

DOCKET NO. BPH-CV21-6009425 : SUPERIOR COURT  
NEST ARTS FACTORY, LLC : J.D. OF FAIRFIELD  
V. : AT BRIDGEPORT HOUSING  
LANGDON & BATCHELLER LOFTS, LLC : MAY 31, 2024

HOUSING SESSION  
BRIDGEPORT  
STATE OF CT  
2024 MAY 31 P 3:20

**MEMORANDUM OF DECISION AFTER TRIAL**

Nest Arts Factory, LLC (the "Nest") and Langdon & Batcheller Lofts, LLC ("L&B") are parties to a written commercial Lease with respect to a three-story commercial building located at 345 Railroad Avenue, Bridgeport, Connecticut ("Building") for use as an artist cooperative, artist studios, art gallery, the production and sale of artisanal goods and products, showroom, art exhibit and event space, gift shop and all other related and ancillary uses incidental thereto, for a term of 12 years (the "Lease"). The Building was to be fitted up by the Nest and L&B to include space for 44 artists' studios to be sublet by the Nest to individual artists.

The Nest and L&B each had obligations under the terms of the Lease to make and pay for various improvements to the Building, which was an old, long-vacant factory building.

The Nest filed this action on March 11, 2021, in four counts sounding in breach of contract, specific performance<sup>1</sup>, tortious interference with business relations and a violation of the Connecticut Unfair Trade Practices Act.

L&B has asserted a two-count counterclaim against the Nest and two other defendants it cited in, Cricket Hosiery, Inc. ("Cricket"), which is the member of the Nest, and Victor J. Mulaire, Jr. ("Mulaire"), who is the President of Cricket, sounding in breach of contract as to all three of those counterclaim defendants and in negligent misrepresentation as against the Nest.

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<sup>1</sup> The specific performance count was not litigated because the issues were moot at the time of the litigation.

The case was tried to the court on October 25, 2023, January 31, and March 6, 2024. At the conclusion of the presentation of the evidence, the Court ordered the parties to file simultaneous post-trial briefs and, if necessary, replies.

After reviewing the oral and written arguments of the parties, the relevant evidence and law, the credibility of the witnesses, and the equitable positions of the parties, the court finds that the Nest has proved by a preponderance of evidence their claim of tortious interference with business relations and, L&B have proved by a preponderance of evidence their claims of breach of contract.

#### DISCUSSION

A brief summary of facts is necessary to understand the court's reasoning. The Nest operated a facility on Fairfield Avenue in the City of Bridgeport comprised of artists studios for various disciplines. In the summer of 2017 the Nest was looking for a new building to move their tenants and operations. The Nest, which was formed in 2013, is an arts community which rents out studio spaces to artists, including painters, sculptors and musicians, for the production and display of their works of art, and holds arts-related events. The Nest is run by Mulaire, its award-winning manager who has more than 30 years of experience in supporting the arts and has built out four buildings for artist studios. At that time, L&B owned an old industrial building, the Building, which needed significant work and improvements to be of use to any tenant. L&B's principal, Michael Villani, ("Villani") had decades of experience in commercial real estate and the construction and rehabilitation of commercial buildings.

Both Mulaire and Villani are sophisticated businesspeople in their respective fields and were represented by counsel at all times mentioned herein.

In the summer of 2017, the Nest was looking for a new space to rent for use as an artist cooperative. They were leaving their previous location on Fairfield Avenue and intended on taking those tenants to the new Building. On or about November 2, 2018, NEST and L&B entered into the Lease for the Building, with L&B as the "Landlord" and NEST as the "Tenant". Cricket Hosiery and Mulaire were guarantors of the Lease. The Lease was drafted by the Nest with the assistance of their counsel.

