

Bissell St. I, LLC v Westbrook Partners LLC

2023 NY Slip Op 34704(U)

July 7, 2023

Supreme Court, New York County

Docket Number: Index No. 654223/2022

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

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, <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">- v -</p> WESTBROOK PARTNERS LLC, WESTBROOK REAL ESTATE FUND XI, L.P., EGBW38R OWNER, LLC, EGBW38R HOLDINGS, LLC, EGBW38R REIT, LLC <p style="text-align: center;">Defendants.</p>	<table border="0"> <tr> <td>INDEX NO.</td> <td><u>654223/2022</u></td> </tr> <tr> <td>MOTION DATE</td> <td><u>N/A</u></td> </tr> <tr> <td>MOTION SEQ. NO.</td> <td><u>004</u></td> </tr> </table> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>	INDEX NO.	<u>654223/2022</u>	MOTION DATE	<u>N/A</u>	MOTION SEQ. NO.	<u>004</u>
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HON. JOEL M. COHEN:

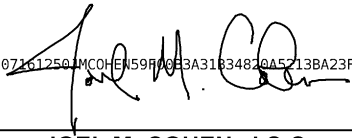
The following e-filed documents, listed by NYSCEF document number (Motion 004) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44
 were read on this motion to STAY DISCOVERY.

Defendants Westbrook Partners LLC, Westbrook Real Estate Fund XI, L.P., EGBW38R Owner, LLC, EGBW38R Holdings, LLC, and EGBW38R REIT, LLC (collectively, “Defendants” or “Westbrook”) seek an order to stay discovery pursuant to Rule 11(g) of the Rules of the Commercial Division and CPLR 3214(b), and for a protective order pursuant to CPLR 3103, pending a decision on Defendants’ motion to dismiss Plaintiffs Bissell Street I, LLC’s and Bissell Street Bellevue Member, LLC’s (collectively, “Bissell Street” or “Plaintiffs”) Complaint.

“[I]t is the presumption of the Commercial Division that discovery continues during motion practice” (*In Re Dentsply Sirona, Inc. v XXX*, 2019 NY Slip Op 32297[U], 14 [Sup Ct, NY County 2019] [Scarpulla, J.]; *Quadriad Realty Partners, LLC v Wilbee Corp.*, 2020 NY Slip Op 30024[U], *12 [Sup Ct, NY County 2020]). The fact that Defendants believe their motion will be successful is not sufficient, on its own, to warrant a stay (*Hartman, David E. v Snellen*,

Eric, 2014 WL 7876752 at *1 [Sup Ct, NY County 2014] [denying motion for stay of discovery pending motion to dismiss because “defendants filing motions to dismiss presumably deem them meritorious” and “if the filing of a motion to dismiss were sufficient to impose a stay, there would be no Rule 11(d)”]. There are no special circumstances here, such as a challenge to the Court’s jurisdiction (*see Youge Venture Capital Ltd. Liab. Co. v Han*, 2023 WL 4234896 [N.Y. Sup Ct, New York County 2023]), warranting a stay. To the extent Plaintiff’s discovery requests are claimed to be overbroad, the parties should meet and confer regarding these requests.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

7/7/2023
DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: