SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

----------X

WENJUAN SHI & HAPPY 8 REALTY CORP.

Plaintiffs,

- against -

57 AVENUE CORP.

Defendant.

Index No. 710343/2016

Commercial Division
Justice Livote

PLAINTIFFS'
MEMORANDUM OF LAW
IN OPPOSITION TO MOTION TO DISMISS

Gary Rosen, Esq.
Rosen Law LLC
Attorneys for Plaintiffs
216 Lakeville Road
Great Neck, New York 11020
516-437-3400

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases Page(s)

Statutes

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

----------X

WENJUAN SHI & HAPPY 8 REALTY CORP.

Plaintiffs,

- against -

57 AVENUE CORP.

Defendant.

PRELIMINARY STATEMENT

Plaintiffs respectfully submit this Memorandum of Law in opposition to Defendant's motion to dismiss.

The causes of action set forth in the First Amended Complaint are as follows:

a. First cause of action for specific performance of real estate;

b. Second cause of action for Preliminary Injunction;

c. Third cause of action for Permanent Injunction;

d. Fourth cause of action for Breach of Contract;

e. Fifth cause of action for Unjust Enrichment;

f. Sixth cause of action for Breach of Covenant of Good Faith and Fair Dealing;

g. Seventh cause of action for Fraud;

h. Eighth cause of action for Breach of Contract by Plaintiff Happy 8 Realty Corp. against Defendant.

Plaintiffs respectfully submit that for the reasons set forth herein, that the motion to dismiss should be denied.

ARGUMENT
POINT I
STANDARD OF REVIEW

Defendants move to dismiss based on CPLR §3211(a)(4) and CPLR §3211(a)(7).

CPLR §3211(a)(4) states that "a party may move for judgment dismissing one or more causes of action asserted against him on the ground that there is another action pending between the same parties for the same cause of action in a court of any state or the United States; the court need not dismiss upon this ground but may make such order as justice requires".

It is undisputable fact that there is no other action pending between the same parties and therefore, the motion to dismiss based on CPLR §3211(a)(4) must be DENIED.

"Dismissal of a complaint pursuant to CPLR §3211(a)(7) is only warranted where, after accepting the facts alleged as true and according plaintiff the benefit of every possible favorable inference, the court determines that the allegations do not fit within any cognizable legal theory". Board of Managers of the South Star Condominium v. WSA Equities LLC, et.al., 2014 N.Y. Misc. Lexis 4643 (Supreme Ct. .N.Y. Co. 2014); Morone v. Morone, 50 N.Y.2d 481, 484 (1989).

"The court's inquiry is limited to whether plaintiff has stated a cause of action and not whether it may ultimately be successful on the merits". Stukuls v. State of New York, 42 N.Y.2d 272, 275 (1977). In considering a motion to dismiss brought pursuant to CPLR §3211(a)(7), the Court presumes the facts pleaded to be true and accords them every favorable inference. Cron v. Hargro Fabrics, 91 N.Y. 2d 362, 366 (1998).

On a motion to dismiss the complaint for failure to state a cause of action, pursuant to CPLR § 3211(a)(7), the pleading is to be afforded a liberal construction, the facts as alleged in the complaint are accepted as true and the plaintiff is afforded the benefit of every possible favorable inference. See, Nonnon v. City of New York, 9 N.Y.3d 825, 874 N.E.2d 720, 842 N.Y.S.2d 756 (2007); Zumpano v. Quinn, 6 N.Y.3d 666, 849 N.E.2d 926, 816 N.Y.S.2d 703 (2006); AG Capital Funding Partners, L.P. v. State Street Bank and Trust Co., 5 N.Y.3d 582, 842 N.E.2d 471, 808 N.Y.S.2d 573 (2005); Reid v. Gateway Sherman, Inc., 60 A.D.3d 836, 875 N.Y.S.2d 254 (2nd Dept. 2009); Edme v. Tanenbaum, 50 A.D.3d 624, 855 N.Y.S.2d 596 (2nd Dept. 2008); Enriquez v. Home Lawn Care and Landscaping, Inc., 49 A.D.3d 496, 854 N.Y.S.2d 410 (2nd Dept. 2008); Parsippany Const. Co., Inc. v. Clark Patterson Associates, P.C., 41 A.D.3d 805, 839 N.Y.S.2d 179 (2nd Dept.2007); Klepetko v. Reisman, 41 A.D.3d 551, 839 N.Y.S.2d 101 (2nd Dept. 2007); Santos v. City of New York, 269 A.D.2d 585, 703 N.Y.S.2d 511 (2nd Dept. 2000).

