251 W. 30th Owner LLC v Justin Tower, LLC
2018 NY Slip Op 32780(U)
October 29, 2018
Supreme Court, New York County
Docket Number: 652192/2017
Judge: Gerald Lebovits
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. GERALD LEBOVITS **PART** IAS MOTION 7EFM

Justice

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INDEX NO. 652192/2017

251 WEST 30TH OWNER LLC,

MOTION SEQ. NO. 003

Plaintiff,

- v -

JUSTIN TOWER, LLC,251 HOLDINGS, LLC, RG ASSOCIATES RE LLC,BR1941 LLC,ANDREW JUSTIN, ULTRASOUND MUSIC INC.,EUGENE SINIGALLIANO

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 34, 35, 36, 37, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52

were read on this motion to/for DISMISS

Meister Seelig & Fein LLP, New York (Christopher J. Major and Eugene Meyers of counsel), for plaintiff.
Diamond McCarthy LLP, New York (Lon J. Seidman of counsel), for defendants.
Richard G. Jensen (admitted *pro hac vice*), for defendants.

Gerald Lebovits, J.

Defendants Justin Tower, LLC ("Justin Tower"), 251 Holdings, LLC ("251 Holdings"), Andrew Justin, RG Associates RE LLC, and BR1941 LLC ("Defendants" or "Sellers") move to dismiss six causes of action arising out of a Purchase and Sale Agreement ("PSA") between Justin Tower and Plaintiff 251 West 30th Owner, LLC ("Plaintiff" or "Buyer").

On December 10, 2015, Plaintiff entered into a PSA with Justin Tower to purchase a mixed-use building located at 251 West 30th Street in the Chelsea neighborhood of Manhattan, New York. The commercial space comprises more than 90% of the building. Residential apartments occupy the remainder. Intending to conduct significant renovations on the building, Plaintiff entered into the December 10, 2015 PSA with the understanding that all existing tenants would vacate the building "in or about June 2017." (NY St Cts Elec Filing [NYSCEF] Doc No. 1 at ¶ 50.) To ensure this would happen, Plaintiff required Defendants to make various representations, warranties, and disclosures. Two of those representations incited this action.

First, Defendant Sellers represented in the PSA that the commercial lease for tenant Ultrasound Music Inc. ("Ultrasound"), initially executed in 2012 ("2012 Lease") and extended in 2015 through 2019, was the operative lease of Ultrasound's tenancy. (NYSCEF Doc No. 43, Exhibit I-B.) The 2012 Lease (amended in 2015) contained a demolition clause that would give

Plaintiff the right to terminate the amended 2012 Lease at any time. Plaintiff and Defendant Sellers jointly sent a letter to Ultrasound exercising this termination right on April 28, 2016, the day before the PSA's Closing Date. (NYSCEF Doc No. 1 at ¶ 66.) The letter gave notice to Ultrasound that the 2012 Lease would be terminated on October 31, 2016. (*Id.*) However, on October 27, 2016, Ultrasound filed a lawsuit claiming that the 2012 Lease was not the operative lease, and, in fact, that Ultrasound had signed a new lease with Justin Tower in June 2014 ("purported June 2014 Ultrasound Lease" or "2014 Lease") that did not contain a demolition clause. (*Id.* at ¶ 67.) The purported June 2014 Ultrasound Lease was not included in the PSA or disclosed before its closing on April 29, 2016 ("Closing Date"). Ultrasound claimed that the purported June 2014 Ultrasound Lease was the operative lease, not the 2012 Lease. (*Id.*) Defendants have admitted their failure to list the 2014 Lease in the PSA. (NYSCEF Doc No. 35 at 9.)

Second, Defendant Sellers represented in Exhibit O of the PSA that Eugene Sinigalliano, a residential tenant in the building as well as the owner of Ultrasound, verbally indicated that he would leave his residential apartment "in approximately June 2017." (NYSCEF Doc No. 43, Exhibit O.) Defendants further represented that Sinigalliano no longer resided in the apartment. (*Id.*) If true, the protections afforded to Interim Multiple Dwelling ("IMD") tenants like Sinigalliano, such as rent stabilization and renewal rights, would not apply. In February 2017, however, Sinigalliano indicated that he intended to remain in the apartment indefinitely. (NYSCEF Doc No. 1 at ¶ 82.)

Sellers provided information about the Ultrasound and Sinigalliano tenancies both orally and in writing against the backdrop of a friendship between Andrew Justin and Sinigalliano. (NYSCEF Doc No. 1 at ¶ 70.) As required by the PSA, Defendant Sellers delivered a certificate ("Closing Certificate") to Plaintiff on the Closing Date certifying that the Sellers' representations and warranties were true and correct. (NYSCEF Doc No. 1 at ¶ 56.) Plaintiff alleges breach of the PSA and Closing Certification relating to the Ultrasound and Sinigalliano tenancies, contractual indemnification under the Assignment and Assumption of Leases relating to both tenancies, and fraud and negligent misrepresentation against all defendants. Lastly, Plaintiff seeks declaratory judgment against Andrew Justin.

Defendants move to dismiss all causes of action except the first, breach of the PSA and Closing Certificate relating to the Ultrasound tenancy, under CPLR 3211 (a) (1), (5), and (7).

Defendants' Motion to Dismiss Under CPLR 3211 (a) (1), (5), and (7)

Defendants move to dismiss six of the seven causes of action under CPLR 3211 (a) (1), dismissal based on a conclusive defense arising out of documentary evidence; CPLR 3211 (a) (5), dismissal based on affirmative defenses including statute of limitations defenses; and CPLR 3211 (a) (7), failure to state a cause of action.

With respect to Plaintiff's fourth, fifth, and sixth causes of action, Defendants' motion to dismiss is granted. This Court denies Defendants' motion to dismiss Plaintiff's second, third, and seventh causes of action.

On a CPLR 3211 motion to dismiss, the court must liberally construe the pleadings and "accord plaintiffs the benefit of every possible favorable inference." (*Goshen v Mut. Life Ins. Co. of New York*, 98 NY2d 314, 326 [2002] [internal quotation marks and citation omitted].)

CPLR 3211 (a) (1) further requires that documentary evidence "conclusively establish a defense to the asserted claims as a matter of law." (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994].)

Under CPLR 3211 (a) (7), a cause of action may be dismissed "if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017] [citation omitted].)

Point I – Motion to Dismiss Plaintiff's Third Cause of Action

Defendants move to dismiss Plaintiff's third cause of action, breach of the PSA and Closing Certificate relating to the Sinigalliano tenancy, on the ground that, under CPLR 3211 (a) (5), the contractually agreed-upon statute of limitations bars Plaintiff's claims relating to this tenancy. This motion is denied.

Under CPLR 213 (2), actions upon express or implied contractual obligations must be commenced within six years of the contract. CPLR 201, however, allows statutorily prescribed statutes of limitations to be shortened. Defendants argue that Plaintiff agreed to a shortened statute of limitations in the PSA. By Defendants' interpretation, Section 6.2 of the PSA would require any action to be brought within 180 days of the Closing Date, April 29, 2016. (NYSCEF Doc No. 35 at 13.) In other words, before October 26, 2016. Plaintiff commenced the action relating to the residential tenancy of Sinigalliano on April 24, 2017. The parties diverge on their interpretation of the following language of the PSA:

> "The representations and warranties set forth in Sections 6.1(d) through (p).... inclusive, shall survive Closing to the date (the '**Representation Termination Date**') occurring one hundred eighty (180) days after the Closing Date (the '**Survival Period**'), at which time such representations and warranties shall terminate and be of no further force or effect except as to any representation or warranty with respect to which Buyer has commenced an action against Seller for Seller's breach of any representation or warranty prior to the Representation Termination Date." (NYSCEF Doc No. 43, Purchase and Sale Agreement, Exhibit B at 14-15.)

Plaintiff contends that this is a survival clause. Defendants argue that this is a shortened statute of limitations. Plaintiff's Opposition Memo offers persuasive cases that contain nearly identical language in support of the claim that this is a survival clause. *(Cf. Hurlbut v Christiano*, 63 AD2d 1116, 1117 [4th Dept 1978]) [holding as clear, unambiguous, and not suggestive of a shortened statute of limitations period the following language: "representations and warranties ... shall survive the closing for a period of three (3) years"].) The language used in *Hurlbut* mirrors the language of the PSA preceding "at which time." Real estate transaction drafting

resources have also recommended similar language for creating survival periods for specified provisions. (*See e.g.* Alvin L. Arnold, Modern Real Estate Practice Forms § 17:51 [2017 Westlaw update].) Defendants' argument therefore rests on the second half of this excerpt of the PSA, after "at which time," to distinguish § 6.2 from Plaintiff's cases.

The question becomes whether the language "at which time such representations and warranties shall terminate and be of no further force or effect except as to any representation or warranty with respect to which Buyer has commenced an action against Seller for Seller's breach of any representation or warranty prior to the Representation Termination Date" limits the time period for when an action may be commenced. Defendant compares this language to that used in *Hunt v Raymour & Flanigan*, in which the contract "provided that 'any claim or lawsuit relating to [the employee plaintiff's] service with [R & F] must be filed no more than six (6) months after the date of the employment action that is the subject of the claim or lawsuit.'" (105 AD3d 1005, 1005 [2d Dept 2013].) This language differs from that used in PSA § 6.2 in that it contains the critical phrase "must be filed." The PSA terminates the time period for when representations and warranties will be of force, but it does not shorten the time period for when actions must be filed.

Defendants also rely on *Wayne Drilling v Felix Industries*, quoting language from the opinion but not from the contract between the two parties. (*See* 129 AD2d 633 [2d Dept 1987].) Language is critical to Defendants' case. A summary of the contract taken from the *Wayne* court's opinion does not provide satisfactory support to the Defendants. Equally unhelpfully, Defendants quote the statute of limitations clause of *Timberline Elec. Supply Corp.*, which, while an adequate example of a statute of limitations, does not resemble the language used in the PSA and hence does not bolster Defendants' argument. (NYSCEF Doc No. 49 at 8.)

Nothing in § 6.2 of the PSA clearly demonstrates that the parties to this contract agreed to a shortened statute of limitations period.

In the alternative, Defendants turn to the language of the Closing Certificate, which the Sellers unilaterally executed:

> "[E]ach [of] Seller's applicable representations and warranties contained in the Purchase Agreement (1) are true in all material respects on the date hereof (except to the extent of disclosure, if any, made in writing by such seller since the date of the Purchase Agreement), (2) shall survive closing under the Purchase Agreement as and to the extent provided in the Purchase Agreement and (3) shall not merge into the bargain and sale deed without covenants against grantor's acts being delivered by Seller at closing; provided, however, that any action concerning a breach of any of said representations or warranties must be commenced within one hundred eighty (180) days of the date of closing or shall be deemed waived." (NYSCEF Doc No. 47, Closing Certificate, Exhibit F.)

It is true that the Closing Certificate contains language that could indicate a shortened statute of limitations period ("any action concerning a breach of any of said representations or warranties must be commenced within one hundred eighty (180) days of closing or shall be deemed waived"). (*Id.*) But whether the Closing Certificate is binding on the Plaintiff remains

an open question. Plaintiff did not sign the Certificate, and it was not attached to the PSA. (NYSCEF Doc No. 40 at 21.) Section 13.3 of the PSA provides that the "Agreement may not be modified . . . except by a further agreement in writing duly executed by Buyer and Seller" unless the party unilaterally signing is "granting or making . . . consent, waiver, approval or authorization." (Purchase and Sale Agreement, *supra* at 14-15.) Defendants also recognized their uncertainty as to whether this Certificate binds Plaintiff during oral arguments stating, "if it isn't binding on the plaintiff, it certainly is instructive on what the parties intended with respect to this 180[-]day deadline." (NYSCEF Doc No. 53, Transcript of Proceedings at 4.) Plaintiff suggested a more convincing alternative, that "Sellers knew exactly what contractual language was needed to create a shortened limitations period," and they did not do so in § 6.2 of the PSA. (NYSCEF Doc. 40 at 20.) Regardless of Defendants' intentions, the Closing Certificate alone is not enough to grant the motion to dismiss the third cause of action based on the affirmative defense of statute of limitations under CPLR 3211 (a) (5). As a result, it is not necessary to discuss Plaintiff's alternative argument for a tolled limitations period arising out of fraudulent concealment. (NYSCEF Doc. 40 at 21.)

Point II – Motion to Dismiss Plaintiff's Second and Fourth Causes of Action

Defendants' motion to dismiss Plaintiff's second cause of action is denied.

This court grants Defendants' motion with respect to Plaintiff's fourth cause of action.

Second Cause of Action

The court denies Defendants' motion to dismiss, as against the Sellers, Plaintiff's second cause of action, contractual indemnification under the assignment and assumption of leases relating to the Ultrasound tenancy.

The Assignment and Assumption of Leases provides in relevant part,

> "Assignor agrees to protect, defend, indemnify and hold harmless Assignee, its successors and assigns, from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys' fees), court costs, suits, judgments, liability, claims and demands whatsoever in law or in equity, incurred or suffered by Assignee, its successors and assigns or any of them *arising out of or in connection with the Leases, with respect to any event or events occurring prior to the date of this Agreement, provided that any action with regard to an alleged breach of any such covenant of Assignor must be brought within two (2) years after the date of this Assignment and Assumption of Leases, as evidenced by filing or serving a complaint within such two (2) year period.*" (NYSCEF Doc No. 46. Assignment and Assumption of Leases, Exhibit E [emphasis added].)

With regard to the Ultrasound lease, Plaintiff argues that Defendants have indemnified Plaintiff for all losses, damages, and fees for any event(s) under the leases occurring before the Closing Date. (NYSCEF Doc No. 1 at ¶ 64.) The day before the Closing Date, Plaintiff and Defendants jointly sent Ultrasound a notice of termination of the 2015 lease. (*Id.* at ¶ 66.) This

termination attempt occurred before the Closing Date and has resulted in a lawsuit and losses arising out of that lawsuit. The facts of this lawsuit could viably lead to the conclusion that the losses, damages, and fees arising from it are precisely the costs against which this indemnification language sought to protect Plaintiff. Furthermore, Plaintiff has brought this action within two (2) years of the Assignment and Assumption of Leases. Defendants argue that this cause of action must be dismissed for failure to state a cause of action under CPLR 3211 (a) (7) due to the absence of an underlying claim. But there is an underlying claim, the lawsuit between Ultrasound and Plaintiff. Defendants' motion to dismiss Plaintiff's second cause of action is denied.

Fourth Cause of Action

Defendants' motion to dismiss Plaintiff's fourth cause of action, contractual indemnification under the Assignment and Assumption of Leases relating to the Sinigalliano tenancy, as against the Sellers, is granted. For both the second and fourth causes of action, Plaintiff argues that losses arising in the absence of an underlying claim may be covered by indemnification under the Assignment and Assumption of Leases. (NYSCEF Doc No. 40 at 24). Plaintiff provides no case law supporting this definition of indemnification. Each of the cases Plaintiff cites involve underlying claims. This requirement of an underlying claim is well understood by the courts as inherent in the definition of this type of provision. What the Plaintiff seeks are damages for breach of contract. Sinigalliano, in his capacity as a resident tenant, has not brought a claim against Plaintiff. Neither has Plaintiff provided facts sufficient to allow for an enforceable right of recovery or an inference thereof. Therefore, Defendants' motion to dismiss Plaintiff's fourth cause of action is granted under CPLR 3211 (a) (7).

Point III – Motion to Dismiss Plaintiff's Fifth & Sixth Causes of Action

Defendants move to dismiss Plaintiff's fifth and sixth causes of action based in part on the economic-loss doctrine. Both causes of action may be dismissed under this doctrine with regard to the Ultrasound Tenancy. Contrary to Plaintiff's claim, the economic-loss doctrine has been extended beyond the context of product liability cases. (*See e.g. BlackRock Allocation Target Shares: Series S. Portfolio v Wells Fargo Bank, Nat'l Ass'n*, 247 F Supp 2d 377, 387 [SDNY 2017], *affd in part sub nom Blackrock Balanced Capital Portfolio [FI] v U.S. Bank Nat'l Ass'n*, 2018 NY Slip Op 06990 [1st Dept 2018] [agreeing with the federal court's application of the economic-loss doctrine to bar tort claims made by certificate holders of residential-mortgage-backed securities trusts against the common trustee].) There has been much debate about the scope of the economic-loss doctrine, but courts have applied it to a broad range of cases. (*See e.g. JMP Sec. LLP v Altair Nanotechnologies Inc.*, 880 F Supp 2d 1029, 1042-1043 [ND Cal 2012] [finding fraud and negligent-misrepresentation claims barred by the economic-loss rule where "[t]he tort claims consist of nothing more than (the defendant's) alleged failure to make good on its contractual promises"].)

Plaintiff's first cause of action, breach of the PSA and Closing Certificate relating to the Ultrasound Tenancy, as against the Sellers and Justin Tower, is a contract claim that seeks the same damages as the tort claims comprising the fifth and sixth causes of action. Underlying the economic-loss doctrine is the principle "that damages arising from the failure of the bargained-

for consideration to meet the expectations of the parties are recoverable in contract, not tort." (*Washington Apts., L.P. v Oetiker, Inc.*, 43 Misc 3d 265, 270 [Sur Ct, Erie County 2013]; *accord Manhattan Motorcars, Inc. v Automobili Lamborghini, S.p.A.*, 244 FRD 204, 220 [SD NY 2007].) Plaintiff's fraud and misrepresentation claims against Ultrasound are precisely the sorts of claims the economic-loss doctrine seeks to prevent. Defendant Sellers' motion to dismiss the fifth and sixth causes of action as they relate to the Ultrasound Tenancy are therefore granted under CPLR 3211 (a) (7) for failure to present facts that would give rise to an enforceable right.

(A) Fifth Cause of Action

Defendants' motion to dismiss Plaintiff's fifth cause of action, fraud, as against all Defendants, is granted with respect to the claims relating to the Ultrasound Tenancy for the reasons set forth above under the economic-loss doctrine. With respect to the residential Sinigalliano tenancy, the claims of fraud are also dismissed.

CPLR 3016 provides that "[w]here a cause of action or defense is based upon misrepresentation, fraud, mistake, willful default, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in detail."

For a fraud claim to survive a motion to dismiss, "the plaintiff must allege representation of a material existing fact, falsity, scienter, deception and injury. In addition, each of these essential elements must be supported by factual allegations." (*Lanzi v Brooks*, 54 AD2d 1057, 1058 [3d Dept 1976], *affd* 43 NY2d 778 [1977].) Under CPLR 3016, these factual allegations must be stated in detail. To meet the deception requirement, a plaintiff must "reasonably believe that the representation is true [and] be justified in taking action in reliance thereon." (*Id.* at 1058.) As in *Lanzi*, the Plaintiff here should have known the limits of Defendant Sellers' promises and authority and that the Defendants "did not have the ability to make such a [. . .] guarantee" that Sinigalliano would leave the premises in June 2017. (*Id.*) Furthermore, Plaintiff was aware that Sinigalliano's status as a resident was in question. (NYSCEF Doc No. 1 at ¶ 50.) "In question" implies the possibility that Sinigallion's status as a resident could go one way or the other. Plaintiff should have known that these uncertainties, without any contractual promises made by Sinigalliano himself, had the capacity to unfold unfavorably. Plaintiff has not provided any factual allegations to indicate that Defendants had reason to believe that Sinigalliano's statement that he no longer resided in the residential apartment and agreed to vacate in 2017 was false. Plaintiff should have known the limits of Defendants' authority to enforce these statements.

Plaintiff and Defendants argue over whether Plaintiff's fraud claim is separate from Plaintiff's contract claim. Plaintiff cites *Gosmile, Inc. v Levine* in arguing that a misrepresentation of "present fact" can involve a separate breach of duty. (See 81 AD3d 77, 81 [1st Dept 2010].) While this might be so, this does not compensate for the fact that Plaintiff still does not put forth factual allegations that suggest Plaintiff's misrepresentations constituted deception. Plaintiff alleges that Sinigalliano and Defendant Sellers are friends, and for that reason we should assume fraud took place. (NYSCEF Doc No. 40 at 7.) This is simply too conclusory without additional details. Looking at the "full range of the [. . .] series of events," it

is hard to conclude based on these facts that Defendant Sellers "conducted [themselves] in bad faith." (*Braddock v Braddock*, 60 AD3d 84, 90 [1st Dept 2009].)

Defendants' motion to dismiss Plaintiff's Fifth Cause of Action, fraud, as against all Defendants, is granted with regard to Defendant Sellers.

(B) Sixth Cause of Action

Defendants' motion to dismiss Plaintiff's sixth cause of action, negligent misrepresentation, as against all Defendants, is granted under CPLR 3211 (a) (7) with respect to the claims against Sellers regarding the Ultrasound Tenancy for the reasons set forth above under the economic-loss doctrine.

This Court further grants the motion to dismiss the negligent-misrepresentation action, as against Defendant Sellers, as it concerns the Sinigalliano residential tenancy.

To maintain a cause of action for negligent misrepresentation, Plaintiff must be able to show that there existed "a special or privity-like relationship" between Plaintiff and Defendants "imposing a duty on the defendant to impart correct information to the plaintiff." (*J.A.O. Acquisition Corp. v Stavitsky*, 8 NY3d 144, 148 [2007].) An arms-length business transaction between sophisticated parties generally does not give rise to a special relationship. (*Hong Leong Fin. Ltd. [Singapore] v Morgan Stanley*, 44 Misc 3d 1231[A] [Sup Ct, NY County 2014], *affd* 131 AD3d 418 [1st Dept 2015].) Plaintiff and Defendants here are sophisticated parties. A vague statement that Sellers and Sinigalliano are friends is not enough to create an exception to this general rule. Furthermore, it should not have led Plaintiff reasonably to believe that Sellers possessed "unique or specialized information" or to put Sellers "in a special position of confidence and trust with [Plaintiff] such that reliance on the negligent misrepresentation is justified." (*Greenberg, Trager & Herbst, LLP v HSBC Bank USA*, 17 NY3d 565, 578 [2011].)

In addition, a claim for negligent misrepresentation requires that Defendants knew the information conveyed was false and that plaintiff reasonably relied on that information. Plaintiff does not allege any fact that would indicate that Defendants knew the statements regarding Sinigalliano's tenancy were false. Furthermore, the Plaintiff should know Defendants could not ultimately control the actions of Sinigalliano. Therefore, Plaintiff's reasonable reliance should have been limited to an understanding that information conveyed by a landlord about a tenant's past behavior cannot make certain the tenant's future behavior. In other words, Defendants may have learned from Sinigalliano that he no longer resided in the building and intended to leave, but they could not control his future decision to stay. For these reasons, the Plaintiff's sixth cause of action against Seller Defendants as it concerns the Sinigalliano residential tenancy is dismissed.

Part IV – Motion to Dismiss Plaintiff's Seventh Cause of Action

Defendants' motion to dismiss Plaintiff's seventh cause of action, declaratory judgment, as against Andrew Justin, is denied. The PSA's third amendment extends the period of time

during which Andrew Justin must ensure that 251 Holdings maintains a net worth of at least $1,522,500[1]. An open question remains, however, about what the parties intended with this sentence:

> "For the avoidance of doubt, the representations and warranties of Seller, set forth in Sections 6.1(d) through (p), inclusive, as they relate, refer and/or pertain solely to the Specified Matters, shall be in full force and effect and claims based thereon may be filed by Purchaser until April 26, 2017." (NYSCEF Doc No. 48, Third Amendment to the Purchase and Sale Agreement, Exhibit G.)

This is particularly true given the connection made between the $1,522,500 and damages in the PSA ("Buyer acknowledges and agrees that any actual Damages that arise as a result of Seller's breach of any representation or warranty shall be limited to $1.522,500"). (NYSCEF Doc No. 43, Purchase and Sale Agreement, Exhibit B). Whether the parties intended to have those funds available through the end of any litigation commenced prior to April 26, 2017 is a question of fact. Defendants' motion to dismiss this cause of action is denied.

Accordingly, it is

ORDERED that defendants' motion to dismiss plaintiff's fourth, fifth, and sixth causes of action is granted; and it is further

ORDERED that defendants' motion to dismiss plaintiff's second, third, and seventh causes of action is denied; and it is further

ORDERED that counsel for all parties shall serve a copy of this decision and order with notice of entry on all parties and on the Country Clerk's Office, which is directed to enter judgment accordingly; and it is further

ORDERED that counsel for all parties shall appear for a preliminary conference on November 21, 2018, at 10:00 a.m. in Part 7, room 345, at 60 Centre Street.

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[1] "Section 6.2 of the Agreement is hereby revised to provide that (A) the Representation Termination Date and Survival Period for the representations and warranties of Seller, set forth in Sections 6.1(d) through (p), inclusive, as they relate, refer and/or pertain solely to the tenant[] Ultrasound …are hereby extended to April 26, 2017 and (B) the obligation and guaranty of Andrew Justin to maintain and/or cause Justin to maintain a net worth of at least $1,522,500.00 is hereby extended to April 26, 2017. For the avoidance of doubt, the representations and warranties of Seller, set forth in Sections 6.1(d) through (p), inclusive, as they relate, refer and/or pertain solely to the Specified Matters, shall be in full force and effect and claims based thereon may be filed by Purchaser until April 26, 2017." (NYSCEF Doc No. 48, Third Amendment to the Purchase and Sale Agreement, Exhibit G.)

10/29/2018
DATE

GERALD LEBOVITS, 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