

INDIANA COMMERCIAL COURT

STATE OF INDIANA) IN THE MARION COUNTY SUPERIOR COURT
)) SS:
COUNTY OF MARION) CAUSE NO.

1NP LLC,

Plaintiff,

v.

CENTIER BANK,

Defendant.

COMPLAINT FOR DAMAGES

Plaintiff 1NP LLC (“Landlord”), by counsel, for its Complaint for Damages against Defendant Centier Bank (“Tenant”), alleges and states as follows:

THE PARTIES AND VENUE

1. Landlord is an Indiana limited liability company that owns commercial property known as One North Penn located at 1 North Pennsylvania Street, Indianapolis, Indiana 46204 (the “Building”).
2. Tenant is an Indiana corporation with its principal place of business and registered agent located at 600 E. 84th Avenue, Merrillville, Indiana 46410.
3. This case is eligible for the Commercial Court Docket as, *inter alia*, it relates to a dispute between two business entities over a contract for the lease of commercial property located in Indianapolis. *See* Interim Comm'l Ct. Rule 2(E)(7).

THE OFFICE LEASES, LETTER OF INTENT AND AMENDMENTS

4. On March 27, 2015, One North Penn, LLC (“One North Penn”) and Tenant entered into an Office Lease, whereby One North Penn leased to Tenant approximately 2,856

square feet of office space known as Suite 100 in the Building (“Suite 100 Office Lease”). A true and accurate copy of the Suite 100 Office Lease is attached hereto as **Exhibit A**.

5. Tenant subsequently entered into a separate Office Lease with One North Penn on May 18, 2015, for the tenancy of an additional 3,633 square feet of office space known as Suite 1310 in the Building (“Suite 1310 Office Lease”) on May 18, 2015. A true and accurate copy of the Suite 1310 Office Lease is attached hereto as **Exhibit B**.

6. Landlord, as successor in interest to One North Penn, is a party to the Suite 100 Office Lease and Suite 1310 Office Lease and is the current landlord under both lease agreements.

7. In 2017, Landlord reached an agreement with a hotel operator (the “Hotel Operator”), pursuant to which the Hotel Operator agreed to allow Landlord to operate the entire Building as a nationally recognized hotel franchise (the “Hotel Agreement”).

8. In anticipation of the relocation, renovations and the Hotel Agreement, Landlord engaged its affiliate, Loftus Robinson LLC (“Loftus Robinson”), to meet with Tenant to negotiate a relocation agreement in advance of the large scale renovations.

9. Those negotiations culminated in an August 3, 2017 Letter of Intent (“LOI”), which was intended to aid Landlord and Tenant in negotiating a binding lease agreement for Tenant to vacate the Building and relocate to commercial space on the first and second floor of an adjacent property located at 110 East Washington Street (“110 East Washington”). A true and accurate copy of the LOI is attached hereto as **Exhibit C**.

10. Pursuant to the terms of the LOI, Landlord and Tenant were to work diligently to complete a mutually agreeable lease.

11. The LOI further provides a list of specific terms and requirements for the new leased premises, such as the location and square footage of the premises, accommodations for

furniture and interior finishes, signage, and pricing, all of which were expressly agreed to by Tenant.

12. For purposes of acknowledging and memorializing the intentions of the parties, Landlord and Tenant amended the Suite 100 Office Lease and Suite 1310 Office Lease on November 28, 2017. True and accurate copies of the First Amendments are attached hereto as **Exhibits D** and **E**, respectively (collectively, the “First Amendments”).

13. Tenant acknowledged that “execution of the New Lease [was] required for Landlord to satisfy its obligations under the Hotel Agreement and to facilitate the Hotel Operator’s intended use of the Building” and that “Landlord shall sustain substantial damages in the event the New Lease [was] not executed on or before [February 1, 2018,] the New Lease Execution Date.” *See* First Amendments, Section 2.

14. Tenant expressly agreed to “negotiate in good faith and enter into the New Lease upon the terms and conditions contained in the Letter of Intent and other Customary Lease Terms.” Tenant further agreed to fully execute a new lease on or before February 1, 2018, “so long as the terms of the New Lease are consistent with the terms of the Letter of Intent and each party has negotiated in good faith.” *Id.*

15. Tenant further agreed to vacate Suite 1310 and relocate to approximately 2,234 square feet of available retail space located in Suite 220 of the Building (“Temporary Replacement Premises”) and remain in occupancy of the Temporary Replacement Premises until Tenant was relocated to 110 East Washington and a new lease was fully executed. *See* Exhibit E, Section 3-4.

16. Tenant relocated to the Temporary Replacement Premises and has not been assessed any rent for the Temporary Replacement Premises by Landlord based on the parties’

agreement Tenant would execute a new lease for 110 East Washington; however, Tenant has not negotiated in good faith as required by the parties' agreement.

17. The parties were not able to execute a new lease prior to the New Lease Execution Date on or before February 1, 2018.

18. Wishing to extend the New Lease Execution Date, the parties amended the Suite 100 Office Lease and Suite 1310 Office Lease again on July 25, 2018. True copies of the Second Amendments are attached hereto as **Exhibits F** and **G**, respectively (collectively, the "Second Amendments").

19. Similar to the First Amendments, Section 2 of the Second Amendments provides as follows:

Execution of New Lease. Landlord and Tenant acknowledge and agree that the execution of the New Lease is required for Landlord to satisfy its obligations under the Hotel Agreement and to facilitate the Hotel Operator's intended use of the Building. As a result, Landlord and Tenant agree to negotiate in good faith and enter into the New Lease upon the terms and conditions contained in the Letter of Intent and other Customary Lease Terms. The parties further agree that, so long as the terms of the New Lease are consistent with the terms of the Letter of Intent and each party has negotiated in good faith, the New Lease shall be fully executed by Landlord and Tenant.

See Second Amendments, Section 2.

TENANT LEASE VIOLATIONS

20. Tenant has failed to negotiate in good faith or work diligently to reach terms on a new lease as required by the Suite 100 Office Lease and Suite 1310 Office Lease, as amended by the First and Second Amendments (collectively, hereinafter referred to as the "Office Leases").

21. Loftus Robinson, on behalf of Landlord, drafted and circulated a proposed new lease agreement (the "Draft Lease") in early April 2018.

22. The terms of the Draft Lease are consistent with the terms of the LOI.

23. Tenant initially responded with preliminary questions on April 11, 2018, but did not provide specific comments or otherwise revise or accept the terms of the Draft Lease. In fact, other than simply acknowledging receipt of the Draft Lease and related communications from Landlord's counsel, Tenant ignored Landlord's numerous attempts to discuss the proposed lease terms or signage plans until September 5, 2018.

24. Tenant has since been more interested in negotiating a buyout and/or entering into an entirely different lease with a third party than diligently negotiating and executing a new lease with Landlord upon the previously-negotiated terms.

25. In fact, after brief (yet futile) discussions concerning a buyout on September 7, 2018, Tenant informed Landlord that it had been looking at various alternative properties to relocate, such as 50 S. Meridian St., Indianapolis, Indiana, and even presented a cash flow statement showing applicable pricing and costs for the alternative premises.

26. Furthermore, when Landlord persisted and required that Tenant provide comments to the Draft Lease, Tenant finally tendered red-line revisions to the Draft Lease on September 14, 2018, but even the proposed revisions materially differed (in violation of Tenant's contractual requirements) from the terms set forth in the LOI. Tenant demanded, among other things, an additional 2,000 square feet of rental space and required the annual rent be decreased by more than 15% of the originally agreed upon pricing.

27. To date, Tenant has refused to agree to any terms consistent with the LOI and has otherwise refused to negotiate in good faith.

28. As such, Tenant is in breach of the Office Leases.

COUNT I: BREACH OF CONTRACT

29. Landlord incorporates by reference the allegations set forth in the foregoing paragraphs as though fully set forth herein.

30. Tenant was obligated to, but has failed and refused to, enter into a new lease with Landlord upon the terms and conditions contained in the LOI.

31. Tenant has further failed to negotiate a new lease in good faith.

32. As a proximate result of Tenant's breach, Landlord has and will continue to suffer damages resulting from Landlord's inability to satisfy its obligations under the Hotel Agreement due to Tenant's delay and bad faith and refusal to execute a new lease, including, but not limited to, ongoing operating expenses, loss of rents and other financial repercussions..

33. Landlord is further entitled to its attorneys' fees and costs as a result of Tenant's breach and enforcement of the Office Leases, per the terms thereof.

COUNT II: PROMISSORY ESTOPPEL (IN THE ALTERNATIVE)

34. The Office Leases require the parties to fully execute a new lease in good faith consistent with the terms and conditions contained in the LOI, and thus, Landlord is entitled to relief under the claims above. This claim is asserted in the alternative, however, to the extent Tenant somehow contends the incorporation of the LOI terms in the Office Leases was improper.

35. Tenant incorporates by reference the allegations contained in Paragraphs 1 through 28 as though fully set forth herein.

36. Tenant made promises to Landlord, including that it would negotiate in good faith and diligently enter into a new lease upon the terms and conditions contained in the LOI, with the intention that Landlord would rely on those representations.

37. Landlord did in fact rely on Tenant's promises to its detriment such that the resulting injustice can be avoided only by enforcement of the promises.

COUNT III: UNJUST ENRICHMENT (IN THE ALTERNATIVE)

38. The Office Leases require the parties to fully execute a new lease in good faith consistent with the terms and conditions in the LOI, and thus, Landlord is entitled to relief under

the claims above. This claim is asserted in the alternative, however, to the extent Tenant somehow contends the incorporation of the LOI terms in the Office Leases was improper.

39. Tenant incorporates by reference the allegations contained in Paragraphs 1 through 28 as though fully set forth herein.

40. Landlord allowed Tenant to relocate to the Temporary Replacement Premises and has not required Tenant to pay monthly rent and other monetary obligations due under the Office Leases in reliance of the parties' agreement Tenant would negotiate in good faith and diligently enter into a new lease upon the terms and conditions contained in the LOI.

41. Tenant has failed and refused to enter into a new lease with Landlord upon the terms and conditions contained in the LOI, all while continuing to occupy the Temporary Replacement Premises at no cost to Tenant.

42. Tenant has further failed to negotiate a new lease in good faith.

43. Landlord has been unjustly deprived of (and Tenant has been unjustly enriched by) the rent and other monetary obligations otherwise due under the Office Leases. Landlord also will incur significant additional damages resulting from ongoing operating expenses, loss of rents and other financial repercussions, all for Tenant's unjust enrichment.

44. As a result, Landlord is entitled to restitution from Tenant for the amount of rent and other monetary obligations due under the Office Leases, as well as damages resulting from ongoing operating expenses, loss of rents and other financial repercussions.

WHEREFORE, Landlord respectfully requests the Court enter judgment in favor of Landlord and against Tenant; award Landlord damages; award Landlord costs and attorneys' fees associated with bringing this action as provided by the Office Leases; and for all other appropriate relief.

Respectfully submitted,

ICE MILLER LLP

/s/ George A. Gasper

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