Board of Mgrs. of 85 8th Ave. Condominium v Manhattan Realty LLC
2011 NY Slip Op 32032(U)
July 14, 2011
Supreme Court, New York County
Docket Number: 111902/00
Judge: Joan A. Madden
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SCANNED ON 7/21/2011

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

PRESENT: HON. JOAN A. MADDEN J.S.C. PART 11

Index Number : 111902/2000

85 8TH AVE. CONDO

vs

MANHATTAN REALTY LLC

Sequence Number : 004

SUMMARY JUDGMENT

INDEX NO. ______

MOTION DATE ______

MOTION SEQ. NO. ______

MOTION CAL. NO. ______

The following papers, numbered 1 to ______ were read on this motion to/for ______

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion is consolidated with motion sequence no. 005 and the consolidated motions are determined in accordance with the annexed decision and order.

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

FILED

JUL 21 2011

NEW YORK COUNTY CLERK'S OFFICE

Dated: July 14, 2011

HON. JOAN A. MADDEN J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

[* 2]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

---------------------------------------X

THE BOARD OF MANAGERS OF THE 85 8TH AVENUE CONDOMINIUM,

Plaintiff,

-against-

Index No. 111902/00

MANHATTAN REALTY LLC, WEINER-MEGA LLC, MANHATTAN REALTY CO., JONATHAN WEINER, JOEL WEINER, ARTHUR WEINER, THE STATE OF NEW YORK, and THE CITY OF NEW YORK,

Defendants.

---------------------------------------X

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JUL 21 2011

NEW YORK
COUNTY CLERK'S OFFICE

MADDEN, J.:

Plaintiff Board of Managers (the Board) of the 85 8th Avenue Condominium (the Condominium), the various units of which are located at 85 Eighth Avenue, New York, New York (the Building), commenced two separate actions to foreclose liens filed against the garage unit (the Garage Unit) and the commercial unit (the Commercial Unit) of the Condominium, which actions are now consolidated. Plaintiff alleges that defendants, owners of the Garage and Commercial Units, have failed and refused to pay their allocable share of common charges and assessments since 1996, leaving the owners of the Condominium's Residential Unit (the Residential Unit), which is owned by 85 Eighth Avenue Owners Corp. (the Cooperative), to bear the financial burden.

Motion Sequence Nos. 004 and 005 are consolidated for disposition. In Motion Sequence No. 004, defendants Manhattan Realty LLC (Manhattan Realty) and Joel Weiner move, pursuant to CPLR 3212, for an order granting them summary judgment dismissing the

complaint. In Motion Sequence No. 005, plaintiff moves for summary judgment on the consolidated complaints. For the reasons set forth below, defendants' motion for summary judgment is denied, and plaintiff's motion for summary judgment is granted to the extent of liability.

FACTS

Manhattan Realty was the sponsor which converted the Building in 1987 from a rental building to one where the apartments are privately owned. The Condominium was established, consisting initially of the Residential Unit, owned by the Cooperative, and the Garage Unit, owned by Manhattan Realty. By amendment to the offering plan, the Commercial Unit, which is also owned by Manhattan Realty, was created as the third unit of the Condominium. The Building is a "Condop," in which the main unit of the Condominium is the Residential Unit, and the other two Condominium units are the Garage and Commercial Units.

The Condominium's governing documents provide that the Board collect common charges from its three unit owners in proportion to their ownership of the common elements, except for fuel, which is allocated 90% to the Residential Unit and 10% to the Garage Unit. The governing documents include the Declaration of Condominium (the Declaration) and the Condominium's by-laws (the By-Laws). Pursuant to the Third Amendment to the Offering Plan (the Third Amendment), the Residential Unit is responsible for 87.3% of the Building's common expenses, and the Garage and Commercial Units are responsible, respectively, for 9.6% and 3.1% of the common expenses, for a total of 12.7% (*see* Third Amendment, Exh A [Aff. of Joel Weiner, Exh B]).

Plaintiff alleges that from the inception of the Condominium to date, the Cooperative, the Residential Unit owner, has borne nearly the entire cost of operating the Condominium because, despite due demand, the Garage and Commercial Unit owners have failed and refused to pay their proportionate share of the common charges and assessments attributable to the common elements (*see* Aff. of Donna LoGuercio, the Condominium's corporate auditor, ¶¶ 7, 8 [alleging that all of the charges sought to be recovered in this litigation were incurred by the Condominium, and are appropriately reflected as expenses in the Condominium's books of accounts]). Plaintiff alleges that charges due and owing the Condominium amount to in excess of $1.4 million (*see* Documentary Supplement, Exh B).

As a result of the failure to pay the common charges and assessments, the Condominium filed liens (the Liens) against the Garage and Commercial Units, and brought this action against defendants Manhattan Realty, Weiner-Mega LLC, Manhattan Realty Co., Jonathan Weiner, Joel Weiner and Arthur Weiner, each of which at various times was the record owner or had an ownership interest in the Garage and Commercial Units during the period for which common charges have been assessed. As a result of various dismissals, Manhattan Realty and Joel Weiner are the only two defendants currently remaining in the consolidated actions.

On December 3, 2001, a partial settlement of this action was reached between plaintiff and defendants. In consideration of $130,000, all claims against defendants with respect to the common charges accruing prior to December 31, 1996 were dismissed by stipulation (the Stipulation) of the parties (*see* Documentary Supplement, Exh E). With respect to the common charges accruing after December 31, 1996, all of plaintiff's claims survived the execution of the

Stipulation (*see id.*, ¶¶ 3 and 4). In addition, plaintiff specifically reserved all rights to collect attorney's fees, interest and expenses in connection with the common charges accruing after December 31, 1996 (*see id.*, ¶ 9).

Defendants acknowledge that Manhattan Realty currently owes plaintiff the amount of $85,295 through December 21, 2009 (*see* Weiner Aff., ¶ 5), but contests the remainder of the charges.

DISCUSSION

"'[T]he 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 demonstrate the absence of any material issues of fact (citation omitted)'" (*Ayotte v Gervasio*, 81 NY2d 1062, 1062 [1993]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d at 853; *see also Lesocovich v 180 Madison Ave. Corp.*, 81 NY2d 982 [1993]). The party opposing summary judgment has the burden of presenting evidentiary facts sufficient to raise triable issues of fact (*Rinaldi v Holt, Rinehart & Winston*, 42 NY2d 369, *cert denied* 434 US 969 [1977]; *Indig v Finkelstein*, 23 NY2d 728 [1968]).

As set forth below, defendants have failed to make a prima facie showing that they are entitled to summary judgment. In contrast, plaintiff has demonstrated its entitlement to summary judgment as a matter of law. Accordingly, defendants' motion for summary judgment is denied, and plaintiffs' motion for summary judgment on the consolidated complaints is granted.

In support of its motion for summary judgment, plaintiff contends that the Declaration and By-Laws specifically authorized the Liens to be imposed against the Garage and Commercial Units to secure payment of common charges, as well as any special assessments deemed necessary by the Board, and directs the Board to take action to collect all common charges and special assessments by way of foreclosure of the Liens placed against the Units. Plaintiff further asserts that the Condominium has fully documented the amount of common charges due, the method of calculation, and the allocation to the Garage and Commercial Units. Thus, plaintiff contends, the Condominium is entitled to summary judgment on its claims against defendants.

Conversely, defendants contend that, in violation of the express provisions of the Third Amendment, plaintiff improperly seeks to hold the Garage and Commercial Units responsible for the repair, maintenance and operating costs of the Residential Unit. In support of this argument, defendants rely upon a provision of the Third Amendment which states that:

> The Residential Unit Owner, Garage Unit Owner and Commercial Unit Owner shall be empowered to manage and operate their units independently of each other. Each Unit Owner shall be responsible for repair and maintenance of their respective unit

(Third Amendment, § 3 [g], at 5). Defendants also rely upon a schedule attached to the Third Amendment, which lists five categories of expenses to be shared by the Residential, Garage and Commercial Units – heating fuel, water charges, insurance, accounting and contingency (*see id.*, Schedule C, at 21). Defendants contend that, based upon Schedule C, the Garage and Commercial Units are responsible only for the those five items of common expenses, and that

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all other expenses are to be borne by the unit to which such expenses relate. Thus, defendants argue, repair and maintenance of the Residential Unit is not an expense category for which the other condominium units are responsible.

