the premises, for your possession of the premises?

7 A. We -- we're trying -- we -- my expectation was
8 that it was synchronized with the 5501 lease, which was
9 synchronized with the 5524 and the 5528 leases to have a
10 global synchronized lease for all properties for years,
11 ten years from now.

12 Q. You mentioned 5524 and 5528 leases, have those
13 leases not expired?

14 A. Well, we are currently in litigation regarding
15 those leases.

16 Q. But the terms of the date on those leases, have
17 they not already expired a few months ago?

18 A. Yeah, they've expired now.

19 Q. What date do you intend on vacating the 175
20 premises?

21 A. Say that again?

22 Q. What date do you intend on vacating or turning
23 possession over, back over for the 175 premises to the
24 landlord?

25 A. At the completion of the 5501 Northeast Second

1 Avenue, LLC. lease.

2 MS. ZALMAN: Mr. Bradford, I know you filed
3 Defendant's Exhibit Number 1, can I ask you kindly if
4 you can share the screen to that since it's your
5 filing connected to the PDF we were just using.

6 MR. BRADFORD: Sure, no problem.

7 MS. ZALMAN: Can we just go to Page 2? Thank
8 you so much. Up one page to the face page, thank
9 you.

10 BY MS. ZALMAN:

11 Q. Mr. Dale, do you recognize this agreement?

12 A. Yes, I do.

13 Q. Is this the lease agreement to 5501 you have
14 been referring to?

15 A. Yes, it is.

16 Q. To your knowledge, based on this, is the 175
17 premises listed anywhere in disagreement?

18 A. No, it's not.

19 Q. I'm going to refer you to section 29 of this
20 exhibit. Section 29 Amendment of Lease, can you take a
21 moment and review that section?

22 A. Okay.

23 Q. What does this section mean to you?

24 A. That the lease may not be altered.

25 Q. And does it continue by, "except by an

1 instrument in writing signed by the parties", is that your
2 understanding?

3 A. Mm-hmm.

4 MS. ZALMAN: I would like to admit Defendant's
5 Exhibit 1 into evidence?

6 THE COURT: Is there any --

7 (Thereupon, the exhibit was moved into
8 evidence.)

9 BY MS. ZALMAN:

10 Q. Mr. Dale, is there anything in writing that
11 connects 175 to this lease?

12 A. We had expressed written consent?

13 Q. And where is that document?

14 A. We have, you know, a series of, you know, I
15 would say, I mean it was verbal. I meant express verbal,
16 not expressed written. I apologize.

17 Q. Understood. You testified that you spent over
18 76,000 in repairs for the premises at 175?

19 A. That is correct.

20 Q. My question to you is, why not in this case or
21 any case have you filed any documentation with receipts or
22 invoices for moneys spent for 175?

23 A. Well, we could have. We were never requested
24 to, except under the demand to provide my financial
25 documents for the purpose of refinancing for Mr. Kauderer.

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Q. So --

A. To represent our improvements, our businesses spend as his own for applications to the banks, and I refused to do it.

Q. Have you hired licensed contractors to make these improvements to the premise?

A. We did not do any improvements that required permitting.

Q. Do you have contract with any contractor regarding how much work you paid out to do work at 175?

A. No, I do not.

Q. Okay, so just to follow up on your other answer, you did not need to pull any permits or work with the City on your repairs for the 175 premises?

A. Correct.

Q. And following up on my prior question, you did not provide me a specific date when you intend on vacating. Can you provide a date when you intend on giving up possession of the 175 premises?

A. We never intended on -- we intend on all of our leases to be synchronized and us to be leaving all of the properties at the exact same time. That is what was always promised to us. That's what we always agreed upon that we entered into multiple leases and made improvements

1 to multiple properties all based on a ten-year plan and
2 put together our financial forecast and our ROI schedule.
3 And the entire time this property of 175 Northeast 55th
4 Street was considered in those plans to always be
5 synchronized, you know, for I think it was nine years,
6 nine-year term when we entered into Churchill's.

7 Q. So do you think its fair to remain at the
8 premises indefinitely, or without paying rent?

9 A. Certainly not. I believe that we should not
10 have been retaliated against. I don't think we should
11 have been stopped from making progress on any of the
12 properties. But your client's actions from the SBA funds,
13 to demands of my financials, to not repairing, you know,
14 roofs on 5528 and instructing the real landlord there, the
15 real owner of the property not to improve our roof at that
16 property. So their actions have changed what our future
17 looks like, and what my expectation of ending the lease
18 is.

19 Q. You ever -- earlier in your testimony you
20 indicated at 175 you were seeking landlord to also make
21 repairs, have you ever sent a 7-day notice to cure or
22 other notice to cure to landlord for the 175 premises?

23 A. We sent a memo of understanding.

24 Q. Do you have a copy of that with you?

25 A. I don't believe we put it into exhibits, but

1 it's --

2 Q. Approximately -- when what is the memo of
3 understanding issued?

4 A. I believe August of 2020.

5 Q. Do you currently use the premises as your office
6 space for --

7 A. Churchill's? Yes, we do.

8 Q. District Live Agency?

9 A. District Live Agency is the parent company of
10 Churchill's

11 Q. Do you currently use the office space at the 175
12 premises for the District Live Agency?

13 A. We -- it's co-utilized. It's the same ownership
14 for Churchill's Pub and District Live Agency.

15 Q. Are you there on a daily basis?

16 A. Yes, I'd say I come here on a daily basis, yes.

17 MS. ZALMAN: Mr. Velez, did you have anything?

18 MR. VELEZ: No. No, I don't.

19 BY MS. ZALMAN:

20 Q. Okay, so in conclusion my final question is,
21 have you paid out of pocket any rents for the 175 premises
22 in the year 2021?

23 A. Have I paid any money out of pocket since 2021?

24 Q. For the 175 premises?

25 A. No, we've still been acting as if it's operating

1 under the 5501 Northeast Second Avenue lease.

2 Q. And again, you have nothing in writing
3 connecting those two properties? I apologize, I did say
4 that was the last question, but I thought of one more.
5 Was it your idea to demolish this side building, the
6 condemned building on the 5501 property?

7 A. Was it my idea to demolish -- was it my idea to
8 remedy the unsafe structure? Yes, you're correct about
9 that. I stepped in for your client to handle that for
10 safety.

11 MS. ZALMAN: Thank you for your cooperation, Mr.
12 Dale. That is all I have.

13 THE WITNESS: My pleasure.

14 MR. BRADFORD: Can I have a brief redirect, your
15 Honor? Unless, your Honor has some questions you
16 would like to ask the witness first?

17 THE COURT: Well, let me ask real quick. I saw
18 the lease, it started April 1st of 2019, when does
19 that lease end? Is there an end date in the lease?
20 I didn't see that.

21 MS. ZALMAN: For the 5501?

22 THE COURT: Yes, Mr. Dale. Was there an end
23 date in the lease?

24 THE WITNESS: I believe we had a three-year
25 renewal coming up at the end of 2022, so 2025.

1 THE COURT: So from April 2019 to April 2025 is
2 the lease?

3 THE WITNESS: It was a three-year lease with a
4 one-term renewal.

5 THE COURT: Okay, so the first term would be --
6 the first ending would be in 2022?

7 MS. ZALMAN: March 31, 2022 is what is stated on
8 the face page of Defendant's Exhibit 1. I would
9 state there is no renewal in effect, obviously
10 between parties.

11 THE COURT: I'm sorry, say that again.

12 MS. ZALMAN: I would say there is no renewal in
13 effect after the expiration date as the parties are
14 not in agreement.

15 THE COURT: Okay, okay. Go ahead, Mr. Bradford.

16 MR. BRADFORD: Just a brief redirect.

17 REDIRECT EXAMINATION

18 BY MR. BRADFORD:

19 Q. Counsel asked you the question, Mr. Dale, how
20 long you should be able to stay in the property without
21 paying rent; do you believe that you owe any rent under
22 the lease at 5501?

23 A. Absolutely not.

24 Q. And what is your basis for not owing any rent
25 under the lease at 5501?

1 A. I would say there is two components to that,
2 your Honor. One would be the value of my prepaid rent
3 credits that I worked tirelessly for over the course of
4 the past seven years; and the other would be the fact
5 that, you know, the pandemic closed our business, right?
6 And as a small business owner, you know, I was proud to
7 close my doors and I knew the challenges that we were
8 going to face. But in doing so, I closed my doors for the
9 safety of, you know, American lives and the unknown with
10 this pandemic. But what I did understand as a small
11 business owner is that our government will come to the aid
12 of small business owners to support not only us, but our
13 employees, families, vendors, and we rightfully have the
14 right to getting that government aid. And the government
15 did what was right, they distributed funds to the use of
16 our business to be utilized for rents, and to be utilized
17 to pay our staff, and pay our vendors, and pay the
18 utilities, you know. The government stepped in to help
19 the businesses that held our country when the time was
20 needed. Those programs were not established by Congress
21 in order for people to make loans of those funds intended
22 for the business for their real estate development
23 companies. That is not -- that wasn't why these programs
24 were intended.

