

EXRP 14 Holdings LLC v LS-14 Ave LLC
2022 NY Slip Op 34094(U)
December 2, 2022
Supreme Court, New York County
Docket Number: Index No. 652698/2022
Judge: Melissa A. Crane
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT:	<u>HON. MELISSA A. CRANE</u>	PART	60M
	<i>Justice</i>		
	-----X	INDEX NO.	<u>652698/2022</u>
EXRP 14 HOLDINGS LLC		MOTION DATE	<u>N/A, 12/01/2022</u>
Plaintiff,		MOTION SEQ. NO.	<u>002 003</u>
- v -			
LS-14 AVE LLC,		DECISION + ORDER ON MOTION	
Defendant.			
	-----X		

The following e-filed documents, listed by NYSCEF document number (Motion 002) 45, 46, 47, 48, 49, 50, 51, 57, 59, 61, 62, 63, 64, 69 were read on this motion to/for VACATE LIS-PENDIS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 52, 53, 54, 55, 56, 60, 65, 66, 67, 68 were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is

Motion 2 is denied and motion 3 is granted in part, and denied in part, in accordance with the reasoning on the record of 12/2/2022 to wit:

The court declines to dismiss the first cause of action for breach of contract, because, as explained on the record, it is not clear at this juncture whether defendant’s failure to build the store front amounts to a *de minimus* problem under the contract or is actually a breach;

The court also declines to dismiss the second cause of action for specific performance. This cause of action is a valid alternative pleading at this point, especially as plaintiff represented on the record that they would still like to close if defendant completes the renovations and plaintiff still has a tenant in place, two conditions the failure of which could be defendant’s fault. Assuming plaintiff is able to inspect the premises no later than December 7, 2022 at 1:30 PM, plaintiff must inform defendant of its intentions about going forward with a closing no later than

5 PM on December 15, 2022. The parties are to attend a conference with the court on December 19, 2022 at 3 PM over Microsoft teams to apprise the court as well.

The third cause of action for declaratory judgment is dismissed as moot due to the direction in the decretal paragraphs directing Royal Abstract of New York, LLC as escrow agent NOT to release any escrowed funds without further order of the court.

The plaintiff withdrew the fourth cause of action for equitable estoppel and promissory estoppel on the record and therefore the court dismisses these causes of action.

The court dismisses the fifth cause of action for unjust enrichment because, as explained on the record, it duplicates the seventh cause of action for tortious interference with contract and the first cause of action for breach of contract.

The court dismisses the sixth cause of action for breach of the covenant of good faith and fair dealing because, as explained on the record, it duplicates the first cause of action for breach of contract.

The court denies that part of the motion seeking dismissal of the seventh cause of action for tortious interference with contract. Plaintiff alleges that defendant: (1) knew that once plaintiff purchased the premises it had a contract to lease out the premises to a tenant; (2) purposefully delayed the renovations so that plaintiff could not commence that lease, and (3) tried to cut plaintiff out of the lease deal, claiming it had a right to negotiate its own lease with the tenant. As explained on the record, although it may ultimately be true that defendant did not have any dealings with the plaintiff's tenant, at the pleading stage, this cause of action needs discovery.

For similar reasons, and as explained on the record, the court declines to dismiss the eighth cause of action for unfair competition. Further, this cause of action differs from the cause

of action for tortious interference, because it involves allegations that defendant wrongfully used confidential information it gained from EXRP to compete for EXRP's tenant.

The court dismisses the ninth cause of action for conversion because it duplicates the first cause of action for breach of contract.

The court declines to vacate the lis pendens. At this point, as explained on the record, plaintiff has a valid cause of action for specific performance and the lis pendens was not filed in bad faith, but rather in furtherance of that cause of action.

Accordingly, it is

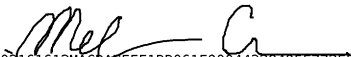
ORDERED THAT The court directs the Royal Abstract of New York, LLC as escrow agent NOT to release any escrowed funds without further order of the court. Plaintiff is directed to serve a copy of this order on Royal Abstract of New York, LLC, within one business day of the efiled date of this decision and order; and it is further

ORDERED THAT the court grants the motion to dismiss to the extent of dismissing the third, fourth, fifth, sixth and ninth causes of action and otherwise denies the motion; and it is further;

ORDERED THAT the court denies the motion to vacate the lis pendens without prejudice upon further development of the record; and it is further

ORDERED THAT defendant has 20 days within which to answer the complaint; and it is further

ORDERED THAT the parties are directed to attend a conference over Microsoft teams on December 19, 2022 at 3:00 PM.


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12/2/2022
DATE

MELISSA A. CRANE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
			DENIED		OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					REFERENCE