

EAST BATON ROUGE PARISH C-695912  
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Deputy Clerk of Court

19th JUDICIAL DISTRICT COURT FOR EAST BATON ROUGE PARISH

STATE OF LOUISIANA

NO:

DIVISION:

SQUARE 46, LLC

VERSUS

WHITE STAR MARKET, LLC and HOWARD CLARK GAINES, JR.

FILED: \_\_\_\_\_

\_\_\_\_\_  
DEPUTY CLERK

PETITION FOR DAMAGES

NOW INTO COURT, through undersigned counsel, comes Petitioner Square 46, LLC (“Square 46”) and files this petition against Defendants White Star Market, LLC (“White Star Market”) and Howard Clark Gaines, Jr. (“Gaines”):

INTRODUCTION

This case presents a classic illustration of a tenant who attempts to exploit a public health crisis to be freed of its leases. White Star Market experienced declining sales and the loss of subtenants for months preceding the pandemic crisis. Those financial losses predate and obviously were not caused by either the crises or state and local orders designed to combat the crisis. Nonetheless, despite months of declining sales and revenues, White Star Market now claims it may unilaterally terminate the Leases as a result of losses it claims to have sustained as a result of the coronavirus pandemic. That claim is pretextual. White Star Market desires to be relieved of the Leases; the pandemic is a convenient excuse.

In the face of the coronavirus pandemic, Square 46 made clear to White Star Market that it was willing to work with White Star Market on a month-to-month arrangement to reduce or defer White Star Market’s monthly payments to Square 46. Square 46 made this offer not knowing whether it would be supported by its own lender and whether its lender would allow abatement of Square 46’s mortgage payments. White Star Market failed to acknowledge, much less respond to Square 46’s offer of support during the pandemic crisis. Rather, it abandoned the leased premises, leaving the space in disarray, failing even to clean the refrigerator and cooking areas of rancid food and other debris.

For the reasons detailed below, Square 46 is entitled to a judgment against both defendants enforcing their obligations under the leases.

### **PARTIES**

1. Square 46 is a Louisiana limited liability company with its registered office located in East Baton Rouge Parish.
2. White Star Market is a Louisiana limited liability company located in East Baton Rouge Parish.
3. Gaines is a resident of East Baton Rouge Parish and is a principal and guarantor of White Star Market. Gaines is a solidary obligor with respect to obligations owed by White Star Market to Square 46.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over the parties and venue is proper in this Court pursuant to Louisiana Code of Civil Procedure arts. 42, 76.1, and 80.

### **FACTS**

#### **Background**

5. Square 46 owns and operates the Square 46 Center, a mixed-use development located in the center of Baton Rouge's recently revitalized Government Street corridor.
6. White Star Market—an upscale food hall—leases two spaces in the Square 46 Center. Until recently, it operated White Star Market and maintained a general office there, White Star Annex. On March 31, 2020, White Star Market abruptly announced that it was closing White Star Market and White Star Annex and terminating its leases.
7. Prior to the abrupt and unjustified termination of the two leases, White Star Market had subtenant agreements with several local vendors for space in the White Star Market.
8. Since at least the fall of 2019, White Star Market and its subtenants experienced significant declines in sales. At least one subtenant experienced a sales decline of 30 to 40 percent. As a result, several subtenants moved out and other subtenants planned to do so when their subleases expire.
9. Absent subtenants, White Star Market is apparently unwilling to pay the rent and other monetary obligations it owes to Square 46 or to honor its obligations under the leases. Accordingly, White Star Market now claims it may unilaterally terminate the leases as a result of

losses it claims to have sustained as a result of the coronavirus pandemic. That claim is pretextual. White Star Market desires to be relieved of the leases because of financial losses that predate and were not caused by the pandemic crisis; the pandemic is a convenient excuse.

10. By this action, Square 46 seeks a judgment enforcing the Leases in accordance with their respective terms and holding White Star Market and Gaines, White Star Market's guarantor and solidary obligor, liable for all rents and other obligations owed under the Leases.

