

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT  
CASE TYPE: Eviction

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Wayzata Bay West Retail, LLC,

Court File No:

Plaintiff,

vs.

**EVICITION COMPLAINT  
(COMMERCIAL LEASE)**

Anthropologie, Inc.,

Defendant.

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Plaintiff Wayzata Bay West Retail, LLC ("Landlord"), as and for its Eviction Complaint against Defendant Anthropologie, Inc. ("Tenant"), states and alleges as follows:

**PARTIES**

1. Landlord is a Minnesota limited liability company with its principal place of business located at 2845 Hamline Avenue North, Roseville, Minnesota 55113.
2. Tenant is a Pennsylvania Corporation with its principal place of business located at 5000 South Broad Street, Philadelphia, Pennsylvania 19112.

**JURISDICTION**

3. The Court has personal and subject matter jurisdiction over this action as Landlord is a Minnesota resident, and Tenant transacted or currently transacts business in the State of Minnesota, and has sufficient contacts with the State of Minnesota.

**VENUE**

4. Venue is proper pursuant to Minn. Stat. § 542.09 as the as the real property at issue in this matter is located in Hennepin County, Minnesota.

### **FACTUAL BACKGROUND**

5. On September 3, 2014, the Landlord and Tenant entered into a commercial lease agreement (the “Lease”) for approximately 9,500 square feet of space on the ground level of the Promenade Building (the “Building”) owned by Landlord and located at 803 Lake Street, Wayzata, Minnesota (the “Leased Space”) for an initial term of ten (10) years.

6. On March 1, 2015, pursuant to the Lease, Landlord delivered the Leased Space to Tenant and Tenant accepted delivery.

7. The Commencement Date (as defined in the Lease), *inter alia*, is the date which is 120 days after the Delivery Date, but is subject to a “Commencement Date Condition,” as set forth in Section 30 of the Lease. (*See* Lease, schedule, Item L; Section 30 of the Lease)

8. Pursuant to Section 5 of the Lease, commencing on the Commencement Date (as defined in the Lease), Tenant agreed to pay annual Minimum Rent (as defined in the Lease) in equal monthly installments on the first day of each calendar month during the Initial Lease Term and any Extension Term. (*See* Section 5 of the Lease)

9. Pursuant to Section 6 of the Lease, in addition to Minimum Rent, and in addition to any Additional Rent (as defined in the Lease), Tenant agreed to pay Landlord an additional percentage rent

equal to five percent (5%) of “Gross Sales from the Leased Space” (as hereinafter defined) for such Percentage Rent Lease Year in excess of the quotient of the Minimum Rent payment during such Percentage Rent Lease Year divide by .05 (the “Percentage Rent Base”).

(*See* Section 6 of the Lease)

10. Pursuant to Section 7 of the Lease, in addition to Minimum Rent, after the Commencement Date, Tenant agreed to pay Landlord Additional Rent (as defined in the lease), including, Tenant’s proportionate share of real estate taxes levied against the Property (including

the Building and the land on which the Building is situated) and CAM Charges (as defined in the Lease). (*See* Section 7 of the Lease)

11. “Rent” is defined in the Lease as “Minimum Rent, Percentage Rent and all sums payable and collectible as Additional Rent.” (*See* Section 3(e) of the Lease)

12. Pursuant to Section 30 of the Lease, the Commencement Date was conditioned upon the Landlord entering into

“written, legal, valid and binding leases for space in the Property (except as noted) with (i) Lund’s, located in the Superior Block of The Promenade at Wayzata (adjacent to the Property, and (ii) at least two of the following ten retailers: PaperSource, Francesca’s, Arafina, Ala Mode, Lululemon, yogafit, Invision Eyewear, Charleson Shoe Co., solidcore or Lou & Grey (or replacements thereof approved by Tenant), and (iii) retail tenants and restaurants of the type typically found in first-class shopping centers located in the Minneapolis/St. Paul, MN metropolitan area occupying at least seventy-five (75%) percent of the total rentable retail area of the “West Block” of Property (exclusive of the Leases Space by inclusive of the occupants described in clause (ii) hereof), all of which shall have opened for business to the public (the “Commencement Date Condition.”

(*See* Section 30 of the Lease)

13. In the event the Commencement Date Condition was not met, and Tenant opted to open for business, Tenant was only obligated to pay Landlord “Alternate Rent,” defined in the Lease to mean “five percent (5%) of all of Tenant’s Gross Sales from the Leased Space.” (*Id.*)

14. If the Commencement Date Condition was not met for eighteen (18) months, Tenant retained the right to terminate the Lease. (*Id.*)

15. In the event the Commencement Date Condition was met, Tenant is required to “immediately commence payment of full Rent.” (*Id.*)

16. On February 1, 2022, Landlord sent correspondence to Tenant, informing it that (1) the first criterion of the Commencement Date Condition had been met, (2) formally requesting that

Tenant approve two then-current tenants as fitting within the parameters necessary to meet the second criterion under the Commencement Date Condition, and (3) as it anticipated satisfying the third criterion on April 1, 2022 as one of those tenants would be installed, requesting that Tenant begin paying full Rent at that time.

