IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2020-017813-CA-01
SECTION: CA31
JUDGE: Migna Sanchez-Llorens

IN-FLIGHT SERVICES USA, LLC
Plaintiff(s)

vs.

STOCKBRIDGE AVENTURA, LLC
Defendant(s)
_____/

ORDER ON PLAINTIFF'S MOTION TO DETERMINE RENTS AND RENT ABATEMENT REQUIRED UNDER LEASES

THIS CAUSE came before the Court on February 4, 2021 and February 11, 2021, upon Plaintiff, In-Flight Services, USA, LLC's ("**In-Flight**" or "**Tenant**") Motion to Determine Rents and Rent Abatement Required Under Leases ("**Motion**"). The Court has considered the Motion, Defendant, Stockbridge Aventura, LLC's ("**Stockbridge**" or "**Landlord**") Response to the Motion ("**Response**"), In-Flight's Evidentiary Hearing Brief on the Motion, and Stockbridge's Response to In-Flight's Brief. Present before the Court via a Zoom video conference were: Philip Hancock ("**Mr. Hancock**"), In-Flight's chief financial officer; counsel for In-Flight; Kevin Dolan ("**Mr. Dolan**"), as corporate representative for Stockbridge; counsel for Stockbridge; Nancy McClellan ("**Ms. McClellan**"), expert witness for In-Flight; and Don Ginsburg ("**Mr. Ginsberg**"), expert witness for In-Flight. The Court having heard from the witnesses, having reviewed documentary evidence, having heard argument from the parties' respective counsel, and being fully advised in the premises, **FINDS** as follows:

This action involves a dispute between Stockbridge as Landlord and In-Flight as Tenant, under two separate industrial leases. The dispute arises from the impact of the COVID-19

pandemic on the properties leased by Tenant and lease provisions providing Tenant relief for, among other things, casualty events such as the one presented in this lawsuit.

On August 20, 2020, Plaintiff/Counter-Defendant, In-Flight, filed its Complaint for Declaratory Relief. On September 16, 2020, Defendant/Counter-Plaintiff, Stockbridge, filed its Counterclaims including an action for possession of commercial real property under Ch. 83, Part I, Florida Statutes. On September 23, 2020, In-Flight filed its Motion to Determine Rents and Rent Abatement Required Under Leases.

The issue before the Court is what properly constitutes rent under the provisions of In-Flight's and Stockbridge's[1] two materially identical lease agreements ("**Lease Agreements**")[2] for the properties located at 555 N.E. 185 Street, Miami, Florida 33179 ("**Premises 555**"), and 320 N.E. 187 Street, Miami, Florida 33179 ("**Premises 320**") (collectively, the "**Leased Premises**"), pursuant to section 83.232, Florida Statutes. This statute provides:

> (1) In an action by the landlord which includes a claim for possession of real property, the tenant shall pay into the court registry the amount alleged in the complaint as unpaid, or *if such amount is contested, such amount as is determined by the court,* and any rent accruing during the pendency of the action, when due, unless the tenant has interposed the defense of payment or satisfaction of the rent in the amount the complaint alleges as unpaid. Unless the tenant disputes the amount of accrued rent, the tenant must pay the amount alleged in the complaint into the court registry on or before the date on which his or her answer to the claim for possession is due. If the tenant contests the amount of accrued rent, the tenant must pay the amount determined by the court into the court registry on the day that the court makes its determination . . . .
>
> (2) *If the tenant contests the amount of money to be placed into the court registry, any hearing regarding such dispute shall be limited to only the factual or legal issues concerning:*
>
> *(a) Whether the tenant has been properly credited by*

> *the landlord with any and all rental payments made; and*
>
> *(b) What properly constitutes rent under the provisions of the lease.*[3]

See Rowe v. Macaw Holdings I, LLC, 248 So. 3d 1178, 1179-80 (Fla. 4th DCA 2018) (where a lease provided for a reduction in "Fixed Rent" for partial destruction of the leased premises, the trial court was required to make a preliminary determination of the reduction of rent, if any, to which the tenant was entitled regarding the deposit into the court registry); *see also, Muvico Entm't, L.L.C. v. Pointe Orlando Dev. Co.*, 755 So. 2d 194, 194 (Fla. 5th DCA 2000).[4]

