

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GOMEL CAPITAL PARTNERS LLC,

Plaintiff,

-against-

601 NE 29 DRIVE LLC,

Defendant,

-and-

RIVERSIDE ABSTRACT LLC,

Nominal Defendant.

Case No. 20-Civ-_____

COMPLAINT

Plaintiff Gomel Capital Partners LLC, by its attorneys, Schwartz Sladkus Reich Greenberg Atlas LLP, as and for its complaint against defendant 601 NE 29 Drive LLC and nominal defendant Riverside Abstract, LLC (together, “Defendants”), alleges as follows:

Nature of the Action

1. This is an action to recover a \$275,000 contract deposit being held hostage by defendant 601 NE 29 Drive LLC (the “Seller”)—despite falsely and fraudulently inducing Plaintiff to enter into the Contract in the first place, despite breaching several material provisions of the Contract critical to the contemplated transaction, and despite the obvious and immutable obstacles posed by the outbreak of the COVID-19 global pandemic, the resulting upheaval in the commercial world, and the frustration of Plaintiff’s ability to proceed with the transaction.

2. In short, the Seller knows Plaintiff cannot close on the subject property; the Seller has all but ensured that Plaintiff cannot reasonably close on the subject property; and now the

Seller is seeking to grab Plaintiff's \$275,000 contract deposit while still holding onto the subject property.

3. Plaintiff thus brings this action to terminate the contract and recover its deposit (plus default interest and the costs, expenses, and attorneys' fees incurred in this action).

The Parties

4. Plaintiff Gomel Capital Partners LLC is a Delaware limited liability company with its principal office in Encino, California.

5. Defendant 601 NE 29 Drive LLC is, upon information and belief, a Florida limited liability company with its principal place of business at 1515 N. Federal Highway Suite 300, Boca Raton Florida.

6. Defendant Riverside Abstract, LLC ("Riverside") is a New York limited liability company with a place of business at 3839 Flatlands Avenue, Brooklyn, New York. Riverside is named herein as a necessary but nominal party only, as it holds the disputed escrow deposit monies.

Jurisdiction and Venue

7. This Court has jurisdiction under 28 U.S.C. § 1332 based on diversity of citizenship between Plaintiff and Defendants, and because the amount in controversy exceeds \$75,000. This Court has supplemental jurisdiction over all state law claims under 28 U.S.C. § 1367, and under principles of pendent jurisdiction.

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

Facts Common to All Claims

9. On February 24, 2020, Plaintiff and the Seller entered into a "Commercial Contract" (the "Contract") concerning the 38-unit multifamily rental property located at 601-607 NE 29th Drive, Wilton Manors, Florida (the "Property").

The Contract Terms

10. Under the Contract, Plaintiff was to purchase the Property from the Seller for \$5,225,000, with a time is of the essence closing 60 days from February 24, 2020—*i.e.*, April 24, 2020 (the “Closing Date”). The parties agreed that “[t]ime is of the essence in [this] Contract.”

11. In furtherance of the contemplated transaction, Plaintiff agreed to, and did, deposit with the Seller’s escrow agent, defendant Riverside Abstract, LLC (“Riverside”), \$275,000 (the “Deposit”), which was to be credited to the purchase price at closing.

12. The parties agreed that, in the event any of the Contract terms were not met, Plaintiff would be entitled to the return of its Deposit.

13. Critically, however, in the event of an alleged default by Plaintiff—which, upon information and belief, the Seller will declare on April 24, 2020 if the transaction is not closed—the Seller would have the right to obtain Plaintiff’s Deposit immediately and without further notice or any due process.

14. Since Riverside is located in New York and the Seller is located in Florida, that would mean that the Seller would be removing property from New York to a foreign state.

15. Not only could that divest New York courts of jurisdiction over this matter, it would jeopardize Plaintiff’s ability to recover the Deposit altogether. That cannot be allowed to happen.

The Seller’s False And Fraudulent Contract Misrepresentations

16. As a material inducement to enter into the Contract, the Seller made a series of representations and warranties intended to mislead Plaintiff.

17. For example, the Seller represented and promised that it could and would “convey marketable title to the Property...free of liens, easements and encumbrances of record or known to Seller.”

18. The Seller further agreed that, even with respect to certain “Permitted Exceptions” (as defined in the Contract to include “government regulations”), such exceptions would not be permitted in the event such exceptions either (i) constituted a “violation,” or (ii) “prevent[] [Plaintiff’s] intended use of the Property as multifamily rentals.”

19. The Seller also warranted and represented that, as of the Effective Date (*i.e.*, February 24, 2020), it was aware of no governmental or municipal violations affecting the Property.

20. These representations and warranties by the Seller were materially false when made, and the Seller knew as much.

21. Indeed, unbeknownst to Plaintiff, on February 20, 2020—***before*** the parties executed the Contract—four separate violations were issued against the Property, one of which was a “Repeat Violation” from a prior 2019 violation, and two more of which were deemed “High Priority” violations.

22. Rather than owning up to these numerous violations plaguing the Property, the Seller did just the opposite: it sought to cover up the existence of these violations and deceive and mislead Plaintiff.

23. On February 25, 2020—the day after the parties executed the Contract—the Seller transmitted to Plaintiff (through Dropbox) a file labeled “Violation Report.”

24. Despite the fact that the Seller transmitted to Plaintiff the “Violation Report” on February 25, 2020—five days after the slew of new violations was issued against the Property—the Seller “curiously” furnished Plaintiff with only the violations entered against the Property in 2019; the Seller deliberately omitted any mention of, or reference to, the numerous 2020 violations lodged against the Property.

25. This was a deliberate tactic by the Seller to throw Plaintiff off and hide the fresh batch of 2020 violations plaguing the Property in an effort to induce Plaintiff to proceed with the Contract.

26. Indeed, had Plaintiff known about the 2020 violations—some of which were repeat violations from the 2019 violations, indicating ongoing difficulties with the ability to manage and operate the Property—Plaintiff never would have executed the Contract.

27. At bottom, in the alternative, the Seller’s deliberate refusal to deliver to Plaintiff the a “list of violations” as of the Effective Date “tolled and extended” the Contract’s “Due Diligence Period.” And since the Seller *still* has not delivered to Plaintiff a list of the violations plaguing the Property, the Due Diligence Period has been and remains tolled.

The Seller Breaches The Contract

28. But the Seller’s Contract shenanigans did not end there: in addition to its knowingly false and fraudulent misrepresentations and inducements, the Seller also committed several independent breaches of the Contract.

29. Under the Contract, the Seller had to provide a slew of documents within two days of execution (*i.e.*, by February 26, 2020), including, among other things, an updated rent roll, copies of all leases, list of violations and most recent city/state inspection reports, and insurance agreements. It failed to do so.

30. While the Seller did send some of the required documents, it failed to furnish many of these required documents, including that, without limitation, it failed to furnish an updated rent roll (through April 10, 2020, as Plaintiff requested), it failed to furnish Plaintiff with copies of all existing leases, it failed to furnish Plaintiff with a current list of violations and most recent city/state inspection reports (which, of course, would have exposed the Sellers fraudulent

inducement as alleged hereinabove), and it failed to furnish any insurance agreement with respect to the Property. These are all serious and material breaches of the Contract.

31. In addition to constituting material breaches of the Contract, or in the alternative, the Seller's failure to timely and fully furnish these required documents to Plaintiff tolls and/or extends Plaintiff's "Due Diligence Period" until all such documents are furnished to Plaintiff.

32. In addition to these document failures, the Seller also breached other aspects of the Contract.

33. For instance, the Contract requires the Seller to "continue to operate the Property and any business conducted on the Property in the manner operated prior to Contract..." and to "continue to lease out the units in accordance with current operation of business."

34. Upon information and believed, contrary to its Contract obligations and in light of the COVID-19 global pandemic, the Seller has not operated the Property in the same manner as prior to the Contract; on the contrary, upon information and belief, the Seller has taken little or no action to collect unpaid/overdue rents and/or to commence eviction proceedings for renters who are in arrears. That too is a serious and material breach of the Contract.

35. The Seller also promised, under the Contract, that it would "cure any existing...governmental violations prior to Closing." As alleged hereinabove, no fewer than four separate violations (two of which are deemed "High Priority" by the State of Florida) plague the Property and have since prior to the parties' execution of the Contract.

36. Upon information and belief, the Seller has not "cured" those violations, nor will it be able to prior to April 24, 2020 (*i.e.*, the Closing Date).

37. In short, in addition to the Seller's false and fraudulent inducements, the Seller also has breached many of the Contract's provisions entitling Plaintiff to terminate the Contract and

receive a full and immediate refund of its Contract Deposit, or, at a minimum, extend Plaintiff's Due Diligence Period.

The COVID-19 Global Pandemic Frustrates The Transaction, Terminates The Contract, And, At Bottom Extends Plaintiff's Due Diligence Period

38. Mere days after the Contract was executed, in late February and early March 2020, the COVID-19 global pandemic took hold in earnest in the United States.

39. The financial fallout from the outbreak of the COVID-19 global pandemic cannot be denied: it caused a complete upheaval of the United States economy, with nearly all "non-essential" business shut down and prohibited virtually all non-essential movement to and throughout the state of Florida.

40. While virtually every commercial party has made efforts to act in a commercial reasonable and responsible manner, the Seller has not.

41. The outbreak of the COVID-19 global pandemic has also made it impossible for Plaintiff to conduct the due diligence that the Seller promised Plaintiff could conduct, including, among other things, by conducting

any tests, analyses, surveys and investigations ("Inspection") which [Plaintiff] deems necessary to determine to [Plaintiff's] satisfaction the Property's engineering, architectural, environmental properties; zoning and zoning restrictions; flood zone designation and restrictions; subdivision regulations; soil and grade; availability of access to public roads, water, and other utilities; consistency with local, state and regional growth management and comprehensive land use plans; availability of permits, government approvals and licenses; compliance with Americans with Disabilities Act; absence of asbestos, soil and ground water contamination; and other inspections that [Plaintiff] deems appropriate.

42. Due to the outbreak of the COVID-19 global pandemic, however, Plaintiff has not had the ability to perform any of these vital inspections and examinations, and Plaintiff certainly

cannot know whether it wishes to exercise its “sole and absolute discretion” to deem the Property “suitable”—as is its absolute right under the Contract.

43. The Seller further promised and assured Plaintiff that Plaintiff would have the absolute right, “on the day prior to closing,” to “conduct a final ‘walk-through’ inspection of the Property.” To date, due to the outbreak of the COVID-19 global pandemic, Plaintiff itself has not even had an opportunity to inspect the Property, nor will it be able to conduct such an inspection “on the day prior to closing” (*i.e.*, April 23, 2020) or at any time in the foreseeable future.

44. In addition, due to the outbreak of the COVID-19 global pandemic and the associated stay-at-home orders prevailing throughout the country, including governing travel to and within Florida, Plaintiff has been, and for the foreseeable future will remain, unable to conduct.

45. Under the Contract, if a Force Majeure event prevents performance of the Contract for more than 30 days beyond the Closing Date (*i.e.*, April 24, 2020), “then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to [Plaintiff], thereby releasing [the parties] from all further obligations under this Contract.”

46. The outbreak of the COVID-19 global pandemic is a Force Majeure event, a quintessential “act of God.”

47. As such, and assuming Plaintiff’s performance under the Contract continues to be frustrated for 30 days beyond the Closing Date, Plaintiff is entitled to the refund of its Deposit (in addition to the independent grounds for termination of the Contract and return of the Deposit owing to the Seller’s false and fraudulent inducements and other knowing and deliberate Contract breaches).

Plaintiff Diligently Cancels the Contract And Duly Demands Return of its Deposit, But The Seller Refuses

48. As a result of the Seller's false and fraudulent inducements, willful and material breaches of the Contract, and the Force Majeure act of the COVID-19 global pandemic, Plaintiff lawfully and justifiably terminated the Contract and sought return of the Deposit.

49. On April 2, 2020, Plaintiff, through its prior counsel, Blank Rome LLP, wrote to the Seller's attorney and terminated the Contract and demanded return of the Deposit (the "Termination Letter")

50. But rather than complying with its legal and contractual obligations to return to Plaintiff the Contract Deposit—and instead ignoring its own fraudulent and culpable conduct and seeking to exploit the COVID-19 pandemic to capture for itself Plaintiff's sizeable Deposit while still retaining the Property—the Seller, through its counsel, denied Plaintiff's good faith request and has indicated that, come April 24, 2020 (*i.e.*, the Closing Date) or even sooner, the Seller will (i) grab the Deposit monies being held by Riverside and remove them from New York State to the State of Florida. Not only would that divest this Court of jurisdiction over property currently held within the state, it would altogether jeopardize Plaintiff's ability to recover the Deposit.

First Cause of Action
(Declaratory Judgment—Against All Defendants)

51. Plaintiff repeats and realleges the allegations contained in all prior paragraphs as if set forth fully herein.

52. As alleged hereinabove, because of the Seller's numerous breaches of, and false and fraudulent representations in, the Contract, the Contract is terminated and the Deposit must be returned to Plaintiff.

53. Upon information and belief, the Seller fails and refuses to return the Deposit, claiming (however disingenuously) that it is entitled to retain the Deposit.

54. As such, a justiciable controversy exists between Plaintiff and the Seller regarding whether Plaintiff's termination of the Contract was proper and whether it is entitled to the return of the Deposit.

55. As alleged hereinabove, because of the Seller's numerous breaches of the Contract (including the failure and refusal to furnish Plaintiff with certain information and documents), the transaction's Due Diligence Period was and remains tolled and extended. Upon information and belief, the Seller believes (however disingenuously) that the transaction's Due Diligence Period has closed.

56. As to these questions, Plaintiff has no adequate remedy at law.

57. By reason of the foregoing, Plaintiff is entitled to a declaratory judgment that: (i) it cancelled the Contract effectively, and that it is entitled to the return of its Contract Deposit; and (ii) the transaction's Due Diligence Period was and remains tolled and extended, through the present.

Second Cause of Action
(Breach of Contract—Against The Seller)

58. Plaintiff repeats and realleges the allegations contained in all prior paragraphs as if set forth fully herein.

59. The Contract was a valid and binding agreement between Plaintiff and the Seller.

60. As alleged hereinabove, Plaintiff at all times performed its obligations under the Contract; the Seller did not. Specifically, among other things, the Seller failed to: (i) furnish Plaintiff with an updated rent roll (through April 10, 2020, as Plaintiff requested); (ii) furnish Plaintiff with copies of all existing leases; (iii) furnish Plaintiff with a current list of violations and

most recent city/state inspection reports (which, of course, would have exposed the Sellers fraudulent inducement as alleged hereinabove); and (iv) furnish Plaintiff with any insurance agreement with respect to the Property.

61. In addition to constituting material breaches of the Contract, or in the alternative, the Seller's failure to timely and fully furnish these required documents to Plaintiff tolls and/or extends Plaintiff's "Due Diligence Period" until all such documents are furnished to Plaintiff.

62. The Seller also has breached numerous other aspects of the Contract, including by (i) failing to continue to operate the Property and all business conducted on the Property in the manner operated prior to Contract; (ii) failing to continue to lease out the units in accordance with current operation of business; and (iii) failing to cure all existing violations prior to closing;.

63. By reason of the foregoing, Plaintiff is entitled to an order directing Riverside to release the Deposit to Plaintiff; or, in the alternative, Plaintiff is entitled to an award of damages against the Seller in the amount of \$500,000, plus interest thereon.

Third Cause of Action
(Fraud In The Inducement—Against The Seller)

64. Plaintiff repeats and realleges the allegations contained in all prior paragraphs as if set forth fully herein.

65. As alleged hereinabove, to induce Plaintiff to enter into the Contract, the Seller lied and misrepresented to Plaintiff that, among other things, there were no violations affecting the Property.

66. At the time it made these false representations to Plaintiff, the Seller knew them to be false; indeed, the Seller made these false representations to Plaintiff solely to defraud Plaintiff and lure it into entering into the Contract and transferring the \$275,000 Deposit to Riverside.

67. Plaintiff reasonably relied upon the Seller's knowing (mis)representations in agreeing to enter into the Contract and transfer its \$275,000 Deposit to Riverside. Indeed, the Seller took affirmative steps thereafter to deceive Plaintiff into believing that there were no violations affecting the Property, including by submitting an outdated "Violation Report" intended to mislead Plaintiffs while the Property continued to be plagued by no fewer than four separate violations (two of which are deemed "High Priority").

68. Had Plaintiff known that the Seller's representations were false and fraudulent, Plaintiff never would have agreed to enter into the Contract, nor would Plaintiff have agreed to transfer its \$275,000 Deposit to Riverside.

69. As a result of the Seller's knowingly false and fraudulent misrepresentations and Plaintiff's reliance thereupon, Plaintiff has suffered damages.

70. By reason of the foregoing, Plaintiff has been injured in an amount to be determined at trial but not less than \$500,000, plus interest, for which sum the Seller is liable to Plaintiff.

Fourth Cause of Action
(Unjust Enrichment—Against The Seller)

71. Plaintiff repeats and realleges the allegations contained in all prior paragraphs as if set forth fully herein.

72. By reason of their foregoing conduct—including in fraudulently inducing Plaintiff to enter into the Contract, breaching the Contract deliberately, and failing and refusing to honor its legal and contractual obligations to return to Plaintiff its Deposit—the Seller has profited and enriched themselves unjustly at the expense and to the detriment of Plaintiff.

73. The Seller should not be permitted, in equity and good conscience, to retain for itself the Deposit that rightfully belongs to Plaintiff.

74. By reason of the foregoing, Plaintiff has been injured in an amount to be determined at trial but not less than \$500,000, plus interest, for which sum the Seller is liable to Plaintiff.

Fifth Cause of Action
(Costs, Expenses, And Attorneys' Fees—Against The Seller)

75. Plaintiff repeats and realleges the allegations contained in all prior paragraphs as if set forth fully herein.

76. Under the Contract, “[i]n any claim or controversy arising out of or relating to this Contract, the prevailing party...will be awarded reasonable attorneys’ fees, costs, and expenses.”

77. As alleged hereinabove, this action is necessitated by the Seller’s false and fraudulent inducements and willful and uncured breaches of the Lease, for which Plaintiff will be declared the prevailing party.

78. By reason of the foregoing, Plaintiff is entitled to reimbursement from the Seller for all costs, expenses, and attorneys’ fees (with interest thereon) incurred by Plaintiff in commencing and prosecuting this action, in an amount to be determined at trial.

WHEREFORE, Plaintiff demands judgment as follows:

- A. On the First Cause of Action, a judgment declaring that: (i) Plaintiff cancelled the Contract effectively, and that it is entitled to the return of its Contract Deposit; and (ii) the transaction’s Due Diligence Period was and remains tolled and extended, through the present;
- B. On the Second Cause of Action, an Order directing Riverside to release the Contract Deposit to Plaintiff, or, in the alternative an award of money damages against the Seller in the amount of \$500,000, plus interest thereon;
- C. On the Third Cause of Action, money damages in an amount to be determined at trial but not less than \$500,000;
- D. On the Fourth Cause of Action, money damages in an amount to be determined at trial but not less than \$500,000;

- E. On the Fifth Cause of Action, reimbursement of all costs, expenses, and attorneys' fees incurred in connection with this action, plus interest thereon (and directing such other and further proceedings to determine the amount thereof); and

granting to Plaintiff such other and further relief as the Court deems just and proper.

Dated: New York, New York
April 27, 2020

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