In November of 2018, the Building was not in "move in condition." The Building consists of a three-story commercial building containing 34,185 gross rentable square feet. When L&B purchased the Building, the Building was vacant and dilapidated. The first floor of the Building had nothing in it, the second floor had some partitions and the third floor had three gas heaters. The Building had no heat. According to Mulaire, when he first saw the three gas heaters, he was surprised that they ran at all. He surmised that even if they did work, they would do no more than heat the third floor. L&B envisioned renovating the building for use as an artist cooperative, artist studios, art gallery, the production and sale of artisanal goods and products, showroom, art exhibit and event space, gift shop and all other related and ancillary uses incidental thereto. L&B's vision of the Building aligned with the Nest's vision of a new space for their business.

In the Spring of 2018, Jane Davila, who was employed by the Nest and a tenant and artists at the Fairfield Avenue facility was tasked with drafting a letter of intent based upon the parties' understandings. On or about November 2, 2018, NEST and L&B entered into a written commercial Lease for the Building, with L&B as the "Landlord" and NEST as the "Tenant." Cricket Hosiery and Mulaire were guarantors of the Lease.

The Lease contains several core terms and provisions that are directly relevant to the instant matter. Some of these provisions are:

1. "Rent Commencement Date" was defined "the later of (i) the first day of the month following the date on which the Landlord has completed all of Landlord's Work...or (ii) February 1, 2019."
2. The "Landlord's Work", as defined in the Lease Exhibit B, includes:
  - a. the replacement of all exterior windows and doors in the original openings in the Building with new energy efficient exterior windows and doors (including divides, all insulation, caulking and sealing and all finishing work both inside and outside) of first class quality which are suitable to the aesthetics of a heritage industrial factory building;
  - b. the repair of the roof of the Building so that all leaks have been repaired and the roof is otherwise watertight (the "Roof Repairs");
  - c. the repair, filling of potholes and sealing of the parking lot located within the parking easement area on the adjacent property at 347 Railroad Avenue, Bridgeport, Connecticut.
3. Section 3.1 of the Lease provided that "from and after the Rent Commencement Date" NEST would pay L&B the Minimum Annual Rent as set forth in Schedule 1 of the Lease in equal consecutive monthly installments of Minimum Monthly Rent.
4. Per Section 4.1 of the Lease, NEST was to promptly furnish L&B with plans and specifications ("Tenant Improvement Plans") specifying the Tenant Improvements that would be completed at the Property. The Lease states: "Tenant will promptly (and in no event more than three (3) weeks after execution of this Lease) furnish to the Landlord, prior to Tenant commencing the Tenant Improvements (As described in Exhibit A hereto), Tenant's plans and specifications specifying the Tenant Improvements, all in such form as may be reasonably approved by Landlord.
5. Section 4.2 required the work be done in a workmanlike manner, with appropriate insurance and legal requirements including building permits and inspections and shall diligently pursue the completion of same. Furthermore, it required proof that building plans were approved by the City of Bridgeport prior to construction.
6. Schedule 2 of the Lease addresses the Tenant Improvement Allowance (the "TI Allowance"). Schedule 2 states that "Tenant Shall provide a copy of the Tenant Improvement Plan prior to the execution of this Lease and Landlord and Tenant shall both sign off on a copy of the [Plan] which shall be attached to this Lease." The TI Allowance was to be reLeased to Nest in stages, as portions of the improvements are "constructed based upon a construction budget and construction schedule to be determined and reasonably acceptable to" Nest and L&B. In order to be entitled to advances, Nest was to provide L&B with copies of signed contracts or contractors invoices based upon which L&B would schedule inspections.

7. Section 25.22 states that "Time is of the essence with respect to Tenant's and Landlord's obligations under this Lease.
8. In Schedule 2 – Additional Provisions, Section E the Lease outlines the tenant's obligation for obtaining financing for improvements to the building. "Tenant's obligations under this Lease are expressly conditioned upon Tenant closing on its financing in the amount of \$200,000 prior to November 30, 2018, which sum from the Tenant Financing will be used by Tenant to pay for a portion of the cost of the construction of the Tenant Improvements."
  - a. The deadline for this financing was extended twice by written agreement of the parties. The first extension was through December 14, 2018.
  - b. The second extension was extended through January 25, 2019.
9. Section 8.1, which outlines the Landlord's responsibility in maintaining the building. "Landlord shall be solely responsible, at his own sole cost and expense... to keep the roof watertight and free from leaks, and for the replacement of the roof, sprinkler systems, heating, ventilating and air-conditioning system and equipment serving the [Building] that become necessary during the Term or any extension thereof."
10. Section 17.9 Landlord's Default. In the event of any default by the Landlord, the Tenant will give Landlord written notice specifying such default and allow 30 days in which to cure the same.

