

**321 W16 Prop. Owner, LLC v 321 W. 16th, LLC**

2023 NY Slip Op 31722(U)

May 17, 2023

Supreme Court, New York County

Docket Number: Index No. 656695/2022

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 41

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321 W16 PROPERTY OWNER, LLC,

Index No. 656695/2022

Plaintiff

- against -

DECISION AND ORDER

321 W. 16TH, LLC, and AXOS BANK,

Defendants  
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LUCY BILLINGS, J.S.C.:

Plaintiff is a prospective buyer of an apartment building at 321 West 16th Street, New York County. After defendant refused to sell the building on the closing date pursuant to the parties' purchase and sale agreement, plaintiff commenced this action for breach of the contract. Plaintiff now moves for a preliminary injunction to enforce § 9.1.3 of the contract and restrain defendant from entering new leases or modifying or renewing current leases for apartments in the building without plaintiff's consent. C.P.L.R. §§ 6301, 6312(a).

To obtain a preliminary injunction, plaintiff must show a probability of success on the merits of plaintiff's claims, a danger of irreparable injury absent an injunction, and a balancing of equities in plaintiff's favor. C.P.L.R. §§ 6301, 6312(a); Uber Tech., Inc. v. American Arbitration Assn., Inc., 204 A.D.3d 506, 508 (1st Dep't 2022); Avenue A Assoc. LP v. Board

of Mgrs. of the Hearth House Condominium, 190 A.D.3d 473, 473 (1st Dep't 2021); Wilder v. Fresenius Med. Care Holdings, Inc., 175 A.D.3d 406, 408 (1st Dep't 2019). Plaintiff insists that a preliminary injunction is necessary because § 10.2 of the contract designates specific performance as a remedy for defendant's default. Defendant maintains that plaintiff demonstrates no irreparable harm.

Plaintiff's claimed injury arises because defendant has not sold the property, not because defendant entered a new lease or renewed or modified a current lease in violation of § 9.1.3. Therefore plaintiff fails to show how the preliminary injunction plaintiff seeks would remedy that injury. Although plaintiff contends that the contract entitles plaintiff to specific performance, its mere availability as a remedy does not automatically justify a preliminary injunction for any breach of the contract. Plaintiff also must point to contract terms that expressly acknowledge plaintiff's injury either is irreparable or necessitates injunctive relief. Noyack Med. Partners, LLC v. OSK IX, LLC, 206 A.D.3d 429, 430 (1st Dep't 2022); LDC USA Holdings, Inc. v. Taly Diamonds, LLC, 121 A.D.3d 529, 530 (1st Dep't 2014). Because the agreement lacks such terms, plaintiff fails to demonstrate irreparable harm. Rather, plaintiff seeks to enforce a contractual provision without showing defendant has breached that provision.

Plaintiff also insists that its harm is irreparable because the property is unique, but plaintiff seeks to purchase the building as a commercial investment, which undermines the need for a preliminary injunction. Atlas MF Mezzanine Borrower, LLC v. Macquarie Tex. Loan Holder LLC, 174 A.D.3d 150, 156 (1st Dep't 2019); Broadway 500 W. Monroe Mezz II LLC v. Transwestern Mezzanine Realty Partners II, LLC, 80 A.D.3d 483, 484 (1st Dep't 2011); Lombard v. Station Sq. Inn Apts. Corp., 94 A.D.3d 717, 721 (2d Dep't 2012). The contract allows plaintiff to receive its downpayment plus interest as an alternative remedy for defendant's default, which would fully compensate plaintiff were defendant to breach § 9.1.3. In light of the available monetary relief, a preliminary injunction is unnecessary. Atlas MF Mezzanine Borrower, LLC v. Macquarie Tex. Loan Holder LLC, 174 A.D.3d at 156; Broadway 500 W. Monroe Mezz II LLC v. Transwestern Mezzanine Realty Partners II, LLC, 80 A.D.3d at 484; Lombard v. Station Sq. Inn Apts. Corp., 94 A.D.3d at 721.

Finally, maintaining the status quo is consistent with § 9.1.1 of the contract, which requires defendant seller to continue to manage and lease the property similarly to how it was being operated when the parties executed the contract. See Asprea v. Whitehall Interiors NYC, LLC, 206 A.D.3d 402, 403 (1st Dep't 2022); East Fordham DE LLC v. U.S. Bank N.A., 170 A.D.3d 545, 546 (1st Dep't 2019); Barbes Rest. Inc. v. ASRR Suzer 218,

LLC, 140 A.D.3d 430, 432 (1st Dep't 2016). For all the reasons explained above, the court denies plaintiff's motion for a preliminary injunction. C.P.L.R. §§ 6301, 6312(a).

DATED: May 17, 2023

*Lucy Billings*

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LUCY BILLINGS, J.S.C.

**LUCY BILLINGS**  
J.S.C.