#### **The 2016 Lease**

11. On February 19, 2016, Square 46 and White Star Market entered into a lease agreement ("2016 Lease") whereby White Star Market leased from Square 46 space in the Square 46 Center identified as Suite 101, comprising approximately 5,900 square feet, for an initial term of five years, commencing on the first day of occupancy. A copy of the 2016 Lease is attached hereto and incorporated herein as Exhibit 1.<sup>1</sup>

12. White Star Market agreed to pay to Square 46 monthly base rental of \$11,062.50 or \$132,750.00 annually plus a percentage of common area maintenance charges and property taxes. Gaines personally guaranteed all of White Star Market's obligations under the 2016 Lease and agreed to be a solidary obligor with White Star Market.

13. On the same day, Gaines guaranteed White Star Market's performance under the 2016 Lease.<sup>2</sup>

14. Pursuant to the 2016 Lease, Square 46 delivered Suite 101 to White Star Market and further provided to White Star Market a tenant improvement allowance equal to \$25.00 per square foot of the leased premises, or \$147,500.00, to build out the space for use as a food hall.<sup>3</sup>

15. White Star Market used Square 46's allowance to build out the space, and in May 2018, White Star Market opened an upscale food court featuring several popular and culturally diverse restaurants.<sup>4</sup>

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<sup>1</sup> See 2016 Lease, page 1 at ¶¶ 1 and 2.

<sup>2</sup> See 2016 Lease, page 18 at ¶ 41 and page 24, "Exhibit 'D' Guaranty of Lease Agreement."

<sup>3</sup> See 2016 Lease, page 3 at ¶ 9.

<sup>4</sup> See Sigur, Matthew, "Take a look inside White Star Market, the new food hall opening in Baton Rouge." *The Advocate*, available at [https://www.theadvocate.com/baton\\_rouge/entertainment\\_life/article\\_0ef0ef8c-58a6-11e8-b90a-73f0a267fd2c.html](https://www.theadvocate.com/baton_rouge/entertainment_life/article_0ef0ef8c-58a6-11e8-b90a-73f0a267fd2c.html) (last visited April 9, 2020).

### **The 2018 Lease**

16. On July 17, 2018, Square 46 and White Star Market entered into a second lease agreement ("2018 Lease") whereby White Star Market leased from Square 46 additional space in the Square 46 Center identified as Suite 203, comprising approximately 1,130 square feet, for an initial term ending on July 31, 2023.<sup>5</sup> A copy of the 2018 Lease is attached hereto and incorporated herein as Exhibit 2.

17. Pursuant to the 2018 Lease, Square 46 delivered Suite 203 to White Star Market and further provided to White Star Market a tenant improvement allowance in the amount of \$13,800.00 to build out the space for use as a general office.<sup>6</sup>

18. White Star Market used Square 46's allowance to build out the space, and it used the space as a general office, White Star Annex.

19. White Star Market agreed to pay rent of \$1,695 per month and \$20,340 per annum in the first two (2) years of the 2018 Lease and escalating to \$1,888.33 per month or \$22,600 per year for year five, plus a percentage of common area maintenance charges and taxes.

### **White Star Market's business fails**

20. White Star Market either never achieved or could not sustain the kind of business it projected. Newspaper reports quote sources who say White Star Market's business fell as much as 30 to 40 percent since September and did not recover.<sup>7</sup>

### **White Star Market blames coronavirus**

21. On March 31, 2020, White Star Market abruptly announced on its website that it was closing White Star Market and terminating "the lease" due to "the COVID 19 pandemic, and the proclamations that have been issued by our local & state government." White Star Market represented that it "asked our landlord for rent abatement and the request was denied." That representation was untrue.

22. In fact, Square 46 offered to work with White Star Market to form an arrangement by which monetary obligations would be reduced or deferred on a month-to-month basis. Square 46 never heard back from White Star Market.

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<sup>5</sup> See 2018 Lease, page 1 at ¶¶ 1 and 2.

<sup>6</sup> See 2018 Lease, pages 5-6 at ¶ 8.

<sup>7</sup> See Boone, Timothy, "White Star Market permanently closes amid coronavirus state-at-home order," *The Advocate*, available at [https://www.theadvocate.com/baton\\_rouge/news/coronavirus/article\\_d2c5da6e-739b-11ea-af34-7be1311f6b97.html](https://www.theadvocate.com/baton_rouge/news/coronavirus/article_d2c5da6e-739b-11ea-af34-7be1311f6b97.html) (last visited April 9, 2020).

23. Instead, White Star Market's lawyer sent Square 46 a letter that purports to terminate the 2016 Lease and 2018 Lease, denies White Star Market's obligation to pay rent, and absurdly reserves White Star Market's right to seek damages against Square 46.

24. White Star Market misuses the coronavirus crisis as an excuse to terminate its leases, which do not expire until 2023. The coronavirus is merely a pretext for White Star Market refusing to honor its contractual obligations.

25. On or about April 1, 2020, White Star Market abandoned Square 46 and removed furniture, fixtures, and equipment from the property, all in violation of the 2016 Lease and 2018 Lease.

26. Neither the Leases nor Louisiana law give White Star Market the right to terminate due to "the COVID 19 pandemic, and the proclamations that have been issued by our local & state government."

27. Indeed, to the contrary, the 2016 Lease expressly states that, in the event of forces beyond either party's control, performance "shall be excused and extended for a period," but nothing shall excuse White Star Market "from the prompt payment of any rent":

**FORCE MAJEURE.** If either party hereto shall be delayed or prevented from the performance of any act required by reason of acts of God, strikes, lockouts, inability to procure materials, restrictive government laws or regulations or other cause without fault and beyond the control of the party obligated to perform (financial inability excepted), performance of such act shall be excused and extended for a period equivalent to the period of such delay; provided, however, **nothing in this section contained shall excuse Tenant from the prompt payment of any rent or other charge required of Tenant hereunder except as may be expressly provided elsewhere in this Lease.**<sup>8</sup>

#### **White Star Market's default**

28. The 2016 Lease requires that White Star Market pay Square 46 monthly installments constituting "Base Rent" as well as White Star Market's "proportionate share for the maintenance and operation of all common areas of the Square 46 Center" (together, "2016 Lease Rent") until the expiration date under the lease.<sup>9</sup> In addition, White Star Market is required to pay a proportionate share of property taxes. If any monthly payment is not paid by the fifth day of each month, White Star Market is additionally responsible for paying a late charge equal to five percent

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<sup>8</sup> See 2016 Lease, page 11 at ¶ 14.

<sup>9</sup> See 2016 Lease, page 2 at ¶ 4 and page 6 at ¶ 11(d).

of the monthly installment.<sup>10</sup> Past due installments of rent bear interest at the maximum allowable rate from date due until paid.<sup>11</sup>

29. The 2018 Lease requires that White Star Market pay Square 46 monthly installments constituting “Base Rent” and “Tenant’s Proportionate Share of Landlord’s Total Additional Cost of Operation” (together, “2018 Lease Rent”) until the expiration date under the lease as well as White Star’s prorated share of “all expenses for maintenance and operation of the Common Areas.”<sup>12</sup> If any monthly payment is not paid by the fifth day of each month, White Star Market shall be responsible for paying an additional late charge equal to five (5%) percent of the monthly installment.<sup>13</sup> Past due installments of rent bear interest at the maximum allowable rate from date due until paid.<sup>14</sup>

30. White Star Market did not pay its monthly installments for the 2016 Lease Rent or the 2018 Lease Rent when they became due on April 1, 2020. White Star Market also failed to pay all amounts due to Square 46 for the month of March 2020.

31. On April 2, 2020, Square 46 issued to White Star Market a formal notice of default for White Star Market’s failure to pay rent. Square 46 advised that if White Star Market did not cure its default within ten days, as provided in the leases, Square 46 would exercise any and all rights against White Star Market available to it under the leases and Louisiana law.

