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

PRESENT: Hon. Doris Ling-Cohan Justice PART 36

Index Number : 110694/2010
392 CPW, LLC
VS.
MAXWELL KATES, INC.
SEQUENCE NUMBER : 001
DISMISS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for dismiss

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1, 2
Answering Affidavits — Exhibits	3
Replying Affidavits	4

Cross-Motion: ☐ Yes ☑ No

Upon the foregoing papers, it is ordered that this motion to dismiss by defendants Kates, Ludwig + the Board is granted in accordance with the attached memorandum decision. (consolidated for disposition with motion sequence # 002 + 003)

FILED
APR 13 2011
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 4/11/11

J.S.C.
JUDGE DORIS LING-COHAN

Check one: ☑ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG. ☐ SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 36

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392 CPW, LLC and MICHAEL FRIEDLANDER,

Plaintiffs,

Index No.: 110694/10

-against-

Motion Seq. No.: 001, 002 & 003

MAXWELL KATES, INC., KENNETH LUDWIG, THE 392 CENTRAL PARK WEST CONDOMINIUM BOARD, N.T.R. LLC d/b/a CITIHABITATS, INC., KAREN STONE, SANDRO GALEA and MARGARET KRUK,

Defendants.

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DORIS LING-COHAN, J.:

BACKGROUND

Motion sequence numbers 001, 002 and 003 are consolidated for disposition.

In motion sequence number 001, defendants Maxwell Kates, Inc. (Kates), Kenneth Ludwig (Ludwig), and The Board of Managers of the 392 Central Park West Condominium i/s/h/a The 392 Central Park Condominium Board (the Board)(collectively, the Kates and Board defendants) move, pursuant to CPLR 3211 (a) (7), to dismiss the fourth cause of action asserted as against them for tortious interference with prospective contract and to dismiss the fifth cause of action asserted as against Ludwig and Kates for defamation.

In motion sequence number 002, defendants Sandro Galea

(Galea) and Margaret Kruk (Kruk) move, pursuant to CPLR 3211 (a) (1) and (7), to dismiss the first cause of action asserted as against them for breach of a lease agreement and the second cause of action asserted as against them for promissory estoppel.

In motion sequence number 003, defendants Citihabitats, Inc. (Citihabitat) and Karen Stone (Stone) (together, the Citihabitat defendants) move, pursuant to CPLR 3211 (a) (1) and (7), to dismiss the complaint as against them.

Plaintiff 392 CPW, LLC is the owner of an apartment unit in the condominium building that is the subject of this litigation known as Units 10H and 10J (sometimes collectively, Unit 10HJ). Plaintiff Michael Friedlander (Friedlander) is the sole member of 392 CPW, LLC. Ludwig is employed by Kates as a managing agent for the board for the condominium building that is the subject of this litigation. The Board is the sole governing body for the condominium. Galea and Kruk are putative lessees of the unit owned by plaintiffs, and Stone is their broker, employed by Citihabitat.

According to the complaint, plaintiffs attempted to rent Unit 10HJ to Galea and Kruk, allegedly following the procedures required for leasing apartment units in the building. Pursuant to Article VII, section 1 (b) of the condominium bylaws, before any unit owner may lease his or her unit, the unit owner must submit to the Board the name and address of the potential tenant,

the terms of the proposed lease, a list of references, and any other information that the Board may reasonably require. Motion sequence number 001, Ex. A. Further, no lease of a unit may be made without the prior written consent of the Board, and the Board must inform the unit owner, in writing, of its decision within 30 days of receiving a completed lease application. *Id.* Should the Board not consent to the lease, the Board shall, within the same 30-day period, either provide a tenant for the apartment on the same terms as the lease proposed by the unit owner or the Board will rent the unit itself. However, the Board may not lease a unit without the approval of a majority of the apartment unit owners. *Id.* Should the Board fail to provide a tenant or lease the unit itself within the 30-day period, the unit owner has the right to consummate the lease according to the terms initially presented to the Board. *Id.*

All parties agree that the above-quoted provisions grant the Board the right of first refusal with respect to the leasing of an apartment unit in the condominium. In addition to the foregoing, section 10 of Article VII of the bylaws states:

> "No apartment unit owner shall be permitted to convey, mortgage, pledge, hypothecate, sell or lease his unit unless and until he shall have paid in full to the Board of Managers all unpaid common charges and assessments theretofore assessed by the Board of Managers against his unit and until he shall have satisfied all unpaid liens against said unit, except permitted mortgages."

(emphasis supplied). Thus, the bylaws make clear that plaintiffs

have/had no right to lease the subject unit, if common charges and/or assessments are owed.

On or about October 10, 2009, plaintiffs, after having shown the unit to Galea and Kruk, along with Stone as their broker, sent them a two-year lease on the unit for a monthly rental of $5,700, along with a package to complete for approval of the lease by the Board. [Complaint, at 20-22]. That same day, upon information and belief, Galea and Kruk submitted a fully executed lease agreement, along with checks for the security deposit and first month's rent to Stone, who placed the security deposit in the Citihabitat escrow account. *Id.* at 23-24.

On or about October 20, 2009, Friedlander sent the lease and Board approval package to the Kates and Board defendants, wherein plaintiffs sought a waiver of the Board's right of first refusal concerning the lease of Unit 10HJ.

On or about October 22, 2010, Ludwig contacted plaintiffs to inform them that Galea and Kruk had not signed the entire Board package. *Id.* at 30. Soon thereafter, plaintiffs were informed by Stone that Galea and Kruk no longer wished to rent the unit, allegedly based on Ludwig's saying that "he would never rent from Plaintiff if given the chance," and the fact that Ludwig informed them that plaintiffs had outstanding common charges, sending them a copy of plaintiffs' deficient common charge statement, which, Friedlander asserts, was private information. *Id.* at 31-32.

Plaintiffs maintain that such statements were defamatory per se, attacking the business reputation of plaintiffs, who are in the real estate industry.

Id. at 33-34.

Stone informed Friedlander that she had returned the checks for the security deposit to Galea and Kruk, after which Friedlander contacted Galea and Kruk, telling them that, according to the lease, they were required to furnish all information to the Board within five business days of signing the lease in order to obtain the Board's waiver of its right of first refusal, and that they should complete signing the application. *Id.* at 35-36. Friedlander then informed Citihabitat that he considered the lease a binding contract and that Galea and Kruk were obligated for the full rental. *Id.* at 38-39.

Plaintiffs' counsel subsequently sent two letters to Galea and Kruk, informing them that they were in default of the lease and that, therefore, the lease was terminated, but that they were still obligated for all unpaid rent. *Id.* at 40-41.

In their complaint, plaintiffs have alleged five causes of action: (1) breach of the lease agreement as against Galea and Kruk; (2) promissory estoppel as against Galea and Kruk; (3) conversion as against Citihabitat and Stone; (4) tortious interference with prospective business relationship as against Ludwig, Kates and the Board; and (5) defamation per se as against

Ludwig and Kates.

In his affidavit in support of motion sequence number 001, Ludwig says that, upon his review of the application, he determined that the Board could not approve the application because the Board had liens on both Unit 10H and Unit 10J for nonpayment of assessments. Motion sequence number 001, Ex. C, Copies of the NYC Department of Finance Office of City Register Lien. This, he contends, is true, regardless of the fact that the application had not been completely signed.

Ludwig states that, on behalf of the Board, he contacted plaintiffs, Galea, Kruk, and Stone, Galea and Kruk's broker, and informed them that the application could not be accepted because of plaintiffs' arrears owing to the Board and the Board's liens placed thereon. He further maintains that he gave them a copy of the liens, which are public documents, because they indicated that they still wanted to rent the unit and would be willing to pay plaintiffs' arrears to obtain the waiver from the Board. Motion sequence number 001, Ex. C. Moreover, Ludwig denies that he ever said that he would not rent from plaintiffs.

According to Friedlander, in his opposition to the within motions to dismiss,[1] when Stone informed him that Galea and Kruk no longer wished to go forward with the lease, she also indicated

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[1]Friedlander has provided the identical affidavit in support of his opposition to all three motions.

that Ludwig made other defamatory statements about plaintiffs, which, Friedlander avers, are as yet unknown to him because discovery has yet to take place. Friedlander further asserts that the copy of the deficient common-charge statement which Ludwig gave to Galea and Kruk is both a private document and contains disputed items.

Friedlander maintains that the lease afforded him the opportunity to cure any defaults, and required Galea and Kruk to provide all information necessary to obtain a waiver of the Board's right of first refusal, but that Galea and Kruk's refusal to complete the package for the Board placed them in default, thereby rendering them liable for the term of the lease.

Plaintiffs state that, on or about February, 2010, they listed the unit for sale, found potential buyers and, according to Friedlander, were informed by the potential buyers that they received Board approval on or about late April, 2010, when, he asserts, he was still in dispute with the Board regarding common charges. Thus, plaintiffs argue that the Board should have approved the lease if it approved a sale, during a time that the unit was in arrears, because the bylaws apply equally to sales or leases.

In motion sequence number 002, Galea and Kruk provide a copy of the lease between them and 392 CPW, LLC, signed by Friedlander in his representative capacity. Pursuant to section 1 of that

agreement,

> "You acknowledge that: (i) this Lease may not commence until the Condominium has waived any first refusal rights that it may have with respect to this Lease; and (ii) no other person other than You and the Permitted Occupants may reside in the Apartment without the prior written consent of the Owner and the Condominium."

(emphasis supplied). Such lease section makes clear that the lease was not to take effect, until the Condominium waived its right of first refusal.

Section 33 of the lease provides:

> "You shall furnish to the Condominium or its managing agent, within 5 business days after the date of this Lease, such personal and financial references and additional information concerning You and the Permitted Occupants of the Apartment as may be requested in order to obtain the waiver of the Condominium's right of first refusal with respect to this Lease, including the submission of any application requested by the Condominium. You acknowledge that this Lease will not commence and that You and the Permitted Occupants shall have no right to occupy the Apartment until the waiver of the Condominium's right of first refusal with respect to this Lease is obtained. If such waiver has not been obtained by the date specified in Article 2 as the beginning date of this Lease, You shall have no obligation to pay rent until such waiver has been obtained. ...".

(emphasis supplied). Such section obligates the prospective tenant to provide information and any application requests by the Condominium, to obtain the waiver of the Condominiums' "right of first refusal".

According to Galea and Kruk, as supported by their submitted documentary evidence, since the Board had liens on the unit, and

eventually filed two foreclosure actions in March of 2010 against 392 CPW, LLC, no waiver could have been forthcoming from the Board, pursuant to the explicit terms of the condominium's bylaws. Motion sequence number 002, Ex. D, Foreclosure Petitions. In addition, Galea and Kruk state that the lease gives them the right to cancel if 392 CPW, LLC does not perform all of its obligations under the lease, which included being subordinate to the condominium rules and bylaws. Section 4 of the lease requires 392 CPW, LLC, as the owner of the unit, to see that all common charges for the unit are paid, which plaintiffs failed to do, thereby allowing Galea and Kruk to terminate the lease.

In motion sequence number 003, the Citihabitat defendants assert that, based on the provisions of the lease quoted above, no lease existed between plaintiffs and Galea and Kruk, because plaintiffs failed to see that there were no arrears in the common charges, the prerequisite to the Board approving a rental of an apartment unit. Hence, there could be no conversion by them of the checks for the security deposit and first month's rent given to them by Galea and Kruk, since, until Board approval was given, plaintiffs had no right to such funds.

DISCUSSION

CPLR 3211, governing motions to dismiss a cause of action, states that:

> "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that: (1) a defense is founded upon documentary evidence; or
>
> * * *
>
> (7) the pleading fails to state a cause of action ..."

On a motion to dismiss, pursuant to CPLR 3211, the pleading should be liberally construed, the facts alleged by the plaintiff should be accepted as true, and all inferences should be drawn in the plaintiff's favor (*Leon v Martinez*, 84 NY2d 83 [1994]); however, the court must determine whether the alleged facts "fit within any cognizable legal theory." *Id.* at 87-88. Further, "[a]llegations consisting of bare legal conclusions ... are not presumed to be true [or] accorded every favorable inference [internal quotation marks and citation omitted]." *Biondi v Beekman Hill House Apartment Corp.*, 257 AD2d 76, 81 (1st Dept 1999), *affd* 94 NY2d 659 (2000).