Defendants assert that, in violation of these provisions, plaintiff's annual budgets for the past ten years have allocated expenses for repair, maintenance and operation of the lobby, hallways, elevator and other parts of the Residential Unit to the Garage and Commercial Units. For instance, defendants assert, the budgets charge the Condominium with 29% of the Residential Unit's labor costs, 100% of its repair and maintenance costs, 40% of its management and administrative costs, and 50% of its legal expenses (*see* Def Mem., at 7).

The court rejects defendants' contentions. Defendants' argument that each unit is solely responsible for expenses attendant to the operation of their respective units, and that the owners of those units have no liability to pay their proportionate share of expenses to operate the Condominium's common elements, is grounded on two erroneous premises: (1) that the Garage and Commercial Unit owners do not use and derive no benefit from the common elements and thus should not be forced to pay for common expenses; and (2) that expenses to be paid by the Cooperative to operate the Residential Unit are being unfairly imposed on the owner of the Garage and Commercial Units. This argument, however, directly contradicts the governing documents – the Declaration and the By-Laws.

The New York Court of Appeals has consistently held that where, as here, "parties set down their agreement in a clear, complete document, their writing should as a rule be enforced according to its terms" (*W.W.W. Assoc. v Giancontieri*, 77 NY2d 157, 162 [1990];

accord South Rd. Assoc., LLC v International Bus. Machs. Corp., 4 NY3d 272 [2005]; *Cellular Tel. Co. v 210 E. 86th St. Corp.*, 44 AD3d 77 [1st Dept 2007]; *see also Weisberger v Goldstein*, 242 AD2d 622, 623 [2d Dept 1997] ["'It is the primary rule of construction of contracts that when the terms of a written contract are clear and unambiguous, the intent of the parties must be found within the four corners of the contract, giving a practical interpretation to the language employed and the parties' reasonable expectations (citation omitted)'"]).

Applying these rules of contract construction, it is clear that the Condominium's governing documents support plaintiff's position, rather than that of defendants. The Condominium consists of the Residential Unit, the Garage Unit and the Commercial Unit. Portions of the Building not included within the legal description of the respective units, or those that are structural or foundational elements, are designated in the Declaration as general common elements (the Common Elements) (*see* Declaration, Article Sixth). The common interest of each unit owner in the Condominium, which establishes the Unit Owner's percentage of ownership in the Common Elements, is referred to as the "common interest" (*id.*, Article Third [k]).

Each of the owners of the Condominium units is responsible for the payment of common charges, or common expenses, sufficient to operate the Condominium as a whole, and for assessments imposed to pay for the performance of certain repairs and improvements. Common expenses are defined in the Declaration as those charges incurred in connection with the "maintenance, repair, replacement, restoration and operation of, and any alterations and additions to the Common Elements" (*id.*, Article Third [j]). The Declaration provides that, except for fuel, the Board must collect common charges from its three unit owners in proportion

to their ownership of the Common Elements (percentage of the common interest) (*see id.*, Article Third [k] [j]; Article Sixth, Schedule B), which expenses are allocated 87.3% to the Residential Unit, 9.6% to the Garage Unit and 3.1% to the Commercial Unit (*see* Third Amendment, Exh A).

Article III, Section 5 of the By-Laws gives plaintiff, the Board of Managers, the power to determine and collect common charges to cover the cost of common expenses (*see* By-Laws, Article II, Section 5 [d] [1] [Documentary Supplement, Exh A]). Similarly, Articles VI and VII of the By-Laws give the Board the right to determine common charges to be assessed against each unit, to file a lien against the unit for the nonpayment of common charges and to foreclose the lien in an action such as this. Article VI, Section 2, entitled "Assessments," provides:

> The Board of Managers shall, from time to time, but at least annually, fix and determine the budget representing the sum or sums necessary and adequate for the continued operation of the Common Elements. ... They shall determine the total amount required, including the operational items such as insurance, repairs, reserves betterments, maintenance of the Common Elements and other operating expenses as well as charges to cover any deficit from prior years. The total annual requirements shall be assessed and prorated in accordance with the provisions of Section 1 of Article VII. ... The Board shall take action to collect any common charges due from any Unit Owner which remains unpaid 90 days from its due date by way of foreclosure of the lien on such Unit in accordance with Section 339 of the Real Property Law or otherwise.

Section 1 of Article VII of the By-Laws, entitled "Determination of Common Expenses and Fixing of Common Charges," states that:

> The Garage Unit and Commercial Unit ... will be separately operated, maintained, repaired or altered by the owners thereof at their sole expenses, except as otherwise provided in these By-Laws. ... The Board of Managers shall from time to time, and at

> least annually, prepare budget[s] for the operation of the General Common Elements and determine the amount of Common Charges payable by the Unit Owners to meet the Common Expenses of the General Common Elements. The Common Expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board of Managers pursuant to the provisions of this Article. ...The Common Expenses may also include such amounts as the Board may deem proper ... for the repair, replacement, substitution, operation and maintenance of the General Common Elements, including, without limitation, an amount for working capital of the Condominium, for a general operating reserve, for a reserve fund for replacements and to make up any deficit in the Common Expenses for any prior year. ... The owners of the units will each pay a proportionate share (computed in accordance with their respect proportionate interests in the Common Elements) of the cost of insurance, repairs and maintenance of equipment servicing the General Common Elements, heat ... electricity ..., the cost of accounting and management to the extent that said costs relate solely to the operation of the Condominium and not to an individual unit.

The above-reference language of the Declaration and By-Laws demonstrate the fallacy of defendants' claim that the Garage and Commercial Units are exempt from liability for payment of common expenses because they do not use or derive benefit from the Common Elements. This argument must also be rejected as a matter of law. Real Property Law § 339-x provides that "No unit owner may exempt himself from liability for his common charges by waiver of the use and enjoyment of the common elements." This dictate is mirrored in the Declaration, which provides that "[e]very Unit Owner shall pay the Common Charges assessed against him when due and no Unit Owner may exempt himself from liability for the payment of the common charges assessed against him by waiver of the use or enjoyment of any of the Common Elements" (Declaration, Article Thirteenth).

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Thus, under the governing documents of the Condominium, common expenses must be paid in proportion to the unit owner's ownership of the Common Elements, regardless of whether one unit or another makes use of the common area in question.

Defendants further argue that the Board is wrongfully attempting to collect from the Garage and Commercial Units expenses incurred by the Residential Unit, and passing them off as having been incurred by the Condominium. However, documentary evidence in the form of financial statements of both the Cooperative and the Condominium reflect that the Cooperative pays ~~entirely~~ for all expenses of the Residential Unit (*see* Documentary Supplement, Exh F [Annual Reports of both the Condominium and Cooperative for 1997 to 2009, evidencing that the Cooperative advanced sums to the Condominium to fund the Condominium's operation]; *see also* LoGuercio Aff., ¶¶ 7, 8).

Defendants also claim that the common expenses allocated to the Garage and Commercial Units are limited to five items of expense contained in a non-binding "projected budget" for the calendar year 1988 attached to the Third Amendment. According to defendants, any category of common charges imposed beyond the categories set forth in the 1988 budget is improper.

However, the Condominium's governing documents in no way limit the categories used by the Board in fixing assessments of common charges to those expressed in a non-binding budget from 1988. To the contrary, the Declaration and By-Laws provide a broad scope of categories from which the Board may determine the budget representing the amounts necessary and adequate for the continued operation of the Common Elements, and fix them as

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common charges in accordance with the respective percentage interests of the various units (*see* Declaration, Article Third [j] [defining common expenses as those charges incurred in connection with the "maintenance, repair, replacement, restoration and operation of, and any alterations and additions to the Common Elements"]; By-Laws, Article VI, Section 2 [the Board "shall determine the total amount required, including the operational items such as insurance, repairs, reserves, betterments, maintenance of the Common Elements and other operating expenses as well as charges to cover any deficit from prior years"]; By-Laws, Article VII, Section 1 ["(t)he Common Expenses may also include such amounts as the Board may deem proper ... for the repair, replacement, substitution, operation and maintenance of the General Common Elements, including, without limitation, an amount for working capital of the Condominium, for a general operating reserve, for a reserve fund for replacements and to make up any deficit in the Common Expenses for any prior year"]).

