

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

**ROUTE 96 PROPERTIES, LLC.,
Plaintiff,**

vs.

**ADVENTURES IN MOVEMENT AND
SENSATION, INC., and
MARK KLYCZEK,
Defendants.**

Index # 127226-2020

**AFFIDAVIT IN OPPOSITION
TO
MOTION FOR SUMMARY JUDGMENT
BY PLAINTIFF**

STATE OF NEW YORK)

COUNTY OF ONTARIO) ss.:

Edward C. Kenyon, being duly sworn, deposes and says:

1. I am an attorney duly licensed to practice law in the State of New York.
2. I am the attorney for the Defendant Adventures in Movement and Sensation, Inc. and Defendant Mark Klyczek, in this matter. As such I am fully familiar with the facts, circumstances, and statements made herein.

3. Defendant Adventures in Movement and Sensation, Inc. is a New York for profit corporation.
4. There is no officer, director or shareholder of the corporation currently residing or conducting business anywhere within the State of New York.
5. Defendant Mark Klyczek is a resident of the Commonwealth of Virginia.
6. Defendant Mark Klyczek does not reside in the State of New York, and is not present in the State of New York.
7. This Affidavit is made in opposition to the Motion for Summary Judgment made by the Plaintiff.
8. It is respectfully submitted that there are triable issues of fact remaining in this matter which are relevant and determinative of the alleged misconduct of the Defendants, and that this matter is therefore not subject to Summary Judgment.
9. That the submissions of the parties are to be looked upon in the light most favorable to the non-moving party.
10. Defendants submitted an Answer in this matter.

11. As a part of their Answer, Defendants have contested, and continue to contest, the jurisdiction of this Court over them.
12. It is alleged by the Defendants that the Plaintiff has failed to adequately serve the Summons and Complaint in this matter upon both of the Defendants herein.
13. It is further alleged by Defendant Mark Klyczek that at no time has he been personally served with any of the pleadings in this matter.
14. Upon information and belief, no determination has been made regarding the sufficiency of service in this matter. Therefore, this Court does not have jurisdiction over the Defendants herein.
15. Lacking jurisdiction over the Defendants, or in the alternative, over either of the two Defendants, makes Summary Judgment an inappropriate remedy at this time for the Plaintiff.
16. It is respectfully submitted that there are several issues of fact involving the actions of the Defendants which directly relate to the provisions of the Lease Agreement upon which the Plaintiff bases this action.

17. At issue are behaviors and actions of the Tenant and of the Guarantor that are directly related to the potential liability of both the Tenant and the Guarantor pursuant to the terms of the Lease Agreement.

18. Those issues of fact, relevant to the alleged culpability of the Defendants include:

- a. Originally, in the early stages of the lease, the impact that actions and behaviors of other tenants and their customers had upon the business of the Defendant.
- b. Those actions of other tenants, and the actions of the Landlord in response to knowledge thereof, directly relate to the ability of the Tenant to comply with the provisions of the Lease Agreement.
- c. The actions taken by Defendant Adventures in Movement and Sensation, Inc., “AIMS”, when it became apparent that the business may have been facing the potential of financial difficulties.
- d. The voluminous and exhaustive actions taken by AIMS as the potential for financial difficulties became actual financial difficulties.
- e. These actions included individual efforts made by the Defendants themselves as well as repeated attempted efforts to secure the involvement of the Landlord in

efforts to mitigate any potential financial hardship on both the Defendants and upon the Plaintiff.

- f. These actions involved efforts, that it is respectfully submitted, went above and beyond the required action of a tenant in order to make every effort to remain in compliance with the provisions of the Lease Agreement.
- g. In spite of the efforts made by the Defendants, there was little or no reciprocation of those efforts by the Landlord.
- h. The Defendants submit that upon the knowledge of the Landlord of the efforts being made by the Defendants in order to prevent a default, and or to mitigate potential damages in the event of a possible default, the Landlord had a responsibility to work with the Defendants.
- i. The Defendants believe, that with a greater level of cooperation from the Landlord, the likelihood of a potential default pursuant to the Lease Agreement would have been significantly reduced.
- j. Even at the time that the Tenant vacated the premises, Tenant alleges that the Landlord failed to meaningfully cooperate with the Tenant in the surrender of the premises, a final inspection of the premises, and the surrender of the keys to the premises.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.