The Kates, Ludwig and the Board's motion to dismiss the fourth and fifth causes of action asserted as against them (motion sequence number 001) is granted.

The fourth cause of action alleges tortious interference with contractual relations as against Kates, Ludwig and the Board, and the fifth cause of action alleges defamation as against Kates and Ludwig.

> "Tortious interference with contract requires the existence of a valid contract between the plaintiff and a third party, defendant's knowledge of that contract, defendant's intentional procurement of the third party's breach of the contract without

> justification, actual breach of the contract, and damages resulting therefrom."

Lama Holding Company v Smith Barney Inc., 88 NY2d 413, 424 (1996). In addition, a plaintiff must plead that the defendants were motivated solely by malice or that they intended to inflict injury on the plaintiff by wrongful means. *Kenneth H. Brown & Co., Inc. v Dutchess Works One-Stop Employment & Training Center, Inc.*, 73 AD3d 984, 985 (2d Dept 2010). "'Wrongful means' includes physical violence, fraud, misrepresentation, civil suits, criminal prosecutions and some degree of economic pressure, but more than simple persuasion." *Snyder v Sony Music Entertainment, Inc.*, 252 AD2d 294, 300 (1st Dept 1999). Plaintiffs' pleadings fail to meet this burden.

Assuming, for the sake of argument of this motion (motion sequence number 001), that Galea and Kruk breached the lease, the facts as alleged do not support a claim that the Kates and Board defendants procured such breach and that they were motivated to do so by malice or intent to inflict injury by wrongful means. The submitted documentary evidence relied upon on this motion to dismiss, clearly shows that the Kates and Board defendants were required, pursuant to the express terms of the lease and the condominium bylaws, to review the rental application and make sure both that the application was complete and that plaintiffs were not in violation of the bylaws; it was in their economic interest, as financial protectors of the condominium, to make

sure that all of the condominium's rules and regulations were adhered to. *See White Plains Coat & Apron Co., Inc. v Cintas Corp.*, 8 NY3d 422 (2007) (economic justification is a defense to a claim of tortious interference with contractual relations).

Furthermore, the facts as alleged herein, do not include that

> "defendants acted with the sole purpose of harming the plaintiffs or engaged in any improper or unlawful conduct; a necessary element of a cause of action alleging interference with prospective contractual relations."

Glen Cove Associates, L.P. v North Shore University Hospital, 240 AD2d 701, 702 (2d Dept 1997).

Moreover, to sustain a cause of action for tortious interference with contract against a corporate official, such as Ludwig, plaintiffs are held to an enhanced pleading requirement of

> "a particularized pleading of allegations that the acts of the defendant corporate officers which resulted in the tortious interference with contract either were beyond the scope of their employment or, if not, were motivated by their personal gain ... in terms that the challenged acts were undertaken with malice and were calculated to impair the plaintiff's business for the personal profit of the [individual] defendant [internal quotation marks and citation omitted]."

Petkanas v Kooyman, 303 AD2d 303, 305 (1st Dept 2003). Here, plaintiffs have failed to meet this enhanced pleading standard with respect to the claims against Ludwig.

Additionally, the argument, that Friedlander lacks standing

to maintain this cause of action for tortious interference with a contract in his individual capacity, is meritorious. The lease was entered into by 392 CPW LLC, and was only signed by Friedlander in his representative capacity, as evidenced by the designation "member" after his signature. As it is not alleged that Friedlander is the alter ego of 392 CPW LLC, he cannot be said to have been personally aggrieved by the alleged tortious interference by the defendants. *See Mucchi v Eli Haddad Corp.*, 101 AD2d 724, 725 (1st Dept 1984). Thus, Friedlander may not maintain a claim for tortious interference with a contract in his individual capacity.

With respect to the cause of action for defamation, contrary to plaintiffs' contentions, the fact that the Board had liens on the unit for assessment arrears was public record, not private information, and is the reason why the Board did not have to grant a waiver for the lease, pursuant to the bylaws. In addition, the facts as alleged do not support a claim that Ludwig and Kates defamed plaintiffs, since the fact of the liens having been imposed is the truth, and truth is a complete defense to defamation claims. *See Dillon v City of New York*, 261 AD2d 34, 39 (1st Dept 1999).

Further, as to Ludwig, the statement that Ludwig is alleged to have made, which he denies, regarding his personal disinclination to rent from plaintiff, even if accepted that he

indeed made such statement, is a matter of opinion, which is nonactionable. *See Slade v. Metropolitan Life Ins. Co.*, 255 AD2d 130 (1st Dept 1998); *Silverman v Clark*, 35 AD3d 1 (1st Dept 2006).

Thus, despite the asserted allegations, the Kates, Ludwig and the Board defendants have submitted sufficient documentary evidence to support their arguments for dismissal of the claims against them for tortious interference with a contract and defamation pursuant to CPLR 3211(a)(1) and (7), which plaintiffs have failed to sufficiently rebuff.

The court is unpersuaded by plaintiffs' speculative and conclusory argument that discovery is needed to ferret out the defamatory statements that plaintiff speculates Kates and Ludwig are alleged to have made. "CPLR 3016(a) [specifically] requires that in a defamation action, 'the particular words complained of...be set forth in the complaint' [and] [t]he complaint must allege the time, place and manner of the false statement and specify to whom it was made..." *Dillon v. City of New York*, 261 AD2d at 38 (citations omitted). As indicated above, the pleadings here are deficient with respect to the alleged defamation by Kates and Ludwig. As to plaintiffs' claim for discovery, the discovery process is not to be used as an aid to determine whether additional allegedly defamatory statements were in fact made. *See Cerick v. MTB Bank*, 240 AD2d 274 (1st Dept

1997); *A. Brod, Inc. v. Worldwide Dreams, LLC, 4 Misc 3d 1006A, 791 NYS2d 867 (App Term, 1st Dept 2004); Stern v. Burkle*, 20 Misc 3d 1101A, 867 NYS2d 20 (Sup Court, New York County 2008).

Finally, with respect to plaintiffs' opposition to the Kates and Board defendants' motion, their request for leave to replead to add an additional claim for tortious interference with a contract made in their attorney's memorandum of law is procedurally inappropriate and also without merit for the reasons stated above with respect to plaintiffs' initial tortious interference cause of action. See CPLR 3025. Based on the foregoing, the Kates, Ludwig and the Board defendants' motion to dismiss the fourth and fifth causes of action asserted as against them is granted.

Galea and Kruk's motion to dismiss the first and second causes of action asserted as against them (motion sequence number 002), for breach of contract and promissory estoppel, is granted, given the plain language of the terms of the lease and bylaws.

> "A condition precedent is an act or event, other than a lapse of time, which, unless the condition is excused, must occur before a duty to perform a promise in the agreement arises. Most conditions precedent describe acts or events which must occur before a party is obliged to perform a promise made pursuant to an existing contract, a situation to be distinguished conceptually from a condition precedent to the formation or existence of the contract itself. In the latter situation, no contract arises unless and until the condition occurs [internal quotation marks and citations omitted]."

Oppenheimer & Co., Inc. v Oppenheim, Appel, Dixon & Co., 86 NY2d

685, 690 (1995); *IDT Corp. v Tyco Group, S.A.R.L.*, 13 NY3d 209 (2009). Here, based on the terms of the subject lease, board approval was a condition precedent to the parties' obligations under an existing contract, not the condition precedent to the formation of the contract, as Galea and Kruk assert. However, the court disagrees with plaintiffs' contention that Galea and Kruk breached the lease by failing to provide signatures on all of the places indicated on the waiver application.

Despite plaintiffs' arguments, which attempt to shift blame for the failure of the Board to approve the application to Galea and Kruk, the submitted documentary evidence shows that it is plaintiffs' own violation of the condominium by-laws that prevented the Board from granting the waiver.

It is undisputed that, at the time the application was filed, the condominium had liens on the unit for nonpayment of assessments, which, pursuant to the bylaws quoted above, mandate that the Board deny the waiver. It is also undisputed that such liens continued to be in place for many months after the lease fell through, eventually culminating in the condominium instituting foreclosure proceedings as against the unit.

As quoted above, Article VII, section 10 of the bylaws makes clear that plaintiff 392 CPW had no right to lease its unit if it owed common charges and/or assessments, until such were paid. Thus, notwithstanding that the lease did require Galea and Kruk

to complete the waiver application, even if Galea and Kruk had fully signed the application, such would have been a futile gesture, since, by the terms of the by-laws, plaintiffs had no right to lease the subject premises, and Board approval could not be forthcoming, until and unless all common-charge assessments were paid in full. Therefore, plaintiffs cannot assert that Galea and Kruk breached by failing to fulfill a condition when their own actions, or inaction in the instant case, frustrated the occurrence of the condition. *See MHR Capital Partners LP v Presstek, Inc.*, 12 NY3d 640 (2009).

Furthermore, plaintiffs have failed to allege a cause of action for promissory estoppel. A successful pleading for promissory estoppel requires a clear and unambiguous promise, reasonable and foreseeable reliance thereon, and an injury sustained in reliance on that promise. *Urban Holding Corp. v Haberman*, 162 AD2d 230 (1st Dept 1990). In the case at bar, plaintiffs only allege that they relied on Galea and Kruk's signatures on the lease as the basis for their promissory estoppel claim, which is insufficient to support this cause of action, especially in light of the previous discussion regarding the condition precedent to Galea and Kruk's contractual obligations, and the bylaws.

Based on the foregoing, Galea and Kruk's motion (motion sequence number 002) is granted, and the first and second causes

of action asserted as against them are dismissed.

The Citihabitat defendants' motion, motion sequence number 003, seeking to dismiss the complaint as against them is also granted.

Plaintiffs allege that the Citihabitat defendants converted funds rightfully belonging to plaintiffs, specifically, the checks given to the Citihabitat defendants by Galea and Kruk for the first month's rent and security deposit for the putative lease of the condominium unit.

> "A conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession. Two key elements of conversion are (1) plaintiff's possessory right or interest in the property; and (2) defendant's dominion over the property or interference with it, in derogation of plaintiff's rights [internal citations omitted]."

Colovito v New York Organ Donor Network, Inc., 8 NY3d 43, 49-50 (2006); *Abacus Federal Savings Bank v Lim*, 75 AD3d 472 (1st Dept 2010).

Based upon the alleged facts and the submitted documentary evidence, as discussed above, it is clear that plaintiffs had no rights under the lease, nor did Galea and Kruk have any obligations thereunder, until and unless the Board approved the waiver of its right of first refusal, which it could not do because of the arrears in the common charges owed to it by plaintiffs; nor were plaintiffs permitted to lease the subject apartment under the bylaws (Article VII(10)). As a consequence,

the Citihabitat defendants could not have committed a conversion of plaintiffs' property, because plaintiffs' rights to the property never vested. Therefore, the Citihabitat defendants' motion is granted and the complaint is dismissed as against them.

Plaintiffs' opposition to the Citihabitat defendants' motion is based on *770 Owners Corp. v Spitzer*, 25 Misc 3d 1204(A), 2009 NY Slip OP 51968(U) *5 (Sup Ct, Kings County 2009), which states:

> "The rule is clear that, to establish a cause of action in conversion, the plaintiff must show legal ownership or an immediate superior right of possession to a specific identifiable thing and must show that the defendant exercised an unauthorized dominion over the thing in question ... to the exclusion of the plaintiff's rights. ... Tangible personal property or *specific money* must be involved [citation omitted]."

However, in *770 Owners Corp.*, that court was dealing with a contract that was in existence and being performed, unlike the lease in the instant matter. Moreover, as previously stated, because the by-laws prevented plaintiffs from leasing due to the undisputed financial arrears, and the condition precedent in the lease, which was never fulfilled, plaintiffs had no right to the checks in question. Hence, plaintiffs' opposition is found to be unavailing.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED that the motions to dismiss by defendants (motion

sequence numbers 001, 002 and 003) are all granted and the complaint is dismissed in its entirety, with costs and disbursements to the defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that within 30 days of entry of this order, defendants shall serve a copy upon plaintiff with notice of entry.

Dated: 4/11/11

Doris Ling-Cohan, J.S.C.

J:\Dismiss\392 CPW.Kates.Helewitz.wpd