

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM**

*Justice*

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VICTORIA'S SECRET STORES, LLC SUCCESSOR IN INTEREST TO VICTORIA'S SECRET STORES, INC.,L BRANDS INC.,SUCCESSOR IN INTEREST TO THE LIMITED, INC. AND INTIMATE BRANDS, INC.

Plaintiff,

- v -

HERALD SQUARE OWNER LLC SUCCESSOR IN INTEREST TO 1328 BROADWAY, LLC,

Defendant.

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INDEX NO. 651833/2020  
MOTION DATE 06/30/2020  
MOTION SEQ. NO. 001

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

Upon the foregoing documents, the defendant's motion for summary judgment dismissing the complaint is granted in its entirety.

The Complaint is premised on the mistaken theory that the parties did not allocate the risk of tenant not being able to operate its business and that tenant is therefore somehow forgiven from its performance by virtue of a state law. This is contrary to the express allocation of these risks set forth in Paragraph 26 of the Lease Agreement, dated as of August 22, 2001, by and between Herald Square Owner LLC's predecessor-in-interest, as landlord, and Victoria's Secret Stores, LLC's predecessor-in-interest, as tenant, as amended (collectively, hereinafter, the **Lease**; NYSCEF Doc. Nos. 9-10). It is of no moment that the specific cause for the government law was not enumerated by the parties because the Lease as drafted is broad and encompasses what happened here — a state law that temporarily caused a closure of the tenant's business (*see, e.g.,*

*Urban Archeology, Ltd. v 207 E. 57th St. LLC*, 2009 WL 8572326, at \*5 (Sup Ct NY Cnty Sept. 10, 2009) (Sherwood, J. [citing *General Electric Co. v Metals Resources Group Ltd.*, 293 AD2d 417 (1st Dept 2002)], *affd.*, 68 AD3d 562 (1st Dept 2009)]. The parties agreed that this would not relieve the tenant’s obligation to pay rent. Thus, the Complaint must be dismissed in its entirety.

Accordingly,

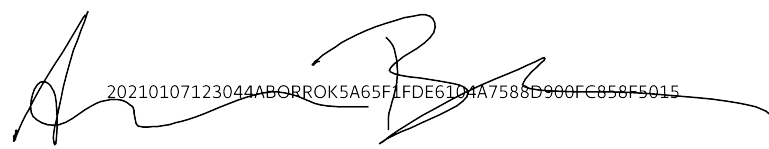
ORDERED that defendant's motion for summary judgment is granted and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of the defendants on the complaint accordingly; and it is further

ORDERED that the parties appear for a preliminary conference with respect to the counterclaims on February 9, 2021 at 2 pm.

1/7/2021

DATE



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ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE