

**Active Retirement Community, Inc. v Tritec/Klewin  
Constructors, LLC**

2011 NY Slip Op 31699(U)

June 7, 2011

Supreme Court, Suffolk County

Docket Number: 07-31510

Judge: Joseph C. Pastoressa

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SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 34 - SUFFOLK COUNTY

**PRESENT:**

**COPY**

Hon. JOSEPH C. PASTORESSA  
Supreme Court

Mot. Seq. # 010 - MG  
# 011 - MD  
# 012 - MG  
#013- MG; CASE DISP.

-----X  
ACTIVE RETIREMENT COMMUNITY, INC. :  
d/b/a JEFFERSON'S FERRY, :  
: Plaintiff, :  
: - against - :  
TRITEC/KLEWIN CONSTRUCTORS, LLC, :  
TRITEC BUILDING COMPANY, INC., :  
KLEWIN BUILDING COMPANY OF NEW :  
YORK, LLC f/k/a E&F WALSH BUILDING :  
COMPANY, LLC, AND C.R. KLEWIN :  
INTERNATIONAL, INC., :  
Defendants. :  
-----X

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Pages Numbered

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and Affidavits (Affirmations) Annexed 1, 2, 4, 5, 7, 8, 16  
Opposing Affidavits (Affirmations) 10, 11, 17, 18  
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Affidavit (Affirmation) \_\_\_\_\_  
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It is,

**ORDERED** that this motion (010) by the defendants, Tritec/Klewin Constructors, LLC, Klewin Building Company of New York LLC f/k/a Walsh Building Company, LLC, and Klewin International, Inc., for an order pursuant to CPLR 3212 granting summary judgment is granted and the complaint of this action is dismissed with prejudice as asserted against them; and it is further

**ORDERED** that cross-motion (011) by the defendant, Tritec Building Company, Inc. pursuant to CPLR 3212 for an order dismissing the first amended complaint and all cross claims asserted against it has been rendered

academic by service of an amended notice of motion and amended supporting affirmation and is denied as moot; and it is further

**ORDERED** that amended cross-motion (012) by the defendant, Tritec Building Company, Inc. pursuant to CPLR 3212 for an order dismissing the first amended complaint and all cross claims asserted against it is granted and the complaint and cross claims are dismissed with prejudice; and it is further

**ORDERED** that the motion (013) by the plaintiff for an order permitting the plaintiff to submit an exhibit to the court and to submit a sur-reply memorandum of law in connection with the motions and cross-motions is granted to the extent that the plaintiff is permitted to submit a certified copy of the Unconditional Guaranty agreement as an exhibit and permits the submission of the plaintiff's sur-reply memorandum of law and the defendants Tritec/Klewin Constructors, LLC, Klewin Building Company of New York LLC f/k/a Walsh Building Company, LLC, and Klewin International, Inc.'s sur-reply memorandum of law as well as defendant Tritec Building Company, Inc.'s affirmation in opposition in connection with the motion and cross-motions.

The complaint of this action sets forth that in or about March 1997, Jefferson's Ferry entered into a written contract with Cashin Associates, P.C. wherein Cashin agreed to serve as site engineer with respect to the construction of a new facility known as the Jefferson Ferry Life Care Retirement Community (the project) which was to be built at the intersection of Route 347 and Wireless Road, Brookhaven, New York, and included several structures, residential cottages, and a main building with landscaped grounds and amenities. Cashin was to design the grounds, make the plans, drawings and designs for the grading of the property, sidewalks, roadways and landscaping. In or about July 23, 1999, Jefferson Ferry entered into a written construction contract with Tritec/Klewin Constructors, LLC for the construction services and work necessary to construct the project, including reviewing the project drawings and specifications, notifying the architect and Jefferson's Ferry of any error, inconsistency or omission, to perform the work, being responsible for the acts and omissions of its subcontractors, and that Tritec was to warrant that the work would be free from defects not inherent in the quality required or permitted and would conform with the project drawings and specifications, which work was to be substantially completed by March 30, 2001. Any nonconforming work would be considered defective and Tritec was obligated to correct such defect or non-conforming work. In or about October 1999, Jefferson's Ferry entered into an Unconditional Guaranty Agreement with Tritec Building, Klewin International and E & F Walsh Building Company wherein they conditionally and irrevocably guaranteed the prompt, full and faithful payment, performance and discharge of all obligations, undertakings, covenants, commitments and liabilities of Tritec under the Jefferson's Ferry contract.

The plaintiff has set forth causes of action for breach of contract, alleging fraud and misrepresentation by Cashin and Tritec and seeks repair or replacement of materials damaged by water entering the project, remediation of mold caused by excessive moisture at the project; construction and installation of drywells to obviate the excessive water; regrading of the grounds; relandscaping of the grounds; and structural remediation to prevent further water damage. The first cause of action sounds in breach of contract asserted against Cashin; the second cause of action premised on allegations of fraud and materially false misrepresentations are asserted against Cashin; the third cause of action asserts Cashin negligently and recklessly made false misrepresentations; the fourth cause of action premised upon breach of contract is asserted against Tritec/Klewin Constructors, LLC; the fifth cause of action sounds in fraud and materially false misrepresentation against Tritec/Klewin Constructors, LLC; the sixth cause of action asserts Tritec/Klewin Constructors, LLC negligently and recklessly made false misrepresentations; and the seventh cause of action asserts that Tritec Building, Klewin International and Walsh have breached the Guaranty Agreement.

By order dated May 5, 2009 (Sgroi, J.), the court directed that the action asserted against C.R. Klewin Northeast, LLC, Klewin Building Company, Inc., C.R. Klewin, Inc., Daniel Root and James L. Coughlan be discontinued; summary judgment was granted dismissing the first amended complaint and cross-claims as asserted against the defendants Cashin Associates, P.C., and Cashin Technical Services, Inc.; the fifth and sixth causes of action in the first amended complaint were dismissed as asserted against Tritec/Klewin Constructors, LLC, Klewin Building Company of New York, LLC f/k/a E&F Walsh Building Company, LLC, and C.R. Klewin International; Tritec Building Company, Inc.'s motion to dismiss the seventh cause of action was granted to the extent that it was derived from claims for fraud and negligence but was not dismissed to the extent that it seeks damages for a breach of performance of a contract.

Based upon the foregoing, the remaining causes of action are the fourth cause of action for breach of performance of the contract asserted against Tritec/Klewin Constructors, LLC wherein the plaintiff seeks damages; and the seventh cause of action against Tritec Building, Klewin International and Walsh on the claim they breached the Guaranty Agreement wherein the plaintiff seeks damages.

In motion (010), the defendants, Tritec/Klewin Constructors, LLC, Klewin Building Company of New York LLC f/k/a Walsh Building Company, LLC, and Klewin International, Inc., as set forth in the Notice of Motion, seek an order pursuant to CPLR 3212 directing summary judgment in favor of the plaintiff. In that the supporting affidavit seeks dismissal of the first amended complaint on the basis the plaintiff's claims are barred by a Mutual Limited Release and Covenant Not to Sue dated February 26, 2004, this court will construe the motion as one in which the moving defendants are seeking summary judgment in their favor. In support of the motion, the defendants have submitted, inter alia, an attorney's affirmation; a copy of the first amended complaint, answer served by Tritec Building Company, with cross-claim against co-defendants Cashin Associates, P.C. and Cashin Technical Services, Incorporated; the answer served by Tritec/Klewin Constructors, CCL, Klewin Building Company, Inc., Klewin Building Company of New York, LLC f/k/a E&F Walsh Building Company, LLC, and C.R. Klewin International, Inc.; a copy of the decision and order dated May 5, 2009 (Sgroi, J.); copy of Notice to Admit; copy of Mutual Limited Release and Covenant Not to Sue dated June 6, 2004; and the affidavit of James L. Coughlan dated January 15, 2010.

In motion (012), the defendant, Tritec Building Company, Inc., seeks summary judgment dismissing the first amended complaint and all cross-claims asserted against it on the basis that the claims of secondary liability as asserted against it are wholly derivative of plaintiff's claim against Tritec/Klewin, and that by discharging the claims against Tritec/Klewin pursuant to the Mutual Limited Release, the plaintiff also discharged and released the claims of secondary liability against it as well. In support of its motion, it has submitted, inter alia, an attorney's affirmation; a copy of the verified complaint and first amended complaint, a copy of its verified answers to the complaint and first amended complaint; the answer of co-defendants Tritec/Klewin; a copy of the Mutual Release and Covenant Not to Sue; copy of a check dated May 28, 2004 #001639; copy of Notice to Admit; copy fo the order dated May 5, 2009 (Sgroi, J.); and the affidavit of James L. Coughlan.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. To grant summary judgment it must clearly appear that no material and triable issue of fact is presented (*Sillman v Twentieth Century-Fox Film Corporation*, 3 NY2d 395 [1957]). The movant has the initial burden of proving entitlement to summary judgment (*Winegrad v N.Y.U. Medical Center*, 64 NY2d 851 [1985]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v N.Y.U. Medical Center*, *supra*). Once such proof has been offered, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form...and must

“show facts sufficient to require a trial of any issue of fact” (CPLR 3212[b]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). The opposing party must present facts sufficient to require a trial of any issue of fact by producing evidentiary proof in admissible form (*Joseph P. Day Realty Corp. v Aeroxon Prods.*, 148 AD2d 499 [2<sup>nd</sup> Dept 1979]) and must assemble, lay bare and reveal his proof in order to establish that the matters set forth in his pleadings are real and capable of being established (*Castro v Liberty Bus Co.*, 79 AD2d 1014 [2<sup>nd</sup> Dept 1981]). Summary judgment shall only be granted when there are no issues of material fact and the evidence requires the court to direct a judgment in favor of the movant as a matter of law (*Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065 [1979]).

In the first amended complaint, the plaintiff seeks repair or replacement of materials damaged by water entering the project, remediation of mold caused by excessive moisture at the project; construction and installation of drywells to obviate the excessive water; regrading of the grounds; relandscaping of the grounds; and structural remediation to prevent further water damage; separate and apart from the heating and air conditioning and insulation problems set forth in the Mutual Release and Covenant Not to Sue.

James L. Coughlan, a signatory to the Mutual Release and Covenant Not to Sue on behalf of Tritec/Klewin, sets forth in his supporting affidavit that he is the Chief Executive Officer of Tritec Building Company, Inc (Tritec). In 1998, Tritec and E&F Walsh Building Company, LLC (Walsh) entered into a joint venture agreement and formed a limited liability company known as Tritec/Klewin Constructors, LLC (Tritec/Klewin) for the limited purpose of constructing a new facility, Jefferson's Ferry Life Care Retirement Community. On or about July 23, 1999, Tritec/Klewin, as construction manager, entered into a contract with Active Retirement Community d/b/a Jefferson Ferry as the owner of the project, whereby Tritec/Klewin agreed to provide certain work, labor and materials with respect to the construction of the project, including the site work, grading and drainage system, for a guaranteed maximum price in the amount of \$50,899,313.00. Tritec/Klewin completed the project and submitted its final requisition to Active Retirement on or about August 15, 2001. Subsequent to the completion of the project there was a dispute between Active Retirement and Tritec/Klewin with respect to the design and/or installation of the heating and air conditioning systems, and therefore Active Retirement withheld \$25,000. from the final payment pending resolution of the dispute. To settle the dispute, Tritec/Klewin agreed to withdraw and waive its demand for the \$25,000 and to pay an additional \$25,000 to Active Retirement in exchange for a “Mutual Limited Release and Covenant Not to Sue.” Mr. Coughlan asserts that the release clearly and unequivocally states in three separate locations that Active Retirement and Tritec/Klewin release each other from “all claims which as of the date hereof are known to Active Retirement,” including the claims at issue in this lawsuit which this court has previously determined were known to Active Retirement on July 24, 2002, as set forth in the order dated May 5, 2009 (Sgroi, J.), and which decision was not appealed.

The Mutual Limited Release and Covenant Not to Sue was entered into June 26, 2004 between Tritec/Klewin Constructors and Active Retirement and relates to the contract between Active Retirement and Tritec/Klewin for the construction of a senior life facility, Jefferson's Ferry, which was completed by Tritec/Klewin in 2001. It sets forth that certain disputes arose concerning, specifically, the heat and air conditioning systems and insulation in the facility were defectively designed and/or installed, for which Active Retirement claimed damages in an undetermined amount. Disputes also arose between Tritec/Klewin and Active Retirement over unpaid sums due to the alleged construction defects asserted by Active Retirement. The parties resolved their disputes pertaining to the design and/or installations of heating and air conditioning systems and insulation, and any and all claims which, as of the date of the release, are known to Active Retirement, wherein, in exchange for the Mutual Limited Release, and other good and valuable consideration, Tritec/Klewin was to withdraw and waive its demand for payment of \$25,000. from Active Retirement and deliver to Active Retirement the sum of \$25,000. Active Retirement and Tritec/Klewin released each other from any and all claims they have against each other only with

regard to: (i) the design and/or installation of heating and air conditioning systems in the facility; (ii) all claims which as of the date hereof that are known to Active Retirement and (iii) all sums owed by Active retirement to Tritec/Klewin under the contract or otherwise. Paragraph A Limited Release further provides that the parties and their respective agents, inter alia, irrevocably and unconditionally release, acquit, and forever discharge each other, inter alia, from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, remedies, actions, causes of action, suits right, demands, costs, losses, debts and expenses, relating solely to all claims which, (i) as of the date of the release are known to Active Retirement and (ii) the design and/or installation of heating and air conditioning systems and/or insulation in the facility; and (iii) all sums owed by Active Retirement to Tritec/Klewin under the contract; and further covenanted not to sue or file any grievances or arbitration or commence any other proceeding, administrative or judicial against each other for the same.<sup>1</sup>

In the order dated May 5, 2009, (Sgroi, J.), it was set forth that on July 24, 2002, Skip West, a representative of the management for Jefferson's Ferry's wrote to Cashin addressing the plaintiff's refusal to pay an invoice sent by Cashin on January 7, 2002. The court determined that as of July 24, 2002, the plaintiff was aware that it had a drainage problem, that it was significant, that a remediation contractor had been hired, that monetary damages of at least \$50,000.00 allegedly attributable to the drainage problem had resulted, and that the problem had existed for at least one year, and that the plaintiff was refusing to pay almost \$50,000.00 to Cashin due to this problem. This action was not commenced against the defendants until October 2007. The court continued in its decision and order that the plaintiff alleges in the amended complaint and in the affirmations and memorandums in opposition to the motions to dismiss that in 2006 it discovered mold in some of the buildings at the Jefferson Ferry retirement community and that an investigation revealed that the mold was caused by excess moisture in the buildings created when water had leaked into the buildings. A consultant was hired, and according to the plaintiff, the consultant found that the ground surrounding the structures was not properly pitched away from the structures, that the finished floors of some of the structures were below the surrounding grade, and that the elevation levels of the walkways and the roadways surrounding the buildings were too high. The court continued that it is clear from the letter from Mr. West that the plaintiff had been aware of the drainage problems on site for a prolonged period of time, inclusive of improper grading and elevation of the roadways and buildings and it has had knowledge that the pooling of water was a significant difficulty at the project since at least the year 2002 when the above referenced letter was sent to Frank Ribaud, an employee of Cashin.

Accordingly, the plaintiff is bound by this order wherein it states that it is clear from the letter from Mr. West that the plaintiff had been aware of the drainage problems on site for a prolonged period of time, inclusive of improper grading and elevation of the roadways and buildings and it has had knowledge that the pooling of water was a significant difficulty at the project since at least the year 2002 when the above referenced letter was sent to Frank Ribaud, an employee of Cashin. Thus, it is determined that the moving defendants have established prima

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The Notice to Admit dated July 30, 2009 sets forth, in part, that Exhibit A annexed thereto is a true and accurate unsigned copy of the Mutual Limited Release and Covenant not to Sue that was duly executed by Tritec/Klewin Constructors, LLC (Tritec/Klewin) and Active Retirement, Inc. with respect to a contract between Tritec/Klewin and Active Retirement for the construction of a senior living facility called Jefferson's Ferry was not objected to by the plaintiff. It sets forth the contract and project is the same contract and project at issue in the amended complaint dated June 5, 2008. Pursuant to the agreement and in exchange for the Mutual Limited Release and other good and valuable consideration, Tritec/Klewin agreed, among other things, to withdraw and waive its demand for payment from Active Retirement in the amount of \$25,000 and deliver to Active Retirement the sum of \$25,000. The Notice further sets forth that Exhibit B is a true and accurate copy of the check issued by Tritec/Klewin No. 001639 in the amount of \$25,000 payable to the order of Active Retirement, with the Active Retirement endorsement "for deposit only" into Account No. 923363793; that this check is the payment from Tritec/Klewin to Active Retirement that is referenced in the agreement; that Active Retirement accepted and deposited the check and was credited to Active Retirement's bank account on or about June 4, 2004.

