

ARC NYWWPJV001, LLC v WWP JV LLC

2025 NY Slip Op 30445(U)

February 4, 2025

Supreme Court, New York County

Docket Number: Index No. 654977/2022

Judge: Joel M. Cohen

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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 03M

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ARC NYWWPJV001, LLC, A DELAWARE LIMITED
LIABILITY COMPANY,

Plaintiff,

- v -

WWP JV LLC, A DELAWARE LIMITED LIABILITY
COMPANY,

Defendant.

-----X

WWP JV LLC, A DELAWARE LIMITED LIABILITY COMPANY,

Plaintiff,

-against-

NEW YORK REIT LIQUIDATING LLC

Defendant.

-----X

INDEX NO. 654977/2022

MOTION DATE 07/12/2024,
07/12/2024

MOTION SEQ. NO. 013 014

**DECISION + ORDER ON
MOTION**

Third-Party
Index No.

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 013) 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 487, 488, 489, 490, 491, 492, 493

were read on this motion for

SUMMARY JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 014) 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486

were read on this motion for

SUMMARY JUDGMENT

Upon the foregoing documents, and for the reasons stated on the record following the January 29, 2025 oral argument, the Court **granted** the motion for summary judgment filed by Plaintiff ARC NYWWPJV001 (“Arc”) and Counterclaim Defendant New York REIT Liquidating LLC (“NYRT”), and **denied** the motion for summary judgment filed by Defendant WWP JV LLC (“WWP JV”).

Because the Court did not specifically address one aspect of Plaintiff’s proposed declaratory relief (relating to the Initial Budget), the Court supplements its on-the-record decision to address that issue. Specifically, on summary judgment Plaintiff seeks a declaration that “the Initial Budget expired on December 31, 2018, and Owner Member does not have an ongoing obligation to fund capital expenditures budgeted in the Initial Budget” (NYSCEF 186 at 21). For the reasons set forth below, summary judgment is granted to Plaintiff with respect to that relief.¹

The Third Amended and Restated Limited Liability Company Agreement of WWP Holdings, LLC (the “Agreement”) provided the following definitions:

“2018 Budget Year” means the Budget Year ending on December 31, 2018. . . .

“Annual Budget” means the annual operating expense and capital budget for the Company and its Subsidiaries, which shall be a part of the Annual Business Plan; . . .

“Annual Business Plan” means the Company and its Subsidiaries’ business plan for any Budget Year, which may consist of, and which in all events shall include, the Annual Budget for such Budget Year. . . .

¹ In their pleadings, the parties set forth various requests for declaratory relief relating to the Initial Budget and the Reserve described in Section 7.3(b) of the Agreement. The Court finds that the substance of the dueling requests for declaratory relief is resolved by the declarations set forth at the end of this Decision and Order, which resolves all pending claims in the litigation.

“Approved Annual Budget” means the Annual Budget in the form that has received Board Approval, whether included as part of an Approved Annual Business Plan or otherwise. The Initial Budget shall be deemed to constitute an Approved Annual Budget.

“Approved Annual Business Plan” means an Annual Business Plan that, in its entirety, has received Board Approval. An Approved Annual Budget shall be deemed to constitute an Approved Annual Business Plan with respect to the corresponding Budget Year unless a separate Annual Business Plan receives Board Approval. . . .

“Budget Year” means, with respect to Fiscal Year 2017, the period beginning on the Effective Date and ending on December 31, 2017; and, with respect to each Fiscal Year thereafter, “Budget Year” means the period beginning on January 1 and ending on December 31 of such year. . . .

“Current Budget Year” means the Budget Year ending on December 31, 2017. . . .

“Initial Budget” means the initial budget for the Company and its Subsidiaries from and after the date hereof, in the form attached as Schedule B to the Disclosure Letter.

(NYSCEF 204 § 1.1).

