



Baharestani v Baharestani

2022 NY Slip Op 31418(U) (2022) | Cited 0 times | New York Supreme Court | April 29, 2022

The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 were read on this motion to/for DISMISSAL .

ve for an award of reasonable

-1.1. Plaintiff opposes the motion.

Plaintiff commenced the within action for breach of contract and unjust enrichment. In

May 2016, Steven, George, and Martin Baharestani on behalf of Dutch Kills LLC entered into an

-35 27 th

(9) story hotel. Under the 2016 Agreement, Steven was responsible for obtaining a two-year

extension of zoning approval and George had 24 months from the receipt of the extension to obtain

Subsequently, in the 2016 Agreement regarding the TCO. As part of the 2018 Agreement, George also agreed to SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. KATHY J. KING PART 6 Justice

-----X INDEX NO. 652743/2020

MOTION DATE 09/04/2020 MOTION SEQ. NO. 002

DECISION & ORDER STEVEN BAHARESTANI, Plaintiff, - v - GEORGE BAHARESTANI, FOREST HILLS FLATS Defendant(s).

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1 of 4 [* 1] put his ownership interest in Forest Hills Flats in escrow. In May 2019, Steven, George and Martin, as members of Dutch Kills Partners LLC, signed a corporate resolution (2019 Corporate



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Resolution to sell the subject property.

Thereafter, Plaintiff filed a lawsuit against defendants alleging breach of contract and unjust enrichment since George did not obtain a TCO, and as a result, he is obligated to pay Steven \$6,500,000 pursuant to the terms of the 2019 Corporate Resolution. Plaintiff further contends that defendant Forest Hills Flats is a proper defendant, as plaintiff claims entitlement to ownership of Forest Hills Flats pursuant to the breach of the 2018 Agreement.

Defendants now move to

based on documentary evidence and CPLR 3211 (a)(7) for failure to state a cause of action, further contend that Forest Hills Flats is not a proper defendant, given there is no privity of contract between Forest Hills Flats and plaintiff.

Spoleta

Constr., LLC v Aspen Ins. UK Ltd., 27 NY3d 933, 936 [2016] quoting Beal Sav. Bank v Sommer, defense to the asserted claims as

Spoleta, 27 NY3d at 936), since the 2019 Corporate Resolution provides for the months of the 2016 Agreement.

Additionally, plaintiff has failed to state a cause of action for breach of contract under

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2 of 4 [* 2] entered into a valid agreement; (2) plaintiff performed pursuant to the agreement; (3) defendant VisionChina Media Inc. v

Shareholder Representative Servs., 109 AD3d 49, 58 [1st Dept 2013]). A review of the 2016

Operating Agreement establishes that George signed said agreement in his capacity as member of



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Dutch Kills LLC, and that his obligation to obtain a TCO was not a personal obligation to Steven, rather it was for property owned by Dutch Kills LLC. Accordingly, plaintiff has not established the elements of a breach of contract cause of action.

ion, the court finds that dismissal is

and (3) it is against equity and good conscience to permit the other party to retain what is sought

Farina v Bastianich, 116 AD3d 546 [1st Dept 2014]). Here, Steven asserts that

George has failed to pay Steven money that is due and owing under the 2018 Agreement, the same agreement that plaintiff relied on for its breach of contract claim which the Court found to be without merit. The court notes that the record is devoid of any benefit that plaintiff has conferred on defendant.

Finally, a review of the 2016 and 2018 Agreement establishes that Forest Park Flats is not

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3 of 4 [* 3] Based on the foregoing, it is hereby, amended

complaint pursuant to CPLR 3211(a)(1) and CPLR 3211(a)(7) against George Baharestani and

Forest Hills Flats LLC, and in all other respects it is denied.

4/29/2022 \$SIG\$ DATE CHECK ONE: X CASE DISPOSED NON-FINAL DISPOSITION X
GRANTED DENIED GRANTED IN PART OTHER APPLICATION: SETTLE ORDER SUBMIT
ORDER CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY
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