Moore St. Bldg. Corp. v Abbott Resource Servs. Co.
2023 NY Slip Op 33201(U)
September 14, 2023
Supreme Court, New York County
Docket Number: Index No. 650810/2014
Judge: Phaedra F. Perry
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
---X
MOORE STREET BUILDING CORP.,

Index No.: 650810/2014

Plaintiff,

DECISION/ORDER AFTER TRIAL

-against-

ABBOTT RESOURCE SERVICES COMPANY,

Defendant.
---X
J. PERRY, P.

This matter is brought by Plaintiff, Moore Street Building Corp. (Plaintiff), against Defendant Abbott Resource Services Company (Defendant and/or Abbott), for the dissolution of a Joint Venture Agreement (JVA) to develop the real property located at 42 North Moore Street, City, County and State of New York into legal condominiums. The subject building is a six-story building located in Tribeca. The cellar, ground floor and mezzanine (the commercial unit) are an office space in which Mr. Stephen Correlli, (Corelli) Plaintiff's Principal, used for his architectural practice. Floor two through six of the building each contain a single-floor apartment (the lofts). Plaintiff planned to develop these floors into condominiums. The subject property is regulated under Article 7-C of New York's Multiple Dwelling Law, also known as the Loft Law. Similar to Rent Stabilization, the Loft Law protects tenants of lofts from having their rent increased except in specifically permitted ways, and against eviction except for very specific enumerated reasons.

ABBOTT'S DEFAULT AT THE HEARING

On November 2, 2022, a bench trial was scheduled to begin on July 10, 2023. On June 28, 2023, a Last Clear Chance Conference was held, where the Court denied Defendant's request for an adjournment of the trial and ordered Ms. Sarah Davison, Defendant's Principal, to appear. On June 29, 2023, Defendant's Counsel emailed Plaintiff's Counsel that Ms. Davison, who resides in the Bahamas, had difficulty getting a flight to New York to appear for the trial (**Ex 100**). Defendant's Counsel advised that they may have to make an application for a short adjournment.

Defendant's Counsel emailed Plaintiff's Counsel on July 9, 2023, indicating that Ms. Davison flew from the Bahamas to Miami, but then flew back to the Bahamas because all connecting flights to New York had been cancelled due to inclement weather, and no flights to New York were available until the following night (**Exhibit 101**). This email had been received at 6:15 p.m. on July 9, 2023. An internet search revealed that there were nine flights between 4:30 p.m. and 9 p.m. from Miami to New York on July 9, 2023. One flight, American Airlines Flight 1113, had a scheduled departure time of 7:34 p.m., that departed shortly thereafter, and had available tickets for purchase (**Ex. 103**). On July 10, 2023, Defendant made two more applications for an adjournment. Defendant's applications were denied, but the Court allowed Ms. Davison to appear virtually or by telephone to listen in. However, the Court ordered her to appear if she were to give any testimony either on direct or cross-examination.

On July 11, 2023, the day the trial began, Defendant failed to appear. Further, Counsel for Defendant advised the Court that Ms. Davison, as Principal for Defendant, had fired them that morning and that Counsel wished to withdraw. The Court addressed Ms. Davison by telephone to inquire whether she wanted her current Counsel to represent her. Ms. Davison informed the Court that she did not. When asked why, she responded "because they haven't been able to get a continuance under these dire circumstances." Ms. Davison further communicated to the Court that her Counsel did not communicate with her and she did not know what was going on with the case. Defendant's Counsel apprised the Court that there had been a breakdown in their relationship with their client. Defendant's Counsel represented that there was a disagreement in strategy and Ms. Davison had refused their advice. Ms. Davison, admonished the Court that she needed to get off the phone in order that she could get on a flight to New York that day. The Court discharged Counsel for Defendant and permitted Plaintiff to move forward and prove its case. Prior to Plaintiff's closing on that day, the Court adjourned the trial for the day to allow the Defendant the opportunity to appear with counsel on the following day. The following morning, neither Defendant nor a newly retained attorney appeared in court.

The Court again notes that this trial was scheduled on November 2, 2022, the Court further notes that at no time on July 9, or July 10 did Defendant express a desire to replace her attorney. It appears to this Court that it was only after the attorney was not able to procure an adjournment did the Defendant decide to terminate the attorney's representation on the day of the trial.

Here, Defendant Corporation defaulted due to its failure to appear by counsel. By firing Defendant's counsel on the day of trial because counsel was unable to obtain an adjournment, Ms. Davison prevented Defendant from defending against Plaintiff's claims. Even if Ms. Davison appeared for the second day of the trial, which the Court permitted, the CPLR does not allow her to represent Defendant in Court. "A party, other than one specified in section 1201 of this chapter, may prosecute or defend a civil action in person or by attorney, except that a corporation or voluntary association shall appear by attorney, except as otherwise provided in sections 1809 and 1809-A of the New York City Civil Court Act, sections 1809 and 1809-A of the uniform district court act and sections 1809 and 1809-A of the uniform city court act, and except as otherwise provided in section 501 and section 1809 of the uniform justice court act." **CPLR 321.**

BACKGROUND

In 1990 or 1991 Plaintiff purchased Moore Street Building Corp. (Moore Street). At that time there were two mortgages on the building, one in connection with the purchase. Corelli had planned to develop the building into condos and had renovated the basement, ground floor and mezzanine into an office which he used as his office. He attempted to improve the rest of the building. He obtained a Certificate of Occupancy ("CO") but as noted, the building is occupied by tenants who are regulated under the Loft Law, and they fought him vigorously. He eventually spent a lot of money on attorney's fees and spent through the capital he had for the project. Within a couple of years of the purchase, he stopped making mortgage payments, and he was unable to pay the building's expenses, which were far greater than the revenues the building had generated from the regulated rents.

Sometime in 1998 Abbott reached out to Corelli to inform him that she now holds the mortgages. About 18 months later Abbot again reached out to Corelli to propose a joint venture agreement ("JVA") which was signed on August 2, 2001. The agreement provided *inter alia* that Moore Street would supervise the operation and the renovation of the building in addition to guaranteeing the rent for the first and second floors. Abbot was required to pay various costs and to cooperate and approve decisions. Although not specifically spelled out in the JVA, it appears that the parties believed the Venture would last approximately 3 years, the expected time for a condo conversion to occur.

As stated *supra*, the purpose of the JVA was to convert the lofts into a six-unit condominium.

> The Corporations' shall be obliged to: "to design, prepare plans and specifications, supervise the construction and completion of development to the property, the dimensions and scope of which are to be agreed to by the parties; secure all necessary permits; coordinate all work in the development of the Property and the improvements to be made thereon; supervise the maintenance and repair of the Property and the general operation and management of the Property; supervise all activities customarily carried on in connection with management of real property in the City of New York; cause a final Certificate of Occupancy to be issued for the Property which will reflect the units set forth above in Paragraph 1 of this Agreement; coordinate all activities in connection with all with all of the above; and to work with the attorneys preparing and presenting the Condo Plan. Stephen Correlli (Corelli) shall be the representative of the corporation in connection with all of the activities of the Corporation as set forth above and as otherwise provided in this Agreement and shall have limited authority to act for the Venture in all matters affecting the Venture or the Property except as otherwise specifically provided in this Agreement."
>
> ¶2 JVA

Further:

> The Co-Venturer [Abbott] will contribute to the Venture all sums required to pay the items set forth on Schedule 1 hereto attached. All tax liens pertaining to premises 42N. Moore Street, New York, New York with interest and additional charges thereon (Item 1), all real estate taxes currently owning on the Property (Item 2), all water and sewer charges which are current liens against the Property (Item 3) and the obligations set forth in Item 11, all Schedule 1 are to be paid by Co-Venturer upon the execution of this agreement. Co-Venturer will pay all items contained on schedule 1 hereto attached as same become due. In addition, Co-Venturer agrees to contribute up to an additional Three Hundred Thousand and No/100 ($300,000.00) Dollars for the development of the Property as outlined in Schedules 2 and 3. All sums contributed by the Co-Venturer shall be deemed advances made to further secure the First Mortgage and the amounts therein shall be deemed added

> to the unpaid principal balance of the First Mortgage. Upon the Closing (as hereinafter defined) Co-venturer will satisfy all of the Mortgages on the Property.
>
> JVA ¶3.

A closing was to occur within 30 days of the last of three events: the issuance of the Certificate of Occupancy; the Attorney General's approval of the offering plan; and the filing of the condo declaration. At the time of closing, Abbott would satisfy the mortgages, and the Corporation, or its designee would own the commercial unit and the second-floor residential unit free and clear of the mortgages. Abbot would own floors three through six, subject to the existing tenancies.

On September 19, 2001, six weeks after the JVA was signed, Plaintiff reached out to Defendant regarding hiring a lawyer to work on the offering plan. Corelli alleges that for reasons unknown, Defendant did not agree to hiring the lawyer. Plaintiff periodically communicated to Defendant that they needed to hire a lawyer to start on the offering plan, to which Defendant continually did not agree to do this. On February 24, 2006, Defendant wrote to Plaintiff, "I have offered to begin and pay for the legal work for the conversion upon the completion of your portion of the paperwork that will begin the process." Corelli testified that he continued to try to get Defendant to hire a lawyer until approximately June 2006, when Abbott finally hired an attorney, five years after the JVA was signed.

At trial, Mr. Corelli testified that it is the lawyer who states what is needed for the offering plan and that they (he and Ms. Davison) needed to work together to gather the necessary paperwork to satisfy the Attorney General. On May 9, 2006, more than five years later, a Certificate of Occupancy had been obtained.

From 2006 until the filing of Plaintiff's Complaint in 2014, the Joint Venture encountered several obstacles, the first of which was Defendant's refusal to become a sponsor of the offering plan.

> Each party agrees to provide such information and materials and to execute, acknowledge and deliver all documents that may be reasonably required in connection with the Plan to convert the Property to condominium ownership to be filed with the Attorney General of the State of New York, and each will agree to be a sponsor, if necessary, of the said Plan; and each will execute, acknowledge and deliver all agreements, certificates, consents and all other documents reasonably necessary for or related to the purposes of the Venture, the

conduct of activities reasonably required for the Venture and/or to comply with the requirements of law or otherwise reasonably required.

JVA ¶ 16.

Title 13, Section 20.3 of the New York Codes, Rules, and Regulations provides that a Condominium Offering Plan must include an "Introduction" which "[i]dentif[ies] the sponsor, and state when the sponsor acquired the property or sponsor's interest as a contract vendee." 13 NYCRR § 20.3(d)(3). Title 13, Section 23.1 of the NYCRR defines a sponsor as "any person, partnership, joint venture, corporation, company, trust, association or other entity who makes or takes part in a public offering or sale, in or from the State of New York, of securities consisting primarily of shares or participation interests or investments in real estate, including condominium units and other cooperative interests in realty." Here there is no dispute that for the subject property to be converted into condominiums, Defendant had to be a sponsor of the offering plan because of its position as a Co-Joint Venturer. At the time of the trial, and twenty-two years after the signing of the JVA, Defendant still had not become a sponsor for the offering plan.

At the hearing Corelli testified that another obstacle he encountered was payment of the expenses for the JVA. The JVA required Defendant to pay "all of the items set forth on Schedule 1" attached to the JVA. The items listed in Schedule 1 are tax liens on the subject property, real estate taxes owing on the property, real estate taxes accrued during the life of the Joint Venture, water and sewer liens, and charges accrued during the life of the Joint Venture, costs of construction as per the approved budget to achieve a new Certificate of Occupancy, cost of all filing fees and expediter charges in connection with filing plans and securing a new Certificate of Occupancy as agreed under the budget, attorney fees in connection with the preparation and filing of the offering plan, fees and charges in connection with division of the Property into tax lots as agreed under the budget, filing fees in connection with the filing of the offering plan, declaration of Condominium, and other filing fees up to and including the closing. Additionally, the JVA required Defendant to cover building improvement costs up to $300,000. As stated *supra*, the JVA required Defendant to use the rent it received to pay for these expenses. If the rent was not sufficient to completely pay these expenses, Defendant had to cover two-thirds of the deficiency and Plaintiff had to pay the rest. However, between 2004 and 2008, Plaintiff paid $80,000 in expenses which Corelli argued, should have been paid by Defendant.

A huge impediment to the JVA was the status of the tenants under the Loft Law. In 2001 when the parties signed the agreement, and to date, the building is regulated under Article 7C of the Loft Law. The law protects the tenants from eviction except in certain enumerated circumstances and governs rent increases. General Business Law (GBL) § 352-eeee, or the "Martin Act," provides that offering plans must be submitted to, and approved by, the AG before buildings may shift from residential rental status to condominium or cooperative ownership status. The Martin Act was designed as a way to encourage these conversion plans but still protect non-purchasing tenants from eviction, unconscionable rent increases, or coercion into purchasing their units. The law was changed in 2019 but prior to the change, at least one tenant was required to purchase one of the apartments, (referred to as a non-eviction plan).

Corelli testified that sometime in June 2004, he was able to negotiate a buyout of the fifth-floor apartment which was paid by Defendant. The apartment became a free market rental, and thereafter, Defendant's daughter moved in and has resided there rent free.

DISCUSSION

Plaintiff filed a Verified Summons and Complaint, dated March 13, 2014, seeking a declaratory judgment (1) that the JVA between it and Defendant had been dissolved, (2) ordering the winding up of all Joint Venture affairs, and (3) declaring that neither Defendant, nor the Joint Venture, acquired any interest in certain real property owned in fee by Plaintiff during the course of the Joint Venture. The Plaintiff argues that the JVA was either dissolved by, (1) the Defendant's alleged breach of the JVA, (2) the time for the JVA had expired, (3) the venture is no longer possible, (4) the relationship is irretrievably broken, (5) the Plaintiff terminated the JVA.

Defendant filed its Answer with Counter-Claims on or about May 29, 2014. Defendants brought five counter-claims in total, claiming: 1) breach of fiduciary duty; 2) breach of the agreement; 3) constructive trust; 4) accounting; and 5) specific performance. Plaintiff filed its Note of Issue on June 16, 2021.

Because there is no specific joint venture law, the courts routinely look to Partnership Law. Specifically, Plaintiff argues for dissolution of the Joint Venture under New York CLS Partnership Law § 62(1)(b), § 62(2), § 63(d), and § 63(f). Plaintiff argues that Defendant's refusal to be a sponsor of the offering plan was an express repudiation and willful breach of the Joint Venture, that a breakdown in the relationship between Correlli and Ms. Davison prevents the Joint Venture

from reaching its original purpose, and that Mr. Corelli expressed his will to dissolve the Joint Venture on several occasions starting on June 2006. Pursuant to NY CLS Partnership Law § 62(1)(b) and § 62(2), dissolution of a joint venture is caused by the express will of any partner or joint venturer. Plaintiff argues that dissolution occurred as early as June 2006, when Mr. Correlli expressed his desire to end the Joint Venture, or at the latest, March 13, 2014, when Plaintiff filed its Verified Complaint.

It is well settled that "[a] joint venture … is in a sense a partnership for a limited purpose, and it has long been recognized that the legal consequences of a joint venture are equivalent to those of a partnership," and, as a result, it is proper to look to the Partnership Law to resolve disputes involving joint ventures (Gramercy Equities Corp. v Dumont, 72 NY2d 560, 565, 531 NE2d 629, 534 NYS2d 908 [1988]; Sagus Mar. Corp. v Rynne & Co., 207 AD2d 701, 702, 616 NYS2d 496 [1994]). Eskenazi v. Schapiro, 27 A.D.3d 312, 314-315.

In Cahill v Haff (248 NY 377, 162 NE 288 [1928]), the Court of Appeals, citing to Partnership Law § 62, observed that notwithstanding provisions in a partnership agreement involving the termination of the partnership, any partner may repudiate the agreement at any time, reasoning that "[n]o agreement can prevent this result. No one can be forced to continue as partner against his will. He may be liable for breach of contract. Nothing more" (at 382; see also Staines Assoc. v Adler, 266 AD2d 52, 698 NYS2d 639 [1999] [sufficient evidence existed from which to conclude that the partnership had been dissolved when defendant transferred title to the partnership's primary asset, a residential brownstone in which the parties resided on separate floors, to himself individually, and encumbered the property with a mortgage, the proceeds of which he alone received]).

The JVA required the approval of the Co-Venturer for plans for development (as set forth in Paragraph 2 *supra*) which are to be filed with the agencies of government having jurisdiction ("Building Plan"); a budget for development and schedule of disbursements, preparation of the Condo Plan and entry into any lease for any portion of the Property (except such extensions of leases as may be required by law). (See ¶9 JVA). However, for reasons known only to the Defendant, the hiring of an attorney to work on the Offering Plan did not occur until 5 years after the parties signed the JVA. While Petitioner argues that this constituted a breach of the JVA, he continued to work on the JVA. Additionally, Corelli testified that he ceased paying rent to Abbott

which is also a violation of the JVA, however, it doesn't appear that Abbott attempted to dissolve the JVA.

While it may have become obvious to the parties that the conversion was not going to happen, the record reflects that neither party attempted, either explicitly, or through their actions, to dissolve the joint venture. For an example, although initially Abbott failed to approve the hiring of an attorney to work on the offering plan, Corelli continued to send correspondences to get an approval for the attorney.

Based on the evidence presented, the Court finds that the Joint Venture Agreement dissolved as of the filing of the complaint on March 13, 2014. Mr. Correlli testified that no work occurred after June 2006 to further the Joint Venture because of the actions of Defendant. These actions included, but are not limited to, the refusal to be the sponsor of the offering plan and failing to communicate with Plaintiff to further the Joint Venture. However, Plaintiff's own evidence suggests that he worked to continue the Joint Venture past June 2006. Plaintiff's **Exhibit 18** is a list of expenses incurred by Plaintiff for which it sought reimbursement from Defendant. Plaintiff incurred these expenses between 2004 and 2008. Although Plaintiff claims that the Joint Venture stalled in 2006 and no more work was done to further the Joint Venture, Correlli continued working on the building until 2008, seeking payment of costs from Defendant as outlined in the JVA. By seeking reimbursement from Defendant for the expenses incurred up until 2008, which the JVA required it to pay, Plaintiff cannot claim that work stopped on the Joint Venture in 2006.

Furthermore, several emails, which Plaintiff submitted into evidence, show that Plaintiff did not expressly state its desire to dissolve the JVA. Plaintiff's **Exhibit 15**, dated June 6, 2006, reads, in pertinent part, "I need to speak with you about a number of things relating to the preparation of the Offering Plan. I had given the lawyers what I could, but I am a little bit stuck until we can sort things out. I tired calling the number that I had for you…it does not seem to work." It is evident from this email that Corelli was attempting to continue the work pursuant to the JVA.

Plaintiff's **Exhibit 22**, dated March 19, 2010, reads, in pertinent part, "I think that it might be useful for you and I to sit down at some point and reassess our situation. While you have succeeded in obtaining housing for Vanessa, the long-term investment viability of this joint venture arrangement is clearly not what you had hoped for. While there certainly may be very attractive investment opportunities in real estate as a result of the current economic malaise, I do

believe that the particular circumstances of this property are such that it would not be among them. I know that you, like me, have been frustrated with this. Perhaps we can find a way to unwind things that will leave both of us better off. Please feel free to call me over the weekend if you would like to explore this further. Have a great weekend."

However, the record does not reflect that the Plaintiff through his actions, took any actual steps to dissolve the JVA at that time. Indeed, Plaintiff's **Exhibit 23**, dated April 28, 2011, reads "I have still not heard anything from your lawyer. If you think that there might be some basis on which to bring a non-primary residence action, I will need to evaluate that before we do anything. If you have hired an investigator and are in receipt of his findings you can forward them to me so that, if and when I hear from the lawyer, I will be in a better position to determine how to proceed. I also think that whatever the outcome of this particular episode might be, it would be a good idea for us to meet in person and review where we are after all of these years and whether or not we should continue our "joint venture. There may be some alternative arrangement that can provide for your daughters housing while salvaging your investment in this (mis)adventure."

As shown by these emails, Mr. Corelli, as Plaintiff's Principal, does not expressly state his will to dissolve the Joint Venture. In fact, his email from 2011 states that he needs further information from the lawyer hired for the Joint Venture to determine how to proceed. Furthermore, in the same email, he stated that he would need to meet with Ms. Davison to discuss whether the Joint Venture should continue, demonstrating that he did presume that the Joint Venture continued on this date. Despite all the obstacles the Joint Venture faced from its outset up until 2011, and Plaintiff's claim that Defendant breached the JVA, Plaintiff still entertained the notion of going forward in completing the condominium conversion based on Mr. Corelli's 2011 email. Furthermore, Plaintiff provides no evidence that it expressed its will to dissolve the Joint Venture between 2011 and 2014.

Plaintiff filed of a Verified Complaint on March 13, 2014, in which it unequivocally stated its will to end the Joint Venture. "If the joint venture has not been otherwise terminated, plaintiff hereby elects to terminate the joint venture as of the date of filing of this complaint and seeks the immediate winding up of all joint venture matters." The filing of the Complaint is the first time the Plaintiff expresses its will to dissolve the Joint Venture. **Therefore, this Court finds that the Joint Venture is dissolved as of the filing of Plaintiff's Verified Complaint.**

Petitioner argues that Abbott breached the agreement by failing to use the rent monies to pay for the building improvements. However, it was also a breach of the JVA that Petitioner failed to pay rent for the 1st and 2nd floors, something he testified to during the hearing. It is undisputed that twenty-two years after the initial signing of the JVA, the closing has not occurred. To date, there has been no closing under the JVA, which means that Moore continues to retain the title for the building and Abbott continues to hold the mortgages. As there has been no closing under the JVA, that the mortgages were never satisfied by Abbott, that Moore never transferred the title to Abbott, and that the Loft Law regulated tenants remain in the premises, the status of the premises remains as it was before the signing of the JVA.

As to the winding down of the JVA and to the extent the Defendant incurred expenses in connection with the JVA and those expenses are greater than the benefits the Defendant received, the Defendant could have continued with its claim for the difference. However, as Defendant fired her attorney on the day of trial, failed to appear the next day with new counsel which warranted a dismissal of her cross-petition, this court cannot render a decision regarding what if any amounts are compensable to Defendant.

Finally, by virtue of its default, Defendant Abbott has not met its burden on its counterclaims. Therefore, these claims are dismissed.

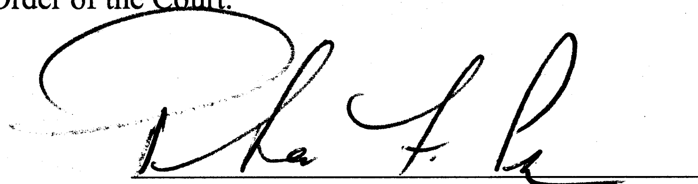
Accordingly, it is

ORDERED and ADJUDGED that the JVA between Moore Street and Abbott Resource Services Company is dissolved as of the filing of the Petition on March 13, 2014; and it is further

ORDERED and ADJUDGED that Defendant's counterclaims are dismissed; and it is further

ORDERED and ADJUDGED that Moore Street continues to own the premises located at 42 N. Moore Street.

This constitutes the Decision and Order of the Court.



Dated: 9/14/23

HON. PHAEDRA F. PERRY, A.J.S.C.