

Belnord Partners LLC v Piplani

2024 NY Slip Op 30721(U)

March 7, 2024

Supreme Court, New York County

Docket Number: Index No. 160545/2020

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JUDY H. KIM **PART** **04**

Justice

-----X

BELNORD PARTNERS LLC,

Plaintiff,

INDEX NO. 160545/2020

MOTION DATE 10/29/2021

MOTION SEQ. NO. 001

- v -

DHRUV PIPLANI,

Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54, 55, 56, 57, 59, 60

were read on this motion for JUDGMENT - SUMMARY.

In this action, plaintiff Belnord Partners LLC asserts claims against defendant Dhruv Piplani for breach of contract based on defendant’s failure to pay rents due for Unit 1003 in a building known as 2360-2376 Broadway, New York, New York (“The Belnord”) under an Interim Lease Agreement executed by the parties on August 28, 2018 (“Interim Lease”). Piplani interposed an answer asserting various affirmative defenses as well as counterclaims for: (1) a declaratory judgment that no money is owed under the Interim Lease because his obligations thereunder were relieved by a subsequent “Investment Agreement” executed by the parties; (2) money owed to Piplani under a promissory note executed by the parties prior to their execution of the Interim Lease; and (3) money owed to Piplani based upon plaintiff’s breach of the Investment Agreement¹ (NYSCEF Doc. No. 7).

¹ Plaintiff also commenced a separate breach of contract action against Piplani, under index number 655330/2020, based upon his alleged failure to purchase Unit 1003, as well as an action against Horizon Select, LLC—an entity wholly owned and controlled by Piplani—under index number 655332/2020, for breach of contract based upon its

Plaintiff now moves for partial summary judgment on its first and second causes of action for “breach of Interim Lease” and “ongoing rent.”

FACTUAL BACKGROUND

The following is undisputed unless otherwise noted.

The Belnord is a luxury residential condominium building located on the Upper West Side of Manhattan. Plaintiff Belnord Partners LLC is the sponsor of The Belnord’s conversion to condominiums and, in that capacity, sold individual condominium units to purchasers.

On or about August 28, 2018, plaintiff entered a Purchase and Sale Agreement with Piplani (the “Purchase Agreement”) in which plaintiff agreed to sell Unit 1003 of the Belnord to Piplani for \$9,350,000.00. Under the Purchase Agreement, Piplani was required to make a deposit of ten percent of the nominal purchase price (i.e., \$935,000.00) which he in fact made. The Purchase Agreement provided that the closing would occur on a date designated by plaintiff upon thirty days prior written notice to Piplani (NYSCEF Doc. No. 66 [Purchase Agreement at §6.1]). The Purchase Agreement was signed by Piplani and by Ziel Feldman as “Authorized Signatory” of Belnord Partners LLC.

On August 28, 2018, the parties also entered into an Interim Lease in which defendant agreed to pay rent for Unit 1003 in the amount of \$10,000.00 per month commencing on the execution of the Purchase Agreement until the closing on the sale of Unit 1003 (or defendant’s default under the Purchase Agreement or Interim Lease). The Interim Lease was signed by Piplani and by Feldman as “Authorized Signatory” for Belnord Partners LLC.

It is undisputed that there was never a closing under the Purchase Agreement and that Piplani has never made the rent payments contemplated by the Interim Lease.

alleged failure to complete the purchase of Unit 806 in The Belnord. On November 29, 2021, all three actions were consolidated for all pre-trial purposes by order of the Court (Hon. Verna L. Saunders) (NYSCEF Doc. No. 59).

In his Answer and his opposition to plaintiff's motion, Piplani asserts—and plaintiff strongly disputes—that the parties entered into other agreements both before and after the execution of the Purchase Agreement and Interim Lease. Piplani asserts, specifically, that in 2015 he loaned money to non-party HFZ Capital Group LLC, a New York real estate developer which, at that time, controlled the managing partner of plaintiff Belnord Partners LLC through an indirect subsidiary.² Piplani was told, at that time, that the loaned funds would be spent on The Belnord.

Piplani maintains that, in connection with this loan, plaintiff and HFZ Capital Group LLC executed a promissory note dated December 31, 2015, in the amount of \$3,445,234.34 plus accrued interest (NYSCEF Doc. No. 127 [Promissory Note]). This promissory note was signed by Ziel Feldman as “Authorized Signatory” of Belnord Partners LLC. According to Piplani, this promissory note was amended in an “Amended and Restated Promissory Note” dated December 31, 2016 (the “Amended Note”). The Amended Note defines the borrower as Belnord Partners LLC (though it incorrectly identifies Belnord Partners LLC as a New York LLC, rather than a Delaware LLC, and lists HFZ's address as Belnord Partners LLC's place of business) and the Lender as Dhruv Piplani, Ltd. and a “Loan Amount” of \$4,145,608.14 (NYSCEF Doc. No. 128 [Amended Note]). The Amended Note is signed by Ziel Feldman as “Authorized Signatory” of Belnord Partners LLC.

Piplani asserts that Dhruv Piplani, Ltd. assigned the Amended Note to Dhruv Piplani, personally, in an Assignment dated January 1, 2018 (NYSCEF Doc. No. 65 [Assignment]).

Piplani further asserts that on or about September 26, 2018 (i.e., one month after the execution of the Purchase Agreement) he entered into another contract with Belnord Partners LLC,

² Piplani asserts that “HFZ through a subsidiary was the sole managing member of the Sponsor until sometime in 2018 or 2019, when an affiliate of Westbrook Partners (“Westbrook”), a large international investment fund with more than \$20 billion under management, became a co-managing member. In or about January 2021, Westbrook became the sole managing member” (NYSCEF Doc. No. 61 [Piplani Aff. at fn. 1]).

entitled Unit 1003 Investment Agreement (the “Investment Agreement”), which provided, in relevant part, as follows:

THIS INVESTMENT AGREEMENT (as may be amended, this “Agreement”) is dated as of September 26, 2018 and is made by and between Belnord Partners, LLC, a Delaware limited liability company with its principal place of business at c/o HFZ Capital Group LLC, 600 Madison Avenue, 16th Floor, New York, NY (the “Sponsor”), HFZ Capital Group LLC, a New York limited liability company with its principal place of business at 600 Madison Avenue, 16th Floor, New York NY 10022, and its affiliated entities for the properties located at 255 West 86th Street (the “Belnord”) (collectively as “HFZ”) and Dhruv Piplani.

A. On May 15, 2015 Investor and HFZ entered into a letter agreement (the “Letter Agreement”) relating to an investment with HFZ Capital Group LLC in the properties located at the Belnord consisting of a loan to HFZ in the amount of \$3,064,109.59 (the “Loan”) evidenced by a note (the “Original Note”), and which was personally guaranteed by Nir Meir and Ziel Feldman (collectively the “Guarantors”) pursuant to that certain Guaranty (the “Guaranty”, and together with the Original Note, the “Original Loan Documents”) pursuant to which Investor could, among other things, convert the Loan into a credit against the purchase of a unit at the Belnord for a purchase price equal to \$1500 per square foot, fully renovated.

B. On and as of December 31, 2015, the Original Loan Documents were modified, amended and restated to, among other things, reflect an outstanding principal balance on the Original Loan of Three Million Four Hundred Forty Five Thousand Two Hundred Thirty Four and 45/100 (\$3,445,234.45) Dollars (the “First Modification” and the Original Loan, as modified by the Modification, the “First Modified Loan”) and an extension of the Maturity Date to December 31, 2016.

C. On and as of December 31, 2016, the First Modification and the Loan were amended and restated to, among other things, reflect an outstanding principal balance on the Loan of Four Million One Hundred Forty Five Thousand Six Hundred Eight and 14/100 (\$4,145,608.14) Dollars (the “Second Modification” and the First Modified Loan, as modified by the Second Modification, the “Second Modified Loan”) and an extension of the Maturity Date to December 31, 2017.

D. On and as of December 31, 2017, the Second Modification and the Loan were amended and restated to, among other things, reflect an outstanding principal balance on the Loan of Four Million Nine Hundred Seventy Four Thousand Seven Hundred Twenty Nine and 77/100 (\$4,974,729.77) Dollars (the “Balance Of The Loan”), which includes all interest accrued

E. Investor has entered in a purchase agreement (the “Contract”) with the Sponsor, an affiliated entity managed by HFZ for the purchase of unit 1003 (the “Unit”) at

the Belnord as of August 28, 2018 for a purchase price of \$9,350,000, which price is \$3,432,500 (the “Excess Purchase Price”) greater than the purchase price would be if calculated at \$1500 per square foot, and which excess will be paid by HFZ or Sponsor or otherwise credited to Investor at the closing of the purchase of the Unit pursuant to the Contract.

F. Investor has entered into an Interim Lease Agreement (the “Lease”) for the Unit with the Sponsor as of August 28, 2018, and HFZ and Investor have entered into an agreement (the “Lease Payment Agreement”) as of August 28, 2018 pursuant to which HFZ or Sponsor has agreed to pay all amounts due under the Lease through the closing date for the purchase of the Unit pursuant to the Contract.

G. On September 31, 2016, Grantee made a loan to HFZ in the original principal amount of Four Hundred Thousand and 00/100 (\$400,000) Dollars (the “Sunrise Loan”).

NOW THEREFORE, the Parties agree as follows:

1. Upon 90 days notice to Investor, HFZ shall cause the Sponsor to close on the transfer of the Unit, which closing shall take place no later than August 28, 2020 (the “Outside Date”). If the closing does not occur on or before the Outside Date for any reason, Investor may, at Investor’s sole election either (i) terminate the Contract and receive the Deposit under the Contract from the Sponsor without any credit or offset against the Loan and declare the Loan to be reinstated and payable on demand together with interest thereon at 20 percent per annum ... until HFZ and Sponsor proceed to consummate the transaction contemplated in the Contract with Investor ... At the Closing (i) HFZ or Sponsor shall pay, credit or cause to be paid or credited at the Closing, for the benefit of the Investor, amounts equal to (a) \$467,500 (repayment by the HFZ of the First Installment of the deposit paid by Investor under the Contract) (b) the Balance Of The Loan (\$ 4,974,729.77) ... and (ii) HFZ or Sponsor shall pay all rent due under the Lease through the closing date, and receive a credit against the Balance Of the Loan for all Lease rent that it pays on behalf Investor. For the avoidance of doubt, the Balance Of The Loan plus 3,432,500 equals more than the remainder of Contract purchase price due at closing. Upon the Closing, the amount of the Second Installment of the Deposit credited against the Purchase Price shall be credited against the Sunrise Loan, and the remaining balance of the Sunrise Loan shall be paid in full within 90 days of the Closing Date.

...

3. HFZ or Sponsor shall pay, credit or cause to be paid or credited, for the benefit of the Investor, all rent due under the Lease through the date of the Closing.

...

6. The payment of the Loan, as modified by this Agreement, shall continue to be guaranteed pursuant to the terms of the Original Guaranty. Attached hereto as Exhibit B is a true and correct structure chart showing HFZ's ownership interest in the Belnord and its management of the Sponsor. The Guarantors are authorized signatories and signing on behalf of the Sponsor and HFZ for this agreement...

7. The timing of the closing of the Unit pursuant to the Contract, and funding of the amounts owed to Sponsor are under the control of HFZ and any default by Investor under the Contract would be caused by HFZ or Sponsor ...

8. Due Authorization. HFZ has full power and authority (including full corporate or other entity power and authority) to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of HFZ, enforceable in accordance with its terms. HFZ need not give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order to consummate the transactions contemplated by this Agreement. The execution, delivery and performance of this Agreement and all other agreement contemplated hereby have been duly authorized by HFZ.

(NYSCEF Doc. No. 67 [Investment Agreement] [emphasis added]).

The Investment Agreement is signed by Piplani and by Nir Meir as "Authorized Signatory" of HFZ Capital Group LLC.

DISCUSSION

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]).

"Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action" (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]). In reviewing a motion for summary judgment, the Court "must view the evidence in the light most favorable to the nonmoving party, including drawing all reasonable

inferences in favor of the nonmoving party” (Vega v Metro. Transportation Auth., 212 AD3d 587, 588 [1st Dept 2023]).

Plaintiff’s motion for partial summary judgment is denied. While plaintiff has met its initial burden by submitting the Interim Lease and undisputed proof that no rent was paid by Piplani pursuant to this agreement, Piplani has, in opposition, raised an issue of fact as to whether his obligations under the Interim Lease were assumed by plaintiff through its execution of the Investment Agreement, which obligates Belnord Partners LLC (or HFZ Capital Group LLC) to, inter alia, “pay, credit or cause to be paid or credited, for the benefit of the Investor, all rent due under the Lease through the date of the Closing.”

Plaintiff asserts that the Investment Agreement is not signed by plaintiff or anyone acting on plaintiff’s behalf and argues that, as a result, enforcement of the Investment Agreement against plaintiff is barred by General Obligations Law sections 5-701(a)(2) and 5-703—which require, respectively, that an agreement containing a “promise to answer for the debt, default or miscarriage of another person” or “concerning real property” are in writing and subscribed by either the party to be charged or that party’s lawfully authorized agent—as well as section 45 of the Purchase Agreement, which requires that any amendments must be set forth in a separate written agreement signed by the parties to the Purchase Agreement, and the “hornbook law” principle that a contract cannot be enforced against a non-signatory who has not affirmatively assumed the contract.

The Court disagrees. Assuming, for purposes of this motion, that Meir had authority, through HFZ Capital Group LLC, to bind Belnord Partners LLC, his signature on the Investment Agreement satisfies the requirement of the Statute of Frauds³ and Purchase Agreement, in light of the fact that the Investment Agreement names Belnord Partners LLC as a party to the agreement,

³ For purposes of this motion the Court assumes, without deciding, that the Investment Agreement falls within the ambit of GOL §5-703.

states that Belnord Partners LLC is affiliated with and managed by HFZ Capital Group LLC, and, most importantly, provides that Meir is signing on behalf of HFZ Capital Group LLC and Belnord Partners LLC (See Sweedler v DSJS, Inc., 111 AD3d 416 [1st Dept 2013]; see also Discovision Assoc. v Fuji Photo Film Co. Ltd., 2008 NY Slip Op 31697[U] [Sup Ct, NY County 2008] [“While it is true ... that generally a contract binds only the signatory, where the signatory has the authority to bind its affiliates, those affiliates can also be bound”], affd 296 AD2d 318 [1st Dept 2002]). The absence of Belnord Partners LLC from the signature line does not undercut this conclusion. Moreover, even if the Court construed the omission of Belnord Partners LLC from the signature block as indicating an intent to bind only HFZ Capital Group LLC, such a contradiction would not be grounds for summary judgment but an ambiguity to be resolved at trial (See Georgia Malone & Co., Inc. v E & M Assoc., 163 AD3d 176, 177 [1st Dept 2018]; see also Emerald Dev. Corp. v Real Equities, Inc., 251 AD2d 180, 181 [1st Dept 1998]).

The cases relied on by plaintiff, Mercator Corp. v Windhorst and Amerimax Capital, LLC v Ender, are readily distinguishable—while both cases involve claims for breach of contract which were dismissed against defendants who were not signatories to the alleged contract, nothing within the text of those agreements set out a clearly stated intent to bind the defendant in question (Mercator Corp. v Windhorst, 159 F Supp 3d 463 [SDNY 2016]; Amerimax Capital, LLC v Ender, 2017 NY Slip Op 30263[U], 4 [Sup Ct, NY County 2017] [emphasis added]).

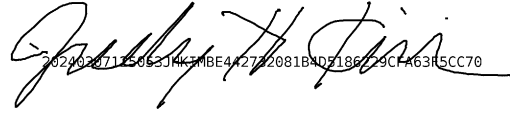
Accordingly, it is

ORDERED that plaintiff’s motion for partial summary judgment is denied; and it is further

ORDERED that, within thirty days from the date of this decision and order, counsel for defendant shall serve a copy of this decision and order, with notice of entry, on plaintiff; and it is further

ORDERED that the parties are to appear for a preliminary conference in Part 4 (80 Centre Street, room 308) at 10:00 a.m. on May 31, 2024.

This constitutes the decision and order of the Court.



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3/7/2024
DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE