

**MP Indus. Venture LLC v
Criterion Indus. Holdings LLC**

2023 NY Slip Op 33744(U)

October 16, 2023

Supreme Court, New York County

Docket Number: Index No. 653506/2022

Judge: Margaret A. Chan

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

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MP INDUSTRIAL VENTURE LLC,	INDEX NO.	<u>653506/2022</u>
Plaintiff,	MOTION DATE	<u>06/20/2023</u>
- v -	MOTION SEQ. NO.	<u>004</u>
CRITERION INDUSTRIAL HOLDINGS LLC,	DECISION + ORDER ON	
Defendant,	MOTION	
- and -		
NATIONAL LAND TENURE COMPANY, LLC,		
Nominal Defendant.		

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HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 95, 99, 100, 101, 102, 103, 104 were read on this motion to/for DISMISS.

Plaintiff MP Industrial Venture LLC (Meadow) brings this action, as amended on February 27, 2023, against defendant Criterion Industrial Holdings LLC (Criterion) and nominal defendant National Land Tenure Company, LLC (Escrow Agent), alleging claims for declaratory judgment, breach of contract, breach of the implied covenant of good faith and fair dealing, and injunctive relief (NYSCEF # 32). Following this court's denial of its motion to dismiss Meadow's First Amended Complaint, Criterion filed its answer, which included four counterclaims against Meadow (NYSCEF # 72 – Counterclaims). Presently before the court is Meadow's motion, pursuant CPLR 3211, to dismiss these counterclaims (NYSCEF # 75). Criterion opposes the motion (NYSCEF # 101). For the following reasons, Meadow's motion is denied.¹

Background

The court assumes the parties' familiarity with the background of this case, which was detailed in prior decisions and orders issued by this court (*see* NYSCEF

¹ In its opposition, Criterion withdraws its first three counterclaims (*see* NYSCEF # 101 at 1). Because these three claims are withdrawn, Meadow's motion to dismiss, as it relates to these three claims, is denied as moot.

#s 67, 68, 69). Below the court details the facts and procedural background that are pertinent to resolution of the present motion.

This action arises out a Membership Interest Purchase Agreement (MIPA) between Criterion and Meadow (NYSCEF # 78 at Recitals). Pursuant to the MIPA, Criterion agreed to purchase Meadow's 95% membership interest in the parties' joint venture, MP Criterion Industrial Venture LLC (JV LLC) (Counterclaims ¶¶ 1, 6). The parties contemplated a purchase price of \$89,000,000 upon closing, with Criterion depositing \$2,500,000 with Escrow Agent upon execution of the MIPA (Counterclaims ¶¶ 1, 6-7; NYSCEF # 78 §§ 2, 3). After the closing date set forth in the MIPA allegedly lapsed (for reasons that the parties sharply dispute), Meadow demanded that Escrow Agent transfer the deposit to it, and Criterion, in turn, interposed its objection with Escrow Agent (*see* Counterclaim ¶¶8-33). Meadow soon after commenced this lawsuit (NYSCEF # 1).

In the months after commencing this action, Meadow purportedly received and solicited four letters of intent to purchase the JV LLC's real estate assets (the Underlying Properties), and it received and signed at least one letter of intent to refinance existing debt on one of the Underlying Properties (Counterclaims ¶¶ 2, 35-36). Upon learning of Meadow's alleged attempts to sell and/or refinance the Underlying Properties, Criterion sent letters to prospective purchasers and refinancing lenders explaining that beneficial ownership in the Underlying Properties remained subject to Criterion's acquisition rights under the MIPA and that it would pursue all legal remedies to preserve its rights (*id.* ¶ 37). Meadow, in response, caused the JV LLC's executive committee to issue a resolution designating Jeffrey Kaplan and Timothy Yantz—two of the appointed members of the executive committee—as “Authorized Persons” to act on behalf of the JV LLC with respect to a proposed refinancing and contemplated sale (the Resolution) (*id.* ¶ 38). The executive committee directed Criterion, as Managing Member, to carry out the terms of the Resolution (*id.*).

Criterion contends that, by attempting to market and sell the Underlying Properties without its consent and in issuing the Resolution, Meadow was acting contrary to the express language of the JV LLC's Limited Liability Company Agreement, dated as of March 19, 2020 (*see* Counterclaims ¶ 2, 35, 42; NYSCEF # 77 – JV Agreement). In support, Criterion points to certain provisions of the JV Agreement granting it the power and authorization to sell property and borrow money, subject to approval by the JV LLC's executive committee (*see* JV Agreement §§ 7.01[a], [d], [g]). It, in turn, notes that nothing in the JV Agreement authorizes Meadow or its representatives on the executive committee to do anything on behalf of the JV LLC other than approve (or not approve) Criterion's conduct as Managing Member (*see* Counterclaim ¶ 41). Hence, Criterion alleges, the executive committee usurped Criterion's power and authority by attempting to sell the Underlying Properties and issuing the Resolution (*see id.*).

On February 27, 2023, in response to Criterion's above-described letters to potential buyers and refinancing lenders, as well as its purported "thumb[ing] [of] its nose at Meadow's properly enacted corporate action," Meadow filed its First Amended Complaint (NYSCEF # 32 – FAC). In the FAC, Meadow sets forth a claim against Criterion for breach of the implied covenant of good faith and fair dealing under the JV Agreement (*id.* ¶¶ 20, 117-129). Meadow asserts that because the JV Agreement required executive committee approval of "Major Decisions," and because it holds two out of the three seats on the JV LLC's executive committee, Meadow bargained for the right to sell and/or refinance any of the Underlying Properties, even over Criterion's objection (*id.* ¶¶ 121-123). Meadow contends that Criterion acted in bad faith by (1) interfering with Meadow's bargained-for right to refinance and/or sell the Underlying Properties by sending threatening letters to potential purchasers and refinancing lenders and (2) refusing to comply with the Resolution (*id.* ¶¶ 124-125). Meadow seeks damages in an amount to be determined at trial, as well as attorneys' fees and court costs (*id.* ¶¶ 128-129).

At the time the FAC was filed, several motions were pending before the court. This included Criterion's motion to dismiss the original complaint (NYSCEF # 3) and the parties' motions, by order to show cause, for preliminary injunctions (NYSCEF #s 33, 57). After the court issued its Decision and Order on each of these motions, Criterion filed its Answer, Affirmative Defenses, and Counterclaims to the FAC. Criterion's fourth counterclaim is for declaratory judgment in connection with the rights and obligations set forth in Section 7.01 of the JV Agreement (Counterclaims ¶¶ 80-84). Criterion seeks a declaration that (1) only it may sell, transfer, assign, encumber and/or otherwise deal with the Underlying Properties, (2) the executive committee may only approve (or not approve) Major Decisions, and it cannot unilaterally execute Major Decisions without Criterion's consent, and (3) the Resolution is null and void (*id.* ¶ 84).

Discussion

Meadow seeks dismissal of the fourth counterclaim on the basis that it is a "mirror image" of its claim for breach of the implied covenant of good faith and fair dealing under the JV Agreement (NYSCEF # 93 at 2-3, 15). Specifically, Meadow argues that, through this claim, it seeks to compel Criterion to comply with the Resolution, while Criterion's counterclaim seeks a declaration that the Resolution is null and void and that it is permitted to sell and refinance the Underlying Properties (*id.* at 15). Put differently, Meadow contends, under either the implied covenant claim or the fourth counterclaim, the court will determine whether Meadow may cause the Executive Committee to approve the selling and refinancing of the Underlying Properties without Criterion's consent, or whether only Criterion may decide to sell/refinance the Underlying Properties, subject to Meadow's approval (NYSCEF # 104).

Criterion responds that its fourth counterclaim is not a mirror image of the implied covenant claim (NYSCEF # 101). It avers that its claim would still be ripe for adjudication should Meadow's claim be dismissed because the parties would still require a judgment declaring their rights under the JV Agreement (*id.* at 6). In further support, Criterion notes that the implied covenant claim does not "seek to compel" compliance with the Resolution; rather, Criterion observes, this claim seeks money damages (*id.*).

"The general purpose of a declaratory judgment is to serve some practical end in quieting or stabilizing an uncertain or disputed jural relation" (*Touro College v Novus Univ. Corp.*, 146 AD3d 679, 679-680 [1st Dept 2017] [internal citations and quotations omitted]). Accordingly, "[a] cause of action for declaratory judgment is unnecessary and inappropriate when [a party] has an adequate, alternative remedy . . ." (*Apple Records v Capital Records*, 137 AD2d 50, 54 [1st Dept 1988]; *Wilson v Dantas*, 128 AD3d 176, 188 [1st Dept 2015]). This is true regarding duplicative counterclaims for declaratory judgment (*see JMF Consulting Group II, Inc. v Beverage Mktg. USA, Inc.*, 97 AD3d 540, 542 [2d Dept 2012] [dismissing counterclaim for declaratory judgment as "inappropriate" based on the availability of "adequate and alternate remedies"] [internal citations omitted]).

Here, Meadow has failed to establish that Criterion's fourth counterclaim is a "mirror image," or otherwise duplicative, of its breach of the implied covenant of good faith and fair dealing claim. At its core, Criterion's fourth counterclaim seeks a declaration that under the JV Agreement, Criterion possesses the right and power sell or encumber the Underlying Properties, subject to the Executive Committee's approval (*see* Counterclaims ¶¶ 80-84). Meadow's implied covenant claim, by contrast, seeks damages based on Criterion purportedly acting in bad faith to interfere with Meadow's refinancing and/or selling the Underlying Properties and refusing to comply with the Resolution (*see* FAC ¶¶ 20, 117-129).² There are certainly overlapping issues pertaining to the parties' rights under JV Agreement that underlie both of these claims and bear upon their ultimate outcome. But it is not the case, as Meadow suggests (*see* NYSCEF # 104 at 6), that resolution of the implied covenant claim sufficiently guides the parties on future performance as to, or otherwise readily disposes of, Criterion's fourth counterclaim (or vice versa).

For example, even if Meadow ultimately obtains a favorable adjudication regarding the scope of Criterion's rights under the JV Agreement, Meadow would still need to establish that Criterion acted in a legally unjustified manner or in bad faith because its claims are ultimately tied to allegedly bad-faith conduct that is

² Meadow suggests that its implied covenant claim focuses on "compell[ing] Criterion to comply with the Resolution" (NYSCEF # 93 at 15). But nothing in this cause of action suggests that it is seeking such a remedy (*see* FAC ¶¶ 117-129). To the extent Meadow is actually arguing that the fourth counterclaim is duplicative of its claim for a preliminary injunction, that contention fails for the same reasons set forth in this decision and order.

separate from the parties' contractual rights and powers under the JV Agreement (see FAC ¶¶ 125-126 [alleging that Criterion acted in "bad faith" and in a "legally unjustified" manner by "sending threatening letters" and "refus[ing] to comply with the Resolution"]). Similarly, if Criterion successfully obtains a dismissal of Meadow's implied covenant claim, there would still be a live dispute concerning the parties' respective rights and obligations under the JV Agreement. At bottom, given the nature of the parties' claims, the court cannot conclude that the fourth counterclaim is unnecessary, inappropriate, or otherwise duplicative of Meadow's implied covenant claim, or that it would be left with an "adequate alternative remedy" if the fourth counterclaim was dismissed (cf. Maxim, Inc. v Feifer, 161 AD3d 551, 553 [1st Dept 2018] [affirming dismissal of declaratory judgment action where "all issues involved in it would be disposed of when the pending breach of contract action is resolved"]). Meadow's motion to dismiss the fourth counterclaim is denied.

Conclusion

For the foregoing reasons, it is hereby

ORDERED that plaintiff's motion to dismiss the defendant's fourth counterclaim is denied, and its motion to dismiss the first, second, and third counterclaims is denied as moot.

10/16/2023

DATE



MARGARET A. 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