The determination to be made is whether plaintiff has a cause of action, not whether one was stated. See, Gaidon v. Guardian Life Ins. Co. of America, 94 N.Y.2d 330, 725 N.E.2d 598, 704 N.Y.S.2d 177 (1999); Walker v. Kramer, 63 A.D.3d 723, 880 N.Y.S.2d 677 (2nd Dept. 2009); Gershon v. Goldberg, 30 A.D.3d 372, 817 N.Y.S.2d 322 (2nd Dept. 2006); Steiner v. Lazzaro & Gregory, P.C., 271 A.D.2d 596, 706 N.Y.S.2d 157 (2nd Dept. 2000).

The determination to be made is whether the facts as alleged fit within any cognizable legal theory. See, Fitzgerald v. Federal Signal Corp., 63 A.D.3d 994, 883 N.Y.S.2d 67 (2nd Dept. 2009); Farber v. Breslin, 47 A.D.3d 873, 850 N.Y.S.2d 604 (2nd

Dept. 2008); International Oil Field Supply Services Corp. v. Fadeyi, 35 A.D.3d 372, 825 N.Y.S.2d 730 (2nd Dept. 2006); EBC I. Inc. v. Goldman Sachs & Co., 5 N.Y.3d 11, 832 N.E.2d 26, 799 N.Y.S.2d 170 (2nd Dept. 2005).

In review of this motion, and the affidavits in support thereof and opposition thereto, it is respectfully submitted that after due inquiry, the Court should find that plaintiff (i) has stated eight (8) causes of action and (ii) it is not for the court to decide at this time whether the Plaintiff will be ultimately successful on all eight (8) causes of action. The Court need not and cannot decide on this motion whether the Plaintiff will "ultimately be successful on the merits".

As set forth herein, accepting the facts alleged in the complaint as true and according plaintiff the benefit of every possible favorable inference, the court cannot determine that the eight (8) causes of action and the allegations set forth in the complaint do not fit within any cognizable legal theory, because it is respectfully submitted that they do.

Defendant is not seeking dismissal of the complaint based on what is contained in reading the complaint from the four corners of the complaint. Questions of fact raised by Defendant must be sorted out in discovery and cannot be decided on this motion to dismiss.

It is respectfully submitted that based on the four corners of the complaint, there are eight (8) cognizable causes of action, which cannot be dismissed on a motion to dismiss.

It is also respectfully submitted that for the reasons set forth herein and in the affidavit in opposition to the motion to dismiss, that Defendant's motion to dismiss be denied.

POINT II

THE COMPLAINT STATES A COGNIZABLE FIRST CAUSE OF ACTION FOR SPECIFIC PERFORMANCE AGAINST DEFENDANT

To prevail on a cause of action for specific performance of a contract for the sale of real property, a plaintiff purchaser must establish that it substantially performed its contractual obligations and was ready, willing, and able to perform its remaining obligations, that the vendor was able to convey the property, and that there was no adequate remedy at law (*see E & D Group, LLC v Vialet*, 134 AD3d 981, 982-983, 21 N.Y.S.3d 691)).

In the instant action, Plaintiff Wenjuan Shi executed a contract of sale and paid the first and second required monetary deposits of $138,800 each to Defendant. Defendant received, accepted and used the total $277,600 in deposits.

Plaintiff Wenjuan Shi substantially performed its contractual obligations by paying the monies that it was required to pay under the Contract of Sale.

Plaintiff Wenjuan Shi was and is ready, willing, and able to perform Plaintiff Wenjuan Shi remaining obligations.

Defendant is able to convey the real property which is the subject of this action.

There is no adequate remedy at law.

Specific performance has been deemed an appropriate remedy "in actions for breach of contract for the sale of real property or when the uniqueness of the goods in

questions makes calculation of money damages too difficult or uncertain." 47-53 Chrystie Holdings LLC v. Thuan Tam Realty Corp., 2017 N.Y. Misc. Lexis 2547 (Supreme Ct. N.Y. Co., June 27, 2017) citing *Cho v. 401-403 57th St. Realty Corp.*, 300 A.D.2d 174, 175, 752 N.Y.S.2d 55 (1st Dept. 2002).

Plaintiff Wenjuan Shi has a cognizable cause of action against Defendant for specific performance of the real estate Contract of Sale.

POINT III

THE COMPLAINT STATES A COGNIZABLE SECOND CAUSE OF ACTION FOR A PRELIMINARY INJUNCTION

To prevail on a cause of action for a preliminary injunction, Plaintiff must show "a probability of success, damage of irreparable injury in the absence of an injunction and a balance of the equities in their favor". Aetna Ins. Co. v. Capasso, 75 N.Y.2d 860 (1990) citing Grant Co. v Srogi, 52 N.Y.2d 496 (1981).

Plaintiff Wenjuan Shi is the purchaser under a contract for the sale of real property. Plaintiff Wenjuan Shi performed all obligations required under the said contract of sale.

The subject real property is unique real property.

Because Plaintiff Wenjuan Shi performed all obligations required under the said contract of sale and is able to pay the balance of the purchase price, Plaintiff Wenjuan Shi has a probability of success on the merits.

Because the real property is unique, in the absence of an injunction, Plaintiff Wenjuan Shi will suffer irreparable injury because Defendant will be freely able to convey title to a third party absent the preliminary injunction.

In a balancing of the equities, as Plaintiff Wenjuan Shi is ready, willing and able to purchase the real property from Defendant, Defendant will suffer no losses by the granting of the preliminary injunction, but Plaintiff Wenjuan Shi **would suffer** irreparable injury if Defendant sells the real property to a third party.

Plaintiff Wenjuan Shi has a cognizable cause of action against Defendant for a preliminary injunction.

POINT IV
THE COMPLAINT STATES
A COGNIZABLE THIRD CAUSE OF ACTION FOR
A PERMANENT INJUNCTION

For the reasons set forth above, at trial, the Court should grant a permanent injunction, as at trial, Plaintiff Wenjuan Shi will prove that (i) Plaintiff Wenjuan Shi is the purchaser under a contract for the sale of real property, (ii) Plaintiff Wenjuan Shi performed all obligations required under the said contract of sale, (iii) the subject real property is unique real property and (iv) Plaintiff Wenjuan Shi performed all obligations required under the said contract of sale and is able to pay the balance of the purchase price and (v) at trial it will be proven that Plaintiff Wenjuan Shi succeeded on the merits and allegations alleged in the complaint.

Plaintiff Wenjuan Shi has a cognizable cause of action against Defendant for a permanent injunction.

POINT V
THE COMPLAINT STATES
A COGNIZABLE FOURTH CAUSE OF ACTION FOR
A BREACH OF CONTRACT

In MadCap Acquisitions LLC v. American Towers LLC, 2016 N.Y. Misc. Lexis 2714 (Supreme Ct. N.Y. Co. July 19, 2016), the Court cited Harris v. Seward Park

Housing Corp., 79 A.D.3d 425 (1st Dept. 2010) citing Morris v. 702 E. Fifth St. HDFC, 46 A.D 3d 478 (2007) explaining elements for breach of contract claim.

In Harris, supra, the appellate division stated that the elements for breach of contract are the (1) existence of a contract, (2) the plaintiff's performance thereunder, (3) the defendant's breach thereof, and (4) resulting damages.

The first amended complaint includes the allegations of (i) a contract between the parties, (ii) performance by the Plaintiff Wenjuan Shi, (iii) breach of the contract by the Defendant and (iv) damages suffered by the Plaintiff. All of the elements required to assert a cause of action for breach of contract are set forth in the fourth cause of action in the first amended complaint.

It is respectfully submitted that the complaint articulates the elements for breach of contract.

The fourth cause of action for breach of contract is a cognizable claim for relief and should survive a motion to dismiss.

POINT VI

THE COMPLAINT STATES A COGNIZABLE FIFTH CAUSE OF ACTION FOR UNJUST ENRICHMENT

"Unjust enrichment is a quasi contract theory of recovery, and is an obligation imposed by equity to prevent injustice, in the absence of an actual agreement between the parties concerned'" 135 Bowery LLC v. Sofer, 2016 NY Slip Op 31012(U), ¶ 20 (Supreme Ct. N.Y. Co., 2016).

The fifth cause of action for unjust enrichment are pled in the alternative, in the event that the claims for breach of contract are rejected by the Court if the Court were to

hold that there was no "contract". In STS Partners Fund, LP v. Deutsche Bank Sec., Inc., 2016 NY Slip Op 31191(U), (Supreme Ct. N.Y. Co, June 21, 2016) the Court stated that "Their attempt to plead the cause of action in the alternative must be rejected, as that procedure is available only where "there is a bona fide dispute as to the existence of a contract or where the contract does not cover the dispute in issue." Joseph Sternberg, Inc. v. Walber 36th St. Assocs, 187 A.D.2d 225, 228, 594 N.Y.S.2d 144 (1st Dep't 1993).

In this case, there is a BONA FIDE DISPUTE as to the existence of a contract between the parties because Defendant claims that the contract was terminated. It is not appropriate at this stage of litigation for the Court to dismiss claims for unjust enrichment without the Defendant admitting the existence and validity of a contract. In this case, the Defendant has not admitted the existence of a contract as alleged in the fourth cause of action. Therefore, the cause of action for unjust enrichment should not be dismissed at this time.

In Worldview Entm't Holdings Inc. v. Woodrow, 2016 NY Slip Op 30806(U), ¶ 12 (Supreme Ct. N.Y. Co. 2016) the court said that "where there is a bona fide dispute as to the existence of a contract or the application of a contract in the dispute in issue, a plaintiff may proceed upon a theory of quasi contract as well as breach of contract, and will not be required to elect his or her remedies." (Sabre Intl. Sec., Ltd. v. Vulcan Capital Mgt., Inc., 95 A.D.3d 434, 438-39, 944 N.Y.S.2d 36 [1st Dep't 2012]. See also Chrysler Corp. v. Airtemp Corp., 426 A.2d 845, 854 [Del. Super. 1980] ("With respect to the theory of quantum meruit or contract implied by law, courts of this State have long recognized that recovery on such a theory will be considered only if it is determined that the relationship of the parties is not governed by an express contract implied in law.").

It is respectfully submitted that the complaint articulates the elements for unjust enrichment.

It is respectfully submitted that the Defendants' motion to dismiss the fifth cause of action for unjust enrichment be denied.

POINT VII

THE COMPLAINT STATES A COGNIZABLE SIXTH CAUSE OF ACTION FOR BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

"Implied in every contract is a covenant of good faith and fair dealing, which is breached when a party to a contract acts in a manner that, although not expressly forbidden by any contractual provision, would deprive the other party of the right to receive the benefits under their agreement." Worldview Entertainment Holdings Inc., supra citing *Jaffe v. Paramount Communs.*, 222 A.D.2d 17, 22-23, 644 N.Y.S.2d 43 [1st Dep't 1996]. The implied obligation "is in aid and furtherance of other terms of the agreement of the parties", and "an obligation that would be inconsistent with other terms of the contractual relationship cannot be implied." (*Sheth v. New York Life Ins. Co.*, 273 A.D.2d 72, 73, 709 N.Y.S.2d 74 [1st Dep't 2000]). "There can be no claim of breach of the implied covenant of good faith and fair dealing without a contract." (*Randall's Is. Aquatic Leisure, LLC v City of New York*, 92 A.D.3d 463, 463, 938 N.Y.S.2d 62 [1st Dep't 2012]).

There was and is a contract between Plaintiff Wenjuan Shi and Defendant.

Defendant breached the implied covenant of good faith and fair dealing with Plaintiff Wenjuan Shi.

Defendant has acted in a manner that would deprive Plaintiff Wenjuan Shi of the right to receive the benefits under their agreement.

It is respectfully submitted that the complaint articulates the elements for breach of the implied covenant of good faith and fair dealing.

The sixth cause of action for breach of the implied covenant of good faith and fair dealing is a cognizable claim for relief and should survive a motion to dismiss.

POINT VIII

THE COMPLAINT STATES A COGNIZABLE SEVENTH CAUSE OF ACTION FOR FRAUD

In Connaughton v. Chipotle Mexican Grill, Inc., 29 N.Y. 3d 137 (2017), the Court of Appeals stated that to allege a cause of action based on fraud, the plaintiff must assert a representation or a material omission of fact which was false and known to be false by the defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission and injury."

The first amended complaint alleges all of the required elements for fraud.

The first amended complaint alleges that:

Paragraph "168" of the first amended complaint states that "On or about July 25, 2013, Defendant represented to Plaintiff that Defendant was constructing the subject Real Property".

Paragraph "169" of the first amended complaint states that "On or about July 25, 2013, Defendant represented to Plaintiff that the New York City Department of Buildings approved the amended building plans for the house being constructed on the Real Property on May 13, 2013."

Paragraph "170" of the first amended complaint states that "Based on the approval of the amended building plans for the house being constructed on the Real Property on May 13, 2013, Plaintiff WENJUAN SHI agreed to pay additional monies to Defendant in the sum of $138,800.00 to Defendant with such funds to be used by Defendant to construct the house on the Real Property for Plaintiff WENJUAN SHI."

Paragraph "171" of the first amended complaint states that "On or about July 25, 2013, Plaintiff WENJUAN SHI paid to Defendant the sum of $138,800.00 to Defendant as and for a second deposit for the purchase of the Real Property and the improvements as required under the Contract of Sale by check number 102 written on Plaintiff WENJUAN SHI's bank account at JP Morgan Chase Bank."

Paragraph "172" of the first amended complaint states that "Defendant received, retained and deposited the sum of $138,800.00 received from Plaintiff WENJUAN SHI."

Paragraph "173" of the first amended complaint states that "Defendant had a duty to use the funds provided by Plaintiff WENJUAN SHI for the construction of the house to be acquired by Plaintiff WENJUAN SHI."

Paragraph "174" of the first amended complaint states that "Upon information and belief, Defendant instead used the funds which were provided by Plaintiff WENJUAN SHI to Defendant on or about July 25, 2013 in the sum of $138,800 for the construction of houses located on Block 4961, Lot 13 on the Tax Map of the City of New York, County of Queens, which was not a house or real property under contract by Plaintiff WENJUAN SHI."

Paragraph "175" of the first amended complaint states that "Upon information and belief, Defendant instead used the funds which were provided by Plaintiff

WENJUAN SHI to Defendant on or about July 25, 2013 in the sum of $138,800 for the construction of houses located on Block 4961, Lot 114 on the Tax Map of the City of New York, County of Queens, which was not a house or real property under contract by Plaintiff WENJUAN SHI."

Paragraph "176" of the first amended complaint states that "Upon information and belief, Defendant instead used the funds which were provided by Plaintiff WENJUAN SHI to Defendant on or about July 25, 2013 in the sum of $138,800 for the construction of houses located on Block 4961, Lot 115 on the Tax Map of the City of New York, County of Queens, which was not a house or real property under contract by Plaintiff WENJUAN SHI."

Paragraph "177" of the first amended complaint states that "At the time that Plaintiff WENJUAN SHI signed the Contract of Sale, Defendant knew that it intended to use all or a portion of the sum of $277,600.00 which Plaintiff WENJUAN SHI paid to Defendant for the construction of houses not located on the Real Property."

Paragraph "178" of the first amended complaint states that "Defendant never intended to convey title to the Real Property to Plaintiff WENJUAN SHI."

Paragraph "179" of the first amended complaint states that "Defendant owed Plaintiff WENJUAN SHI a duty."

Paragraph "180" of the first amended complaint states that "Defendant breached its duty to Plaintiff WENJUAN SHI."

Paragraph "181" of the first amended complaint states that "The duty owed by Defendant to Plaintiff WENJUAN SHI was collateral to the Contract of Sale."

Paragraph "182" of the first amended complaint states that "The duty owed by Defendant to Plaintiff WENJUAN SHI was extraneous to the Contract of Sale.

Paragraph "183" of the first amended complaint states that "Defendant owed a duty to Plaintiff WENJUAN SHI to use the funds paid by Plaintiff WENJUAN SHI to Defendant for the construction of only one house on the Real Property."

Paragraph "184" of the first amended complaint states that "Defendant owed a duty to Plaintiff WENJUAN SHI to use the funds paid by Plaintiff WENJUAN SHI to Defendant for the construction of only one house on the Real Property and for no other purposes."

Paragraph "185" of the first amended complaint states that "Defendant owed a duty to Plaintiff WENJUAN SHI to use the funds paid by Plaintiff WENJUAN SHI to Defendant for the construction of only one house on the Real Property and not for the construction of a house located on Block 4961, Lot 13 on the Tax Map of the City of New York, County of Queens, City and State of New York."

Paragraph "186" of the first amended complaint states that "Defendant owed a duty to Plaintiff WENJUAN SHI to use the funds paid by Plaintiff WENJUAN SHI to Defendant for the construction of only one house on the Real Property and not for the construction of a house located on Block 4961, Lot 114 on the Tax Map of the City of New York, County of Queens, City and State of New York."

Paragraph "187" of the first amended complaint states that "Defendant owed a duty to Plaintiff WENJUAN SHI to use the funds paid by Plaintiff WENJUAN SHI to Defendant for the construction of only one house on the Real Property and not for the

construction of a house located on Block 4961, Lot 115 on the Tax Map of the City of New York, County of Queens, City and State of New York."

Paragraph "188" of the first amended complaint states that "Plaintiff WENJUAN SHI's claim for fraud does not arise out of the facts and circumstances identical to the action for breach of contract."

It is respectfully submitted that the complaint articulates the elements for fraud with particularity.

The seventh cause of action for fraud is a cognizable claim for relief and should survive a motion to dismiss.

POINT IX

THE COMPLAINT STATES A COGNIZABLE EIGHTH CAUSE OF ACTION FOR A BREACH OF CONTRACT BROUGHT BY PLAINTIFF HAPPY 8 REALTY CORP.

Plaintiff Happy 8 Realty Corp. alleges in the first amended complaint (1) the existence of a contract, (2) the plaintiff's performance thereunder, (3) the defendant's breach thereof, and (4) resulting damages. Such elements constitute a cognizable cause of action for breach of contract by Plaintiff Happy 8 Realty Corp. against Defendant.

Plaintiff Happy 8 Realty Corp. brought about a meeting of the minds by and between Plaintiff Wenjuan Shi and Defendant.

Defendant failed to compensate Plaintiff Happy 8 Realty Corp. for a brokerage commission for arranging for the meeting of the minds between Plaintiff Shi and Defendant.

Plaintiff Happy 8 Realty Corp. is entitled to its real estate brokerage commission.

Defendant alleges in its Memorandum of Law in Support of its instant Motion to Dismiss that Plaintiff Happy 8 Realty Corp. "expressly agreed that its entitlement to its commission would be contingent upon the transfer of title" of the subject premises from Defendant to Plaintiff Shi. (Defendant's Memorandum of Law, Document No. 110, Page 16).

However, the Broker's Commission Agreement, which is attached to Defendant's Memorandum of Law in Support as Exhibit "L", specifically provides that Plaintiff Happy 8 Realty Corp.'s **"commission is to be due and payable...only if, as and when title closes, except for *willful default of the sellers*."**

Defendant has not demonstrated any entitlement to its request for dismissal of the eighth cause of action for breach of contract by Plaintiff Happy 8 Realty Corp. against Defendant.

It is respectfully submitted that Defendant's motion to dismiss the eighth cause of action should be denied since Plaintiff Happy 8 Realty Corp. articulated a cognizable claim for breach of contract against Defendant.

It is further respectfully submitted that Defendant's motion to dismiss the eighth cause of action should be denied since the issue of whether Plaintiff Happy 8 Realty Corp. was due its commission is an issue of fact in dispute between the parties since Plaintiffs assert that the ***willful default of the sellers*** – Defendant – is specifically what caused the breach of contract for which Plaintiff Happy 8 Realty Corp. has asserted the eighth cause of action, while Defendant claims that it is not in default whatsoever.

It is respectfully submitted that the complaint articulates the elements for breach of contract brought by Plaintiff Happy 8 Realty Corp.

The eighth cause of action for breach of contract is a cognizable claim for relief and should survive a motion to dismiss.

CONCLUSION

It is respectfully requested, for the reasons set forth herein and in the Affidavit in Opposition to the Defendant's Motion to Dismiss, that Defendant's Motion to Dismiss be denied in its entirety and that the Court direct Defendant to file an Answer to the First Amended Complaint and proceed in discovery and for such other and further relief as this Court deems just and proper.

Dated: Great Neck, New York
July 11, 2017

Gary Rosen, Esq.
Rosen Law LLC
Attorneys for Plaintiffs
216 Lakeville Road
Great Neck, New York 11020
(516)-437-3400