SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JOEL M. COHEN** **PART** 03M

Justice

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GEDULA 26, LLC,485 SHUR LLC, BSD 777-26 MANAGER LLC, BSD SHEVA MANAGER LLC,

INDEX NO. 653977/2014

Plaintiffs,

- v -

LIGHTSTONE ACQUISITIONS III LLC,485 SEVENTH AVENUE ASSOCIATES LLC, THE LIGHTSTONE GROUP, LLC,

Defendants.

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DECISION AFTER NON-JURY TRIAL

The central question in this case is whether the parties to a $182 million real estate sales transaction orally committed, on the day of closing, to a separate legally binding agreement to permit the seller to participate as a 25 percent partner in the intended subsequent redevelopment of the property into a hotel. After a five-day bench trial, the Court concludes that although the parties had discussed the possibility of such an arrangement on numerous occasions (at sellers' insistence), and although a representative of the buyer provided the sellers and their counsel a skeletal term sheet for the proposed arrangement on the day of closing, there is no persuasive evidence of a legally binding agreement. Accordingly, Plaintiffs' claim for breach of a "Partnership Agreement" is denied and dismissed.

However, Plaintiffs did establish that Defendants breached the post-closing occupancy provisions of the parties' real estate sales agreement by preventing Plaintiffs from accessing the building on December 17, 2014 (*see Gedula 26, LLC v Lightstone Acquisitions III LLC*, 213

AD3d 409, 410 [1st Dept 2023]). The Court finds that Plaintiffs are entitled to damages arising out of that breach in the amount of $322.58.

FINDINGS OF FACT

In 2004, Abraham Talassazan ("Talassazan"), through his companies Plaintiffs Gedula 26, LLC ("Gedula") and 485 Shur LLC ("Shur"),[1] purchased the sixteen-story office building known as 485 Seventh Avenue, New York, New York (the "Building") for approximately $48 million (Tr.2 206:12–17).[2] The Building was developed nearly 100 years earlier as a hotel, and Talassazan intended to convert the Building back to that use (NYSCEF 1103 [Joint Statement of Stipulated Facts ("JSSF")] ¶4; Tr.1 56:9-24).

In or about early March 2014, Plaintiffs and Defendant Lightstone Acquisition III LLC ("Lightstone")[3] were introduced and began negotiating a Purchase and Sale Agreement ("PSA") for the Property (JSSF ¶5). Lightstone is an LLC within the Lightstone Group, a real estate enterprise owned and run by David Lichtenstein ("Lichtenstein") (Tr.4 588:9–589:1; 591:10–12; 696:17–18; 697:5–7). Lichtenstein, along with Meir Milgraum ("Milgraum"), Lightstone's Director of Acquisitions and Development, and Joseph Teichman, Esq. ("Teichman") Lightstone's General Counsel, were involved in the negotiations with Plaintiffs (Tr.1 71:23-25;72:1-15).

At the time negotiations began, the Property consisted of offices, retail spaces on the

[1] Plaintiffs Gedula 26, LLC, 485 Shur LLC, together with BSD 777-26 Manager LLC, and BSD Sheva Manager, LLC, collectively "Plaintiffs."

[2] Trial Transcripts are filed as Volume 1 (NYSCEF 1121), Volume 2 (NYSCEF 1122), Volume 3 (NYSCEF 1123), Volume 4 (NYSCEF 1124), and Volume 5 (NYSCEF 1125). Hereafter, citations to the Trial transcript shall appear as "Tr. [Volume Number] __:_-__"

[3] Lightstone Acquisitions III LLC, together with 485 Seventh Avenue Associates LLC, and The Lightstone Group, LLC, collectively, "Defendants."

ground floor, and a public garage (JSSF ¶6). Plaintiffs primarily conducted their business out of some of the office spaces, and occupied storage space in a room in the rear of the lobby, storage rooms in the basement and on the roof, and Suite 1626, which was used as a Synagogue ("Sellers' Spaces") (JSSF ¶7).

On April 2, 2014, the parties entered into an Agreement for the Purchase and Sale ("PSA") of the Property, with a purchase price of $182,000,000, and a $9,000,000 deposit (JX-1). The PSA provided Plaintiffs would vacate Sellers Spaces "six (6) months from the anniversary of closing" with a holdover rent of $10,000.00 per month beyond the six months (JX-1 at 69,73,76).

Thereafter, the parties executed an Amended PSA and a Second Amended PSA extending the Purchaser's due diligence deadline, by two and three days respectively (JX-2; JX-3). After it became clear that multiple city approvals were required before Lightstone could install windows across one wall of the building, on May 5, 2014, the parties executed the Third Amendment to the PSA, which constituted Purchaser's Due Diligence Waiver Notice and reduced the purchase price by $8,500,000 until Purchaser's obtained the "City Approval." (JX-4).

A. The Partnership Discussions

Between March and November 2014, Lightstone and Talasazzan had numerous discussions about a potential partnership. Talassazan raised the possibility of a partnership before the PSA was signed, and the parties discussed a potential Internal Revenue Code § 1031 exchange, with Talassazan acquiring a different building and the possibility of Lightstone reselling the garage and retail spaces to Talassazan (Tr.4 600:2–25, 601:1-3, 620:3–7; Tr.1 85:8-25, 87:21-25; JX-9).

In March, Talassazan, Miligraum, and Lichtenstein again discussed the possible partnership. Miligraum testified that Lichtenstein "was extremely adamant that this would all happen post-closing, and that we would close on the building and then we would discuss it with him." (Tr.4 601:11–21). Talassazan recalled discussions about "the idea of a potential partnership" with Lichtenstein and others at Lightstone, and he understood that Lichtenstein was the decisionmaker on any potential partnership (Tr.1 72:12–15; 214:7–15; Tr.2 235:3–14).

The PSA included a provision for continued negotiations regarding a potential partnership. Paragraph 38 of the PSA stated that, for 75 days after Lightstone delivered a due diligence waiver notice, "Purchaser and Sellers shall negotiate in good faith … for Sellers to acquire up to a twenty-five percent (25%) ownership interest in the entity which will acquire title to the Property, on terms and conditions determined in Purchaser's sole discretion." (JX-1 at 39). As is clear from the language, there was no partnership agreement at this point, only the provision for *negotiations*, with the ultimate terms and conditions to be in "Purchaser's sole discretion."

Additionally, attached to the PSA as Exhibit J was the Rent Roll, which provided that Sellers would have the right to occupy the Sellers' Spaces post-closing and would be obligated to vacate the same "six (6) months from the anniversary of closing" and if Seller failed to vacate, Seller would pay a holdover rent in the aggregate of $10,000 per month for the Suites (the "Post-Closing Occupancy Agreement") (JX-1 at Exhibit J).

Between the PSA's execution and the November 19 closing, Talassazan and Milgraum continued discussing a possible partnership and his anticipated § 1031 exchange (JX-161). They also discussed a confidential 70-page Deal Presentation prepared by Defendants regarding the proposed development of a hotel at the Property (JX-10; Tr.1 95:6-7). Milgraum referenced the

possibility of a partnership agreement in his correspondence with Talassazan, though with the caveat that it was an issue to be finalized when the project matured (JX-44 at 2 ["I assure you that when…these questions are finalized, it will be easier for me to have you come in as a partner …Please have a little more patience.…."]; JX-161 at 2 ["I still intend to keep you in the deal and we are working towards a resolution of the capital stack, should be done shortly."]).

Milgraum repeatedly told Talassazan that Lightstone could only enter a partnership after it closed on the Property and put together its "capital stack"—*i.e.*, the debt and equity financing for the development and construction project required to convert the over Property back into a hotel (Tr.4 595:6–13; 602:16–22; 624:3; Tr.2 236:1–5, 13–15; JX-11 [July 24: "As I said this is going to be complicated and I can't commit to anything until the capital stack is finalized."]; JX161 [August 25: "The capitalization of the project is still being worked on … and it may happen post closing …."]; JX-162 [September 2: "We still have not finalized the capital stack."]). Additionally, whether Lightstone would agree to a partnership was ultimately up to Lichtenstein (Tr.4 602:23–603:3; 631:25–632:4).

On September 4, 2014, Talassazan and Lichtenstein had a face-to-face meeting at Lichtenstein's office (JX-73). Talassazan testified that at that meeting, Talassazan and Lichtenstein discussed the partnership agreement and Lichtenstein told Talassazan that he will speak with Milgraum and that Milgraum will come back to Talassazan with partnership agreement terms (Tr.1 256:7-18). On September 15, 2014, Milgraum wrote to Talassazan: "David did ask me to respond given that you have called him regarding the conversation you had with him" and wrote "JV with you and Lightstone - As I have said all along, and my position has not changed, we intend on having you in as our partner in the deal and would be grateful if you

stayed in however, *until the capital stack is finalized, there really is nothing to talk about*" (JX-164 at 1 [emphasis added]).

Lightstone adjourned the September 18, 2014, closing date for sixty days to November 18, 2014 (Tr.1 78:1-79:7; JX-1). On November 7, 2014, in preparation for the closing, Plaintiffs' counsel, Michael Coritsidis, wrote to Defendants with a list of items for review, including "Number 8," which stated: "Let me know, whether now that the financing, etc. is in place, your client will be providing Mr. Talassazan with the terms and conditions of a 'Partnership Agreement' as set forth in Section 38 of the Contract" (JX-16 at 3). In context, the Court finds that the "financing" referenced by Plaintiff's counsel (which at this stage was simply bridge financing) is not the same as the "capital stack" that had been repeatedly referenced by Defendants' representatives, which would be constructed well after the closing of Defendants' acquisition of the Property.

Upon receiving Coritsidis' email, Teichman responded to Landau, "Defer to Meir on 8 but here are a few possibilities: tell him it will be easier to do post closing since we are using 1031 money to buy; ask him to do first draft term sheet; ignore." (JX-16 at 2). Landau responded to Teichman, "I think the response depends upon Meir/David's willingness to have that partnership. If yes, we should speak because I would not want a 'binding term sheet' out and I don't know that we could negotiate an LLC with them in 11 days. If no, we should also speak on how this will be communicated to Michael, but we will need to respond." (JX-16 at 1). Milgraum responded "He is joking on #8 right?" (*id.*).

B. The Closing

On November 18, 2014, the scheduled closing day, the parties disputed whether Purchaser should pay the $8,500,000 reduction in the Third Amendment (Tr.1 127:20-130:9).

According to Talassazan, although the Third Amendment required Purchaser to pursue the chimney removal "in a commercially reasonable and diligent manner," Teichman took no action (Tr.1 128:14-129:4; DX-248), and therefore, Talassazan believed that Teichman was making an illegitimate excuse to withhold $8,500,000.00 from the closing and to never pay it (Tr.1 129:25-130:9, 132:1-24;DX-248). However, Defendants viewed Talassazan's refusal to close at the contract price of $173.5 million as unwarranted because the City had *not* granted unconditional approval for the window installation that would have entitled him to that increase in the agreed upon purchase price (Tr.2 270:3–14; 262:4–11; JX-44).

Although Defendants proposed to extend the PSA §38 partnership discussion deadline for 75 days, Talassazan stated that he "would not extend the time to post closing" (JSSF ¶18; JX-168; Tr.1 134:12-136:6). Meanwhile, Teichman and Eric Landau ("Landau"), Lightstone's transactional attorney, drafted the "485 Seventh- JV Language" requested by Milgraum, and emailed the terms to Milgraum at 1:15 p.m. on November 18 (the "Landau Email") (JX-146; Tr.5 806: 19-25; Tr.4 669:3-9). The Landau Email provided:

> Seller agrees that Purchaser shall have the right to acquire 25% of the equity ownership interest in the Property Owner that is retained by Lightstone Group at the time of the construction loan closing (or on such earlier date as Lightstone Group elects to finalize the organizational structure of the property owner), provided that such interest shall:
>
> (i) not share in any fees, promotes or carried interests payable to, held by (or which will be in the future payable to or granted to) Lightstone Group;
> (ii) require Seller to contribute capital pro rata and pari passu with Lightstone Group, with dilution and/or member loan penalties for failure to timely fund capital contributions (and an obligation to fund 25% of Lightstone Group's invested capital upon admission to the ownership structure);
> (iii) be owned and held solely by an SPE wholly owned by Abraham Talasazan or trusts controlled by him (and such interest shall not be pledged, encumbered or hypothecated except as permitted by Lightstone Group in its sole discretion);
> (iv) not have any day to day or major decision rights;

> (v} shall contain customary drag-along rights in favor of Lightstone Group and tag-along rights in favor of Seller; and
> (vi) shall have such other rights and obligations as shall be acceptable to Seller and Purchaser in their respective sole discretion.

(JX-146). The email was not provided to Talassazan at that time.

Talassazan testified that he had a conversation with Milgraum regarding the proposed partnership in the late afternoon of November 18, 2014, after which Milgraum said he would call him in the morning of November 19 (Tr.1 137:22-25).

The precise order of events on November 19 are disputed. According to Talassazan, around 8:00 a.m. on November 19, 2014, Milgraum called him and said he wanted to go forward with the closing today and that he will have the joint venture agreement for him and he will meet at Coritsidis' office (Tr.1 138:1-20). Later that morning, Milgram, Teichman, and Landau exchanged emails having the subject line: "485 Seventh-JV Language," containing the "485 Seventh- JV Language*"* in the Landau Email, with Milgraum informing them: "Abraham called me. Let's talk ASAP." (JX-17). At 9:25 A.M., Milgraum emailed Talassazan: "Abraham, Eric and I will be at Michael's office at 10:30 to discuss the partnership and finish the closing…" (JX-18).

That afternoon, Talassazan, Milgram, Landau, and Coritsidis, met in Coritsidis' conference room (JSSF ¶20; Tr.1 140:10-21). Milgraum testified that he brought the Landau Email to the closing, and provided it to Talassazan and his counsel (Tr.4 672:20-25, 673:1-9). The parties sharply dispute what happened next.

Talassazan testified that upon receiving the Landau Email, he reviewed the terms with Coritsidis outside the conference room, found them acceptable, and then returned to the conference room, telling Milgraum and Landau that he accepted the terms, at which point they

all shook hands and said "Mazel Tov" to each other (Tr.1 141:1-22). In Talassazan's view, this was confirmation of a binding agreement.

Milgraum told a very different story. According to his testimony, after receiving the Landau Email, Talassazan demanded to speak with Lichtenstein (Tr.4 636:5–9; Tr.5 820:8–17). Milgraum testified that he and Talassazan left the lawyers in a conference room, went into another room, and called Lichtenstein (Tr.4 636:10–18). According to Milgraum, Lichtenstein told Talassazan that he wanted to complete the closing, and that "[a]fter closing we will put a draft partnership agreement together." (Tr.4 637:7–639:6). Landau and Teichman both testified to having been briefed contemporaneously about the call between Talassazan and Lichtenstein (Tr.4 636:11–14; 639:1–20 [Landau "jotted it down"]; 719:20–23; 782:7–10). Talassazan did not deny that the call occurred—his testimony was that he did not remember any such conversation (Tr.2 303:20–305:6; Tr.5 816:16–817:4).

Miligraum, Landau, and Teichman each testified that they did not intend the Landau Email to be an offer capable of being accepted and forming a years-long multi-million dollar partnership agreement. Specifically, Milgraum testified that neither he nor anyone else agreed to any kind of partnership contract—neither an option nor a final partnership agreement (Tr.633:7–20). Landau testified that no partnership agreement was reached in his presence and that an agreement of this type would not be oral (Tr.694:18–23; 718:23–719:2; 726:11–16), and Teichman testified that no one sought his authorization for any such partnership, which would have been required (Tr.766:7–10).

