SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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TSW18 ASSOCIATES LLC,

Plaintiff,

- v -

W 42 OFFICE LLC,

Defendant.

INDEX NO. 655985/2024

MOTION DATE -

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 12, 13 were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

On November 11, 2024, plaintiff TSW18 Associates LLC (Seller) initiated this action for a declaratory judgment and preliminary injunction. Seller simultaneously filed this motion for a preliminary injunction pursuant to CPLR 6301 enjoining defendant W42 Office LLC (Buyer), including all of its members, officers, directors, employees and agents, from (1) asserting to anyone that the October 28, 2024 sale and purchase agreement between the parties (Agreement) was not terminated; (2) asserting "to anyone that the termination of the Agreement was revoked;" (3) taking any steps to interfere with any of Seller's business activities, including but not limited to Seller's business activities concerning the office condominium identified in the Agreement located at 303 West 42nd Street, New York, New York 10036 (Office Unit); and (4) "doing anything inconsistent with the fact that the Agreement was terminated and not revoked." (NYSCEF 2, Proposed OSC.)

> "A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do or is doing or procuring or suffering to be

> done, an act in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual." (CPLR 6301.)

To obtain a preliminary injunction, a movant must establish: "(1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party's favor." (*Doe v Axelrod*, 73 NY2d 748, 750 [1988] [citation omitted].) Movant must demonstrate these elements "by clear and convincing evidence." (*Uber Tech., Inc. v Am. Arbitration Assn., Inc.*, 204 AD3d 506, 508 [1st Dept 2022] [citations omitted].) As stated on the record on November 26, 2024, and again on December 3, 2024, regarding Buyer's motion seq. no. 002 for a preliminary injunction and permission to file a notice of pendency, Seller has satisfied this standard.

The Agreement provides Buyer with a "'Feasibility Period,' during which [Buyer] could unilaterally elect not to proceed with the purchase of the Office Unit" up to 5 p.m. EST on November 4, 2024. (NYSCEF 1, Complaint ¶11.) Specifically, Section 2.4 of the Agreement provides, in relevant part,

> "Feasibility Period. If, during the period between the Effective Date and 5:00 p.m. Eastern Time on November 4, 2024 (such period is hereinafter referred to as the "Feasibility Period"), Buyer gives Seller written notification (which notice for the purpose of this Section may be delivered via e-mail, hereinafter, the 'Termination Notice') that Buyer elects not to consummate the purchase of the Property solely as a result of its diligence with respect to the ICAP Benefits, the Condominium Documents (including the Condo Doc Amendment) and the Access and Easement Agreement, this Agreement shall terminate, the First Deposit and any interest thereon shall be returned to Buyer, and, except as otherwise expressly provided herein, neither party shall have any further liability to the other under this Agreement." (NYSCEF 16, Agreement at 15.)

Since Buyer's attorney timely issued a termination of the Agreement (NYSCEF 17, Buyer's November 4, 2024 Letter[1]), which Seller accepted (NYSCEF 7, Seller's November 4, 2024 Email[2]), Seller refuses to proceed to closing on the Office Unit even though Buyer attempted to revoke the termination. (NYSCEF 19, Buyer's November 4, 2024 Email[3]; *see also* NYSCEF 8, Buyer's November 6, 2024 Email[4].) Thus, Section 5.1 of the Agreement, the termination provision, is at issue. Section 5.1. provides:

> "Permitted Termination; Seller Default. If the sale of the Property is not consummated due to the permitted termination of this Agreement by Buyer as herein expressly provided, the Deposit shall be returned to Seller and Seller will have no liability hereunder except as set forth in Sections 3.4, 3.5, 9.6, 10.8 and 10.10. If the sale of the Property is not consummated due to Seller's default hereunder, Buyer shall be entitled, as its sole remedy, to receive the return of the Deposit, and to the extent such default is a Willful Material Default, a payment by Seller to Buyer representing liquidated damages in the amount of $500,000. As used herein, the term "Willful Material Default" shall mean a willful refusal by Seller to perform its obligations hereunder and close the transactions contemplated hereby in breach of this Agreement. THE PARTIES HAVE AGREED THAT BUYER'S ACTUAL DAMAGES, IN THE EVENT OF A WILLFUL MATERIAL DEFAULT WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES

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[1] In this letter, Buyer's attorney states, "[p]lease note that Purchaser pursuant to Section 2.4 of the PSA has elected hereby to terminate the PSA and hereby demands a prompt return of the First Deposit in the sum , unless your client agrees to extend the Feasibility Period, by countersigning the First Amendment to the PSA, a copy of which is annexed hereto and returning same to my attention by no later than 5 pm on Monday, November 4, 2024." (NYSCEF 17, Buyer's November 4, 2024 Letter.)

[2] At approximately 6 p.m. on November 4, 2024, Seller responded "for the avoidance of doubt, this email shall confirm that Seller authorizes the release of the First Deposit (as defined in the attached PSA) back to Purchaser pursuant to Purchaser's termination letter (attached again for reference)." (NYSCEF 7, Seller's November 4, 2024 Email.)

[3] On November 4, 2024 at 5:42 p.m., Buyer emailed "I just saw it, As a buyer I agree to take the 24H Extention [sic] and regroup with Seller tomorrow at noon. i respect my attorny [sic] time and the election day but I am here to make a deal and not cancel it. (NYSCEF 19, Buyer's November 4, 2024 Email.)

[4] On November 6, 2024, Buyer emailed Seller stating, "[a]s of 5pm on nov 4th my atturney [sic] Mr aminzadeh send this letter without my authorization or consent therefore he is no longer representing me." (NYSCEF 8, Buyer's November 6, 2024 Email.)

> EXISTING ON THE DATE OF THIS AGREEMENT, $500,000 IS A REASONABLE ESTIMATE OF THE DAMAGES THAT BUYER WOULD INCUR IN SUCH EVENT. **Notwithstanding the foregoing to the contrary, the parties agree that if Seller's Acquisition Closing shall have occurred and the Closing hereunder has not been consummated due to Seller's default hereunder, then Buyer shall be entitled, as its sole remedy, either (a) to receive the return of the Deposit, or (b) to enforce specific performance of this Agreement. Buyer shall be deemed to have elected to terminate this Agreement and receive back the Deposit if Buyer fails to file suit for specific performance against Seller in a court prescribed by Section 10.5 hereof, on or before forty-five (45) days following the date upon which Closing was to have occurred. Buyer expressly waives its rights to seek any damages in the event of Seller's default hereunder."** (NYSCEF 16, Agreement [emphasis added].)

Since Seller closed on the acquisition of the building, only the bolded portion of Section 5.1 is at issue. (NYSCEF 41 & 42, ACRIS documents.) Accordingly, the issue is whether Seller has established a likelihood of success that Seller has not defaulted by refusing to close on the Office Unit with Buyer pursuant to the Agreement.

Seller has established a solid legal basis to believe that Aminzadeh was Buyer's counsel, and thus, that the termination would be valid. First, Aminzadeh acted as Buyer's legal counsel (NYSCEF 1, Complaint ¶¶12, 14); second, the Agreement lists Buyer's address c/o Aminzadeh Law Group, PLLC (*Id.* ¶15); third, the Agreement's notice provision directs notices for Buyer be sent to Aminzadeh's office (*Id.* ¶16; *see also* NYSCEF 16, Agreement at 40 [§10.2(c)].); and fourth, the notice provision also states that "Counsel for a party may give notice or demand on behalf of such party, and such notice or demand shall be treated as being sent by such party." (*Id*. ¶17; *see also* NYSCEF 16, Agreement at 40 [§10.2(c)].) Therefore, Seller has established by clear and convincing evidence that Aminzadeh had apparent authority to terminate the Agreement. (*See Hallock v State of New York*, 64 NY2d 224, 231 [1984] ["Essential to the creation of apparent authority are words or conduct of the principal, communicated

to a third party, that give rise to the appearance and belief that the agent possesses authority to enter into a transaction"].)

As to Buyer's assertion that Buyer effectively revoked the termination, at best, an issue of fact exists as to whether the revocation was valid. However, "[a] likelihood of success on the merits may be sufficiently established even where the facts are in dispute, and the evidence need not be conclusive." (*See IHG Mgmt. (Maryland) LLC v West 44th Street Hotel*, 163 AD3d 413, 414 [1st Dept 2018] [internal quotation marks and citation omitted].) Here, Buyer fails to offer any law in support of its revocation theory and thus fails to establish likelihood of success on revocation.

The irreparable harm element is neutral since each party asserts an interest in real property. "[E]ach parcel of real property is presumed to be unique." (*Alba v Kaufmann*, 27 AD3d 816, 818 [3d Dept 2006] [citation omitted].) Seller would lose its right to sell the Office Unit, which would constitute irreparable harm for which money damages would be insufficient. (*See, e.g., Carpenter Tech. Corp. v City of Bridgeport*, 180 F3d 93, 97 [2d Cir 1999] [finding threat of taking of real property constituted irreparable harm warranting injunctive relief].) Likewise, Buyer would lose the right to use or sell the Office Unit for which money damages would be insufficient. In both cases, money damages would be difficult to calculate.

The equities, however, favor Seller. Buyer had the opportunity to purchase the Office Unit but terminated that opportunity. Although there may be an issue of fact as to revocation of that termination, that is an issue Buyer created.

It appearing to this court that a cause of action exists in favor of Seller and against Buyer and that Seller is entitled to a preliminary injunction on the ground Seller

has demanded and would be entitled to a judgment restraining Buyer from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to Seller, as set forth in the aforesaid decision.

Accordingly, it is

ORDERED that plaintiff TSW18 Associates LLC's motion for a preliminary injunction is granted; and it is further

ORDERED that defendant W42 Office LLC, its agents, servants, employees, and all other persons acting under the jurisdiction, supervision and/or direction of defendant, are enjoined and restrained, during the pendency of this action, from doing or suffering to be done, directly or through any attorney, agent, servant, employee or other person under the supervision or control of defendant or otherwise, any of the following acts: (1) asserting to anyone that the October 28, 2024 sale and purchase agreement between the parties was not terminated; (2) asserting to anyone that the termination of the October 28, 2024 sale and purchase agreement was revoked; (3) taking any steps to interfere with any of TSW18 Associates LLC's business activities, including but not limited to TSW18 Associates LLC's business activities concerning the office condominium identified in the Agreement located at 303 West 42nd Street, New York, New York 10036; and (4) doing anything inconsistent with the fact that the October 28, 2024 sale and purchase agreement was terminated and not revoked; and it is further

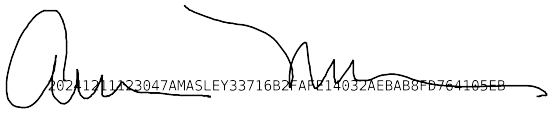
ORDERED that the undertaking is fixed in the sum of $ 500,000 conditioned that TSW18 Associates LLC, if it is finally determined that it was not entitled to an injunction,

will pay to W42 Office LLC all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that TRO is vacated; and it is further

ORDERED that TSW18 Associates LLC shall submit the transcripts to the court to be so ordered; and it is further

ORDERED that the parties are to submit a proposed Preliminary Conference Order (via SFC-Part48@nycourts.gov and NYSCEF) by December 19, 2024.



12/11/2024
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:		**CASE DISPOSED**		X	**NON-FINAL DISPOSITION**		
	X	**GRANTED**	**DENIED**		**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**			**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**		**REFERENCE**