Bissell St. I, LLC v Westbrook Partners LLC
2023 NY Slip Op 34293(U)
November 21, 2023
Supreme Court, New York County
Docket Number: Index No. 654223/2022
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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BISSELL STREET I, LLC, BISSELL STREET BELLEVUE MEMBER, LLC,

Plaintiffs,

- v -

WESTBROOK PARTNERS LLC, WESTBROOK REAL ESTATE FUND XI, L.P., EGBW38R OWNER, LLC, EGBW38R HOLDINGS, LLC, EGBW38R REIT, LLC

Defendants.

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INDEX NO. 654223/2022

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 18, 19, 20, 21, 34

were read on this motion to DISMISS.

This dispute concerns, among other things, the validity and enforceability of certain agreements that were signed by one party but not the other.

BACKGROUND

According to the Complaint, the factual allegations of which are assumed to be true for purposes of this motion to dismiss, Plaintiffs Bissell Street I, LLC, and Bissell Street Bellevue Member, LLC (collectively, "Bissell Street" or "Plaintiffs") identified an opportunity to purchase and redevelop the Boeing Eastgate Campus, a 700,000 square foot office campus located in Bellevue, Washington ("Boeing Campus Property" or the "Property"). Bissell Street engaged in a bidding process for the Property (NYSCEF 2 ["Compl."] ¶1).

After Bissell Street advanced to the best and final round of four bidders, it brought the opportunity to Defendant Westbrook Partners LLC, a real estate management company that had not previously participated in the bidding process (*id.* at ¶2). Westbrook Partners, through its

subsidiaries Defendants Westbrook Real Estate Fund XI, L.P., EGBW38R Owner, LLC, EGBW38R Holdings, LLC, and EGBW38R REIT, LLC (collectively, "Westbrook" or "Defendants"), joined Bissell Street in the successful acquisition of the Boeing Campus Property on June 30, 2021, for a purchase price of $139,000,000 (*id.* at ¶3).

Prior to closing on the property, Westbrook and Bissell Street negotiated and agreed to the general financial terms under which Bissell Street would be compensated under the parties' arrangement – specifically, Westbrook approved Bissell Street's plan (in conjunction with Bissell Street's family office partner) to provide seven percent (7%) of the equity to acquire the Property (*id.* at ¶27-28).

On May 30, 2021, Westbrook sent Bissell Street the first draft of a Joint Venture Agreement (JVA) it had prepared. The parties exchanged comments and revisions to the Joint Venture Agreement as well as a draft management agreement that ultimately became the Amended Management Agreement (AMA) (*id.* at ¶32). On or around June 29, 2021, immediately prior to the scheduled closing, Westbrook informed Bissell Street that it preferred to finalize the Joint Venture Agreement post-closing (*id.* at ¶33).

On June 30, 2021, Westbrook closed on the acquisition of the Property (*id.* at ¶34). That same day, Westbrook again confirmed via email to Bissell Street that it intended to finalize the Joint Venture Agreement and AMA post-closing (*id.* at ¶35).

Within a few days, however, Westbrook changed course. During a call between the parties on July 2, 2021, Westbrook proposed revised terms for the joint venture, as well as a revised Joint Venture Agreement ("Amended JVA"). Most notably, Bissell Street's family office was no longer included as a source of equity, and Bissell Street's co-investment amount was

reduced to 0.7% of the total equity. Westbrook followed up with this proposal in writing, and Bissell Street agreed to the proposed terms (*id.* at ¶36).

The parties subsequently exchanged revised drafts of the Amended JVA and AMA. The AMA provisions entitled Bissell Street to an acquisition fee of $300,000. The acquisition fee was to be paid in exchange for Bissell Street's identification of the opportunity to purchase and redevelop the Boeing Campus Property and the work Bissell Street performed in connection with bidding on the property and successfully accomplishing the close of the acquisition as targeted (the "Acquisition Fee") (*id.* at ¶47). On July 17, 2021, Westbrook asked Bissell Street to execute the Amended JVA and the AMA. Bissell Street signed the agreements, as Westbrook had requested. Westbrook, however, did not (*id.* at ¶37).

