SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

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WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE, FOR THE BENEFIT OF THE HOLDERS OF COMM 2015-CCRE23 MORTGAGE TRUST COMMERCIAL MORTGAGE PASSTHROUGH CERTIFICATES,

Plaintiff,

- v -

39-05 29TH ST HOTEL, LLC, and NOVARE NATIONAL SETTLEMENT SERVICE, LLC

Defendants.

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INDEX NO. 654401/2023

MOTION DATE 10/26/2023

MOTION SEQ. NO. MS 001

DECISION + ORDER ON MOTION

HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for DISMISS.

In this action arising from the failed sale of a loan note by plaintiff Wilmington Trust, National Association, as Trustee, for the Benefit of the Holders of Comm 2015-CCRE23 Mortgage Trust Commercial Mortgage Passthrough Certificates ("Wilmington Trust" or plaintiff) to defendant 39-05 29th Street Hotel LLC (movant-defendant), movant-defendant moves to dismiss plaintiff's complaint pursuant to CPLR 3211[a][1] and [a][7] for failure to state a claim.[1] Movant-defendant also moves for default judgment against non-moving defendant Novare National Settlement Service, LLC ("Novare"). For the reasons below, movant-defendant's motion is granted as to dismissal of plaintiff's cause of action for declaratory judgment and denied in all other respects.

Background

In 2014, a creditor extended a loan to a borrower secured by real property, and the two sides created a promissory note to reflect that transaction ("the Note")

[1] Defendant also claims to be moving to dismiss under other paragraphs of 3211[a] but is unclear about *which* paragraphs. The Notice of Motion states that defendant is moving pursuant to 3211[a][1], [a][3], [a][7], and [a][8] (NYSCEF # 12 at 1). Defendant's brief says it is moving pursuant to [a][1], [a][5], and [a][7] (NYSCEF # 13 at 1). The only two paragraphs in common are [a][1] and [a][7]. Given that defendant does not actually make arguments under [a][3], [a][5], or [a][8] or cite law for any of those claims, the court will only analyze pursuant to [a][1] and [a][7].

(NYSCEF # 1, Complaint, ¶¶ 8-10). Plaintiff eventually came to own the Note (*id.* ¶¶ 2, 12). The Note is now in default, and plaintiff is currently engaged in a foreclosure action against the borrower and several people who personally guaranteed the Note, including non-party Hafeez Choudhary[2] (*id.* ¶¶ 10, 13-16). Choudhary, in particular, has not yet paid back plaintiff (*id.* ¶¶ 13-16, 33).

Meanwhile, in addition to pursuing the foreclosure action, plaintiff decided to sell the Note (*id.* ¶ 17). On June 5, 2023, plaintiff auctioned off the Note to the highest bidder, movant-defendant 39-05 29th Street Hotel LLC (*id.* ¶ 18). Over the next three days, the parties executed both a Loan Sale Agreement to sell the Note ("LSA") and a "Confirmation Addendum" (*id.* ¶¶ 19-20), each with an effective date of June 7, 2023 (*id.*).

Pursuant to the LSA, the parties agreed that "time is of the essence"[3] and set a mandatory closing date for June 22, 2023 (NYSCEF # 3, Loan Sale Agreement & Related Docs, at Definitions, § 15.1). Movant-defendant warranted that it would be financially able to make the purchase by the date of closing (*id.* § 6.2[b]). The LSA also required movant-defendant to make a $1 million deposit in escrow in advance of the closing (NYSCEF # 1 ¶ 21). Movant-defendant allegedly did so on June 8, 2023, by depositing the money with non-moving defendant Novare, who is a nominal defendant in this action (*id.* ¶¶ 4-5, 22). The LSA states that "[plaintiff's] right to retain the initial escrow deposit will be the sole and exclusive remedy of [plaintiff] upon a breach of this [LSA] by [movant-defendant] (save and except [Prevailing Parties: Litigation section])" (NYSCEF # 3 ¶ 7.1). Finally, pursuant to the Confirmation Addendum, plaintiff had absolute discretion to approve or reject the transaction within five business days from the effective date, which after counting weekends and the Juneteenth holiday, gave it until June 14, 2023 (NYSCEF # 3 at *1); *see also* NYSCEF # 1 ¶ 20 [incorrectly alleging plaintiff had ten business days to accept or reject]).

Plaintiff alleges that at the time the LSA was executed, Uri Dreifus was movant-defendant's principal and the one who executed the LSA and Confirmation Addendum on behalf of movant-defendant (NYSCEF # 1 ¶¶ 23, 24; NYSCEF # 3 at *1, *21). Dreifus provided financials to plaintiff showing that he personally would have sufficient funds to pay at closing (NYSCEF # 1 ¶ 25). Dreifus even sent plaintiff a "Purchaser Certification" that he signed as "sole member" of movant-defendant (*id.* ¶¶ 27-28; *see* NYSCEF # 4, Purchaser Certification). The Purchaser

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[2] The complaint interchangeably uses the spellings "Choudhary" and "Chaudhary." The court uses the spelling from defendant's voluntary petition for bankruptcy (*see* NYSCEF # 17 at 4).

[3] "When a contract states that time is of the essence, the parties are obligated to comply strictly with its terms. Moreover, where time is of the essence, performance on the specified date is a material element of the contract, and failure to perform on that date constitutes, therefore, a material breach of the contract" (*Kaiser-Haidri v Battery Place Green, LLC*, 85 AD3d 730, 733 [2d Dept 2011], quoting *New Colony Homes, Inc. v Long Is. Prop. Group, LLC*, 21 AD3d 1072, 1072-1073 [2d Dept 2005]).

Certification claimed to depict movant-defendant's organizational structure, although that attachment was not filed here (*see* NYSCEF # 4, Purchaser Certification). Plaintiff alleges that it relied on Dreifus's financials in entering the LSA, and on the Purchaser Certification in approving the deal on June 14, 2023, pursuant to the Confirmation Addendum (NYSCEF # 1 ¶¶ 25-28).

However, plaintiff alleges "upon information and belief" that Dreifus was not the owner of movant-defendant on the closing date. Instead, Dreifus secretly transferred ownership to Choudhary, the person who had personally guaranteed the Note and who is currently a defendant in plaintiff's foreclosure action (*id.* ¶¶ 16, 29). Plaintiff further alleges, still on information and belief, that Choudhary was the one who escrowed $1 million with Novare and had agreed to pay Dreifus $1,928,375.00 at the time of closing on the Note in exchange for ownership of movant-defendant (*id.* ¶¶ 30-31). Based on plaintiff's allegations, Choudhary was trying to pull a fast one on plaintiff by buying his own debt at a significant markdown in order to discharge it. Plaintiff alleges that it would not have entered the LSA if it had known that Choudhary was on the other side of the deal (*id.* ¶ 33).

On the closing date of June 22, 2023, movant-defendant did not pay the closing price (*id.* ¶ 40). Instead, movant-defendant filed a petition for Chapter 11 bankruptcy, signed by Choudhary as "member" of movant-defendant (NYSCEF # 17, Bankruptcy Petition, at 1, 4). Choudhary also appeared at a bankruptcy hearing on August 14, 2023, and was expressly referred to as movant-defendant's "principal" at that hearing (*see* NYSCEF # 19, Bk Hrg Tr, at 2:5-8).

Based on the hearing transcript filed by movant-defendant in support of this motion, movant-defendant's goal in filing for bankruptcy was "to take advantage of the sixty-day extension to close pursuant to Section 108(b) of the Bankruptcy Code" (NYSCEF # 25, Pltf's Opp, at 9; *see* NYSCEF # 19 at 10:12-21, 23:1-3). That extension period was set to end on August 22, 2023, and so the bankruptcy court gave movant-defendant until that date to secure the funds necessary to make the purchase (*see* NYSCEF # 19 at 24:1-9). However, two days later, movant-defendant sent the court a proposed order voluntarily dismissing the case, (NYSCEF # 23, Voluntary Dismissal Letter & Proposed Order), which the court entered on August 18, 2023 (NYSCEF # 18, Bankruptcy Dismissal).

Plaintiff sent movant-defendant a default letter within hours of the bankruptcy dismissal (NYSCEF # 1 ¶ 43; NYSCEF # 6, Default Letter at 1). Plaintiff also instructed Novare to release the $1 million in escrow to plaintiff (NYSCEF # 1 ¶¶ 43-44; NYSCEF # 6 at 2). From plaintiff's perspective, movant-defendant failed to pay on the closing date of June 22, abused the bankruptcy process to extend the closing date to August 22, and then dismissed its bankruptcy case early when it realized it could not secure funding (*see* NYSCEF # 1 ¶¶ 41-44; NYSCEF # 25 at 1-2). To plaintiff, this meant that movant-defendant immediately entered a state of

default under the "time is of the essence" clause. However, Novare and movant-defendant refused to consent to release of the deposit (NYSCEF # 1 ¶¶ 48-54).

Plaintiff now sues for declaratory judgment for release of the $1 million escrowed with Novare, breach of contract for the "time is of the essence" clause, and fraud for movant-defendant's misstatements about ownership and ability to pay (*id.* ¶¶ 48-64). Meanwhile, movant-defendant moves to dismiss all three causes of action under CPLR 3211 [a][1] and [a][7] (NYSCEF # 12, Notice of Motion; NYSCEF # 13, Def Br, at 1).

Movant-defendant also moves for default judgment against Novare for Novare's failure to respond to the complaint (NYSCEF # 12 at 1). However, the same day movant-defendant filed its motion, Novare filed its answer with counterclaims (*see* NYSCEF # 11, Novare Answer).

Legal Standard

On a motion to dismiss pursuant to CPLR 3211 [a] [7], the court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference," and "determine only whether the facts as alleged fit into any cognizable legal theory" (*Siegmund Strauss, Inc. v E. 149th Realty Corp.*, 104 AD3d 401, 403 [1st Dept 2013]). Significantly, "whether a plaintiff...can ultimately establish its allegations is not taken into consideration in determining a motion to dismiss" (*Phillips S. Beach LLC v ZC Specialty Ins. Co.*, 55 AD3d 493, 497 [1st Dept 2008], *lv denied* 12 NY3d 713 [2009])

At the same time, "[i]n those circumstances where the legal conclusions and factual allegations are flatly contradicted by documentary evidence, they are not presumed to be true or accorded every favorable inference" (*Morgenthow & Latham v Bank of New York Company, Inc.*, 305 AD2d 74, 78 [1st Dept 2003] [internal citation and quotation omitted]). However, dismissal based on documentary evidence under 3211 [a] [1] may result "only when it has been shown that a material fact as claimed by the pleader is not a fact at all and no significant dispute exists regarding it" (*Acquista v New York Life Ins. Co.*, 285 AD2d 73, 76 [1st Dept 2001] [quoting *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]]).

Discussion

Declaratory Judgment Claim

Movant-defendant seeks dismissal of the declaratory judgment claim as duplicative of the breach of contract claim. "A cause of action for a declaratory judgment is unnecessary and inappropriate when the plaintiff has an adequate, alternative remedy in another form of action, such as breach of contract" (*Apple Records, Inc. v Capitol Records, Inc.*, 137 AD2d 50, 54 [1st Dept 1988]).

Here, the declaratory judgment claim is clearly duplicative of the breach of contract claim. While there is a slight difference in the sense that the declaratory judgment merely seeks an instruction to Novare to release the million-dollar escrow to plaintiff, plaintiff will be entitled to that same million dollars if victorious on the breach of contract claim. The declaratory judgment claim requires a finding of default under the contract (*see* NYSCEF # 1, ¶ 49 [alleging that movant-defendant "defaulted under the (LSA)"]). Moreover, the contract itself states that "[movant-defendant] and [plaintiff] agree that [plaintiff's] right to retain the initial escrow deposit will be the sole and exclusive remedy of [plaintiff] upon a breach of this [LSA] by [movant-defendant] (save and except [Prevailing Parties: Litigation section])" (NYSCEF # 16, ¶ 7.1). If breach is found, then movant-defendant will have to instruct Novare to release the money. All of this together means that the breach and declaratory judgment claims are duplicative, and thus the declaratory judgment claim must be dismissed.

Breach of Contract Claim

Plaintiff's breach of contract claim, however, survives dismissal. "[T]o plead a cause of action for breach of contract, a plaintiff usually must allege that: (1) a contract exists; (2) plaintiff performed in accordance with the contract; (3) movant-defendant breached its contractual obligations; and (4) movant-defendant's breach resulted in damages" (*34-06 73, LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022] [internal citations omitted]).