32. More than ten days after Square 46 issued the formal notice of default, White Star Market still has not paid rent and other obligations owed to Square 46. Instead, White Star Market has abandoned the property and removed furniture, fixtures, and equipment, all in direct violation of the 2016 Lease and 2018 Lease.

## **CAUSES OF ACTION**

### **Liability for damages**

33. In the event of an uncured default, the 2016 Lease and 2018 Lease entitle Square 46 to elect to “accelerate the rent for the whole unexpired Term of this Lease, which rent shall become immediately due and exigible.”<sup>15</sup>

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<sup>10</sup> See 2016 Lease, page 3 at ¶ 7.

<sup>11</sup> See 2016 Lease, page 3 at ¶ 7.

<sup>12</sup> See 2018 Lease, page 2 at ¶ 4, page 3 at ¶ 6, page 7 at ¶ 12.

<sup>13</sup> See 2018 Lease, page 3 at ¶ 7.

<sup>14</sup> See 2018 Lease, page 3 at ¶ 7.

<sup>15</sup> See 2016 Lease, page 13 at ¶ 24 and 2018 Lease, page 12 at ¶ 25.

34. Square 46 provided White Star Market formal notice of its default, but White Star Market did not cure it. Square 46 elects, as is its contractual right, to accelerate any and all rent and other obligations due under the 2016 Lease and 2018 Lease.

35. The 2016 Lease and 2018 Lease further entitle Square 46 to late charges equal to five percent of any unpaid monthly installment, plus interest at the maximum allowable rate from date due until paid.<sup>16</sup>

36. White Star Market is contractually liable to Square 46 for:

- a. any and all amounts due under the 2016 Lease and 2018 Lease for their whole unexpired terms;
- b. a five percent late charge on any unpaid monthly installment; and
- c. interest on the total amount due at the maximum allowable rate from now until paid.

37. Square 46 seeks a judgment against White Star Market awarding Square 46 all damages to which it is entitled under the 2016 Lease and 2018 Lease.

#### **Guarantor liability**

38. Gaines guaranteed White Star Market's performance under the 2016 Lease both in the 2016 Lease and in the Guaranty he separately signed.

39. The 2016 Lease provides that Gaines "personally guarantees all of [White Star Market's] obligations" and "shall be bound 'in solido' with [White Star Market] for the full and faithful performance of all obligations and covenants of [White Star Market]."<sup>17</sup>

40. The Guaranty separately provides that Gaines "irrevocably and solidarily guarantees" White Star Market's obligations and agrees that he is "jointly, severally, and solidarily" liable with White Star Market for "the rent or other charges due by [White Star Market]."<sup>18</sup>

41. Square 46 therefore seeks a judgment against Gaines awarding Square 46 all damages to which it is entitled pursuant to the 2016 Lease and the Guaranty.

#### **Liability for attorneys' fees**

42. Pursuant to the 2016 Lease, 2018 Lease, and Louisiana law, Defendants are liable for the attorneys' fees, costs, and disbursements that Square 46 incurs in this action.

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<sup>16</sup> See 2016 Lease, page 3 at ¶ 7 and 2018 Lease, page 3 at ¶ 7.

<sup>17</sup> See 2016 Lease, page 18 at ¶ 41.

<sup>18</sup> See 2016 Lease, page 24, "Exhibit 'D' Guaranty of Lease Agreement."

43. Square 46 therefore seeks a judgment against Defendants awarding Square 46 all attorneys' fees, costs, and disbursements to which it is entitled pursuant to the 2016 Lease, 2018 Lease, and Louisiana law.

**PRAYER FOR RELIEF**

**WHEREFORE**, Square 46 asks that after due proceedings, there be judgment in its favor and against White Star Market and Howard Clark Gaines, Jr., jointly and *in solido* and said judgment provide for:

- (1) all damages to which Square 46 is entitled;
- (2) pre-judgment and post-judgment interest;
- (3) attorneys' fees, costs, and disbursements; and
- (4) any other relief to which Square 46 is legally entitled.

Respectfully submitted,

/s/ Brent B. Barriere

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