Section 5.04 of the Lease Agreements provides: "each monthly installment of rent shall be due and payable on or before the first day of the calendar month for which such rent is payable. Rent shall be payable without demand, deduction or right of set off."[5]

Stockbridge presented evidence that In-Flight is currently in arrears in the payment of rent on both Leased Premises in the collective amount of $1,381,533.20 through February 2021. Further, Stockbridge presented unrebutted evidence that the monthly rent due during the pendency of this action is $134,707.00 per month on the first day of each month.[6] However, In-Flight argues that it is entitled to a credit for rent that should be abated pursuant to the Lease Agreements. In-Flight presented evidence that since May 2020, it has been continually paying rent at the reduced amount of $10,000.00 per month; they perceived this reduced amount to be fair and reasonable under the circumstances.

The parties to the Lease Agreements had negotiated and agreed upon the risk of loss under a myriad of potential occurrences. In particular, Article XIII of the Lease Agreements embodies the parties' allocation of responsibility when the Leased Premises suffered damage caused by a peril covered by insurance ("**Casualty Clause**"). This article provides in pertinent

part as follows:[7]

ARTICLE XIII

CASUALTY AND CONDEMNATION

13.01 Damage or Destruction. (a) If the Building should be totally destroyed by fire, tornado, or other casualty, or of the Building should be so damaged thereby that rebuilding or repairs cannot in Landlord's reasonable estimation by completed within the Restoration Period, this Lease shall terminate and the Rent shall be abated during the unexpired portion of this Lease, effective upon the date of the occurrence of such damage.

(b) If the Building should be damaged by *any peril covered by insurance* to be provided by Landlord under Section 12.01, but only to such extent that rebuilding or repairs can in Landlord's estimation be completed within the Restoration Period, this Lease shall not terminate, and *Landlord shall at its sole cost and expense thereupon proceed with reasonable diligence to rebuild and repair the Building to substantially the condition in which it existed prior to such damage . . . . If the Premises are untenantable in whole or in part following such damage, the Rent payable hereunder during the period in which they are untenantable shall be reduced to such extent as may be fair and reasonable under all of the circumstances.* If Landlord should fail to complete the repairs and rebuilding within the Restoration Period, you may, at your option, terminate this Lease by delivering written notice of termination to Landlord as your exclusive remedy, whereupon all rights and or obligations hereunder shall cease and terminate. *Should construction be delayed because of a Force Majeure Event, the Restoration Period shall be extended for the time Landlord is so delayed.*[8]

In Section 12.01 of the Lease Agreements, the Landlord agreed to maintain property damage insurance covering the Leased Premises.[9]

In the event the Casualty Clause is triggered, it clearly and unambiguously operates to set forth the reduced "rent" due under the Lease Agreements ("[i]f the Premises are untenantable in whole or in part following such damage, *the Rent payable hereunder* during the period in which they are untenantable *shall be reduced to such extent as may be fair and reasonable under all of the circumstances.*").[10]

The term "casualty" is not defined under the Lease Agreements. Accordingly, the Court is required to employ the plain and ordinary meaning of the word "casualty" in interpreting the Parties' Lease Agreements.[11] The Black's Law Dictionary definition of "casualty", which both parties have cited to in previous briefings to the Court is (emphasis added):

> **Casualty** / kaezh(y)uwaltiy/. A serious or fatal incident. A person or thing injured, lost or destroyed. *A disastrous occurrence due to sudden, unexpected or unusual cause.* Accident; misfortune or mishap; *that which comes by chance or without design*. A loss from such an event or cause; as by fire, shipwreck, lightning, etc. *See also Accident; Loss; Unavoidable casualty*

Accordingly, the Court has considered the evidence to determine the following elements of the Casualty Clause and whether "[r]ent . . . shall be reduced to such extent as may be fair and reasonable under all of the circumstances." For the reasons set forth in this Order, the Court finds:

a. The Leased Premises were damaged by COVID-19 – a peril covered by insurance;

b. The damage rendered the Leased Premises untenantable in whole or in part; and

c. The damage could have been repaired by Stockbridge within the 200-day Restoration Period.

A. **COVID-19 is a Peril Covered by Insurance**

In accordance with Section 12.01 of the Lease Agreements, Stockbridge, via its parent company Core and Value Advisors, LLC, procured five insurance policies, each of which contain a materially identical "Endorsement No. 2":

ENDORSEMENT NO. 2

INSURED: Core and Value Advisors, LLC

And as more fully defined herein

EFFECTIVE DATE: February 1, 2020

SPECIAL PERILS

Notwithstanding Section I, Perils Insured Against, *this Policy is extended to cover loss* resulting from interruption of or interference with the business carried on by the Insured *in consequence of:*

(a) *Infectious or contagious disease manifested by any person while on the premises of the Insured or within a radius of 5 miles thereof;*

. . .

(d) Closing of the whole or part of the premises of the Insured by order of a competent public authority consequent upon the existence or threat of hazardous conditions either actual or suspected at the premises of the Insured;

. . .

The Company's liability for loss described under this clause in one occurrence shall not exceed $5,000,000.

. . .

Definitions:

> ***Infectious Diseases:***
>
> ***Any disease that has the capacity to spread to others.***
>
> Prohibited Access:
>
> This Company will pay for the Actual Loss Sustained resulting from the suspension of the Insured's operations at an Insured Location if access to that Insured Location by the Insured's suppliers, customers or employees is impaired by order or action of a governmental authority relating to the actual presence of an infectious disease.[12]

Special Endorsement No. 2 also provides for coverage for relocation expense and interruption by infectious disease.

Stockbridge's risk manager, Jason Bopp, similarly admitted that Stockbridge had insurance for business interruption or interference arising from infectious disease:[13]

> Q. All right. And just to be clear the Liberty policy referenced here, the CNA policy, and the Star policy, all have a special perils endorsement?
>
> A. Correct.
>
> Q. And they cover loss from infectious disease?
>
> A. Correct.

Despite the existence of insurance coverage, the evidence shows that Stockbridge did not discuss whether or not there was coverage with its outside risk manager, nor did he attempt to

make a claim.[14] Mr. Dolan, as corporate representative for Stockbridge, testified that he is not knowledgeable on any insurance matters and Stockbridge did not call their outside insurance expert to testify at the hearing.

Accordingly, the Court finds that COVID-19 is an infectious disease, and is a peril covered by Stockbridge's insurance policies.[15]

B. The Leased Premises Suffered Damage Which Rendered the Leased Premises Untenantable in Whole or in Part

The Broward County Administrator's Emergency Order 20-03, which was entered into evidence, notes "*the propensity of the virus to spread person to person and [that] the virus is physically causing property damage due to its proclivity to attach to surfaces for prolonged period of time*."[16] The City of Aventura Office of the City Manager Order and Supplement to Declaration of State of Emergency, which was admitted into evidence, similarly notes "*the propensity of COVID-19 virus to spread person to person and [that] the virus physically is causing property damage due to its proclivity to attach to surfaces for prolonged periods of time*."[17]

i. COVID-19 is Physically Present at the Leased Premises

The undisputed evidence shows that COVID-19 is physically at the Leased Premises.

In-Flight's Chief Financial Officer, Philip Hancock, testified that twenty-four employees have tested positive for COVID-19 through February 4, 2021. Some of these employees tested positive on the same day that they were working at the Leased Premises.

Additionally, Ms. McClellan, an industrial hygienist who assessed the Leased Premises, provided unrebutted expert testimony that COVID-19 is physically present at the Leased Premises. Mr. Ginsburg, a real estate industry expert, further testified that the Leased Premises

are substantially untenantable due to the COVID-19 damage.

Finally, In-Flight employee, Michael Lorenzo, stated that (a) he contracted COVID-19 the week of January 11, 2021; (b) he was informed that on January 11, 2021, an employee working approximately twenty feet away from his desk tested positive for COVID-19; and (c) to the best of his knowledge, he had not previously been exposed to any person who had contracted COVID-19.

Accordingly, based in part on the unrefuted testimony and evidence provided by In-Flight, the Court finds that COVID-19 was physically present at the Leased Premises.

ii. **The Leased Premises are Damaged, Unsafe, and Pose a High Risk to Inhabitants**

"Damage" is not defined under the Lease Agreements. Accordingly, the Court is required to employ the plain and ordinary meaning of the word "damage" in interpreting the Parties' Lease Agreements.[18] Mr. Hancock testified that damage means "injury or harm that reduces value or usefulness," and stated that this definition was learned from Dictionary.com. Additionally, on cross-examination, Mr. Dolan, as corporate representative for Stockbridge, admitted that he previously testified at his deposition that he did not know, nor did Stockbridge know what the term "damage" meant.

Accordingly, the Court finds as a matter of law that in making its determination of whether or not the Leased Premises were damaged, the Court shall employ the plain and ordinary meaning of the term "damage," which means "injury or harm that reduces value or usefulness."[19]

In-Flight adduced unrefuted testimony and evidence that its office and warehouse spaces are damaged, *i.e.*, that they suffered injury or harm that reduces value or usefulness, are "unsafe"

and pose a "high risk" to its inhabitants due to the presence of COVID-19. The evidence demonstrated that the office space was unsafe and posed a high risk to its occupants since it lacks windows and relies exclusively on an antiquated and inadequate HVAC[20] system to provide air to the occupants. Ms. McClellan testified that the HVAC systems installed at the Leased Premises were incapable of allowing 100% fresh air onto the Leased Premises and did not provide filtration to the level of MERV-13[21] (which level is needed to capture COVID-19 virus circulating within the Leased Premises). Further, the HVAC system could not mix (meaning replace) the circulating air within the Leased Premises six times per hour as recommended by the Centers for Disease Control ("**CDC**") and American Society of Heating, Refrigerating and Air-Conditioning Engineers ("**ASHRAE**"). Ms. McClellan, the expert, stated that for the office space to come into compliance with current CDC and ASHRAE guidelines, the HVAC units needed replacement.

While Stockbridge disputed this, it adduced no testimony or evidence to rebut Ms. McClellan's expert testimony. Instead, the Court notes that materials prepared by CBRE[22] and the property manager for the Leased Premises support Ms. McClellan's opinions. CBRE's HVAC expert declared that "[i]nside air quality is really important in slowing the spread of viruses in commercial facilities."[23]

CBRE's white paper, *UNDERSTANDING HVAC & Indoor Air Quality Technologies & Practices*, in discussing the challenges with indoor air quality, explains:

> . . . any airborne particulates carried by a person can be safely assumed to be part of the recirculated air. When evaluating indoor air quality and determining a plan of action with respect to HVAC systems, these compounds and particulates should be considered. While specific airborne pathogens or other microorganisms may often be the most news-worthy concern, *the negative impacts of other airborne contaminants in the airstream is significant and detrimental to both a building occupant's health as well as their cognitive function.*[24]

The CBRE white paper discusses installation of hardware into or near the HVAC system "designed to either kill, inactivate, or sterilize pathogens (UVGI and air ionization), or trap pathogens or airborne contaminants (high filtration)." The white paper also discusses design or control strategies such as higher ventilation which "focus on replacing recirculated air with outdoor air at a higher than normal rate . . . ."[25] The white paper notes that while none of the modifications will completely remove all airborne particulates or prevent all microbial build-up, each of these modifications can make an impact on indoor air quality.[26]

Ms. McClellan, the industrial hygienist expert, also explained that the warehouse space is unsafe and poses a high risk to its occupants. Ms. McClellan, who performed an industry standard risk assessment analysis of all of the Leased Premises, noted two fundamental problems with the warehouse space. First, the warehouses lacked a trucker cage for incoming truckers that would isolate incoming truckers and remove their airborne contaminants from the Leased Premises. Second, that the warehouse space lacked an adequate source of clean air and, accordingly, left the space circulating contaminated air.

Moreover, Section 13.01(b) of the Lease Agreements provides that if the Building suffers physical damage and such physical damage can be repaired, the Landlord is obligated to "proceed with reasonable diligence to rebuild and repair the Building *to substantially the condition in which it existed prior to such damage*." As such, the warehouse space of the Leased Premises never included a trucker cage nor did the vast majority of the warehouse area include air conditioning. Furthermore, the express language in the Leases obligates Stockbridge, in the event of a casualty, to rebuild and repair the building to the condition in which it existed prior to such damage.

iii. **The Lease Agreements Require Stockbridge as Landlord to Replace the HVAC System**

The Court finds that the Lease Agreements require Stockbridge as the Landlord to replace all of the HVAC systems at the Leased Premises. Florida principles of contract interpretation require that "a specific provision dealing with a particular subject will control over a different provision dealing only generally with that same subject."[27] Moreover, "a court may not interpret a contract so as to render a portion of its language meaningless or useless."[28] The Casualty Clause in the Lease Agreements specifically provide that if the Leased Premises suffer damage from an insured peril, the "Landlord shall at its sole cost and expense thereupon proceed with reasonable diligence to rebuild and repair the Building *to substantially the condition in which its existed prior to such damage*."[29]

