

**59 N. 6th St. LLC v City Urban Realty LLC**

2019 NY Slip Op 33543(U)

November 19, 2019

Supreme Court, Kings County

Docket Number: 276/19

Judge: David B. Vaughan

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Commercial Part 9 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 19<sup>th</sup> day of November, 2019.

PRESENT:

HON. DAVID B. VAUGHAN,  
Justice.  
-----X  
59 NORTH 6<sup>TH</sup> STREET LLC,

Plaintiff,

- against -

CITY URBAN REALTY LLC,  
MICHAEL ALVANDI, and  
59-63 NORTH 6<sup>TH</sup> STREET ASSOCIATES, LLC,

Defendants.  
-----X

59-63 NORTH 6<sup>TH</sup> STREET ASSOCIATES, LLC,

Plaintiff,

- against -

59 NORTH 6<sup>TH</sup> STREET LLC,  
REHAN PERVEEZ, et al.,

Defendants.  
-----X

The following papers numbered 1 through 16 read herein:

Notice of Motion/Cross Motion, Supporting Affirmations  
(Affidavits), and Memoranda of Law \_\_\_\_\_  
Affidavit in Opposition \_\_\_\_\_  
Reply Affirmations (Affidavits) and Memoranda of Law \_\_\_\_\_

**JOINT DECISION AND ORDER**

Index No. 276/19

Mot. Seq. No. 2  
(Action No. 1)

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KINGS COUNTY CLERK  
FILED

Index No. 503736/19

Mot. Seq. No. 1

(Action No. 2)

Papers Numbered:

1-2, 3-6, 7-9  
10-11  
12, 13, 14, 15, 16

In Action No. 2, defendants 59 North 6<sup>th</sup> Street LLC (the borrower) and Rehan Perveez (the guarantor and, collectively, the borrower defendants) jointly move, pre-answer, in Seq. No. 1 for an order (1) pursuant to CPLR 602, consolidating Action No. 2 with Action No. 1 in which the borrower is plaintiff (the borrower action); (2) pursuant to CPLR 3211

and RPAPL 1341, dismissing the complaint of plaintiff 59-63 North 6<sup>th</sup> Street Associates, LLC (the lender) in Action No. 2 (the lender action) upon (a) the borrower's payment "into court of disputed amount allegedly due [the lender]," (b) "[p]aying to [the lender] that amount [which is] not in dispute, and (c) "[s]taying [the] sale of [the underlying commercial property]"; and (3) pursuant to CPLR 3211, dismissing the complaint on other grounds.

In Action No. 1, defendants City Urban Realty, LLC, Michael Alvandi, and the lender (collectively, the lender defendants) jointly move in Seq. No. 1 for an order, pursuant to CPLR 3212, dismissing the borrower's complaint as against them. Also in Action No. 1, the borrower cross-moves for an order, pursuant to CPLR 3212, granting it partial summary judgment on liability.

The dispute, when pared down to its essentials, focuses on whether the borrower should abide by the terms of the Consolidated, Amended and Restated Note in the principal amount of \$12.7 million and the Consolidated, Extension, and Modification Loan Agreement, both dated as of July 19, 2018 (collectively, the loan documents),<sup>1</sup> or whether the loan documents are subordinate to, and where inconsistent should be superseded by, the Term Sheet, dated Apr. 18, 2018 and executed by the borrower on Apr. 27, 2018, outlining the loan transaction (the Term Sheet).<sup>2</sup> Following the Nov. 2, 2018 notice of default by the lender to the borrower, the borrower preemptively commenced Action No. 1 alleging that (1) the Term Sheet was the governing document, (2) the loan documents, although executed and delivered by the borrower at a formal closing at which it was represented by counsel,

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<sup>1</sup> The sole member of the borrower acted as the guarantor for the loan.

<sup>2</sup> The Term Sheet was not executed by the lender.

were procured by fraud, in violation of the Term Sheet, and through economic duress. The borrower in Action No. 1 sought (1) an accounting, (2) damages for conversion of certain funds escrowed in accordance with the Interest Reserve Pledge Agreement, dated as of July 19, 2018, executed in connection with the loan transaction, (3) damages for unjust enrichment, and (4) a declaratory judgment that the Term Sheet was a valid and binding agreement governing the subsequently executed loan documents.

Upon review of the foregoing documents and after oral argument, it is

ORDERED that in Action No. 1, the lender defendants' motion in Seq. No. 1 for summary judgment is *granted* and the complaint in Action No. 1 is *dismissed* in its entirety without costs and disbursements and *without prejudice* to the rights of the borrower defendants, if they be so advised, to assert whatever defenses and counterclaims they deem appropriate in Action No. 2, subject to 22 NYCRR § 130-1.1; and it is further

ORDERED that in Action No. 1, the plaintiff-borrower's cross motion in Seq. No. 2 for partial summary judgment on liability on its complaint is *denied in its entirety*; and it is further

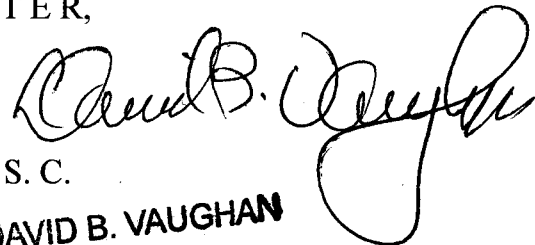
ORDERED that in Action No. 2, the borrower defendants' pre-answer motion in Seq. No. 1 is *denied in its entirety*; and it is further

ORDERED that the joint counsel to the lender defendants in Action No. 1 and the plaintiff lender in Action No. 2 shall serve a copy of this Joint Decision and Order with notice of entry on the joint counsel to the plaintiff borrower in Action No. 1 and the borrower defendants in Action No. 2, and shall file an affidavit of service thereof in each of the actions with the Kings County Clerk; and it is further

ORDERED that in Action No. 2, the borrower defendants shall interpose an answer to the complaint in that action within 20 days after service of this joint decision and order with notice of entry on their counsel.

This constitutes the Joint Decision and Order of the Court.

ENTER,



J. S. C.

HON. DAVID B. VAUGHAN  
J.S.C.

KINGS COUNTY CLERK  
FILED  
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