Centerline Housing Partnership v. Palm Communities
8:21-CV-00107-JVS (JDEx)

TENTATIVE Order Regarding Motion for Summary Judgment

Defendants/Counterclaimants Palm communities, f/k/a Palm Desert Development Company ("Palm") and Housing Corporation of America ("HCA") (collectively, the "General Partners") move for summary judgment dismissing Count One of the First Amended Complaint ("FAC") and partial summary judgment on Counts I and II of the Counterclaim. See Mot., Dkt. No. 59, 1. Defendant Palm also moves for summary judgment on Counts Two and Three of the FAC. Mot., 2. Plaintiffs/Counter-Defendants Centerline Housing Partnership I, L.P. – Series 2, f/k/a Related Capital Housing Partnership I, L.P. – Series 2 ("Centerline"), RCHP SLP I L.P. – Series 2 ("RCHP") (together with Centerline, the "Limited Partners") and Alden Torch Financial, LLC ("ATF) (together with the Limited Partners, "Alden Torch") oppose the motion. See Opp'n, Dkt. No. 76. The General Partners filed a reply. See Reply, Dkt. No. 83.

For the following reasons, the Court **GRANTS** the motion in part and **DENIES** it in part.

I. BACKGROUND

A. Factual Background

This matter involves the Fredrick and 52 II L.P. (the "Partnership"). The Partnership includes Palm as the Administrative General Partner, HCA as the Managing General Partner of the Partnership, Centerline as the Investor Limited Partner, and RCHP as the Special Limited Partner. Plaintiffs/Counter-Defendants' Statement of Genuine Disputes of Material Fact ("SDF"), Dkt. 76-1 ¶¶ 1–4. Centerline's affiliate and predecessor-in-interest, RCC Credit Facility, LLC, and RCHP's affiliate and predecessor-in-interest, Related Direct SLP LLC, were originally admitted to the Partnership as the Investor Limited Partner and Special Limited Partner, respectively. Id. ¶ 5. "In 2015 or at a later date," Alden Torch came to own, control, and manage, the Limited Partners. Id. ¶ 6. The Partnership and the rights and obligations of the General Partners and Limited Partners in relation to their roles as partners in the Partnership are governed by the Amended

and Restated Agreement of Limited Partnership, as amended, dated March 1, 2002 (the "LPA"). Id. ¶ 7. Under the LPA, "[t]he business of the Partnership shall be limited to the construction, ownership, financing, operation and disposition fo the Apartment Complex." Id. ¶ 8.

The Partnership owns Orchard Villas II, a qualified low-income housing project in Coachella, California (the "Property"). Id. ¶ 9. The Property makes up substantially all of the Partnership's assets. Id. ¶ 10. The Partnership and Property are managed in a manner to participate in the Low-Income Housing Tax Credit ("LIHTC") program, governed by 26 U.S.C. § 42 ("Section 42"). Id. ¶ 11. The LIHTC program provides tax credits to eligible low-income projects. Id. ¶ 12. The tax credits are earned over a ten-year period known as the "Credit Period." Id. ¶ 13. Pursuant to Section 42, the Property was subject to a 15-year compliance period ending on December 31, 2017. Id. ¶ 14.

When the Partnership was executed, the Partnership, Palm, and HCA also entered into an Option Agreement and Right of First Refusal Agreement ("Right of First Refusal Agreement"). Id. ¶ 16. The Partnership Agreement refers to the Right of First Refusal Agreement. Id. ¶ 17. The Right of First Refusal Agreement grants HCA a "Right of First Refusal" that is triggered if, during the 4-year option term, the Partnership "shall desire to accept a bona fide offer from an unrelated third party to purchase the Property." Blake Decl., Ex. B ("Option and ROFT Agreement") § 5. The LPA further provides that the Property may not be sold without RCHP's written consent. LPA § 5.4.A. The Option and Right of First Refusal Agreement requires HCA to pay "an amount sufficient to (A) pay all liabilities of the Owner upon Owner's termination and liquidation as projected to occur immediately following the sale pursuant to the Option; (B) pay any deficiency in the federal and/or state tax credits projected to be received by the limited partners unless otherwise recovered by the limited partners; and (C) distribute to the partners of Owner, proceeds equal to the federal, state and local taxes projected thereof as a result of the sale pursuant to Section 9.2B of [the LPA]." Option and ROFT Agreement §§ 4(a)(i), 5. The Purchase Price set forth in the Option and ROFT Agreement is fixed and is presently below market. SDF ¶ 21.