facie entitlement to summary judgment dismissing the complaint on the issue that the Active Retirement was aware at the time it signed the Mutual Release and Covenant Not to Sue of the claim concerning the water problems described herein and that the release included "all claims which, (i) as of the date of the release are known to Active Retirement."

In opposing the defendants' motions, the plaintiff has submitted the affidavit of Karen Brannen, the executive director of Active Retirement Community (Jefferson's Ferry) who was a signatory to the Mutual Release and Covenant Not to Sue, and who states that on July 23, 1999, Jefferson's Ferry entered into a written construction contract with Tritec/Klewin Constructors, LLC to construct the Jefferson's Ferry Life Care Retirement Community. In or about October 1999, Jefferson's Ferry entered into an Unconditional Agreement with Tritec Building Company, Inc., C.R. Klewin International, Inc. and E&F Walsh Building Company, LLC wherein they guaranteed the prompt, full and faithful payment, performance and discharge of all obligations, undertakings, covenants, commitments and liabilities of Tritec under the Jefferson's Ferry Contract. Ms. Brannen avers she was present during the negotiations with Tritec's defective construction of the heating and air conditioning system along with Vincent Bove (a former board member of Jefferson's Ferry who is now deceased) and participated in and had responsibility for the negotiation and execution of the Limited Release. She avers that the only issue being addressed was Tritec's defective construction of the heating and air conditioning system and that no other issue regarding Tritec's construction or supervision of the project was discussed by the parties and nothing about the negotiations either explicitly or implicitly suggested that Tritec's payment was intended to absolve Tritec of liability for any and all other potential claims by Jefferson's Ferry under the Tritec Contract. She states that the grading and drainage at the facility, and supervision of work done by sub-contractors related to the aspects of the project were never considered or mentioned and were not intended to be covered by the Release and that she refused to sign a general release. In fact, she set forth that by the time the release was signed, the drainage problem appeared to have been largely alleviated. Ms. Brannen avers that she (Jefferson's Ferry) was not aware at the time the Release was signed that it had claims against Tritec. She does acknowledge, however, the problems with water drainage at the site prior to the signing of the release.

Where the language of a release is clear and unambiguous, effect will be given to the intention of the parties as indicated by the language employed, and the fact that one of the parties may have intended something else is irrelevant. However, a release may not be read to cover matters which the parties did not desire or intend to dispose of (see, *Niagara Fronteir Transportation Authority v Patterson-Stevens, Inc. et al*, 237 AD2d 965 [4<sup>th</sup> Dept 1997]). "One who executes a plain and unambiguous release cannot avoid its effect by merely stating that he misinterpreted its terms. It is well settled that, where the language of a release is clear and unambiguous, effect will be given to the intention of the parties as indicated by the language employed and the fact that one of the parties may have intended something else is irrelevant" (*Booth et al v 3669 Delaware, Inc. et al*, 242 AD2d 921 [4<sup>th</sup> Dept 1997]). "It is well settled that where the language of a release is clear and unambiguous, the signing of a release is a jural act binding on the parties" and will...be set aside [only] as a result of "duress, illegality, fraud, or mutual mistake"" (*Almar Plumbing & Heating Corp. v Dormitory Authority of the State of New York*, 21 Misc3d 1119A [Supreme Court of New York, Kings County 2008]). Active Retirement did not set forth an exclusion for the known flooding and water problems so that the release would not relate to that known condition (see, *Almar Plumbing & Heating Corp. v Dormitory Authority of the State of New York*, supra). Here there is clear language indicating that Active Retirement agreed to waive all claims known, and it is determined that Active Retirement knew of the water problem and flooding and its potential claim against Tritec/Klewin at the time the release was signed.

In further support of its opposition to the motions by the defendants, the plaintiff has submitted the "Draft" report "Evaluation of Drainage Situation at Jefferson's Ferry, South Setauket, New York" dated March 15, 2007,

prepared by Henderson and Bodwell, LLP, consulting engineers for Active Retirement. It is noted that this "draft" report is not in admissible form and is unsigned and unsworn. The report indicates it is based on a review of original proposed drawings by Cashin Associates and as-built plans by Vollmuth & Bush Surveying, as well as additional spot-grades provided by H&B, and a visual inspection on February 22, 2007. The report sets forth its findings and probable causes for the pooling of water: high grade around the buildings, poorly pitched grade away from the buildings and unconnected leader drains around the main building, combining to create an unsuitable situation where water is directed back to the buildings, and in some areas, into the buildings. It is determined that this report, even if it were in admissible form, does not demonstrate Tritec/Klewin defaulted on the terms of the contract by causing the condition complained of, ie, whether the conditions claimed were due to design defects by Cashin, the surveyors or other non-parties, or whether the claimed defects were caused by Tritec/Klewin during construction due to the failure to comply with the site plans and design. Without an engineering opinion in admissible form setting forth the alleged defaults were caused by Tritec/Klewin, the plaintiff has not demonstrated that Tritec/Klewin defaulted on terms and conditions of the contract and a subsequent breach of performance. Although Active Retirement claims that the Mutual Release and Covenant Not to Sue does not pertain to the water conditions complained of herein, on this motion for summary judgment it has not been established that there was any default or breach of performance of the contract by the Tritec/Klewin defendants upon which the plaintiff may base a claim. Further, the plaintiff claims that it has had to conduct mold remediation, but does not support the need for the same by relating it to the flooding conditions relative to grading and related causes or due to broken pipes in the walls allegedly caused by the problem relating to the insulation.

The plaintiff's engineer's report does not demonstrate that the Tritec/Klewin defendants defaulted on the contract, and therefore a breach by the defendants has not been demonstrated. Considering the same along with this court's prior determination that the plaintiff knew of the drainage and water problems at the site in July 2002, and the clear and unambiguous wording of the Mutual Release relating solely to all claims which, as of the date of the release are known to Active Retirement and, which date was June 26, 2004, it is determined that the moving Tritec/Klewin defendants have established prima facie entitlement to summary judgment. The plaintiff has not raised a triable issue of fact to preclude summary judgment. The plaintiff, although aware of the drainage and water problems at the time the Mutual Release was executed, did not exclude this condition from the "any and all claims" which were known by the plaintiff at the time the release was signed. The engineer's report does not establish that the Tritec/Klewin defendants caused the condition complained of to support a claim of breach of contract. Further, wording in the release is self-limiting, relating solely to all claims which, as of the date of the release are known to Active Retirement, and would not bar the plaintiff from basing a breach on other conditions not known at the time the release was entered into. The release did not act as a general release for any and all claims not known or which may arise in the future.

Accordingly, motion (010) by Tritec/Klewin Constructors, LLC, Klewin Building Company of New York LLC f/k/a Walsh Building Company, LLC, and Klewin International, Inc. is granted and the complaint and cross claims are dismissed with prejudice.

Turning to motion (012) by Tritec Building Company and the motion (013) by the plaintiff, it is determined that "A contract guaranty is subject to the fulfillment of any condition precedent to the liability imposed on the guarantor...In particular, the guarantors' liability accrues only after default on the part of the principal obligor" (*Parimist Funding Corp. v Suffolk Vascular Associates, PLLC, et al*, 18 Misc3d 1131A [Supreme Court of New York, Nassau County 2008], citing *Madison Ave. Leasehold, LLC, v Madison Bentley Associates, LLC*, 30 AD3d 1 [1<sup>st</sup> Dept 2006, *aff'd* 8 NY3d 59 [2006]]). There has been no demonstration that the principal Tritec/Klewin defaulted on its contract. Therefore, the guarantors' liability has not accrued.

Accordingly, motion (012) is granted and the complaint is dismissed as asserted against Tritec Building

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Company, Inc.

Dated: June 7, 2011



**HON. JOSEPH C. PASTORESSA**

  X   FINAL DISPOSITION             NON-FINAL DISPOSITION