Invar Intl. Holding, Inc. v 136 Field Point Circle Holding Co. LLC

2025 NY Slip Op 34999(U)

December 22, 2025

Supreme Court, New York County

Docket Number: Index No. 651197/2014

Judge: Judy H. Kim

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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INVAR INTERNATIONAL HOLDING, INC., ALEXANDER RAZINSKI, TANYA RAZINSKI,

Plaintiffs,

- v -

136 FIELD POINT CIRCLE HOLDING COMPANY LLC,

Defendant.

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INDEX NO. 651197/2014

MOTION DATE 01/08/2024, 09/09/2025

MOTION SEQ. NO. 015 016

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 015) 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 359

were read on this motion for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 016) 360, 361, 362, 363, 369

were read on this motion for MISCELLANEOUS.

Upon the foregoing documents, defendant's motion for summary judgment and plaintiffs' motion to "expedite proceedings" are denied.

FACTUAL BACKGROUND

On May 17, 2012, plaintiffs Alexander and Tanya Razinski leased 136 Field Point Circle in Greenwich, Connecticut from defendant 136 Field Point Circle Holdings Company LLC ("Field Point"), the owner of that property. On the same date, the Razinskis and their company, Invar Holding, Inc. ("Invar"), executed a Master Agreement with Field Point providing, as pertinent here, that:

> A. The Razinskis are the holder of an option to purchase for the Deed Price thereunder of $13,387,045.14 the real property commonly known as 136 Field Point Circle, Greenwich, Connecticut …

> 1.1 Assignment of Purchase Option.
>
> Conditioned upon, and effective immediately prior to, occurrence of the … [closing of the purchase and sale of the Property to Field Point], Razinski shall assign the Purchase Option Agreement to [Field Point] … in exchange for an "Option Acquisition Payment" consisting of: (a) $2,548,181.86 paid by [Field Point] to the Razinskis at the Real Estate Closing pursuant to Section 1.2: and (b) an additional $1,000,000 if [Field Point] is satisfied, in its sole and absolute discretion, with the progress of the Arbitration and Invar's business …
>
> 1.2 Use of Proceeds from Option Acquisition Payment.
>
> … The Razinskis shall be required to use the second installment of the Option Acquisition Payment (if any) as agreed upon in writing by Purchaser and the Razinskis.

(NYSCEF Doc No. 317, master agreement [emphasis added]).

In their complaint, plaintiffs allege that this $1 million payment would be used to pay Invar's legal fees and expenses incurred in an arbitration, entitled *Invar Int'l Inc. v. Zorlu Enerji Elektrik Uretem Anonim Sirketi and Talex International LLC*, pending in Geneva, Switzerland (the "Arbitration"). Plaintiffs further allege that "despite the fact that the Arbitration and Invar's business were progressing favorably throughout the relevant period, [Field Point] arbitrarily, irrationally and in bad faith denied funding of the additional $1,000,000 at a critical juncture," which "severely prejudiced Invar's ability to prosecute the Arbitration and ultimately left Invar in a position in which it was forced to accept a settlement of its claims that was substantially lower than it would otherwise have been entitled to recover, causing substantial damages to Invar and the Razinskis" (NYSCEF Doc No. 312, complaint at ¶¶2-3).

By order dated May 12, 2022, this Court (Hon. Frank P. Nervo) struck the complaint's allegations to the extent asserted on behalf of Invar, pursuant to CPLR 321(a), based upon Invar's failure to appear by counsel (NYSCEF Doc No. 316). In that order Justice Nervo also directed that the note of issue was to be filed by December 30, 2022, with dispositive motions filed within sixty

days after the note of issue was filed (*id.*). While plaintiffs filed the note of issue on December 30, 2022, that note of issue was subsequently vacated (NYSCEF Doc No. 275, vacatur order) and refiled on September 13, 2023.

On January 8, 2024, 117 days after that note of issue was filed, defendant filed the instant motion for summary judgment dismissing the complaint on the grounds that: (i) sections 1.1 and 1.2 of the Master Agreement, taken together, are an unenforceable "agreement to agree"; (ii) plaintiffs' alleged damages are speculative and their failure to ask their experts in the Arbitration to take a lower fee was an intervening cause of any harm suffered; (iii) plaintiffs' breach of the implied covenant of good faith claim is duplicative of their breach of contract claim and, in addition, the "enforcement" of this claim would "negate" section 1.2 of the Master Agreement; and (iv) the Razinskis do not have standing to assert a claim for losses from Invar's settlement of the Arbitration, because any such claim belong exclusively to Invar as the only one of the plaintiffs that participated in the Arbitration (NYSCEF Doc No. 320, memo of law).

In support of its motion, defendant submits the affidavit of Nicholas Prouty, its Managing Member, in which he attests that "[w]hen presented with Mr. Razinski's request that defendant lend him the additional funds, I considered both the progress of the arbitration and the business of his company" (NYSCEF Doc No. 311, Prouty aff at 13) and Alexander Razinski's deposition transcripts (NYSECEF Doc Nos. 314-315). In opposition, plaintiffs argue that defendant's motion is untimely, as it was filed outside of the sixty-day window for dispositive motions set by Justice Nervo, and contest each of defendant's arguments on their merits.

DISCUSSION

As a threshold matter, defendant's motion was filed beyond the sixty-day deadline set by Justice Nervo. However, defendant's explanation for their delay—that they believed in good faith

that the sixty-day deadline had been vacated when the note of issue deadline set in the same order was vacated—amounts to an excuse of law office failure (*see Betty v City of New York*, 12 AD3d 472, 473-74 [2d Dept 2004] [failure to timely move for an extension of time based on "counsel's ignorance of the legal effect of the compliance conference order," was "an excuse akin to law office failure"]) that is sufficient to establish good cause for their delay in making the instant motion (*ARCPE1, LLC v Pub. Serv. Mut. Ins. Co.*, 231 AD3d 661, 662 [1st Dept 2024] [internal citations omitted]). Accordingly, the Court addresses defendant's motion on its merits.

"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 demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [internal citations omitted]).

Defendant has failed to meet its burden here. Prouty's conclusory statement in his affidavit that he "considered both the progress of the arbitration and the business of his company" when declining to make the $1 million payment contemplated in section 1.1 of the Master Agreement does not establish that defendant's discretion was not exercised in bad faith.

Neither has defendant established that the Master Agreement's provisions concerning this discretionary payment was an unenforceable "agreement to agree." Section 1.2 of the Master Agreement was not a condition to be satisfied before payment of the $1 million to plaintiff but a limitation on how the Razinskis and/or Invar would disburse these funds after this payment, to be determined at a later date. The fact that the Master Agreement did not fix every term with absolute certainty does not render it an agreement to agree. "[N]ot all terms of a contract need be fixed with absolute certainty" (*Matter of Express Indus. and Term. Corp. v New York State Dept. of Transp.*,

93 NY2d 584, 589 [1999]) and the failure to resolve, up front, the manner in which the $1 million would be spent, if paid by defendant "did not vitiate the parties' meeting of the minds as expressed in the executed agreement" (*Sabetfard v Djavaheri Realty Corp.*, 18 AD3d 640, 641-42 [2d Dept 2005]). Indeed, the Master Agreement stands in stark contrast to the letters of intent at issue in the cases relied upon by defendant (*see e.g., New York Mil. Acad. v NewOpen Grp.*, 142 AD3d 489, 490 [2d Dept 2016] [letter of intent stating that parties would negotiate mutually acceptable definitive agreements regarding potential joint venture and loan while reserving right to withdraw from such negotiations at any time for any reason was unenforceable agreement to agree]).

Defendant's argument that plaintiffs' breach of implied covenant of good faith claim must be dismissed as a matter of law as duplicative of their breach of contract was already rejected, at least implicitly, in denying defendant's motion to dismiss. Defendant's argument that such a claim is, effectively, precluded by section 1.2 of the Master Agreement is also unavailing. Since, as discussed above, sections 1.1 and 1.2 address two independent events, plaintiffs' claim that defendant failed to act in good faith in connection with its obligations under section 1.1 has no bearing on section 1.2 and certainly does not "negate" it.

Defendant has waived their argument that the Razinskis do not have standing to assert the claim at issue here, having failed to raise this argument "in either a pre-answer motion to dismiss or [their] answer" (*Eida v Bd. of Managers of 135 Condominium*, 166 AD3d 561, 561-62 [1st Dept 2018] [internal citations omitted]). Finally, defendant's remaining arguments merely "point out gaps in the plaintiff's proof, which [is] insufficient to meet the defendant['s] burden" (*Iannucci v Kucker & Bruh, LLP*, 161 AD3d 959, 960 [2d Dept 2018] [internal citations omitted]; *see also Kliger-Weiss Infosystems, Inc. v Ruskin Moscou Faltischek, P.C.*, 235 AD3d 857, 859-60 [2d Dept 2025]).

Accordingly, it is

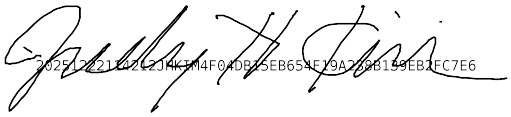
ORDERED that defendant's motion for summary judgment dismissing this action is denied; and it is further

ORDERED that plaintiffs' motion to "expedite proceedings" is denied; and it is further

ORDERED that the parties are to appear for a pre-trial conference on January 28, 2026, at 2:30 pm; and it is further

ORDERED that the trial of this action will be held in February 2026 and the parties are to arrive at the pre-trial conference prepared with available dates for trial and to discuss any motions in limine they intend to make.

This constitutes the decision and order of the Court.



12/22/2025
DATE

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

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