The foregoing categories of expense required to operate the Building, as set forth in the Declaration and the By-Laws, are far more expansive than the list created by the sponsor in the Third Amendment. These documents, and not offering plan amendments, or non-binding budgets, are paramount (*see* Real Property Law § 339-u; *Murphy v State of New York*, 14 AD3d 127 [2d Dept 2004] [the administration of a condominium's affairs is governed principally by its by-laws]; *Board of Mgrs. of Marbury Club Condominium v Marbury Corners, LLC*, 28 Misc 3d 1240[A], 2010 NY Slip Op 51650[U] [Sup Ct, Westchester County 2010] [despite disclosure in offering plan and in the budget, court invalidated note and mortgage because authority to enter into loan agreement was not expressly set forth in the declaration and by-laws which governed the condominium]).

Defendants also allege that they have been charged with payroll and maintenance expenses that are the sole responsibility of the Residential Unit. However, as is clear from documentary evidence in the form of the annual budgets from the years 1997 through 2010 (*see* Documentary Supplement, Exh H), the Garage and Commercial Units were charged for expenses relating to the payroll for the superintendent and the porter (2 out of 7 employees), since they service the Common Elements, which amounts to 29% of the total payroll expenses. The balance of 69% was paid by the Residential Unit. Moreover, of that 29%, the Garage and Commercial Units were billed only their proportionate share – 12.7% in total (*see id.*).

Defendants also contend that the Condominium Board was never formally constituted, and never held any meetings or elected any officers. Instead, defendants argue, the Cooperative's Board of Directors, acting wrongfully as the Condominium's Board of Managers, has imposed all of the assessments and common charges that plaintiff seeks to recover in this action. Defendants claim that, as such, all common charges and assessments are illegitimate. The court rejects this argument. In actuality, as is apparent from the By-Laws, defendant Joel Weiner, along with his brothers, created the Condominium Board. Article II, Section 4 of the By-Laws, entitled "First Board of Managers," specifically provides that "[t]he first Board of Managers shall consist of Joel Weiner, Arthur Wiener and Jonathan Wiener." In addition, plaintiff submits Condominium Board minutes from a January 28, 1992 Board meeting, during which it was determined that the Cooperative and Condominium Boards would be comprised of the same members, including defendant Joel Weiner and his family (*see* Documentary Supplement, Exh I [passing motion "to elect the same Condo Board as the Coop board"]).

Finally, defendants claim that the Third Amendment permits the Condominium to collect only 4% of the Condominium's heating costs from the Garage Unit, but plaintiff has improperly charged the Garage Unit with 10% of the heating costs for more than 10 years. Contrary to defendants' arguments, however, the provisions of the By-Laws, rather than the Third Amendment, govern this dispute. The By-Laws state that:

> Heat is supplied to the Building through a common Building boiler system. The Board shall pay the cost of such heat directly to the supplier thereof ... and the owners of the units shall pay as a Common Expense their proportionate share computed in accordance with their proportionate interest in the Common Elements unless a unit owner uses or incurs a disproportionate portion of the heat relative to its respective common interest (whether too low or too high) in which case such unit owner shall be required to pay its fair share of such expenses

(By-Laws, Article VII, Section 5).

Plaintiff asserts that, when the Condominium was established, the sponsor represented in the Plan that the Garage Unit contained four radiators to supply heat to the Garage Unit, and that the estimated percentage of the Condominium's annual heating bill attributable to the Garage was 4% (*see* 7/24/87 architect statement [Documentary Supplement, Exh J]. Plaintiff asserts that, however, after conducting a survey to determine actual usage, it was determined that the Garage Unit was being charged a disproportionately low percentage of the cost of supplying heat. Article VII, Section 5 of the By-Laws permits the Board to require a unit owner who uses or incurs a disproportionate amount of heat relative to its respective common interest to pay its fair share. Thus, the Garage Unit must reimburse the Condominium for 10% of the heating costs.

Based on the foregoing, defendants' motion for summary judgment is denied.

Plaintiff's motion for summary judgment on the consolidated complaints is granted only to the extent of liability. Plaintiff has made out a prima face case as to liability based upon its submissions, which establish that (1) it extended money in connection with the operation of the Common Elements of the Condominium; (2) the expenses were properly allocated to the Garage and Commercial Units based on their proportionate interest in the Common Elements; (3) the expenses were assessed against the Garage and Commercial Units as common charges and in the form of an assessment for the work to the garage roof/courtyard in accordance with the dictates of the Condominium's governing documents; and (4) the Commercial and Garage Units failed to pay the common charges and assessments that are the subject of the Liens sought to be foreclosed in this action.

In addition, the obligations of a unit owner to pay common charges and special expenses is absolute (Real Property Law, § 339-x; *Board of Mgrs. of First Ave. Condominium v Shandel*, 143 Misc 2d 1084 [Civ Ct, NY County 1989]). When a unit owner challenges an action by a condominium board of managers, the court must apply the business judgment rule (*Matter of Levandusky v One Fifth Ave. Apt. Corp.*, 75 NY2d 530 [1990]; *Helmer v Comito*, 61 AD3d 635 [2d Dept 2009]; *Acevedo v Town 'N Country Condominium, Section I, Bd. of Mgrs.*, 51 AD3d 603 [2d Dept 2008]). "Under that rule, a court's inquiry 'is limited to whether the board acted within the scope of its authority under the by-laws (a necessary threshold inquiry) and whether the action was taken in good faith to further a legitimate interest of the condominium (citation omitted)'" (*Perlbinder v Board of Mgrs. of 411 E. 53rd St. Condominium*, 65 AD3d 985, 989 [1st Dept 2009]). "Absent a showing of fraud, self-dealing or unconscionability, the court's

inquiry is so limited and it will not inquire as to the wisdom or soundness of the business decision" (*Schoninger v Yardarm Beach Homeowners' Assn.*, 134 AD2d 1, 9 [2d Dept 1987]). "Stated somewhat differently, unless a resident challenging the board's action is able to demonstrate a breach of [the board's duty to act in good faith within the scope of its authority,] judicial review is not available" (*Matter of Levandusky v One Fifth Ave. Apt. Corp.*, 75 NY2d at 538). Thus, "a unit owner ... cannot withhold payment of common charges and assessments in derogation of the by-laws of the condominium" based on a disagreement with actions lawfully taken by the board of managers (*Frisch v Bellmarc Mgt.*, 190 AD2d 383, 389 [1st Dept 1993]).

Applying the foregoing principles, absent a bona fide showing of fraud, self-dealing or unconscionability, the court's inquiry under the business judgment rule is limited to whether the Condominium Board was authorized under its governing documents (the declaration and by-laws) to impose the common charges upon defendants. Because defendants have raised no allegations of fraud, self-dealing or unconscionability, the court's inquiry is at an end, and judgment must be awarded to plaintiff. However, plaintiff is entitled to summary judgment only as to liability, since the full extent of the damages suffered by plaintiff cannot be ascertained solely through documentary evidence.

In addition, defendants' counterclaim, which alleges that the Condominium failed to properly maintain the courtyard above the garage roof, must be dismissed. Even if the court accepts, as true, defendants' allegation that the courtyard renovation was extravagant, this allegation does not amount to fraud or self-dealing that would permit the court to bypass the business judgment rule.

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The court has considered the remaining arguments, and finds them to be without merit.

Accordingly, it is

ORDERED that defendants' motion for summary judgment (Motion Sequence No. 004) is denied; and it is further

ORDERED that plaintiff's motion for summary judgment (Motion Sequence No. 005) is granted only to the extent of liability; and it is further

ORDERED that the parties are directed to appear for the conference previously scheduled for July 28, 2011 at 9:30 a.m., in Part 11, Room 351, 60 Centre Street.

DATED: July 14, 2011

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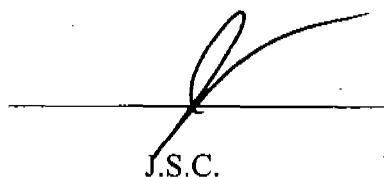

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