SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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D&N REALTY LIMITED LIABILITY COMPANY,

Plaintiff,

-against-

THE LAUREN INVESTMENT CORPORATION,

Defendants.

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Index No. EF002960-2020

AMENDED COMPLAINT

Plaintiff D&N Realty Limited Liability Company ("Purchaser"), by its attorneys, for its amended complaint against the defendants, The Lauren Investment Corporation ("Seller"), alleges as follows:

1. This complaint is being amended pursuant to CPLR §3025(a), as of right.

NATURE OF THE ACTION

2. On June 19, 2019, Purchaser's predecessor and Seller entered into a "Contract of Sale—Office, Commercial and Multi-Family Residential Premises" (the "Contract of Sale") and "Rider Attached to and Forming Part of Contract of Sale" (the "Rider"), dated June 19, 2019, for Purchaser's acquisition of the real property located at 364 Route 211 East, Middletown, Town of Wallkill, County of Orange, New York 10940 (the "Premises"). Section 25 of the Rider set an initial "drop dead date" for closing the acquisition of 12 months after execution, *i.e.*, by June 18, 2020 (the "Original Drop Dead Date"), but neither the Rider nor the Contract of Sale included a "time is of the essence" clause.

3. As set forth in Section 24 of the Rider, Purchaser intended to develop a retail bank building on the Premises, and the transaction was specifically made contingent upon Purchaser obtaining approval of its development application from the relevant governmental authorities. The

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Contract of Sale included several provisions for Purchaser's benefit that allowed it to extend the Original Drop Dead Date, or even cancel the Contract of Sale and Rider, if its applications were not approved in a timely manner.

4. Purchaser pursued its approvals with diligence (expending significant time and money to do so) and obtained preliminary site plan approval for its development from the Town of Wallkill Planning Board on December 17, 2019. However, its effort to obtain final site plan approval was hampered and delayed by the COVID-19 pandemic and resulting government shutdown. As a result, several conditions to final site plan approval remained unfulfilled through June 2020. These delays resulted in an extension of the Original Drop Dead Date on a day-for-day basis with the COVID-19 shutdown until at least August 18, 2020 (the "New Drop Dead Date").

5. Nevertheless, on June 7, 2020 — ***11 days before the Original Drop Dead Date*** — Purchaser notified Seller that it was ready, willing, and able to close once Seller's documentation was ready. Purchaser proposed a closing date in mid-July 2020, specifically so that Seller could satisfy its own obligations and prepare such documentation, which was after the Original Drop Dead Date, but well before the New Drop Dead Date:

> We are looking at a closing mid July - probably between the 15th and 21st. ***I know there were a number of things for Seller to deal with under the Agreement, so I wanted to be sure you had plenty of notice.*** The approvals are now in hand on our end. I'm happy to start reviewing Seller documents as soon as they are prepared.

6. Seller, through its counsel, responded four days later, and stated enthusiastically: "Great news! Now that you have finally told me your client's site plan is approved I will let my clients know!" In fact, Seller's counsel began that response by apologizing for its lateness, attributing the delay to his associate having been furloughed (presumably as a result of COVID-19): "Sorry I missed this e-mail...Sarah my associate has been on furlough so a couple e-mails have been slipping through..."

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7. Seller never objected to a closing date after the Original Drop Dead Date. Had Seller responded to Purchaser's June 7, 2020 e-mail by insisting on closing on or before the Original Drop Date, or even by noting that time is of the essence, Purchaser would have done so, as it was ready, willing, and able to close at that point. Indeed, as indicated in Seller's counsel's June 7, 2020 e-mail, the mid-July date was an accommodation to Seller. Based on Seller's positive response and lack of objection to a later closing date or any indication that time was of the essence, Purchaser continued its preparation for closing in mid-July.

8. Suddenly, at 5:42 p.m. on June 18, 2020 — ***after the close of business on the Original Drop Dead Date*** — Joseph Romero, purportedly acting on behalf of Seller despite serving as Purchaser's broker in the transaction, sent an e-mail to Purchaser notifying it that Seller would not close.

9. In his e-mail, Romero asserted that Purchaser failed to notify Seller that it had obtained "site plan approval" in December 2019 for its planned development on the Premises, allegedly in breach of a provision in the Contract of Sale requiring Purchaser to notify Seller when site plan approval had been obtained, and to close the acquisition within 60 days of receipt of that approval.

10. Seller's position concerning site plan approval was and is wrong. In December 2019, the Town of Wallkill Planning Board granted only ***preliminary*** site plan approval to Purchaser, but that preliminary approval was subject to numerous conditions. The Town of Wallkill Zoning Code makes clear that preliminary approval is ***not*** "site plan approval." Accordingly, Seller's position was simply wrong, and its refusal to close was also wrong.

11. In fact, Seller's real motivation for not closing was revealed in Romero's e-mail. In that e-mail, Romero accused Purchaser of engaging in a "deceitful" plan to develop the Premises

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for a profit, and to "flip" the property once a profitable tenant — Bank of America — took occupancy of Purchaser's new development. Under this theory, it appears that Seller believes it is "deceitful" for a profitable real estate developer to develop real estate for a profit.

12. By the time of Romero's e-mail — after the close of business on June 18, 2020, the Original Drop Dead Date, and eleven days after Purchaser informed Seller that it intended to close in mid-July so that Seller could satisfy its own obligations — it was too late to close the transaction by the Original Drop Dead Date, which was then over. That was no coincidence.

13. Yet, Seller now claims that Purchaser's failure to close by the Original Drop Dead Date — despite there being no time is of the essence clause in the Contract of Sale or Rider, Seller's failure to inform Purchaser before the Original Drop Dead Date that it would not close thereafter, and without regard for the delays caused by COVID-19 — means it can cancel the contract and take the benefits of Purchaser's development work for itself, while depriving Purchaser of the Premises, a unique parcel of land that it was poised to develop for the benefit of a lucrative new tenant, and ultimately to sell for a substantial profit. Seller was well aware that this was Purchaser's plan when it entered into the Contract of Sale and when Purchaser proposed a closing date in mid-July, and Seller knew that the plan had come to fruition when it later refused to close; indeed, that was precisely why Seller refused to do so.

14. Accordingly, Purchaser demanded that Seller confirm that it would close, and when Seller failed to do so, Purchaser filed the instant action and obtained a Notice of Pendency.

15. On July 10, 2020, and consistent with its counsel's June 7, 2020 e-mail, Purchaser formally notified Seller that the closing would occur on July 16, 2020, well in advance of the New Drop Dead Date.

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16. Purchaser funded and appeared for the closing on July 16, 2020, but Seller failed to do so.

17. Accordingly, Purchaser seeks a judgment from the Court finding that Seller is in breach of the Contract of Sale and Rider, and ordering Seller to specifically perform its obligations thereunder by closing on the sale, and to pay Purchaser fair market value for its use and occupancy of the Premises until such time as specific performance is granted and Purchaser takes possession thereof, which Purchaser values at $20,000 per month based upon its lease with Bank of America; or, alternatively, for direct and consequential damages in excess of $3.5 million.

PARTIES, JURISDICTION, AND VENUE

18. Plaintiff D&N Realty Limited Liability Company is a New Jersey limited liability company with a principal place of business in Ridgewood, New Jersey.

19. Upon information and belief, Defendant The Lauren Investment Corporation is a Florida corporation with a principal place of business in Miami, Florida, and an office in New York (which is also its DOS Process address) located at 34 Mansion Ridge Blvd., Monroe, New York 10950.

20. This Court has personal jurisdiction over Seller because Seller conducts substantial business within the State of New York and the events giving rise to this lawsuit took place in this state.

21. Venue is proper pursuant to New York CPLR 507 because the Premises is located in Orange County.

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