ATX Debt Fund 2, LLC v Paul
2024 NY Slip Op 30402(U)
February 5, 2024
Supreme Court, New York County
Docket Number: Index No. 650728/2020
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ANDREW BORROK** **PART** **53**

Justice

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INDEX NO. 650728/2020

ATX DEBT FUND 2, LLC,

Plaintiff,

- v -

NATIN PAUL A/K/A NATE PAUL, ATX DEBT FUND 1, LLC,KARLIN REAL ESTATE, LLC,KARLIN REAL ESTATE 2, LLC,KARLIN ASSET MANAGEMENT, INC.,KARLIN RIVER PLACE, LLC,KARLIN CESAR CHAVEZ, LLC,KARLIN EAST SIXTH, LLC,KARLIN MOUNTAIN RIDGE, LLC,KARLIN PHILLIPS BUILDING, LLC,KARLIN 320 CONGRESS, LLC,KARLIN 422 CONGRESS, LLC,MATTHEW SCHWAB, TUEBOR REIT SUB LLC,LADDER CAPITAL FINANCE LLC,LADDER CAPITAL CORP., ELIZABETH LIZ NICOLLE BOYDSTON, JAMES H. BILLINGSLEY, JOHN DOES 1-10,

Defendant.

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MOTION DATE 05/15/2023, 05/15/2023, 05/15/2023, 07/05/2023, 12/16/2023, 12/16/2023, 12/18/2023

MOTION SEQ. NO. 020 021 022 023 032 033 034

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 020) 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 687, 689, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1081, 1100

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 021) 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 686, 690, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 1082, 1083, 1084, 1085, 1086, 1087

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 022) 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 688, 691, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 1088, 1089, 1090, 1091, 1092, 1093

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 023) 557, 558, 559, 560, 561, 562, 692, 694, 695, 731, 907, 908, 909, 1094, 1095, 1096, 1097, 1098, 1099

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 032) 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 993, 994, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1181, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1252

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 033) 991, 992, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1182, 1184, 1185

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 034) 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1075, 1076, 1077, 1078, 1079, 1080, 1183, 1186, 1251, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316

were read on this motion to/for STAY.

Upon the foregoing documents, the motions are decided as follows:

I. Mtn. Seq. No. 34

Natin Paul's motion for a stay is denied. He voluntarily chose to appear at a deposition and take the Fifth Amendment. He did not have to. He could have refused to appear, litigated that, and litigated any contempt or sanction finding based on his refusal to appear. He did not do those things. Hence, by his own litigation decision, he exposed himself to the consequences of that decision (*Access Cap. v DeCicco,* 302 AD3d 48, 52 [1st Dept 2002]; *Small v DMRJ Grp. LLC,* 197 NYS3d 232 [1st Dept. 2023]. As discussed by the Appellate Division in *Small,* the issue is whether the questions that the counterclaim plaintiff refused to answer were "material and necessary" to his claims (*Small*, citing CPLR 3101; *see e.g., Batista v City of New York,* 15 AD.3d 304, 306 [1st Dept 2005]). Here, Mr. Paul took the Fifth Amendment over 400 times at his deposition including about his allegations that this was a rigged foreclosure sale. These questions are unquestionably material and necessary to the maintenance of his counterclaims and affirmative defenses in this case. As such, and as discussed below (Mtn. Seq. No. 20), the plaintiff's motion to dismiss the counterclaims and affirmative defenses is granted.

By way of background, the plaintiffs in this case moved for a stay of this case. In his opposition papers, Mr. Paul indicated he was only willing to agree to a stay if there was agreement of a stay of not only this case but also the case pending in the United States District Court for the Southern District of New York, where the Silicon Hills loan transaction is being litigated.[1] Ultimately, the parties apparently litigated the case in the SDNY as well, and recently the SDNY issued a decision (NYSCEF Doc. No. 1318, Pgs. 11-17) on issues similar to or overlapping with the issues pending in this Court:

> Paul contends that, based on a decision by a New York court, the doctrine of collateral estoppel supports his contention that Section 2.14 preserves his ability to raise defenses grounded in gross negligence or willful misconduct. (ECF No. 204 at 19.) But that decision addressed Section 2.14 of the Guaranty, which is not the relevant section that this Court discusses. Moreover, that decision merely granted Paul the ability to serve an amended answer "to the extent it asserts affirmative defenses based on fraudulent conduct"; such a decision about Paul's ability to serve an amended pleading does not collaterally estop this Court from making substantive determinations about the merits of such defenses. *ATX Debt Fund 2, LLC v. Paul*, 206 A.D.3d 465, 466 (1st Dep't 2022).
>
> As to the four defenses that Paul raises for the first time in his opposition to ATX's motion for summary judgment—(11) breach of contract, (12) promissory estoppel, (13) gross negligence, and (14) willful misconduct—they are not raised in Paul's answer and are therefore forfeited. In addition to being untimely, these purported defenses, to the extent they are supported by facts, are encompassed by the waiver. The breach of contract and promissory estoppel defenses fall within Section 2.1 of the Guaranty, as both of those defenses rely on Lender's purported failure to grant Paul a third extension of the Loan. The gross negligence and willful misconduct defenses also appear to fall under the waiver. Although Paul's briefing on those two defenses is less than clear, those defenses appear to be premised on ATX's alleged "loan to own scheme," which similarly involves claims that fall within the waiver. (ECF No. 204 at 5.) As a result, Paul is barred from raising those defenses.
>
> 2. Merits
>
> Beyond largely being subject to the waiver in the Guaranty, Paul's defenses all fail on the merits, as no rational jury could conclude that the asserted defenses apply in this case.
>
> The four defenses that arguably do not fall under the waiver—(1) lack of personal jurisdiction, (2) lack of subject matter jurisdiction, (6) whether ATX owns the Loan, and (7) lack of standing—plainly fail on their merits. On (1) lack of

[1] For completeness, the Court notes that there was a request for a stay for "settlement purposes" by the parties which the Court denied. But this was long before Mr. Paul's deposition and nothing prevented Mr. Paul for making a motion for a stay based on his criminal indictment which at that time had already been pending for months.

personal jurisdiction, Paul explicitly abandoned that defense (ECF No. 204 at 16 n.7), and "the personal jurisdiction requirement is a waivable right." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 n.14 (1985). Even had Paul not abandoned that defense, he explicitly submitted to this Court's jurisdiction in the Guaranty. (ECF No. 165-3 § 6.3(b).) On (2) lack of subject matter jurisdiction, the parties were completely diverse and the amount in controversy exceeded $75,000 at the time the action was filed, granting the Court jurisdiction under 28 U.S.C. § 1332. (See ECF No. 26 ¶¶ 1-3.) Even though ATX stepped into the shoes of Tuebor after Tuebor assigned its interest to ATX, the later substitution of a non-diverse party pursuant to Rule 25(c) does not destroy diversity jurisdiction. *Freeport-McMoRan, Inc. v. K N Energy, Inc.*, 498 U.S. 426, 427-28 (1991). And on (6) whether ATX was assigned the Loan and Guaranty and (7) lack of standing, Paul cannot make a serious argument that ATX is not entitled to bring this action. While Paul asserts that ATX has "failed to submit admissible proof to support its prima facie case as a holder in due course of the Guaranty in question" (ECF No. 204 at 4), Tuebor "assigned all right, title, and interest under the Loan and the Guaranty to ATX" (Def.'s SOF Opp. ¶ 58), and ATX has introduced evidence of such assignment (see ECF No. 165-13).

The four additional defenses Paul belatedly raised in his opposition to ATX's motion for summary judgment—(11) breach of contract, (12) promissory estoppel, (13) gross negligence, and (14) willful misconduct—also fail because Paul forfeited them by neglecting to raise them until in his opposition to ATX's motion for summary judgment. *See Zann Kwan v. Andalex Grp. LLC*, 737 F.3d 834, 843 (2d Cir. 2013) (affirming district court's refusal to consider a claim that "had never [been] asserted . . . until [the] brief in opposition to the motion for summary judgment"); *see also In re Image Innovations Holdings, Inc.*, 391 B.R. 255, 260 (S.D.N.Y. 2008) ("Affirmative defenses are generally waived if not timely asserted." (citing *Travellers Int'l A.G. v. Trans World Airlines, Inc.*, 41 F.3d 1570, 1580 (2d Cir. 1994))). Thus, even if Paul's new defenses are not barred by the waiver in the Guaranty that he signed, as the Court concluded earlier, the Court declines to consider them. Moreover, even if the gross negligence and willful misconduct defenses did not fall within the waiver, they would fail on the merits, as Paul has not adduced any facts showing that ATX owed a duty to Paul outside the Guaranty, or that ATX evinced a reckless disregard or conscious indifference to the rights of others—both of which are necessary for those defenses. *See Pasternack v. Lab'y Corp. of Am.*, 892 F. Supp. 2d 540, 547 (S.D.N.Y. 2012); *Taylor Precision Prods., Inc. v. Larimer Grp., Inc.*, No. 15-CV-4428, 2018 WL 4278286, at *18 (S.D.N.Y. Mar. 26, 2018).

Paul's remaining defenses also fail on the merits. On (3) accord and satisfaction and (10) failure to mitigate damages, both of those defenses are premised on ATX's alleged improper decision to "decline[] a settlement offer from the Borrowers" and ATX's alleged improper behavior in "rigging" the foreclosure sale that resulted in the Property being sold for less than it was worth. (ECF No. 49 ¶¶ 90, 97; ECF No. 204 at 2, 12-13.) As an initial matter, Paul has forfeited

any defense based on (3) accord and satisfaction by failing to mention that defense anywhere in his opposition to the motion for summary judgment, despite ATX's briefing of it in its motion for summary judgment. (See ECF No. 162 at 13, 19-20.) More importantly, even if ATX received certain settlement offers, ATX "was not required to accept the breaching party's offer"—here, an offer from Borrower—and a "breach victim is rarely required to accept a new offer in order to mitigate damages." *SuperCom, Ltd. v. Sabby Volatility Warrant Master Fund Ltd.*, __ F. Supp. 3d __, 2023 WL 7151717, at *15 (S.D.N.Y. 2023) (internal quotation marks and citation omitted). That is especially so when, as Paul puts it himself, that rejected offer required "refinancing by a substitute lender" (ECF No. 49 ¶ 90), as the duty to mitigate damages requires only "reasonable effort" and does not require a plaintiff to incur "undue risk, burden, or expense," *U.S. Bank Nat'l Ass'n v. Ables & Hall Builders*, 696 F. Supp. 2d 428, 441 (S.D.N.Y. 2010).

Defenses based on claims about the rigged foreclosure sale must also dismissed due to the law of the case doctrine, which "commands that when a court has ruled on an issue, that decision should generally be adhered to by that court in subsequent stages in the same case unless cogent and compelling reasons militate otherwise." *Johnson v. Holder*, 564 F.3d 95, 99 (2d Cir. 2009) (internal quotation marks and citation omitted). Here, Paul's claims about the "rigged" foreclosure sale all amount to a complaint that the Property sold for far less than what it was worth. But as this Court explained in its prior opinion, "[t]wo federal courts—one bankruptcy court and one district court sitting in review—have examined the issue of valuation and determined that the Property was not worth more than $53 million," which was the value of ATX's bid, and those determinations are binding. *ATX I*, 2023 WL 2585714, at *6 (ECF No. 110 at 11-12). Thus, to the extent that Paul's defenses of accord and satisfaction and failure to mitigate damages (and any other defenses) are based on the Property's selling for less than its actual worth, those defenses are barred by law of the case.

With respect to (4) unclean hands, (5) equitable estoppel, and (8) fraud, Paul has not pointed to any conduct by ATX that could plausibly support those defenses. To begin, Paul's affirmative defense of fraud again relies on claims that this Court has already rejected. To "raise[] fraud as an affirmative defense," one must prove, among other elements, a misrepresentation that "was made . . . to [one's] injury." *Swig Weiler and Arnow Mgmt., Inc. v. Stahl*, 817 F. Supp. 404, 407 (S.D.N.Y. 1993); *see also State St. Global Advisors Tr. Co. v. Visbal*, 462 F. Supp. 3d 435, 440 (S.D.N.Y. 2020) (explaining that "[t]o plead fraudulent inducement as an affirmative defense, a party must allege . . . resulting damages" from material misrepresentations (internal quotation marks and citation omitted)). Here, although Paul's allegations are, at times, difficult to understand, the crux of his fraud claim against ATX is that it ran a "loan to own scheme" in which it "ma[d]e fraudulent representations to the bankruptcy court in Texas regarding the value of the property" and then ran a "rigged" foreclosure sale. (ECF No. 204 at 1, 3, 10-11.) Paul cannot show that there were any resulting damages from those alleged

> misrepresentations, however, because it is law of the case that the Property was not worth more than $53 million. Paul insists that the law of the case doctrine should not apply because there is "new evidence," but that evidence largely revolves around a claim that ATX internally valued the Property at much more than $53 million. (ECF No. 204 at 14-16.) ATX's subjective views of the Property's value do not constitute a "cogent or compelling reason[]" to upend the bankruptcy court's (and subsequently, a federal district court's) conclusions on a full evidentiary record. Johnson, 564 F.3d at 109 (internal quotation marks and citation omitted).
>
> Similarly, Paul asserts that ATX has "unclean hands" because of new evidence that ATX "had rigged the system in advance to take the Property 'under market value,'" but that claim cannot succeed, again, given the established fact that the Property was not more than $53 million. (ECF No. 204 at 16.) As for Paul's defense of equitable estoppel, it is unclear what conduct that defense is based on, as Paul fails to mention that defense anywhere in his opposition to the motion for summary judgment despite ATX's briefing of the defense, arguably rendering it forfeited. (See ECF No. 162 at 13, 18-19.) But assuming it is based on the same conduct that the fraud and unclean hands defenses are based on it, that defense, too, fails.
>
> Finally, on (9) breach of implied covenant and duty of good faith and fair dealing, Paul bases that defense on Lender's refusal to grant a third extension of the Loan maturity date. (ECF No. 204 at 10-11.) But Tuebor was the relevant Lender at the time negotiations regarding a third extension were ongoing (see Def.'s SOF Opp. ¶ 58), and Paul does not explain why ATX owed Paul any duty with respect to the extension, or why Tuebor's conduct should be attributed to ATX, which is now the Plaintiff. (See ECF No. 223 at 8-9 & nn. 9-10.) As a result, that defense fails as well

(NYSCEF Doc. No. 1318, 11-17).

Again, Mr. Paul did not have to go to his deposition or litigate the case in the SDNY. He could have sought stays and then litigated those issues, including via a mandamus motion in the SDNY. He did not do that. Defendants cite no case in which a stay has been granted after a Defendant chose to attend a deposition, and there invoked the Fifth Amendment repeatedly. *Britt v Intl. Bus Services, Inc.*, 255 AD2d 143, 144 [1st Dept 1998] is inapposite. Indeed in *Britt,* relied on by Mr. Paul, the Court held that a stay was appropriate because the witness there had not yet been deposed and intended to invoke his right against self-incrimination and that his testimony was critical and necessary and that without his testimony he would be unable to assert a competent defense. Significantly, Mr. Paul has already been deposed in this case and never sought a stay. Accordingly, Mr. Paul has by his own litigation strategy undermined any claim of irreparable harm or unfair prejudice or the idea that he should not be compelled to attend a deposition because without his testimony he can not assert his counterclaims or defenses such

that no stay now is appropriate. Thus, the motion seeking stay is denied and the plaintiff's motion seeking dismissal of the counterclaims and defenses is granted.

II. Mtn. Seq. No. 33

No additional discovery from Ladder is appropriate. Mr. Perelman testified credibly on the subjects that were material and necessary to the Plaintiff's claim in this case and Mr. Paul's affirmative defenses and counterclaims. Significantly, Mr. Paul is now collaterally estopped from relitigating certain factual determinations that were made in the SDNY action. The factual allegations that support these positions have already been determined adverse to Mr. Paul's position and the issues are *res judicata*.

III. Mtn. Seq. No. 32

No additional discovery in support of Mr. Paul's affirmative defenses and or counterclaims is appropriate. They are not sustainable. Thus, additional discovery at this point amounts to nothing more than a baseless fishing expedition in attempt to further stall the inevitable. As the SDNY Court observed "this is a simple contract case which ought to have proceeded more efficiently to resolution." *ATX Debt Fund 1, LLC v. Paul,* 2023 WL 6554363, at *1 (SDNY Aug. 4. 2023).

IV. Mtn. Seq. No. 23

The counterclaim defendant Ladder Capital Finance LLC and Tuebor REIT Sub LLC are entitled to dismissal. The counterclaim fails to adequately allege a basis upon which liability can be asserted against them. They are not parties to the Guaranty and do not have any obligations under the Guaranty. Equally importantly, Ladder sold all right title and interest to the H8 Loan to ATX and this Court permitted substitution pursuant to CPLR 1018 without opposition from Mr. Paul. There simply are no facts that support liability against Tuebor REIT. There are also no facts which support allegations of alter-ego or veil piercing. Also, significantly, the counterclaims cannot be maintained at this point for the reasons set forth above. Thus, the motion is granted in its entirety.

V. Mtn. Seq. No. 22

The claims regarding the Silicon Hills Loans and the Guaranty are dismissed. The Silicon Hills Loans based claims have been resolved by the SDNY. The value of the Silicon Hills Property has been litigated by Mr. Paul and established to be $53 million. Finality for collateral estoppel and *res judicata* are different than for the purposes of an interlocutory appeal under FRCP 54. The Counterclaims based on gross negligence and willful misconduct are also dismissed. They are premised on the same factual predicates as the federal case and are subject to dismissal under *res judicata*. In this case, like in that case, Mr. Paul alleges that this was a loan to own scheme through "rigged foreclosure sales." These allegations have been thoroughly considered by other courts (three) and rejected. Those decisions matter. Thus, the counterclaims are dismissed.

Dismissal is required for a number of other reasons as well. First, Mr. Paul's counterclaims as to the value of the properties were determined in the bankruptcy proceedings and Mr. Paul is collaterally estopped from relitigating those values. The counterclaim allegations do not support alter ego jurisdiction. Moreover, dismissal is appropriate for the reason set forth above. Finally, the Court notes that it is wholly irrelevant that this Court permitted the filing of the Second Amended Answer with Counterclaims on March 16, 2023, because leave to amend is freely given not based on any determination of sufficiency. Now, on the merits, the SDNY Court has interpreted the Guaranty and, on the merits, has determined that there is no claim under the waiver carve-out.

VI. Mot. Seq. No. 20

As discussed above, Mr. Paul voluntarily appeared at a deposition and there invoked his Fifth Amendment rights some 400 times (NYSCEF Doc. No. 874 at 2). It is well settled that invocation of the Fifth Amendment right does not relieve a party of the usual evidentiary burden attendant to a civil proceeding (*Access Capital, Inc. v DeCicco*, 302 AD2d 48, 51 [1st Dept 2002]; *United States v Rylander*, 460 US 752, 761, [1983]). In deciding whether the Court should invoke its inherent power to dismiss a claim when its proponent refuses to answer questions on the grounds of the Fifth Amendment privilege against self-incrimination, "[t]he only inquiry" is whether the questions the plaintiff refused to answer were "material and necessary" to the defendant's defense (*Small v DMRJ Group LLC*, 221 AD3d 418, 419 [1st Dept 2023]; CPLR 3101).

In his deposition, Mr. Paul invoked the Fifth Amendment in refusing to answer questions about (i) the evidentiary bases of each of the counterclaims alleged in his Second Amended Answer and Complaint, (ii) his conduct at the foreclosure sales he alleges were rigged, (iii) the value of the properties he alleges were sold for an unfairly low value at those foreclosure sales, (iv) what documents he has in his possession to substantiate his claims, (v) whether he performed under the Guaranties that are the bases of this lawsuit, and (vi) the activities of his business, World Class, in relation to the loans and properties at issue in this case (NYSCEF Doc. No. 874 at 2-3). In particular, Mr. Paul brings counterclaims sounding in fraud, but refused to answer questions relating to his state of mind and his dealings with those he alleges defrauded him. Thus, the "material and necessary" standard is met, and dismissal of Mr. Paul's counterclaims is warranted.

VII. Mot. Seq. 21

Mr. Paul also counterclaims against one Matthew Schwab and a slew of other entities allegedly owned and operated by Mr. Schwab (collectively, the **Karlin Counterdefendants**). Mr. Paul's claims against the Karlin Counterdefendants suffer many of the same fatal defects as his claims against Ladder Capital Finance LLC and Tuebor REIT Sub LLC. Namely, Mr. Paul fails to allege any facts to provide a basis for the Karlin Counterdefendants' alleged liability. None of the Karlin Counterdefendants are parties to the Guaranty. There are no facts alleged upon which the Court could find that any of the Karlin Counterdefendants were alter egos of ATX 2. Lastly,

these claims are dismissed because Mr. Paul cannot carry his evidentiary burden in light of his refusal to answer questions about the bases of his claims about the Karlin Counterdefendants.

As discussed on the record (2.5.24), the Plaintiff is granted leave to move by Order to Show Cause for summary judgment by February 26, 2024. Mr. Paul shall submit opposition papers by March 18, 2024. The parties shall email Part 53 when the order to show cause is fully submitted.

The Court has considered Mr. Paul's remaining arguments and finds them unavailing.

Accordingly, it is hereby

ORDERED that Mr. Paul's motion to stay (Mtn. Seq. 034) is denied; and it is further

ORDERED that motions to dismiss Mr. Paul's counterclaims (Mtn. Seq. Nos. 020, 021, 022, 023) are granted; and it is further

ORDERED that the motions to compel (Mtn. Seq. Nos. 032, 033) are denied.