On August 3, 2021, Westbrook changed course again. During a phone call between the parties on August 3, 2021, Westbrook informed Bissell Street that Bissell Street could no longer co-invest at all. Westbrook assured Bissell Street that Bissell Street would still receive fees and promoted interest consistent with the terms of the Amended JVA. Essentially, according to the Complaint, Westbrook offered Bissell Street the opportunity to earn the same economic benefit that the parties had negotiated under the original JVA and Amended JVA, but under a different structure and agreement (as it turned out, substituting an Incentive Management Agreement for the JVA). Bissell Street accepted the proposal (*id.* at ¶¶38-39).

Later on August 3, 2021, Westbrook confirmed in an email to Bissell Street that Westbrook's Investment Committee approved the terms of an Incentive Management Agreement ("IMA") that Westbrook intended to use in place of the Amended JVA (*id.* at ¶40). The IMA (as did the Amended JVA) provided for a profit-sharing structure in the form of a promoted interest in the profits of Westbrook's ultimate sale of the Property. According to Plaintiffs, the value of

the promoted interest is estimated to be $12 million based on the pro forma underwriting at the time of Westbrook's purchase of the property in 2021 (*id.* at ¶49–50).

On August 5, 2021, Bissell Street provided suggested (purportedly) immaterial revisions to the draft IMA, and on August 6, 2021, Westbrook accepted those proposed revisions (*id.* at ¶41). On August 26, 2021, the parties exchanged final drafts of the IMA and AMA. Bissell alleges that it signed both agreements (*id.* at ¶ 4). However, again, Westbrook did not (*id.* at ¶42).

Nevertheless, Westbrook requested that Bissell Street manage and oversee the redevelopment of the Boeing Campus Property from the closing date of June 30, 2021, through July 2022 (*id.* at ¶43). The management services were, according to Plaintiffs, consistent with the terms of the AMA (*id.*). Under the AMA, Bissell Street was supposed to have been paid monthly (*id.* at ¶44). Instead, Bissell Street received payment for six months of fees for the first time in December 2021 (*id.* at ¶44). In April 2022, at Bissell Street's insistence, Westbrook made payment to Bissell Street for four months of fees that allegedly had been past due under the AMA (*id.* at ¶45). However, Westbrook did not pay Bissell Street for work performed during the months of May, June, and July 2022 (*id.* at ¶46). Nor has it paid the acquisition fee referenced in the AMA.

On this motion, Westbrook contends that Bissell Street received the above-referenced monthly payments pursuant to signed fee agreements between the parties dated December 29, 2021 and May 13, 2022 (NYSCEF 15, 16 [the "Fee Agreements"]), rather than pursuant to the un-signed AMA upon which Bissell Street sues in this case (*see* NYSCEF 13 at 6). The Fee Agreements each state that Bissell Street I, LLC presented EGBW38R Owner, LLC with an

invoice for certain services performed for EGBW38R Owner, LLC. The Fee Agreements further state that:

> [T]he parties acknowledge that Manager [Bissell Street I, LLC] and Owner [EGBW38R Owner, LLC] are currently in active negotiations regarding an asset management agreement and an incentive management agreement with respect to the Property; it being understood that a binding commitment between the parties with respect thereto shall be set forth in final written agreements duly approved and executed by each of Owner and Manager.

(NYSCEF 15, 16).

Bissell Street filed this action on November 4, 2022 (NYSCEF 2), seeking compensation for its work related to the acquisition, development, leasing, asset management, and property management of the Property. Plaintiffs bring claims for (1) anticipatory breach of the IMA (2) declaratory judgment regarding the IMA, (3) breach of the Amended JVA, (4) breach of the AMA, and (5) unjust enrichment.

Defendants now moves to dismiss the Complaint in its entirety. For the following reasons, Defendants' motion is granted in part.

DISCUSSION

CPLR 3211(a) provides, in part: "A party may move for judgment dismissing one or more causes of action asserted against him on the ground that: (1) a defense is founded upon documentary evidence; . . . (5) the cause of action may not be maintained because of . . . statute of frauds; or . . . (7) the pleading fails to state a cause of action[.]" (CPLR 3211(a)(1), (a)(5), (a)(7)). In considering a motion brought under CPLR 3211(a), "the court must 'accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory'" (*DKR Soundshore Oasis Holding Fund Ltd. v Merrill Lynch Int'l*, 80 AD3d 448, 449

[1st Dept 2011], quoting *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). "[H]owever, 'allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration'" (*Myers v Schneiderman*, 30 NY3d 1, 11 [2017] [citations omitted]).

