

Leon v AC Broadway Lender LLC
2025 NY Slip Op 35431(U)
February 25, 2025
Supreme Court, Nassau County
Docket Number: Index No. 606596/2021
Judge: Sharon M.J. Gianelli
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU
COMMERCIAL DIVISION: Part 7

BARRY LEON,
475 WASHINGTON AVENUE OWNERS LLC,
ABL VENTURE CAPITAL GROUP LLC,
J&B HOLDINGS LLC,

X

Index No. 606596/2021

Motion Seq. No. 003

Decision and Order

Plaintiffs,

-against-

AC BROADWAY LENDER LLC,
AVANT CAPITAL PARTNERS LLC,
CARDINAL CREDIT IX LLC,
388 BROADWAY OWNERS LLC,

Defendants.

X

Upon consideration of the parties' submissions, the Court's ruling is set forth below.

This is Defendants' motion for an Order of the Court granting Defendants summary judgment dismissing the four (4) causes of action alleged by Plaintiffs. The motion is unopposed.

In the underlying action, Plaintiffs seek payment from Defendants in connection with a loan and assignment/security agreement and related UCC Foreclosure sale.

By Second Amended Complaint, Plaintiffs bring the following four (4) causes of action: The First cause of action is for breach of UCC sec 9-615(d) and (f), brought pursuant to UCC sec 9-625(b). Plaintiffs seek payment from Defendants AC Lender, Avant and

Cardinal of surplus funds after payment of approximately \$1,900,000.00 owed on the collateral and the related expenses of the sale.

The Second cause of action is for breach of contract. Plaintiffs allege that Defendants breached their obligations under the AC Loan, the UCC, and/or the 388 operating agreement when they failed to “properly attempt to have the public sale accomplish the goal of reaching the property’s true, and optimal fair market value with sufficient marketing.”

The Third cause of action is for breach of fiduciary duty. Plaintiffs allege that Defendants failed from the outset in their primary responsibility as managers of the real property herein, namely to collect the rent.

The Fourth cause of action is for fraud and conspiracy to commit fraud. Plaintiffs allege on information and belief that Defendants have entered into an agreement to sell the property at issue to certain unknown tenants at the subject property, who have not paid rent in a significant period of time, and at a price that is significantly below market value.

Defendants assert that Plaintiffs lack standing to bring the UCC sec 9-625 claim, as Plaintiffs are neither debtors nor obligors. Further, Defendants assert that Plaintiffs claim that the equity interests sold in the UCC sale were valued at \$27,000,000, “upon information and belief”, despite the absence of bidders other than the secured creditor whose bid was \$1,000. Moreover, Plaintiffs assert, upon information and belief, and

nothing more, that there was a surplus in value at the UCC sale of the membership interests in 388 Broadway Owners LLC which was greater than the amount owed to AC Broadway Lender LLC, as well as the mortgage loan, which should have resulted in a distribution in the amount of \$3,600,000 to Plaintiffs, despite the fact that the only existing evidence supports a finding that the interest was worth less than the debt. Defendants contend that throughout discovery, Plaintiffs have failed to corroborate their assertion of the value of the equity interests by way of documents or expert opinion.

On a motion for summary judgment, the proponent must tender sufficient evidence to demonstrate the absence of any material issues of fact to make out a *prima facie* showing that it is entitled to judgment as a matter of law (*Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 [1985]). Here, Defendants have sufficiently demonstrated that Plaintiffs' causes of action are conclusory, at best and that no material issues of fact exist upon which to try the matter. Defendants have made a *prima facie* showing. The burden therefore shifts to Plaintiffs to produce evidence, in admissible form, to demonstrate the existence of an issue of material fact which requires a trial of the action (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 [1986]). Again, Plaintiffs have not produced such evidence and have not opposed the motion.

Accordingly,

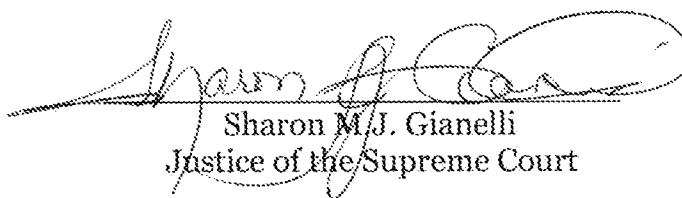
It is

ORDERED, that Defendants' motion for an Order of the Court granting Defendants summary judgment dismissing the four (4) causes of action alleged by Plaintiffs, is
Granted.

Any application not specifically addressed herein is denied.

This constitutes the Decision and Order of the Court.

Dated: Mineola, New York
February 25, 2025



Sharon M.J. Gianelli
Justice of the Supreme Court

ENTERED

Feb 27 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE