

**Superstructures Engrs. + Architects v Tribeca
E. Condominium**

2007 NY Slip Op 30284(U)

March 15, 2007

Supreme Court, New York County

Docket Number: 0600485

Judge: Jane S. Solomon

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

PRESENT: SOLOMON
Justice

PART 55

SUBSTRUCTURAL ENGINEERS
+ ARCHITECTS

INDEX NO. 600485/06

MOTION DATE 3/12/07

- v -

MOTION SEQ. NO. 02

TRIBECA EAST CONDOMINIUM,
LTA.

MOTION CAL. NO. _____

The following papers, numbered 1 to 9 were read on this motion to/for disqualify counsel

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1-5

6-8

9

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is denied in accordance with the annexed memorandum decision and order.

FILED
MAR 22 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 3/15/07

JANE S. SOLOMON J.S.C.
 NON-FINAL DISPOSITION

Check one: FINAL DISPOSITION

[* 1]

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 55

-----X
SUPERSTRUCTURES ENGINEERS + ARCHITECTS

Plaintiff,

-against-

TRIBECA EAST CONDOMINIUM and SUEN &
YOUNG LAND DEVELOPMENT CORP.

Defendants.

-----X
JANE S. SOLOMON, J.

INDEX NO. 600485/06

~~DECISION and ORDER~~

FILED

MAR 22 2007

NEW YORK
COUNTY CLERK'S OFFICE

In this breach of contract action, defendants Tribeca East Condominium ("Tribeca East") and Suen & Young Land Development Corp. ("Suen & Young") move to disqualify the law firm of Gogick, Byrne & O'Neill, LLP (the "Gogick Firm"), from representing plaintiff Superstructures Engineers + Architects ("Superstructures") due to an alleged conflict of interest. For the reasons described herein, the motion is denied.

Suen & Young owned the property located at 19-21 Warren Street in Manhattan and was the sponsor of its conversion to a residential condominium, namely, the plaintiff. In rehabilitating the property, Suen & Young hired the architectural firm now known as Fegan & Berg, which in turn hired CGM Engineering Inc. (collectively, "Fegan and Michaels").

In April 2003, Tribeca East filed a complaint with the New York State Attorney General concerning the offering plan and alleged construction and design defects in the conversion. At a

May 25, 2004, meeting convened by the Attorney General to address Tribeca East's complaint, Fegan and Michaels were represented by the Gogick Firm. As a result of the discussions, both defendants, Suen & Young and Tribeca East, agreed to hire Superstructures to prepare a report about the complained of conditions. Superstructures submitted an invoice for \$63,633.04 for its completed report, which has not been paid. Accordingly, it commenced this action in or around February 2006.

Superstructure's report purportedly found design deficiencies and code violations on the property. Suen & Young and Tribeca East held further meetings with the Attorney General, which resulted in a settlement in December 2006. Suen & Young alleges that it discussed the substance of Superstructure's report with an attorney from the Gogick Firm who represented Fegan and Michaels. It also contends that the discussions included the amount of the settlement and whether Fegan and Michaels would contribute towards it, but they did not.

On this motion, Suen & Young alleges that it is preparing to sue Fegan and Michaels for indemnification, and that, in any such action, Superstructures would be a witness for Suen & Young against the Gogick Firm's clients. For this reason, it moves under CPLR § 321(b)(2) to disqualify the Gogick Firm from continuing to represent Superstructures here. However, it is

conceded that no such action has been commenced. Thus, the motion to disqualify counsel based on a perceived conflict of interest is premature and must be denied. If it were granted, every client would be at risk of losing chosen counsel simply on the threat of action being taken against another client.

Accordingly, it hereby is

ORDERED that defendants' motion is denied, with \$100 costs.

Dated: March 15, 2007

ENTER:



J.S.C.

JANE S. SOLOMON

FILED
MAR 22 2007
NEW YORK
COUNTY CLERKS OFFICE