

Atum Equity, LLC v 560 Seventh Ave. JV, LLC

2025 NY Slip Op 34886(U)

December 16, 2025

Supreme Court, New York County

Docket Number: Index No. 650311/2020

Judge: Debra A. James

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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. DEBRA A. JAMES

PART 59

Justice

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ATUM EQUITY, LLC,

Plaintiff,

- v -

560 SEVENTH AVENUE JV, LLC, 560 JV MEMBER LLC,
VC HOSPITALITY, LLC, AC 560 HOTEL PARTNERS
LLC, 560 MV HOTEL LLC, 560 SEVENTH PREFERRED
LLC, MURRAY HILL PROPERTIES LLC, BANYAN STREET
CAPITAL, LLC, SOHO PROPERTIES DEVELOPMENT
LLC, AQUARY GROUP CORP. DELAWARE LLC, and
SOHO PROPERTIES INC.,

Defendants.

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INDEX NO. 650311/2020

MOTION DATE 06/09/2020

MOTION SEQ. NO. 001

**RESETTLED DECISION +
ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40

were read on this motion to/for DISMISSAL.

ORDER

Upon the foregoing documents, it is

ORDERED that the Order dated December 16, 2025, resolving motion sequence numbers 001 in this action (NYSCEF Doc No 041), is VACATED, RESETTLED, AND CORRECTED, nunc pro tunc, pursuant to CPLR § 5019(a) [see Kiker v Nassau County, 85 NY2d 879 (1995)] as follows:

Upon the foregoing papers, it is

ORDERED that to the extent that it seeks to dismiss the first cause of action for breach of contract, the second cause of action for unjust enrichment, and the fourth cause of action for fraud,

the motion, pursuant to CPLR 3211(a)(1) and (7), of defendants, is granted as to defendant Soho Properties Development LLC only; and it is further

ORDERED that the motion is otherwise denied; and it is further

ORDERED that defendants are directed to serve an answer to the complaint within sixty (60) days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to post on NYSCEF a proposed preliminary discovery conference order or competing proposed preliminary conference order(s) at least two days before April 16, 2026, on which date counsel shall appear via Microsoft Teams before IAS Part 14, unless, by joint request to SFC-Part14-Clerk@nycourts.gov, such appearance be waived by the court.

DECISION

The first cause of action for breach of contract of plaintiff Atum Equity, LLC, against defendant Soho Properties Development LLC ("SPD"), is dismissed on the basis of that the development fee agreement between Atum, the defendant Murray Hill Properties LLC ("MHP"), and SPD (the "DFA"), was executed by SPD to acknowledge a single sentence in the DFA, but did not otherwise render SPD liable for the obligations owed by MHP. DFA, NYSCEF Doc No 24.

MHP contends that its obligations under the DFA were terminated upon the termination of the hotel management agreement (the "HMA"). However, MHP fails to establish that the conditions

precedent in the HMA termination agreement ("HMATA") were properly satisfied to effectuate termination of the HMA. Atum alleges that certain required payments be made under the HMATA to non-party Dream Hotel Group LLC ("DHG") were never paid. HMAA, NYSCEF Doc No 17. Despite the defendants' affidavit stating that the HMA was terminated on December 15, 2016 (NYSCEF Doc No 16, p. 4), communications on February 3, 2017 contemplating the termination of the HMA suggest the HMA was in still in effect. Letter dated February 3, 2017, NYSCEF Doc No 27 ("If DHG is unable or unwilling to contribute the required funds, 560 Seventh Avenue Owner LLC insists on an immediate termination of the existing HMA. . .").

Thus, under the liberal pleading standard of CPLR 3211, the first cause of action for breach of the DFA against MHP is sufficiently pled, and dismissal is not warranted. Furthermore, the motion to dismiss is denied with respect to the third cause of action for tortious interference. For the reasons stated above, the defendants' fail to establish that the DFA was not terminated. Therefore, Atum's allegations that the defendants AC 560 Hotel Partners LLC ("Flintlock"), Banyan Street Capital, LLC ("Banyan"), Aquary Group Corp. Delaware LLC (Aquary") were aware of the DFA between Atum and MHP, and intentionally procured MHP's breach of the DFA, resulting in damage to Atum, sufficiently state a claim for tortious interference with contract. See Bayside Carting, Inc. v Chic Cleaners, 240 AD2d 687, 688 (2d Dept 1997).

However, Atum's second cause of action for unjust enrichment against the defendants Flintlock, Banyan, Aquary, and SP is dismissed because the claim is duplicative of its breach of contract claim against MHP as it arises out of the same facts and circumstances and seeks similar damages. "An unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim.", Corsetto v Verizon New York, Inc., 18 NY3d 777, 790 (2012).

Finally, the fourth cause of action for fraud is dismissed, as Atum's allegations merely allege an attempt to defraud and does not allege that it suffered any damages as result of the fraud extraneous to its breach of contract claim. "If the fraud causes no loss, then the plaintiff has suffered no damages", Connaughton v Chipotle Mexican Grill, Inc., 29 NY3d 137, 142 (2017).

Debra A. James

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<u>12/16/2025</u> DATE					<u>DEBRA A. JAMES, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<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