[* 1]

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

PRESENT: _____ **PART** 46

Index Number : 600739/2010

BURTON, ROBERT

VS

LUPU, EMANUELA, ESQ.

Sequence Number : 002

DISMISS

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to 4 **were read on this motion to/for** dismiss the action

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

Cross-Motion: ☑ **Yes** ☐ **No**

Upon the foregoing papers, It is ordered ~~that this motion~~ and adjudged that:

The court grants the motion by defendants Lupu, Tammaro, and Smith, Buss & Jacobs to dismiss the action against them, pursuant to the accompanying decision. C.P.L.R. § 3211(a)(3), (5), and (7). Plaintiff's cross-motion to serve and file a late complaint is resolved pursuant to the 2/9/11 stipulation.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 8/8/12

Lucy Billings

J.S.C.

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

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 46

----------x

ROBERT BURTON,

Plaintiff

- against -

EMANUELA LUPU, ESQ., DOMINICK TAMMARO, SMITH, BUSS & JACOBS, 70 PARK TERRACE EAST OWNERS CORP., and PRIME LOCATIONS, INC.,

Defendants

----------x

Index No. 600739/2010

DECISION AND ORDER

LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Plaintiff sues to recover damages for harassment and fraud arising from a landlord-tenant proceeding that defendant 70 Park Terrace East Owners Corp., represented by defendants Lupu and Smith, Buss & Jacobs, maintained against non-party Equity Preservation Corp. to recover possession of apartment 5G, 70 Park Terrace East, in New York County. Plaintiff also seeks a declaration that he, Equity Preservation, or both own the apartment. 70 Park Terrace East and its managing agent, defendant Prime Locations, Inc., move, and Lupu, defendant Tammaro, a partner in Smith, Buss & Jacobs, and the firm separately move to dismiss the complaint on the grounds of lack of standing, res judicata or collateral estoppel, and failure to state a claim. C.P.L.R. § 3211(a)(3), (5), and (7). Plaintiff cross-moves for a declaration that 70 Park Terrace East does not own the apartment. C.P.L.R. §§ 3001, 3212(b) and (e). For the

reasons explained below, the court grants defendants' motions and denies plaintiff's cross-motion.

II. DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

A. LACK OF STANDING

Lack of standing is a ground for dismissing the complaint, C.P.L.R. § 3211(a)(3); Lance Intl., Inc. v. First Natl. City Bank, 86 A.D.3d 479 (1st Dep't 2011); Security Pac. Natl. Bank v. Evans, 31 A.D.3d 278, 280 (1st Dep't 2006); Williams v. Stein, 6 A.D.3d 197 (1st Dep't 2004), as long as defendants do not waive the defense by failing to appear or answer timely. Wells Fargo Bank, NA v. Edwards, 95 A.D.3d 692 (1st Dep't 2012); Security Pac. Natl. Bank v. Evans, 31 A.D.3d at 278. In determining a motion to dismiss based on lack of standing, the court accepts the allegations of the complaint and plaintiff's affidavits as true. Rhodes v. Herz, 84 A.D.3d 1, 3 n.1 (1st Dep't 2011); Trustees of the Plumbers Local Union No. 1 Additional Sec. Benefit Fund v. City of New York, 73 A.D.3d 530, 531 (1st Dep't 2010); Hammer v. American Kennel Club, 304 A.D.2d 74, 78 (1st Dep't 2003); Shui Kam Chan v. Louis, 303 A.D.2d 151, 152 (1st Dep't 2003).

A corporation's officer may not recover for the corporation's claims. Spear, Leeds & Kellogg v. Bullseye Sec., 291 A.D.2d 255, 256 (1st Dep't 2002); Uribe v. Merchants Bank of N.Y., 239 A.D.2d 128 (1st Dep't 1997). Nor may an individual shareholder recover for injuries to the corporation. New Castle Siding Co. v. Wolfson, 63 N.Y.2d 782, 784 (1984); MatlinPatterson

ATA Holdings LLC v. Federal Express Corp., 87 A.D.3d 836, 839 (1st Dep't 2011); Rogers v. Ciprian, 26 A.D.3d 1, 6 (1st Dep't 2005); Evangelista v. Slatt, 20 A.D.3d 349, 350 (1st Dep't 2005). See Dragon Inv. Co. II LLC v. Shanahan, 49 A.D.3d 403, 404 (1st Dep't 2008); Behrens v. Metropolitan Opera Assn., Inc., 18 A.D.3d 47, 50 (1st Dep't 2005). This limitation applies even to a sole shareholder as plaintiff is here. New Castle Siding Co. v. Wolfson, 97 A.D.2d 501, 502 (1st Dep't 1983), aff'd, 63 N.Y.2d at 784; MatlinPatterson ATA Holdings LLC v. Federal Express Corp., 87 A.D.3d at 839.

Here, plaintiff lacks standing because Equity Preservation was the owner of the apartment in the cooperative apartment building, the shareholder of the cooperative, and the party to the proprietary lease. Plaintiff, the sole shareholder, officer, and director of Equity Preservation, signed the lease as the president of Equity Preservation. See Rogers v. Ciprian, 26 A.D.3d at 3-4; Behrens v. Metropolitan Opera Assn., Inc., 18 A.D.3d at 49.

The complaint fails to establish injury to plaintiff himself from breach of a duty defendants owed to him individually, so as to provide a basis for a claim by him. Abrams v. Donati, 66 N.Y.2d 951, 953 (1985); New Castle Siding Co. v. Wolfson, 97 A.D.2d at 502, aff'd, 63 N.Y.2d at 784; Behrens v. Metropolitan Opera Assn., Inc., 18 A.D.3d at 50. Although plaintiff claims Equity Preservation assigned its rights in the cooperative apartment to him, he nowhere alleges in either his complaint or

his affidavits that the assignment was in writing, as required by the Statute of Frauds. N.Y. Gen. Oblig. Law § 5-703(1); Panetta v. Kelly, 17 A.D.3d 163, 165 (1st Dep't 2005); Lowinger v. Lowinger, 287 A.D.2d 39, 44 (1st Dep't 2001). See LaRuffa v. Fleet Bank, 260 A.D.2d 299 (1st Dep't 1999). Paragraph 16(a) of the apartment's proprietary lease also requires that an assignment of rights in the cooperative apartment be in writing. Aff. of Michael F. Daly Ex. E, at 10. 70 Park Terrace East maintains these defenses as a party to the lease. Ashkenazy Acquisition Corp. v. Rela Realty Corp., 296 A.D.2d 332, 333 (1st Dep't 2002).

Plaintiff further claims that, because the shares allocated to the apartment qualify as "unsold shares" under ¶ 38(a) of the lease, ¶ 38(b) entitled Equity Preservation to transfer the shares to him without the consent of 70 Park Terrace East, its shareholders or directors, or Prime Locations. Any such exemption from the consent requirement, however, does not negate the statutory and contractual requirements for a written assignment. Daly Aff. Ex. E ¶ 16(a), at 10; N.Y. Gen. Oblig. Law § 5-703(1).

B. RES JUDICATA AND COLLATERAL ESTOPPEL

Under the res judicata doctrine, a final judgment bars a later action between the same parties on any claim arising out of the same conduct. Gomez v. Brill Sec., Inc., 95 A.D.3d 32, 35 (1st Dep't 2012); Simmons v. New York City Health & Hosps. Corp., 71 A.D.3d 410, 411 (1st Dep't 2010); Ginzera Assoc. LLC v.

Ifantopoulos, 70 A.D.3d 427, 429 (1st Dep't 2010). Related collateral estoppel principles bind parties to legal conclusions and factual findings necessarily determined in an earlier proceeding that involved the same material issues. Ginzera Assoc. LLC v. Ifantopoulos, 70 A.D.3d at 429; Academic Health Professionals Ins. Assn. v. Lester, 30 A.D.3d 328, 329 (1st Dep't 2006). Defendants, as the parties relying on res judicata and collateral estoppel, must demonstrate the identity of issues, that they were necessarily decided, and that plaintiff had a full and fair opportunity to litigate them. Gomez v. Brill Sec., Inc., 95 A.D.3d at 35; Ginzera Assoc. LLC v. Ifantopoulos, 70 A.D.3d at 429.

Two prior court decisions resolved plaintiff's claim for the apartment's unsold shares: one in a proceeding by 70 Park Terrace East against Equity Preservation in New York City Civil Court and another in an action by plaintiff against defendants in Supreme Court, New York County. The current complaint seeks a declaration that the apartment shares are unsold shares, to which Equity Preservation was and now plaintiff is entitled, an issue that was litigated in the Civil Court proceeding. The Civil Court's decision dated May 7, 2009, finding Equity Preservation had breached the lease, and, based on that breach, granting 70 Park Terrace East a final judgment of possession of the apartment against Equity Preservation, necessarily decided its claim to the apartment shares against Equity Preservation and hence plaintiff. Daly Aff. Ex. H, at 9-10.

Plaintiff also raised these issues in a prior action in Supreme Court, New York County, which he commenced on his own behalf against defendants 70 Park Terrace East, Lupu, and Smith, Buss & Jacobs, LLC. The court (Madden, J.) dismissed the entire action upon plaintiff's default in an order dated September 15, 2009. A dismissal upon default is still of preclusive effect under res judicata and collateral estoppel. CIBC Mellon Trust Co. v. HSBC Guyerzeller Bank AG, 56 A.D.3d 307, 308 (1st Dep't 2008); Brown v. Suggs, 39 A.D.3d 395 (1st Dep't 2007); Academic Health Professionals Ins. Assn. v. Lester, 30 A.D.3d at 329; Trisingh Enters. v. Kessler, 249 A.D.2d 45, 46 (1st Dep't 1998). As plaintiff now raises the same issues in his complaint here that twice were raised and decided, this action is barred by res judicata, Simmons v. New York City Health & Hosps. Corp., 71 A.D.3d at 411; Ginzera Assoc. LLC v. Ifantopoulos, 70 A.D.3d at 429, and collateral estoppel. Brown v. Suggs, 39 A.D.3d 395; Fallek v. Becker, Archiron & Isserlis, 246 A.D.2d 394, 395 (1st Dep't 1998).

Even though plaintiff was not a party to the prior proceeding in Civil Court, since Equity Preservation and plaintiff, the sole shareholder, director, and officer of Equity Preservation, are in privity, res judicata and collateral estoppel bar his claims here. UBS Sec. LLC v. Highland Capital Mgt., L.P., 93 A.D.3d 489, 490 (1st Dep't 2012); Casa de Meadows Inc. (Cayman Is.) v. Zaman, 76 A.D.3d 917, 922 (1st Dep't 2010); Simmons v. New York City Health & Hosps. Corp., 71 A.D.3d at 411;

Ginzera Assoc. LLC v. Ifantopoulos, 70 A.D.3d at 429. Similarly, although neither Prime Locations nor Tammaro was a party to the prior litigation, plaintiff alleges that Prime Locations was an agent of 70 Park Terrace East and Tammaro was a partner in Smith, Buss & Jacobs and alleges claims against the agent indistinct from the claims against its principal and claims against the partner indistinct from the claims against his firm.

C. FAILURE TO STATE A CLAIM

Upon defendants' motion to dismiss claims pursuant to C.P.L.R. § 3211(a)(7), the court also must accept the complaint's allegations as true, liberally construe them, and draw all reasonable inferences in plaintiff's favor. Nonnon v. City of New York, 9 N.Y.3d 825, 827 (2007); Goshen v. Mutual Life Ins. Co. of N.Y., 98 N.Y.2d 316, 326 (2002); Harris v. IG Greenpoint Corp., 72 A.D.3d 608, 609 (1st Dep't 2010); Vig v. New York Hairspray Co., L.P., 67 A.D.3d 140, 144-45 (1st Dep't 2009). In short, the court may dismiss a claim based on C.P.L.R. § 3211(a)(7) only if the allegations completely fail to state a claim. Leon v. Martinez, 84 N.Y.2d at 88; Harris v. IG Greenpoint Corp., 72 A.D.3d at 609; Frank v. DaimlerChrysler Corp., 292 A.D.2d 118, 121 (1st Dep't 2002); Scott v. Bell Atl. Corp., 282 A.D.2d 180, 183 (1st Dep't 2001).

1. Harassment

Plaintiff claims defendants engaged in harassment regarding the condition of the apartment. Daly Aff. Ex. C § D. Harassment is not a cognizable civil claim, Jerulee Co. v. Sanchez, 43

A.D.3d 328, 329 (1st Dep't 2007); Hartman v. 536/540 E. 5th St. Equities, Inc., 19 A.D.3d 240 (1st Dep't 2005), except under specific statutory and regulatory provisions that plaintiff does not rely on and do not apply here. Jerulee Co. v. Sanchez, 43 A.D.3d at 329.

Nor does the complaint establish intentional infliction of emotional distress, which requires plaintiff to show defendants (1) engaged in extreme and outrageous conduct, (2) with intent to cause or in disregard of a substantial probability that the conduct would cause severe emotional distress, (3) that did cause plaintiff severe emotional distress. Howell v. New York Post Co., 81 N.Y.2d 115, 121 (1993); Suarez v. Bakalchuk, 66 A.D.3d 419 (1st Dep't 2009). To support the first element alone, plaintiff must show that defendants' conduct was "beyond all possible bounds of decency" and "utterly intolerable in a civilized community." Marmelstein v. Kehillat New Hempstead: The Rav Aron Jofen Community Synagogue, 11 N.Y.3d 15, 22-23 (2008); Howell v. New York Post Co., 81 N.Y.2d at 122; Murphy v. American Home Prods. Corp., 58 N.Y.2d 293, 303 (1983); Suarez v. Bakalchuk, 66 A.D.3d 419. Defendants' conduct, as alleged by plaintiff, does not approach that level.

2. Fraud

Plaintiff also claims defendants committed fraud maliciously and in bad faith, in managing the cooperative and enforcing defendants' rights in court. Daly Aff. Ex. C §§ E-F. Plaintiff must plead fraud with specificity. C.P.L.R. § 3016(b); Mandarin

Trading Ltd. v. Wildenstein, 16 N.Y.3d 173, 178 (2011); Giant Group v. Arthur Andersen LLP, 2 A.D.3d at 190; Non-Linear Trading Co. v. Braddis Assoc., 243 A.D.2d 107, 116 (1st Dep't 1998). Fraud claims based on misrepresentations require plaintiff to allege that defendants misrepresented or omitted a material fact, knowing the misstatement or omission was false, to induce plaintiff to rely on it, and that plaintiff justifiably relied on the misrepresentation or omission and incurred damages from his reliance. Mandarin Trading Ltd. v. Wildenstein, 16 N.Y.3d at 178; Gosmile, Inc. v. Levine, 81 A.D.3d 77, 81 (1st Dep't 2011); Nicosia v. Board of Mgrs. of the Weber House Condominium, 77 A.D.3d 455, 456 (1st Dep't 2010). Plaintiff's mere recitation of the circumstances and occurrences leading to the judgments in the prior litigation do not indicate any false representations or concealment by defendants that he actually and justifiably relied on to his damage. His allegations thus fall far short of the particularity requirements. Dragon Inv. Co. II LLC v. Shanahan, 49 A.D.3d at 403.

3. Violation of Judiciary Law § 487

Plaintiff claims the attorney defendants violated New York Judiciary Law § 487(1), which directs that:

> An attorney or counselor who is guilty of any deceit or collusion . . . with intent to deceive the court or any party . . . is guilty of a misdemeanor, and in addition to the punishment prescribed therefor by the penal law, he forfeits to the party injured treble damages, to be recovered in a civil action.

Even an unsuccessful attempted deceit violates Judiciary Law § 487(1). Amalfitano v. Rosenberg, 12 N.Y.3d 8, 14 (2009); Kurman

v. Schnapp, 73 A.D.3d 435 (1st Dep't 2010).

To sustain a claim for violation of Judiciary Law § 487(1), plaintiff must show "a chronic and extreme pattern of legal delinquency" along with the statutorily required intent to deceive. Kaminsky v. Herrick, Feinstein LLP, 59 A.D.3d 1, 13 (1st Dep't 2008); Kinberg v. Opinsky, 51 A.D.3d 548, 549 (1st Dep't 2008); Nason v. Fisher, 36 A.D.3d 486, 487 (1st Dep't 2007); Solow Mgt. Corp. v. Seltzer, 18 A.D.3d 399, 400 (1st Dep't 2005). See Jaroslawicz v. Cohen, 12 A.D.3d 160, 161 (1st Dep't 2004). He also must allege damages from defendants' conduct. Maksimiak v. Schwartzapfel Novick Truhowsky Marcus, P.C., 82 A.D.3d 652 (1st Dep't 2011); Kaminsky v. Herrick, Feinstein LLP, 59 A.D.3d at 13; Nason v. Fisher, 36 A.D.3d at 487; Jaroslawicz v. Cohen, 12 A.D.3d at 161.

Plaintiff must interpose his claim for damages under Judiciary Law § 487 in the action or proceeding in which he alleges defendants deceived the court or a party, unless the alleged deceit was part of "a larger fraudulent scheme." Specialized Indus. Servs. Corp. v. Carter, 68 A.D.3d 750, 752 (2d Dep't 2009). See Melnitsky v. Owen, 19 A.D.3d 201 (1st Dep't 2005); Yalkowsky v. Century Apts. Assocs., 215 A.D.2d 214, 215 (1st Dep't 1995); