Harmit Realties LLC v 835 Ave. of the Ams., L.P.
2015 NY Slip Op 30931(U)
June 2, 2015
Supreme Court, New York County
Docket Number: 651931/2013
Judge: Charles E. Ramos
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

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HARMIT REALTIES LLC,

Plaintiff,

-against- Index No. 651931/2013

835 AVENUE OF THE AMERICAS, L.P.; CARLISLE 839 LLC; 835 6TH AVE MASTER LP; 835 6TH AVE PARKING L.P.; EQR-BEATRICE A,LLC; BEATRICE B, LLC; BEATRICE C,LLC; BEATRICE D, LLC; BEATRICE E,LLC; BEATRICE F, LLC; BEATRICE G,LLC; BEATRICE H, LLC; BEATRICE I,LLC; and "XYZ CORPS 1-5," the last five names being fictitious and unknown to the plaintiff, the parties intended being entities, if any, to which Defendants have assigned, granted, or in any other way transferred their interests at issue,

Defendants.

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Hon. Charles E. Ramos, J.S.C.:

In motion sequence 005, plaintiff and counterclaim-defendant Harmit Realties LLC (Harmit) and counterclaim-defendant Harvey Drucker (Drucker) move to dismiss defendants' and counterclaim-plaintiffs' verified answer and counterclaims pursuant to CPLR 3211 (a)(1) and (a)(7) and for sanctions pursuant to Section 130-1.1 of the Rules of the Chief Administrative Judge against defendants and their counsel.

BACKGROUND[1]

This is an action brought by Harmit against 835 Avenue of

[1] The facts set forth herein are taken from the pleadings, namely the counterclaims, unless otherwise noted.

the Americas, L.P., Carlisle 839 LLC, 835 6th Ave Master LP, 835 6th Ave Parking L.P., EQR-Beatrice A, LLC, Beatrice B, LLC, Beatrice C, LLC, Beatrice D, LLC, Beatrice E, LLC, Beatrice F, LLC, Beatrice G, LLC, Beatrice H, LLC, and Beatrice I, LLC (collectively, Carlisle).[2] Harmit accuses the defendants of wrongfully transferring to themselves development rights, resulting in defendants overbuilding their building and encroaching on Harmit's development rights.

Harmit and Carlisle own adjacent properties on West 30th Street and Sixth Avenue in Manhattan, New York. Harmit owns 114-120 West 30th Street (Owner Parcel) with the building and improvements thereon (Owner Building) and Carlisle owns 835-861 Avenue of Americas (Developer Parcel) with the building and improvements thereon (Developer Building).

In 2006, Carlisle sought to purchase from Harmit certain air rights attached to the Owner Building. Jules Demchick, on behalf of Carlisle, and Drucker, on behalf of Harmit, conducted the negotiations between the parties. Harmit and Drucker agreed to sell Carlisle any and all development rights that Harmit possessed but was not using at the time (Excess Development Rights).

While negotiations were pending, Carlisle employed a

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[2]Refer to Amended Complaint, Answer and Counterclaims for a full description of the parties (Am. Complaint ¶¶ 13-37, Verified Answer ¶¶ 13-37, Counterclaims ¶¶.

surveyor, Fehringer Surveying, P.C. (Fehringer), to conduct a survey of the Owner Building in order to determine the amount of air rights that were available for Harmit to sell to Carlisle (the Survey). The Survey was conducted on or about September 23, 2006, and sent to Drucker shortly thereafter.

The Survey sent to Drucker stated that the total area for the Owner Parcel was 6,270.47 square feet. Carlisle alleges that since Harmit's parcel carried a floor-area-ratio (FAR) of 10, there was at most 62,704.70 square feet of air rights available for use or sale. The Survey also identifies a building area for the Owner Building consisting of six floors and a penthouse totaling 34,284 square feet. Thus, there were 28,420.70 square feet of unused air rights (62,704.70 - 34,284) available for sale based on the Survey.

Carlisle alleges the Survey erroneously did not reflect the existence of a mezzanine in the Owner Building because the surveyors were not shown the part of Harmit's building containing the mezzanine. By failing to set forth the mezzanine in the Owner Building, the Survey understated the amount of square feet being used by the Owner Building and overstated the amount of square feet of air rights available for sale.

Carlisle alleges that upon receiving the Survey, Drucker and Harmit knew or should have known that Carlisle believed the Owner Building did not contain the mezzanine and did not advise

Carlisle of the error which Drucker and Harmit knew to be wrong. Instead, Harmit and Drucker allegedly wanted to profit from the mistake in the Survey by being paid for development rights that Harmit did not have and proceeded with the transaction.

The parties allegedly agreed on a price of $313 per square foot for all of Harmit's Excess Development Rights, however this quote was not stated anywhere in the agreements. The parties understood that the final purchase price would reflect the negotiated per-square-foot price multiplied by the square footage being sold by Harmit.

Harmit prepared a first draft of the Purchase Agreement which provided explicitly that the purchase price for the excess development rights was $8,900,000. This draft was sent to Carlisle on January 18, 2007.

The total purchase price of $8,900,000 million as calculated by Harmit reflects the amount of Excess Development Rights according to the Survey since dividing $8,900,000 by $313 per square foots yields 28,434 square feet, which is approximately the same number of square feet (28,420.70) available under the Survey.

Carlisle alleges that the fact that the initial draft incorporates the said purchase price demonstrates that both Harmit and Drucker were aware of the Survey, its calculations, that the mezzanine was omitted, and that Carlisle mistakenly

believed they were buying more square footage than Harmit had available to sell.

The transaction was finalized on June 4, 2007 and made pursuant to a purchase and sale agreement (Purchase Agreement), a zoning lot development agreement (ZLDA), and a declaration of zoning lot restrictions (the Zoning Declaration).

The agreements provided that the defendants were only purchasing Excess Development Rights and excluded Harmit's improvements on the Owner Building, which Harmit contends included the mezzanine level and all other parts of the Owner Building.

The agreements do not state the amount of square footage, any measurement or equation of the air rights purchased, or the mezzanine. Certain disclaimers are contained within the agreements stating "Seller makes no representation as to the number of square feet of floor area contained in the Excess Development Rights" (Sherman Aff., Exh. 2, § 1.1 [M][emphasis added]) and "purchaser acknowledges that seller has made no representations regarding the amount of the Excess Development Rights or the compliance of the transfer of the Excess Development Rights and the utilizations thereof by Purchaser...and that Seller has made no representation regarding the amount of Utilized development Rights" (*Id.* at Exh. 2, § 2.2 and Exh. 3, § 5 [emphasis added]).

Furthermore, the agreements contained merger clauses stating: "this Agreement constitutes the entire agreement and understanding among the parties hereto and any and all prior agreements and understandings between and among the parties...whether written or oral...are merged into this Agreement" (*Id.* at Exh. 2, § 18.10, and Exh. 3, § 20).

After the transaction had closed, Carlisle, submitted to the Department of Buildings (DOB) certain documents setting forth the amount of total square footage that (it believed) was transferred from Harmit to Carlisle and designed and constructed the Developer Building.

On or about June 11, 2012, a request was made for an estoppel certificate from Harmit by Carlisle. The estoppel certificate required Harmit to attest that there exist no facts which would constitute a default by Carlisle. Harmit then requested from Carlisle that they provide the documents filed with the DOB with respect to the Owner Building. Carlisle sent Harmit the documents requested including the Survey. Harmit in response sent the estoppel certificate to Carlisle and stated the Survey was inaccurate in that it understated the amount of Utilized Development Rights in the Owner Building by failing to reflect the mezzanine in the Owner Building.

Drucker represents that he did not know of the mistake until the request was made. Carlisle disputes this and states that

Harmit and Drucker were aware of the error immediately after the survey was taken and emailed to Drucker before the transaction had closed.

In order to ascertain the facts after the error was revealed, Carlisle hired Fehringer a second time to conduct a survey of the Owner Building on December 7, 2012. This survey revealed the existence of a mezzanine and a square footage of 38,432 for the Owner Building (the Mezzanine Survey), a difference of approximately 4,148 square feet from the original Survey.

On September 3, 2014, this Court granted Carlisle's motion to dismiss the verified complaint as to all causes of action except as to the cause of action for compelling the filing of corrective documents to the DOB. On May 12, 2015, the First Department modified, on the law, the first cause of action, for declaratory judgment, and reinstated the second cause of action, for breach of contract and monetary damages, and otherwise affirmed this Court's September 3, 2014 order.

On October 2, 2014, Carlisle filed an answer to the verified amended complaint with counterclaims against Harmit and Mr. Drucker alleging fraud, negligent misrepresentation, reformation, breach of contract, and declaratory relief. In this motion, Harmit and Drucker move to dismiss the stated counterclaims.