Section 6.2 of the Agreement provides that: “Prior to the date of this Agreement, the Participating Members have approved the Initial Budget (which shall constitute an Approved Budget and an Approved Business Plan) *for the Current Budget Year and the 2018 Budget Year*” (*id.* § 6.2[a] [emphasis added]). Section 6.2 further required the Administrative Member (defined as Investor Member or WWP JV [*id.* §§ 1.1; Preamble]) to “submit to the Board a proposed Annual Business Plan (including a proposed Annual Budget) for the succeeding Budget Year” and prescribed the method by which objections to said budgets or business plans would be raised and resolved (*id.* § 6.2[a]). That process included the following:

If, prior to the commencement of any Budget Year, the Board has not approved the amount to be allocated to all line items set forth

in the proposed Annual Budget for such Budget Year, then, as to any disputed line items, . . . the amount budgeted for such line item shall be deemed to be the amount, . . . of the corresponding line item in the immediately preceding Budget Year's Approved Budget, and such amount shall be controlling until such time as such disputed line item receives Board Approval or is resolved pursuant to arbitration in accordance with Section 6.2(b).

(*Id.*) Further, Section 7.3(c) provides that the parties would contribute their “Pro Rata Share of capital required to be funded by additional capital contributions for the purposes set forth in the Initial Budget” (*id.* § 7.3[c]).

“Contract terms themselves will be controlling when they establish the parties’ common meaning so that a reasonable person in the position of either party would have no expectations inconsistent with the contract language” (*Eagle Indus., Inc. v DeVilbiss Health Care, Inc.*, 702 A2d 1228, 1232 [Del 1997]).² “When there is uncertainty in the meaning and application of the terms of the contract, [Delaware courts] will consider testimony pertaining to” extrinsic evidence (*Pellaton v Bank of New York*, 592 A2d 473, 478 [Del 1991]). “However, if the instrument is clear and unambiguous on its face, neither [the Delaware Supreme] Court nor the [Delaware] trial court[s] may consider parol evidence ‘to interpret it or search for the parties’ intent[ions]’” (*id.* [citing *Hibbert v Hollywood Park, Inc.*, 457 A2d 339, 343 [Del 1983]]). In addition to the Initial Budget, the parties do not dispute that WWP JV prepared Annual Budgets for the 2019, 2020, 2021, and 2022 Budget Years (NYSCEF 345 ¶¶ 45-48, 53).

The Court concludes that the Agreement is clear and unambiguous with respect to the scope and expiration date of the Initial Budget. Based on the language set forth above, the Court finds that the Initial Budget expired at the end of the 2018 Budget Year (that is, December 31,

² No party disputes the Agreement is governed by Delaware law (*see* NYSCEF 204 § 15.8).

2018). WWP JV's chief rejoinder—that the “purposes” of the Initial Budget did not expire on December 31, 2018—is unavailing. While the “purposes” may have been carried forward into subsequent and distinct Annual Budgets, that does not foreclose a declaration that the Initial Budget itself expired.

Accordingly, it is

ORDERED that Arc & NYRT's motion for summary judgment (MS 13) is **granted**, and WWP JV's motion for summary judgment (MS 14) is **denied**, for the reasons set forth on the record and in this Decision and Order; it is further

ORDERED that WWP JV's cross-motion to strike portions (MS 13) of the Ashner Affidavit is **denied**, substantially for the reasons contained in Arc and NYRT's reply brief (NYSCEF 487); it is further

ORDERED, ADJUDGED, AND DECLARED that Initial Budget expired on December 31, 2018, and that Owner Member does not have an obligation to fund capital expenditures pursuant to the Initial Budget; it is further

ORDERED, ADJUDGED, and DECLARED that Owner Member and NYRT have no obligation to maintain the Reserve referenced in Section 7.3(b) of the Agreement and the Agreement does not preclude them from distributing said Reserve to stakeholders; it is further

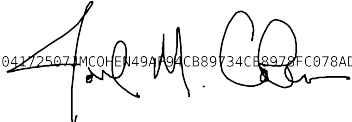
ORDERED that entry of judgment (and the effect of the declarations set forth above) is stayed for seven (7) days from the date this Decision and Order is filed to permit time for Defendant to file an application for an interim stay and motion to stay pending appeal in the Appellate Division, First Department; it is further

ORDERED that Arc and/or NYRT may submit an application for attorneys' fees, with adequate supporting documentation and briefing, within fourteen (14) days from the date of this

Decision and Order, and WWP JV may respond within ten (10) days from the date the application is filed; and it is further

ORDERED that the parties upload a copy of the transcript of the January 29, 2025 hearing to NYSCEF upon receipt.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

2/4/2025

DATE

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