The Court also finds that Section 7.04(b) of the Lease Agreements require that Stockbridge replace the existing HVAC system due to the COVID-19 damage. This Section provides, in pertinent part:

> (b) At your own cost and expense, you agree to enter into a regularly scheduled preventive maintenance/service contract with a Florida licensed maintenance contractor, for servicing all heating and air conditioning systems and equipment servicing the Premises and an executed copy of such contract shall be delivered to Landlord. This service contract must include all services suggested by the equipment manufacturer within the operations/maintenance manual and must become effective within thirty (30) days immediately following the date you take possession of the Premises. Landlord may (but shall not be required to), upon notice to you, elect to enter into such a maintenance service contract on your behalf or perform the work itself and, in either case, charge you therefore. *Provided that you [the tenant] have complied with the provisions of this paragraph, then notwithstanding anything in this Section or in Section 8.01 to the contrary, if an HVAC unit serving the Premises or a major component therefor requires replacement, then Landlord will replace the HVAC unit or major component.*[30]

Mr. Hancock testified that In-Flight did in fact enter into a regularly scheduled preventive maintenance/service contract with a Florida licensed maintenance contractor. Furthermore, In-Flight presented evidence of substantial costs incurred—more than $69,000.00—by In-Flight on service and repairs of the HVAC units from late 2018 to the present.[31] Accordingly, the Court finds that In-Flight complied with its obligation to enter into a service contract with a licensed contractor, which triggers Landlord's obligation pursuant to Section 7.04 to replace the HVAC units at the Leased Premises "or a major component therefor" in the event such HVAC unit or major component therefor requires replacement.

Furthermore, Mr. Hancock stated that due to the COVID-19 damage at the Leased Premises, In-Flight has been operating with a skeleton staff in its office and warehouse spaces. Specifically, Mr. Hancock confirmed that the office, which houses In-Flight's executives and key employees, is currently being used by 10-20% of the staff, and the warehouse is being used by 30-40% of the staff that had previously used the space prior to the Leased Premises suffering the COVID-19 damage. Mr. Hancock's unrebutted testimony was that its reduction in staff was due to COVID-19 which reduced the value and usefulness of the Leased Premises.

Mr. Ginsburg, an expert in real estate with thirty years of experience, similarly testified that COVID-19 damage rendered the Leased Premises substantially untenantable. Mr. Ginsburg noted that the Leased Premises were now "sick buildings" due to the COVID-19 damage coupled with the Leased Premises' antiquated HVAC units and other failings which cause the buildings to be unsafe and to pose a high risk to the inhabitants.

Mr. Hancock and Mr. Ginsburg also testified that because of the COVID-19 damage and Stockbridge's failure to mitigate the damage, In-Flight has not been able to utilize the Leased Premises to hold staff meetings or other conferences or to host meetings with outside customers,

suppliers and vendors, each of which are key components of In-Flight's ability to obtain and retain clientele and otherwise operate effectively. This further reduced the value and usefulness of the Leased Premises.

Mr. Dolan testified that Stockbridge had not inspected the Leased Premises for COVID-19 damage, notwithstanding the fact that In-Flight's counsel sent notice to Stockbridge of a casualty event due to COVID-19 in May 2020.[32] Mr. Dolan similarly testified that Stockbridge did not inspect the HVAC units at the Leased Premises to determine whether or not they can come into compliance with CDC or other guidelines. In short, in response to In-Flight's notice of a casualty event, Stockbridge took no action.

CBRE's employee Keith Parry, who serves as the real estate manager for the Leased Premises, similarly testified:[33]

> Q. Okay. Has CBRE done any work to the properties in connection with COVID?
>
> A. No.
>
> Q. Has CBRE inspected the properties with respect to COVID?
>
> A. No.
>
> Q. Have you made any suggestions that any work be done to [the property] (sic) with respect to COVID?
>
> A. No.

Accordingly, the Court finds that the Leased Premises suffered damages. The Leased Premises cannot fully operate safely and are untenantable to some extent.

C. **The Leased Premises Could Have Been Restored Within the Restoration Period**

Ms. McClellan provided expert testimony that the HVAC units could have been replaced, and that other work could have been done to make the Leased Premises tenantable within two months. Stockbridge presented no evidence to the contrary.

D. **Stockbridge's Argument that Rent Should Not Be Abated Because COVID-19 is a Force Majeure Event is Contrary to the Lease Agreements**

Stockbridge argued at the evidentiary hearing that because COVID-19 is a force majeure event,[34] In-Flight is not entitled to an abatement in rent.[35] Similarly, Stockbridge claims that the COVID-19 pandemic is a force majeure event[36] and not a casualty.

The Lease Agreements do not support such an "either/or" interpretation. Even a cursory reading of the Lease Agreements demonstrates that an event could constitute both a casualty and a force majeure event.[37] In fact, the Casualty Clause in the Lease Agreements demonstrates that a casualty and a force majeure event work hand in hand. The Casualty Clause specifically provides: "Should construction be delayed because of a Force Majeure Event, the Restoration Period shall be extended for the time Landlord is so delayed."[38]

Furthermore, "Force Majeure Event" is defined to include "fire" while Section 13.01(a) titled "Damage or Destruction" includes destruction "by fire, tornado or other casualty." Mr. Dolan admitted during his testimony that force majeure events such as, a fire, can constitute a casualty and result in an abatement in rent pursuant to the Casualty Clause. The Court finds no reason that COVID-19 damage should be treated differently.

Stockbridge cites Section 21.08 of the Lease Agreements to argue that force majeure events "shall not . . . extend the due date of the payment of Rent or any other payment required to

be made pursuant to this Lease nor shall the provisions of the immediately preceding sentence extend the time period during which any right granted under this Lease, if any, may be exercised."[39]

However, In-Flight is not seeking to "delay" the payment of Rent to Stockbridge. In fact, the testimony, which was confirmed by Stockbridge's corporate representative, is that In-Flight has timely paid $10,000.00 a month, representing In-Flight's estimation of fair and reasonable rent under all of the circumstances, each month to Stockbridge since May 2020.[40]

The Casualty Clause specifically addresses the amount of rent in the event of damage caused by a peril covered by insurance, while Section 21.08 of the Lease Agreements *only* addresses the deadline for In-Flight to pay the correct amount of rent. *Silver Shells Corp. v. St. Maarten at Silver Shells Condo. Ass'n*, 169 So. 3d 197, 203 (Fla. 1st DCA 2015) ("a cardinal principle of contract interpretation is that the contract must be interpreted in a manner that does not render any provision of the contract meaningless"). Here, the Court is being asked what amount of rent is fair and reasonable under the circumstances, and not when it should be paid. Section 21.08 of the Lease Agreements, accordingly, does not bear on this question.

E. **Fair and Reasonable Rent Under All of the Circumstances**

Stockbridge presented evidence that In-Flight is currently in arrears in the payment of rent on both Leased Premises in the collective amount of $1,381,533.20 through February 2021. The monthly rent due during the pendency of this action is $134,707.00 per month on the first day of each month.

Premises 555 consists of 123,233 square feet of which approximately 80% is used for warehouse space, and approximately 20% for office use. Premises 320 consists of 70,234 square feet of which 67,325 square feet is used for warehouse space (approximately 96%), and 3,000 square feet is for office use (approximately 4%).

In sum, In-Flight is leasing collectively 193,558 square feet of commercial space from Stockbridge of which approximately 86% of the space is used for warehouse storage purposes, and 14% is used for office space.[41]

Mr. Ginsburg, In-Flight's real estate expert, testified that fair and reasonable rent for the Leased Premises should be, considering only the COVID-19 damage, $21,674.00 per month combined. He explained that the rent should be accounted for based on its current utility. In-Flight's utility was affected by the building's safety hazard to the employees, clients, and vendors. Additionally, productivity was affected by In-Flight's inability to interact in person. Moreover, Mr. Ginsburg stated that office spaces typically lease at double the price per square foot than warehouse spaces.

In addition to the COVID-19 damage mentioned above, Mr. Hancock reported significant flooding and roof leak issues that have plagued the Leased Premises for at least several years.[42] Mr. Hancock testified that the parking lot, driveways, and areas adjacent to the warehouse spaces experience significant flooding on a regular rainy day in Florida, and that the roof leak issues have persisted since his employment at In-Flight.

Mr. Ginsburg stated that the flooding and roof leak issues further reduced the value and usefulness of the Leased Premises, and opined that the fair and reasonable monthly rent under all of the circumstances for the Leased Premises combined is $11,715.00.

While the Court agrees that In-Flight's utility of the Leased Premises are not at 100% full utility, the Court disagrees with Mr. Ginsburg's and In-Flight's position that only $11,715.00 of $134,707.00 per month or only 8.7% of the current lease amount due under the Lease Agreements, would equate to a fair and reasonable rent under the circumstances.

The Court, having considered the argument of counsel, the testimony given during the

hearing, and all other evidence admitted, it is hereby,

ORDERED and **ADJUDGED** as follows:

1. The Court finds that the fair and reasonable monthly rent for the Leased Premises[43] under all of the circumstances is ***$96,989.04*** ("Fair and Reasonable Monthly Rent").[44]

2. In-Flight is ordered to pay rent as follows: (i) the amount of ***$956,879.44***, plus any associated clerk's fees, for rent due from May, 2020 through the month of March, 2021 no later than 4:00 p.m. on March 31, 2021; and, (ii) the amounts of $96,989.04, plus any associated clerk's fees, no later than 4:00 p.m. on April 1, 2021 and again no later than 4:00 p.m. on the first (1^{st}) day of each calendar month thereafter during the pendency of this action. If In-Flight does not deposit the sufficient funds into the Court Registry, by the dates and times set forth above, Stockbridge, upon presentation of affidavit of default and Final Judgment for Possession, will be entitled to a Final Judgment for Possession of Premises 555 and Premises 320, and Writs of Possession, forthwith.

3. The Court reserves jurisdiction over this case, parties, and the subject matter to enter further orders that are proper, including without limitation, for enforcement purposes, and as otherwise authorized by Florida Law.

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[1] In-Flight and Stockbridge are collectively referred to as the "Parties."

[2] Lease Agreements encompass the two commercial leases for the properties located at: 555 N.E. 185 Street, Miami, Florida 33179 and 320 N.E. 187 Street, Miami, Florida 33179.

[3] § 83.232, Fla. Stat. (2021) (emphasis added).

[4] The Court notes that its ruling herein is limited to the specific Lease Agreements at issue, including their Casualty Clause, where the Landlord, Stockbridge, has obtained insurance coverage for infectious diseases, and regarding this particular Leased Premises which have HVAC and other limitations discussed below. The Court does not and cannot opine on the impact of COVID-19 on other leased premises governed by other specific lease language.

[5] Pl.'s Ex. 1 and 2, at ¶ 5.04.

[6] This is the monthly sum of rent due for both Leased Premises.

[7] With respect to the Court's interpretation of the Parties' Lease Agreements, The Florida Supreme Court has held:

> "It is well settled that courts may not rewrite a contract or interfere with the freedom of contract or substitute their judgment for that of the parties thereto in order to relieve one of the parties from the apparent hardship of an improvident bargain."

Beach Resort Hotel Corp. v. Wieder, 79 So. 2d 659, 663 (Fla. 1955).

[8] Pl.'s Ex. 1 and 2, at ¶ 13.01 (emphasis added).

[9] Pl.'s Ex. 1 and 2, at ¶ 13.01(b) (emphasis added).

[10] Pl.'s Ex. 1 and 2, at ¶ 13.01(b) (emphasis added).

[11] *See Beans v. Chohonis*, 740 So. 2d 65, 67 (Fla. 3d DCA 1999) (concluding that upon declaring the contract language ambiguous, the trial court looks to the dictionary for the plain and ordinary meaning of words).

[12] *See* Pl.'s Ex. 14, 15, 16, and 18 (emphasis added).

[13] *See* In-Flight's Designation of Excerpts from Jason Bopp's January 7, 2021 Deposition dated February 11, 2021, Filing # 121207023 ("**Bopp Designations**"), at pp. 34:21-35:1.

[14] Any argument by Stockbridge that there was no coverage must be viewed in the context that Stockbridge failed to take even the smallest step to determine whether or not there was coverage once In-Flight put Stockbridge on notice of the casualty, such as failing to even ask its outside risk manager if there was coverage or seeking any additional information from In-Flight. In-Flight wrote to Mr. Dolan on behalf of In-Flight on May 22, 2020 and put Stockbridge on notice that "[t]he COVID pandemic constitutes a 'casualty' at the Premises . . . under Article XIII of the Lease." *See* Plaintiff's Trial Exhibit No. 27. Mr. Bopp testified at his deposition that (a) he never told Mr. Dolan that there was no coverage for infectious disease; (b) he never discussed special perils coverage with Mr. Dolan; and (c) Mr. Dolan never asked him if there was coverage for COVID-19. *See* Bopp Designations, at pp. 42:13-43:1.

[15] Stockbridge's insurance policies were entered into evidence. *See* Pl.'s Ex. 14, 15, 16, and 18.

[16] Pl.'s Ex. 7 (emphasis added).

[17] Pl.'s Ex. 8 (emphasis added); *see also* Pl.'s Ex. 3, 4, 5, and 6, which are emergency orders and proclamations entered by President Trump, Florida Governor Ron DeSantis, and Miami-Dade County, Florida.

[18] *See Beans*, 740 So. 2d at 67.

[19] Based on the definition for the word "damage" in www.dictionary.com.

[20] HVAC is Heating, Ventilation, and Air Conditioning.

[21] MERV is Minimum Efficiency Reporting Value.

[22] CBRE stands for Coldwell Banker Richard Ellis.

[23] *See* Pl.'s Ex. 47.

[24] *See* Pl.'s Ex. 48, p. 4 (emphasis added).

[25] *See* Pl.'s Ex. 48, p. 4 (emphasis added).

[26] *See* Pl.'s Ex. 48, p. 3 (emphasis added).

[27] *Papunen v. Bay Nat'l Title Co.*, 271 So. 3d 1108, 1111 (Fla. 3d DCA 2019) (internal quotations omitted).

[28] *TRG Columbus Dev. Venture, Ltd. v. Sifontes*, 163 So 3d 548, 552 (Fla. 3d DCA 2015) (citing *Moore v. State Farm Mut. Auto. Ins. Co.*, 916 So. 2d 871, 877 (Fla. 2d DCA 2006)).

[29] Pl.'s Ex. 1 and 2, at ¶ 13.01(b).

[30] *See* Pl.'s Ex. 1 (emphasis added).

[31] *See* Pl.'s Ex. 50.

[32] *See* Pl.'s Ex. 27.

[33] *See* In-Flight's Designation of Excerpts from Keith Parry's January 14, 2021 Deposition dated February 11, 2021, Filing # 121207023 ("Parry Designations"), at p 16:11-19.

[34] In-Flight notes that Stockbridge's argument that COVID-19 is a force majeure event is refuted by Stockbridge's own admission in response to In-Flight's notice to Stockbridge in May 2020 that the Leased Premises suffered a casualty. *See* Pl.'s Ex. 28 ("**nor does [COVID-19] constitute a force majeure**, casualty, or other event as a result of which Tenant may avoid the payment of rent.") (emphasis added).

[35] Section 21.08 of the Lease Agreements provide that Force Majeure Events "shall not . . . extend the due date of the payment of any Rent or any other payment required to be made pursuant to this Lease."

[36] The Lease Agreements include "epidemics" in its definition of "Force Majeure Event." *See* Pl.'s Ex. 1 and 2, at pp. 2-3.

[37] *See* Pl.'s Ex. 1 and 2, at pp. 2-3.

[38] *See* Pl.'s Ex. 1 and 2, at ¶ 13.01(b).

[39] Pl.'s Ex. 1. at ¶ 21.08.

[40] *See* Pl.'s Ex. E and F (lease ledgers).

[41] Furthermore, the vast majority of the warehouse area is not under air conditioning.

[42] *See* Pl.'s Ex. 38.

[43] Leased Premises includes both facilities: Premises 555 and Premises 320.

[44] Based on the Lease Agreements, the Court finds that Stockbridge *may* not have a duty under the lease to *add* safety measures to the Leased Premises as stated in section 13.01(b). Should they have to replace the HVAC system, according to section 7.04(b) of the Lease Agreements, this would appear to only include the office spaces. Because the office spaces are valued at double the amount in rent per square foot than the warehouse spaces, the court finds that 28% (14% x 2) is a sufficient reduction until the pendency of this action.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 9th day of March, 2021.

2020-017813-CA-01 03-09-2021 1:53 PM

Hon. Migna Sanchez-Llorens

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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