

28

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ROBERT L. GLUSHON, S.B.#93840
KRISTINA BADARAITE, S.B.#279316
LUNA & GLUSHON
16255 Ventura Boulevard, Suite 1016
Encino, California 91436
Telephone: (818) 907-8755
Facsimile: (818) 907-8760

FILED
Superior Court of California
County of Los Angeles

NOV 30 2015

Sherri B. Carter, Executive Officer/Clerk
By Raul Sanchez Deputy
Raul Sanchez

Attorneys for Plaintiff, ROBERT L. GLUSHON

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
UNLIMITED JURISDICTION**

ROBERT L. GLUSHON

Plaintiff

vs.

DOUGLAS EMMETT 1997, LLC, a
Delaware limited liability company;
DOUGLAS EMMETT
MANAGEMENT, INC., a Delaware
corporation; and DOES 1-50, inclusive,

Defendants.

CASE NO.: BC 598918

FIRST AMENDED VERIFIED COMPLAINT
FOR DAMAGES AND TERMINATION OF
OFFICE SPACE LEASE

1. BREACH OF CONTRACT
2. BREACH OF THE COVENANT OF QUIET ENJOYMENT
3. FRAUD
[CONCEALMENT/SUPPRESSION OF FACTS]

BY FAX

5102 / 03 / 2015

1 Plaintiff ROBERT L. GLUSHON ("Plaintiff") allege as follows:

2 THE PARTIES

3 1. Plaintiff ROBERT L. GLUSHON is an individual who is and at all times relevant
4 hereto was a resident of Los Angeles County and an attorney licensed to practice law in the State
5 of California.

6 2. Plaintiff is, and at all times relevant thereto, conducting the practice of law as a
7 partner in the law firm of Luna & Glushon.

8 3. Plaintiff is informed, believes and on that basis alleges that Defendant
9 DOUGLAS EMMETT 1997, LLC ("DE") is, and at all times relevant herein was, a Delaware
10 limited liability company and the owner of certain real property improved with a commercial
11 office building located at 16255 Ventura Boulevard, Encino, California.

12 4. Plaintiff is informed, believes and on that basis alleges that Defendant
13 DOUGLAS EMMETT MANAGEMENT, INC., ("DEMI") is, and at all times relevant herein
14 was, a corporation duly organized under the laws of the state of Delaware and was and is doing
15 business in the state of California. Plaintiff is further informed, believes and on that basis alleges
16 that all relevant times herein, said Defendant was responsible for leasing and/or management of
17 the office building and premises that are the subject of the within action.

18 5. The true names and capacities, whether individual, corporate, associate, or
19 otherwise of defendants sued herein as DOES 1 through 50, inclusive, are unknown to Plaintiff
20 at the present time, and Plaintiff therefore sues said defendants by such fictitious names.
21 Plaintiff, after obtaining leave of court, if necessary, will amend this Complaint to show such
22 true names and capacities when the same have been ascertained.

23 6. Whenever in this Complaint reference is made to any act of defendant or
24 defendants, such allegations shall be deemed to mean the acts of the defendant or defendants
25 named in the particular cause of action, and DOES 1 through 50 inclusive, and each of them,
26 acting individually, jointly and/or severally.

27 7. Plaintiff is informed, believes and on that basis alleges that defendants, and each
28 of them, were agents of the other and that each and every act alleged herein as performed by

1 one of them, or all of them, was in the capacity of an agent of the other defendants and that
2 each of defendant acted and performed within the scope of said relationship.

3 VENUE

4 8. Venue is proper because the Office Lease that is the subject of the within action
5 was entered into, and was to be performed, in the County of Los Angeles.

6 GENERAL ALLEGATIONS

7 9. On or about October 20, 2011, DE entered into a written Office Lease agreement
8 with Plaintiff for the lease of the premises known as Suite 1016 at 16255 Ventura Boulevard,
9 Encino, California ("subject Premises") for Plaintiff to operate his law practice. A true and
10 correct copy of the Office Lease is attached hereto as Exhibit 1.

11 10. Prior to entering into the Office, Plaintiff and his staff made several inspections
12 of the subject Premises at which time Katherine DeFevere, an agent for Defendants DE and/or
13 DEMI and/or other agents for said Defendants were present. At no time during such inspections
14 did DeFevere and/or other agents of Defendants disclose to Plaintiff that there were prior noise
15 complaints or problems involving the subject Premises.

16 11. Prior to Plaintiff's execution of the Office Lease, Defendants DE and DEM also
17 failed to disclose that there were prior noise complaints or problems involving the subject
18 Premises.

19 12. Paragraph 1.5 of the Office Lease expressly provides that Plaintiff's tenancy shall
20 include a covenant of quiet enjoyment for the Premises.

21 13. In or about December, 2011, Plaintiff took possession of the subject Premises.

22 14. In or about June, 2012, Plaintiff contacted Katherine DeFevere, the on-site
23 manager for Defendants DE and/or DEM for the subject property and subject Premises regarding
24 noise impacts which were coming an adjacent office and which were substantially interfering
25 with Plaintiff's use of his own office within the subject Premises and which also could be heard
26 by Plaintiff's paralegal from her space. Plaintiff provided Ms. DeFevere with audio recordings
27 from his office as evidence of such noise impacts.
28

12/03/2015

1 15. In or about August, 2012, DeFevere advised Plaintiff that certain technical
2 corrective actions were taken to try to abate the noise impacts.

3 16. On August 21, 2012, Plaintiff wrote to DeFevere that whatever corrective actions
4 may have been taken did not resolve the noise impacts. Plaintiff made a formal demand for
5 further corrective actions. Attached hereto as Exhibit 2 is a copy of Plaintiff's demand letter to
6 Ms. DeFevere.

7 17. In response to Plaintiff's August 21, 2012 demand letter, DeFevere stated that she
8 would "take this under advisement".

9 18. Thereafter, DeFevere claimed that some "additional work" was done within the
10 subject Premises, however, as of October, 2012, the noise impacts remained unabated and
11 continued to significantly impact Plaintiff, Plaintiff's staff and the operation of Plaintiff's law
12 practice.

13 19. When Defendants failed to take further corrective actions, on April 22, 2013,
14 Plaintiff served a formal notice of default under Paragraph 1.5 of the Office Lease by letter on
15 Defendants. Attached hereto as Exhibit 3 is a true copy of the notice of default letter. In addition
16 to the noise impacts referenced as to Plaintiff's office, the notice of default letter further informed
17 Defendants of other noise impacts within the subject Premises which were impacting Kristina
18 Badaraite's office and also the conference room.

19 20. In response to Plaintiff's notice of default letter, DeFevere sent Plaintiff a letter
20 dated April 25, 2013 in which Defendants denied any responsibility based on leasing the subject
21 Premises in an "as is" condition and referenced alleged corrective actions that had been taken.
22 Attached hereto as Exhibit 4 is a true copy of DeFevere's letter.

23 21. Thereafter, the noise impacts remained unabated and continued to interfere with
24 Plaintiff's use and enjoyment of the subject Premises.

25 22. In or about June, 2013, Defendants claim to have had additional corrective work
26 done, however, there again was no abatement of the noise impacts which continued to interfere
27 with the use of the subject Premises including both attorney offices, the conference room and
28 the paralegal space.

12/03/2015

1 23. On May 7, 2014, Plaintiff again wrote to DeFevere pointing out not only that
2 continued noise impacts, but also that Plaintiff had learned the prior tenant of the subject
3 Premises had experienced similar major noise impacts which were never disclosed to Plaintiff
4 prior to entering into the Office Lease agreement. Plaintiff stated that because the situation had
5 become intolerable, that he had no choice but to file formal legal action and asked if DeFevere
6 or legal counsel would accept service of process. Attached hereto as Exhibit 5 is a true copy of
7 Plaintiff's letter.

8 24. On May 16, 2014, DeFevere responded by letter to Plaintiff that Defendants had
9 "engaged additional professionals to assist us in this repair as it is more complex than we had
10 originally thought." Attached hereto as Exhibit 6 is a true copy of DeFevere's letter.

11 25. In or about July and August, 2014, Plaintiff is informed and believes and based
12 thereon alleges that Defendants had additional corrective work performed within the subject
13 Premises. Such work did not result in an elimination of the noise impacts.

14 26. Plaintiff is informed and believes and based thereon alleges that the occupant of
15 the office immediately appurtenant to Plaintiff's office, an attorney, relocated to another office
16 within his same suite. As a result of such relocation, Plaintiff has not experienced any further
17 noise impacts from such appurtenant office. However, the subject Premises continues to be
18 impacted by substantial and unreasonable noise impacts from conversations from the other
19 appurtenant office next to the office of Plaintiff's associate, Kristina Badaraite Kropp and also
20 appurtenant to Plaintiff's conference room.

21 27. At all times material thereto, the noise impacts have been unreasonable,
22 substantial and have interfered with the use and possession of the subject Premises by Plaintiff
23 and his staff.

24 28. As a direct and proximate result of the noise impacts, Plaintiff has entered into a
25 sublease for new office space in Suite 950 in the same building as the subject Premises effective
26 December 1, 2015.

27 29. The Office Lease provides for an award of attorneys' fees to the prevailing party
28 in any legal action.

FILED IN 12/03/2015

1 FIRST CAUSE OF ACTION

2 BREACH OF CONTRACT

3 (Against All Defendants)

4 30. Plaintiff refers to, re-alleges and incorporates herein each and every allegation
5 contained in Paragraphs 1-29 inclusive, as though set forth in full herein.

6 31. Defendants breached Paragraph 1.5 of the Office Lease in that between
7 approximately January 1, 2012 and the present time and which is continuing, Plaintiff did not
8 have reasonable quiet enjoyment of the subject Premises in that he and his staff have been and
9 continue to be subjected to unreasonable and loud noise impacts from conversations coming
10 from the office space abutting both sides of the subject Premises.

11 32. At all times material thereto, Plaintiff has performed all obligations required of
12 him to be performed under the Office Lease including but not limited to the payment of monthly
13 rent.

14 33. As a direct and proximate result of such breach, Plaintiff has suffered damages in
15 an amount subject to proof at the time of trial but which includes a diminution in value warranting
16 a reimbursement of a portion of the rent paid to Defendants between January 1, 2012 and the
17 present time, and continuing daily, and other damages allowed by law. Such damages exceed
18 the total amount of \$30,000.

19 34. As a further direct and proximate result of such breach, Plaintiff is entitled to
20 termination of the Office Lease.

21 SECOND CAUSE OF ACTION

22 BREACH OF IMPLIED COVENANT OF QUIET ENJOYMENT

23 (Against All Defendants and DOES 1-50)

24 35. Plaintiff refers to, re-alleges and incorporates herein each and every allegation
25 contained in Paragraphs 1-29, inclusive, as though set forth in full herein.

26 36. By entering into the Office Lease with Plaintiff, Defendants impliedly covenanted
27 that Plaintiff would have the right to quiet enjoyment and possession of the subject Premises.
28

12/03/2015

1 37. At all times material thereto, Plaintiff has performed all obligations required of
2 him to be performed under the Office Lease including but not limited to the payment of monthly
3 rent.

4 38. Between approximately January 1, 2012 and the present time, Defendants have
5 breached and continue to breach the implied covenant of quiet enjoyment in that the noise
6 impacts from normal conversations on both sides of the subject Premises has been unreasonable,
7 constant and at a level that any reasonable person would find unacceptable in order to utilize the
8 subject Premises as a law or other professional office.

9 39. As a direct and proximate result of such breach, Plaintiff has suffered damages in
10 an amount subject to proof at the time of trial but which includes a diminution in value warranting
11 a reimbursement of a portion of the rent paid to Defendants between January 1, 2012 and the
12 present date, and continuing daily until the time of trial, and other damages allowed by law.
13 Such damages exceed the total amount of \$30,000.

14 40. As a further direct and proximate result of such breach, Plaintiff is entitled to
15 termination of the Office Lease.

16 THIRD CAUSE OF ACTION

17 FRAUD (CONCEALMENT/SUPPRESSION OF FACTS)

18 (Against All Defendants and DOES 1-50)

19 41. Plaintiff refers to, re-alleges and incorporates herein each and every allegation
20 contained in Paragraphs 1-29 inclusive, as though set forth in full herein.

21 42. Plaintiff is informed and believes and based thereon alleges that at the time
22 Defendants entered the Office Lease with Plaintiff, Defendants had superior knowledge
23 concerning the subject Premises including but not limited to knowledge of that there were noise
24 problems and complaints impacting the enjoyment and possession of the subject Premises and
25 the office space on both sides of the subject Premises.

26 43. Specifically, Plaintiff is informed and believes and based thereon alleges that
27 Defendants were aware of noise problems and complaints impacting Brian Schall, an attorney,
28 who was the prior tenant of the subject Premises before Plaintiff's occupancy.

12/03/2015

1 44. Plaintiff is further informed and believes and based thereon alleges that
2 Defendants were aware of other noise problems and complaints involving the subject Premises
3 from complaints made by the tenants of the office space appurtenant to the office now occupied
4 by Kristina Badaraite Kropp and the conference room within in the subject Premises.

5 45. Despite such knowledge, Defendants failed to disclose, concealed and suppressed
6 the facts of such prior noise problems and complaints to Plaintiff.

7 46. As the owner and manager of the subject Premises and property, at all times
8 material thereto Defendants had a duty to disclose all material facts affecting the use and
9 enjoyment of the subject Premises including but not limited to prior noise problems and
10 complaints.

11 47. Plaintiff could not have reasonably discovered, nor did Plaintiff or his staff
12 discover, that there were noise problems or prior complaints until after taking possession of the
13 subject Premises.

14 48. The noise problems significantly impacted the use, enjoyment and possession of
15 the subject Premises by Plaintiff and his staff.

16 49. Had the noise problems been disclosed, Plaintiff would not have entered into the
17 Office Lease.

18 50. Plaintiff is informed and believes and based thereon alleges that Defendants
19 concealed and suppressed the facts about the prior noise problems and complaints impacting the
20 subject Premises with the intent to induce Plaintiff to desire to enter into the Office Lease.

21 51. As a direct and proximate result of Defendants' concealment and suppression of
22 facts as to the noise problems and prior complaints, Plaintiff has suffered harm and damages in
23 an amount subject to proof at the time of trial but which Plaintiff believes is in excess of the sum
24 of \$30,000 and continuing each and every day that Plaintiff is in possession of the subject
25 Premises. Such harm and damages include interference with the Plaintiff's law office including
26 but not limited to the use by Plaintiff of his own office and the use of the conference room for
27 meetings and depositions.
28

12/03/2015

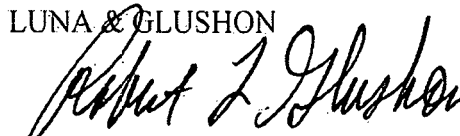
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For damages according to proof at trial;
2. For termination of the Office Lease effective December 1, 2015;
3. For attorneys' fees;
4. For costs incurred; and
5. For such other and further relief as the Court deems just and proper.

Dated: November 30, 2015

LUNA & GLUSHON



ROBERT L. GLUSHON
Attorneys for Plaintiff

12 / 03 / 2015