

EXHIBIT MMM

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

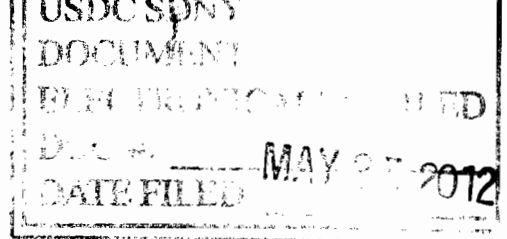
UNI-RTY CORP. and GOLDEN PLAZA
LIMITED PARTNERSHIP,

Plaintiffs,

-v-

GUANGDONG BUILDING, INC., NEW
YORK GUANGDONG FINANCE, INC.,
EASTBANK, N.A., JOSEPH CHU, and
ALEXANDER CHU,

Defendants.



MEMORANDUM DECISION
AND ORDER

95 CV 09432 (GBD)

GEORGE B. DANIELS, District Judge:

Plaintiffs Uni-Rty Corporation and Golden Plaza Limited Partnership (collectively, “Plaintiffs”) brought suit against Defendants Guangdong Building, Inc. (“GBI”), New York Guangdong Finance, Inc. (“NYGF”), Alexander Chu and The Estate of Joseph Chu (collectively, the “Defendants”) based upon a series of transactions from 1989 to 1994 involving a commercial property located at 239-241 Canal Street in Manhattan’s Chinatown District (hereinafter, the “Property”). The parties proceeded to trial on Plaintiffs’ claims for fraudulent inducement and breach of contract; and on Defendants’ counterclaims to enforce a \$3 million promissory note and a two-year lease.

After this case was reassigned from Judge Sprizzo’s docket following his death, this Court conducted a jury trial on all of the parties’ claims. At the conclusion of a seven-day trial, the jury reached the following verdict: (1) Defendant NYGF breached the contract referred to as the Joint Venture Agreement (“JVA”), and, as a result, Plaintiffs incurred damages of \$8,250,000; (2) Defendants Joseph Chu and Alexander Chu made false representations that

fraudulently induced Plaintiffs to enter into the 1994 Sale/Leaseback Agreement, and, as a result, Plaintiffs incurred an additional monetary loss of \$250,000; (3) Plaintiffs breached the 1994 Loan Agreement with Defendant Joseph Chu by defaulting and failing to pay the sums due and owed under the loan note, and, as a result, Defendant Joseph Chu incurred damages of \$1,000,000; and (4) Plaintiffs breached the 1994 two-year lease agreement with Defendant GBI by failing to pay the rents due and owed under the lease contract, but that Defendant GBI did not incur any additional damages as a result of this breach. See Trial Tr., at 1333-1335. Defendants subsequently moved for judgment as a matter of law pursuant to Fed. R. Civ. P. 50(b) on the breach of contract and fraudulent inducement claims, and judgment in Defendants' favor on both counterclaims, or, in the alternative, for remittitur and/or a new trial pursuant to Fed. R. Civ. P. 59. Defendants' motions are DENIED.¹

BACKGROUND

In May 1989, Plaintiffs purchased the Property from the FDIC for \$8.5 million. Plaintiffs funded the purchase by a loan from the FDIC and loans from Defendant Eastbank and Defendant NYGF, an entity owned and controlled by Defendants Joseph Chu and Alexander Chu. In February 1990, Plaintiffs refinanced the Property through a \$10 million loan secured by mortgage liens from Defendants NYGF. NYGF funded the loan to Plaintiffs by borrowing \$9 million from HSBC, despite Plaintiffs' insistence that HSBC not be involved in financing transactions concerning the Property. Plaintiffs used the funds to pay off the 1989 loans, with the remainder serving as working capital and proceeds for renovating the Property. Also in

¹ Defendants also renewed their first motion in limine, which sought, in part, to preclude Plaintiffs from presenting evidence that Defendants' alleged wrongful conduct caused Plaintiffs' "loss" of the Property. Defendants contend that this motion is still pending. Defendants' motion is DENIED, as that issue was decided by this Court at the trial and Defendants have articulated no reason for this Court to revisit its decision.

February 1990, Plaintiffs and Defendant NYGF executed the JVA. The parties disputed at trial what obligations, if any, the JVA imposed on Defendant NYGF to help develop the property, and whether Defendant NYGF engaged in conduct that violated the terms of that agreement. The jury found that Defendant NYGF breached the JVA, and awarded Plaintiffs damages in the amount of \$8,250,000 million. The agreement between the parties had contemplated that the rents from the renovated property would pay outstanding obligations and generate profits from its income.

By January 1994, Plaintiffs had defaulted on their financial obligations under the 1990 loan agreement to Defendant NYGF. Plaintiffs owed approximately \$2,600,000 in interest and real estate taxes, and the \$10 million principal balance was due to mature in February 1994. Plaintiffs lacked sufficient funds to pay either the delinquent amount or the balloon payment.

In February 1994, Plaintiffs entered into the Sale/Leaseback Transaction with Defendant GBI. The first aspect of the transaction was a sale agreement, whereby Plaintiffs transferred title to the Property to Defendant GBI, a company formed by Defendant Joseph Chu solely to hold the title. GBI assumed Plaintiffs' principal mortgage debt of \$10 million owed to NYGF. The second aspect of the transaction was a separately executed lease agreement. Defendant GBI leased the Property back to Plaintiffs for a non-renewable two-year term, with fifty percent of the rental payments being deferred until the end of the lease. Plaintiffs had an option to repurchase the Property from Defendant GBI at the end of the term. The parties disputed at trial whether Defendants had made material misstatements or omissions concerning the 1990 HSBC loan during the negotiations of the 1994 Sale/Leaseback Transaction, and whether Plaintiffs had reasonably relied on those statements to their detriment. The jury found that Defendants Joseph Chu and Alexander Chu fraudulently induced Plaintiffs to enter the 1994 Sale/Leaseback

Transaction, and awarded Plaintiffs additional damages in the amount of \$250,000.

Plaintiffs defaulted on their obligations under the 1994 lease agreement with Defendant GBI by failing to pay their property taxes in January 1995 and their lease payments in May, June, and July 1995. In July 1995, Defendant GBI evicted Plaintiffs and retained ownership of the Property. The jury found that Plaintiffs breached the 1994 lease agreement. The jury determined that Defendant GBI did not incur any additional damages as a result of Plaintiffs' breach.

Also, in February 1994, Defendant Joseph Chu personally loaned Plaintiffs \$3 million. Plaintiffs used the funds to pay real estate taxes and interest arrears under the 1990 loan agreement, with the remainder serving as working capital. Plaintiffs never repaid the promissory note to Defendant Joseph Chu. The jury found that Plaintiffs breached the 1994 loan agreement, and awarded Defendant Joseph Chu \$1 million.

STANDARD OF REVIEW

A motion, pursuant to Rule 50(b), to set aside a jury verdict and to award judgment as a matter of law should be granted cautiously and sparingly. Meloff v. New York Life Ins. Co., 240 F.3d 138, 145 (2d Cir. 2001) (citation and internal quotation marks omitted); see also Fed. R. Civ. P. 50(b). In reviewing such a motion, the Court is required to consider the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences from the evidence in that party's favor. Okemo Mountain, Inc. v. Sikorski, 2008 WL 5273494, at *1 (2d Cir. Dec. 19, 2008) (quoting Chartschlaa v. Nationwide Mut. Ins. Co., 538 F.3d 116, 122 (2d Cir. 2008)). The Court is precluded from assessing the credibility of the witnesses or weighing the evidence. Brady v. Wal-Mart Stores, Inc., 531 F.3d 127, 133 (2d Cir. 2008) (quoting Caruolo v. John Crane, Inc., 226 F.3d 46, 51 (2d Cir. 2000)); Meloff, 240 F.3d at 145 (quoting

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