25 So the amount of money that we requested in our

1 memo of understanding of \$150,000, your Honor, that's what
2 we received. Our total aid was \$192,500 for Churchill's
3 Pub, your Honor, and nothing has been credited for the
4 rents. I haven't been able to pay any of my staff. I
5 haven't been able to pay any of my utilities. I haven't
6 been able to pay any of my vendors. And while that
7 happened, this is worth noting, your Honor, when the
8 pandemic started in March, simultaneously our liquor
9 license expired, the liquor license owned by the Plaintiff
10 here today. And that liquor license expired on March 31st
11 of 2020. Now, the landlord decided that they were not
12 going to renew that liquor license allowing us to operate
13 our business. The only thing -- we are mandated by the
14 lease in front of you to make sure that we only operate as
15 a bar, and I can only use that, their liquor license, I am
16 bound to only using their liquor license, which they did
17 not renew.

18 MR. VELEZ: Your Honor, I object to this. This
19 is beyond the purview of the question and it is a
20 complete monologue. And it's irrelevant to this
21 case.

22 THE COURT: Sustained, okay it's sustained. I
23 have a question, the lease, how much is the amount of
24 rent that is paid for 5501?

25 THE WITNESS: Great question, your Honor, at the

1 beginning of the pandemic -- in totality it's about
2 10,500. It's an \$8,800 base rent, but I'll have you
3 know --

4 THE COURT: I'm sorry, what was the rent again?

5 THE WITNESS: At the time it was an \$8,800 base
6 rent. Now, the landlord offered us a rent reduction
7 for the entirety of the pandemic to be \$5,000, okay,
8 \$5,000 from March 2020 until the reopening of the
9 pandemic and I do have that in writing. Okay, so
10 when we entered the beginning of the pandemic it was
11 my understanding that my rent would be an adjusted to
12 \$5,000, which was manageable to us. Our business
13 wasn't in debt, we were doing great. The --

14 THE COURT: Mr. Dale, Mr. Dale, hold on. And so
15 on March 20th, \$5,000 -- going with what you are
16 saying, March 20th, \$5,000 is your rent that is to be
17 paid every month?

18 THE WITNESS: That is correct.

19 THE COURT: Okay, and was that rent being paid?

20 THE WITNESS: Yes, it was your Honor.

21 THE COURT: Okay, and when was the last payment
22 made?

23 THE WITNESS: On the books I think we have it
24 through July. It got complicated when I confronted
25 the landlord on June 12th about taking the money --

1 MS. ZALMAN: Just to correct, it's July 2020 for
2 the record.

3 THE COURT: July 2020, was that the last day
4 that rent was paid?

5 THE WITNESS: I believe. I don't have the
6 ledger in front of me, your Honor.

7 THE COURT: Well, let's be clear because we are
8 here for a rent determination hearing.

9 THE WITNESS: I understand that. I don't have
10 my ledger for -- oh, yes I do, yes I do. I have my
11 affidavit. Going into the month of August, \$19,300
12 has been paid by DLA to the landlord. At that point
13 \$8,000, a PPP fund still remained so --

14 THE COURT: I'm confused, what are you saying?

15 THE WITNESS: I'm trying to look at exactly the
16 payments that were made in 2020. So I'm looking
17 through and I am seeing that June, July -- wait
18 March, April, June, July, I believe is the last time
19 out of pocket, not taking into consideration SBA
20 funds or the prepaid rent credits.

21 THE COURT: Okay, so what I am asking is, July
22 was the last month the payment was made.

23 THE WITNESS: That is correct.

24 THE COURT: Okay. Any other questions?
25

1 BY MR. BRADFORD:

2 Q. To follow up on your question, just for absolute
3 clarity; do you believe your rent to be prepaid?

4 A. Absolutely, zero dollars owed.

5 Q. Okay, so just stay with me for a second. It is,
6 you know, presumptively your response to your Honor's
7 question was accurate with respect coming out of pocket,
8 but just for clarity, how are you defining payment coming
9 out of pocket?

10 A. Actual, not my prepaid rent credits, physical
11 dollars from my bank account to the landlord, but --

12 Q. Do you believe that the value of your prepaid
13 rent credits is greater than the amounts you would owe
14 under the lease if no prepaid rent credits were applied
15 since July 2020?

16 MR. VELEZ: Your Honor, that is an argumentative
17 question.

18 THE COURT: So I'll sustain it. That will be
19 argument for you to make, Mr. Bradford. Any other
20 question for Mr. Dale?

21 MS. ZALMAN: We do not.

22 THE COURT: And Ms. Zalman, you said there was a
23 witness you wanted to call?

24 MS. ZALMAN: We do. We have Ms. Levitt, Danita
25 Levitt for the Plaintiff.

1 THE COURT: Okay. And one of the questions I
2 would just like to know is what does she reflect as
3 the last rental payment? If you could for me?

4 MS. ZALMAN: For the 175 premises?

5 THE COURT: Both, the 5501 and 175.

6 MS. ZALMAN: Okay, so --

7 THE COURT: No, I'm asking you for the witness
8 to testify to.

9 MS. ZALMAN: Oh.

10 THE COURT: I'll have some testimony on it. So
11 I'm saying if you could make sure to ask that
12 question.

13 MS. ZALMAN: Yes, we'll start right there.

14 THE COURT: All right, so, would you please
15 raise your right hand, ma'am?

16 THE WITNESS: (Witness complies.)

17 THE COURT: Do you swear or affirm that the
18 testimony you're about to give will be the truth, the
19 whole truth, and nothing but the truth so help you
20 God?

21 THE WITNESS: I do.

22 THE COURT: Okay, thank you. You may proceed.

23 (Thereupon, the witness was duly sworn)

24 DIRECT EXAMINATION

25

1 BY MS. ZALMAN:

2 Q. Good afternoon, can you state your name for the
3 record.

4 A. Danita Levitt.

5 Q. And what is your position -- can you advise the
6 Court what your position is regarding the Plaintiff, 175
7 Northeast 55th Street, LLC?

8 A. I'm the manager for 175 Northeast 55th Street,
9 LLC.

10 Q. If you could raise your voice just a little bit
11 because the hearing on your end is a little low.

12 A. Okay.

13 Q. You said you are the manager?

14 A. Yes.

15 Q. Okay. And how long have you held that position?

16 A. Since acquisition of that property in 2014.

17 Q. And as manager do you maintain the ledger for
18 the premises, the 175 premises?

19 A. Yes.

20 Q. What is Plaintiff's role for, I'm sorry, 175
21 Northeast 55th Street's role in regard to the premises
22 address 175 Northeast 55th Street, if any?

23 A. Landlord.

24 Q. You're the landlord. Do you personally have the
25 care, custody, and control of business record for the

1 premises?

2 A. For my records, yes. For 175 Northeast 75th
3 LLC.

4 Q. Okay. And what is relationship with the
5 Defendants, if any? The Plaintiff's relationship, not
6 yours personally.

7 A. The Plaintiff is the landlord.

8 Q. And do you have an agreement with the Defendants
9 in this matter, as they testified, a tenancy agreement?

10 A. There was a verbal agreement.

11 Q. And what are the terms of that agreement?

12 A. That the tenant would and could take possession
13 to begin clean up and repairs to the premises. And at
14 some point further down the line there would be a rent
15 agreement for them to pay rent.

16 Q. So the repairs and the improvements, were these
17 to be in lieu of rent?

18 A. Yes.

19 Q. For how long?

20 A. It wasn't stated, I guess on my part I assumed
21 maybe about a year-and-a-half.

22 Q. I don't want you to make an assumption. I just
23 want you to testify to what was agreed to.

24 A. There was no strict date of when rent would
25 start.

1 Q. So it's your recollection it was about a
2 year-and-a-half?

3 A. Approximately.

4 MR. BRADFORD: Objection. That was a
5 mischaracterization of the witnesses testimony. She
6 didn't say that. She said that there was no date
7 certain. Why are you putting words in her mouth,
8 Counsel?

9 MS. ZALMAN: Well, she said about a
10 year-and-a-half before.

11 MR. BRADFORD: After you told her to say that.

12 THE COURT: Okay, okay, okay. Let the witness
13 do the testifying, please.

14 MS. ZALMAN: I don't have, I can try to share
15 the screen, but I want to bring forth the question at
16 issue, which is the affidavit you filed with the
17 Court on June 23, 2020, does everyone have that
18 present in front of them? And Ms. Levitt, do you
19 have that present in front of you?

