

Twitter appeals 'deeply flawed' \$10M verdict in favor of landlord

GENRE

BY JUSTIN WINGERTER

BUSINESSDEN

X Corp., the Elon Musk-owned social media site formerly known as Twitter, is challenging a Boulder judge's order that it pay \$10 million to its former landlord there, saying the verdict was "deeply flawed."

"The court deprived Twitter of its negotiated rights, including millions of dollars of rent credits to which Twitter was entitled," its lawyers say.

The company is asking the Colorado Court of Appeals to reverse the findings of Judge Nancy Salomone, who presided over a five-day trial in March. She ruled in May that Twitter had broken its 10-year lease at the Railyards at S'PARK office building, 3401 Bluff St.

Twitter ended up having 64,500 square feet of the 70,000-square-foot building for little more than a year. It stopped paying rent in late 2022, was evicted, sued its landlord for wrongful eviction, and was sued for back rent. The Railyards building is owned by The John Buck Co. in Chicago.

The triple-net lease between Twitter and Buck Co. provided Twitter with a tenant improvement allowance of \$5.8 million. As Salomone noted in her verdict, "The central dispute in this litigation is whether Twitter satisfied the lease conditions" necessary to receive the allowance.

The Railyards lease required Twitter to build out the property and then send documentation proving it had. Twitter did the build-out but, in the period following Musk's purchase of the company, never sent the evidence to its landlord, according to the judge's verdict.

Salomone said she was persuaded by a video deposition of Joseph Killian, a former Twitter executive, who testified that Twitter stopped paying rent in December 2022 as a "renegotiating tactic — a tactic to save money." By comparison, the judge found trial testimony from Nicole Hollander, a top Musk aide who led Twitter's real estate division, "not at all credible."

Because Twitter could not claim a rent allowance, its refusal to pay rent in 2022 was a breach of its lease, the judge determined. She ordered the company to pay \$8.3 million, plus Buck Co.'s attorney fees. Last month, those fees were calculated at \$1.7 million.

"There is no basis for that ruling," Twitter's attorneys wrote in a 61-page appeal on Nov. 25.

Twitter said it upheld its end of the lease by spending \$40 million building out the entirety of the Railyards building. The company claims it did notify its landlord of the work, although it doesn't believe that was required.

"In an apparent attempt to manufacture an excuse to terminate the lease and deprive Twitter of the value of the build-out, (Buck Co.) claimed that Twitter failed to pay rent and initiated eviction proceedings," according to its appeal. "(Buck) failed to notify Twitter of the lawsuit."

Twitter said it was unaware of this "secret eviction" until weeks after a Boulder judge approved it, because Buck Co. hid it from the social media company. "That lack of notice violated Twitter's due process rights," its attorneys complained to the Court of Appeals last month.

X Corp.'s lawyers are Andrew Gehring, Frederick Yarger and William Sowers with Wheeler Trigg O'Donnell. Buck Co.'s are Aja Robbins and Chris Jackson with Holland & Hart.