

Cassaforte Ltd. v Johnson

2022 NY Slip Op 32092(U)

June 30, 2022

Supreme Court, New York County

Docket Number: Index No. 653387/2019

Judge: Margaret Chan

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This opinion is uncorrected and not selected for official publication.

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

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CASSAFORTE LIMITED and FRF 348 QUINCY LLC,

Plaintiffs,

- v -

AARON JOHNSON, XYZ GROUP LLC, XYZ PARTNERS
LLC, XYZ PARTNERS LA LLC, XYZ HOLDINGS LLC, XYZ
HOLDINGS LA LLC, XYZ DEVELOPMENT II LLC, XYZ 42
VAN BUREN LLC, XYZ 1535 PACIFIC LLC, XYZ 1555
PACIFIC LLC, 1523 DOHENY, LLC, BABAK
POURTVOOSI PC, SHARESTATES INVESTMENTS
DACL, LLC, and JOHN DOES 1-99

Defendants.

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INDEX NO. 653387/2019

MOTION DATE 01/24/2022

MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

HON. MARGARET CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 006) 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239

were read on this motion to/for PARTIAL SUMMARY JUDGMENT

In this Motion Sequence 006, plaintiff Cassaforte Limited (Cassaforte) moves for partial summary judgment against defendants XYZ Partners LA and Aaron Johnson for amounts relating to Count One and Count Five of the Verified Complaint relating to, respectively, alleged breaches of a loan agreement and guaranty concerning real estate previously held by Doheny LLC.

Background

On or about June 10, 2018, Cassaforte and XYZ Partners LA executed a loan agreement (NYSCEF # 225 – the Doheny Loan Agreement) whereby Cassaforte agreed to provide XYZ Partners LA with up to \$1,348,722 in mezzanine financing to develop residential real property located one North Doheny Drive in Los Angeles, California (the Doheny Project) (NYSCEF # 223 – Cassaforte’s Statement of Undisputed Material Facts, ¶ 1). Around that time, Johnson agreed to guarantee amounts payable thereunder (NYSCEF # 226 – the Doheny Guaranty).

XYZ Partners LA was required to repay Cassaforte all funds advanced under the Doheny Loan Agreement within twenty-four months of the initial drawdown (the Repayment Date) (NYSCEF # 223, ¶ 3; NYSCEF # 225, Schedule 1 Item 8).

The initial drawdown was on or about June 19, 2018, and in total, \$848,426.00 has been drawn on the Doheny Loan Agreement and funded by Cassaforte (NYSCEF # 223, ¶s 4-5). XYZ Partners LA and Johnson failed to pay any of the amounts due under the Doheny Loan Agreement, even though the Repayment Date was on June 19, 2020 (*id.*, ¶ 18-19). Further, the Doheny Project property was sold at a foreclosure sale; it was sold for less than the outstanding debt owed to the senior lender for the property, and thus Cassaforte did not receive any proceeds from the sale (*id.*, ¶ 20, 22).

Cassaforte asserts that both the failure to repay the funds and the foreclosure sale constitute Events of Default under, respectively, Sections 11.1 and 11 (b) (viii) of the Doheny Loan Agreement (*id.*, ¶ 19-20). In addition, Cassaforte alleges that representations of Johnson and XYZ Partners LA were misleading and/or “woefully inaccurate” and constituted a violation of Section 11.1 (b) (v) (C) of the Doheny Loan Agreement, which provided that a material variation from the terms of the Development Plan (as defined in the Doheny Loan Agreement) without Cassaforte’s prior written consent would constitute a default (the Development Plan Misrepresentations) (*id.*, ¶ 13-14).

Upon the occurrence of an Event of Default, following the expiration of any cure period, Cassaforte was authorized under Section 11.2 of the Doheny Loan Agreement to accelerate the loan and declare all sums immediately due and payable (*id.*, ¶ 8). In addition, Cassaforte was entitled to the Compounding Interest and Service Amounts, as those terms are calculated in Section 7 of the Doheny Loan Agreement (*id.*, ¶ 9). On or about May 2, 2019, Cassaforte wrote to Johnson and XYZ Partners LA to notify them that they were in default of the Doheny Loan Agreement because of the Development Plan Misrepresentations and that Cassaforte was accelerating all amounts due (*id.*, ¶ 15; NYSCEF # 227).

The Doheny Loan Agreement funding the Doheny Project was one of five mezzanine loans made by Cassaforte to various special purpose entities controlled by Johnson to support the acquisition, development, and sale of real property (NYSCEF # 230 – Complaint, ¶ 2). Apart from the Doheny Project, the other projects all concern real estate in Brooklyn, New York (the Brooklyn Projects) (*id.*). Cassaforte states that the parties continue to conduct discovery with respect to other causes of action, e.g., involving the Brooklyn Projects, but that “no material questions of fact remain with respect to Plaintiffs’ claims for breach of contract arising under the Doheny Loan Agreement and Guaranty” (NYSCEF # 232 – Memo of Law in support of MS 006 at 5).

Cassaforte argues that there is no genuine dispute that the Doheny Loan Agreement and Doheny Guaranty are valid and enforceable contracts, that Cassaforte performed its obligations thereunder, that XYZ Partners LA and Johnson breached their respective agreements, and that Cassaforte suffered damages as a result (*id.* at 6-7). Cassaforte seeks judgment against each of XYZ

Partners and Johnson in the amount of \$1,696,582.00, plus, against Johnson, attorneys' fees and costs associated with enforcing the terms of the Doheny Guaranty pursuant to Section 1 thereto (*id.* at 7-8).

Johnson argues that MS 006 should be denied as “numerous questions of fact and law remain that must be determined” (NYSCEF # 235, ¶ 3). Specifically, he argues that before Cassaforte's losses can be determined respecting the Doheny Project, “the determination of damages and/or gains that have been and or will be received by Plaintiffs with respect to the Brooklyn properties must be factored in as well” (*id.*, ¶ 9).

Johnson further asserts that via a UCC foreclosure, plaintiffs obtained all right, title, and interest to, *inter alia*, the Fee Owners, and accordingly, Cassaforte gained control of all the Brooklyn Projects (*id.*, ¶'s 11-12). Johnson claims that Cassaforte's ownership of the Brooklyn Projects will result in “substantial financial gain” (*id.*, ¶ 14). He also argues that the viability of plaintiffs' claims against Pourtavoosi and Sharestates in the Related Action “may affect or reduce damages sustained by Plaintiffs with respect to Defendant Johnson” (*id.*, ¶ 21).

Johnson adds that it is “simply not equitable” for Cassaforte to segregate their claimed losses from the Doheny Project from any gains they may have respecting the Brooklyn Projects, including as it was “the common practice of the Plaintiff to send deposits to one of the Brooklyn LLC's and instruct me to use monies to make payments on all of the properties, including but not limited to Doheny” (the Commingling of Funds Claim) (NYSCEF # 234 – Johnson Affidavit Opposing MS 006, ¶'s 18; 20). Finally, Johnson contests the idea that there were Development Plan Misrepresentations (*id.*, ¶'s 9-11).

Cassaforte counters that because Johnson has failed to submit the opposition statement required by Rule 19-a of the Rules of Practice for the Commercial Division of the Supreme Court (22 NYCRR 202.70), all facts stated in Cassaforte's Statement of Undisputed Material Facts should be deemed admitted (NYSCEF # 239 – Cassaforte's Reply Memo of Law at 3). Cassaforte notes that Johnson does not dispute XYZ Partners LA breached the Doheny Loan Agreement or raise any issue of fact as to Cassaforte's alleged facts regarding regarding the breach (*id.*). Cassaforte sees as illogical Johnson's argument that because questions of fact may remain on the four loan agreements and guaranties at issue in this action, questions of fact also remain as to the damages under the Doheny agreements (*id.* at 5). Cassaforte points out that Johnson submits no evidence for his “illogical” claim which Cassaforte characterizes as “nonsensical” because “it is undisputed that each Project was governed by separate loan documents” (*id.*). Finally, Cassaforte argues that “any recovery Cassaforte may eventually realize in [the Related Action] is irrelevant and immaterial to the amounts it seeks here” as only three of the Brooklyn Projects are at issue therein, not the Doheny Project (*id.*, ¶ 6). Cassaforte does not dispute or otherwise respond to Johnson's Commingling of Funds Claim.

Discussion

A party moving for summary judgment must make a prima facie showing that it is entitled to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once a showing has been made, the burden shifts to the party or parties opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party (*see Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). In the presence of a genuine issue of material fact, a motion for summary judgment must be denied (*see Grossman v Amalgamated Haus. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]). “A motion for summary judgment, irrespective of by whom it was made, empowers a court to search the record and award judgment where appropriate” (*GHR Energy Corp. v Stinnes Interoil Inc.*, 165 AD2d 707, 708 [1st Dept 1990]). “It is not the court’s function on a motion for summary judgment to assess credibility” (*Ferrante v Am. Lung Assn.*, 90 NY2d 623, 631 [1997]).

A breach of contract claim requires “the existence of a contract, the plaintiff’s performance thereunder, the defendant’s breach thereof, and resulting damages” (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]).

Cassaforte’s motion for partial summary judgment against Johnson and XYZ Partners LA is denied. Initially, it is noted that Rule 19-a of the Commercial Division gives the court discretion to deem admitted, or not to deem admitted, facts in a statement of undisputed material facts when no counterstatement is made (*Abreu v Barkin & Assocs. Realty, Inc.*, 69 AD3d 420, 421 [1st Dept 2010]). Cassaforte’s motion would be denied even if this court were to deem as admitted that the Doheny Loan Agreement and Guaranty are valid and enforceable contracts; that Cassaforte performed thereunder; that XYZ Partners LA breached the Doheny Loan Agreement by not paying loan amounts due as of the Repayment Date, June 19, 2020;¹ and that Johnson breached the Doheny Guaranty by failing to pay such owed loan amounts after the default by XYZ Partners LA. Notwithstanding the foregoing, Cassaforte does not respond to Johnson’s Commingling of Funds Claim which, if true, could support Johnson’s argument that damages under the Doheny Project involve reference to the Brooklyn Projects.

Conclusion

In view of the above, it is

ORDERED that Cassaforte Limited’s motion for partial summary judgment


¹ Cassaforte argues that the default occurred as early as May 2, 2019, because of the Development Plan Misrepresentations; Cassaforte fails to attach the Development Plan to the record on MS 006, however, and the court declines at this stage to deem May 2, 2019, to be the first date of default.

against XYZ Partners LA with respect to Count One of the Complaint is denied; and it is further

ORDERED that Cassaforte Limited's motion for partial summary judgment against Aaron Johnson with respect to Count Five of the Complaint is denied.

This constitutes the Decision and Order of the court.

06/30/2022
DATE


MARGARET CHAN, J.S.C.

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

GRANTED DENIED GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE