

**Edmonds v 8 Morningside Ave.**

2011 NY Slip Op 32273(U)

August 18, 2011

Supreme Court, New York County

Docket Number: 116036/10

Judge: Louis B. York

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

PRESENT: **LOUIS B. YORK**  
J.S.C. Justice

PART 2

Edmonds  
- v -  
8 Morningside Avenue

INDEX NO. 116036/10  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 01  
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

**MOTION IS DECIDED WITH ACCOMPANYING  
WITH ACCOMPANYING MEMORANDUM DECISION.**

**FILED**

AUG 22 2011

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 8/18/11

[Signature]  
**LOUIS B. YORK**

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:

IAS PART 2

-----X  
CHARLES W. EDMONDS and DAISY M. EDWARDS,

Plaintiffs,

Index No. 116036/10

-against-

8 MORNINGSIDE AVENUE/352 WEST 115<sup>th</sup> STREET HDFC,  
CHARLOTTE D. ROBINSON, CARLOS SADDLER,  
SAMUEL HARGRESS, JR., SAMUEL D. HARGRESS III,

**FILED**

Defendants.

**AUG 22 2011**

-----X

LOUIS B. YORK, J.:

NEW YORK  
COUNTY CLERK'S OFFICE

Plaintiffs CHARLES W. EDMONDS ("Edmonds") and DAISY M. EDWARDS

("Edwards") bring this application by an order to show cause against defendants 8

MORNINGSIDE AVENUE/352 WEST 115<sup>TH</sup> STREET HDFC ("HDFC"), CHARLOTTE D.

ROBINSON ("Robinson"), CARLOS SADDLER ("Saddler"), SAMUEL HARGRESS, JR.

("Hargress Jr.") and SAMUEL D. HARGRESS III ("Hargress III") for damages resulting from

alleged fraud and breach of contract, as well as an injunction requiring defendant HDFC to issue

them shares allocated to a residential co-op apartment. Defendants have filed a cross-motion for

summary judgment. For the following reasons, the Court denies plaintiffs' order to show cause

and grants defendant's cross-motion.

### Facts

This case revolves around an apartment at 8 Morningside Avenue, a cooperative residential building in Manhattan. Plaintiffs have leased the apartment in question since 1995. Prior to their tenancy, plaintiffs approached the president of the co-op board, defendant Samuel Hargress Jr., and asked whether there were any vacancies in the building. Hargress Jr. allegedly informed them that there was an apartment available in the building and they could buy it for \$7,500.

In September 1995 plaintiffs entered into an oral lease agreement with Hargress Jr. and in September of 1996 the lease was put into writing, with plaintiffs listed as lessees and Hargress Jr.'s son, Samuel Hargress III, as lessor. The lease provided that plaintiffs would take immediate possession of unit 2N and would pay Hargress Jr. and the co-op board a deposit of \$1,400 and monthly payments of \$700. It also allegedly gave plaintiffs an option to buy the apartment during the term of the lease for \$7,500. Although there is no such provision in the lease, plaintiffs allege that Hargress Jr. orally assured them that a portion of their rent payments each month would go towards the purchase price so that at the end of the lease they would receive the co-op shares and proprietary lease associated with the apartment, with the purchase price of \$7,500 paid in full. Plaintiffs moved into the apartment in September 1995 and remain in possession to this day.

In September 1998, after the lease had run its course, plaintiffs orally requested that Hargress Jr. issue a certificate of shares and the proprietary lease for the apartment to them. Plaintiffs received no reply, so their attorney sent a letter to Hargress Jr. in December 1998, officially declaring plaintiffs' desire to exercise their option to buy. However, the only response

they received from Hargress Jr. was an almost illegible letter referring plaintiff's need to file an application for sale. The letter did not mention any previous oral arrangement. In fact, Hargress Jr. already had sold apartment 2N to his son, defendant Samuel Hargress III, who signed a contract for sale on August 11, 1995, and was issued 250 shares of building stock on February 1, 1998. Plaintiffs allege that this was not disclosed to them until years later and that they did not have any form of landlord-tenant relationship with Hargress III.

In 2003, plaintiffs signed a new lease with the building in order to preserve their interest in the apartment. However, the lease did not include any option to buy. On November 9, 2004, Hargress Jr. appeared at a co-op board meeting and produced a contract of sale and a certificate of shares, both of which established that Hargress III had owned unit 2N since 1995. Plaintiffs, now members of the coop board, did not attend the meeting.

Plaintiffs commenced this lawsuit against defendants on December 10, 2010, alleging breach of contract and fraud. They seek relief in the amount of \$30,000, which they allegedly paid for various repairs and improvements made to the apartment over and above the maintenance minus the \$7,500 cost of the shares. They also seek an injunction to prohibit defendants from reselling the shares to another party and to compel defendants to transfer the shares to plaintiffs.

In their cross-motion for summary judgment, defendants allege that the case against defendant Saddler must be dismissed for improper service, and that the actions against defendants Robinson and Saddler must be dismissed because they were acting only within the scope of their roles as members of the HDFC board and no independent wrongful acts have been alleged against them. They claim that the action against Hargress Jr., Hargress III, and HDFC

must be dismissed because the statute of limitations has run. Finally, they claim that due to the statute of frauds, any agreement for the sale of the property must be in writing, and there is no written evidence of the sale.

#### Analysis

Defendants argue that plaintiffs' action against them is barred by the statute of limitations. Plaintiffs have six years to bring an action for breach of contract. CPLR § 213. The clock begins to run on the date of the accrual of the cause of action. CPLR § 203. In an action for fraud, plaintiffs must commence their action within the greater of six years from the accrual of the cause of action, two years from either their discovery of the fraud or the moment they could have discovered it with reasonable diligence. CPLR § 213.8; Kaufman v. Cohen, 307 A.D.2d 113, 122, 760 N.Y.S.2d 157, 167 (1st Dept. 2003). For the latter computation, plaintiffs need not have positive knowledge of the fraud. Instead, the cause of action accrues when plaintiffs possess knowledge of sufficient facts that, with reasonable diligence, they could have discovered the wrongdoing. Stride Rite Children's Group, Inc. v. Siegel, 269 A.D.2d 875, 875, 703 N.Y.S.2d 642, 643 (4<sup>th</sup> Dept. 2000). Though often the question of when a party should have discovered the fraud is a mixed question of law and fact, if it is clear the plaintiffs were aware of facts which should have prompted them to inquire and discover the alleged fraud, summary disposition is appropriate. Rattner v. York, 174 A.D.2d 718, 721, 571 N.Y.S.2d 762, 765 (2<sup>nd</sup> Dept. 1991).

Based on the timing of events as recounted by plaintiffs, and construing the facts in the light most favorable to them, the breach of contract claim accrued in 1998, when Hargress Jr. failed to hand over the apartment shares to them. Thus, by any computation of this cause of

action is untimely. As for the fraud, there were many times over the course of their fifteen-plus years of occupancy in the building that they could have discovered the alleged fraud – beginning in 1998, when Hargress Jr. refused to turn over the co-op shares to them upon their written request. At the latest they should have been aware of any wrongdoing by November 9, 2004; for this is the date that Hargress Jr. appeared at the co-op board meeting and produced proof that he had sold the apartment to his son prior to allegedly selling it to plaintiffs. Plaintiffs, elected members of the board who knew of the dispute over the ownership of the apartment and had a strong interest in its outcome, with reasonable diligence should have discovered what happened at the board meeting. Plaintiffs commenced this action on December 10, 2010, over fifteen years after the cause of action accrued, twelve years after they asked for ownership of the apartment, and six years after the coop meeting. Therefore, under even the most generous computation, the statute of limitations prohibits them from asserting fraud as well.

Plaintiffs argue that the statute of limitations should be tolled because defendants fraudulently concealed information that would have allowed plaintiffs to discover that they had a cause of action. See CPLR § 213[8]; Durazinski v. Chandler, 41 A.D.3d 918, 919, 837 N.Y.S.2d 775, 775 (3d Dept. 2007). Here, even if defendants concealed the sale to Hargress III in the 1990's – which the Court accepts solely for the purpose of evaluating this argument – Hargress III disclosed the details of the sale publicly at the meeting of November 9, 2004. Despite this, plaintiffs still failed to file their action until December 2010. Moreover, despite the fact that Hargress Jr. failed to convey ownership of the apartment to them in 1998, there is no evidence that plaintiffs investigated the situation at that time or in the ensuing years. See Baratta v. ABF Real Estate Co., Inc., 215 A.D.2d 518, 519, 627 N.Y.S.2d 52, 53 (2<sup>nd</sup> Dept. 1995). Therefore,

this argument is unpersuasive.

Alternatively, plaintiffs argue that the doctrine of laches applies to toll the statute. Here, too, they are incorrect. Under the doctrine of laches, if a party creates an unreasonable delay in pursuing a cause of action, and this delay prejudices an adverse party from discovering that they also have a cause of action, then the statute of limitations is deemed not to have run. In re Linker, 23 A.D.3d 186, 189, 803 N.Y.S.2d 534, 537 (1st Dept. 2005). In order to establish laches, a party must show that there was an injury, loss of evidence, or some other disadvantage caused by the delay. Id. Plaintiffs assert that because defendants did not sue the officers of the corporation for fraud, plaintiffs were prevented from discovering their cause of action until after the statute of limitations had already run, and so the doctrine of laches should toll the statute of limitations from 1998 until 2010. However, it is not clear how this alleged failure misled plaintiffs. Moreover, for the reasons explained above, through reasonable diligence plaintiffs should have discovered the alleged wrongdoing even in the absence of a civil lawsuit. Also, this argument fails because it suggests, illogically, that defendants' failure to file the suit against the board was fraudulent and designed to mislead plaintiffs. Accordingly, the Court concludes that laches does not apply.

Because the Court dismisses on this threshold issue, it need not reach the remaining arguments. However, it notes that even if the action had been timely, this Court would have granted defendants' motion based on the statute of frauds. See N.Y. GEN. OBLIG. LAW § 5-703 (McKinney 2011), Messner Vetere Berger McNamee Schmetterer Euro RSCG Inc. v. Aegis Group PLC, 93 N.Y.2d 229, 235, 689 N.Y.S.2d 674, 677 (1999). Because there was no mention in the lease of any portion of the rent comprising payments towards purchase, plaintiffs' lease

does not satisfy that requirement. The Court also would have dismissed the case against defendants Robinson and Saddler because plaintiffs failed to show that they committed any tortious acts independent of the actions of the HDFC as a whole, and therefore under the Business Judgment rule they would not have been liable. See Sayeh v. 66 Madison Ave. Apt. Corp., 73 A.D.3d 459, 461, 901 N.Y.S.2d 26, 28 (1st Dept. 2010).

Based on the above, therefore, it is

ORDERED that the order to show cause is denied, the cross-motion is granted and the action is dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: 8/18/11

**FILED**

**AUG 22 2011**

ENTER: NEW YORK  
COUNTY CLERK'S OFFICE

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LOUIS B. YORK, J.S.C.