Although the Court generally found Talassazan to be an earnest and credible witness, on balance the Court finds that his description of the events of November 19, 2014 to be less likely than the description provided by Milgraum, Landau, and Teichman. The history of

communications between the parties, and the internal communications among the Defendants' representatives, are inconsistent with reaching a binding oral agreement based on something as skeletal and imprecise as the Landau email, many months (or years) before a "capital stack" for the project had been assembled. Defendants further noted that they had made a written representation to their bridge lenders as to the organization chart of the project, and that an undisclosed change like a binding agreement to add Talassazan as a partner would have caused an immediate default with significant adverse consequences (Tr.605:23–606:10; 726:24–729:22; JX28 at 27, 37, 72–74). The Court finds it to be extremely highly unlikely that the careful operators of Lightstone and their counsel would have so casually added a party to the transaction without disclosing that fact to the lender.

The more likely scenario is that Defendants were seeking to *appear* as supportive as possible of the proposed partnership as they could be without binding themselves to it, to clear the path to closing the real estate transaction. Talassazan had shown himself during the negotiations to be volatile when rebuffed and quick to perceive insults. That would explain the presentation of the Landau Email as a tangible indication of interest, but without definitive terms and no signature block. For his part Talassazan, eager as he was for any indication of Lightstone's agreement, may have perceived the Landau Email as far more than it was. To the extent that there were handshakes and an exchange of Mazel Tovs, the Court believes they related to perceived progress and, more to the point (certainly from Milgraum's perspective), the closing of the real estate transaction. It did not signify agreement to a long term partnership agreement, as much as Talassazan may have wished that to be the case.

The closing of the Property purchase proceeded on November 19. Milgraum, on behalf of Purchaser, waived, at Talassazan's request, the Sellers' $1,000,0000 escrow hold back (Tr.1 142:4-

5, 142:20-143:4). Landau handed Coritsidis a proposed License Agreement for Sellers' Spaces, and Coritsidis said he would review and get back to him (Tr.1 152:9-19). Purchaser (485 Seventh Avenue Associates LLC) and Seller (Plaintiffs) closed on the purchase of the Property for $182 million (JSSF ¶22).[4]

Hours after the closing, however, Teichman sent an ill-fated "default" letter to Plaintiffs declaring that Defendants were "forced to effect the Closing..." and "intend...to pursue a claim against [Plaintiffs]...." (JX-21 [the "Default Notice"]). Talassazan understood the Default Notice to mean that everything that happened that day, including the real estate transaction, was cancelled and Purchaser wanted its money back (Tr.1 158:9-19; Tr.2 181:18-182:23, 289:21-25). Defendants, by contrast, claim they intended the default letter as a reservation of rights with respect the dispute over the Purchase Price (which ultimately was resolved when the condition precedent was satisfied), rather than a revocation of the transaction (Tr.777:7–778:3).

In the Court's view, the unfortunate timing, tone, and substance of the Default Notice, which unsurprisingly enraged Talassazan, fractured the parties' already fragile commercial relationship and triggered this decade-long lawsuit.

C. The Lock-Out

Despite the Post-Closing Occupancy Agreement, on December 12, 2014, Teichman sent Plaintiffs a Notice to Quit (JX-24; Tr.1 163:1-8). On December 17, Defendants sent a locksmith to Sellers' Spaces to change the locks on some of Sellers' Spaces including an office, storage

[4] Seller 485 Shur LLC transferred a 15 percent tenancy in common interest in the Property to BSD Sheva Manager LLC; and Seller Gedula 26, LLC transferred a 12.6 percent tenancy in common interest in the Property to BSD Sheva Manager LLC., each of which are to be a "mere change of identity" or form of ownership pursuant to the Transfer and Assumption Agreement (JSSF ¶21). Lightstone Acquisitions III LLC, who was the "Purchaser" under the PSA, assigned the Property to 485 Seventh Avenue Associates LLC (JX-26). Talassazan, on behalf of Sellers, acknowledged and agreed to this assignment (JSSF ¶19).

space, and the synagogue (Tr.1 159:8-160:13, 161:1-7, 12-25, 162:4-25; Tr. 2 187:2-22). Talassazan testified that they were unable to access the premises and the landlord refused to unlock the doors (Tr. 160:2-12; 161:1-7). Talassazan called the police, and after hours of waiting and getting the parties' lawyers involved, the locksmith was directed to unlock the doors and give Plaintiffs new keys (Tr. 161:12-25; 162:1-25).

D. ***Post-Closing Development of the Hotel***

On December 24, 2015, Marriott International, Inc., as Franchisor, and 485 Seventh Avenue Associates, LLC, as Franchisee, entered into a Moxy Hotels Franchise Agreement (JSSF ¶24). On December 31, 2015, Defendants secured construction financing in the amount of $205,000,000.00 from SM Tactical Finance I-A LLC (JSSF ¶25). The Moxy Hotel opened for business at the Property and began operations in September 2017 (JSSF ¶27). Plaintiffs were not asked to provide, and did not provide, any investment as part of the development.

PROCEDURAL BACKGROUND

Plaintiffs commenced this action on December 30, 2014 (JSSF ¶32; NYSCEF 1). On August 15, 2016, Defendants' motion to dismiss was granted in part, with the Court dismissing Plaintiffs' interference with religious worship, fraud, and provisional remedies causes of action (*Gedula 26, LLC v Lightstone Acquisitions III LLC*, 2016 NY Slip Op 31758[U] [Sup Ct, NY County 2016] [Bransten, J.]). The Court denied Defendants' motion to dismiss Plaintiff's breach of contract, wrongful eviction, and punitive damages causes of action (*id.*; JSSF ¶35).

On appeal, the First Department largely affirmed this Court's decision, modifying it only to dismiss Plaintiffs' cause of action for punitive damages (JSSF ¶37; *Gedula 26, LLC v Lightstone Acquisitions III LLC*, 150 AD3d 583, 584 [1st Dept 2017]).

Thereafter, amended pleadings were filed, and Plaintiff asserted claims for breach of contract, special or consequential damages, unlawful and forceful eviction, breach of the Sellers Post-Closing Occupancy Agreement, and legal fees, and Defendants asserted a counterclaim for legal fees (JSSF ¶38-42; NYSCEF 104, 501, 796, 813, 815, 823). On December 7, 2020, Plaintiffs filed the note of issue (JSSF ¶43; NYSCEF 823).

In March 2021, the parties filed cross-motions for summary judgment (JSSF ¶44; NYSCEF 920, 936). On December 22, 2021, this Court denied both parties' motions (JSSF ¶45; NYSCEF 1039). On March 13, 2023, the First Department affirmed the Court's rulings denying the parties' cross motions for summary judgment, except that it held that "Defendants committed an unlawful eviction that breached the parties' agreement to allow plaintiffs to remain in the building for six months post-closing." (*see Gedula 26*, 213 AD3d 409). The First Department ruled that, since "the illegal lockout caused plaintiffs to lose a day of business, [P]laintiffs "should be permitted to prove their damages based on the unlawful eviction and breach of the post-closing occupancy agreement." (*id.* at 410; JSSF ¶47).

CONCLUSIONS OF LAW

I. Breach of Contract (First Cause of Action)

A. Plaintiffs Failed to Establish an Enforceable Partnership Agreement

"To establish the existence of an enforceable agreement, a plaintiff must establish an offer, acceptance of the offer, consideration, mutual assent, and an intent to be bound" (*Kowalchuk v Stroup*, 61 AD3d 118, 121 [1st Dept 2009]). "The existence of a binding contract is not dependent on the subjective intent of [the parties]. In determining whether the parties entered into a contractual agreement ..., it is necessary to look, rather, to the objective

manifestations of the intent of the parties as gathered by their expressed words and deeds" (*Utica Builders, LLC v Collins*, 176 AD3d 897, 899 [2d Dept 2019]).

"To create a binding contract, there must be a manifestation of mutual assent sufficiently definite to assure that the parties are truly in agreement with respect to all material terms" (*Matter of Express Indus. And Term. Corp. v New York State Dept. of Transp.*, 93 NY2d 584, 589 [1999]; *Kowalchuk*, 61 AD3d at 121 ["That meeting of the minds must include agreement on all essential terms"]). "[D]efiniteness as to material matters is of the very essence in contract law. Impenetrable vagueness and uncertainty will not do" (*Joseph Martin, Jr., Delicatessen, Inc. v Schumacher*, 52 NY2d 105, 109 [1981]). Accordingly, "[i]f an agreement is not reasonably certain in its material terms, there can be no legally enforceable contract" (*Carione v Hickey*, 133 AD3d 811 [2d Dept 2015]).

Based on the evidence adduced at trial, the Court finds that there was no binding partnership agreement among the parties granting Plaintiffs a 25 percent interest in the then-nascent project to develop and build a hotel. Talassazan clearly wanted to be a partner with, and it is equally clear that Defendants did not want to agree to any partnership terms until after the closing and in fact not until they were much further along in determining the composition of the capital stack for the project. Those positions were expressed consistently throughout the parties' negotiations and discussions leading up to the closing. While the Landau Email was brought to the closing, the Court does not find that this means Defendants changed their position on November 19 and decided to offer a binding partnership agreement based on terms contained in the skeletal Landau Email, despite their repeated reluctance to do so.

Rather, the record indicates that the Landau Email is a draft of talking points for discussion. It was an email sent by Landau to Milgraum, not to Plaintiffs. As Milgraum

explained, he asked Landau for "some talking points that I could discuss with Talassazan so that we can have a discussion about what a potential partnership will look like in the future after we got through closings." (Tr.4 632:12–20). Milgraum "thought it would be helpful to … have these talking points in front of [himself]" for that discussion (Tr.4 632:20–23; 690:22–24; Tr.5 804:20). This testimony is consistent with the parties' behavior throughout their relationship and with the with the contemporaneous emails exchanged by the parties. The preponderance of the evidence simply does not support the proposition that the Landau Email was an *offer* by Defendants capable of triggering a binding agreement upon acceptance.

Moreover, the Landau Email does not demonstrate a manifestation of mutual assent sufficiently definite to assure that the parties were truly in agreement with respect to all material terms. *First*, it is missing material terms, including the identity of the purchaser(s) and any reference to consideration. It also has no term for any partnership, no signature line, and no other indication that it could be accepted as forming a binding agreement. Landau, who specializes in negotiating real estate partnership agreements, testified that they can take months to negotiate and typically range "anywhere from 60 to 100 pages." (Tr.4 694:14; 696:9–10; 614:8–9). Landau described some of the crucial terms missing from the Landau Email, including transfer and exit provisions; the designation of a managing member and limits on that member's authority; and the structure of guaranties and indemnities (Tr.4 694:24–695:14).

Second, the text is internally inconsistent. It starts with the "Seller" giving the "Purchaser" a right to acquire a 25% interest in "the Property Owner" (*not* in the "Seller") (JX-146). Then, in subpart (ii), "Seller" becomes the entity contributing capital "with Lightstone Group"—fully transposing two crucial terms (*id.*; *see* Tr.2 287:23–25 ("Q: So seller means Lightstone in the first sentence and you in paragraph number two; correct, sir? A: It's – you

want to be technical, yes."); 722:1–2). Subpart (vi) is even more confusing: it states that the 25% interest "shall have such other rights and obligations as shall be acceptable to Seller and Purchase in their respective sole discretion." (JX-146). An enforceable contract does not end with a statement that the parties will negotiate the rest of the contract in the future. As Teichman testified, he never would have approved a final contract in that form, because "I don't know what this means." (Tr.4 767:8–13). As noted above, Talassazan may well have perceived the Landau Email to be far more than it was, but that unilateral perception is not enough to create a binding agreement.

Third, Plaintiffs' argument runs counter to how these parties generally conducted their business and documented their agreements. The parties negotiated heavily, back and forth, on the details of their contracts (*see, e.g.*, Tr.219:24–220:1; 239:11–25). They documented dozens of agreements, down to the minutiae of transferring elevator contracts, in signed writings in connection with the closing (JX1–4; JX129; Tr.773:9–774:8; 224:6–11). The idea that these parties entered an oral partnership agreement, on the day of closing, to undertake an immensely complicated redevelopment project and then operate a hotel for years into the future is inconsistent with their course of performance and contemporaneous correspondence. The idea that they would have done so with numerous material terms to be determined later—including how much money Talassazan or his entities would have to contribute—is even further afield.

Accordingly, the Court finds that the parties did not enter into a binding partnership agreement on November 19, 2014 and therefore Plaintiffs' claim for breach of contract based on such an agreement is denied.

II. Unlawful Eviction and Breach of the Post-Closing Occupancy Agreement (Third and Fourth Causes of Action)

The First Department has already held that "Defendants committed an unlawful eviction that breached the parties' agreement to allow plaintiffs to remain in the building for six months post-closing" and since "the illegal lockout caused plaintiffs to lose a day of business, [P]laintiffs "should be permitted to prove their damages based on the unlawful eviction and breach of the post-closing occupancy agreement." (*see Gedula 26, LLC v Lightstone Acquisitions III LLC*, 213 AD3d 409-410 [1st Dept 2023]).

Plaintiffs established that they lost one entire business day, and that the post-closing Occupancy Agreement indicated that the value of the relevant space was $10,000 per month ($322.58 per diem). Accordingly, the Court finds that Plaintiffs are entitled to recovery of $322.58.

III. Attorney's Fees (Defendants' Counterclaim)

Defendants' counterclaim for attorney's fees under section 17 of the PSA is denied. Section 17 provides that "if any action or proceeding is commenced by either party to enforce its rights under this Agreement or to collect damages as a result of the breach of any of the provisions of this Agreement, the prevailing party in such action or proceeding . . . shall be entitled to recover all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and court costs actually incurred, in addition to any other relief awarded by the court" (JX-1 §17). In view of Plaintiffs' successful unlawful eviction claim, Defendants are not the prevailing party in the litigation under the PSA. Further, the primary claim in this litigation for breach of an alleged partnership agreement does not fall under the PSA—instead, it related to an entirely separate proposed agreement.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED and **ADJUDGED** that Plaintiffs' Breach of Contract claim (First and Second Causes of Action) is **DENIED** and **DISMISSED**; it is further

ORDERED and **ADJUDGED** that Defendants are liable to Plaintiffs in the amount of $322.58, plus prejudgment interest running from December 17, 2014 on Plaintiffs' claims for Unlawful Eviction and Breach of the Post-Closing Occupancy Agreement (Third and Fourth Causes of Action); it is further

ORDERED and **ADJUDGED** that Plaintiffs' claim for Legal Fees (Fifth Cause of Action) is **GRANTED IN PART**, as follows: As the prevailing party on the Fourth Cause of Action, Plaintiffs are entitled under Section 17 of the Purchase and Sale Agreement to reasonable attorneys' fees and court costs actually incurred specifically in connection with the Fourth Cause of Action, and Plaintiffs shall file their application and supporting evidence within fourteen (14) days of the date of this Order; Defendants shall have seven (7) days thereafter to file any objections; it is further

ORDERED and **ADJUDGED** that Defendants' Counterclaim for Legal Fees is **DENIED** and **DISMISSED**; and it is further

ORDERED that the parties submit a proposed judgment within ten (10) days of the date of this Order.

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JOEL M. COHEN, JSC

DATE: 6/12/2024

Check One: [X] **Case Disposed** [ ] **Non-Final Disposition**

Check if Appropriate: [ ] **Other (Specify _____)**