

Walker212W18th LLC v Best 1 LLC
2026 NY Slip Op 30970(U)
March 9, 2026
Supreme Court, New York County
Docket Number: Index No. 652311/2025
Judge: Phaedra F. Perry-Bond
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

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INDEX NO. 652311/2025

WALKER212W18TH LLC,

MOTION DATE 05/12/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

BEST 1 LLC, LISA J. LEDER, as Trustee of the Lisa J. Leder Revocable Trust u/a/d March 3, 2011, as amended, and LISA J. LEDER individually,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 22, 23

were read on this motion to/for DISMISS

Upon the foregoing documents, Defendants' motion to dismiss Plaintiff's Complaint and for an award of attorneys' fees denied.

I. Background

As alleged in the Complaint, on March 4, 2024, Defendant Best 1 LLC ("Best") entered a contract (the "Contract") with non-parties Julia Sandler ("Sandler") and Andrew Steinman ("Steinman") whereby Best agreed to sell Sandler and Steinman Unit 11C/D (the "Unit") in the Walker Tower Condominium (the "Condominium") located at 212 West 18th Street, New York, NY. Steinman and Sandler assigned their right to purchase the Unit to Plaintiff on March 25, 2024.

Pursuant to §1.20 of the Contract, any "flip tax" or transfer fee would be paid by the party on whom the flip tax was imposed by the Condominium, or if not imposed on any party by the Condominium, the flip tax would be paid by Best, the seller. Section 7.12.1 of the Condominium's Bylaws provide that a transfer fee shall be paid upon the transfer of any residential unit in the Condominium, and the Condominium would not record the transfer of the Unit until the transfer

fee is paid. Plaintiff alleges a flip tax of \$133,550.00 was charged, but Best did not pay it. Allegedly, the Condominium demanded Plaintiff pay the flip tax or it would be charged as a common charge against the Unit. Plaintiff advanced the payment of the Flip Tax and now sues Best for Breach of Contract.

Plaintiff sues Defendant Lisa J. Leder (“Leder”) and Lisa J. Leder as Trustee of the Lisa J. Leder Revocable Trust (“Trustee”) under the New York Debtor & Creditor Law based on the allegation that Best fraudulently transferred the proceeds of the sale to Trustee or Leder to render Best an empty shell company who could not be pursued for failing to pay the Flip Tax. In response, Defendants move pre-answer to dismiss pursuant to CPLR 3211(a)(1), (a)(5), and (a)(7). Defendants argue the Complaint is barred by the Contract’s six-month limitation period and that the fraudulent transfer claim is likewise time barred and, in any event, fails to state a claim. In opposition, Plaintiff argues there is no contractual limitation regarding the flip tax and that the fraudulent transfer claim has been adequately alleged.

II. Discussion

A. Standard

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court accepts all factual allegations as true, gives claimant the benefit of all favorable inferences which may be drawn from the pleadings, and determines only whether the alleged facts fit within any cognizable legal theory (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]).

A motion to dismiss based on documentary evidence is appropriately granted when the documentary evidence utterly refutes the plaintiff’s factual allegations, conclusively establishing a defense as a matter of law (*Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314 [2002]). The documentary evidence must be unambiguous, of undisputed authenticity, and its contents must

be undeniable (*VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019]). A defendant who moves to dismiss based on the statute of limitations bears the burden of proving that the time to sue has expired (*Lebedev v Blavatnik*, 144 AD3d 24 [1st Dept 2022]). If there exists an issue of fact as to whether the statute of limitations has run, a motion to dismiss based on untimeliness must be denied (*Stringer v Kim*, 226 AD3d 607, 608 [1st Dept 2024]).

B. Breach of Contract

The motion to dismiss the breach of contract claim as untimely is denied. “Contracts must be read as a whole and all terms of a contract must be harmonized whenever reasonably possible” (*see, e.g. Teliman Holding Corp. v VCW Associates*, 211 AD3d 499 [1st Dept 2022] quoting *Madison Hudson Assocs. LLC v Neumann*, 44 AD3d 473, 480 [1st Dept 2007]). When interpreting a contract, the Court should adopt the interpretation that gives each provision force and effect (*Isaacs v Westchester Wood Works, Inc.*, 278 AD2d 184, 185 [1st Dept 2000]). In other words, courts should interpret contracts in such a way that avoids rendering certain provisions as empty surplusage (*see 333 Johnson LLC v Maple 333 Johnson Member, LLC*, 237 AD3d 456, 459 [1st Dept 2025]).

With these principles in mind, and reading the contract holistically, the Court finds Defendants’ proposed interpretation of § 4.3 of the Contract to be myopic and in conflict with several other contract provisions. Specifically, Defendants rely on § 4.3 of the Contract which provides “[a]ny errors or omissions in computing closing adjustments shall be corrected. The provisions of this Article 4 shall survive closing for six (6) months.” The issue with Defendants’ argument is, as correctly argued by Plaintiff, when reading the contract holistically, the flip tax¹ is not a “closing adjustment” subject to the six-month limitation in Article 4 of the Contract. Article

¹ Or transfer fee – the parties used the terms interchangeably.

4 defines adjustments to be made before closing to be “real estate taxes and water charges and sewer rents, if separately assessed, on the basis of the fiscal period for which assessed” (*see* § 4.1.1), “common charges” (*see* § 4.1.2), “the value of fuel stored with respect to the Unit” (*see* § 4.1.3), “an Assessment which is or may become payable in installments” (*see* §4.3), and “the customs in respect to title closings’ recommended by The Real Estate Board of New York, Inc.” (*see* § 4.4).

As stated by the First Department, “[u]nder the rule of ejusdem generis, the meaning of a word in a series of words is determined ‘by the company it keeps’...a series of specific words describing things or concepts of a particular sort are used to explain the meaning of a general one in the same series” (*see Lend Lease (U.S.) Const. LMB Inc. v Zurich American Ins. Co.*, 136 AD3d 52, 57 [1st Dept 2015] [internal quotations and citations omitted]). The “transfer fee” or “flip tax” does not fall into any of the enumerated items in Article 4, not least of which because it is a flat fee calculated through the Unit’s purchase price and is not a fee requiring adjustment or a separate assessment on the basis of a fiscal period. Section 7.12.1 of the Bylaws defines the transfer fee as one (1%) of the purchase price of the Unit owed upon the sale of the Unit (*see* NYSCEF Doc. 5).

Moreover, § 37 of the Contract states that the party “Any such increase or additional charge shall be without any liability to Seller whatsoever, **except for any flip tax that may be imposed on sellers by the Condominium**.... the provisions of this paragraph shall survive transfer of the Deed” (emphasis added). This section, which does not contain any time limitation in comparison to Article 4, explicitly refers to the” flip tax” or “transfer fee” which is the subject of this lawsuit, and falls outside the scope of the adjustments defined in Article 4.

The conclusion that the time limitation set forth in §4.3 does not encompass all claims arising from an alleged breach of the Contract is buttressed by other provisions of the Contract,

which recite other obligations that survive closing with unspecified time limitation or with time limitations greater than six months (*see, e.g.* § 40 [rebates or abatements have one year limitation period]; § 14 [costs or expenses with respect to FIRPTA have no specified limitation period], and § 18 [liability for broker fees survive closing with no specified limitation period]). Thus, reading the Contract holistically and avoiding surplusage, the Court finds the breach of contract claim based on Defendants' alleged failure to pay the "flip tax" or "transfer fee" to the Condominium is not time barred by § 4.3 of the Contract. While Defendants argue that § 4.3 applies to all errors, mistakes, or omissions related to closing, it also remains an issue of fact on this pre-answer motion to dismiss whether Defendants' failure to pay the flip tax was a simple error or omission or was intentional.

C. Fraudulent Transfer

The motion to dismiss the second cause of action alleging the fraudulent transfer of closing proceeds from Best to Leder and Trustee is granted. As a preliminary matter, Defendants' argument that the fraudulent transfer claim must be dismissed because the alleged debt is time barred pursuant to § 4.3 of the Contract is without merit as the Court has rejected Defendants' argument regarding timeliness.

Moreover, at this pre-answer stage, Plaintiff has adequately alleged a fraudulent transfer claim against Leder and Trustee which Defendants have failed to conclusively refute. Specifically, Plaintiff has alleged that Best was a single purpose entity which transferred the proceeds of the sale to Trustee or Leder with the intent to hinder, delay, or defraud Plaintiff recovering the flip tax which should have been paid by Best. Plaintiff further alleges that Trustee and Leder are "insiders", that Best was rendered insolvent as a result of the transfer, that the transfer was made for no consideration and constituted all of Best's assets, that Plaintiff became the creditor of Best after

Best did not pay the flip tax, that Best knew it was supposed to pay the flip tax, and that the transfer occurred around the time Best became Plaintiff's debtor.

On a pre-answer motion to dismiss, these specific factual allegations are sufficient to make out a claim under New York Debt. & Cred. Law § 273 (*see 245 E. 19 Realty LLC v 245 E. 19th Street Parking LLC*, 223 AD3d 604, 606 [1st Dept 2024]; *see also Wall Street Associates v Brodsky*, 257 AD2d 526 [1st Dept 1999]). Because concrete facts “are peculiarly within the knowledge of [Defendants]” any lack of specificity may be cured through further discovery (*see Brennan v 3250 Rawlins Ave. Partners, LLC*, 171 AD3d 603, 604 [1st Dept 2019] quoting *Pludeman v Northern Leasing Sys., Inc.*, 10 NY3d 486, 491 [2008]). While Defendants may ultimately refute the alleged badges of fraud set forth in the Complaint, at this juncture they are sufficient to survive a CPLR 3211(a)(7) motion to dismiss (*see also 214 Knickerboxcker LLC v Pan*, 217 AD3d 431, 431-432 [1st Dept 2023]). Therefore, the motion to dismiss is denied. Because Defendants have not yet succeeded in this lawsuit, their request for attorneys' fees is denied as premature.

Accordingly, it is hereby,

ORDERED that Defendants' motion is denied in its entirety; and it is further

ORDERED that within twenty days of entry, Defendants shall serve their Answer to Plaintiff's Complaint; and it is further

ORDERED that the parties shall meet and confer immediately and shall submit a proposed preliminary conference order to the Court via e-mail, but in no event shall the proposed preliminary conference order be submitted any later than April 21, 2026. If there is a serious discovery dispute preventing the parties from entering a proposed order, they shall notify the Court via e-mail so an in-person conference can be scheduled; and it is further

ORDERED that if the parties wish to resolve this dispute through the Court’s sponsored ADR program, they shall notify the Court so the appropriate referral order may be issued; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

3/9/26
DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	