

SUPREME COURT PENDING CASE

The following appeal is assigned for argument in the Supreme Court on November 16, 2021

AGW SONO PARTNERS, LLC *v.* DOWNTOWN SOHO, LLC, et al.,
SC 20625

Judicial District of Stamford-Norwalk, Housing Session at Norwalk

Contracts; Damages; Whether Trial Court Properly Rejected Defendant’s Special Defenses that Executive Orders Issued in Response to COVID-19 Pandemic Excused Breach of Restaurant Lease Under Doctrines of Impossibility, Illegality or Frustration of Purpose; Whether Trial Court Erred in Determining Damages.

The plaintiff owns property in Norwalk and was assigned a ten year commercial lease with the defendant Downtown Soho, LLC, which operated a fine dining restaurant and upscale bar. The lease required that the defendant comply with all governing laws and regulations and further provided that the premises could only be used for a “first-class restaurant and bar.” The defendant failed to make timely lease payments in January and February, 2020, but cured the defaults shortly thereafter. On March 10, 2020, the governor declared a public health and civil preparedness emergency in response to the spread of the COVID-19 pandemic, and, the next day, the plaintiff sent the defendant a default notice regarding the March lease payment, which was not cured. Beginning in March, 2020, the governor issued a series of executive orders that, inter alia, closed bars and prohibited in-person dining at restaurants through May 20, 2020. Although restaurants were then permitted to operate at 50 percent indoor capacity with social distancing measures in place, the defendant’s restaurant, which previously had a capacity of over 140 patrons, was limited to a maximum indoor capacity of twenty-five individuals, including staff. As a result, the restaurant operated at a loss through the summer of 2020, and, after the defendant vacated the premises, the plaintiff found a new tenant that took possession in January, 2021. The plaintiff brought this action for breach of the lease agreement, and the defendant raised as special defenses that, in light of the executive orders, the breach was excused under the doctrines of impossibility, illegality, or frustration of purpose. The court rejected those claims, finding that the lease did not require the operation of a profitable restaurant and, moreover, that the lease had allocated the risk of complying with governmental orders to the defendant. Furthermore, the court disagreed with the defendant’s argument that reliance on takeout orders was inconsistent with use of the premises for a “first-class restaurant,” as the lease was not

specifically limited to indoor dining or a specific dining experience. The trial court awarded \$200,308.76 in damages for unpaid lease payments from March, 2020, through December, 2020, the subsequent real estate commission, and legal fees and costs. The defendant appealed and the plaintiff cross appealed to the Appellate Court, and the Supreme Court transferred the appeals to itself. The defendant claims that the trial court erred because the executive orders made it commercially impractical to operate a fine dining restaurant, frustrating the purpose of the lease, and because the parties had entered into the lease assuming the nonoccurrence of a pandemic that forced the widespread shutdown of restaurants and businesses. The defendant also claims that the court misinterpreted the lease, failed to consider the breakdown of the parties' negotiations, and erred in determining the percentage of business affected by the executive orders. In its cross appeal, the plaintiff claims that the court erred in its damages award by finding certain evidence insufficient or speculative and by failing to award the difference in value between the defendant's lease and the value of the subsequent tenant's lease.

The summary appearing here is not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. This summary is prepared by the Staff Attorneys' Office for the convenience of the bar. It in no way indicates the Supreme Court's view of the factual or legal aspects of the appeal.

*Jessie Opinion
Chief Staff Attorney*