L&B, shortly after the Lease was signed, installed a new roof and all exterior windows in compliance with the Landlord's Work section of the Lease.

The Nest never submitted a Tenant Improvement Plan pursuant to section 4.1. Even with the two extensions, the Nest never was able to obtain the \$200,000.00 financing as illustrated in Schedule 2 of the Lease. On February 7, 2020, The Nest was able to secure \$140,000.00 of financing through Capital for Change, a local bank, which required L&B's representative Villani to provide a guarantee. The Nest claims it independently raised \$50,000 from tenants in the form of cash donations and barter, but that was not in compliance with the Lease which required "financing" not donations and bartered exchanges.

The Nest drew down \$40,000.00 off of the credit line from Capital for Change to finance some construction on the Building through two instalments in June and July of 2020. The money

was used to construct the walls of the various studios. The studios did not have doors, lighting, painting or heat. The Nest's, Jane Davila, sent an email to Capital for Change with a Construction Budget which stated: "Our spreadsheet, attached here again, shows what our budget is paying for – the interior framing for the studio walls, electric and heating to individual studios, doors for the individual studios, etc." Mulaire sent an email to Capital for Change stating:

"We have been approached by an entity that is producing electricity a couple blocks away which has proposed to supply us with heat for the building. I am actually still waiting for a quote to run hot water lines through the building in place of gas lines. Also the heating units would no longer have to use combustible fuel which were much more costly than hot water units. There should be a significant insurance deductions also. This is net final but I think is fairly close."

The email attached a spreadsheet that indicated the Nest had budgeted \$50,000.00 to install heaters in each unit. Mulaire also exchanged emails with a Glenn Giustino, regarding an estimate to install condensing boilers and hot water pumps as well as "72 Unit heaters for 49 tenant studios and 21 landlord common areas."

There were other emails between Mulaire and Villani, regarding installing heating in the building where Mulaire, on behalf of the Nest, referred to his budget for heating equipment and compared it to Villani's budget for L&B.

It is clear from this voluminous evidence that L&B was not responsible for installing the heat for the individual units. And Section 8.1 which states that L&B is responsible "for the replacement of the roof, sprinkler systems, heating, ventilating and air-conditioning system and equipment serving the [Building] that become necessary during the Term or any extension thereof." Is referring to making replacements to those parts of the building after they have been installed by the Nest when the Lease became in full force and effect after the Commencement Date.

Regarding the \$200,000.00 Tenant Improvement Allowance, the Nest never provided a Tenant Improvement Plan which was required to be submitted and approved by L&B prior to L&B releasing the funds. Also, the Nest never requested a disbursement from the Tenant Improvement Allowance to fund construction of the building.

L&B's bank notified them in September of 2020 that if heat was not installed in buildings, they would stop financing the project. L&B had been paying for all carrying costs without receiving any rent from November 2, 2018, through June of 2020.

On September 25, 2020, L&B's attorney sent an email to the Nest and Mulaire, that the Lease agreement is terminated for the Nests failure to obtain the financing required in full and on time; that the delay in getting the financing was due to the dilatory behavior of the Nest; and that the Nest failed to meet its obligations by the February 19, 2019, proposed Commencement Date. The letter also proposed that L&B would take over the \$140,000.00 Capital for Change construction loan in exchange for terminating the Lease agreement. L&B did not assume the Nest's loan for the \$140,000.00 and never made any payments on the balance.

On February 9, 2021, the Nest's attorney sent a letter to L&B regarding "Notice of Default." The letter cited four areas where L&B breached the Lease agreement. First, they claimed that L&B did not install all the windows and doors that were required. According to Villani, 90% of the doors and windows were replaced. Second, they claimed electrical, water and gas service to the Building was never turned on, and the bathroom fixtures, and kitchen cabinets were not installed. Villani stated these were not completed when the letter was received. Villani stated that installing the heating system was not L&B's responsibility but rather the Nest's obligation. The fourth alleged breach regarded the adjacent parking lot, but the Nest is not pursuing that claim.

The testimony of Jane Davila was very compelling to the court. Davila was an artist who rented a studio from the Nest in their Railroad Avenue location. Eventually she became the manager of the Nest in January of 2014 until she resigned in 2021. Davila stated she was looking for a new location for the Nest in 2017 and found the subject property. Davila stated the rent was considerably below market (\$8.00 - \$11.00 per foot) at \$3.00 per foot. Davila believed the reason for the discount was because the tenant, in this case the Nest, would have to spend significant capital and complete a lot of work to get the Building in a condition where it could be rented.

Davila stated that it was always understood that the Nest would be responsible for providing heat to the studios until Mulaire hired a new lawyer. Then, the story changed and Mulaire was arguing that the Lease required L&B to provide heat to the studios. Davila stated that there was a GoFundMe campaign called "Save the Artists of the Nest" which was used to raise \$50,000 to assist the artists move into the new location. Davila accused Mulaire of comingling funds from the account and using the funds to help pay for work done in the Building without authorization.

On November 18, 2020, Davila along with several other artists sent a letter to Capital for Change, the Nests finance provider, that she along with the artists of the Nest were severing ties with Mulaire and were planning on moving into the Building because of the delays to date and their lack of confidence that the future would be any different. The letter also stated that none of the artists had a Lease with the Nest or Mulaire and that they were an independent group separate from the Nest.

Rick Reyes, an artist and tenant of the Nest, received a letter in April of 2020 enclosing a proposal from the Nest to occupy the new location at 345 Railroad Avenue, Bridgeport, the Building, as a tenant for \$320.00 per month commencing in June of 2020. He received a Text



message from Davila on March 9, 2021, stating that the artists were meeting L&B at the Building to discuss construction schedules and timeline for “getting us in there.” Davila closed the text with “This is not something we’re sharing with Vic.” (a/k/a Mulaire)

In April of 2021, Davila began working for L&B. The text she sent to the artists including Reyes was sent before she quit her job at the Nest. Many of the artists who were renting from the Nest in the Fairfield Avenue location ended up moving into the 345 Railroad Avenue property owned by L&B.

**1. Plaintiff, the Nest, has failed to prove that the defendant L&B breached the Lease agreement.**

The Nest claims L&B has not complied with the Lease in the following respects. 1. It failed to replace all of the exterior windows pursuant to the Lease. 2. It failed to repair the adjacent parking lot. 3. It has not obtained nor provided the Nest with certificates of occupancy. 4. It has not repaired floors, installed bathroom fixtures, kitchen cabinets, connected electrical and gas service to the building. 5. It has failed to finalize a construction budget. And 6. It has failed to replace the heating system in compliance with Section 8.1 of the Lease.

The court finds that L&B has substantially complied with their obligations under the Lease agreement. The court finds that approximately 90% of the doors and windows that needed to be replaced were replaced in the Building. The Nest’s claim that L&B failed to repair the parking lot was abandoned at trial. Although certificates of occupancy were not obtained, pursuant to the contract, this was largely due to the delayed action by the Nest in obtaining financing and submitting a detailed Tenant Improvement Plan to rehabilitate the Building.

Again, it was the Nest’s responsibility to provide such a plan when the Lease was signed. Section 4.1 of the Lease required “Tenant will promptly (and in no event more than three (3) weeks

after execution of this Lease) furnish to the Landlord, prior to Tenant commencing the Tenant Improvements. No such Tenant Improvement Plan was ever submitted to L&B.

This is also true for the claim that L&B failed to repair floors, install bathroom fixtures, kitchen cabinets, connect electrical and gas service to the building. L&B spent a significant sum of money to put a roof on the building, replace the exterior windows and doors and prepare the building for interior work. The Nest did not timely obtain its financing or submit to the landlord a detailed plan to improve the interior of the building with building permits and the necessary approvals from the city of Bridgeport.