17. Having heard no objection from Tenant, on July 18, 2022, Landlord sent a “Notice of Commencement of Full Rent” explaining that the commencement of Tenant’s requirement to pay Full Rent would begin on August 1, 2022, as the Commencement Date Condition had been satisfied.

18. Despite the notice, Tenant failed to pay the full Rent amount for August, 2022.

19. On September 19, 2022, Landlord sent a Notice of Failure to Pay Full Rent, notifying Tenant of its failure to pay full Rent and its default under the terms of the Lease.

20. Tenant failed to pay the full Rent for September, October, November, and December 2022, as well as January 2023.

21. Pursuant to Section 21 of the Lease, an “Event of Default” occurs under the Lease if Tenant

fails to pay any installment of Rent which is due and payable hereunder by Tenant and such failure continues for a period of ten (10) days after Tenant’s receipt of notice thereof from Landlord

(See Section 21 of the Lease)

22. On January 4, 2023, Landlord sent a Notice of Default to Tenant, stating that Tenant has defaulted under the Lease for failing to pay full Rent. The Notice of Default provided Tenant 10 days to cure the default, in the aggregate sum of \$128,464.68.

23. Tenant failed to timely cure the default.

24. Pursuant to Section 22 of the Lease, upon an Event of Default, the Landlord may, at its option:

(i) Terminate this Lease by giving ten (10) additional days' prior notice thereof to Tenant and, upon the expiration of such notice period, this Lease shall terminate with the same force and effect as though the date of such notice were the Expiration Date, and all rights of Tenant hereunder shall expire and termination, but Tenant shall remain liable as hereinafter expressly provided, and/or (ii) Without terminating the Lease, re-enter and take possession of the Leased Space and expel or remove Tenant and any other person occupying the Leased Space in accordance with applicable law without liability for prosecution of any claim or damages therefor, and/or (iii) Exercise and other rights and remedies available to Landlord at law or in equity.

(See Section 22(a) of the Lease)

25. Pursuant to Section 39 of the Lease, delinquent amounts accrue interest from their respective due dates at the Default Rate under the Lease of 10% per annum. (See Section 39 of the Lease)

26. Pursuant to Section 40 of the Lease, if an Event of Default occurs, and an action or proceeding is initiated, the prevailing party shall recover reasonable attorney's fees and other costs and expenses incurred. (See Section 40 of the Lease)

27. Tenant is in default under the term of the Lease as Tenant failed to pay Landlord amounts owed pursuant to the Lease. As of February 1, 2023, Tenant owes Landlord \$180,540.50, in addition to such attorney fees and other costs as provided under the Lease.

28. Landlord notified Tenant of its default on September 19, 2022, discussed the default with Tenant's attorney over the phone on December 14, 2022, and sent a Notice of Default to Tenant on January 4, 2023, thus satisfying the notification requirements under Section 21 of the Lease.

**COUNT I**  
**(Writ of Recovery - Eviction)**

29. Landlord hereby incorporates paragraphs 1 through 28 as if fully set forth herein.

30. Because the Leased Space is commercial space, the disclosures required under Minn. Stat. 504B.181 are inapplicable to this matter.

31. Tenant has defaulted under the terms of the Lease by failing to make payments of full Rent (as defined in the Lease) for the months of August-December 2022, and January 2023.

32. Despite notice and an opportunity to cure, Tenant has failed to cure the default.

33. Pursuant to the terms of the Lease, in the event of a default, Landlord is entitled to re-enter and take possession of the Leased Space and expel or remove Tenant and any other person occupying the Leased Space in accordance with applicable law.

34. To that end, Landlord is entitled to an immediate Writ of Recovery in order to recover possession of the Leased Space from Tenant as Tenant unlawfully detains the same due to Tenant's failure to pay amounts due and owing Landlord under the Lease as well Tenant's ongoing violations of the terms, conditions, and covenants of the Lease.<sup>1</sup>

WHEREFORE, Landlord demands judgment against Tenant, issuing a Writ of Recovery restoring Landlord to possession of the Leased Space in possession of Tenant, ordering Tenant to remove all personal property from the Leased Space, restraining Tenant from committing any waste upon the Leased Space, awarding Landlord its costs, disbursements, and reasonable attorney fees incurred herein, and granting such other relief as the Court deems just and equitable.

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<sup>1</sup> Landlord does not waive, and expressly reserves the right to file a separate action or separate actions against Tenant and/or any other persons or entities for any and all relief to which Landlord may be entitled under the Lease and/or applicable law, including without limitation to collect the amounts the Landlord is owed under the Lease and/or to seek any damages arising out of Tenant's breach of the Lease

**ACKNOWLEDGMENT**

Plaintiff hereby acknowledges that sanctions may be imposed under the circumstances set forth in Minn. Stat. § 549.211.

Respectfully submitted,

**BASSFORD REMELE**  
***A Professional Association***

Dated: February 7, 2023

By: /s/ Jeffrey D. Klobucar

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