Here, plaintiff claims that movant-defendant breached the LSA's "time is of the essence" clause by failing to pay on the closing date of June 22, 2023 (NYSCEF # 1, ¶¶ 35, 40, 56). "Where time is of the essence, performance on the specified date is a material element of the contract, and failure to perform on that date constitutes, therefore, a material breach of the contract" (*Kaiser-Haidri v Battery Place Green, LLC*, 85 AD3d 730, 733 [2d Dept 2011], quoting *New Colony Homes, Inc. v Long Is. Prop. Group, LLC*, 21 AD3d 1072, 1072-1073 [2d Dept 2005]; *see also Greto v Barker 33 Assoc.*, 161 AD2d 109, 110 [1st Dept 1990] ["where the parties have by their agreement expressly made time of the essence, failure to perform on the specified date constitutes a default"]).

Plaintiff alleges in the complaint that the contract mandated closing on June 22, 2023, and that because movant-defendant did not close on that date, movant-defendant was in default. Movant-defendant argues that the original "time is of the essence" clause was no longer binding because the close date was stayed pursuant to the Bankruptcy Code. Movant-defendant argues plaintiff therefore should have offered a new closing date after the bankruptcy dismissal. Movant-defendant cites *Birnbaum v Perl* (2021 N.Y. Slip Op. 30130[U], 1 [Sup Ct, Kings County 2021]) in support.

Generally, if a contract says time is of the essence, then the parties are bound by that (*Kaiser-Haidri v Battery Place Green, LLC*, 85 AD3d 730, 733 [2d Dept 2011]). However, parties may waive their right to timely performance through their actions (*see Stefanelli v Vitale*, 223 AD2d 361, 362 [1st Dept 1996]) or through mutual agreement (*Greto*, 161 AD2d at 110 ["a mutual verbal agreement to extend the time may indicate a waiver of this provision"]).

Movant-defendant is essentially arguing that plaintiff's right to timely performance (i.e., close date of June 22, 2023) was waived under *Birnbaum* because movant-defendant filed for bankruptcy. Defendant claims that *Birnbaum* stands for the proposition that a "time is of the essence" clause is waived by bankruptcy unless the transaction was specifically approved by the bankruptcy court. But *Birnbaum* does not stand for this proposition at all.

In *Birnbaum*, defendant was the seller under a time is of the essence contract, and plaintiff was buyer (*Birnbaum*, 2021 N.Y. Slip Op. 30130[U], *1). Defendant-seller filed for bankruptcy, leaving defendant unable to transfer title on the "time is of the essence" close date due to the operation of the Bankruptcy Code (*id.* *2-3). After the bankruptcy proceedings concluded, plaintiff-buyer reached out to defendant-seller to reschedule the closing (*id.* at *2). Defendant-seller, however, considered plaintiff-buyer in default because plaintiff-buyer did not pay on the closing date, even though defendant-seller had been legally incapable of transferring title at the time (*id.*). The court rejected defendant-seller's argument, holding that defendant-seller could not claim plaintiff-buyer was in default for missing the close date when defendant-seller could not convey title absent the bankruptcy court's approval of the sale (*id.* at *3). In a way, *Birnbaum* is best understood as another manifestation of the principle that a party cannot cause another party's default and then claim that default as a breach.

That principle has no applicability here. Movant-defendant is the purchaser, not the seller, and so filing for bankruptcy did not affect its ability to convey title, only its ability to pay the titleholder. At most, filing for bankruptcy only stayed the closing date under the contract due to the operation of law; it did not make closing legally or fundamentally impossible. However, once the bankruptcy case was dismissed, "the [movant-defendant's] debts and property [were] subject to the general laws, unaffected by bankruptcy concepts" (*In re Kent Funding Corp.*, 290 BR 471, 475 [Bankr EDNY 2003]). At bottom, despite the parties' respective understanding of the extension issues under bankruptcy law (*see, e.g.*, 11 USC §§ 108, 349), what is undisputed is that plaintiff was not the cause of movant-defendant's default, and so *Birnbaum* does not apply.

Without *Birnbaum*'s assistance, movant-defendant is essentially arguing—with no legal support—that movant-defendant's choice to declare bankruptcy effectively waived plaintiff's right to timely performance under the "time is of the essence" clause. Parties may waive their own rights to timely performance (*Stefanelli*, 223

AD2d at 362), or waive by *mutual* agreement (*Greto*, 161 AD2d at 110). Movant-defendant has cited no authority stating that one party may waive *the other's* right to timely performance, nor any authority that the operation of bankruptcy law itself waives that right after the bankruptcy case has been dismissed. Given that plaintiff immediately sent movant-defendant a default letter when the bankruptcy case was dismissed, plaintiff did not waive its rights (NYSCEF # 6). Thus, there is no evidence or allegation that plaintiff waived its right to timely performance, and plaintiff had no duty to extend movant-defendant's time to comply.

In sum, the branch of movant-defendant's motion to dismiss plaintiff's breach of contract claim is denied.

Fraud and Misrepresentation Claim

Plaintiff's fraud by misrepresentation claim is based on allegations that movant-defendant "induced" plaintiff to "execute and then confirm the [LSA]" (NYSCEF # 1 ¶¶ 61-63). In that the allegations focus on inducement, this claim is better understood as one for fraudulent inducement.

To plead fraudulent inducement, a plaintiff must allege "[1] a misrepresentation or a material omission of fact which was false and known to be false by the defendant, [2] made for the purpose of inducing the other party to rely upon it, [3] justifiable reliance of the other party on the misrepresentation or material omission, and [4] injury" (*Ambac Assur. Corp. v Countrywide Home Loans, Inc.*, 31 NY3d 569, 578-579 [2018]). Additionally, CPLR 3016[b] requires fraud claims to be pled with particularity, meaning they are supported with "specific facts with respect to the time, place, or manner" of the misrepresentations or omissions (*CMB Export Infrastructure Inv. Group 48, LP v Motcomb Estates, Ltd.*, 223 AD3d 513, 514 [1st Dept 2024], citing *Riverbay Corp. v Thyssenkrupp N. El. Corp.*, 116 AD3d 487, 488 [1st Dept 2014]).

Movant-defendant challenges plaintiff's claim on two grounds: first, that plaintiff failed to plead misrepresentation with particularity, and second, that the claim as a whole is duplicative of the breach claim.

Movant-defendant first argues that the plaintiff failed to plead misrepresentation with particularity because plaintiff did not allege any specific misrepresentations as to the ownership or members of movant-defendant. Movant-defendant is incorrect because plaintiff alleges that movant-defendant falsely represented itself as being owned and controlled solely by Dreifus, when in fact Choudhary was the true owner or would be at the time of the closing (NYSCEF # 1, ¶¶ 27, 29-31). Dreifus signed the LSA and Confirmation Addenda on movant-defendant's behalf (NYSCEF # 3 at *1, *21), provided his own financials to prove he would have enough money to complete the closing (NYSCEF # 1 ¶¶ 24-26), and even submitted a Purchaser Certification listing himself as the "sole member" of movant-

defendant (NYSCEF # 4). And yet plaintiff alleges upon information and belief that in fact Dreifus shortly thereafter transferred ownership of movant-defendant to Choudhary, that Choudhary paid the $1 million escrow, and that Choudhary would complete purchase of movant-defendant at the time of closing on the Note (NYSCEF # 1, ¶¶ 29-31). These allegations of misrepresentation are particularized down to the specific dates of signing and transferring documents.

The reason these allegations do not end the inquiry is that plaintiff made the allegations about Choudhary "upon information and belief," and it is well-established that "[s]tatements made . . . upon information and belief are not sufficient to establish the necessary quantum of proof to sustain allegations of fraud" (*Facebook, Inc. v DLA Piper LLP (US)*, 134 AD3d 610, 615 [1st Dept 2015]). Yet *Facebook* does not end the inquiry either, because ironically movant-defendant provided the very documents necessary to support plaintiff's claims. Nowhere in the complaint were there factual, non-information-and-belief allegations that Choudhary owned or purchased movant-defendant. However, movant-defendant supported its motion to dismiss with a copy of its petition for bankruptcy, which is undisputedly signed by Choudhary in his capacity as a "member" of movant-defendant (NYSCEF # 17 at 4). This petition is dated a mere *eight days* after Dreifus's "purchaser certification" describing Dreifus as movant-defendant's "sole member" (compare *id.* with NYSCEF # 4). Movant-defendant also attached a transcript of the August 14, 2023, hearing in the bankruptcy action in which Choudhary appeared and was described as movant-defendant's "principal" (NYSCEF # 19 at 2:5-8).

Based on the representations in these documents, and making all reasonable inferences in favor of plaintiff, either (a) movant-defendant was owned by Choudhary the entire time, (b) Choudhary temporarily transferred ownership to Dreifus in order to fool plaintiff into selling to Choudhary, or (c) Choudhary and Dreifus always planned to have Dreifus create movant-defendant and then transfer ownership to Choudhary once plaintiff had executed and confirmed the LSA. Any of these three inferences adequately supports plaintiff's claim of fraud.[4] While it is also possible that Dreifus was honestly approached by Choudhary after Dreifus won the auction, the speed of transaction between plaintiff and movant-defendant and the fact that Choudhary was able to so quickly both front the money and file for bankruptcy make this extremely unlikely.

Alternatively, plaintiff has sufficiently alleged that movant-defendant warranted that it would "have the financial capability to close the transaction" on June 22, 2023, as set forth in the LSA (NYSCEF # 16, § 6.2[b]), and instead filed for bankruptcy on that date.

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[4] Neither plaintiff nor defendant acknowledge the arguably stronger argument that defendant fraudulently omitted the fact that it was or soon would be owned by Choudhary—a theory which requires allegations of a specific duty to reveal that information.

Movant-defendant's other argument is that even if plaintiff pled with particularity, the fraud claim is nevertheless duplicative of breach of contract. That argument is easily denied. "A fraud claim . . . is not duplicative and may be independently viable where 'the complaint alleges a misrepresentation of present facts that are collateral to the contract and served as an inducement to enter into the contract'" (*Thrall v State Farm Mut. Auto. Ins. Co.*, 78 Misc 3d 1208(A) [Sup Ct, Saratoga Cnty, 2023]; *see also Wyle Inc. v ITT Corp.*, 130 AD3d 438, 440-441 [1st Dept 2015] ["*a misrepresentation of present facts is collateral to the contract* (though it may have induced the plaintiff to sign the contract) and therefore involves a separate breach of duty" (emphasis in original)]).

Here, movant-defendant induced plaintiff to sell the Note to movant-defendant with a misrepresentation of present fact—i.e., that movant-defendant was or would at the time of closing be owned by Dreifus rather than Choudhary, whom plaintiff alleges it would never have sold to because Choudhary owed plaintiff money on the same Note (NYSCEF # 1, ¶¶ 32-33; NYSCEF # 25 at 10-11). Alternatively, movant-defendant showed plaintiff Dreifus's financial information, misrepresenting the fact that it intended for Choudhary, not Dreifus, to be the one to close the transaction.

Plaintiff therefore adequately alleges fraudulent inducement. The motion to dismiss this claim is denied.

Default Judgment Against Novare

Movant-defendant also moves for default judgment against Novare (NYSCEF # 12 at 1). However, Novare did in fact file an answer, counterclaims, and crossclaims on October 26, 2023—the same day movant-defendant filed this motion (compare NYSCEF # 11 with NYSCEF # 12). The motion for default judgment is therefore denied.

Conclusion

For the foregoing reasons, it is

ORDERED that the branch of movant-defendant 39-05 29th Street Hotel LLC's motion (MS 001) to dismiss plaintiff's complaint is granted in part only with respect to dismissal of the first cause of action for declaratory judgment, and denied in all other respects; and it is further

ORDERED that the branch of movant-defendant 39-05 29th Street Hotel LLC's motion (MS 001) for default judgment against non-moving defendant Novare National Settlement Services LLC is denied; and it is further

ORDERED that within 30 days of the e-filing of this order, defendant 39-05 29th Street Hotel LLC'shall file an answer to the complaint and cross-complaint; and it is further

ORDERED that a preliminary conference shall be held via Microsoft Teams on June 5, 2024, at 2:30 p.m. or at such other time that the parties shall set with the court's law clerk, provided, however, that the parties shall first meet and confer to determine if there is agreement to stipulate to a preliminary conference order, available at https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/part49-PC-Order-fillable.pdf.

This constitutes the Decision and Order of the court.

4/12/2024
DATE

MARGARET A. CHAN, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE