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Gelita, LLC v 133 Second Ave., LLC
2014 NY Slip Op 50064(U)
Decided on January 22, 2014
Supreme Court, New York County
Kornreich, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
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Decided on January 22, 2014

Supreme Court, New York County

Gelita, LLC and GIAN LUCA GIOVANETTI, Plaintiffs,

against

133 Second Avenue, LLC, WALSAM 133 LLC, VINNY MORA a/k/a VINCENT MORA a/k/a VINCE MORA, ENKO CONSTRUCTION CORP., and THOMAS C. TUNG P.C., Defendants.

651538/2012

Cox Padmore Skolnik & Shakarchy LLP, for plaintiffs.

Troutman Sanders LLP, for the Owner.

Kushnick Pallaci PLLC, for the Enko Defendants.

Shirley Werner Kornreich, J.

Motion Sequence Numbers 006 and 007 are consolidated for disposition.

Defendants 133 Second Avenue, LLC and Walsam 133 LLC (collectively, the Owner) move to dismiss the eighth through fourteenth causes of action in the Amended Complaint (the AC) pursuant to CPLR 3211. Seq. No. 006. Defendants Vinny Mora and Enko Construction Corp. (Enko) (collectively, the Mora Defendants) move to dismiss the first, second, third, sixth, and seventh causes of action in the AC pursuant to CPLR 3211 and 3016(b). Seq. No. 007. Plaintiffs Gelita, LLC (Gelita) and Gian Luca Giovanetti cross-move to file a Second Amended Complaint to assert a seventeenth cause of action pursuant to CPLR 3025(b). Defendants' motions to dismiss are granted in part and denied in part, and plaintiffs' cross-motion to amend is denied for the reasons that follow.

Factual Background & Procedural History

The court assumes familiarity with its order dated June 10, 2013 (the June Order),[FN1] which dismissed certain claims in the original complaint and granted plaintiffs leave to file the AC. Since the AC's factual allegations virtually mirror the original complaint and only adds new claims, the court will not recount such facts for a second time.

The AC, filed on July 3, 2013, contains 16 causes of action: (1) fraudulent inducement of the Construction Contract against Mora; (2) fraudulent inducement of the Construction Contract against Enko; (3) fraudulent inducement of the Guarantee against Mora; (4) breach of the Construction Contract against Enko; (5) third-party beneficiary breach of contract (the [*2]construction contract between the Owner and Enko) against Enko; (6) tortious interference with Contract (the Lease) against Enko; (7) negligence against Enko; (8) breach of the duty of good faith and fair dealing against the Owner; (9) frustration of purpose against the Owner; (10) rescission of the Lease due to mistake and unjust enrichment against the Owner; (11) rescission of the Guarantee due to mistake and unjust enrichment against the Owner; (12) breach of the Lease against the Owner; (13) constructive eviction against the Owner; (14) return of the security deposit and use and occupancy against the Owner; (15) negligence against Tung; and (16) third-party beneficiary breach of contract (the contract between the Enko and Tung) against Tung.

Motions to Dismiss

On a motion to dismiss, the court must accept as true the facts alleged in the complaint as well as all reasonable inferences that may be gleaned from those facts. *Amaro v Gani Realty Corp.*, 60 AD3d 491 (1st Dept 2009); *Skillgames, LLC v Brody*, 1 AD3d 247, 250 (1st Dept 2003), citing *McGill v Parker*, 179 AD2d 98, 105 (1992); *see also Cron v Harago Fabrics*, 91 NY2d 362, 366 (1998). The court is not permitted to assess the merits of the complaint or any of its factual allegations, but may only determine if, assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action. *Skillgames*, *id.*, citing *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 (1977). Deficiencies in the complaint may be remedied by affidavits submitted by the plaintiff. *Amaro*, 60 NY3d at 491. "However, factual allegations that do not state a viable cause of action, that consist of bare legal conclusions, or that are inherently incredible or clearly contradicted by documentary evidence are not entitled to such consideration." *Skillgames*, 1 AD3d at 250, citing *Caniglia v Chicago Tribune-New York News Syndicate*, 204 AD2d 233 (1st Dept 1994). Further, where the defendant seeks to dismiss the complaint based upon documentary evidence, the motion will succeed if "the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law." *Goshen v Mutual Life Ins. Co. of NY*, 98 NY2d 314, 326 (2002) (citation omitted); *Leon v Martinez*, 84 NY2d 83, 88 (1994).

The Owner's Motion (Seq. 006)

The seven causes of action asserted against the Owner all attempt to arrive at the same legal conclusion — that, as a result of the Premises being unfit for its intended use, plaintiffs are absolved from paying the balance of rent due under the Lease. The Owner's primary defense is that the Lease explicitly places the burden of building out the Premises and ensuring the suitability of its intended use on plaintiffs' shoulders. Moreover, as discussed at length in the June Order, the Lease also explicitly disclaims any liability on the part of the Owner for problems arising from such build out or related legal issues, such as regulatory compliance. This is all well and good. The harder question, however, is if the Owner, from the outset, knew it was impossible to build out the Premises in accordance with the Lease's specifications, once this fact came to light, are plaintiffs bound by the "gotcha" reality of the Lease and on the hook anyway? In other words, the question is who bears the risk of impossibility where such impossibility was known to defendants yet could have been discovered by plaintiffs with reasonable due diligence beforehand. The court examines this question in the context of each of plaintiffs' causes of action against the Owner.

Breach of the Duty of Good Faith and Fair Dealing

The covenant of good faith and fair dealing in the course of performance is implied in every contract. *511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 153 (2002). "This covenant embraces a pledge that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.'" *Id.*, quoting *Dalton v Educational Testing Serv.*, 87 NY2d 384, 389 (1995). "While the duties of good faith and fair dealing do not imply obligations inconsistent with other terms of the contractual relationship,' they do encompass any promises which a reasonable person in the position of the promisee would be justified in understanding were included.'" *Id.*, quoting *Murphy v Am. Home Prods. Corp.*, 58 NY2d 293, 304 (1983) and *Rowe v Great Atl. & Pac. Tea Co.*, 46 NY2d 62, 69 (1978). The duty of good faith and fair dealing may be breached "when a party to a contract acts in a manner that, a*lthough not expressly forbidden by any contractual provision*, would deprive the other party of the right to receive the benefits under their agreement." *Jaffe v Paramount Communications Inc.*, 222 AD2d 17, 22-23 (1st Dept 1996) (emphasis added). However, "[a] claim for breach of the implied covenant of good faith and fair dealing cannot substitute for an unsustainable breach of contract claim." *Skillgames*, 1 AD3d at 252. In other words, "[t]he covenant of good faith and fair dealing *cannot be construed so broadly as to effectively nullify other express terms of the contract*, or to create independent contractual rights." *Nat'l Union Fire Ins. Co. of Pittsburgh, PA v Xerox Corp.*, 25 AD3d 309, 310 (1st Dept 2006) (emphasis added). Simply put, a plaintiff cannot contend that a defendant has a good faith obligation under a contract when that obligation is expressly disclaimed in the contract itself.

As the Owner correctly observes, there is tension between plaintiffs' good faith claim and the express terms of the Lease, which obligates plaintiffs to build out the Premises and disclaims liability on the part of the Owner for problems arising from such build out. *See, e.g.*, Lease, section 8.01 (Tenant not entitled to rent abatement or constructive eviction claim due to Owner's failure to make repairs or problems with build out). Moreover, as the court explained in the June Order:

The Landlord Defendants are technically correct that they did not contravene the express terms of the Lease. Section 12 of the Lease states that Gelita accepts possession of the Premises "as is" and section 6.01 obligates Gelita to comply with all legal requirements at its sole cost and expense. Indeed, section 20.01 sets forth that the "Lease contains the entire agreement between the parties and all prior negotiations and agreements are merged in this Lease. Neither Owner nor Owner's agents have made any representations with respect to the [Premises] except as set forth in this Lease [and] this Lease may not be [amended] orally." Nonetheless, [the Owner's refusal to fix] the conflict

between the CO and the Declaration notwithstanding the express terms of the Lease, might constitute a frustration of purpose or beach of the duty of good faith and fair dealing.

June Order at 10.

That being said, if the Owner committed bad acts in connection with the construction job performed by Enko and Tung, which is what plaintiffs allege, the Owner would be liable, [*3]notwithstanding the express terms of the Lease. Had the Owner done nothing, and left plaintiffs to their own devices, there would be no breach. However, if the Owner had a role in the alleged shoddy construction, the Owner would have played a part in frustrating plaintiffs' ability to use the Premises and hence would have prevented plaintiffs from reaping "the fruits of the contract." Plaintiffs' allegation that the Owner knowingly and illegally conspired with the Mora Defendants to submit false blueprints to the DOB — an allegation which is not sufficiently rebutted by the Owner's documentary evidence — is enough to allow plaintiffs' good faith claim against the Owner to proceed. Discovery is needed to determine the real nature of the relationship between the Owner and the Mora Defendants and the actual scope of the Owner's involvement in and responsibility for the alleged shoddy construction.

Frustration of Purpose

"[T]o invoke frustration of purpose as a defense for nonperformance, the frustrated purpose must be so completely the basis of the contract that, as both parties understood, without it, the transaction would have made little sense." *PPF Safeguard, LLC v BCR Safeguard Holding, LLC*, 85 AD3d 506, 508 (1st Dept 2011) (quotation marks omitted); *Crown IT Servs., Inc. v Koval-Olsen*, 11 AD3d 263, 265 (1st Dept 2004); *see also Rockland Dev. Assocs. v Richlou Auto Body, Inc.*, 173 AD2d 690, 691 (2d Dept 1991) (the doctrine of frustration of purpose applies when the frustration is substantial). "The doctrine applies *when a change in circumstances* makes one party's performance virtually worthless to the other, frustrating his purpose in making the contract." *PPF Safeguard*, 85 AD3d at 508 (emphasis added), quoting Restatement (Second) of Contracts § 265, Comment a.

However, a frustration of purpose defense "is not available when the event preventing performance was foreseeable." *Morpheus Capital Advisors LLC v UBS AG*, 105 AD3d 145, 148 (1st Dept 2013), citing *Warner v Kaplan*, 71 AD3d 1, 6 (1st Dept 2009); *see also Structure Tone, Inc. v Universal Servs. Grp., Ltd.*, 87 AD3d 909, 912 (1st Dept 2011) ("the doctrine of frustration of performance is inapplicable when the reasons for performing the contract *cease* to exist due to an *unforeseeable*

event which destroys the reasons for performing the contract") (emphasis added). Ergo, when the gravamen of the frustration existed prior to the contract and was foreseeable, this defense cannot be invoked.

In this case, plaintiffs, in their original complaint, alleged that the Owner fraudulently induced them to sign the Lease because it knew that it was impossible to legally build out the Premises in accordance with the Lease's specifications. The court dismissed this claim with prejudice because "any alleged impossibility (whether physical or legal), if one existed, could have been discovered by hiring an architect or consulting with an attorney." June Order at 8, accord *UST Private Equity Invs. Fund v Salomon Smith Barney*, 288 AD2d 87, 88 (1st Dept 2001). Likewise, plaintiffs cannot maintain a frustration of purpose defense because the cause of the alleged frustration was reasonably foreseeable. *See Morpheus*, 105 AD3d at 148. Additionally, as plaintiffs admit, the cause of the frustration did not arise after the Lease's execution; it existed beforehand. Hence, this defense is unavailable since the frustration did not arise from a "change in circumstances." *See PPF Safeguard*, 85 AD3d at 508. That being said, and as discussed earlier, the forseeability of the build out problems does not give defendants free reign to break the law, and certainly does not immunize them for their negligent construction or [*4]their role in committing fraud on the DOB. Yet, these issues must be addressed through plaintiffs other viable causes of action, not frustration of purpose.

Rescission

In the June Order, the court noted that it is still the law in this state that "there can be rescission of a contract for unilateral mistake." *Abner M. Harper, Inc., v City of Newburgh*, 159 AD 685, 697 (2d Dept 1913); see June Order at 9 (noting that *Abner* is still good law), citing *Frederick v Meighan*, 75 AD3d 528, 532 (2d Dept 2010). In *Abner*, the Second Department explained that "in rescission no contract remains, for there was in the eye of the law no meeting of the minds at all. Hence the court may rescind the apparent contract for the mistake of one party only, *without a finding of fraud or inequitable conduct in the other*." *Id.* at 697 (emphasis added). However, this court erred in relying on this Second Department precedent because the First Department holds otherwise. *See Goldberg v Manufacturers Life Ins. Co.*, 242 AD2d 175, 179 (1st Dept 1998) (in claim for rescission of contract based on unilateral mistake, such mistake must have been fraudulently induced); *see also Gaylords Nat'l Corp. v Arlen Realty & Dev. Corp.*, 112 Ad2d 93, 96 (1st Dept 1985).

Goldberg, however, relied on a Court of Appeals case, *Gould v Bd. of Ed. of Sewanhaka Cent. High School Dist.*, 81 NY2d 446, 453 (1993), where the Court, though discussing *mutual* mistake, cited to *Rosenblum v Manufacturers Trust Co.*, 270 NY 79, 84-85 (1936), and added a parenthetical noting that "plaintiff may be entitled to have a court of equity *rescind* a contract even where the mistake is unilateral, not mutual, if failing to do so would result in unjust enrichment of defendant." Thus, it might seem as if the First Department's fraud requirement is precluded by binding Court of Appeals precedent.

Nonetheless, in commercial cases, as here, the First Department has interpreted the unjust enrichment prong of a unilateral mistake claim to entail a de facto fraud standard. For example, in *Wachovia Securities, LLC v Joseph*, 56 AD3d 269, 270 (1st Dept 2008), the First Department disallowed a unilateral mistake claim where, as here, plaintiff's pre-contract diligence was negligent. *See id.* at 270-71. The First Department held that "[t]he record does not support [plaintiff's] allegations of injustice or unjust enrichment, *but only supports a finding that [plaintiff] made a costly error due to its own conduct*." *Id.* at 271 (emphasis added). Though this court agrees with the First Department (and, in any event, is bound to follow its rulings), and hence dismisses plaintiffs' unilateral mistake claims accordingly, this issue begs for appellate clarity. Such clarity would provide useful guidance in answering the question, posed earlier, of "who bears the risk of impossibility where such impossibility was known to defendants yet could have been discovered by plaintiffs with reasonable due diligence beforehand." According to the First Department, the plaintiffs' business bears this risk. According to the Second Department, the defendants bear this risk. This court follows the First Department.

Breaches of the Lease

Plaintiffs may maintain a good faith claim against the Owner. The covenant of good faith and fair dealing is implied in every contract and thus a breach of such covenant constitutes a breach of contract. *See 511 W. 232nd Owners Corp*, *supra*. Likewise, plaintiffs' fourteenth [*5]cause of action for "return of the security deposit and use and occupancy" is not an independent claim, but rather a remedy for breach of the Lease. Since plaintiffs have stated a breach of contract claim, and such claim is merely subject to notice pleading standards, it is premature and indeed unnecessary to precisely circumscribe the viable scope of plaintiffs' breach of contract claim. Discovery will flesh out the facts, and the court can revisit which itemized breaches are viable at the summary judgment stage.[FN2] Nonetheless, the court dismisses plaintiffs' constructive eviction claim because, as

mentioned earlier, it is expressly precluded by section 8.01 of the Lease.

The Mora Defendants' Motion (Seq. 007)

The Mora Defendants move to dismiss all claims asserted against them, except for the fourth and fifth causes of action for breach of contract. As the Mora Defendants concede, the subject contracts govern plaintiffs' claims. The question, therefore, is whether plaintiffs' tort claims (fraud, tortious interference, and negligence) are improperly duplicative.

Fraud

To properly plead a cause of action for fraud, the complaint must contain allegations of a representation of material fact, falsity, scienter, reliance, and injury. *Small v Lorillard Tobacco Co.*, 94 NY2d 43, 57 (1999). Pursuant to CPLR 3016(b), the circumstances constituting the fraud must be stated in detail. *Id.* To maintain a claim of fraudulent inducement, a complaint must allege "a false representation, made for the purpose of inducing another to act on it, and that the party to whom the representation was made justifiably relied on it and was damaged." *Perrotti v Becker, Glynn, Melamed & Muffly LLP*, 82 AD3d 495, 498 (1st Dept 2011), citing *Lama Holding Co. v Smith Barney Inc.*, 88 NY2d 413 (1996).

The Mora Defendants correctly (albeit without proper attribution) aver that to comply with CPLR 3016(b), the plaintiff must identify "(1) a fact (2) known to defendant at the time of defendant's representation (3) such that the representation is incompatible with that fact." *DSM2x, Inc. v GFK Custom Research, LLC*, 38 Misc 3d 1227(A), at *3 (Sup Ct, NY County Feb. 22, 2013), accord *The Hawthorne Group, LLC v RRE Ventures*, 7 AD3d 320, 323 (1st Dept 2004) (fraud claim is only viable when "the alleged misrepresentation [is a fact] extraneous to the contract and involve[s] a duty separate from or in addition to that imposed by the contract.").Mora's alleged lies about whether he and Tung are licensed architects meet this standard.[FN3] To be sure, the breaches of the Construction Contract are merely contract breaches, not fraud. [*6]But, CPLR 3016(b) is certainly satisfied where, as here, a plaintiff contends that it would not have contracted with an architect if it had know that defendant was not actually an architect.

However, plaintiffs cannot maintain a claim against Mora for fraudulent inducement of the Guaranty. Giovanetti executed the Guaranty as a condition precedent to the Owner leasing the

Premises to Gelita. Mora was retained at the Owner's insistence. Additionally, to the extent Giovanetti seeks to assert a fraud claim against Mora for the subject matter plaintiffs asserted in their previously dismissed fraud claims against the Owner, such claim fails on the same ground of failure to conduct due diligence.[FN4]

Tortious Interference with Contract

"Tortious interference with contract requires the existence of a valid contract between the plaintiff and a third party, defendant's knowledge of that contract, defendant's intentional procurement of the third-party's breach of the contract without justification, actual breach of the contract, and damages resulting therefrom." *Lama*, 88 NY2d at 424. Plaintiffs have validly pled this claim by alleging numerous intentional acts, such as the procurement of fraudulent blueprints from the Owner, which, at a minimum, is a good faith breach of the Lease.

That being said, the gravamen of plaintiffs' claims against the Mora Defendants is breach of the Construction Contract, which is based on Mora and Tung's negligent construction. It is well settled that the alleged interference "must be intentional, not merely negligent or incidental to some other, lawful, purpose." *Alvord & Swift v Stewart M. Muller Const. Co.*, 46 NY2d 276, 281 (1978). Consequently, plaintiffs may only prevail on this claim to the extent that certain of the Mora Defendants' actions were intentional and that the Owner was not going to breach anyway. To wit, as discussed earlier, plaintiffs originally alleged that the Owner never intended to perform and that the Lease was a scam to get plaintiffs to pay rent for a useless commercial space. Though, for now, at the pleading stage, plaintiffs are permitted to plead alternative theories, they will have to pick a story and stick to it, since certain claims are simply incompatible.

Negligence

Finally, plaintiffs assert a seemingly duplicative negligence claim against Enko, since such negligence is a breach of the Construction Contract. This is not usually permitted. *See Clark-Fitzpatrick, Inc. v Long Island R.R. Co.*, 70 NY2d 382, 389 (1987) ("It is a well-established principle that a simple breach of contract is not to be considered a tort unless a legal duty independent of the contract itself has been violated"). However, "[p]rofessionals may be subject to tort liability for failure to exercise reasonable care, irrespective of their contractual duties." *Sommer v Fed. Signal Corp.*, 79 NY2d 540, 551 (1992). [*7]

Though Mora allegedly lied about being an architect, a profession subject to a malpractice claim for negligence [*see Sheehan v Pantelidis*, 6 AD3d 251 (1st Dept 2004)], Mora is still a licensed general contractor whose work is subject to DOB regulations. In any event, when plaintiffs contracted with Enko, they thought they were hiring an architect and getting the benefits of an architect's standard of care. Not only was Mora not an architect, neither is his subcontractor, Tung. Therefore, regardless of whether the Construction Contract contains an implied standard of due care owed by an architect, or if such duty ought to be equitably imposed onto Enko due to its lies, plaintiffs may proceed with a claim for negligent construction against Enko. While it is far too premature to determine the applicable standard of care, there is no harm in allowing plaintiffs' negligence claim to proceed because, at worst, it is merely a duplicative claim that can be disposed of at a later date.

Cross-Motion to Amend

In the original complaint, plaintiffs asserted a claim for fraudulent inducement of the Lease against the Owner and the Enko Defendants. As mentioned earlier, such claim was dismissed against the Owner due to the absence of reasonable reliance. However, the claim was not dismissed against the Mora Defendants because they did not move to dismiss the original complaint. But, plaintiffs forgot to include this fraud claim in the AC. Plaintiffs now ask the court to allow another amended complaint so they can fix this mistake. The Mora Defendants oppose on the grounds that they should not have to incur the expense of filing another motion to dismiss when this claim could have been evaluated on the instant motion and also because such claim has no merit. The court agrees with the Mora Defendants.

Pursuant to CPLR 3025(b), leave to amend a pleading should be freely given unless it would result in prejudice or surprise or the amendment is palpably improper or insufficient. *McCaskey, Davies & Assocs., Inc. v N.Y.C. Health & Hosps. Corp.*, 59 NY2d 755, 757 (1983). This court has discretion to determine, on a case by case basis, whether to grant leave. *Edenwald Contracting Co. v City of New York*, 60 NY2d 957, 959 (1983). The plaintiff "need not establish the merit of its proposed new allegations, but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit." *MBIA Ins. Corp. v Greystone & Co.*, 74 AD3d 499, 500 (1st Dept 2010) (internal citations omitted).

Plaintiffs' negligent omission of the subject fraud claim from the AC, if permitted to be remedied, would cause the Mora Defendants to incur the unnecessary expense of filing another motion to

dismiss. If the court allowed the amendment, it might have considered ordering plaintiffs to reimburse the Mora Defendants for the costs of bringing such motion. However, such recourse need not be considered since the claim is clearly devoid of merit. In the June Order, the court held that plaintiffs' failure to conduct due diligence precludes their ability to rescind the Lease. This ruling precludes the claim for fraud no matter the defendant against whom the claim is brought. Moreover, the proposed pleading appears to lack the requisite factual specificity about whether Mora's alleged representations were knowingly false or that Mora had actionable scienter other than the motive to earn fees on the Construction contract (i.e. the Owner stood to make money on the Lease, not Mora). *See SSR II, LLC v John Hancock Life Ins. Co.*, 37 Misc 3d 1204(A), at *5-7 (Sup Ct, NY County 2012), citing *Tech. Support Servs., Inc. v Int'l Bus. Machs. Corp.*, 18 Misc 3d 1106(A), at *30 (Sup Ct, Westchester County 2007) (the "desire for higher [*8]compensation . . . is found in virtually all commercial transactions, making it an ill-suited motive from which to draw an inference of intent to defraud"). For these reasons, plaintiffs may not amend to reassert a claim for fraudulent inducement of the Lease against the Mora Defendants. Accordingly, it is

ORDERED that the motions to dismiss the Amended Complaint by defendants 133 Second Avenue, LLC, Walsam 133 LLC, Vinny Mora, and Enko Construction Corp. are granted in part as follows: (1) the third (fraudulent inducement of the Guarantee against Mora), ninth (frustration of purpose against the Owner), tenth (rescission of the Lease due to mistake and unjust enrichment against the Owner), eleventh (rescission of the Guarantee due to mistake and unjust enrichment against the Owner), and thirteenth (constructive eviction against the Owner) causes of action are dismissed with prejudice; (2) the remaining causes of action are severed and may proceed in accordance with this decision; and (3) the motions are otherwise denied; and it is further

ORDERED that the cross-motion by plaintiffs Gelita, LLC and Gian Luca Giovanetti to amend to reassert a claim against the Mora Defendants for fraudulent inducement of the Lease is denied; and it is further

ORDERED that the parties are to appear in Part 54, Supreme Court, New York County, 60 Centre Street, Room 228, New York, NY, for a status conference on February 4, 2014 at 10:30 in the forenoon.

Dated: January 22, 2014ENTER:

J.S.C.

Footnotes

Footnote 1: All defined terms have the same meaning as in the June Order, which can be found at Dkt. 97 and 2013 WL 2728386.

Footnote 2: It should be noted that courts often require a more precise defining of the alleged contract breaches when doing so can save substantial sums of money by narrowing the scope of discovery. This is especially true when the scope of electronic discovery, which is almost always necessary and quite expensive, will get out of hand and run up costs disproportionate to the amount in controversy. In this case, however, the scope of the allegations is clear and electronic discovery will be proportionate to the amount in controversy.

Footnote 3: The issue of whether plaintiffs' reliance was reasonable, in this instance, is a question of fact.

Footnote 4: Likewise, *see infra*, Part III, for an explanation of why plaintiffs cannot maintain a claim against Mora for fraudulently inducing plaintiffs to sign the Lease.

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