

**Gould v Singal**

2020 NY Slip Op 30836(U)

March 6, 2020

Supreme Court, New York County

Docket Number: 654192/2018

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LOUIS L. NOCK**

**PART IAS MOTION 38EFM**

*Justice*

-----X

**INDEX NO. 654192/2018**

CRAIG GOULD,

**MOTION DATE N/A**

Plaintiff,

**MOTION SEQ. NO. 001**

- v -

SUNEET SINGAL, FIRST CAPITAL REAL ESTATE INVESTMENTS, LLC, FIRST CAPITAL REALTY TRUST, INC.,

**DECISION + ORDER ON MOTION**

Defendants.

-----X

LOUIS L. NOCK, J.

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 17,

were read on this motion for PARTIAL DISMISSAL.

Upon the foregoing documents, it is ordered that defendants' motion for partial dismissal of the complaint is granted in accord with the following.

The complaint exhibits a copy of a "Put Option Agreement" between the plaintiff, Craig Gould, and defendant Suneet Singal, dated September 2, 2016, requiring Singal to purchase shares of stock in a corporation known as First Capital Real Estate Trust, Inc.,<sup>1</sup> in specified quantities, at specified prices, and on specified installment dates (*see*, NYSCEF Doc. No. 2). That agreement was amended on February 28, 2017, modifying certain provisions; but still remaining a contract solely between plaintiff and Singal (*see*, NYSCEF Doc. No. 3). The complaint alleges that Singal breached his purchase obligations under said agreement, as amended, thereby triggering its payment acceleration clause, leaving Singal obligated to plaintiff

<sup>1</sup> While there are two "First Capital" defendants identified in the caption of this action, neither one of them is First Capital Real Estate Trust, Inc.

in the principal sum of \$316,400. The complaint, therefore, asserts a first cause of action against Singal for breach of the Put Option Agreement, as amended.

However, the complaint goes on to assert a second cause of action “against All Defendants” sounding in “Declaratory Judgment” (NYSCEF Doc. No. 1 at 10), seeking a declaration from this court that: (i) the Put Option Agreement, as amended, is enforceable; (ii) “Defendant” (without designating which defendant) is in breach of said agreement; and (iii) “Defendant” (again, without designating which defendant) is contractually obligated to pay the purchase money required under said agreement (*see, id.*, ¶ 61).

Defendants now move to dismiss the second cause of action only. The motion is granted for the following reasons.

First, as to named defendants First Capital Real Estate Investments, LLC, and First Capital Realty Trust, Inc. – neither one of them is a party to the contract underlying this action.<sup>2</sup> Therefore, the second cause of action, which includes “All Defendants” in its scope, must be dismissed as to them.

Second, and relative to all defendants, including individual defendant Suneet Singal, the second cause of action is nothing more than a declaratory form of expression for the precise theory of the first cause of action for breach of the Put Option Agreement, as amended. Implicit in any possible judgment in favor of the first cause of action, seeking money damages for breach of the Put Option Agreement, as amended, is the recognition that: (i) it is enforceable; (ii) Singal is in breach of it; and (iii) Singal must pay what he owes under it. Because the second cause of

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<sup>2</sup> Nor is First Capital Real Estate Trust, Inc.

action is completely duplicative of the first cause of action, it is dismissed as against all defendants.<sup>3</sup>

Accordingly, it is

ORDERED that defendants’ motion to dismiss the second cause of action is granted in all respects; and it is further

ORDERED that the parties identified in the caption as First Capital Real Estate Investments, LLC, and First Capital Realty Trust, Inc., are no longer defendants in this action and, therefore, any further papers in this action shall henceforth bear the caption:

“-----X  
CRAIG GOULD, :  
Plaintiff, :  
-against- :  
SUNEET SINGAL, :  
Defendant. :  
-----X”

<sup>3</sup> While the textually stated reasoning is more than sufficient to warrant this dismissal, the court additionally notes the equally germane principle that declaratory judgment relief is inappropriate where a cause of action at law seeking a money judgment obtains to the case and suffices as a theory of full recovery for the plaintiff regarding the subject of the litigation (*e.g.*, *Apple Records, Inc. v Capitol Records, Inc.*, 137 AD2d 50 [1<sup>st</sup> Dept 1988]).

This shall constitute the decision and order of the court.

ENTER:

*Louis L. Nock*

|                       |   |   |                              |
|-----------------------|---|---|------------------------------|
| <u>3/6/2020</u>       |   |   | <u>LOUIS L. NOCK, J.S.C.</u> |
| DATE                  |   |   |                              |
| CHECK ONE:            | <input type="checkbox"/> CASE DISPOSED                                      | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION                         |                              |
|                       | <input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED | <input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER           |                              |
| APPLICATION:          | <input type="checkbox"/> SETTLE ORDER                                       | <input type="checkbox"/> SUBMIT ORDER   |                              |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN                         | <input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE |                              |