Lastly, it is clear from the voluminous evidence presented at trial that the Nest had assumed the responsibility to install the heating in the building. The Nest submitted proposals for financing that stated the funds would be used for installing heating units. They submitted budgets and correspondence to L&B stating they were planning on installing the heating for the Building. And, the Nest's employee, Ms. Davila, testified that it was understood that the Nest was responsible for installing heating until Mr. Mulaire hired his attorney who discovered §8.1 of the Lease.

Additionally, the court does not believe that §8.1 of the Lease requires L&B to install a new heating system but rather replace one when it is broken or needs replacement or repair. The section states:

Landlord shall be solely responsible, at his own sole cost and expense... to keep the roof watertight and free from leaks, and for the replacement of the roof, sprinkler systems, heating, ventilating and air-conditioning system and equipment serving the [Property] that become necessary during the Term or any extension thereof.

The court finds, at the time the Lease was entered into, the Building did not have any heat. The Lease does not require L&B, the landlord, to *Install*, a heating system. Rather, it requires L&B to be responsible for replacing the heating system once one is installed.

**2. Plaintiff, the Nest, breached the Lease in several respects but specifically in its failure to provide a Tenant Improvement Plan to L&B pursuant to section**

Section 4.1 of the Lease required “Tenant will promptly (and in no event more than three (3) weeks after execution of this Lease) furnish to the Landlord, prior to Tenant commencing the Tenant Improvements. No such Tenant Improvement Plan was ever submitted to L&B. The failure of the Nest to provide a Tenant Improvement Plan was the first of many dominos to fall which destroyed the working relationship of the parties. If the Nest were to provide a Tenant Improvement Plan, it would have presented a detailed plan of the work that needed to be completed.

The Nest’s failure to provide a Tenant Improvement plan, and its failure to obtain the financing pursuant to the Lease were the initial breaches of the contract from which all other breaches originate. As such, plaintiffs were in breach of the Lease agreement.

**3. Defendant, L&B and its agent, Ms. Davila, tortiously interfered with the contractual relationship between the Nest, its tenants and its financier, Capital for Change.**

The court finds that the defendant, L&B and its agent, Jane Davila, engaged in a course of conduct to intentionally interfere with the Nest’s business relationships while they knew of the relationships which caused the Nest to suffer a loss of income.

“[I]n order to recover for a claim of tortious interference with business expectancies, the claimant must plead and prove that: (1) a business relationship existed between the plaintiff and another party; (2) the defendant intentionally interfered with the business relationship while knowing of the relationship; and (3) as a result of the interference, the plaintiff suffered actual loss.” (Internal quotation marks omitted.) *Robinson v. Robinson*, 103 Conn.App. 69, 77, 927 A.2d 364 (2007). “A cause of action for tortious interference with a business expectancy requires proof that the defendant was guilty of fraud, misrepresentation, intimidation or molestation ... or that the

defendant acted maliciously ... (Citations omitted; internal quotation marks omitted.)" *Jones v. O'Connell*, 189 Conn. 648, 660, 458 A.2d 355 (1983). *AFB Constr. Mgmt. of Trumbull, Inc. v. Herbst*, No. CV166053880S, 2017 WL 3671340, at \*4 (Conn. Super. Ct. July 20, 2017).

Davila was an artist who rented a studio from the Nest in their Railroad Avenue location. Eventually, she became the manager of the Nest in January of 2014 until she resigned in the spring of 2021. In April of 2021, she became an employee of L&B. Davila, as manager of the Nest, was intimately familiar with the business relationships that the Nest had with its tenants, financiers and L&B. It was clear to the court, that Davila was cooperating with and acting as an agent for L&B prior to her employment with L&B and while she was the manager of the Nest.

Rick Reyes received a letter in April of 2020 enclosing a proposal from the Nest to occupy the new location at 345 Railroad Avenue, Bridgeport, the Building, as a tenant for \$320.00 per month commencing in June of 2020. (Exhibit 8) This letter shows that the Nest was contracting with their current tenants to sign new Leases at the building located at 345 Railroad Avenue. Davila was aware of these offers to rent and subsequent contracts.

