

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D19363
X/prt

_____AD3d_____

Argued - April 24, 2008

A. GAIL PRUDENTI, P.J.
HOWARD MILLER
EDWARD D. CARNI
CHERYL E. CHAMBERS, JJ.

2007-08630

DECISION & ORDER

Kaygreen Realty Co., LLC, respondent, v IG Second
Generation Partners, L.P., et al., appellants.

(Index No. 3992/07)

Shaw & Binder, P.C., New York, N.Y. (Stuart F. Shaw and Daniel S. LoPresti of counsel), for appellants.

Thelen Reid Brown Raysman & Steiner LLP, New York, N.Y. (Michael L. Chartan and Melanie Finkel of counsel), for respondent.

In an action for a judgment declaring, inter alia, that the plaintiff tenant properly exercised its option to purchase the subject property from the defendants, the defendants appeal from an order of the Supreme Court, Queens County (Kitzes, J.), dated August 2, 2007, which, in effect, denied their motion to compel the plaintiff to provide them with complete access to the entire premises and granted the plaintiff's cross motion for a protective order to the extent of "limiting defendants' right of inspection to the items [set] forth in its notice of default."

ORDERED that the appeal is dismissed as academic, without costs or disbursements.

The plaintiff tenant commenced this action for a judgment declaring, inter alia, that it properly exercised an option to purchase contained in the parties' lease. The defendants, owners of the subject property, claim that the plaintiff cannot exercise the option because it was in default of provisions of the lease, including a provision requiring it to maintain the premises. In preparation for trial, the defendants sought to inspect the entire premises for defects, and moved to compel the plaintiff to provide them with complete access to the subject premises. The plaintiff cross-moved for

May 20, 2008

Page 1.

a protective order. The Supreme Court, in effect, denied the defendants' motion for complete access to the premises and granted the plaintiffs' cross motion to the extent of "limiting defendants' right of inspection to the items [set] forth in its notice of default" in order to avoid a "fishing expedition."

The defendants note in their brief that on October 9, 2007, they inspected the premises pursuant to the order appealed from. However, on October 25, 2007, they were given access "to the entire Premises" pursuant to a provision of the lease affording them access to the premises during business hours to inspect the same. Since the defendants have been given the access requested (*see De Santis v Independent Beetle Serv.*, 59 AD2d 732), we must dismiss the instant appeal as academic (*see Matter of Grand Jury Subpoenas for Locals 17, 135, 257 & 608 of United Blvd. of Carpenters & Joiners of Am., AFL-CIO*, 72 NY2d 307, 311).

PRUDENTI, P.J., MILLER, CARNI and CHAMBERS, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court