

Parkmerced Invs., LLC v WeWork Cos. LLC

2023 NY Slip Op 33547(U)

October 11, 2023

Supreme Court, New York County

Docket Number: Index No. 652094/2020

Judge: Andrea Masley

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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 48

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| PARKMERCED INVESTORS, LLC Plaintiff, - v - WEWORK COMPANIES LLC, AS SUCCESSOR IN INTEREST TO WEWORK COMPANIES INC., Defendant. | INDEX NO. <u>652094/2020</u> MOTION DATE _____ MOTION SEQ. NO. <u>002</u> DECISION + ORDER ON MOTION |
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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 36, 37, 38, 39, 40, 41, 42, 43, 53, 55, 57, 65, 67, 70, 71
 were read on this motion to/for REARGUMENT/RECONSIDERATION.

In motion seq. no. 002, plaintiff moves, pursuant to CPLR 2221, for leave to reargue the court’s decision granting defendant’s motion to dismiss the complaint in its entirety, or in the alternative, grant plaintiff leave to file an amended complaint.

This action involves the redevelopment of the Parkmerced neighborhood in San Francisco, California. (NYSCEF 1, Summons and Complaint ¶¶ 1, 2, 10.) Plaintiff alleges that defendant committed to invest \$450 million in the redevelopment project and provide guaranties for construction loans. (*Id.* ¶ 2.) In September 2018, the parties executed a term sheet containing the material terms for defendant’s investment. (NYSCEF 16, Term Sheet at 1.) The term sheet was a “non-binding indication of terms for a preferred equity investment (the ‘Preferred Investment’)” of \$450 million. (*Id.*) The term sheet was “non-binding,” except for the paragraphs captioned “Costs and Expenses,” “Confidentiality,” “Attorney’s Fees,” “Exclusivity,” “Miscellaneous,” and “Closing Date,” which were binding. (*Id.* at 9 [Non-Binding Provision].) For the right to

participate in the redevelopment project, defendant paid a \$20 million nonrefundable exclusivity fee. (*Id.* at 7-8 [Exclusivity Provision]; NYSCEF 1, Summons and Complaint ¶ 27.)

Plaintiff alleges that it negotiated in good faith to expeditiously close the Preferred Investment, but defendant did not, working behind the scenes to abandon defendant's involvement in the project. (*Id.* ¶¶ 32, 37-38.) On November 1, 2018, defendant repudiated the term sheet. (*Id.* ¶ 40.)

In May 2020, plaintiff brought this action, alleging claims for breach of contract, breach of the covenant of good faith and fair dealing, and promissory estoppel. Defendant moved to dismiss the action. (NYSCEF 3, Notice of Motion [mot. seq. no. 001].) On January 18, 2022, the court granted that motion and dismissed the complaint. (NYSCEF 33, Decision and Order [mot. seq. no. 001].) On February 18, 2022, plaintiff filed a Notice of Appeal (NYSCEF 35) and this motion (NYSCEF 36, Notice of Motion [mot. seq. no. 002].) On June 15, 2023, the Appellate Division, First Department, affirmed the court's decision dismissing the complaint. (*Parkmerced Invs., LLC v WeWork Cos. LLC*, 217 AD3d 531 [1st Dept 2023].) As to the breach of contract claim, the First Department held that

“[t]he court correctly dismissed the breach of contract claim. A term sheet that ‘sets forth the general intent of the parties to discuss in good faith the terms and conditions’ of a deal and states that ‘neither party shall be bound until the parties execute a more formal written agreement,’ does not constitute an enforceable contract.”

(*Id.* [citations omitted].) The First Department also agreed that the exclusivity fee provision “did not pertain to attorneys’ fees, which were allowed if any party commenced any action against another in connection with the term sheet and

prevailed. (*Id.* at 532 [citation omitted].) As to breach of the covenant of good faith and fair dealing, the First Department held that the claim could not be sustained absent a contractual relationship and plaintiff's allegations were, nevertheless, conclusory. (*Id.*) Finally, the First Department held that the promissory estoppel claim was properly dismissed as duplicative and that "the claim was undercut by the absence of a 'sufficiently clear and unambiguous' promise." (*Id.* [citation omitted].)

After the First Department issued their decision, the parties were permitted to file supplemental briefs addressing the decision's application to this motion. In its supplemental brief, plaintiff argues that the First Department's decision did not foreclose the portion of this motion seeking leave to amend the complaint. Plaintiff specifically focuses on its promissory estoppel claim, essentially conceding that its breach of contract and breach of the covenant of good faith and fair dealing claims cannot be sustained as a matter of law in light of the First Department's affirmance, with which the court agrees.

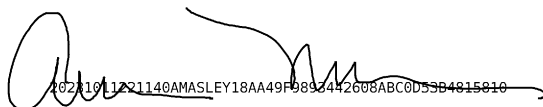
In addition to finding the promissory estoppel claim duplicative of the breach of contract claim, which is no longer an issue as the breach of contract claim is dismissed as matter of law, the First Department also found that there was not a sufficiently clear and unambiguous promise. The proposed amended complaint does not rectify this fatal flaw. The only promises that plaintiff alleges are the promises defendant made via the term sheet; the same promises alleged in the original complaint. (See NYSCEF 42, Redlined Proposed Amended

Complaint ¶¶ 2, 14, 17, 20, 21-24, 34, 38, 42-48.) The proposed amended complaint does not specify any additional clear and ambiguous promises. (*Id.*)

Accordingly, it is

ORDERED that this motion is denied.

10/11/2023
DATE



ANDREA MASLEY, J.S.C.

CHECK ONE:

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| <input checked="" type="checkbox"/> | CASE DISPOSED | | |
| <input type="checkbox"/> | GRANTED | <input checked="" type="checkbox"/> | DENIED |
| <input type="checkbox"/> | SETTLE ORDER | | |
| <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | | |

APPLICATION:

CHECK IF APPROPRIATE:

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| <input type="checkbox"/> | NON-FINAL DISPOSITION | | |
| <input type="checkbox"/> | GRANTED IN PART | <input type="checkbox"/> | OTHER |
| <input type="checkbox"/> | SUBMIT ORDER | | |
| <input type="checkbox"/> | FIDUCIARY APPOINTMENT | <input type="checkbox"/> | REFERENCE |