

<b>Moore St. Bldg. Corp. v Abbott Resource Servs. Co.</b>
2022 NY Slip Op 30185(U)
January 20, 2022
Supreme Court, New York County
Docket Number: Index No. 650810/2014
Judge: Laurence L. Love
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PRESENT: HON. LAURENCE LOVE PART 63M  
*Justice*

-----X  
MOORE STREET BUILDING CORP. INDEX NO. 650810/2014  
Plaintiff, MOTION DATE 10/26/2021  
MOTION SEQ. NO. 002

- v -

ABBOTT RESOURCE SERVICES COMPANY, DECISION + ORDER ON MOTION  
Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 201, 202, 203, 204

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

The following read on defendant’s motion, “pursuant to CPLR 3212(b) and CPLR 3212(e), granting partial summary judgment on liability only, in favor of Defendant, on its Second Counterclaim against Plaintiff Moore Street Building Corp. for breach of the parties’ Joint Venture Agreement, with the calculation of Defendant’s damages to be determined at trial; and on its Fourth Counterclaim against Plaintiff for an ‘accounting’ of all rents received by Plaintiff from tenants, subtenants and occupants of the ground floor and second floor units of the building.”

This litigation involves a written joint venture agreement (“JVA”) between the parties for the development and conversion of the real property located at 42 N. Moore St., NY, NY into condominium ownership.

Plaintiff’s causes of action include i) declaratory judgment that the joint venture has been dissolved per Partnership Law 62(2); ii) alternatively, for dissolution of the joint venture by court order per Partnership Law 63(d); iii) alternatively, for dissolution of the joint venture by court order per Partnership Law 63(f); iv) alternatively, for a declaratory judgment that the joint

venture has been dissolved per Partnership Law 62(b); v) for a declaratory judgment that neither defendant, nor the joint venture, acquired any interest in the property by way of the JVA.

Defendant's answer includes counterclaims of i) breach of fiduciary duty, ii) breach of the agreement, iii) constructive trust, iv) accounting, and v) specific performance.

Plaintiff submitted a previous partial summary judgment motion on the Verified Complaint's third cause of action for a dissolution and winding up of the parties' joint venture; and defendant cross-moved for partial summary judgment on defendant's fifth counterclaim for specific performance directing plaintiff to perform its obligations under the joint venture agreement. Those motions were denied in a June 25, 2015 Order (see NYSCEF Doc. No. 88). Said decision ruled that, "[t]he record also reveals factual issues as to whether or not the lapse of time since inception of the joint venture is an adequate ground for equitable dissolution" (see NYSCEF Doc. No. 88 P. 10).

CPLR § 3212 (b) states that, "the [summary] motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." "The proponent of a motion for summary judgment carries the initial burden of presenting sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact." *Alvarez v. Prospect Hospital*, 68 NY2d 320 (1986).

### **Defendant's Summary Judgment Motion for Breach of JVA**

Defendant submits the affidavit of Susan Davison, Principal and CEO of defendant Abbott Resource Services Company, "[i]t was clearly Moore Street's sole responsibility under the JVA to work with our attorneys to prepare and file a condominium offering plan with the New York State Attorney General's Office. However, as discussed below, by Corelli's own

admissions, by the summer of 2006, he gave up trying to convert the Building to condominium ownership and, as such, he had abandoned the JV and effectively treated the JV as ‘terminated.’ In breach of the JVA, Moore Street never had a condominium offering plan prepared, filed with, and approved by, the Attorney General’s Office. Paragraph 2 of the JVA clearly required, among many other things, Moore Street ‘to work with the attorneys preparing and presenting the Condo Plan’” (see NYSCEF Doc. No. 137 Par. 6, 63).

Defendant does not highlight the section of the JVA that was violated.

Plaintiff’s affirmation affirms, “Abbot’s breach claim fails (sic) because the JVA does not require Moore to prepare, file, or receive approval of the Condo Plan. Paragraph 2 of the JVA lays out Moore’s responsibilities in the JV. In terms of the Condo Plan ... paragraph 2 only requires Moore ‘to *work* with the attorneys preparing and presenting the Condo Plan.’ Furthermore, the JV does not establish *any* time limits by when these two requirements must be fulfilled. Nor does the JVA preclude termination of the JV if these two requirements are not satisfied” (see NYSCEF Doc. No. 203 P. 13).

Plaintiff highlights paragraph two (2) of the Joint Venture Agreement (see NYSCEF Doc. No. 138 Par. 2).

Defendant’s affirmation affirms, “Moore Street produced in discovery a document handwritten by Corelli, entitled “Rental Payments Received from Pierre Winter for the Second Floor @ 42 N. Moore Street, from March 1, 2009 through April 1, 2009,’ showing that, from 2009 through 2019, he collected a total of \$483,750 in rent from Winter” (see NYSCEF Doc. No. 136 Par. 55). Defendant highlights a handwritten note with no signatures or names with an amount of \$483,750 (see NYSCEF Doc. No. 184).

“Once the proponent has met its burden, the opponent must now produce competent evidence in admissible form to establish the existence of a triable issue of fact.” *Zuckerman v City of New York*, 49 NY2d 557 (1980).

Plaintiff submits the affidavit of Stephen Corelli, Chief Executive Officer of Moore Street Building Corporation,

“[u]nder the terms of the JVA, the parties were to work together to convert six existing rental units at the Property into six legal condominiums, five of which were to be residential, and one of which was to be commercial. For the first five years of the JV’s existence (2001 – 2006), I worked hard to obtain a new Certificate of Occupancy. I eventually managed to obtain the new Certificate of Occupancy in 2006. In late 2004, I reached out to [Susan] Davidson to discuss preparation of a Plan. I informed Davidson that under New York law, because Defendant is a co-venturer, it would need to be a sponsor of the Plan. In response, Davidson told me that she did not want her name to appear in any Plan documents, and as she would be Defendant’s signatory, Defendant would not agree to sponsor any plan. I repeatedly told Davidson that Defendant had no choice but to agree to be a sponsor because otherwise, no Plan could ever be submitted. As a result, sometime during the summer of 2006, all work on the drafting of a Plan ceased. As of this date, no Plan has ever been finalized or submitted, no Declaration of Condominium has been filed, and no units at the Property were ever converted into condominiums. (see NYSCEF Doc. No. 164 Par. 10, 12, 14 – 17).

### **Defendant’s Summary Judgment Motion for an Accounting**

An accounting is only warranted when there is a “confidential or fiduciary relationship and a breach of the duty imposed by that relationship respecting property in which the party seeking the accounting has an interest” (see *Adam v. Cutner & Rathkopf*, 238 A.D.2d 234, 242 [1st Dept. 1997]).

### **Conclusion**

“To grant summary judgment, it must clearly appear that no material and triable issue of fact is presented.” *Glick & Dolleck Inc v Tri-Pac Export Corp*, 22 NY2d 439, 441 (1968).

“Summary judgment should not be granted where there is any doubt as to the existence of a factual issue or where the existence of a factual issue is arguable.” *Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 315 (2004). On summary judgment, “facts must be viewed in the light most favorable to the non-moving party.” *Vega v Restani Constr Corp*, 18 NY3d 499, 503 (2012).

There still remain questions of fact regarding the underlying potential breach of contract, as such summary judgment is improper.

The affidavits submitted describe the process of converting a building into a condominium in New York City, and the timeline of what documents are necessary from various government agencies. There remains a dispute as to the definition of the work performed by parties and if same rises to the level of meeting their obligations.

ORDERED that plaintiff’s motion for partial summary judgment on liability only, in favor of Defendant, on its Second Counterclaim against Plaintiff Moore Street Building Corp. for breach of the parties’ Joint Venture Agreement, with the calculation of Defendant’s damages to be determined at trial is DENIED; and it is further

ORDERED that plaintiff’s motion for partial summary judgment on its Fourth Counterclaim against Plaintiff for an ‘accounting’ of all rents received by Plaintiff is DENIED.

1/20/2022  
DATE

  
LAURENCE LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED		<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