

140 BW LLC v GFI Capital Resources Group, Inc.

2026 NY Slip Op 31286(U)

March 31, 2026

Supreme Court, New York County

Docket Number: Index No. 158982/2022

Judge: Hasa A. Kingo

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. HASA A. KINGO PART 65M

Justice

-----X

140 BW LLC,

Plaintiff,

- v -

GFI CAPITAL RESOURCES GROUP, INC.,GFI
INSURANCE BROKERAGE, INC.,GFI DEVELOPMENT
COMPANY, LLC

Defendant.

-----X

INDEX NO. 158982/2022

MOTION DATE 08/15/2025

MOTION SEQ. NO. 004

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 150, 151, 152, 153,
154, 155, 156, 157, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175,
176, 177, 178, 179

were read on this motion to/for MONIES/SURPLUS.

Upon the foregoing documents, Plaintiff 140 BW LLC ("Landlord") moves pursuant to
CPLR § 3212 for partial summary judgment on all causes of action and for damages in the amount
of \$5,863,592.62, with interest and attorneys' fees, costs and disbursements (NYSCEF Doc No.
150, notice of motion). Defendants GFI Capital Resources Group, Inc., GFI Insurance Brokerage,
Inc. and GFI Development Company, LLC (together, "Defendants") oppose the motion. For the
reasons set forth below, the motion is denied.

BACKGROUND

Defendant GFI Capital Resources Group, Inc. ("Tenant") is the commercial tenant under a
lease dated November 25, 2013 ("Lease") with Plaintiff for the entire 41st floor (the "Premises")
of the building located at 140 Broadway, New York, New York 10005 (the "Building") (NYSCEF
Doc No. 153, lease agreement). Defendants GFI Insurance Brokerage, Inc. ("GFI Insurance") and
GFI Development Company, LLC ("GFI Development") are lease guarantors (the "Guarantors").
The Lease has an initial term of 15 years that was in effect during all relevant time periods (id. at
6).

On March 7, 2020, then New York Governor Andrew Cuomo issued Executive Order
Number 202, declaring a disaster emergency for the State of New York due to the COVID-19
pandemic.¹ This was followed by additional Executive Orders that, inter alia, set limits on in-
person gatherings within the state. In response to the Executive Orders, the Landlord sent a notice
by email to all Building tenants on June 5, 2020 titled "140 Broadway Re-Entry Plan," to be

¹ The court takes judicial notice of all Executive Orders referenced herein.

implemented on June 22, 2020 (the “Safety Plan”) (NYSCEF Doc No. 157).² In relevant part, the notice provided instructions for limiting social contact in the building, advised that Building elevator use would be limited to four (4) individuals a time, and provided the following with respect to building occupancy:

. . . Although everyone is very anxious to return to back to [sic] their normal routines and return to the office, we must all remain “thoughtful” and understand that only your “essential” workers should return at this time. Anyone that can work from home should continue to do so until restrictions lessen. We urge you to stagger and rotate your staff returning to the building to help avoid large crowds from congregating in the lobby and in common areas of the building. This is especially critical as we will have a limited amount of people able to ride the elevators at any given time. To maintain the best social distancing requirements, only 4 people are permitted in an elevator at a time. An occupancy worksheet is attached for your convenience and to assist you with planning for a staggered return. All tenants are urged to fill out and provide to us prior to June 22nd. Tenants will also be permitted to use the stairwells if they wish to exit the building to help alleviate the crowds from gathering. Tenants should advise us if any of their employees wish to use the fire stairs to exit the building.

(NYSCEF Doc No. 157, emails at 7).

On June 22, 2020, Risa Rench, Director of Human Resources for Tenant, responded to the Landlord’s email and asked, “[w]hat is the occupancy limit for the 41st floor” (*id.* at 1). Lisbeth Falcon, Tenant Services Coordinator for the Landlord, responded that “[t]he occupancy limit for your floor would be 50% percent of your current staffing” (*id.*). The Landlord asserts that it kept the 50% limitation on tenant occupancy in effect until May 14, 2021, when it notified all Building tenants by email that the limitation was increased to 75%, and then lifted the restriction entirely one month later on June 16, 2021 (NYSCEF Doc No. 151, Neri aff in support ¶¶ 21-23).

On or about June 16, 2020, the Landlord mailed Tenant a 7-Day Notice to Cure for Non-Payment of Rent dated June 16, 2020 (New York Index No. 154591/2020, NYSCEF Doc No. 1, complaint ¶ 8). On June 26, 2020, the Tenant commenced an action in this court bearing the caption GFI Capital Resources Group, Inc. v. 140 BW LLC, Index No. 154591/2020, in which it interposed causes of action for a Yellowstone Injunction, constructive eviction, declaratory judgment, permanent injunction, and for attorneys’ fees and costs (*id.*). Concurrently, Tenant filed a motion, by order to show cause, for a Yellowstone Injunction, which was denied by an order of the court dated August 14, 2020 (NSYCEF [154591/2020] Doc No. 40). Defendants filed answers in this related action, but there was otherwise no case activity until the action was dismissed by an order of the court dated April 4, 2025, after the parties failed to appear for a conference before the court (NYSCEF [154591/2020] Doc No. 48). Counsel later stated that this action “died on the vine” (NYSCEF Doc No. 108, tr at 5, ln 6-7).

² Although the June 5, 2022 announcement sent to the building tenants refers to the plan as a “Re-Entry Plan,” the parties have referred to it as the “Safety Plan” for the duration of this action.

On September 20, 2022, a process server attempted to serve a Seven (7) Business Day Notice to Cure for Non-Payment of Rent (“Notice to Cure”) on the Tenant and was advised by Building security that the Tenant had moved away from the Building “approximately 1 week ago” (NYSCEF Doc No. 151, Neri aff in support ¶ 13; NYSCEF Doc No. 155, affidavit of service). The process server returned on September 22, 2022, and served the Notice to Cure by affixing a copy to the Premises and subsequently mailing copies to Tenant and its counsel (*id.*).

The Landlord then commenced this action by filing a summons and complaint October 20, 2022 (NYSCEF Doc Nos. 1-2). On December 13, 2022, the Landlord filed a motion for default against Tenant and GFI Development, which was subsequently withdrawn (Motion Seq. 001) (NYSCEF Doc Nos. 12, 44). All Defendants filed an answer on December 28, 2022 (NYSCEF Doc No. 42).

On April 28, 2023, the Landlord filed a motion for summary judgment, seeking summary judgment in the Landlord’s favor on all causes of action and damages in the amount of \$7,084,571.08, with interest (Motion Seq. 002) (NYSCEF Doc No. 46, notice of motion). Justice Shlomo Hagler, who presided over the case at the time, heard oral argument at two separate appearances and ordered supplemental briefing on the motion. The court issued two interim orders and a final order on the motion that together denied the motion for summary judgment, except to the extent that several of Defendants’ affirmative defenses (NYSCEF Doc No. 96, 117, 122, orders, Hagler, J.). At the conclusion of the oral argument, the court denied the motion and held that material issues of fact existed regarding whether there was an actual eviction for the period of time between June 2020 and September 2022 (*id.* at 35-36).

On February 18, 2025, the Landlord filed a second motion for summary judgment (Motion Seq. 003) (NYSCEF Doc No. 125, notice of motion). The motion sought partial summary judgment in the Landlord’s favor for Fixed Rent owed under the Lease for each month of the Lease Term not covered by the Safety Policy, totaling \$5,219,361.81, as well as interest and reasonable attorneys’ fees incurred by the Landlord in connection with this action (*id.*; NYSCEF Doc No. 139, mem in support at 2). At oral argument held on July 17, 2025, Justice Hagler held that the Landlord’s moving papers were deficient such that the Landlord did not meet its burden of demonstrating that it sent a notice to the Tenant that the occupancy limit under the Safety Plan was changed to 75% or lifted entirely (NYSCEF Doc No. 179, tr [7/17/2025] at 10-11). In relevant part, Justice Hagler addressed this issue as follows:

If you could show me in a record, where there was a writing that went to all of the tenants in the building that it went back to 75 percent and at a certain point, there was no more restrictions . . . [Then you] would be entitled to all of the rent after that date. . . . If it’s uncontroverted, there was a period of time no safety in effect whether from 2021 to 2024, so be it, if there is a writing, fine, show the writing.

(NYSCEF Doc No. 179, tr [7/17/2025] at 10-11).

The motion was denied with leave to review within 30 days with proper proof of notice (*id.* at 10-12). The court’s determination was memorialized by a written order in which the court denied the motion “without prejudice as stated on the record today with leave to renew within 30

days” of the court’s order dated July 17, 2025 (NYSCEF Doc No. 148, decision and order, Hagler, J.).

On August 15, 2025, the Landlord filed this renewed motion for summary judgment (NYSCEF Doc No. 150, notice of motion). The Landlord moves for partial summary judgment in the Landlord’s favor for Fixed Rent owed under the Lease for each month of the Lease Term not covered by the Safety Policy, totaling \$5,863,592.62, as well as interest and reasonable attorneys’ fees incurred by the Landlord in connection with this action (NYSCEF Doc No. 167, mem in support at 2).

Defendants oppose the motion and assert that the motion should be denied because there are outstanding material issues of fact regarding (1) whether GFI was actually or constructively evicted from the premises, (2) whether GFI is entitled to an abatement of rent pursuant to section 18.06 of the parties’ lease, and (3) the amount of GFI’s damages that would be an offset to any rent owed to the Landlord (NYSCEF Doc No. 169, mem in opp at 2).

DISCUSSION

Pursuant to CPLR § 3212(b), a motion for summary judgment “shall be granted if, upon all the papers and proofs submitted, the cause of action or defense shall be established sufficiently to warrant the Court as a matter of law in directing judgment in favor of any party” (CPLR § 3212[b]). “The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law” (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007]). The movant’s burden is “heavy,” and “on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party” (*William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013] [internal quotation marks and citation omitted]). Upon a proffer of evidence establishing a *prima facie* case by the movant, the party opposing a motion for summary judgment bears the burden of producing evidentiary proof in admissible form sufficient to require a trial of material questions of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). “A motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility” (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010] [internal quotation marks and citation omitted]).

The issues on this motion are narrow. At the July 17, 2025 oral argument, the court granted leave for the Landlord to file a renewed motion for summary judgment with evidentiary proof in admissible form sufficient to demonstrate that the Landlord sent notice to the Tenant that the occupancy limited under the Safety Plan went to 75% and was later lifted entirely (NYSCEF Doc No. 179, tr [7/17/2025] at 10, ln 20-23). Justice Hagler held unequivocally that such proof was necessary for the Landlord to meet its *prima facie* burden on the motion (*id.* at 12), and that this renewed motion would be the Landlord’s last opportunity to move for summary judgment relief (*id.* at 12, ln 22 [“I am giving you one last chance.”]). These determinations are law of the case and cannot be relitigated (*see Glynwill Invs., N.V. v Shearson Lehman Hutton, Inc.*, 216 AD2d 78, 79 [1st Dept 1995]).³

³ The question of abatement raised by Defendants on this motion was also resolved by Justice Hagler’s March 7, 2024 decision order which dismissed Defendants’ affirmative defense of entitlement to an abatement of rent (NYSCEF Doc

On this renewed motion, the landlord relies on an affirmation of Nick Neri, Director of the Plaintiff, and copies of two emails to demonstrate that the Tenant was notified of the occupancy changes to the Safety Plan (NYSCEF Doc Nos. 151, 158-159, Neri aff, exhibits G, H). Mr. Neri attests that the Landlord kept the 50% limitation on tenant occupancy in effect for approximately 11 months, through May 2021 (NYSCEF Doc No. 151, Neri aff ¶ 21). He further attests that on May 14, 2021, “the Landlord permitted all tenants in the Building to increase capacity in their respective spaces in the Building up to 75% of staff” (*id.*). This was purportedly communicated to all Building tenants by a May 14, 2021 email that included an attachment titled “Update on Coronavirus in New York: COVID-19 Restrictions Easing” (*id.* ¶¶ 21-22). Copies of the email and attachment are annexed to the Landlord’s motion (NYSCEF Doc Nos. 158-159)

The body of the May 14, 2021 email sent by Sandra Hahn, Senior Vice President - Property Management for Landlord, is as follows:

Dear Tenants, Good Morning and Happy Friday. Although the CDC has reported that fully vaccinated individuals do not need to wear a face covering or mask indoors (in most settings), please note that New York State and New York City has not YET adopted removal of this restriction. It is currently being reviewed. Click [HERE](#).

Please be advised that until further notice and until specifically advised of such, masks/face coverings are still required to enter the building, in all common areas, and inside the elevators. You may handle the mask/face covering restriction however you wish inside your own space, but we ask that everyone hang in there and respect these guidelines just a little longer. As a refresher, kindly refer to the attached for the latest capacity restrictions and more.

(NYSCEF Doc No. 158, [5/14/2021] email).

The attachment bearing the heading “Stay Up to Date: Coronavirus Updates & Alerts[.] Visit the Coronavirus Resource Hub for real estate's latest guidance and best practices” appears to be a newsletter from the Real Estate Board of New York (*id.*). The attachment contains the following introductory paragraphs:

There is certainly light at the end of the tunnel for all New Yorkers after this long, hard year as we begin to imagine what a post-pandemic New York looks like.

New York City and State have begun planning for reopening as certain pandemic restrictions are set to ease this month. In addition to these reopening efforts, there have been several State orders affecting the real estate industry we wanted to bring to your attention. Below is an overview of the latest COVID-19 news in New York.

No. 177, decision and order at 1). The court then refused to revisit the issue of abatement at the April 2, 2024 oral argument, stating “[u]nfortunately, you have to give notice and the notice was not specific enough. I already ruled on that. [] I’m not going back.” (NYSCEF Doc No. 138, tr [4/2/2025] at 8). Thus, the court made a prior decision on the merits that the notice of abatement was insufficient as a matter of law, which also cannot be relitigated.

(*id.*). After the introductory paragraphs, the newsletter includes a series of updates regarding the easing of COVID-19 restrictions, Executive Orders, and COVID-related eviction and rental assistance programs (*id.*). The following relevant updates were included in the newsletter:

Easing of COVID-19 Restrictions

- Effective May 15, offices can increase capacity from 50% to 75%.

New Executive Order

- Beginning May 7, indoor food services and dining in New York City will increase capacity to 75%.

(*id.*).

Mr. Neri represents that on June 16, 2021, the Landlord “removed all COVID-related occupancy restrictions on tenants, and tenant were permitted to increase capacity in their respective spaces in the Building up to 100% of their staff,” which was communicated to all Building tenants on the same date by an email that contained a link to a press release dated June 15, 2021 from New York State titled “Governor Cuomo Announces COVID-19 Restrictions Lifted as 70% of Adult New Yorkers Have Received First Dose of COVID-19 Vaccine” (NYSCEF Doc No. 151, Neri aff ¶¶ 23-24). A copy of the June 16, 2021 email and press release are annexed to the Landlord’s motion (NYSCEF Doc Nos. 159-160). The body of the June 16, 2021 email is as follows:

Dear Tenants, Governor Cuomo announced yesterday that 70% of adult New Yorkers have received their first dose of the vaccine. As a result, effective immediately, the state-mandated COVID restrictions have been lifted for real estate, offices, construction, retail, gyms, malls, food services, childcare, as well as most other commercial and social settings. However, as per the CDC, masks will still be required on public transit and in healthcare settings.

That being said, we respectfully request that you continue to wear a mask/face coverings when inside the elevators and when social distancing is not possible. Also, be reminded that all unvaccinated individuals are still responsible to continue to wear a mask and socially distance, as per the CDC guidelines. Please click [here](#) for more information. If you have any questions, do not hesitate to reach out.

(NYSCEF Doc No. 159, email).

In relevant part, the press release includes the following paragraph that largely mirrors the body of the Landlord’s email:

Governor Cuomo today announced that COVID-19 restrictions are lifted immediately as 70 percent of New Yorkers aged 18 or older have received the first dose of their COVID-19 vaccination series. The State’s health guidance and New York Forward industry guidelines—including social gathering limits, capacity restrictions, social distancing, cleaning and disinfection, health screening, and

contact information for tracing-are now optional for retail, food services, offices, gyms and fitness centers, amusement and family entertainment, hair salons, barber shops and personal care services, among other commercial settings.

(NYSCEF Doc No. 160, press release).

The Landlord contends that the May 14, 2021 and June 16, 2021 emails were sufficient to notify the Tenant of the changes to the Safety Policy and that no reasonable fact finder could conclude that the Tenant never received notice that the Safety Policy occupancy restrictions had been lifted (NYSCEF Doc No. 178, mem in reply at 2, 6). However, neither of the emails reference the Safety Plan or provide any directions regarding the Building. Both emails reference the changes to restrictions imposed by the State of New York, but neither email advises of the Landlord’s intent to modify the occupancy limit imposed by the Safety Plan. Therefore, the emails are not sufficient to resolve all material questions of fact regarding the notice issue raised by Justice Hagler. These issues also are not resolved by the Landlord limiting its motion only to fixed rent accrued outside the period that the Safety Policy was in effect, as the Landlord asserts, because the motion seeks relief for the same period as the prior motion. Therefore, the renewed motion must be denied on the same basis as the prior motion for summary judgment. In light of Justice Hagler’s clear direction that no further motions for summary judgment would be accepted, the denial must be with prejudice.

Accordingly, it is hereby

ORDERED that plaintiff’s motion for summary judgment is denied with prejudice; and it is further

ORDERED that a settlement conference will be held in this matter on June 18, 2026 at 10:00 a.m. at 80 Centre Street, Room 308, New York, New York 10013.

This constitutes the order and decision of the court.

HASA A. KINGO, J.S.C.

3/31/2026
DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: