

Jaz Operating, LLC v Catsimatidis

2023 NY Slip Op 32749(U)

August 8, 2023

Supreme Court, New York County

Docket Number: Index No. 650464/2023

Judge: Barry Ostrager

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

JAAZ OPERATING, LLC,

Plaintiff,

- v -

JOHN CATSIMATIDIS, 276 WEST 25TH STREET I, LLC, RED APPLE GROUP INC., CATS 276 WEST 25TH STREET, LLC, CATS 280 EIGHTH AVENUE, LLC and RED APPLE REAL ESTATE, INC., MRK HOLDINGS, INC., VCPRE LLC and ITAN RAHMANI,

Defendants.

Table with 2 columns: INDEX NO. (650464/2023), MOTION DATE, MOTION SEQ. NO. (001, 002)

DECISION + ORDER ON MOTIONS

HON. BARRY R. OSTRAGER

On August 8, 2023, the Court heard oral argument on Motion Sequence 001 to dismiss by defendant MRK Holdings, Inc. ("MRK") and Motion Sequence 002 to dismiss by defendants John Catsimatidis, 276 West 25th Street I, LLC ("276 West"), Red Apple Group, Inc., CATS 276 West 25th Street, LLC ("CATS 276"), CATS 280 Eighth Avenue, LLC ("CATS 280"), Red Apple Real Estate, Inc., VCPRE LLC, and Itan Rahmani (collectively, the "Catsimatidis Defendants"). In accordance with the decision on the Transcript of Proceedings of August 8, 2023, the motions are resolved as follows.

The motion by defendants MRK to dismiss the first cause of action for breach of contract is granted. The language of the Right of First Refusal provision contained in the original Lease is unambiguous and did not create any obligation on MRK to disclose the identity of the principals of the original prospective purchaser. Plaintiff failed to establish any breach of the Right of First Refusal provision.

The motion by defendant MRK to dismiss the second cause of action for breach of the covenant of good faith and fair dealing is granted as duplicative of the first and fifth causes of action as it is predicated on the same conduct and underlying damages.

The motions by all defendants to dismiss the third cause of action for rescission related to the Right of First Refusal provision is granted. Rescission is a remedy, not a standalone cause of action, and the two causes of action supporting this remedy (1st cause of action for breach of contract, 5th cause of action for conspiracy to commit fraud) are dismissed.

The motions by all defendants to dismiss the fourth cause of action seeking a declaratory judgment that plaintiff is entitled to exercise the Right of First Refusal is granted as duplicative of the breach of contract and conspiracy to commit fraud causes of action. In any event, plaintiff failed to allege facts sufficient to invoke the court's power to render a declaratory judgment.

The motions by all defendants to dismiss the fifth cause of action for conspiracy to commit fraud is granted. Conspiracy to commit fraud is not a cause of action. Even if the fifth cause of action were asserted as a straightforward fraud claim, plaintiff has failed to state a cause of action for fraud because the allegations are entirely conclusory.

The motion by the Catsimatidis defendants to dismiss the sixth, eighth, and ninth causes of action are granted.

The motion by the Catsimatidis defendants to dismiss the seventh cause of action for a declaratory judgment that the First Amendment to the Lease is void ab initio is denied. Plaintiff's complaint adequately asserted a cause of action seeking a declaration regarding CATS 276's right or capacity to enter into the First Amendment. There is no evidence that an entity known as CATS 276 West 25th Street, LLC existed at the time the First Amendment to the Lease was

executed or that it presently exists; defendants acknowledge in their motion papers that such an entity never existed. Plaintiff has no other adequate remedy at law for these claims.

The motion by Catsimatidis, 276 West, Red Apple Group, Cats 276 West, CATS 280, Red Apple Real Estate, VCPRE LLC, and Rahmani to dismiss the tenth cause of action for injunctive relief is granted without prejudice to plaintiff's filing of a motion via Order to Show Cause seeking to enjoin defendants' exercise of the Termination Notice dated February 17, 2023. Any motion by plaintiff to enjoin the exercise of the Termination Notice must be filed on August 21, 2023.

The Catsimatidis defendants are directed to answer the remaining claim in the Complaint within twenty days of this Order. In the event the parties are interested in engaging in settlement discussions with the Court, the parties are directed to promptly efile a letter so indicating.

Accordingly, it is hereby

ORDERED that MRK's motion to dismiss the First, Second, Third, Fourth and Fifth causes of action is granted in its entirety and those claims against MRK are severed and dismissed; and it is further

ORDERED that the Catsimatidis Defendants’ motion to dismiss is denied with respect to the Seventh cause of action, and granted as to the Third, Fourth, Fifth, Sixth, Eighth, Ninth, and Tenth causes of action, and those causes of action are dismissed to the extent provided herein.

Dated: August 8, 2023

Barry R. Ostrager

BARRY R. OSTRAGER, 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