Centerline contributed approximately $7,542,000 in capital to the Partnership, and that amount was determined in part based on the amount of tax

credits that were expected to be available to the Partnership. Id. ¶ 23. The Partnership expected to receive $9,458,960 in tax credits. Id. ¶ 24. All of the tax credits the Partnership received were intended to be allocated to Centerline. Id. ¶ 25. Centerline is also entitled to 99.98% of the Partnership's operating losses. Id. ¶ 26. According to the LPA, the General Partners have authority over the management and operation of the Property, subject to limitations and restrictions. Id. ¶ 28. The LPA provides that "[Palm] . . . is hereby authorized to sell . . . all or substantially all of the assets of the Partnership; provided, however, that the terms of any such sale . . . must receive the Consent of the [RCHP] before such transaction shall be binding on the Partnership." LPA § 5.4.A (emphasis in original).

On December 9, 2020, Mr. Mauricio Rivero ("Rivero") of Foster Hamilton Affordable contacted Mr. Danavon Horn ("Horn"), President of Palm, on behalf of Affordable Housing for California Communities ("AHCC"). SDF ¶ 32. AHCC is a California non-profit entity that identifies and enters into contracts to acquire affordable housing. Id. ¶ 35. In the past five years, AHCC has made approximately 20 offers to purchase affordable housing, six of which were accepted and resulted in a sale of the property. Id. ¶ 36. Rivero is a direct report of Mr. Ulysses Lepe ("Lepe"), the head director in charge of AHCC and the affordable housing side of Foster Hamilton Affordable. Id. ¶¶ 38–39. Neither Mr. Lepe, AHCC, nor Foster Hamilton Affordable have any relation, affiliation, or connection with Palm or HCA. Id. ¶ 41. In fact, prior to December 2020, Mr. Lepe and AHCC did not know anything about Palm or HCA and had never spoken to anyone at either firm. Id. ¶¶ 42–43. Foster Hamilton Affordable compiles information mined from publicly available sources to identify potential affordable housing properties that are beyond the close of the LIHTC compliance period for AHCC to purchase. Id. ¶ 45. At Lepe's direction, Rivero cold calls owners of the identified properties and asks whether the owner is willing to sell. Id. ¶ 46. When an owner is interested in entertaining an offer, AHCC puts together and presents an offer. Id. ¶ 47.

The Property and a related property known as Orchard Villas I were on Foster Hamilton Affordable's list of identified properties. Id. ¶¶ 48–49. Rivero contacted Palm because it was next on his list of identified properties. Id. ¶ 52. On or around December 17, 2020, Rivero reached out again to Palm in a follow-up email with the subject line, "Strong Interest in 'Orchard Villas Apartments,"

requesting financial information. Id. ¶ 53. On December 19, 2020, Palm sent Rivero rent rolls and the financial documents reflecting the prior twelve months of operations. Id. ¶ 54. Lepe came up with the pricing and terms for for two purchase offers—one for the Property and one for Orchard Villas I. Id. ¶ 56. On December 22, 2020, Rivero, on behalf of AHCC, sent Palm the offers dated December 21, 2020. Id. ¶ 55. On January 11, 2021, Rivero, on behalf of AHCC, sent an updated offer for the Property with an increased purchase price and shorter period of time before some earnest money would become non-refundable (the "Purchase Offer"). Id. ¶ 57. Rivero also sent an updated offer to purchase Orchard Villas I. Id. ¶ 58. Lepe testified that he increased the offer price and revised the terms so that AHCC could be more "aggressive" with its offer because AHCC was "very interested in purchasing the [P]roperty" and was concerned about another bidder being considered. Id. ¶ 60. Lepe and AHCC did not know about the Right of First Refusal when making the Purchase Offer and AHCC made the offer in good faith. Id. ¶ 62–63. The Purchase Offer includes the Property's parcel number. Id. ¶ 67.

On January 11, 2021, Palm sent HCA a Notice of Proposed Offer, attaching a copy of the Purchase Offer and purporting to express a desire on behalf of the Partnership to accept the offer. Id. ¶ 69. The Notice of Proposed Offer stated that HCA had 45 days to exercise its Right of First Refusal. Id. ¶ 70. On January 12, 2021, a copy of the Right of First Refusal Notice was sent to ATF on behalf of the limited partners. Id. ¶ 71. On February 23, 2021, HCA sent a letter to the Partnership purporting to exercise its Right of First Refusal. Id. ¶ 72.

B. Procedural Background

On January 19, 2021, the Limited Partners filed this action for declaratory relief and requested a judicial determination that: (1) "HCA's Section 42(i)(7) Right of First Refusal has not been triggered and may not be exercised unless and until RCHP consents to a sale of the [Property]" and (2) "[Palm and HCA] cannot refinance the Partnership's debt without RCHP's prior written consent." Compl., Dkt. No. 1 ¶¶75, 85. On March 9, 2021, the General Partners asserted counterclaims for declaratory relief, Dkt. No. 17 ¶¶ 106–20, and a separate counterclaim against the Limited Partners for breach of the LPA and implied covenant of good faith and fair dealing, id. ¶¶ 121–38, and a counterclaim against Alden Torch for tortious interference with contract, id. ¶¶ 139–48. On April 30,

2021, the Limited Partners filed an Amended Complaint asserting an additional claim against Palm for breach of fiduciary duty. First Amended Complaint ("FAC"), Dkt. No. 54 ¶¶ 92–95.

On May 3, 2021, the General Partners filed a Motion to Stay Discovery pending the outcome of this Motion for Summary Judgment. Dkt. No. 55. The General Partners filed this Motion on May 13, 2021. Dkt. No. 59. On May 26, 2021, this Court rejected the General Partners' Motion to Stay Discovery. Dkt. No. 64, 7.

II. LEGAL STANDARD

Summary judgment is appropriate where the record, read in the light most favorable to the nonmovant, indicates "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Summary adjudication, or partial summary judgment "upon all or any part of [a] claim," is appropriate where there is no genuine dispute as to any material fact regarding that portion of the claim. Fed. R. Civ. P. 56(a); see also Lies v. Farrell Lines, Inc., 641 F.2d 765, 769 n.3 (9th Cir. 1981) ("Rule 56 authorizes a summary adjudication that will often fall short of a final determination, even of a single claim . . . .") (internal quotation marks omitted).

Material facts are those necessary to the proof or defense of a claim, and are determined by referring to substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In deciding a motion for summary judgment, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." Anderson, 477 U.S. at 255.[1]

The moving party has the initial burden of establishing the absence of a material fact for trial. Anderson, 477 U.S. at 256. "If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of

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[1] "In determining any motion for summary judgment or partial summary judgment, the Court may assume that the material facts as claimed and adequately supported by the moving party are admitted to exist without controversy except to the extent that such material facts are (a) included in the 'Statement of Genuine Disputes' and (b) controverted by declaration or other written evidence filed in opposition to the motion." L.R. 56-3.

fact . . ., the court may . . . consider the fact undisputed." Fed. R. Civ. P. 56(e)(2). Furthermore, "Rule 56[(a)] mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322. Therefore, if the nonmovant does not make a sufficient showing to establish the elements of its claims, the Court must grant the motion.

Where the parties have made cross-motions for summary judgment, the Court must consider each motion on its own merits. Fair Hous. Council of Riverside Cnty., Inc. v. Riverside Two, 249 F.3d 1132, 1136 (9th Cir. 2001). The Court will consider each party's evidentiary showing, regardless of which motion the evidence was tendered under. See id. at 1137.

III. DISCUSSION

A. Right of First Refusal

The General Partners ask this Court, pursuant to Count I of the Counterclaim, to declare: (1) the Purchase Offer is a bona fide offer from an unrelated third party (Counterclaim, Dkt. No. 17, ¶ 120(e)); (2) Palm has the authority under the LPA to express a desire to accept the Purchase Offer without RCHP's consent (id. ¶ 120(c)); and (3) the Right of First Refusal was triggered (id. ¶ 120(d), (f)) and HCA has exercised it (SDF ¶ 8). See Mot., Dkt. 59, at 22.

The parties agree that the Right of First Refusal is only triggered if the Partnership "shall desire to accept a bona fide offer from an unrelated third party to purchase the Property." Blake Decl., Ex. B ("Option and ROFT Agreement") § 5. So, the instant dispute comes down to two key issues. First, whether AHCC's purchase offer constituted a "bona fide offer" sufficient to trigger HCA's Right of First Refusal. And second, whether the Right of First Refusal provision in the LPA required the Limited Partners's consent to sell the Property.

1. Whether AHCC's Purchase Offer was a Bona Fide Offer

The General Partners argue that AHCC"s purchase offer was a bona fide third party offer that triggered their Right of First Refusal. Mot., Dkt. No. 59, 13.

However, Alden Torch argues that summary judgment should not be granted on this issue because there are disputes as to whether the offer was bona fide. Opp'n, Dkt. No. 76, 22.

A bona fide offer is one that is made "in good faith; without fraud or deceit" and is "sincere" and "genuine." Senior Hous. Assistance Group v. AMTAX Holdings 260 LLC, 2019 WL 1417299, at *10 (W.D. Wash. Mar. 29, 2019) (quoting Black's Law Dictionary).

The parties agree that Lepe and AHCC made the Purchase Offer in good faith. SDF ¶ 63. Lepe performed his "standard due diligence" before extending the Purchase Offer and intended for it to be "aggressive" because AHCC was "very interested in purchasing the [P]roperty." Id. ¶¶ 60, 65. Further, it is undisputed that Lepe and AHCC were not aware of HCA's Right of First Refusal when making the purchase offer. Id. ¶ 62. The General Partners contend that this is sufficient to find the offer bona fide. Mot., Dkt. 83, 8–10.

However, despite these facts, Alden Torch argues there is a genuine dispute as to whether the Purchase Offer was bona fide because, it claims, "Palm induced AHCC to act unwittingly as a straw buyer for the sole purpose of triggering HCA's [Right of First Refusal], thereby allowing Palm to force HCA to exercise [that right] and obtain the Property for substantially less than fair-market value pursuant to the AGP." Opp'n, Dkt. 76, 23. Palm and HCA have an "Agreement of General Partners" ("AGP") that gives for-profit developer Palm the benefit of non-profit HCA's below-market Section 42(i)(7) Right of First Refusal. Def.'s Response to Pls./Counter-Defs.' Additional Material Facts ("RAMF"), Dkt. No. 83-1, ¶ 16. Congress reserved the below-market Section 42(i)(7) Right of First Refusal for non-profits. Thus, Alden Torch claims that the AGP undermines the bona fide nature of the offer so that it did not trigger the Right of First Refusal. Id. The Court agrees that this raises a triable issue of fact for the jury to resolve.

In a similar case, a district court in Washington found that offers "were not bona fide as they were solicited by [the General Partners] in an attempt to trigger [the non-profit developer's Right of First Refusal] and compel a sale of [the property] at below market prices, not because [the non-profit developer] was genuinely interested in selling [the properties] to a third party." SHAG v. AMTAX Holdings 260, LLC, 2019 WL 1417299, at *1, *11. Here, Alden Torch

presents evidence suggesting that Mr. Rivero contacted Mr. Horn regarding Palm's interest in selling properties in Palm's portfolio other than the Property, and Mr. Horn was the one who brought up Palm's interest in selling the Property. See SUF ¶ 51; Pettit Decl., Ex. X at 27:24–28:2, 29:16–21, 65:25–66:1; Pettit Decl., Ex. W at 87:18–88:12. Further, Alden Torch offers evidence that "AHCC did not perform adequate due diligence" and that "[i]n partciular, no AHCC representative visited the Propoerty in person or conducted any due diligence regarding its physical condition prior to submitting the offer to purchase the Property." SUF 47; Pettit Decl., Ex. W, at 89:22–90:8; Ex. X, at 33:19–22. This is sufficient to raise a triable issue as to whether the offer was bona fide or whether it was induced by the General Partners to trigger the Right of First Refusal.

The factual record here would permit a jury to find that the offer was not bona fide. Thus, the Court cannot determine at this stage whether the offer was or was not bona fide. The Court thus DENIES the General Partners' motion for summary judgment with respect to whether the offer was bona fide (Counterclaim, ¶ 120(e)).

2. Whether the Right of First Refusal Provision in the LPA Required the Limited Partners's Consent to Sell the Property

The second issue is whether the General Partners have the authority to accept the third-party offer on behalf of the partnership, without the Limited Partners' consent. The Limited Partners argue that the General Partners do not have this authority and that the Special Limited Partner must consent before the Right of First Refusal is triggered. The General Partners move this Court to grant summary judgment declaring that such consent is not required.

"Under California Law, the interpretation of contract language is a question of law." Atel Fin. Corp. v. Quaker Coal Co., 321 F.3d 924, 925–26 (9th Cir. 2003) (internal citation omitted). In California, courts must interpret contracts to give effect to the mutual intent of the parties. Bank of the West v. Super. Ct., 2 Cal. 4th 1254, 1256 (1992) (citing Cal. Civ. Code § 1636). The parties' mutual intent is determined by several factors, including: (1) the language of the contract; (2) the surrounding circumstances in which the parties entered the contract; and

(3) the subsequent conduct of the parties. Morey v. Vannucci, 54 Cal. App. 4th 904, 912 (1998).

California courts have established a two-step process for interpreting contracts. Curry v. Moody, 40 Cal. App. 4th 1547, 1552 (1995). First, the court must determine whether the contract is ambiguous. Id. Contracts are ambiguous when "reasonably susceptible" to different meanings. Id. At this step, the court must provisionally receive extrinsic evidence regarding the meaning of the contract. Id. If the contract is ambiguous when viewed in light of the extrinsic evidence, courts move to the second step of analysis. Id. If, however, there is no ambiguity, the court must apply the clear meaning of the contract. Bank of the West, 2 Cal. 4th at 1264 ("If contractual language is clear and explicit, it governs."). At the second step, the court must then interpret the contract. Curry, 40 Cal App. 4th at 1552. When interpreting the contract, the court admits all extrinsic evidence relevant to ambiguity. Id. If there is no such evidence, or the evidence does not raise any genuine issue of material fact, the interpretation of the contract is a matter of law. ASP Props., 133 Cal. App. 4th at 1267. But, when the extrinsic evidence is in conflict, summary judgement is not appropriate because resolution of the conflicting evidence is a question of fact. WYDA Associates v. Merner, 42 Cal. App. 4th 1702, 1710 (1996).

Here, the LPA and Right of First Refusal are not ambiguous. The LPA states that "the Administrative General Partner . . . is hereby authorized to sell . . . all or substantially all of the assets of the Partnership' provided, however, that the terms of any such sale . . . must receive the Consent of the Special Limited Partner **before such transaction shall be binding on the Partnership**." LPA § 5.4A (underlining in original, bolding supplied). The plain language of the contract provides only that the Special Limited Partner must consent to the sale before it "shall be binding on the Partnership." The Right of First Refusal Agreement only requires that the Partner "desire to accept" an offer to purchase the property. Desiring to accept does not bind the partnership. Thus, it does not require the Special Limited Partner's consent under § 5.4A. See Homeowner's Rehab, 478 Mass. at 760–761 ("To be sure, the partnership could not consummate a sale to a third party without the consent of the special limited partner, but that does not mean that the special limited partner must consent to the terms of an *offer* before the disposition notice can be issued.") (emphasis in original).

The Massachusetts Supreme Court, addressing the same question with regards to a similar agreement explained,

> [The partnership agreement] states only that the special limited partner must consent to the terms of a sale "before such transaction shall be binding on the Partnership." As stated, the decision to accept a third-party offer does not itself constitute an acceptance of the offer. Thus, the mere issuance of a disposition notice does not bind the partnership to sell to the third party or even accept its offer if the nonprofit developer were for some reason to fail to exercise its right of first refusal.

Homeowner's Rehab, Inc. v. Related Corp. V SLP, L.P., 479 Mass. 741, 759 (2018). The Massachusetts Supreme Court partially based this conclusion on the fact that the partnership agreement "specifically recognize[d] the possibility that the partnership [would] not consummate the sale" by stating that if the nonprofit developer did not exercise its Right of First Refusal, the partnership "*may* thereupon consummate the sale to the [third party] upon the terms of the offer." (emphasis in original). Similarly, the LPR here states that if HCA does not exercise its Right of First Refusal, the Partnership "will be free to sell the Property on substantially the terms set forth in the notice." Right of First Refusal Agreement § 5.

The evidence Alden Torch presents does not show that the contract is "reasonably susceptible" to the interpretation Alden Torch urges—that the Special Limited Partner's consent is required to trigger the Right of First Refusal. Nor does this evidence raise any genuine issue of material fact. Alden Torch argues that "Palm's contemporaneous conduct and communications belie its litigation position that RCHP's consent is not required to trigger HCA's [Right of First Refusal]." Opp'n, Dkt. No. 76, at 20. For example, Alden Torch states that "Palm and Alden Torch negotiated transactions in connection with LIHTC partnerships containing disposition provisions similar to those at issue here, yet prior to January 2021 Palm *never* claimed that the limited partner interests should be valued based on the assumption that the property would be acquired at the Section 42(i)(7) price." Id. (emphasis in original). This does not raise an issue of material fact as to the meaning of the present agreement. Although those past provisions may have been "similar to those at issue here," they presumably were not identical and the Court does not have those agreements to evaluate. Thus, Palm's

negotiating position with regards to those separate deals is immaterial here. Further, Alden points to an email from Halter, a Palm representative to the Limited Partners on April 12, 2018 stating in part, "HCA is interested in exercising their right of first refusal should Palm, HCA and the Special Limited Partner [RCHP] collectively agree to a sale." RAMF, Dkt. No. 83-1, 14 ¶ 26. However, the General Partners argue that this was "not an agreement with Alden Torch's misplaced interpretation of the LPA and [Right of First Refusal] Agreement," but rather an attempt to be "agreeable" as "part of a negotiation." Reply, Dkt. 83, 22; Davenport Reply Decl., Ex. P at 127:8–19. Similarly, Alden Torch relies on an internal email from Horn, a Palm representative to HCA that attached the Option and Right of First Refusal Agreement and stated: "I was mistaken about the acceptance of the offer by the [Special Limited Partner]. The [Special Limited Partner] does have to accept the offer. So back to the drawing boards." However, Horn is not an attorney and later explained that he "was relying on Alden Torch's position as being accurate, and after further research, . . . [he] realized that [he] didn't need their permission to desire." Davenport Reply Decl., Ex. A at 152:3–23. This evidence is not sufficient to raise an issue of material fact as to the meaning agreement.

The Court thus GRANTS summary judgment on this issue and declares that the Administrative General Partner has the power under the Partnership Agreement to express, on behalf of the Partnership, a desire to sell the Apartment Complex, whereby the Special LP's consent is only necessary for a sale transaction to become binding on the Partnership (Counterclaim, ¶ 120(c)).

B. Breach of Fiduciary Duty

The General Partners ask this Court to grant summary judgment dismissing Count Three of the FAC for breach of fiduciary duty.

A claim for breach of fiduciary duty requires "the existence of a fiduciary relationship, its breach, and damage proximately caused by that breach." Pierce v. Lyman, 1 Cal. App. 4th 1093, 1102 (1991). "The absence of any one of these elements is fatal to the cause of action." Id. Here, Alden Torch claims that Palm, as the Administrative General Partner, owes the Partnership fiduciary duties of loyalty, care, and good faith and fair dealing. FAC ¶ 93. Alden Torch argues that Palm breached these duties by: (1) prompting AHCC to submit its Purchase Offer

for the purpose of trigger HCA's Right of First Refusal; (2) failing to engage AHCC in good faith negotiations for a more favorable sales price for the Property; and (3) failing to consider whether accepting the Purchase Offer was in the best interests of the Partnership. Id. ¶ 94.

As discussed above, Alden Torch has raises a triable issue of material fact as to whether the General Partners induced AHCC's Purchase Offer for the purpose of triggering HCA's Right of First Refusal. Because this claim is also based on that allegation, the Court DENIES the General Partners' motion for summary judgment on the Limited Partners' fiduciary duty claims.

C. Breach of Contract

The General Partners move this Court for partial summary judgment on Count II of the Counterclaim because, they argue, "the Limited Partners have breached the LPA by preventing the sale of the Property pursuant to the Right of First Refusal Agreement." Mot., Dkt. No. 59, 22. Accordingly, the General Partners ask the Court to order specific performance directing the Partnership to transfer the Property to HCA pursuant to the Right of First Refusal Agreement. Id.

This claim depends on a finding that the Right of First Refusal was in fact triggered. For the reasons discussed above, this is an issue that cannot be resolved on summary judgment. Accordingly, the Court DENIES the General Partners' motion for summary judgment on their breach of contact claim.

IV. CONCLUSION

For the foregoing reasons, the motion is **DENIED** in part and **GRANTED** in part.

IT IS SO ORDERED.

The Court **VACATES** the October 4, 2021 hearing. Any party may file a request for hearing of no more than five pages no later than 5:00 p.m. on Tuesday, October 5, 2021, stating why oral argument is necessary. If no request is submitted, the matter will be deemed submitted on the papers and the tentative

will become the order of the Court. If the request is granted, the Court will advise the parties when and how the hearing will be conducted.