

Klepper v 118 E. 60th Owners, Inc.

2026 NY Slip Op 30878(U)

January 14, 2026

Supreme Court, New York County

Docket Number: Index No. 160268/2025

Judge: Gerald Lebovits

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. GERALD LEBOVITS PART 07

Justice

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INDEX NO. 160268/2025

JAMES KLEPPER and MITRA KLEPPER,

MOTION SEQ. NO. 001 002 003

Petitioners,

- v -

118 EAST 60TH OWNERS, INC., MATTHEW ADAM
PROPERTIES, INC., SCOTT CURTIS, JOHN CARUSO,
OMAR ATTAHAWI, JOEL KARP, NORTON HIGHT, SARAH
CAPLAN, YARON JACOBI, and LAWRENCE FRIEDLAND,

**DECISION + ORDER ON
MOTION**

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46

were read on this motion for INJUNCTION/RESTRAINING ORDER.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 2, 3, 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion for JUDGMENT - DECLARATORY.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 15

were read on this motion for JUDGMENT - DECLARATORY.

Scott J. Gilmore, Esq., Massapequa Park, NY, for petitioners.

Belkin Burden Goldman, LLP, New York, NY (Jay B. Solomon of counsel), for respondents.

Gerald Lebovits, J.:

This hybrid action/special proceeding arises from a residential co-op board’s denial of an application to purchase shares appurtenant to an apartment in the building. Petitioners, James Klepper and Mitra Klepper, challenge the decision of the board of respondent 118 East 60th Owners, Inc., to deny their application to purchase a second apartment in the co-op, to approve the application of another prospective purchaser, and to sell the apartment’s shares to that purchaser instead.¹

On motion sequence 001, petitioners move by order to show cause to vacate the contract of sale between the co-op and the prospective purchaser of the apartment at issue. (See NYSCEF No. 31 at 2.) Petitioners sought a temporary restraining order in connection with the order to

¹ The individual respondents are the members of the co-op board.

show cause, seeking to prevent the co-op, the members of the board, and the co-op's property manager from taking steps to proceed with the sale of the apartment. (*See id.* at 3.) This court denied petitioner's request for a TRO. (*See id.*)

On motion sequences 002 and 003, petitioners seek judgment in their favor on their petition in the proceeding.²

DISCUSSION

1. Motion sequence 001 is denied, substantially for the reasons set forth in this court's explanation of its denial of petitioners' TRO request—made after reviewing the petition and petitioners' opening brief on the motion. (*See* NYSCEF No. 31 at 3.) Petitioners make only one argument in support of motion sequence 001 beyond those set forth in their opening papers. That argument, too, is unpersuasive.

In opposing the motion, respondents represent that the reason they did not provide petitioners with the minutes of the board meeting in which petitioners' purchase application was denied was that there were no minutes to provide. Instead, respondents say, purchase applications are discussed informally by telephone, with the results reported to the managing agent by email. (*See* NYSCEF No. 34 at ¶ 10.) On reply, petitioners challenge the veracity of this representation. Petitioners assert that “[r]espondents themselves submitted ‘minutes’ as evidence with regard to the approval of the new application regarding Apartment 4B, as well as other apartment applications as contained in their NYSCEF Document #s 30 and 36.” (NYSCEF No. 41 at ¶ 7 [emphases omitted].) Therefore, petitioners claim, “[o]bviously, the Board does keep minutes of every other purchase application” except “that of the [p]etitioners!” (*Id.* at ¶ 8 [capitalization omitted].) But NYSCEF Nos. 30 and 36 do not, as petitioners suggest, contain formal minutes of the sort that petitioners seek with regard to their application decision. They are merely emails from a board member (respondent Scott Curtis) to an employee of the managing agent, notifying him of the results of purchase-application votes and including the vote tallies. Those documents are consistent with—rather than undermining—respondents' representation about the process they followed with respect to petitioners' application.

2. With respect to petitioners' request in their petition for an inspection of the books and records, this request is denied as academic. (*See* NYSCEF No. 1 at ¶ A of the prayer for relief.) Petitioners sought (i) a list of the co-op's shareholders and their respective numbers of shares in the co-op (along with a list of the members of the board); and (ii) the minutes of any meeting in which their purchase application was considered, including the meeting in which the application was rejected. (*See* NYSCEF No. 1 at ¶ 27.) It is undisputed that the shareholder list has been provided. (*See* NYSCEF Nos. 45, 46.) And, as discussed above, respondents have represented that no minutes exist that reflect consideration of petitioners' application—or applications of other prospective purchasers during the same period. Petitioners do not provide a basis to doubt this representation. The inspection request has been complied with.

² Motion sequence 003 simply reflects an amended return date on the petition. This court understands motion sequences 002 and 003 to be otherwise identical.

3. For the same reasons set forth above with respect to motion sequence 001, petitioners fail to show entitlement to their requested declaration that the denial of their purchase application was arbitrary and capricious and breached respondents' fiduciary duties. (*See* NYSCEF No. 1 at ¶ B of the prayer for relief.) Absent a basis to call into question the validity of the decision to reject petitioners' purchase application in favor of the application of another prospective purchaser, no basis exists to grant petitioners' request to require respondents and their managing agent to approve and effectuate the transfer of the apartment shares from the seller to petitioners. (*See id.* at ¶ C.)

4. Petitioners also seek damages in contract. (*See* NYSCEF No. 1 at ¶ D of the prayer for relief; NYSCEF No. 2 at 2.) The basis for this claim is not entirely clear; but it appears to be based on respondents' alleged breach of the co-op's bylaws with respect to keeping minutes of board meetings. But even assuming that the failure to keep minutes breached the bylaws (a matter on which this court expresses no opinion), petitioners have not adequately alleged that they were damaged by that failure. At most, petitioners have alleged that the *substance* of the board's decision on their application was the product of improper considerations—not that the (lack of) memorialization of that decision caused them independent harm. And given this court's conclusion that petitioners have not alleged any facts that might suggest the board's decision was made for improper motives, the absence of minutes of that decision is neither here nor there. For the same reason, petitioners' request for damages for an alleged breach of the covenant of good faith and fair dealing (*see id.*) is unavailing as well.

Because petitioners are not the prevailing parties in this action/proceeding, their request for an award of attorney fees is denied.

Accordingly, it is

ORDERED that petitioners' motion for injunctive relief (mot seq 001) is denied; and it is further

ORDERED that petitioners' motions for judgment on their petition (mot seqs 002 and 003) are denied; and it is

ORDERED that petitioners' first item of requested relief in their petition is denied as academic; and it is further

ORDERED that petitioners' third, fourth, fifth, and sixth items of requested relief in their petition are denied for failure to state a cause of action; and, with respect to petitioners' second item of requested relief, it is further

ORDERED, ADJUDGED, AND DECLARED that no basis exists on the record in this action/proceeding to annul respondents' rejection of petitioners' application and contract of sale to purchase the shares appurtenant to Apartment 4B of 118 East 60th Street, New York, New York, because petitioners have not shown that the rejection was arbitrary and capricious, in bad faith or out of self-dealing motives, or constituted a breach of respondents' fiduciary duties; and it is further

ORDERED that the action/proceeding is dismissed, with costs and disbursements as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that respondents serve a copy of this order with notice of its entry on petitioners and on the office of the County Clerk (using the NYSCEF document type "Notice to the County Clerk - CPLR § 8019 (c)"), which shall enter judgment accordingly.

1/14/2026

DATE


HON. GERALD LEBOVITZ
J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE