SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 3

----------x

QUADRIAD REALTY PARTNERS, LLC and DEVELOPMENT PLANNING & DESIGN, INC.,

Plaintiffs,

-and-

ROBERT M. GANS and W&G VENTURE HOLDINGS LLC

Index No.: 153621/2018

Mot. Seq. Nos. 002-004

Plaintiffs-Intervenors,

-against-

WILBEE CORPORATION, KING KULLEN GROCERY CO., INC., QUEENSBORO FARM PRODUCTS, INC., KAUFMAN BEDROCK ASTORIA I LLC, SILVERSTEIN PROPERTIES, INC., and BEDROCK REAL ESTATE PARTNERS, LLC,

Defendants.

----------x

BRANSTEN, J.

Defendants Bedrock Real Estate Partners, LLC ("Bedrock") and Kaufman Bedrock Astoria I LLC ("Kaufman") (Motion Seq. 002), Queensboro Farm Products, Inc. ("Queensboro") and Silverstein Properties, Inc. ("Silverstein") (Motion Seq. 003), and King Kullen Grocery Co., Inc. ("King Kullen") (Motion Seq. 004) move, pursuant to CPLR 3211 (a)(1) and (a)(7) to dismiss the complaints of plaintiffs Quadriad Realty Partners, LLC ("Quadriad") and Development Planning & Design, Inc. ("DPD"), and plaintiffs-intervenors Robert M. Gans ("Gans") and W&G Venture Holdings LLC ("W&G"). Defendant Wilbee Corporation ("Wilbee") joins with Queensboro and

Silverstein's motion. Motion Sequence Numbers 002, 003, and 004 are hereby consolidated for disposition.

I. BACKGROUND

Quadriad and DPD are real estate developers, and nonparty Henry Wollman ("Wollman") is Quadriad's principal. Wollman is the architect of a development plan for privately-funded, mixed-use, partially low income housing projects, known as the "New Strategy." (Corrected Complaint ("Compl.") ¶¶ 1-2, 22-25.) To implement the New Strategy, Plaintiffs identified the intersection of Steinway Street and 35th Avenue in Astoria, Queens as a potential location for development, christening the neighborhood "Steinway Square." (*Id.* ¶ 27.) Beginning in 2010, Plaintiffs began meeting with agencies and community boards to pursue the rezoning and other changes necessary to complete the project, and continued to do so throughout the project's lifespan. (*Id.* ¶¶ 46-69.) Between 2011 and 2012, Plaintiffs approached Queensboro, King Kullen, and Wilbee (the "Owners") to bring them into the project. (*Id.* ¶ 36.)

In early 2014, Wollman approached plaintiff-intervenor Robert M. Gans, who owned one of the sites slated for redevelopment as part of the Steinway Square project. (Corrected Complaint in Intervention ("Gans Compl.") ¶ 18.) Gans joined the project as a financial backer and contributed almost $5 million from 2014-2016. (*Id.* ¶ 19.)

A. *Quadriad Enters Into Ground Leases with the Owners*

At various times during 2015, Quadriad entered into a series of contracts with the Owners, each titled "Agreement to Enter Ground Lease." (Sartorius Affirm. Ex. B-1, Ex. 9 to the Scheiman Affirm. dated 4/19/18 ("Queensboro Agreement" dated 3/11/15); Ex. 10, ("King Kullen Agreement" dated 9/29/15); Ex. 11 ("Wilbee Agreement" dated 11/2/15).) The agreements are substantially identical, and provide that, while they are in effect, the Owners would not "market, advertise, discuss, negotiate, or enter into any agreement[s] . . . for the sale or long term lease of the property." (Queensboro Agreement ¶ 2.) On the closing date, Quadriad agreed to lease the Owner's properties. (*Id.*)

In exchange for not marketing their properties, Quadriad agreed to make certain non-refundable payments to the Owners, including monthly payments beginning on January 1, 2016. (*Id.* ¶ 3(a), (b).) Gans alleges that he was responsible for these payments as Quadriad lacked the funds to pay them. (Gans Compl. ¶¶ 24-25.) If Quadriad failed to make any payments, the Owners had the right to terminate the agreements on "ten days' prior written notice," which would also terminate "[the Owners'] obligation to lease and Quadriad's obligation to accept the lease of the [properties]." (Queensboro Agreement ¶ 3(c).) Finally, Quadriad agreed, "at its sole cost and expense," to undertake all necessary planning, applications, appearances before administrative agencies and the New York City Council, and all other steps necessary to accomplish a rezoning, permitting, or other changes necessary to insure the success of the

Steinway Square project. (*Id.* ¶ 6(e)(ii).)

On February 1, 2016, Gans, Wollman, and Quadriad entered into several agreements that, among other things, created plaintiff-intervenor W&G Venture Holdings LLC. (Gans Compl. ¶ 27.) All three acquired membership interests in W&G and transferred all assets related to the Steinway Square project, including the above described agreements. (*Id.*)

B. *Plaintiffs Negotiate with Kaufman, Bedrock and Silverstein*

Beginning in mid-2016, Plaintiffs began negotiations with Kaufman and Bedrock to add Kaufman's property to the project. (Gans Compl. ¶ 54.) Around the same time, Plaintiffs began negotiating with Silverstein to provide additional funding for the project. (Compl. ¶ 73.) These negotiations were inconclusive, and Plaintiffs began negotiating with nonparty financing entity HFZ. (*Id.* ¶ 75.) Plaintiffs allege that those talks collapsed in February 2017, in part due to Bedrock's "negativity," and Plaintiffs returned to Silverstein for further talks. (*Id.* ¶¶ 75-76; Gans Compl. ¶¶ 52-53.) As part of those negotiations, Quadriad provided Silverstein with "all current design, environmental and government submission materials . . . as well as providing extensive work on project pro formas reformatted to meet Silverstein's specific requirements." (Compl. ¶¶ 76, 83-85; Gans Compl. ¶¶ 54-55.) Silverstein allegedly shared that information with Bedrock, and the two companies used it to force Plaintiffs out of the project. (Compl. ¶¶ 76, 78; Gans Compl. ¶ 53.)

Quadriad alleges that, at some point, one of its partners stopped contributing funds to the project, and as a result, King Kullen and Queensboro terminated their respective agreements on June 9, 2016 and Wilbee terminated its agreement on September 20, 2016. (Compl. ¶ 41.) Gans' allegations are more detailed. Following an adverse zoning decision by the New York City Department of City Planning in early 2016, Gans reached out to the Owners to renegotiate the existing agreements between W&G and the Owners, but the Owners refused to negotiate. (Gans Compl. ¶¶ 36, 48-49.) Gans then breached the agreements by withholding the scheduled payments in order to force the Owners to come to the table. (*Id.* ¶ 49.) Gans alleges that Silverstein had been secretly negotiating directly with the Owners since its first discussions with Plaintiffs in early 2016 and convinced King Kullen and Queensboro to use Gans' breach to terminate the agreements and work directly with Silverstein. (*Id.* ¶ 49.) Despite this, Plaintiffs continued to work on the project, and worked to "regain control of the [properties]." (Compl. ¶ 42; Gans Compl. ¶ 50.)

In October 2017, Silverstein informed Plaintiffs that it would no longer cooperate with or include them in the project, and would not recognize Plaintiffs' contributions to the project. (Compl. ¶ 86; Gans Compl. ¶ 61.) Plaintiffs allege that Silverstein has entered into a "land-lease" agreement with King Kullen, and is pursuing a similar deal with Queensboro, neither of which involve plaintiffs. (Compl. ¶ 86; Gans Compl. ¶¶ 60-62.) Plaintiffs also allege, upon information and belief, that Silverstein has told the Owners that Quadriad and DPD do not have the ability to complete the project, and that

the Department of City Planning will not work with them, which are material misrepresentations. (Compl. ¶ 88; Gans Compl. ¶ 47.)

C. *The Instant Action*

Quadriad and DPD's Complaint sets forth three causes of action: tortious interference with prospective business relations against Silverstein and Bedrock (first cause of action); unjust enrichment against all Defendants (second cause of action); and breach of implied contract against all Defendants (third cause of action). The Gans complaint sets forth eight causes of action: tortious interference with contract against Silverstein and Bedrock (first intervenor cause of action); tortious interference with prospective economic advantage against Silverstein and Bedrock (second intervenor cause of action); unjust enrichment against Silverstein and Bedrock (third intervenor cause of action); unfair competition against Silverstein and Bedrock (fourth intervenor cause of action); idea misappropriation against Silverstein and Bedrock (fifth intervenor cause of action); promissory estoppel against the Owners (sixth intervenor cause of action); declaratory judgment against all Defendants (seventh intervenor cause of action);[1] and preliminary and permanent injunction against all Defendants (eighth intervenor cause of action).