A motion to dismiss under CPLR 3211(a)(1) "may be granted 'only where the documentary evidence utterly refutes [the complaint's] factual allegations, conclusively establishing a defense as a matter of law'" (*id.* at 449-50 [alteration in original], quoting *Goshen v Mut. Life Ins. Co. of NY*, 98 NY2d 314, 326 [2002]).

I. Statue of Frauds

As an initial matter, Defendants contend that the partially executed IMA is void under GOL §§ 5-701(a)(1), which provides that an agreement, promise or undertaking must be in writing signed by the party to be bound if (i) "by its terms is not to be performed within one year from the making thereof or the performance of which is not to be completed before the end of a lifetime" (GOL § 5 701(a)(1)). Defendants argue that "[u]nder the terms of the IMA, the contract continues for more than a year unless EGBW38R Holdings, LLC terminates it for cause" (NYSCEF 3 § 5.1). This argument is unavailing.

"The critical test … is whether 'by its terms' the agreement is not to be performed within a year. Since neither party has contended that the alleged agreement contained any provision which directly or indirectly regulated the time for performance, the agreement is not within the bar of subdivision 1" (*Freedman v Chem. Const. Corp.*, 43 NY2d 260, 265 [1977]). Whether the agreement can be *terminated* within one year without breach is not the relevant question (*D & N Boening, Inc. v Kirsch Beverages, Inc.*, 63 NY2d 449, 456 [1984]; *Cohen v Trump Org. LLC*, 2019 NY Slip Op 32565[U], *13-14 [Sup Ct, NY County 2019]). There is nothing in the IMA

that precludes it from being performed within one year. Accordingly, Defendant has not established that the purported agreement embodied in the partially executed IMA is void as a matter of law under GOL § 5 701(a)(1).

Next, Defendants argues that Plaintiff's claims seeking a $300,000 acquisition fee—either under the AMA[1] or via unjust enrichment—as compensation for their "time and effort to identify the opportunity for the Boeing Campus Property and perform the necessary work to effectuate the acquisition," is barred by GOL § 5-701(a)(10). That provision requires that a contract, whether in fact or law, be in writing and signed by the party against whom enforcement is sought if that contract is to pay: "compensation for services rendered . . . in negotiating the purchase, sale, exchange, renting or leasing of any real estate or interest therein, or of a business opportunity. . . ." (GOL § 5-701(a)(10)). "'Negotiating' includes procuring an introduction to a party to the transaction or assisting in the negotiation or consummation of the transaction." (*id.*). "This provision has been held to apply to finder's fee agreements" (*Rogoff v San Juan Racing Ass'n, Inc.*, 77 AD2d 831, 832 [1st Dept 1980], *affd*, 54 NY2d 883 [1981]).

Defendant has not demonstrated conclusively that the acquisition fee contained in the partially executed AMA is barred by GOL § 5-701(a)(10). The Court of Appeals has "warned against the "pitfalls" of interpreting General Obligations Law 5–701(a)(10) too broadly" (*Dorfman v Reffkin*, 144 AD3d 10, 17 [1st Dept 2016], citing *Sporn v Suffolk Mktg., Inc.*, 56 NY2d 864 [1982]). "The reason for this concern is that '[t]oo broad an interpretation would extend the writing requirement' to situations beyond those intended by the legislature" and thus,

[1] The Moving Brief did not address whether the Statute of Frauds applied to the AMA in the context of the breach of contract action. Defendants submit this is because the purported AMA appended to the Complaint (which Plaintiffs replaced in their reply papers) did not provide for an acquisition fee (*see* NYSCEF 21 at 9 n 4).

the application of GOL 5-701(a)(10) should be decided on a case-by-case basis (*Dorfman*, 144 AD3d at 17).

Section 5-701 (a) (10) "interdicts oral agreements to pay compensation for services rendered with respect to the *negotiation* of the purchase of real estate or of a business opportunity or business" (*JF Capital Advisors, LLC v Lightstone Group, LLC*, 25 NY3d 759, 766 [2015] [emphasis in original]). It does not apply to allegations "seeking recovery for work performed so as to inform defendants whether to partake in certain business opportunities, that is, *whether to negotiate*. To the extent the causes of action are based on such allegations, they are not barred by the statute of frauds." (*id.* [emphasis in original]). Here, Plaintiffs argue that many of the services they performed extend beyond furthering the negotiation and consummation of the transaction for the Boeing Campus Property, and were made in furtherance of informing Defendants whether to negotiate, such as "drafting redevelopment plans," "conducting environmental and physical due diligence; identifying and engaging third party consultants; supervising vendors; [and] reviewing zoning issues." (*see* Compl. ¶ 87). These allegations, at this stage, are sufficient to withstand a motion to dismiss based on GOL § 5-701 (a) (10).[2]

For the same reasons, Plaintiffs' claim for the acquisition fee under its unjust enrichment claim is not facially barred by GOL § 5-701(a)(10) (*Sonenshine Partners, LLC v Duravant LLC*, 191 AD3d 567 [1st Dept 2021] [finding plaintiff's unjust enrichment claim is not barred GOL § 5–701(a)(10) "because the complaint alleges that [plaintiff] was not simply an intermediary, providing services in the negotiation or consummation of a business opportunity. Rather, it

[2] The AMA provides that "[i]n the event that any portion of this Agreement shall be declared invalid by order, decree, or judgment of a court, this Agreement shall be construed as if such portion had not been inserted herein" (NYSCEF 20 § 8.6).

allegedly performed work aimed at informing [defendant] whether to purchase [a company] or one of its subsidiaries"]; *Dorfman v Reffkin*, 144 AD3d 10, 19 [1st Dept 2016] [finding that a portion of the plaintiff's unjust enrichment claim was not barred by the Statute of Frauds because some of the alleged services provided by the plaintiff went "beyond assisting in the negotiation or consummation of such opportunity."]).

The Statute of Frauds aside (for purposes of this motion to dismiss), the next question is whether Plaintiffs sufficiently plead that there was a binding agreement between the parties based on the exchange of draft documents and signature by Bissell.

II. Anticipatory Breach of The Incentive Management Agreement (IMA) and Breach of Management Agreement (AMA)

Plaintiffs have sufficiently alleged that the IMA and the AMA were valid and binding contracts between the parties, despite Defendants failing to execute them. "Provided there is objective evidence establishing that the parties intended to be bound, an agreement need not be signed to be enforceable, unless the parties have agreed that their contract will not be binding until executed by both sides" (*Ostojic v Life Med. Tech., Inc.*, 201 AD3d 522, 523 [1st Dept 2022] [citation omitted]).

The "factors to consider in determining whether the parties intended not to be bound without an executed writing [are] (1) whether there has been an express reservation of the right not to be bound in the absence of a writing; (2) whether there has been partial performance of the contract; (3) whether all of the terms of the alleged contract have been agreed upon; and (4) whether the agreement at issue is the type of contract that is usually committed to writing'" (*Kowalchuk v Stroup*, 61 AD3d 118, 123 [1st Dept 2009]).

Here, as in *Kowalchuk*, not only is it alleged that all the terms been agreed upon, but they were also fully reduced to writing with ample specificity. Although Defendants argue the AMA

is not definite enough, they cite no material terms that are left open in the purported agreement. Further, there is no express indication that the parties intended for their agreement (if one can be proven) to be non-binding unless and until the document was executed (*see Prospect St. Ventures I, LLC v. Eclipsys Sols. Corp.*, 23 A.D.3d 213, 213 [1st Dept 2005] [letter agreement "expressly conditioned a binding contract on the 'execution of a definitive agreement satisfactory in form and substance' to both sides"]). Finally, there is no suggestion that the IMA and/or the AMA were explicitly rejected by Defendants, which drafted the agreements and tendered them to Plaintiffs for signature.

Defendants next argue that the execution of the Fee Agreements demonstrates the parties' intent not to be bound by the unsigned IMA and AMA. While a finder of fact may ultimately conclude that the Fee Agreements (and the language in them indicating that the parties were still negotiating further agreements) undermine the assertion that the IMA and AMA were binding agreements, that determination cannot be made on a motion to dismiss. The Fee Agreements were entered into months after the IMA and AMA were exchanged between the parties. Further, the Fee Agreements are expressly limited to "the Fee for the Services performed during the Specified Period" (NYSCEF 15 and 16). While the Fee Agreements go on to provide that "the parties acknowledge that Manager and Owner are currently in active negotiations regarding an asset management agreement and an incentive management agreement with respect to the Property; it being understood that a binding commitment between the parties with respect thereto shall be set forth in final written agreements duly approved and executed by each of Owner and Manager" (NYSCEF 15 and 16), this provision in the later-signed Fee Agreements does not *conclusively* refute Plaintiff's claim that the IMA and the AMA were enforceable when the parties (purportedly) agreed to terms when Defendants tendered the documents to Plaintiffs for

signature in July and August of 2021. In addition, Bissell's partial performance under those alleged agreements is a factor to be considered when determining the parties' intent, which in turn raises issues of fact that cannot be determined summarily (*see e.g.*, *Aristone Realty Capital, LLC v 9 E. 16th St. LLC*, 94 AD3d 519 [1st Dept 2012]; *Lord v Marilyn Model Mgt., Inc.*, 173 AD3d 606, 607 [1st Dept 2019]; *Newmark & Co. Real Estate Inc. v 2615 E. 17 St. Realty LLC*, 80 AD3d 476, 477 [1st Dept 2011]). Furthermore, Plaintiff asserts that it fully performed under the IMA by sourcing the deal and successfully bringing Defendants into the deal. Thus, Plaintiffs allege that Defendants have received the full benefit of IMA, and cannot now disclaim it based on the later Fee Agreements.

The cases cited by Defendants are distinguishable. In *Jordan Panel Sys., Corp. v Turner Constr. Co.* (45 AD3d 165, 169 [1st Dept 2007]), there was a clear intent expressed in the term sheet that the subcontract would not be binding until signed, regardless of any work performed by the plaintiff. Here, there is no such intent expressed in the IMA and AMA, and the Fee Agreements were not yet in existence when Plaintiff began performing its work. In *Metropolitan Steel Industries, Inc. v Citnalta Construction Corp.* (302 AD2d 233, 233 [1st Dept 2003]), the court dismissed the breach of contract claim, explaining that the parties' continued negotiations evidenced their intent not to be bound by an unexecuted subcontract, including "plaintiff's return of the proposed subcontract to [the defendant] with significant modifications, including a change as to the price for its services[.]". Here, taking Plaintiffs' allegations as true, no further negotiation of the IMA or AMA occurred or was even contemplated after last versions were exchanged and signed by Bissell on August 26, 2021. Given the factual issues relating to the parties' intent, the Fee Agreements do not, at this stage, utterly refute these claims.

Accordingly, the motion to dismiss the first and fourth causes of action is denied.

III. Breach of Amended Joint Venture Agreement (Amended JVA)

By contrast, Plaintiffs' third cause of action—for breach of the Amended JVA—does not state a viable claim and must be dismissed. Given the timeline of events, Plaintiffs cannot demonstrate a mutual intent to be bound by the Amended JVA. Unlike with respect to the AMA and the IMA, Plaintiffs acknowledge in their Complaint that they accepted Defendants' proposal to abandon the draft Amended JVA in favor of negotiating a different contract (which became the IMA) (*see* Compl. ¶39). While Plaintiffs argue in opposition to this motion that the "[p]arties had acted and continued to act as if the Amended JVA were in force," (Opp. at 12), this finds no support in the Complaint, which elsewhere relies on the IMA as reflecting the parties' binding agreement.

IV. Declaratory Judgment

In the second cause of action of the Complaint, Plaintiffs seek a declaration that the IMA is enforceable (*see* Compl. ¶¶ 60-67). "Declaratory judgments are a means to establish the respective legal rights of the parties to a justiciable controversy . . . [t]he general purpose of the declaratory judgment is to serve some practical end in quieting or stabilizing an uncertain or disputed jural relation either as to present or prospective obligations." (*Thome v Alexander & Louisa Calder Found.*, 70 AD3d 88, 99 [1st Dept 2009] [internal quotation marks and citations omitted]). Defendants' argument is that "The IMA and the Fee Letters establish that the parties intended that the IMA would only be enforceable once executed by the parties." But this is the same argument as described above.

Furthermore, the IMA provides for a profit-sharing structure in the form of a promoted interest in the profits of Westbrook's ultimate sale of the Property. Since the Property has not yet been sold, Plaintiffs' claim for declaratory judgment seeks to establish the legal rights of the

parties as to their prospective obligations under the IMA. Accordingly, the motion to dismiss this claim is denied.

V. Unjust Enrichment

In alternative to its contract claims, Plaintiffs seeks relief under its fifth cause of action for unjust enrichment seeking (i) three months of management fees, (ii) the $300,000 acquisition fee, and (iii) promoted interest payments of $12,000,000.

"[W]here, as here, the existence of the contract is in dispute, the plaintiff may allege causes of action to recover for unjust enrichment and in quantum meruit as alternatives to a cause of action alleging breach of contract" (*Thompson Bros. Pile Corp. v Rosenblum*, 121 AD3d 672, 674 [2d Dept 2014]). Plaintiff may pursue this claim in the alternative, and the motion to dismiss it is denied.

VI. Claims against Westbrook Partners LLC and Westbrook Real Estate Fund XI LP

Finally, Defendants argue that Plaintiffs' claims should be dismissed as to Defendants Westbrook Partners LLC and Westbrook Real Estate Fund XI, L.P. (the "Westbrook Entities"). The Court agrees.

"In New York, a parent corporation generally cannot be held liable for the debts of its wholly owned subsidiary, nor can it be bound by the contract of that subsidiary. There are two circumstances under which a parent will be held liable as a party to its subsidiary's contract: (1) if the parent manifests an intent to be bound by the contract; or (2) if the elements of piercing the corporate veil are present" (*World Wide Packaging, LLC v Cargo Cosmetics, LLC*, 193 AD3d 442 [1st Dept 2021]).

"An intent to be bound can be inferred from the parent's participation in the negotiations of the contract" (*id.*; *citing Horsehead Indus., Inc. v Metallgesellschaft AG*, 239 AD2d 171, 172

[1st Dept 1997] ["MG's alleged extensive participation in the negotiations leading up to the Shareholders Agreement, during which time BUS was wholly owned by MG itself and allegedly had no purpose other than to hold HRD shares, manifests MG's intent to be bound thereby."]; *see also Resorts Group, Inc. v Cerberus Capital Mgt., L.P.*, 213 AD3d 621, 623 [1st Dept 2023] ["[P]laintiff sufficiently alleges that Cerberus manifested its intent to be bound by the contracts at issue . . . [by] alleg[ing] that Cerberus Capital Management conducted all the negotiations for the Servicing and Participation Agreements and that Cerberus negotiated the First Supplemental Agreement"]).

However, as in *World Wide Packaging*, there are no allegations about how or if the Westbrook Entities themselves negotiated the terms of the transaction, micromanaged the transaction, or indicated they were the actual parties in interest (*see* 193 AD3d at 442). Accordingly, Plaintiffs' claims against Defendants Westbrook Partners LLC and Westbrook Real Estate Fund XI, L.P. are dismissed. The dismissal is without prejudice to seeking leave to amend to allege sufficient facts to warrant asserting one or more claims against those entities.

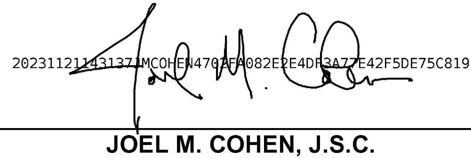
Accordingly, it is

ORDERED that Defendants' Motion to Dismiss the Complaint is **GRANTED** with respect to the Third Cause of Action for Breach of Amended Joint Venture Agreement (dismissed with prejudice) and as to all claims asserted against Westbrook Partners LLC and Westbrook Real Estate Fund XI LP (dismissed without prejudice), and is otherwise **DENIED**; it is further

ORDERED that Defendants EGBW38R OWNER, LLC, EGBW38R HOLDINGS, LLC, and EGBW38R REIT, LLC file an Answer within twenty-one (21) days of the date of this Order; and it is further

ORDERED that the parties appear for a preliminary conference on January 9, 2024, at 10:00 a.m., with the parties circulating dial-in information to chambers at SFC-Part3@nycourts.gov in advance of the conference.[3]

This constitutes the Decision and Order of the Court.



11/21/2023			
DATE		JOEL M. COHEN, 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

[3] If the parties agree on a proposed preliminary conference order in advance of the conference date (consistent with the guidelines in the Part 3 model preliminary conference order, available online at https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/Part3-Preliminary-Conference-Order.pdf), they may file the proposed order and email a courtesy copy to chambers with a request to so-order in lieu of holding the conference.