DISCUSSION

"A party may move for judgment dismissing one or more causes of action asserted against him on the ground that the pleading fails to state a cause of action" (CPLR 3211 [a] [7]). On a motion to dismiss for failure to state a claim, "the court is concerned with whether the pleading states a cause of action rather than the ultimate determination of the facts" (*Stukuls v State*, 42 NY2d 272, 275 [1977]). Such motion will not be granted, unless the moving papers conclusively establish that no cause of action exists (*Ming v Hoi*, 163 AD2d 268 [1st Dept 1990]). The court should construe the pleadings in a liberal fashion by accepting the facts alleged in the complaint and interpreting them in a light most favorable to the plaintiff (*Leon v Martinez*, 84 NY2d 83, 87 [1994]).

Statements in a pleading shall be sufficiently particular to give the court and parties notice of transactions, occurrences or series of transactions or occurrences, intended to be proved and the material elements of each cause of action (CPLR 3013). However, where a cause of action is based upon misrepresentation, fraud, mistake, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in particularity or detail (CPLR 3016). CPLR 3016 (b) is satisfied when the facts suffice to permit a "reasonable inference" of the alleged misconduct (*Pludeman v Northern Leasing Sys., Inc.*, 10

NY3d 486, 492 [2008]). The purpose underlying the statute is to inform a defendant of the complained-of incidents (*id.* at 486). Section 3016 (b) requirements are not "to be interpreted so strictly as to prevent an otherwise valid cause of action in situations where it may be 'impossible to state in detail the circumstances constituting a fraud'" (*Joel v Weber*, 166 AD2d 130, 133-34 [1st Dept 1991], quoting *Jered Contr. Corp. v New York City Transit Auth.*, 22 NY2d 187, 194 [1968]).

FRAUD

In pleading a claim for fraud, the plaintiff must allege representation of a material existing fact, made with knowledge of its falsity, an intent to induce reliance thereon, justifiable reliance upon the misrepresentation, and resulting injury (*MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 87 AD3d 287 [1st Dept 2011]). Where the basis of a cause of action for fraud is concealment of information a plaintiff must also allege that the defendant had a duty to disclose material information and that it failed to do so (*P.T. Bank Cent. Asia v ABN Amro Bank N.V.*, 301 AD2d 373, 376 [1st Dept 2003]).

Carlisle alleges fraud by Harmit and Carlisle based on the following factual allegations: 1) Prior to the signing of the agreements, Harmit and Drucker knew that the Survey failed to account for the Owner Building's mezzanine, and that there were less than 28,420.70 square feet of Excess Development Rights

available for sale (*See* Verified Answer and Counterclaims, pp 32-34, ¶¶ 66-78); 2) Harmit and Drucker knew that Carlisle believed that the total Building Area of the Owner Building was 34,284 square feet comprising six floors and a penthouse with no mezzanine (*Id.*); 3) Harmit and Drucker knew the amount of square footage available for purchase was important information to Carlisle (*Id.*); 4) Harmit and Drucker intentionally misrepresented Carlisle into believing that Harmit had over 28,000 square feet of Excess Development Rights available for sale by submitting a draft Purchase Agreement whose total purchase price of $8.9 million reflected $313 per square foot (the agreed upon per square foot purchase price) multiplied by over 28,000 square feet (*Id.*); 5) Harmit and Drucker intentionally concealed the truth about the mezzanine and about the Survey and were under a duty to disclose this information to Carlisle (*Id.*); and, 6) Carlisle has been damaged by at least $1,250,000 for overpaying Harmit and designing and developing the Developer Building (*Id.*).

Harmit and Drucker argue that Carlisle cannot establish the element of "reasonable reliance" since it is well established that where there is a specific contractual disclaimer concerning the matter as to which a purchaser claims it was defrauded, a purchaser may not assert fraud or negligent misrepresentation based on prior oral representations (*Dannan Realty Corp. v*

Harris, 5 NY2d 317 [1959]).

This Court finds that the contractual disclaimers concerning the amount of development rights were sufficiently specific. The following disclaimers are present in the parties' agreements:

> "Seller makes no representation as to the number of square feet of floor area contained in the Excess Development Rights" (Sherman Aff., Purchase Agreement, Exh. 2, p 4, ¶3).
>
> "Purchaser acknowledges that seller has made no representations regarding the amount of the Excess Development Rights or the compliance of the transfer of the Excess Development Rights and the utilizations thereof by Purchaser...and that Seller has made no representation regarding amount of Utilized development Rights" (*Id.* at Exh. 2, § 2.2 and Exh. 3, § 5).

The disclaimers in the agreements are clearly specific and expressly contract away reliance by Carlisle on any representations made by Harmit with respect to the amount of development rights transferred by the parties and the amount of square footage. Since Harmit's alleged representations and omissions as to the amount of development rights form the basis of Carlisle's fraud claims, Carlisle cannot establish the "reasonable reliance" element of fraud.

Similarly, in *Dannan Realty Corp.*, 5 NY2d at 319-320, the Court dismissed a fraud claim founded on allegations that plaintiff was induced to enter into contract by false oral representations of defendants as to operating expenses and profits and found that the disclaimers were specific enough when the contract language stated:

> "The Purchaser has examined the premises agreed to be sold and is familiar with the physical condition thereof. The Seller has not made and does not make any representations as to the physical condition, rents, leases, expenses, operation or any other matter or thing affecting or related to the aforesaid premises, except as herein specifically set forth, and the Purchaser hereby expressly acknowledges that no such representations have been made, and the Purchaser further acknowledges that it has inspected the premises and agrees to take the premises 'as is'" (*Id.*).

Carlisle argues that Drucker, as a non-party to the contracts, cannot invoke the disclaimers to challenge Carlisle's reliance since the agreements don't name Drucker and are explicitly limited to Harmit Realties LLC as "Seller" and "Owner" in both the Purchase Agreement and the ZLDA. This Court does not agree with Carlisle's contention. Drucker, is the sole member, principal and employee of Harmit (Verified Answer and Counterclaims, P 22, ¶10). Drucker may invoke the disclaimers as protection since he signed the agreements as a member and representative of Harmit and not in his individual capacity (*See Vesey Assocs., Inc. v Regime Realty Corp.*, 35 Misc 2d 353 [Sur Ct, New York County 1961], *affd* 16 AD2d 920 [1st Dept 1962]). There are no allegations by Carlisle of piercing the corporate veil and alter-ego as against Drucker.

Carlisle further argues the disclaimers cannot be invoked to negate justifiable reliance since the misrepresented facts were "peculiarly within the seller's knowledge" (*citing Basis Yield Alpha Fund (Master) v Goldman Sachs Grp., Inc.*, 115 AD3d 128 [1st

Dept 2014]; *Loreley Fin. (Jersey) No. 3 Ltd. v Citigroup Global Mkts. Inc.*, 119 AD3d 136 [1st Dept 2014]).

Harmit and Drucker may have had superior or peculiar knowledge of the square footage and the existence of the mezzanine, but it is undisputed that there existed at least two Certificates of Occupancy (COs) which are publicly filed documents and which reflect the existence of a mezzanine in the Owner Building. There are no allegations that Carlisle was unable to access this information or made diligent efforts to access this information but could not attain it. Furthermore, the Real Property Transfer Tax Return (RPTTR) signed by Carlisle and Harmit on June 1, 2007, a few days before the closing of the transaction reflects the size of the Owner Building to be 36,366 square feet, which is different from the square footage set forth in the Survey (Sherman Aff., Exh. 6).

Thus, Carlisle's allegations that Harmit denied their surveyor access to the mezzanine and failed to disclose facts as to the square footage and existence of the mezzanine are unavailing when Carlisle had access to information prior to entering into the agreements that would have revealed the existence of a mezzanine and varying square footage. Carlisle likely would have been alerted to these discrepancies if it had done the proper due diligence required of a sophisticated business entity.

Similarly, in *B&C Realty, Co. v 159 Emmut Props. LLC*, 106 AD3d 653 (1st Dept 2013), the Court affirmed the dismissal of a complaint and stated:

> "Plaintiff's argument that defendants sheet-rocked the entrance to the eighth floor, programmed the elevator to skip that floor, and installed a deceptive elevator floor designation panel that omitted the eighth floor, is unavailing. Plaintiff should have been alerted to the building's structure by, among other things, comparing the building's 15 temporary C of Os to the "as-built" plans, because the temporary C of Os all showed that the building had eight stories while the "as-built" plans indicated that the building had only seven stories."

Carlisle suggests that New York case law permits a fraud claimant to overcome even specific disclaimers in a contract if the allegations suggest a present intent to commit fraud, as opposed to "the existence of rights under the contract which might inure to the benefit of the defendant(s) to an extent not anticipated by the plaintiff" (See Carlisle Brief P 15; *citing MBIA Ins. Corp v Royal Bank of Canada*, 28 Misc 3d 1225(A), at 39-40 [Sup Ct 2010], *China Dev. Indus. Bank v Morgan Stanley*, 2011 NY Misc LEXIS 1808 [Sup Ct, New York County 2011] *affd* 86 AD3d 435 [1st Dept 2011]).

The allegations regarding a present intention to defraud Carlisle cannot exist in a vacuum without examining the alleged misrepresentations and concealment of facts as to the square footage and the existence of the mezzanine since they form the foundation of Carlisle's fraud claim. An essential analysis that

Carlisle does not address in their "present intent to commit a fraud" sufficiency argument but which the case law does address is that the facts allegedly misrepresented have to be peculiarly within the defendant's knowledge and whether the defendant could only attain the information with great difficulty (*Id.*). Again, with the existence of the COs and RPTTR available to Carlisle prior to the closing of the transaction it's clear that Carlisle should have done more due diligence as a sophisticated investor in an arm's length transaction to ascertain the facts regarding the amount of development rights, existence of a mezzanine, and actual square footage prior to the closing (*HSH Nordbank AG v UBS AG*, 95 AD3d 185 [1st Dept 2012] [Party can't claim reasonable reliance where it "could have uncovered any misrepresentation of the risk of the transaction through the exercise of reasonable due diligence within the means of a financial institution of its size and sophistication"]; *Alpha GmbH & Co. Schiffbesitz KG v BIP Indus. Co.*, 25 AD3d 344, 345 [1st Dept 2006][fraud claim cannot stand based on concealment of matters of public record that could have been discovered by the exercise of ordinary diligence]).

With respect to the allegations of concealment of material facts regarding the existence of a mezzanine and the actual square footage of the Owner Building, Harmit and Drucker were not under a duty to disclose said facts. When a fraud claim is based on an omission or concealment of material fact, the plaintiff

must also demonstrate that the defendants had a duty to disclose material information and failed to do so (*Mandarin Trading Ltd. V Wildenstein*, 16 NY3d 173 [2011]). "Absent a confidential or fiduciary relationship, failure to disclose cannot be the basis of a fraud claim" (*National Union Fire Ins. Co. Of Pittsburgh, PA v Red Apple Group*, 272 AD2d 140 [1st Dept 2000]). Both Carlisle and Harmit are sophisticated business entities involved in an arm's length transaction. No allegations in the counterclaims are present to show that the parties were in a fiduciary relationship and there is no evidence from the agreements of such a relationship. Further, Harmit did not have superior knowledge of the mezzanine and square footage since this information was undisputedly available to Carlisle via the COs and RPTTR.

NEGLIGENT MISREPRESENTATION

The elements of a claim for negligent misrepresentation are: 1) the existence of a special or privity-like relationship imposing a duty on the defendant to impart correct information to the plaintiff; 2) that the information was incorrect; and 3) reasonable reliance on the information (*Mandarin Trading Ltd.*, 16 NY3d 173 at 180).

"A special relationship may be established by persons who possess unique or specialized expertise, or who are in a special

position of confidence and trust with the injured party such that reliance on the negligent misrepresentation is justified" (*Id.* [internal quotations removed]). Where there is an ordinary arm's length business transaction between the parties a special relationship does not generally exist (*MBA Ins. Corp. v Countrywide Home Loans, Inc.*, 87 AD3d 287, 295 [1st Dept 2011]).

Nowhere in the Counterclaims does Carlisle allege that the agreements were entered into based on a special relationship or that the parties were in a fiduciary relationship of trust and confidence. Furthermore, the element of reasonable reliance cannot be adequately alleged when Carlisle had access to the COs and signed off on the RPTTR prior to entering into the transaction.

Thus, the cause of action for negligent misrepresentation is dismissed.

REFORMATION

"A claim for reformation of a written agreement must be grounded upon either mutual mistake or fraudulently induced unilateral mistake" (*Greater New York Mut. Co. v United States Underwriters Ins. Co.*, 36 AD3d 441, 443 [1st Dept 2007]). For mutual mistake, it must be alleged that the parties have reached an oral agreement and, unknown to either, the signed writing does not express that agreement (*Id.*). Whereas for unilateral

mistake, it must be alleged that one party to the agreement fraudulently misled the other, and that the subsequent writing does not express the intended agreement (*Id.*). "A bare, conclusory claim of unilateral mistake, which is unsupported by legally sufficient allegations of fraud, fails to state a cause of action for reformation" (*Id.*).

In its Counterclaims, Carlisle alleges that it is entitled to reformation of the Purchase Agreement to reduce the purchase price by at least $1,250,000 for air rights that Harmit contends Carlisle did not actually acquire. Carlisle's claim for reformation is grounded solely on a fraudulently induced unilateral mistake in that Harmit allegedly negotiated the contracts based on a price per-square foot, and by taking advantage of the mistaken Survey, and through their own superior knowledge of the actual square footage of the Owner building, failed to disclose the actual square footage and inflated the overall purchase price.

The claim for fraud fails based on this Court's articulated reasons stated above and, thus, Carlisle fails to state a cause of action for reformation and it is hereby dismissed.

BREACH OF CONTRACT

The elements for a breach of contract claim include the existence of a contract, plaintiff's performance thereunder, the

defendant's breach thereof and resulting damages (*Harris v Seward Park Housing Corp.*, 79 AD3d 425, 426 [1st Dept 2010]).

The ZLDA agreement provides that Harmit will not "create or permit to exist any Violation with respect to the Owner Parcel" (Counterclaims ¶62; Sherman Aff. Ex. 3, § 2 [m]). Further, Harmit is required to cure any Violation which adversely affects the rights of Carlisle with respect to the Developer Parcel (*Id.* at ¶63; Ex. 3 § 8 [a]). A Violation is defined under the agreement if it: "would delay, hinder or prevent the issuance of, or result in the invalidation of, a building or other work permit or a temporary or permanent (CO) or other license or permit for any building located on the Merged Zoning Lot" (Ex. 3, § 2 [rr]).

Carlisle alleges that the COs on file with the DOB for the Owner Building which describes the Owner Building as a six-story building with a penthouse and mezzanine are incorrect (Counterclaims ¶¶ 95-105). Carlisle states that the mezzanine structure in the Owner Building is not lawful since it is more than twice as large as § 505.2 of the Building Code permits and that, in turn, this is a violation and breach of the ZLDA agreement (*Id.*).

Although a valid cause of action may exist for damages (or a cure by a modification of the existing mezzanine), Carlisle has failed to allege how the violation has damaged its interests or that of the Developer Parcel. No specification has been

articulated as to how the alleged oversized mezzanine, violation of the building code, and inaccurate CO has adversely affected Carlisle. Thus, the breach of contract claim is dismissed but with leave to re-plead.

DECLARATORY RELIEF

Carlisle seeks a declaration in its Counterclaims that the square-footage of the mezzanine does not properly constitute "Utilized Development Rights" under the ZLDA and that the total "Excess Development Rights" that were transferred to Developer are not reduced by the mezzanine's square footage (Counterclaims at ¶106-113).

Conversely, Harmit contends that the Utilized Development Rights include the total square footage of the overbuilt mezzanine under the ZLDA which define Development Rights and Utilized Development Rights to include all development rights in accordance with the Zoning Resolution.

Since the parties are in dispute as to whether the New York City Zoning Resolution applies to the mezzanine, the Court's intervention is needed to interpret what constitutes Utilized Development Rights under New York regulation and the ZLDA agreement. Carlisle's claim for declaratory judgment is not dismissed.

SANCTIONS

Harmit and Drucker request for sanctions as against Carlisle for filing the instant Counterclaims is denied. Harmit does not articulate any facts and does not provide any evidence for such a request and only makes conclusory allegations. There is no showing that Carlisle's behavior was frivolous, extreme, without merit in law or was meant to harass (*See* Rules of the Chief Administrative Judge, Section 130).

This Court requests that all parties refrain from bring on meritless motions for sanctions.

Accordingly, it is:

ORDERED that plaintiffs' motion to dismiss defendants' counterclaims is granted as to the first through fourth causes of action with leave to replead the fourth cause of action for breach of contract; it is further

ORDERED that plaintiffs' motion to dismiss defendants' fifth cause of action for declaratory relief is denied; and it is further

ORDERED that plaintiffs' request for sanctions as against defendants is denied.

Dated: June 2, 2015

J.S.C.

HON. CHARLES E. RAMOS