[1] Gans and W&G voluntarily withdrew their seventh cause of action for a declaratory judgment. (Gans Memorandum of Law at 1 n.2.)

II. DISCUSSION

"On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction." *Leon v. Martinez*, 84 N.Y.2d 83, 87 (1994). "[The court] accept[s] the facts as alleged in the complaint as true, accord[ing] plaintiffs the benefit of every possible favorable inference, and determin[ing] only whether the facts as alleged fit within any cognizable legal theory." *Id.* at 87-88. "[W]here . . . the allegations consist of bare legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence, they are not entitled to such consideration." *Ullmann v. Norma Kamali, Inc.*, 207 A.D.2d 691, 692 (1st Dep't 1994).

A. *Tortious Interference with Contract (First Intervenor Cause of Action)*

For their first cause of action, Gans and W&G assert that Silverstein and Bedrock tortiously interfered with W&G's contracts with the Owners by inducing them to breach the exclusivity clauses therein. Defendants argue that W&G had already breached the ground lease agreements by withholding payments, and the Owners had the right to terminate. Further, they claim that, to the extent that Gans and W&G are asserting that the Owners breached the exclusivity clause, the allegations that Silverstein and Bedrock were negotiating with the Owners are vague and conclusory. In opposition, Gans and W&G argue that they sufficiently alleged that Silverstein and Bedrock were negotiating new agreements with the Owners prior to the Owners terminating their agreements with W&G, and, in fact, urged the Owners to terminate rather than renegotiate the existing

agreements. Moreover, they point out that W&G stopped paying each of the Owners at different times, but that the Owners' termination notices were coordinated, allegedly with Silverstein and Bedrock's assistance.

A claim for tortious interference with contract has four elements: "the existence of [the plaintiff's] valid contract with a third party, defendant's knowledge of that contract, defendant's intentional and improper procuring of a breach, and damages." *White Plains Coat & Apron Co., Inc. v. Cintas Corp.*, 8 N.Y.3d 422, 426 (2007). The third party must actually breach its contract with the plaintiff. *See Lama Holding Co. v. Smith Barney*, 88 N.Y.2d 413, 425 (1996) (affirming dismissal of tortious interference with contract claim where plaintiff failed to allege that defendant in fact breached its contract to provide financial advice and represent plaintiff in the disposition of plaintiff's Smith Barney stock).

Here, the parties do not dispute that Gans and W&G adequately allege that W&G had contracts with the Owners, that Silverstein and Bedrock knew about those contracts, and that W&G has been damaged. Further, the Gans Complaint's allegations that the Owners breached the exclusivity clauses of their respective agreements by negotiating with Silverstein and Bedrock in mid-2016 prior to the Owners terminating said agreements (Gans Compl. ¶ 47), is sufficient on a motion to dismiss to plead a breach of the underlying contracts. Bedrock's reliance on *Guard-Life Corp. v. Parker Hardware Manufacturing Corp.*, 50 N.Y.2d 183 (1980) is unavailing.

Silverstein's citation to *Apfelberg v. East 56th Plaza*, 78 A.D.2d 606 (1st Dep't 1980) and *Washington Avenue Associates, Inc. v. Euclid Equipment, Inc.*, 229 A.D.2d 486 (2d Dep't 1996), for the proposition that the Gans Complaint's allegations are too vague is inapposite, as both cases are distinguishable. *Apfelberg* was a case alleging fraud in a cooperative offering plan, and fraud requires a higher pleading standard. *Apfelberg*, 78 A.D.2d at 607. In *Washington Avenue Associates*, the plaintiff only alleged that one defendant had conversations with another defendant which caused the latter defendant to breach its lease, but provided no details. *Washington Ave. Assoc.*, 229 A.D.2d at 487. Here, by contrast, Gans and W&G allege not only that Silverstein and Bedrock were negotiating with the Owners to terminate the agreements and sign new agreements with Silverstein, but that Silverstein in fact has entered into agreements or letters of intent with King Kullen and Queensboro.

The same allegations are also sufficient at this stage to show that Silverstein and Bedrock induced the Owners to breach. Moreover, the Owners allegedly terminated their agreements only after meeting with Silverstein and Bedrock, after Silverstein and Bedrock had discussed the project with Plaintiffs and received information about the project, and after Bedrock had been tapped to add Kaufman's property to the project. *See CBS Corp. v. Dumsday,* 268 A.D.2d 350, 353 (1st Dep't 2000) ("the succession of events that occurred in this case was too coincidental to permit a finding, as a matter of law, that defendants did not improperly interfere with plaintiff's contractual relations").

Accordingly, those branches of Defendants' motions to dismiss the first intervenor cause of action for tortious interference with contract are denied.

B. *Tortious Interference with Prospective Business Relations/Economic Advantage (First Cause of Action and Second Intervenor Cause of Action)*

For their first cause of action, Quadriad and DPD assert that Silverstein and Bedrock interfered with their ongoing business relationships with the Owners. Specifically, they assert that Silverstein and Bedrock have "appropriated Plaintiffs' role as key creator, facilitator and developer of the Steinway Square project, and are negotiating and contracting with the Astoria Landowners to create ground lease agreements," have done so by wrongful means, and that, absent Silverstein and Bedrock's actions, they would have had an exclusive development relationship with the owners. (Compl. at 33). Gans and W&G make similar assertions for their second cause of action.

Silverstein and Bedrock argue that neither complaint adequately states that they acted solely to harm Plaintiffs or that they used wrongful means. Moreover, they claim that neither "but for" causation, nor Silverstein's alleged defamatory statements to the Owners, are sufficiently pleaded. In opposition, Plaintiffs state that they sufficiently allege that Silverstein and Bedrock urged the Owners not to negotiate with Plaintiffs regarding new ground lease agreements, and that Silverstein's alleged misstatements are sufficient wrongful means to defeat the motions.

"A claim for tortious interference with prospective business advantage must allege that: [1] the plaintiff had business relations with a third party; [2] the defendant interfered with those business relations; [3] the defendant acted with the sole purpose of harming the plaintiff or by using unlawful means; and [4] there was resulting injury to the business relationship." *Thome v. Alexander & Louisa Calder Found.*, 70 A.D.3d 88, 108 (1st Dep't 2009). The defendant's wrongful acts must be perpetuated by wrongful means and be the proximate cause of the plaintiff's injury. *Snyder v. Sony Music Entm't, Inc.*, 252 A.D.2d 294, 300 (1st Dep't 1999). Wrongful means are defined as "physical violence, fraud or misrepresentation, civil suits and criminal prosecutions, and some degrees of economic pressure; they do not, however, include persuasion alone although it is knowingly directed at interference with the contract." *Guard-Life Corp. v. Parker Hardware Mfg. Corp.*, 50 N.Y.2d 183, 191 (1980). A plaintiff must support a tortious interference claim with something more than speculation. *Burrowes v. Combs*, 25 A.D.3d 370, 373 (1st Dep't 2006).

Here, Plaintiffs have adequately alleged claims for tortious interference with prospective business relations. The complaints allege that Quadriad and, in succession, W&G, had business relations with the Owners, that Silverstein and Bedrock misappropriated Plaintiffs' documents and information to take over the Steinway Square project and negotiate directly with the Owners, and that at least two new agreements have been signed or contemplated that do not include Plaintiffs. Use of misappropriated information is sufficient wrongful means to sustain this claim. *CBS Corp. v. Dumsday*,

268 A.D.2d 350, 352-53 (1st Dep't 2000). While Silverstein and Bedrock argue that the information about the project was not proprietary, that question cannot be resolved on a motion to dismiss. Moreover, the complaints allege that Plaintiffs continued to work diligently on the project even after the Owners terminated the ground lease agreements, allegations which are sufficient at this stage to show that Silverstein and Bedrock interfered with Plaintiffs' relations with the Owners. As for Silverstein's alleged misrepresentations, Gans and W&G clarified in their papers that these statements are related to the first intervenor cause of action.

Accordingly, those branches of Defendants' motions to dismiss the first cause of action and second intervenor cause of action for tortious interference with prospective business relations/economic advantage are denied.

C. *Unjust Enrichment (Second Cause of Action and Third Intervenor Cause of Action)*

For their second cause of action, Quadriad and DPD assert that they have invested significant time and money into the Steinway Square project, and that it is against equity and good conscience to allow any Defendants to keep the benefits of that work without compensating them. Gans and W&G make similar assertions for their third cause of action, but only against Silverstein and Bedrock.

Defendants argue that Plaintiffs are trying to recover compensation for services rendered with respect to real estate transactions, and, thus, this claim is barred by the

statute of frauds. Further, they claim that the agreements between the parties, under which Quadriad, and later W&G, assumed all development costs, bar any attempt to recover those costs. Moreover, they assert that Plaintiffs' damages are essentially "avoided costs," which are not available as damages on a claim for unjust enrichment. Defendants also argue that, even if Plaintiffs have recoverable damages, they fail to plead that Defendants have actually been enriched at their expense, as the complaints only vaguely plead how Plaintiffs' information is being used and the proposed rezoning is still in the very early stages of New York's Uniform Land Use Review Procedure. Finally, Bedrock argues separately that it is not in sufficient privity with Plaintiffs to sustain this claim.

In opposition, Plaintiffs argue that the statute of frauds only bars claims based on serving as intermediaries, and Plaintiffs acted as primary developers of the project. Further, Plaintiffs claim that, to the extent that the ground lease agreements apply, they would only apply to the time period for which the contract was effect and, in any case, Plaintiffs may recover on an unperformed contract in *quantum meruit*. Moreover, Plaintiffs assert that there is a sufficient relationship among the parties to sustain this claim. Finally, Plaintiffs claim that Defendants' use of their proprietary documents and information, as well as the increased value of their properties and the design and legwork required to pull together the lots for the Steinway Square project itself are sufficient evidence that Defendants have been enriched at Plaintiffs' expense.

To state a claim for unjust enrichment, a plaintiff must show "that (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered." *Mandarin Trading Ltd. v. Wildenstein*, 16 N.Y.3d 173, 182 (2011) (internal quotation marks and citations omitted). Where payments are made pursuant to a contract, they cannot be the basis of an unjust enrichment claim. *Clark-Fitzpatrick, Inc. v. Long Island R.R. Co.*, 70 N.Y.2d 382, 388 (1987). "[A] plaintiff bringing an unjust enrichment action may not recover as compensatory damages the costs that the defendant avoided due to its unlawful activity in lieu of the plaintiff's own losses." *E.J. Brooks Co. v. Cambridge Sec. Seals*, 31 N.Y.3d 441, 457 (2018).

Philips International Investments, LLC v. Pektor, 117 A.D.3d 1 (1st Dep't 2014), cited by Plaintiffs, is instructive. There, as here, plaintiff alleged that it had negotiated to form a joint venture with defendants to invest in and manage a portfolio of properties, on which plaintiff conducted due diligence. The deal did not go forward, and defendants then took the due diligence information, created their own entities to purchase the properties, and cut plaintiff out of the deal. *Id.* at 3-4. The Appellate Division, First Department, upheld the trial court's decision denying defendants' motion to dismiss plaintiff's unjust enrichment claim, holding that there was a sufficient relationship among the parties, including the created entities, to support the claim. *Id.* at 7-8. Similarly here, Plaintiffs allege that they negotiated with Silverstein and Bedrock to join the project, they contracted with the Owners, and brought Kaufman into the project through Bedrock. As

the First Department has held, privity is not necessary to sustain a claim for unjust enrichment, merely allegations of a relationship that is not too attenuated. *Id.* at 7.

As to the remainder of Defendants' arguments, Plaintiffs acted as the primary developers of the project for seven years, far more participation in the transaction than the narrow set of intermediary functions barred by the statute of frauds. *See JF Capital Advisors, LLC v. Lightstone Grp., LLC*, 25 N.Y.3d 759, 765-67 (2015) (denying motion to dismiss based on statute of frauds where plaintiff was not acting as intermediary). To the extent Defendants rely on *E.J. Brooks Co. v. Cambridge Security Seals*, 31 N.Y.3d 441 (2018), that case concerned damages after a jury verdict, a different procedural posture from that herein. Moreover, the plaintiffs in *E.J. Brooks* had produced no evidence of their own losses, seeking to rely solely on defendant's gains to prove its damages. *See* 31 N.Y.3d at 445.

