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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: JOAN M. KENNEY J.S.C. PART 8

Justice

Index Number : 104289/2010
SUTTON APARTMENTS CORP.
vs.
BRADHURST 100 DEVELOPMENT LLC
SEQUENCE NUMBER : 005
DISMISS

INDEX NO. 104289/10
MOTION DATE 4/4/12
MOTION SEQ. NO. 005

The following papers, numbered 1 to 13, were read on this motion to/for dismiss

Notice of Motion/Order to Show Cause — Affidavits — Exhibits | No(s). 1 - 7
Answering Affidavits — Exhibits | No(s). 8
Replying Affidavits | No(s). 9, 10

Opp Aff + Memo of Law 11-13

Upon the foregoing papers, it is ordered that this motion is

MOTION IS DECIDED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM DECISION

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

Dated: June 19, 2012

JOAN M. KENNEY, J.S.C.

1. CHECK ONE: ..... ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 8

SUTTON APARTMENTS CORPORATION,
Plaintiff,

-against-

BRADHURST 100 DEVELOPMENT LLC, DUVERNAY + BROOKS, LLC, JONI BROOKS, PENNROSE PROPERTIES, LLC, RICHARD BARNHART, MARK DAMBLY, MAGNUSSON ARCHITECTURE AND PLANNING PC, and WEST MANOR CONSTRUCTION CORP.,
Defendants.

DECISION & ORDER
Index No.: 104289/10

JOAN M. KENNEY, J.:

Motion sequence numbers 005, 006, 007, 008 and 009 are consolidated for disposition.

In motion sequence number 005, defendant Magnusson Architecture and Planning PC (Magnusson) [architect of the conversion] moves, pursuant to CPLR 3211 (a) (1) and (7), to dismiss the complaint as asserted against it.

In motion sequence number 006, defendants Richard Barnhart (Barnhart) and Mark Dambly (Dambly) [chief executive officers of Pennrose] move, pursuant to CPLR 3211 (a) (1), (2) and (7) and CPLR 3016 (b), to dismiss the complaint as asserted against them.[1]

In motion sequence number 007, defendants Duvernay & Brooks, LLC and Joni Brooks (together, the Brooks defendants) [member of the sponsor] move, pursuant to CPLR 3211 (a) (1), (2) and (7) and CPLR 3016 (b), to dismiss the complaint as asserted against them.

In motion sequence number 008, defendants Bradhurst 100 Development LLC (Bradhurst) [the sponsor] and Pennrose Properties, LLC (Pennrose) [managing member of the sponsor] (together, the Bradhurst defendants) move, pursuant to CPLR 3211 (a) (1), (3) and (7) and CPLR 3016 (b), to

[1]This motion was initially granted on default by this court on January 24, 2012, but that order was subsequently vacated by this court on January 26, 2012. The original motion, dated January 24, 2012, was incorrectly filed with the Clerk on January 30, 2012.

dismiss the complaint as asserted against them.

In motion sequence number 009, defendant West Manor Construction Corp. (West Manor) [construction manager for the building conversion] moves, pursuant to CPLR 3211 (a) (7), to dismiss the eleventh, twelfth and thirteenth causes of action as asserted against it and to deny plaintiff recovery for any damages outside of the Residential Unit.

FACTUAL BACKGROUND

This is an action brought by the owner of the residential unit in the Sutton Condominium located at 102 Bradhurst Avenue in New York City, alleging that the conditions in the building, after its conversion to condominiums, did not correspond to the representations and promises set forth in the offering plan.[2] The complaint asserts numerous conditions that plaintiff contends are defects. Defendants maintain that any purported "defects" are construction related in nature.

The complaint alleges 15 causes of action: (1) breach of contract against Bradhurst; (2) negligence against Bradhurst, the Brooks defendants, Pennrose, Barnhart and Dambly (collectively, the Sponsor Defendants); (3) fraud against the Sponsor Defendants; (4) negligent misrepresentation against the Sponsor Defendants; (5) negligence against Magnusson; (6) fraud against Magnusson; (7) negligent misrepresentation against Magnusson; (8) breach of contract against Magnusson; (9) unjust enrichment against Magnusson; (10) professional malpractice against Magnusson; (11) negligence against West Manor; (12) breach of contract against West Manor; (13) unjust enrichment against West Manor; (14) violation of New York General Business Law (GBL) §§ 349 and 350 against the Sponsor Defendants and Magnusson; and (15) fraudulent transfers against the Sponsor Defendants.

Magnusson argues (Motion Sequence 005) that plaintiff may not maintain the 6th and 7th causes

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[2]The building was converted to a cond-op. Plaintiff formed as a cooperative corporation and became the owner of the "Residential Unit." Unit purchasers buy shares from plaintiff.

of action as asserted against it because the law does not recognize a private right of action under the Martin Act (GBL §§ 352 *et seq.*). Further, Magnusson avers that the 6th cause of action, alleging fraud, must be dismissed because it is insufficiently specific to meet the requirements of CPLR 3016 (b), since plaintiff only alleges that Magnusson "knew and/or had reason to know from visual inspections they made of the ongoing improvements that the Building, including the Units, could not be delivered in accordance with the terms, conditions and representations set forth in the Offering Plan." Complaint, ¶ 95.

Magnusson asserts that the 5th, 7th and 10th causes of action as asserted against it for negligence, negligent misrepresentation and professional malpractice, must be dismissed because there is neither privity of contract nor its equivalent between Magnusson and plaintiff. Magnusson adds that plaintiff was not a third-party beneficiary of its architectural contracts for the building's conversion.

Magnusson further contends that the 5th and 10th causes of action as asserted against it for negligence and professional malpractice must be dismissed because they are based on a simple breach of contract, which may not be converted into a tort unless a legal duty independent of that contract is alleged to have been violated, which plaintiff has failed to do. Lastly, Magnusson maintains that the cause of action as asserted against it for violations of GBL §§ 349 and 350 must be dismissed because it did not disseminate any advertising or promotional materials and, even if it did, such materials do not have a broad impact on consumers at large.

Defendants Barnhart and Dambly argue (Motion Sequence 006) that all of the claims as asserted against them, except for the 15th cause of action, must be dismissed because they are preempted by the Martin Act. Further, Bradhurst and Dambly claim that the 2nd and 4th causes of action as asserted against them are deficient because plaintiff fails to show that they owed a duty of care to plaintiff. Bradhurst and Dambly's legal position is similar to that of Magnusson with regards

to the lack of specificity for the fraud claims and the lack of broad impact on consumers for the cause of action based on a violation of GBL §§ 349 and 350. Additionally, Bradhurst and Dambly assert that plaintiff lacks standing to sue for defects to the garage ramp, the garage roof and the building's roof because standing to complain about those defects rests with the board of managers, not the individual unit owners.

In sum and substance, the Brooks defendants' argument (Motion Sequence 007) mirrors that of Magnusson and Bradhurst and Dambly, with respect to the causes of action as asserted against the Brooks defendants. Joni Brooks further maintains that she cannot be held liable for the actions of a limited liability company simply because she is a member of the company.

According to the offering plan:

> "... The issuance of a Certificate of Occupancy covering the Building shall be deemed presumptive evidence that the Building, its appurtenances and all of the Apartments in the Residential Unit have been completed substantially in accordance with the Offering Plan and the Plans with Specifications. ... Sponsor will not be responsible for any defect in construction if the work and materials are in substantial compliance with the Plans and Specifications." Motion, Ex. D.

The sponsor, Bradhurst, contends (Motion Sequence 008) that plaintiff failed to rebut this presumption. Moreover, pursuant to the rights and obligations of the sponsor that appear in the offering plan, the sponsor is not obligated to correct any conditions which are not in violation of any building codes so long as those conditions are "insubstantial." Bradhurst avers that all of the defects alleged in the complaint are insubstantial. Bradhurst also states that, pursuant to the offering plan, it is not responsible for any alleged improper substitutions that were deemed to be proper "in the sole discretion" of the general contractor (West Manor) or its architect (Magnusson). *Id.*

West Manor claims (Motion Sequence 009) that plaintiff's cause of action for negligence must fail because: there is no theory upon which plaintiff asserts a duty of care owed to it by West Manor;

and plaintiff did not allege a time frame, rendering the action barred by the statute of limitations.; that the breach of contract claim must be dismissed because: there is no privity of contract between it and plaintiff; that the unjust enrichment claim must be dismissed because: the complaint fails to allege that West Manor was enriched at plaintiff's expense or that there was a relationship between the parties that could have caused reliance or inducement on plaintiff's part; and lastly, that plaintiff lacks standing to assert claims for alleged defects to the common areas.

Plaintiff has provided one opposition argument in response to all of the instant motions.

Initially, plaintiff contends that its common-law claims are not preempted by the Martin Act because these causes of action are not predicated solely on a violation of that act. It is plaintiff's position that its claims arise out of affirmative misrepresentations in the offering plan, not omissions, and, hence, they are not precluded by the Martin Act. In support of this contention, plaintiff points out that the complaint states that the offering plan makes several affirmative representations regarding the windows, heating, and so forth.

Plaintiff states that its causes of action sounding in negligence are not duplicative of its breach of contract claims because defendants owed an independent duty to construct the condominium to be safe and in compliance with the Building Code. Further, plaintiff asserts that the complaint sufficiently alleges a special relationship with defendants. Plaintiff argues that whether or not such a relationship exists is a question of fact, precluding granting a motion to dismiss.

Plaintiff also argues that the individual members of a limited liability company are not automatically shielded from liability if the member participated in the commission of a tort.

Plaintiff maintains that it has sufficiently pled causes of action against Magnusson because, pursuant to Magnusson's contract with Bradhurst, Magnusson was bound to Bradhurst's successors. Plaintiff says that it is Bradhurst's successor and, therefore, in privity of contract with Magnusson.

Plaintiff avers that its causes of action sounding in fraud are sufficiently pled and argues that its claim for fraudulent conveyance is not subject to CPLR 3016 (b) because both intentional and constructive fraudulent conveyance are alleged in the complaint. Plaintiff argues that constructive fraudulent conveyance does not require any allegation of scienter and that the specifics of the fraud need not be pled in the complaint where only the defendant has knowledge of the underlying facts.

Plaintiff states that GBL §§ 349 and 350 are applicable because Bradhurst made a public offering of the condominium units and plaintiff has standing to sue for defects in the common area since the defects reduce the value of the individual units.

All of the moving defendants, with the exception of the Bradhurst defendants, have submitted replies to plaintiff's opposition, reiterating the original arguments in the moving papers.

DISCUSSION

CPLR 3211 (a), "Motion to dismiss 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
> (2) the court has not jurisdiction of the subject matter of the cause of action; or
> (3) the party asserting the cause of action has not legal capacity to sue; or . . .
> (7) the pleading fails to state a cause of action; ... ."

To defeat a pre-answer motion to dismiss pursuant to CPLR 3211, the opposing party need only assert facts of an evidentiary nature which fit within any cognizable legal theory. *Bonnie & Co. Fashions v Bankers Trust Co.*, 262 AD2d 188 (1st Dept 1999). Further, the movant has the burden of demonstrating that, based upon the four corners of the complaint liberally construed in favor of the plaintiff, the pleading states no legally cognizable cause of action. *Guggenheimer v Ginzburg*, 43 NY2d 268 (1977); *Salles v Chase Manhattan Bank*, 300 AD2d 226 (1st Dept 2002).

For the sake of simplicity and clarity, rather than addressing the arguments presented in each motion separately, the court will discuss each cause of action, relating it to the motions, since, collectively, the motions seek to dismiss the entire complaint.

That branch of the Bradhurst defendants' motion (motion sequence number 008) seeking to dismiss the 1st cause of action as asserted against them is granted in part and denied in part.

It is well-settled that "individual unit owners lack standing to seek damages for injury to the building's common elements [internal citation omitted]." *Board of Managers of the Chelsea 19 Condominium v Chelsea 19 Associates*, 73 AD3d 581, 581 (1st Dept 2010); *Kerusa Co. LLC v W10Z/515 Real Estate Limited Partnership*, 50 AD3d 503 (1st Dept 2008); *Devlin v 645 First Avenue Manhattan Company*, 229 AD2d 343 (1st Dept 1996). Therefore, the portions of the complaint seeking damages for alleged defects to the common areas (the garage and the roof) are dismissed.

However, since the complaint alleges that the units did not conform to the specifications of the offering plan, and the plan provides that the sponsor will correct any defect that is not insubstantial, a question of fact exits as to whether the alleged defects are conforming and/or substantial, precluding dismissing this claim at this juncture in the proceedings. *See Plaza PH2001, LLC v Plaza Residential Owners LP*, 79 AD3d 587 (1st Dept 2010).

The branches of the Bradhurst defendants' motion (motion sequence number 008), the Barnhart and Dambly motion (motion sequence number 006) and the Brooks defendants' motion (motion sequence number 007) seeking to dismiss the second cause of action for negligence as asserted against them, is granted.

The allegations of negligence appearing in the complaint are based on defects in the construction of the condominium and, as such, sound in breach of contract rather than tort. *Gallup v Summerset Homes, LLC*, 82 AD3d 1658 (4th Dept 2011; *Hamlet on Olde Oyster Bay Home Owners*

Association, Inc. v Holiday Organization, Inc., 65 AD3d 1284 (2d Dept 2009); *Stardial Communications Corp. v Turner Construction Company*, 305 AD2d 126 (1st Dept 2003); *Rothstein v Equity Ventures*, 299 AD2d 472 (2d Dept 2002).

This cause of action as asserted against the individual defendants is dismissed for the reasons stated below with respect to the 3rd cause of action, because plaintiff has failed to plead any act of negligence attributable to these persons in their individual capacity.

That branch of the Bradhurst defendants' motion (motion sequence number 008), and the Brooks defendants' motion (motion sequence number 007) seeking to dismiss the 3rd cause of action for fraud as asserted against them is granted in part and denied in part. The moving defendants rely on *Kerusa Co. LLC v W10Z/515 Real Estate Limited Partnership* (12 NY3d 236, 239 [2009], which stated that:

> "A purchaser of a condominium apartment may not bring a claim for common-law fraud against the building's sponsor when the fraud is predicated solely on alleged material omissions from the offering plan amendments mandated by the Martin Act (General Business Law art 23-A) and the Attorney General's implementing regulations (13 NYCRR part 20)."

However, in *Caboara v Babylon Cove Development, LLC.* (82 AD3d 1141 [2d Dept 2011]), the Court stated that a private right of action sounding in common-law fraud may rest on the same facts that would support a Martin Act violation, provided that the basis of the complaint is not an allegation of material omissions in the offering plan. *See Board of Managers of Marke Gardens Condominium v 240/242 Franklin Avenue, LLC*, 71 AD3d 935 (2d Dept 2010).

In the case at bar, plaintiff alleges material misrepresentations in the offering plan. Since plaintiff alleges "not that defendant[s] omitted to disclose information required under the Martin Act but that [they] affirmatively misrepresented, as part of the offering plan, a material fact about the condominium," [its claim is not precluded by the Martin Act]." *Bhandari v Ismael Leyva Architects,*

P.C., 84 AD3d 607, 607 (1st Dept 2011). Further, the "[t]he complaint states a cause of action for common-law fraud by alleging that defendant[s] knowingly made a material misrepresentation." *Id.* at 608. *See also Assured Guaranty (UK) Ltd. v J.P. Morgan Investment Management Inc.*, 18 NY3d 341 (2011).

However, the branch of the Brooks defendants' motion (motion sequence number 007) and the Barnhart and Dambly motion (motion sequence number 006) seeking to dismiss this cause of action as asserted against the individual defendants, is granted. A member of a limited liability company may be held individually liable for the acts of the company only by application of the doctrine of piercing the corporate veil where the:

> "...'plaintiff must allege facts that, if proved, indicate that the shareholder exercised complete dominion and control over the corporation [or LLC] and abused the privilege of doing business in the corporate [or LLC] form to perpetrate a wrong or injustice' [internal citation omitted]."

Grammas v Lockwood Associates, LLC, 2012 WL 169941, *1, 2012 NY App Div lexis 3768. *3-4, 2012 NY Slip Op 3808, *2 (2d Dept 2012). No such showing has been made here. *Retropolis, Inc. v 14th Street Development LLC*, 17 AD3d 209 (1st Dept 2005). Plaintiff relies, in part, on *Kew Gardens Hills Apartment Owners, Inc. v Horing Welikson & Rosen, P.C.* (35 AD3d 383 [2d Dept 2006]) for the proposition that an individual may not be shielded from liability simply by arguing that he or she was acting in a representative capacity. However, that case involved a claim for breach of fiduciary duty, which is not alleged in the present matter. Plaintiff has failed to allege any facts sufficient to find any of the individual defendants were in a confidential relationship with it.

That branch of the Bradhurst defendants' motion (motion sequence number 008), the Brooks defendants' motion (motion sequence number 007) and the Barnhart and Dambly motion (motion sequence number 006) seeking to dismiss this cause of action for negligent misrepresentation is

granted, since it is duplicative of the cause of action for breach of contract. *Hamlet on Olde Oyster Bay Homeowners Association v Holiday Organization, Inc.*, 65 AD3d 1284, *supra*. Moreover, plaintiff failed to articulate facts to support this cause of action against the individual defendants.

That branch of Magnusson's motion (motion sequence number 005) seeking to dismiss this cause of action for negligence as asserted against it is granted, for the reasons stated below with respect to the 11th cause of action, *infra*. That branch of Magnusson's motion (motion sequence number 005) seeking to dismiss this cause of action for fraud as asserted against, it is granted.

Magnusson's argument regarding the Martin Act's preclusion of this claim has been discussed above and found not to be persuasive. Hence, the court must determine whether the complaint sufficiently establishes the elements of common-law fraud as asserted against Magnusson.

To set forth a prima facie case of fraud, a plaintiff must allege "misrepresentation or concealment of a material fact, falsity, scienter on the part of the wrongdoer, justifiable reliance and resulting injury." *Dembeck v 220 Central Park South, LLC*, 33 AD3d 491, 492 (1st Dept 2006). Further, the cause of action must establish a "particularized factual assertion which supports the inference of scienter [internal quotation marks and citation omitted]." *Ford v Sivilli*, 2 AD3d 773, 775 (2d Dept 2003). Plaintiff has failed to do . The allegation against Magnusson (see Complaint ¶ 95) are insufficient to sustain a claim of fraud, pursuant to CPLR 3016 (b).

That branch of Magnusson's motion (motion sequence number 005) seeking to dismiss this cause of action for negligent misrepresentation as asserted against it is granted.

> "It has long been the law in New York that a plaintiff in an action for negligent misrepresentation must show either privity of contract between the plaintiff and the defendant or a relationship 'so close as to approach that of privity' [internal citation omitted]."
>
> [P]laintiff] has] not sufficiently alleged that [it was] a 'known party or parties [to the contract]' ... While [Magnusson] knew in general that prospective

> purchasers of apartments would rely on the offering plan, there is no indication that it knew [this plaintiff] would be among them, or indeed that [Magnusson] knew or had the means of knowing of plaintiff['s] existence when it made the statements for which it is being sued [internal citation omitted]."

Sykes v RFD Third Avenue 1 Associates, LLC, 15 NY3d 370, 372 (2010).

Nor is the court persuaded that plaintiff had the functional equivalency of contractual privity, because it was not a known party to Magnusson, merely a member of a potential class of purchasers. *Bri-Den Construction Co., Inc. v Kapell & Kostow Architects, P.C.*, 56 AD3d 355 (1st Dept 2008).

That branch of Magnusson's motion (motion sequence number 005) seeking to dismiss the breach of contract as asserted against it is granted for the reasons enunciated with respect to the 12th cause of action, *infra*.

That branch of Magnusson's motion (motion sequence number 005) seeking to dismiss the 9th cause of action as asserted against it for unjust enrichment, is granted. Plaintiff is arguing that there was a breach of the offering plan and purchase agreement, the proceeds from which unjustly enriched Magnusson. However, the existence of a valid contract bars a cause of action in quantum meruit. *Hawthorne Group, LLC v RRE Ventures*, 7 AD3d 320 (1st Dept 2004); *see also Sheiffer v Shenkman Capital Management, Inc.*, 291 AD2d 295 (1st Dept 2002).

That branch of Magnusson's motion (motion sequence number 005) seeking to dismiss this cause of action for professional malpractice as asserted against it, is granted. There is no contractual privity between Magnusson and plaintiff, nor the functional equivalency of contractual privity, so as to sustain this cause of action, as discussed above with respect to the 7th cause of action.

That portion of West Manor's motion (motion sequence number 009) seeking to dismiss the 11th cause of action for negligence as asserted against it, is granted. Not only are the allegations of negligence appearing in the complaint based on defects in the construction of the condominium, which

sound in breach of contract rather than tort (*Gallup v Summerset Homes, LLC*, 82 AD3d 1658, *supra*; *Hamlet on Olde Oyster Bay Home Owners Association, Inc. v Holiday Organization, Inc.*, 65 AD3d 1284, *supra*; *Rothstein v Equity Ventures*, 299 AD2d 472, *supra*), but, in addition, a contractor generally does not owe a duty of care to a noncontracting party (*Timmins v Tishman Construction Corp.*, 9 AD3d 62 [1st Dept 2004]), except in three circumstances not applicable to the case at bar: (1) "while discharging a contractual obligation, the contract creates an unreasonable risk of harm"; (2) the non-contracting third party suffered an injury based on reasonable reliance on the contractors continuing performance of a contractual obligation; or (3) "where the contracting party has entirely displaced the other party's duty to maintain the premises safely [internal quotation marks and citations omitted." *Powell v HIS Contractors, Inc.*, 75 AD3d 463, 464 (1st Dept 2010).

That branch of West Manor's motion (motion sequence number 009) seeking to dismiss the breach of contract claim as asserted against it, is granted. Plaintiff claims that it has standing to assert such claims as third-party beneficiaries of the sponsor's contracts with the contractors. In support of this contention, plaintiff cites to *Board of Managers of the Alfred Condominium v Carol Management* (214 AD2d 380 [1st Dept 1995]), which found that individual condominium unit owners had standing to sue the building's contractors as third-party beneficiaries of the contract between the contractors and the sponsor. However, that case, as well as its progeny (*Diamond Castle Partners IV PRC, L.P. v IAC/InterActiveCorp*, 82 AD3d 421 [1st Dept 2011]), involved contracts in which the eventual purchasers of the units were specifically stated to be beneficiaries of the agreements. That is not the situation in the case at bar. The contracts that are subject to this cause of action do not contain any reference to eventual purchasers as beneficiaries of the agreements. Absent such express contractual language, the unit owners lack standing to assert claims against the contractors. *See e.g. Sykes v RFD Third Avenue 1 Associates, LLC*, 67 AD3d 162 (1st Dept 2009], *affd* 15 NY3d 370 (2010).

For the same reasons, that branch of Magnusson's motion (motion sequence number 005) seeking to dismiss the 6th cause of action as asserted against it, is granted. Since the plaintiff is not the third-party beneficiary of the architectural contract, it has no standing to sue any party to those agreements.

That branch of West Manor's motion (motion sequence number 009) seeking to dismiss the 13th cause of action as asserted against it for unjust enrichment is granted, for the reasons stated above. Further, a claim for unjust enrichment may not be maintained, absent a contractual relationship between the parties, without a showing that the services were performed at the plaintiff's behest. *Georgia Malone & Company v Rieder,* 86 AD3d 406 (1st Dept 2011).

The branches of the Bradhurst defendants' motion (motion sequence number 008), Magnusson's motion (motion sequence number 005) the motion of Barnhart and Dambly (motion sequence number 006) and the Brooks defendants' motion (motion sequence number 007) seeking to dismiss the 14th cause of action as asserted against them, is granted.

Plaintiff lacks standing to assert a cause of action alleging violations of General Business Law § 349.

> "The threshold under section 349 requires allegations that the defendants' practices have a broad impact on consumers at large. [C]learly not cognizable under the statute are large, private, single-shot contractual transaction[s]. Section 349 was intended [as] a consumer protection statute, so [p]rivate transactions without ramifications for the public at large are not the proper subject of [such] a claim [internal quotation marks and citations omitted]."

Green Harbour Homeowners' Association, Inc. v G.H. Development and Construction, Inc., 307 AD2d 465, 468-469 (3d Dept 2003).

In the instant action, plaintiff failed to allege "a unique set of circumstances whose remedy is not already available to the Attorney-General [internal quotation marks and citations omitted]."

Thompson v Parkchester Apartments Co., 271 AD2d 311, 311 (1st Dept 2000). Because plaintiff has only alleged individual injury, a cause of action premised on General Business Law §§ 349 and 350 cannot be maintained.

The branches of the Bradhurst defendants' motion (motion sequence number 008), the Barnhart and Dambly motion (motion sequence number 006) and the Brooks defendants' motion (motion sequence number 007) seeking to dismiss this cause of action for fraudulent transfers, is granted. This cause of action fails to allege facts in sufficient detail to support this claim, pursuant to the provisions of CPLR 3016 (b). *Wildman & Bernhardt Construction, Inc. v BPM Associates, L.P.*, 273 AD2d 38 (1st Dept 2000); *IDC (Queens) Corp. v Illuminating Experiences*, 220 AD2d 337 (1st Dept 1995); *Bd of Managers of 374 Manhattan Avenue Condominium v Harlem Infil LLC*, 2010 WL 2572583, 2010 NY Misc LEXIS 2211, 2010 NY Slip Op 31518(U) (Sup Ct, NY County 2010).

It is noted that plaintiff seeks punitive damages for its 3rd, 6th, 14th and 15th causes of action, and that the parties have argued for and against such relief. However, since the court has now dismissed the 6th, 14th and 15th causes of action, punitive damages are not available for those claims. *Rocanova v Equitable Life Assurance Society of the United States*, 83 NY2d 603 (1994). As for the 3rd cause of action, "[t]o sustain a claim for punitive damages in tort, one of the following must be shown: intentional or deliberate wrongdoing, aggravating or outrageous circumstances, a fraudulent or evil motive, or a conscious act that willfully and wantonly disregards the rights of another." *Gamiel v Curtis & Riess-Curtis, P.C.*, 16 AD3d 140, 141 (1st Dept 2005). However, alleging fraud alone is insufficient to warrant the imposition of punitive damages; the conduct must be both egregious and be part of a pattern of similar conduct directed at the public generally, which is not the case in the instant matter. *Appel v Giddins*, 89 AD3d 543 (1st Dept 2011). Based on the foregoing, plaintiff's prayers for punitive damages is dismissed. Accordingly, it is hereby

ORDERED that defendant Magnusson Architecture & Planning PC's motion to dismiss the complaint as asserted against it (motion sequence number 005) is granted and the fifth, sixth, seventh, eighth, ninth and tenth causes of action are dismissed, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that defendants Richard Barnhart and Mark Dambly's motion to dismiss the complaint as asserted against them (motion sequence number 006)is granted, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that defendants Duvernay + Brooks, LLC and Joni Brooks motion to dismiss the complaint as asserted against them (motion sequence number 007) is granted with respect to defendant Joni Brooks and granted with respect to defendant Duvernay + Brooks, LLC with respect to the second, fourth, fourteenth and fifteenth causes of action only, with costs and disbursements to defendant Joni Brooks as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment in favor of defendant Joni Brooks and to dismiss the second, fourth, fourteenth and fifteenth causes of action as asserted against Duvernay + Brooks, LLC; and it is further

ORDERED that defendants Bradhurst 100 Development LLC and Pennrose Properties, LLC's motion to dismiss the complaint as asserted against them (motion sequence number 008) is granted only with respect to the second, fourth, fourteenth and fifteenth causes of action and those causes of action are dismissed as against said defendants; and it is further

ORDERED that defendant West Manor Construction Corp.'s motion to dismiss the complaint as asserted against it (motion sequence number 009) is granted and the eleventh, twelfth and thirteenth causes of action are severed and dismissed as against said defendant, with costs and disbursements to

said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that remaining defendants are directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 304 located at71 Thomas Street, NYC at 9:30 A.M. on October 4, 2012.

Dated: June 18, 2012

ENTER:

Joan M. Kenney, J.S.C.