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

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WWP MEZZ, LLC,

Plaintiff,

- v -

WWP MEZZ INVESTMENT COMPANY LLC,

Defendant.

INDEX NO. 650135/2026

MOTION DATE

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 23, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 60, 61, 62, 63, 64, 65, 66, 67, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92 were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

In motion sequence 001 plaintiff WWP Mezz, LLC moves pursuant to CPLR 6301 for a preliminary injunction enjoining the UCC sale of the pledged collateral for a mezzanine loan (Loan) because the sale is allegedly commercially unreasonable under UCC § 9-610(b), which requires that "every aspect" of a disposition of collateral, including the "method, manner, time, place, and other terms," must be commercially reasonable. (*See* NYSCEF Doc. No. [NYSCEF] 20, Order to Show Cause [OSC].)

This is a battle between two titans in the New York real estate community: SL Green Realty Corp., which is the borrower and indirect owner of Worldwide Plaza, a 49-story office tower, located on Eighth Avenue between 49th and 50th Street in Manhattan (Property), and Gary Barnett's Extell Development Company, which purchased the loan and now seeks to foreclose on the collateral, becoming the new indirect owner of the Property. (NYSCEF 1, Complaint at 3.) Many of plaintiff's objections to the foreclosure

sale arise from its objection to its competitor purchasing the Loan and foreclosing on it, which alone does not make the sale commercially unreasonable.[1]

Plaintiff defaulted on the Loan in September 2024 when its failure to make monthly payments and debt service began. (NYSCEF 36, Fiedor aff ¶27.)[2] "Defendant was formed on or about September 22, 2025, roughly thirty days before sending a written notice to Plaintiff, dated October 29, 2025, in which it claimed ownership of the Mezzanine Loan, declared a default under the loan, and accelerated the amounts due under the loan." (NYSCEF 1 Complaint ¶4.)

The court issued a TRO enjoining the January 15, 2026 UCC sale of the collateral, which has been rescheduled for January 29, 2026. (NYSCEF 69, January 14 2026 OSC.) The court requested additional briefing following argument on the TRO and attached a page of questions to the OSC. (*Id.* at 4.) Based on such briefing, timely submitted on January 23, 2026, the court vacates the TRO and denies the preliminary

[1] For example, in the OSC, plaintiff seeks the following expedited discovery about defendant, not the commercial viability of the sale: "(i) Defendant's relationship with Extell Development Company ('Extell'); (ii) Defendant's relationship, if any, with Kookin Bank Co., Ltd., as trustee of Shinhan AIM Real Estate Fund No. 1 ('Shinhan Bank'); (iii) documents demonstrating that the Mezzanine (First) Loan Agreement, dated as of October 18, 2017, has been assigned to Defendant and the price paid therefor including any and all documents and communications between Shinhan Bank or anyone acting on their behalf, including Michael Rebibo and/or Rexmark Holdings LLC (collectively, 'Rebibo'), concerning said loan, or the property located at 825 Eighth Avenue, New York, New York (the 'Property') or any other loans encumbering the Property; (iv) documents concerning any bonds owned by any affiliate of Defendant in the securitized senior loan encumbering the Property or any other interests in the debt stack encumbering the Property; (v) documents establishing the assets and net worth of Defendant." (NYSCEF 20, January 7, 2026 OSC at 2.)

[2] Belle Eberhart Fiedor is defendant's authorized agent. (NYSCEF 90, Fiedor aff ¶ 1.)

injunciton. At this preliminary stage, the court finds that plaintiff has failed to satisfy the requirement of likelihood of success that the sale is commercially unreasonable.[3]

> "A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual." (CPLR 6301.)

To obtain a TRO or preliminary injunction, a movant must establish: "(1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party's favor." (*Doe v Axelrod*, 73 NY2d 748, 750 [1988] [citation omitted].)

The terms of the UCC sale here provide that "in order to be a 'Qualified Bidder,' a prospective bidder must also be a 'Qualified Transferee' as that term is defined in that certain Intercreditor Agreement dated as of November 9, 2017." (NYSCEF 17, Terms of Sale ¶ 3 [a].)

Plaintiff's strongest argument is from its expert Alan Tantleff who challenges the sale as commercially unreasonable because a "Qualified Bidder"[4] must meet a

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[3] Accordingly, the court does not reach irreparable harm. Even if § 9.10 of the Loan Agreement, titled Remedies of Borrower, stipulates that damages are not available, it requires plaintiff to have acted promptly, which is questionable here. (NYSCEF 5, Loan Agreement.) The UCC Notice provided 76 days' notice, but this motion was filed January 7, 2026, days before the auction date of January 15, 2026. (NYSCEF 87, Rosenberg aff ¶ 30.) Accordingly, the court expedited the briefing here.

[4] The Intercreditor Agreement defines "Qualified Transferee" as "(c) an investment fund, limited liability company, limited partnership or general partnership (a 'Permitted Investment Fund') where (i) a Permitted Fund Manager or an entity that is otherwise a Qualified Transferee pursuant to clause (b) of the definition acts (directly or indirectly) as general partner, managing member or fund manager, and (ii) (x) at least 50% of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more of the following: a Qualified Transferee, an institutional 'accredited investor', within the meaning of Regulation D promulgated under the Securities Act of 1933, as amended, and/or a 'qualified institutional buyer' or both within the meaning of Rule 144A promulgated under the Securities Exchange Act of 1934, as amended, provided such

monetary threshold that was set forth in the 2017 Intercreditor Agreement when the Loan was first issued, but this threshold is outdated given the "broad[] shift in the office investment market" rendering the excessive financial requirement arbitrary, irrelevant, and thus commercially unreasonable. (NYSCEF 78, Tantleff aff ¶¶ 13, 19.) Tantleff fears that this now excessive financial requirement applicable to institutional bidders in 2017, will exclude current bidders who may be high net worth individuals and private equity, along with institutional investors. (*Id*. ¶¶ 20-23.) In addition, he opines that since the foreclosure sale would extinguish any mezzanine creditors, the Intercreditor Agreement would be superfluous and thus its requirements are unnecessary.[5] (*Id*. ¶ 6 [d].)

First, the court rejects plaintiff's invitation to rewrite the Intercreditor Agreement's definition of "Qualified Bidder" because the parties could have anticipated a downturn in the market when they negotiated the Agreement. (*See id*. ¶ 19.) A fundamental rule of contract interpretation provides that "clear, complete writings should generally be enforced according to their terms" particularly "where, as here, the instrument was negotiated between sophisticated, counseled businesspeople negotiating at arm's

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institutional 'accredited investors' or 'qualified institutional buyers' that are used to satisfy the 50% test set forth above in this clause (c) satisfy the financial tests in clause (i) of the definition of Eligibility Requirements, or (y) such Permitted Investment Fund, collectively with one or more other Permitted Investment Funds that then hold interests in the Mezzanine Loan and are managed by such Permitted Fund Manager or entity that is a Qualified Transferee pursuant to clause (b) of the definition, in the aggregate satisfy the financial tests in clause (i) of the definition of Eligibility Requirements." (NYSCEF 19, Intercreditor Agreement at 13.)

[5] The court rejects this objection based on Rosenberg's common-sense observation that the winning bidder must have the "financial wherewithal and the know-how to operate and maintain a piece of real estate of this size and complexity." (NYSCEF 87, Rosenberg ¶ 15.)

length." *Wallace v 600 Partners Co.,* 86 NY2d 543, 548 [1995] [internal quotation marks and citations omitted].) This rule "has even greater force in the context of real property transactions, where commercial certainty is a paramount concern." *(Id.* [internal quotation marks and citations omitted].) Moreover, "it is a deeply rooted principle of New York contract law that parties may ... contract as they wish in the absence of some violation of law or transgression of a strong public policy." (*2138747 Ontario, Inc. v Samsung C&T Corp.*, 31 NY3d 372, 377 [2018] [internal quotation marks and citations omitted].) Plaintiff has not established a likelihood of success that the allegedly commercially unreasonable sale violates law or public policy in this regard. Indeed, plaintiff does not dispute that including such an eligibility requirement is standard practice in UCC sales. (NYSCEF 87, Brett Rosenberg[6] aff ¶ 13.) Rather, plaintiff argues that the eligibility requirement is outdated because of a significant change in market conditions. However, the parties to the Intercreditor Agreement – defendant's predecessor and the mortgage lender, but not plaintiff who is not even provided a copy – did not negotiate for a change in the marker. (*Id*. ¶ 17.) Likewise, there is no requirement that the parties to the Intercreditor Agreement modify the Qualified Bidder financial requirement because of market changes and Rosenberg avers that she has never seen such a modification. (*Id*.)

Second, plaintiff fails to establish likelihood of success that the terms of the sale and notice are unusual and thus commercially unreasonable. Rather, the terms of sale,

[6] Rosenberg is a Senior Managing Director of JLL Capital Markets, which defendants retained to market and hold the UCC sale here. (NYSEF 87, Rosenberg aff ¶¶ 1, 4.) She has significant experience with such marketing and sales. (*Id*. ¶ 5; *see also* NYSCEF 51, January 12, 2026 Rosenberg aff and NYSCEF 62, January 13, 2026 Supplemental Rosenberg aff.)

in particular, appear to be consistent with other UCC sales. (NYSCEF 87, Rosenberg ¶ 8.) Plaintiff's example of a typical notice that does not contain a qualified bidder requirement for a UCC sale of eleven Texas apartment buildings is not comparable here as plaintiff fails to establish that that sale has a similar debt structure. (NYSCEF 72, Meister aff ¶¶ 12-13.)[7] However, Rosenberg offered a sample notice and terms of sale with a similar debt structure and qualified bidder requirement, and she confirmed that its terms are standard and customary by comparing the terms to nine similar transactions. (NYSCEF 87, Rosenberg aff ¶ 8; NYSCEF 88, Sample Terms of Sale; NYSCEF 89, Sample Notice of Sale.)

Plaintiff further argues that defendant's express reservation of the right to withhold material information from prospective bidders while requiring bidders to agree that they have received all information necessary to evaluate the transaction is contradictory and renders the sale commercially unreasonable. (NYSCEF 78 Tantleff ¶ 6 [b].) However, again, this provision appears to be the custom and practice for UCC Sale Notices. (NYSCEF 88, Sample Terms of Sale; NYSCEF 87, Rosenberg aff ¶ 12.) Rosenberg explains that this provision makes sense because sellers may have confidential information subject to NDAs or attorney client privileged none of which is necessary for a bidder to evaluate the property. (*Id.* ¶¶10-11.)

Plaintiff also challenges whether defendant satisfied the Intercreditor Agreement's "Qualified Transferee" requirement when it acquired the Loan. Plaintiff argues that defendant's disclosure of the Qualified Transferee requirement in the Terms

[7] The court found the Texas sale reasonable. (See Atlas v Macquarie, Index No. 651657/2017, NYSCEF 1137.)

of Sale without evidence that defendant is the current owner of the Loan and that defendant satisfied the Qualified Transferee requirement would suppress bidder interest because any default under the Intercreditor Agreement could give rise to liabilities for prospective bidders. (NYSCEF 78, Tantleff ¶ 6 [c].) Plaintiff's conjecture is undermined by Rosenberg's statement that no one so inquired about whether defendant was the true owner and satisfied the Qualified Transferee requirement. (NYSCEF 87, Rosenberg aff ¶ 14.)

Similarly, plaintiff challenges defendant's failure to disclose and provide documentary evidence in the data room that it is the owner of the Senior Mezzanine Loan. Defendant established that it is the owner of the note. (NYSCEF 90, Fiedor aff ¶ 7.) In addition, defendant's authorized agent avers that each lender accepted defendant's certification that it is a Qualified Transferee. (*Id.* ¶¶ 8-9.) It does not appear that the absence of such information in the data room discouraged bidders since no one requested such documentation of Rosenberg. (NYSCEF 87, Rosenberg aff ¶ 14.)

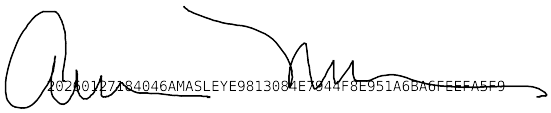
Finally, whether the lender Shinhan violated its NDA with plaintiff by sharing the terms of a restructuring plan with defendant does not make the UCC sale commercially unreasonable. First, plaintiff's "incontrovertible observations" do not "ineluctably" lead to the conclusion that Shinhan shared plaintiff's confidential restructuring plan with defendant in violation of an NDA. (NYSCEF 72, Meister aff ¶¶ 8-9.) Second, counsel's conjecture that the restructuring terms are "the single most critical dataset to any bidder" is insufficient to establish that Shinhan impermissibly shared such information with defendant. (*Id*. ¶ 9 [i].) Moreover, whether such data is relevant to bidders is undermined by Rosenberg's observation that she has never seen such information in a

data room and neither Meister nor Tantleff assert otherwise. (NYSCEF 87, Rosenberg aff ¶ 20.) Indeed, plaintiff's demand that the restructuring plan be disclosed in the data room would certainly violate the NDA. Plaintiff has not offered anything but conjecture that possession of such a failed restructuring plan would give defendant an unfair competitive advantage or that such information would assist a bidder in pricing.

Defendant is the sole bidder. (NYSCEF 87, Rosenberg aff ¶ 27.) However, this is not a sufficient basis to find the sale commercially unsound. (*Summer v Exterbank*, 88 AD2d 887, 888 [11s Dept 1982] ["[t]he fact that only one bidder appeared does not make the sale commercially unreasonable (citation omitted)].)

Accordingly, it is

ORDERED that plaintiff's motion for a preliminary injunction is denied.



1/27/2026
DATE

ANDREA MASLEY, J.S.C.

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