Platthorn 64 Owner LLC v Continuum Analytics, LLC
2025 NY Slip Op 34074(U)
October 21, 2025
Supreme Court, New York County
Docket Number: Index No. 659268/2024
Judge: Judy H. Kim
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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PLATTHORN 64 OWNER LLC, PLATTHORN 67 OWNER LLC,

Plaintiffs,

- v -

CONTINUUM ANALYTICS, LLC,

Defendant.

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INDEX NO. 659268/2024

MOTION DATE 01/27/2025, 01/03/2025, 05/02/2025

MOTION SEQ. NO. 001 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45

were read on this motion to/for MISCELLANEOUS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 11, 12, 13, 14, 15, 16, 27

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69

were read on this motion to/for MISCELLANEOUS.

Upon the foregoing documents, defendant's motion to dismiss the complaint's second and third causes of action is granted and plaintiffs' motions to appoint a temporary receiver and release certain funds from escrow are denied.

FACTUAL BACKGROUND

In this action, plaintiffs Platthorn 64 Owner LLC and Platthorn 67 Owner LLC allege that on or about September 17, 2024, their predecessor-in-interest, Platthorn LLC, entered into a Purchase Agreement with defendant Continuum Analytics, LLC ("Continuum") in which

defendant agreed to sell real property located at 184 East 64th Street and 227 East 67th Street in Manhattan (the "Properties") for approximately $24 million.

As pertinent here, the parties agreed that this amount would be paid in two stages, with a good faith deposit of $1.2 million paid three days after the execution of the Purchase Agreement and the remaining balance of $23,065,703.98 (the "Closing Funds") paid at the closing (NYSCEF Doc No. 2, Purchase Agreement §2[a]-[b]). Both payments were to be held in escrow in an interest-bearing account at an institution selected by escrow agent Fidelity National Title Insurance Company (*id.* at §2[a], 18[a]).

Plaintiffs allege that they satisfied all of the closing conditions in the Purchase Agreement such that the closing was set for November 18, 2024, including payment of the Closing Funds, but that defendant failed to close on that date or thereafter (NYSCEF Doc No. 1, complaint). As a result, plaintiff brings this action, asserting claims for: (1) specific performance, seeking "an order directing [d]efendant to immediately take all steps necessary to close the [sale] and otherwise transfer title of the Properties to [p]laintiffs"; (2) a declaratory judgment that "defendant is in default under the Purchase Agreement" and is obligated to immediately take all steps necessary to close the sale; and (3) breach of contract, seeking money damages resulting from defendant's breach (NYSCEF Doc No. 51, complaint at 4, 46).

In motion sequence 001, plaintiffs move, pursuant to CPLR 6401(a), for an order appointing a temporary receiver to manage the Properties. In motion sequence 002, defendant moves, pursuant to CPLR 3211(a)(1) and (a)(7), to dismiss the complaint's second and third causes of action. In motion sequence 003, plaintiffs move for an order directing the "release of the Closing Funds to [p]laintiffs, without prejudice, during the pendency of this litigation" (NYSCEF Doc No. 65, order to show cause). These motions are consolidated for disposition.

DISCUSSION

Defendant's Motion to Dismiss

Defendant's motion to dismiss the complaint's second and third causes of action is granted.

The second cause of action, for a declaratory judgment, is dismissed as duplicative of plaintiff's claim for specific performance. "A declaratory judgment is unnecessary where a plaintiff can be accorded complete relief at law. Here, a declaratory judgment that the [Purchase Agreement] remains in effect would duplicate the remedy plaintiff seeks in its breach of contract causes of action for specific performance of the Contract" (*Little Cherry, LLC v Two Bridges Hous. Dev. Fund Co.*, 2016 NY Slip Op. 30435[U], 13 [Sup Ct, NY County 2016], *affd as mod sub nom. Little Cherry, LLC v Two Bridgeset Hous. Dev. Fund Co.*, 146 AD3d 714 [1st Dept 2017]; *see also Rabizadeh v 165 E 66, LLC*, 238 AD3d 575, 576 [1st Dept 2025]), Plaintiff argues, in opposition that "because Defendant's default and breach is continuing," the second cause of action "establishes ongoing harm caused by Defendant, and provides relief beyond transferring the property to Plaintiffs (e.g., expectation damages, loss of the use of the escrow deposit, costs Plaintiffs have and are incurring based on Defendant's ongoing failure to close" (NYSCEF Doc No. 16, memo of law in opp. at 11). However, as discussed infra, money damages are available, if at all, only in connection with plaintiff's specific performance claim.

The third cause of action, for unspecified money damages arising out of defendant's alleged breach of contract, is dismissed as precluded by section 14 of the Purchase Agreement. Section 14 provides that:

> (a) If Purchaser defaults in consummating the transaction contemplated hereunder for any reason except due to Seller's default, Seller's sole and exclusive remedy shall be to retain the Earnest Money as liquidated damages and cancel this Agreement with Purchaser responsible for the payment of any escrow cancellation fees. The parties acknowledge that:

> (i) it would be impracticable to fix the actual damages suffered by Seller as a result of such default and
>
> (ii) the amount of the liquidated damages represents a fair and reasonable compensation to Seller for such default.
>
> (b) If Seller defaults in consummating the transaction contemplated hereunder for any reason except due to Purchaser's default, Purchaser may, at its option:
>
> (i) terminate this Agreement, Escrow Agent shall immediately disburse the Earnest Money to Purchaser, and Seller shall promptly reimburse Purchaser for all reasonable, actual and documented out-of-pocket costs and expenses (in an amount not to exceed $250,000) incurred by Purchaser in connection with Purchaser's pursuit of the transactions contemplated by this Agreement, including reasonable attorneys' fees and diligence costs, and neither party hereto shall have any further rights or obligations hereunder, except for those which survive the termination of this Agreement; or
>
> (ii) pursue a suit for specific performance.

(NYSCEF Doc No. 2, Purchase Agreement at §14 [emphasis added]).

Where, as here, "a contract for the sale of real property contains a clause specifically setting forth the remedies available to the buyer if the seller is unable to satisfy a stated condition, fundamental rules of contract construction and enforcement require that [courts] limit the buyer to the remedies for which it provided in the sale contract" (*Gindi v Intertrade Internationale Ltd.*, 50 AD3d 575, 576 [1st Dept 2008] [internal citations omitted]; *see also Mehlman v 592-600 Union Ave. Corp.*, 46 AD3d 338, 343 [1st Dept 2007]). Accordingly, plaintiffs' recourse upon defendant's default was, per section 14(b) of the Purchase Agreement, to either terminate the Purchase Agreement or seek specific performance. As a breach of contract claim is not one of the remedies available to plaintiffs under the Purchase Agreement, they may not assert such a claim here.

Plaintiffs' arguments in opposition are unavailing. To credit plaintiff's interpretation of section 14(b)—that it sets forth two non-exclusive options, leaving plaintiff to pursue any remedy

it wishes—would violate a "cardinal rule of [contract] construction," namely "that a court adopt an interpretation that renders no portion of the contract meaningless" (*Kolmar Americas, Inc. v Bioversal Inc.*, 89 AD3d 493, 494 [1st Dept 2011] [internal citations omitted]). The fact that section 14(a) refers to defendant's "sole and exclusive" remedy upon plaintiffs' default while section 14(b) lists two remedies without this "sole and exclusive" language is of no moment; even without such language, this section clearly indicates that there are two options to choose from. Finally, plaintiffs' argument that sections 8 and 19 of the Purchase Agreement "contemplate money damages caused by Seller's default or breach" (NYSCEF Doc No. 16, memo of law in opp. at 4) is belied by a review of these provisions, which address the distribution of income from the Properties in the days surrounding the closing and the responsibility for attorneys' fees in the event of litigation, respectively.

The Appellate Division, First Department decisions plaintiffs cite are also irrelevant, as none involve a contract for the sale of real property (*see Granite Broadway Dev. LLC v 1711 LLC*, 44 AD3d 594, 595 [1st Dept 2007] [award of specific performance of construction contract and liquidated damages appropriate where contract's liquidated damages clause did not expressly limit defendant's remedy]; *Sutton Madison, Inc. v 27 E. 65th St. Owners Corp.*, 8 AD3d 90, 91 [1st Dept 2004] [defendant properly awarded specific performance of mortgage financing agreement where agreement's liquidated damages provision was, by its terms, not an exclusive relief available to defendant but merely a mechanism to induce performance]; *Locke v Aston*, 1 AD3d 160, 161 [1st Dept 2003] [ambiguous provision in agreement to collaborate on book that contemplated that, if collaboration was unsuccessful, text contributed by each party would revert to that party was not sole remedy in the event of breach and therefore did not preclude breach of contract claim]). Accordingly, the third cause of action is also dismissed.

However, the Court notes that while this is not "a breach of contract action, [in which] the purchaser is compensated for loss of bargain by recovering the difference between the value of the property and the contract price, together with such incidental damages as flow from the breach" (*Freidus v Eisenberg*, 123 AD2d 174, 177 [2d Dept 1986], *affd as mod*, 71 NY2d 981 [1988]), money damages may still be awarded to plaintiffs, should they prevail on their specific performance claim, in order to compensate them for damages sustained as a result of the delay to the closing (*id.*; *see also Cobble Hill Nursing Home, Inc. v Henry and Warren Corp.*, 196 AD2d 564, 567-68 [2d Dept 1993]).

Plaintiffs' Motion to Appoint a Temporary Receiver

Plaintiffs' motion for an order appointing a temporary receiver to take over the management and control of the Properties is denied. CPLR 6401(a) provides that "[u]pon motion of a person having an apparent interest in property…a temporary receiver of the property may be appointed…where there is danger that the property will be removed from the state, or lost, materially injured or destroyed." However, this is "an extreme remedy which can only be invoked in cases in which the moving party has made a clear evidentiary showing of the necessity for conservation of the property and protection of the interests of the movant" (*Hoffman v Hoffman*, 81 AD3d 600 [2d Dept 2011]) and no such showing has been made here.

Plaintiffs note that defendant has failed to pay real estate property taxes, submitting a tax search for both Properties indicating a property tax balance of $134,353.33 and $326,545.57 due and owing, respectively (NYSCEF Doc Nos. 22-23), and argue that this leaves the Properties at risk of an "imminent" tax lien sale and subsequent foreclosure. In opposition, defendant argues that plaintiffs have failed to show by clear and convincing evidence that there is a risk of irreparable loss, submitting the affidavit of Jaspreet Sethi, defendant's Asset Manager, attesting

that the 2024-2025 property taxes have not been paid because defendant is currently disputing the tax owed (NYSCEF Doc No. 28, Sethi aff at 1, 7). Sethi further represents that, upon the resolution of this challenge, defendant shall pay the taxes owed (*id.* at 9). In reply, plaintiff asserts that New York City's Department of Finance requires that taxes are timely paid notwithstanding any challenge and that defendant's normal course of conduct is to pay property taxes and then challenge the amounts of such taxes.

Ultimately, plaintiff has failed to establish that the extreme remedy sought is warranted. The claimed harm—foreclosure of a tax lien—is not, at present, "imminent" but is contingent on several events coming to pass. Specifically, no tax lien has yet been sold; indeed, the Department of Finance has not yet set a date for its annual sale of tax liens (Lien Sale Information - DOF NFP; https://www.nyc.gov/site/finance/property/property-lien-sales.page [last accessed October 15, 2025]). Moreover, defendant would be provided with multiple notices in advance of any such sale (*see* Administrative Code §§11-319, 11-320). This nascent danger distinguishes this case from *Puryear v Prokeen Management. Co. Inc.*, in which plaintiff submitted, inter alia, tax lien foreclosure commencement papers (*Puryear v Prokeen Mgmt. Co.*, 49 Misc3d 1207(A) [Sup Ct, Kings County 2015]). Finally, the affidavit submitted by defendant attesting that the Properties are financially secure and that funds are available to pay the outstanding taxes distinguishes this case from *Lefebvre v Shea*. While the defendants in *Lefebvre* failed to pay property taxes for the building at issue, placing it at risk of being sold at a tax foreclosure proceeding, the appointment of a receiver to manage decedent's estate was, fundamentally, motivated by evidence that the *Lefebvre* defendants had already commingled the estate's funds with their own and that much of the estate had already been dissipated (*Lefebvre v Shea*, 212 AD2d 884, 885 [3d Dept 1995]).

Accordingly, the motion to appoint a temporary receiver is denied without prejudice. However, defendant is directed to immediately notify the Court and Plaintiffs should it receive any notice of a tax lien sale and Plaintiffs may, upon receipt of such notice, move by order to show cause to renew this motion on an expedited basis.

Plaintiff's Motion to Release the Closing Funds

Plaintiffs' motion for an order directing the release of the Closing Funds from escrow is denied. Plaintiffs argue that nothing in the Purchase Agreement requires the Closing Funds to remain in escrow but fail to point to any case law supporting the relief sought. The cases they submit stand only for the proposition that where a seller of real property returns the buyer's down payment, the buyer's acceptance of same does not, in and of itself, establish an accord and satisfaction that would preclude a claim for specific performance (*see Merrill Lynch Realty/Carll Burr, Inc. v Skinner*, 63 NY2d 590, 596-597 [1984]). As such, they are not persuasive.

The Court does not credit defendant's argument that a release of these funds can only be exercised in the event the Purchase Agreement is terminated, as section 14(b) makes reference only to the return of the "Earnest Money" i.e., the first good faith payment of $1.2 million, to Plaintiffs, and is silent as to the disposition of the Closing Funds. However, it ultimately concludes that to permit Plaintiffs to withdraw these funds and use them for unspecified purposes, creating the possibility that they would not be available to Plaintiffs, should they prevail in this action, would be imprudent and contrary to the spirit of Plaintiffs' specific performance claim.

Accordingly, it is

ORDERED that plaintiffs' motion to appoint a temporary receiver to manage the Properties is denied without prejudice; and it is further

ORDERED that plaintiff's motion to release the Closing Funds is denied; and it is further

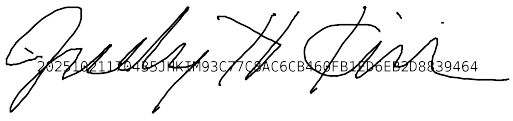
ORDERED that defendant's motion to dismiss the complaint's second and third causes of action is granted and they are hereby dismissed; and it is further

ORDERED that defendant shall, within ten days of the date of this decision and order, serve a copy of same, with notice of entry, upon plaintiff and the Clerk of the Court; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "EFiling" page on this court's website); and it is further

ORDERED that the parties are to appear for a preliminary conference on December 18, 2025, at 9:30 am.

This constitutes the decision and order of the Court.



10/21/2025
DATE

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

CHECK ONE:		**CASE DISPOSED**			X	**NON-FINAL DISPOSITION**	
		GRANTED		**DENIED**	X	**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**