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Whole Foods, NoMad landlord duke it out in court over gas service

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Bloomberg

Whole Foods and its landlord at [63 Madison Ave.](#) are duking it out in court over unpaid rent, but the reason may not be what you think.

The supermarket chain is in the process of building out its store at the base of [George Comfort & Sons'](#) NoMad office building and claims that, per its lease agreement, it doesn't need to start paying rent until the landlord installs a gas hookup.

The landlord disagrees and is threatening to hold the grocery store in default for nearly \$1.4 million in back rent, which puts the lease at risk of being terminated, Whole Foods alleged in a lawsuit filed Wednesday.

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Whole Foods sued the landlord to stop the default, claiming it will lose its \$20 million investment in the property if the lease is canceled. When the gas is installed, Whole Foods will begin making rent payments, the company said in its complaint.

But the landlord denied responsibility for the lack of gas.

"There is no provision in the lease that places the risk of the absence of gas service from the public utility on [the landlord]," Peter Duncan, chief executive of [George Comfort & Sons](#), wrote in an October letter to Whole Foods.

Earlier this month the property owner sent Whole Foods a letter demanding \$1.4 million in rent accrued since November, with 10 days to make a payment or risk defaulting on the lease.

The lease for the 57,000-square-foot location was signed in June 2019, but gas service by Con Edison wasn't available inside the store. The landlord would have to pay the utility provider to extend the gas mains and install piping and other equipment in the store.

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The landlord [paused construction](#) at the store from March 2020 through June 2020 because of the pandemic. In January 2021 it paid Con Edison to extend gas into the store and told the tenant that it's work was completed and Whole Foods could begin building out its space.

The following August, Con Edison told the property owner that it couldn't install any gas lines to the building until January 2022 because of a New York City [Department of Transportation](#) holiday embargo on construction, according to the complaint.

Construction on the gas connections is currently ongoing at the site, but Whole Foods claims it cannot operate its prepared foods and bakery sections, "which constitute approximately one-third of its sales, substantially impacting revenues," the company said in court papers.

Until construction is complete, Whole Foods can extend its buildout period without having to pay rent, according to the suit.

"This is a very surprising and unusual action that is inconsistent with normal process," said the landlord's spokesman, Rick Matthews. "But we are confident that it will be resolved appropriately."

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