On November 18, 2020, Davila along with several other artists sent a letter to Capital for Change, the Nests finance provider, that she along with the artists of the Nest were severing ties with Mulaire and were planning on moving into the Building because of the delays to date and their lack of confidence that the future would be any different. Davila knew of the contractual relationship between the Nest and Capital for Change. Davila's intent was clearly an attempt to interfere with the contractual relationship between the Nest and Mulaire as borrowers of the Capital for Change loan. It was clear from her testimony, that she did this in a malicious way. She was upset with Mulaire for dragging his feet on the move to the new building. Additionally, the artists had set up a GoFundMe campaign to help pay for the transition to the new Building. Davila

believed that Mulaire took funds from the GoFundMe account to pay for debts on behalf of the Nest and not accounting for all the money the artists had raised.

This interference with the plaintiff's financing caused Capital for Change to freeze the construction loan and plaintiffs were responsible for paying the outstanding balance. They were unable to use the loan for its intended purpose, rehabilitating the Building.

On March 9, 2021, Davila sent a text message to other artists arranging a meeting with the principals of L&B and the artists who were currently renting from the Nest. The text states, "Obviously this is not something that we're sharing with Vic (Mulaire)." This demonstrated to the court that Davila was working as a "double agent" coordinating with L&B to get the Nest's artists to terminate any agreements they had with the Nest and contract with L&B. He received a Text message from Davila on March 9, 2021, stating that the artists were meeting L&B at the Building to discuss construction schedules and timeline for "getting us in there."

In April of 2021 Davila began working for L&B. The text she sent to the artists including Reyes was sent before she quit her job at the Nest. Many of the artists who were renting from the Nest in the Fairfield Avenue location ended up moving into the 345 Railroad Avenue property owned by L&B. This resulted in the Nest losing business from artists who he would have rented studios to in the new Building.

**4. The court will now turn to an analysis of the damages.**

After a review of the record and all the filings of the parties, the court is hard pressed to find specific damages suffered by the parties. Neither party produced an expert witness to opine on actual or speculative money damages. There was no testimony from bookkeepers, realtors, or bankers as to the loss of profits or the opportunity costs that were lost.

Defendants the Nest and Mulaire, did obtain a line of credit from Capital for Change, and withdrew \$40,000.00 which was used to rehabilitate the property. On September 25, 2020, counsel for L&B sent a letter terminating the Lease agreement and offering to assume the Capital for Change loan. L&B never paid off the outstanding balance or assumed the loan.

Except for the outstanding loan balance from Capital for Change, neither party proved its damages by a preponderance of evidence.

### CONCLUSION

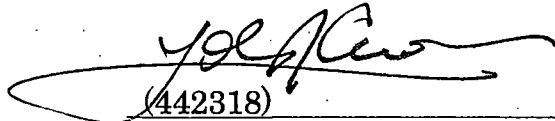
In accordance with the above decision, the court finds that the plaintiffs, Nest Arts Factory, LLC, Vic Mulaire, and Cricket Hosiery, Inc. have proved by a preponderance of evidence count three of their complaint which sounds in tortious interference with contract. The plaintiffs abandoned their second count of the complaint which sounds in specific performance. The plaintiffs have failed to prove the remaining causes of action listed in their complaint.

The court finds that the defendant, Langdon & Batcheller Lofts, LLC, has proved by a preponderance of evidence the first count of their counterclaim which sounds in breach of contract. The defendant has failed to prove the second count of their counterclaim which sounds in negligent misrepresentation.

The court awards damages as follows:

1. To the plaintiff, the outstanding balance of all money due to Capital for Change, for the construction Loan Agreement dated February 7, 2020.
2. To the defendant, reasonable attorney's fees pursuant to the terms of the Lease.

BY THE COURT

A handwritten signature in black ink, appearing to read "John A. Cirello", written over a horizontal line.

(442318)

Hon. John A. Cirello