20 THE WITNESS: Let me find it

21 THE COURT: And what is the affidavit attached
22 to.

23 MS. ZALMAN: Plaintiff's Affidavit, nonpayment
24 affidavit.

25 THE COURT: Okay. I have it.

1 BY MS. ZALMAN:

2 Q. I would like to refer you to the last page of
3 the affidavit, which is tenant ledger?

4 A. Okay.

5 Q. What is the total balance due from Defendants
6 through June 2021?

7 A. \$66,000.

8 Q. What is monthly rent due from tenants in
9 accordance with your ledger?

10 A. \$3,000 up to August.

11 Q. And why did the \$3,000 -- why do you say up to
12 August?

13 A. Because then we terminated our month-to-month
14 tenancy. The tenant then became a hold-over tenant, at
15 which point the rent doubled.

16 Q. I'm going to refer you to Exhibit B in this
17 affidavit, which is the termination notice, Exhibit B of
18 your affidavit. Is this termination notice you are
19 referring to?

20 A. Yes.

21 Q. What date did Plaintiff terminate the tenancy?

22 A. August 31, 2020.

23 THE COURT: Okay, if you will excuse me. I'm
24 sorry, I need to interrupt. Can we go off the record
25 for a moment?

1 (Thereupon, a short recess was taken.)

2 (Thereupon, the proceedings continued.)

3 THE COURT: I believe when I left off Ms. Zalman
4 was still questioning her witness. And I just want
5 the parties to keep in mind that the court reporter
6 has another hearing at four o'clock; is that right,
7 Ms. Wilson?

8 THE COURT REPORTER: Yes, your Honor.

9 THE COURT: Okay.

10 MS. ZALMAN: I'm going to do my best to really
11 make this brief.

12 THE COURT: Okay.

13 BY MS. ZALMAN:

14 Q. Let's return back to the affidavit filed on
15 June 23rd, which I would like to admit into evidence
16 starting on our docket, but it's Plaintiff's Exhibit A.

17 THE COURT: Is there any objection?

18 MR. BRADFORD: No objection.

19 THE COURT: Okay. Affidavit will be admitted
20 without objection. And that will be Plaintiff's 2.

21 (Thereupon, the exhibit was entered into
22 evidence.)

23 MS. ZALMAN: Oh, yes, yes. Because I brought
24 the lease in as 1. Yes, thank you. I apologize.

25

1 BY MS. ZALMAN:

2 Q. Ms. Levitt, let us know when you're ready and
3 I'm going to pull your attention again back to the
4 termination notice we were looking at attached to the
5 affidavit. My question to you is, what date did the
6 amended termination notice terminate the tenancy. And
7 you're on mute.

8 A. I apologize. The effective date of termination
9 is September 4, 2020.

10 Q. Thank you. Following issuance of this notice,
11 did the tenant provide possession?

12 A. No.

13 Q. Did the tenant respond in writing to you
14 regarding this notice, as far as you are aware?

15 A. No.

16 Q. Did the tenant contact you regarding this notice
17 of termination?

18 A. No.

19 Q. Is the Plaintiff, 5501 -- I'm sorry, 175
20 Northeast 55th Street, LLC., is the Plaintiff suffering a
21 hardship as a result of nonpayment of rent?

22 A. Yes.

23 Q. Why?

24 A. We are unable to pay our mortgage.

25 Q. I'm going to refer you quickly to Exhibit A of

1 the same affidavit, a three-day notice to pay rent.

2 A. Yes.

3 Q. What is the amount of the three-day notice?

4 A. \$6,000.

5 Q. And what date was this issued?

6 A. Served September 2, 2020.

7 Q. And this \$6,000, can you tell us what months
8 this represents?

9 A. That would be for July and August 2020.

10 Q. I want to call your attention to, I will see if
11 I can share my screen, Plaintiff's affidavit filed in the
12 5501 matter. One moment, I'm having unfortunate technical
13 problems with my sharing.

14 THE COURT: Is this a document that's --

15 MS. ZALMAN: Did that work?

16 BY MS. ZALMAN:

17 Q. Are you familiar with this document, Ms. Levitt?

18 A. Yes.

19 Q. What is this document?

20 A. This is my amended updated nonpayment affidavit.

21 Q. And for what case is this affidavit relate to?

22 A. For 5501 Northeast Second Avenue, LLC.,
23 plaintiff versus District Live Agency, LLC, defendant.

24 Q. And what is your position, if any, with 5501
25 Northeast Second Avenue?

1 A. Manager for the LLC.

2 Q. Are you also in the care and custody and control
3 of ledgers for that premises as well?

4 A. Yes.

5 Q. I'm going to refer to the last page, can you
6 identify if rent credits at all were provided to the
7 tenant in this matter?

8 A. Yes.

9 Q. How much in rent credits were provided?

10 A. Approximately, \$15,000.

11 Q. And where does that reflect that on this ledger?

12 A. In paid/credited column, commencing April 1,
13 2020.

14 Q. So approximately 3,000 a month for five months,
15 is that also what you are looking at, Ms. Levitt?

16 A. Yes.

17 Q. When is the last time the tenant paid out of
18 pocket for the 5501 property?

19 A. He paid a portion in March 2020.

20 Q. Are you referring to the 5800?

21 A. Yes.

22 Q. Have you received any out-of-pocket rent from
23 the tenant since that date for 5501?

24 A. No.

25 Q. Have you received any rent out of pocket fro any

1 properties from the Defendant in this action?

2 A. No.

3 THE COURT: And, if I could, just on that
4 docket, it said rent 1 and rent 2, what is the
5 difference there?

6 BY MS. ZALMAN:

7 Q. Ms. Levitt, can you clarify what the category
8 rent 1 is? And what the category rent 2 is?

9 A. Yes. Rent 1, is the rent for Churchill's Pub,
10 rent 2 was a property 206 Northeast 55th Terrace that was
11 also being utilized.

12 THE COURT: Okay, so it's a separate property?

13 THE WITNESS: Yes.

14 BY MS. ZALMAN:

15 Q. Ms. Levitt, there has been discussion in today's
16 hearing about a condemned building that is near the 5501
17 property, are you aware of this building?

18 A. Yes.

19 Q. What was the purpose of this building, if any,
20 when the 5501 property was rented out?

21 A. At the time it was being used for storage and
22 office.

23 Q. When the premises were rented out, were you
24 aware if this building needed to be condemned? If you
25 don't recall, that's fine.

1 A. It required its 40-year recertification.

2 Q. Was there ever an agreement with the tenant to
3 use this building as an office space?

4 A. It's part of the lease.

5 Q. Was there ever an agreement that the tenant,
6 Franklin Dale would substitute use this storage space for
7 175?

8 A. No.

9 MS. ZALMAN: That is all I have.

10 THE COURT: Okay. Let me ask a question, Ms.
11 Levitt, I think you said it was a 40-year
12 certification needed to be at the office at 5501; did
13 I hear that correct?

14 THE WITNESS: Yes.

15 THE COURT: So because of that, that office
16 space was not, I guess usable, because they needed to
17 do the work there; is that correct?

18 THE WITNESS: The office space was usable. The
19 notification was from the City for us to get the
20 building recertified.

21 THE COURT: Right, and so what I've heard is
22 that Mr. Dale moved today 175 building -- property,
23 correct?

24 THE WITNESS: At some point, yes.

25 THE COURT: And so why did he need to move to

1 the 175 property?

2 THE WITNESS: Because it was his intention to
3 demolish the building.

4 THE COURT: Demolish what building?

5 THE WITNESS: The small building on the premises
6 at, there are three premises at 5501 Northeast Second
7 Avenue, that was one of the buildings.

8 THE COURT: Okay, so what was going to be
9 demolished, was that the office?

10 THE WITNESS: Yes.

11 THE COURT: Okay. So the office was going to be
12 demolished?

13 THE WITNESS: Yes, because I believe he wanted a
14 larger outdoor courtyard area for staging and bands
15 to play outside.

16 THE COURT: Okay. All right. And so how did
17 the 175 property, I guess, come into discussion?

18 THE WITNESS: He wanted to have a location for
19 bands to practice, for visiting bands to stay as like
20 an Airbnb. He also wanted to have an office for
21 District Live Agency, his business.

22 THE COURT: And I forgot to ask, the 5501
23 building, the office that was going to be demolished,
24 that was same office that the City of Miami had given
25 the notice about?

1 THE WITNESS: Yes, correct.

2 THE COURT: Were there, I guess, any intentions
3 to bring that up to code?

4 THE WITNESS: It could have been, but I believe
5 it was decided that taking it down would be the best
6 result at that location.

7 THE COURT: So the 5501 rent that was being paid
8 there, that was the pub and for that office that was
9 being used?

10 THE WITNESS: For the entire premises.

11 THE COURT: So if the office is no longer there,
12 how -- I guess, how is the rent adjusted, or if it is
13 adjusted because now the full property is not
14 available?

15 THE WITNESS: He did some work on building two,
16 which is a small building on premises and got it
17 ready to be used as an office for that premise.

18 THE COURT: At 5501?

19 THE WITNESS: Correct, for 5501.

20 THE COURT: Okay. But still though, you said
21 there is three properties at 5501, so now one of
22 those properties is no longer available to him,
23 correct? Because City of Miami said it has to be --
24 I think you said, inspection or recertification
25 needed to be done?

1 THE WITNESS: Yes.

2 THE COURT: Okay, so now a portion of what's
3 being rented is not available to him, correct?

4 THE WITNESS: Not necessarily, no. Because his
5 intention was to tear it down and have it open-air
6 space for ands, so he would not have lost the real
7 estate had he done that.

8 THE COURT: Okay. And then I wanted to ask you
9 about, the affidavit of nonpayment, I am looking at
10 Exhibit C. here there is an amount of \$3,000 being
11 charges every month, where does the \$3,000 come from?

12 THE WITNESS: That is an under-market value that
13 we as the landlord determined would be a fair rent.

14 THE COURT: So this wasn't the agreement, this
15 is what you all decided should be the amount?

16 THE WITNESS: We had -- prior we had verbal
17 discussions with Franklin Dale that at some point
18 rent would need to be paid.

19 THE COURT: Well, what I'm trying to --

20 THE WITNESS: We were going to allow a year for
21 the renovation, not charge him rent while he was
22 doing that renovation and then we needed to commence
23 a lease.

24 THE COURT: But what I'm trying to figure out
25 is, so the number, the \$3,000 that is here, is this a

1 number that you all agreed to, or this is a number
2 that the landlord says is appropriate for the
3 property?

4 THE WITNESS: This is a number we felt was
5 appropriate for the property.

6 THE COURT: And then, is that the same thing
7 when it doubles then it goes to 6,000?

8 THE WITNESS: Correct that is when the
9 month-to-month tenancy was terminated and he did not
10 vacate the premises, then by Florida statute it
11 doubles in rent for the hold over. It's my
12 understanding of the law?

13 THE COURT: So I want to make sure I'm following
14 you. So when he moves to the 175 property, what is
15 the agreement when he moves there, initially?

16 THE WITNESS: Initially, we allowed him access
17 early in 2019 to start clearing and repairing for
18 future use.

19 THE COURT: As far as payment, what is
20 discussed? Or what is determined, agreed to?

21 THE WITNESS: At the beginning we did not have a
22 determination of what the rent would be, other than
23 we did state it would be under market.

24 THE COURT: Okay.

25 MS. ZALMAN: Your Honor, can I ask a question

1 here? Because it was my understanding that Ms.
2 Levitt was handling the finances behind the scenes
3 and her partner was actually handling the negotiation
4 with the tenant; I might be in error.

5 MR. BRADFORD: Objection.

6 THE COURT: Wait, hold on.

7 MS. ZALMAN: Yeah, I think she is trying to
8 answer outside the scope of -- I don't know if she's
9 actually had any discussions with --

10 THE COURT: Right, but Ms. Zalman, there is a
11 way to ask that. You can't just say that to her kind
12 of thing. Like if there was a question to be asked
13 about her involvement, that is one thing; but then it
14 comes across that you're telling her what to say and
15 that is why he is objecting like that.

16 MS. ZALMAN: I'm sorry. I wanted to establish
17 if she's actually had conversations with Mr. Dale,
18 because my understanding she was witness here to
19 testify to the accounting.

20 MR. BRADFORD: Your Honor, I move strike.
21 Counsel is attempting to testify on behalf of her
22 client.

23 THE COURT: I mean, that's fine. It's just the
24 Court, I know what the witness has said. Hold on, I
25 lost my train of thought. Okay, so Ms. Levitt, as

1 far as when Mr. Dale initially moved into the
2 property, is this April 2019? I see the first entry,
3 is that when he moved to 175?

4 THE WITNESS: He took possession of the property
5 prior to April 1st, clearing it out and it getting it
6 to the point where he could start his repairs. And
7 at some point in early 2019, he did start, I don't
8 know, started putting furniture in there. I can't
9 tell you the exact date, but that is that date that
10 we agreed as it coincides with other leases.

11 THE COURT: Okay and when you say, we agreed,
12 are you part of this discussion regarding him moving
13 into this property.

14 THE WITNESS: I was part of the discussion at
15 conception when he was handed keys and given the
16 ability to go in and start working.

17 THE COURT: Okay. And at that point, that is
18 when you are saying the amount that would be paid
19 hadn't been determined yet?

20 THE WITNESS: Correct.

21 THE COURT: And so then, at what point then is
22 there a discussion and agreement regarding the amount
23 to be paid?

24 THE WITNESS: I personally did not have a
25 conversation with Franklin Dale of District Live

1 Agency as to a dollar amount.

2 THE COURT: Okay. Okay, let me see if I have
3 any other questions. Okay, and then let me ask you,
4 at the 5501 building, the ledger that I saw in that
5 affidavit it said the rent was \$8,800 a month, was
6 the rent ever reduced in that -- related to that
7 property?

8 THE WITNESS: Yeah, we did a reduction during
9 COVID.

10 THE COURT: Okay. And how much was that
11 reduction for, or what was the amount after --

12 THE WITNESS: We credited him \$3,000 per month
13 for five months.

14 THE COURT: Okay, so 5,500 a month is what he
15 would be paying in March, starting March of 2020?

16 THE WITNESS: It started April. I'm just trying
17 yo find it here.

18 THE COURT: Yeah, no problem. And it stayed at
19 that amount? When did that amount change? Or is it
20 still that amount?

21 THE WITNESS: No, it went back up to the
22 original amount. I want to say it's April, May,
23 June, July, August he was given the rent credit
24 relief. And then September it went back to the
25 original amount.

1 THE COURT: And I think you said -- and for the
2 5501 building, what was the month of the last
3 payment.

4 THE WITNESS: I want to say March, I'm trying to
5 find the document on my computer.

6 THE COURT: No problem, take your time.

7 THE WITNESS: Okay, I'm showing March, I believe
8 he made the payment in March -- excuse me, in April
9 but it was applied to the March rent that was still
10 outstanding.

11 THE COURT: Okay. So the March rent was the
12 last that was paid for the 5501?

13 THE WITNESS: Yes.

14 THE COURT: And then for the 175 property, no
15 rent was for that one, right?

16 THE WITNESS: No rent was paid.

17 THE COURT: Okay, all right. Okay I -- was
18 there any other questions for Ms. Levitt?

19 MR. BRADFORD: On direct? You're asking on
20 direct?

21 THE COURT: Oh, I'm sorry. Mr. Bradford, I
22 didn't give you an opportunity to question her.

23 MR. BRADFORD: I have not begun my cross, no.

24 THE COURT: Okay, go ahead, sir. I forgot --

25 THE COURT REPORTER: Your Honor. It's two

1 minutes until 4 o'clock.

2 THE COURT: Okay. The best I can do is Friday
3 if you all are available.

4 MR. BRADFORD: I'm not available, your Honor.
5 I'm traveling on Friday and I will be unavailable for
6 a week's time there.

7 THE COURT: Well, we can do this tomorrow then?
8 Ms. Wilson, we can go off the record for scheduling
9 purposes, and you can go ahead and get to your next
10 hearing.

11 THE COURT REPORTER: Thank you, your Honor.

12 (Thereupon, the hearing concluded.)
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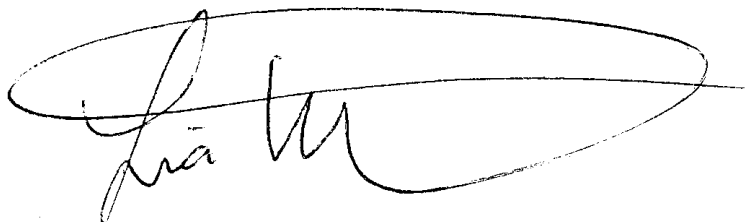
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STATE OF FLORIDA
COUNTY OF BROWARD

I, LISA WILSON, Florida Professional Reporter and Notary Public for the State of Florida, do hereby certify that I was authorized to and did stenographically report and transcribe the foregoing proceedings, and that the transcript is a true and complete record of my stenographic notes.

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Commission No.: GG-261176
Commission Exp: September 23, 2022

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