

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, FIRST DISTRICT

14039267

LOYOLA UNIVERSITY OF CHICAGO,)	
)	
Plaintiff,)	
)	
vs.)	Case No: 2021 M1 701604
)	
ONWARD MSO, LLC. and Unknown)	
Occupants,)	
)	
Defendants.)	

DEFENDANT’S MOTION FOR A DISCOVERY PROTECTIVE ORDER

NOW COMES Defendant, Onward MSO, LLC., an Illinois corporation, (hereinafter “Onward”), by and through its attorney **RICHARD M. CARBONARA**, and pursuant to Illinois Supreme Court Rules 201(c)(1) and (2), moves this Honorable Court to extend the current deadlines pertaining to discovery in this case. In support of this motion, Onward submits the following:

INTRODUCTION

This is not a typical commercial eviction case.

The Plaintiff/Landlord (“Loyola”) is a major private Catholic university, whose very presence dominates much of Chicago’s East Rogers Park neighborhood. Defendant/Tenant Onward is a fine dining restaurant, owned, managed and operated by Michael Olszewski, a highly accomplished restaurateur in Chicago, and notably, a distinguished Loyola alumnus.

In 2017, Loyola leased land it owns adjacent to its main campus to a hotelier, to erect a hotel ostensibly to accommodate visiting parents, sports teams, etc. Loyola’s Sr. Vice President

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and Chief Financial Officer, Wayne Magdziarz, personally solicited Michael Olszewski to open a fine dining restaurant on the ground floor of that hotel. Magdziarz traveled to Olszewski's home in the far northwest suburbs to personally sample the food that would be served at the restaurant, to be named, "Onward."

Rogers Park has and continues to go through challenging times. The contrast between the Loyola community and its surrounding neighbors is stark. And, many of those neighbors are resistant to the gentrification foisted upon the Rogers Park neighborhood by Loyola's activities, and make no secret of their resentment. The facades of the hotel and of Onward have been defaced repeatedly.

Nonetheless, Michael Olszewski answered the call of Loyola, his alma mater, and spent more than \$1.5 million of his own money building out the space that would be Onward. The restaurant opened on December 20, 2018. Olszewski correctly anticipated that a fine dining establishment in a challenged area would take a while to catch on, as its demographic would need to be lured from the tonier area of the city and suburbs. He warned Magdziarz and other Loyola officials of the same, and they agreed to work with Olszewski as a team.

Olszewski's anticipation was prophetic. Business was slow at first, but Onward began to be noticed. It achieved notoriety and praise, and things were looking up.

And then Covid happened. The world was shuttered for over a year. Loyola had no students on campus, ergo, no visitors. Onward was shuttered, and was precluded by Loyola from opening its doors, or even from offering carry-out. Onward was left with no avenue to generate any revenue. But, none of that matters to Loyola, who interprets its Lease to require rent nonetheless, notwithstanding the generosity of Olszewski, its alumnus and benefactor.

Thus, this case is an extraordinary landlord-tenant matter, and relevant facts and circumstances will require time to develop.

ARGUMENT

1. Loyola filed the instant case on May 4, 2021. Onward appeared through counsel on June 2, 2021.
2. Loyola's initial complaint was defective on its face. Recognizing its error, Loyola successfully sought leave to file an amended complaint, which amended complaint was filed on July 1, 2021.
3. Tellingly, while its defective complaint was still pending and before its correction was filed, Loyola brought a motion seeking use and occupancy payments. Obviously, Loyola wants to get paid while it gets its own act together.
4. And further undeterred by its still pending, admittedly defective complaint, Loyola served Requests to Admit on counsel for Onward on June 24, and Interrogatories and Document Production demands on June 28.
5. On June 30, 2021, this Honorable Court allowed Onward until July 28, 2021 to file a responsive pleading to Loyola's then as yet unfiled Amended Complaint, and to answer Loyola's motion for use and occupancy. On that day, this court also ordered that discovery was to be served by July 14, 2021 – two full weeks before responsive pleadings are due to be filed.
6. For reasons including without limitation the foregoing, Onward believes it has a meritorious motion to dismiss Loyola's amended complaint, and a very strong counterclaim, one which will be timely filed as Onward's responsive pleading on July 28, 2021.

7. However, given the schedule described above, relevant topics and circumstances to be probed will remain nebulous until the parties are at issue on the pleadings, thus occasioning needless delay, duplication of effort and potentially deficient discovery.
8. On July 12, 2021, Onward counsel solicited Loyola's agreement to defer discovery deadlines until after the parties are at issue. Loyola refused.
9. Illinois Supreme Court Rule 201(c)(1) and (2) provide in pertinent part:

(c)Prevention of Abuse.

(1)Protective Orders. The court may at any time on its own initiative, or on motion of any party or witness, make a protective order as justice requires, denying, limiting, conditioning, or regulating discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or oppression.

(2)Supervision of Discovery. Upon the motion of any party or witness, on notice to all parties, or on its own initiative without notice, the court may supervise all or any part of any discovery procedure.

10. Thus, Onward appeals to this Court, by the authority cited above, to enter an Order delaying deadlines for responding to Loyola's Requests to Admit, Interrogatories and Document Production requests, and for propounding discovery to Loyola, until after the parties are at issue on the pleadings.
11. The order sought by Onward by this motion would serve justice by allowing full and fair exposition of relevant facts, and thereby serve judicial economy.
12. This motion is brought in good faith, and not for purposes of vexatious delay.

WHEREFORE, Defendant Onward MSO, LLC., an Illinois corporation, prays for the entry of an order extending all current discovery deadlines until after the parties are at issue on the pleadings, and for such other and further relief that this Honorable Court deems fit and just.

Respectfully submitted,

Onward MSO, LLC, by:

A handwritten signature in black ink, appearing to read 'R. Carbonara', with a large, stylized flourish at the end.

Richard M. Carbonara
One of its Lawyers

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