Here, by contrast, Plaintiffs do not solely rely on avoided costs, but rather, also allege that they have been damaged by being cut out of the development process in the new agreements between the Owners and Silverstein and Bedrock, from which they would have derived an economic benefit. (Compl. ¶ 86; Gans Compl. ¶ 61.) Additionally, despite the fact that the project itself is still being permitted, Plaintiffs adequately allege that Defendants have been enriched, in various ways, by the use of Plaintiffs' project-related materials and the increased value of the Owners' properties. Finally, the ground lease agreements were entered into in 2015, five years after Quadriad and DPD began work on the project. The agreements contain no retroactive language,

nor do they otherwise provide for any development costs other than those going forward. Thus, at this stage, Plaintiffs retain a viable claim regarding development costs incurred before and after the agreements were in effect.

Accordingly, those branches of Defendants' motions to dismiss the second cause of action and third intervenor cause of action for unjust enrichment are denied.

D. *Breach of Implied Contract (Third Cause of Action)*

For their third cause of action, Quadriad and DPD assert that they worked with Defendants on the Steinway Square project with the understanding that they would be a part of it, and that Defendants accepted the benefits of their work, forming an implied contract. To plead a claim for breach of contract, plaintiff must allege "the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages." *Harris v. Seward Park Hous. Corp.*, 79 A.D.3d 425, 426 (1st Dep't 2010). An implied contract requires the same proof as an express contract, including proof of mutual assent. *Maas v. Cornell Univ.*, 94 N.Y.2d 87, 93-94 (1999). A court should not find an implied contract where it is vague or indefinite in its material terms. *Matter of Sud v. Sud*, 211 A.D.2d 423, 424 (1st Dep't 1995).

Here, Plaintiffs' allegations are too vague and indefinite to allege an implied contract. Plaintiffs allege that they were to share in the "reputational and economic benefit of their role in the project" and Defendants "accepted and used the efforts made on their behalf by [P]laintiffs to their benefit," but the Complaint is devoid of any

allegations as to the terms on which Plaintiffs would be compensated. *See Cobble Hill Nursing Home v. Henry & Warren Corp.*, 74 N.Y.2d 475, 482 (1989) ("If an agreement is not reasonably certain in its material terms, there can be no legally enforceable contract"). Nor is there any allegation, especially in light of Plaintiffs' breach of the agreements with the Owners that there was mutual assent to such an implied contract. *See Maas*, 94 N.Y.2d at 93-94 (dismissing implied contract claim for failure to plead parties' intent that provisions would become terms of implied contract).

Plaintiffs attempt to argue that they have pled a contract implied in law, or a *quantum meruit* recovery for their work. To state a claim for *quantum meruit*, Plaintiffs must show performance of services in good faith, acceptance of services by the person to whom they are rendered, expectation of compensation, and the reasonable value of the services rendered. *Fulbright & Jaworski, LLP v. Carucci*, 63 A.D.3d 487, 488-89 (1st Dep't 2009). However, the ground lease agreements governed Plaintiffs' compensation for their efforts, and, thus, they cannot recover in *quantum meruit*. *See Douglas Elliman, LLC v. East Coast Realtors, Inc.*, 149 A.D.3d 544, 544 (1st Dep't 2017) (finding existence of contract fatal to *quantum meruit* claim).

Accordingly, those branches of Defendants' motions to dismiss the third cause of action for breach of implied contract are granted.

E. *Unfair Competition (Fourth Intervenor Cause of Action)*

For their fourth cause of action, Gans and W&G assert that Silverstein and Bedrock have co-opted the time and effort Plaintiffs put into the Steinway Square project, as well as specific project-related assets. Defendants argue that they did not misappropriate any proprietary information, and, at best, are only alleged to have used publicly available design plans, or information that Plaintiffs voluntarily shared during the due diligence process. Moreover, they argue that Gans and W&G's allegations regarding how Defendants are using the allegedly stolen information and documents are too vague to support a claim. Finally Defendants claim that Gans and W&G have not alleged bad faith.

In opposition, Gans and W&G argue that they have alleged a confidential relationship, due to the fact that they were negotiating with Bedrock and Silverstein to form a joint venture. Further, they claim that Silverstein and Bedrock are continuing to use the specific documents that Plaintiffs created to pursue their own version of the project without Plaintiffs' involvement, and that Silverstein and Bedrock are acting in bad faith by doing so since they obtained those documents during the negotiations.

The essence of a New York common law unfair competition claim is the "use in state of plaintiff's property or commercial advantage to compete against plaintiff." *ITC Ltd. v. Punchgini, Inc.*, 9 N.Y.3d 467, 479 (2007) (internal citation omitted). "Allegations of a bad faith misappropriation of a commercial advantage belonging to another by exploitation of proprietary information can give rise to a cause of action

for unfair competition." *Macy's Inc. v. Martha Stewart Living Omnimedia, Inc.*, 127 A.D.3d 48, 56 (1st Dep't 2015) (internal quotation marks and citations omitted). Such a claim also requires "either a confidential relation between the parties or a valid agreement to refrain from the alleged unfair competition." *V. Ponte & Sons v. Am. Fibers Intl.*, 222 A.D.2d 271, 271 (1st Dep't 1995).

Here, the parties were involved in an arm's length business transaction, and the Gans Complaint does not allege any agreement to refrain from competing on these terms. That it might be morally or ethically troubling is insufficient. Moreover, Gans and W&G can cite no binding case law that would establish a confidential relationship based on the alleged facts. Accordingly, those branches of Defendants' motions to dismiss the fourth intervenor cause of action for unfair competition are granted.

F. *Idea Misappropriation (Fifth Intervenor Cause of Action)*

For their fifth cause of action, Gans and W&G assert that the Steinway Square project and the New Strategy are novel ideas, and that they have been misappropriated by Silverstein and Bedrock. Idea misappropriation "requires proof of two elements: (1) a legal relationship between the parties in the form of a fiduciary relationship, an express contract, implied contract, or quasi contract; and (2) an idea that is novel and concrete." *Schroeder v. Pinterest Inc.*, 133 A.D.3d 12, 29-30 (1st Dep't 2015). "[T]he idea misappropriation claim cannot extend to material in the public domain." *Id.* at 30. "Improvement of standard technique or quality, the judicious use of existing means, or

the mixture of known ingredients in somewhat different proportions—all the variations on a basic theme—partake more of the nature of elaboration and renovation than of innovation." *Paul v. Haley*, 183 A.D.2d 44, 53 (2d Dep't 1992) (internal quotation marks and citations omitted).

Here, as set forth above with respect to the fourth intervenor cause of action for unfair competition, Gans and W&G do not allege the requisite fiduciary or confidential relationship; nor do they allege any other form of necessary legal relationship. Moreover, Plaintiffs admit in their papers that both the New Strategy and the specific mixture of housing types therein, which Plaintiffs allege are the basis for the Steinway Square project (Compl. ¶¶ 1-2, 6; Gans Compl. ¶ 14), have been publicly available for years on Quadriad's website, and have been the subject of many public presentations. While Gans and W&G try to argue that the project is disassociated from those concepts, that argument is belied by the complaints. Because the elements of the project are publicly available, Gans and W&G may not bring an idea misappropriation claim. *See Schroeder*, 133 A.D.3d at 30.

Accordingly, those branches of Defendants' motions to dismiss the fifth intervenor cause of action for idea misappropriation are granted.

G. *Promissory Estoppel (Sixth Intervenor Cause of Action)*

For their sixth cause of action, Gans and W&G assert that the Owners promised them, in the ground lease agreements, that they would only contract with Quadriad, and later W&G, and that Gans and W&G reasonably relied on that promise. "The elements of a claim for promissory estoppel are: (1) a promise that is sufficiently clear and unambiguous; (2) reasonable reliance on the promise by a party; and (3) injury caused by the reliance." *MatlinPatterson ATA Holdings LLC v. Fed. Express Corp.*, 87 A.D.3d 836, 841-42 (1st Dep't 2011). Where an express contract governs the subject matter of plaintiff's claim, "claims for promissory estoppel . . . are precluded by the fact that a simple breach of contract claim may not be considered a tort unless a legal duty independent of the contract—i.e., one arising out of circumstances extraneous to, and not constituting elements of, the contract itself—has been violated." *Brown v. Brown*, 12 A.D.3d 176, 176 (1st Dep't 2004). Here, Gans and W&G explicitly derive this claim from the ground lease agreements, and fail to establish that the owners violated a legal duty independent of those agreements.

Accordingly, those branches of Defendants' motion to dismiss the sixth intervenor cause of action for promissory estoppel are granted.

H. *Preliminary and Permanent Injunction (Eighth Intervenor Cause of Action)*

For their eighth cause of action, Gans and W&G seek a preliminary and permanent injunction enjoining Defendants from contracting "with any third party that would have the purpose or effect of giving legal possession or development rights in connection with the Steinway Square project to Silverstein, Bedrock, or any other party." (Gans Compl. ¶ 114.)

A cause of action for a permanent injunction requires allegations of "[a] violation of a right presently occurring, or threatened and imminent . . . that the plaintiff has no adequate remedy at law . . . that serious and irreparable injury will result if the injunction is not granted; and . . . that the equities are balanced in the plaintiff's favor." *Elow v. Svenningsen*, 58 A.D.3d 674, 675 (2d Dep't 2009) (internal quotation marks and citation omitted). Where the plaintiff can be sufficiently compensated by monetary damages, an injunction will not issue. *See Van Valkenburgh, Nooger & Neville v. Hayden Publ. Co.*, 30 N.Y.2d 34, 47 (1972).

Here, Gans and W&G fail to allege why they cannot be adequately compensated by monetary damages. While Gans and W&G claim that they will suffer irreparable harm if their assets and information are exploited, as stated above the elements of the development strategy have been publicly available for years. Moreover, given the documentary evidence attached to the instant motions regarding the Steinway Square project's accounts and billing, among other things, any damages should be readily ascertainable. *See e.g., 204 Columbia Heights, LLC v. Manheim*, 148 A.D.3d 59, 70-71

(1st Dep't 2017) (dismissing claim for permanent injunction due to existence of monetary damages). Accordingly, those branches of Defendants' motions to dismiss the eighth intervenor cause of action for a preliminary and permanent injunction is granted.

The court has considered the parties' remaining arguments, and finds them to be without merit.

III. CONCLUSION

Accordingly, it is hereby,

ORDERED that the motion of defendants Kaufman Bedrock Astoria I LLC and Bedrock Real Estate Partners, LLC (Motion Seq. 002) to dismiss the complaint of plaintiffs Quadriad Realty Partners, LLC and Development Planning & Design, Inc., and the Complaint in Intervention of plaintiffs-intervenors Robert M. Gans and W&G Venture Holdings LLC is granted to the extent that the third cause of action of the Complaint and the fourth, fifth, sixth, and eighth causes of action of the Complaint in Intervention are dismissed against those Defendants, and the motion is otherwise denied; and it is further

ORDERED that the motion of defendants Queensboro Farm Products, Inc. and Silverstein Properties, Inc., joined by defendant Wilbee Corporation (Motion Sequence 003) to dismiss the Complaint of plaintiffs Quadriad Realty Partners, LLC and Development Planning & Design, Inc., and the Complaint in Intervention of plaintiffs-intervenors Robert M. Gans and W&G Venture Holdings LLC is granted to the extent

that the third cause of action of the complaint and the fourth, fifth, sixth, and eighth causes of action of the Complaint in Intervention are dismissed against those Defendants and the motion is otherwise denied; and it is further

ORDERED that the motion of defendant King Kullen Grocery Co., Inc. (Motion Sequence 004) to dismiss the Complaint of plaintiffs Quadriad Realty Partners, LLC and Development Planning & Design, Inc., and the Complaint in Intervention of plaintiffs-intervenors Robert M. Gans and W&G Venture Holdings LLC is granted to the extent that the third cause of action of the Complaint and the sixth and eighth causes of action of the Complaint in Intervention are dismissed against said Defendant, and the motion is otherwise denied; and it is further

ORDERED that Defendants are directed to serve an answer to the Complaint and Complaint in Intervention within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a status conference in Room 442, 60 Centre Street, on February 5th, 2019, at 10 AM~~/PM~~.

This constitutes the decision and order of the Court.

Dated: New York, New York
December 20, 2018

ENTER:

HON. EILEEN BRANSTEN
J.S.C.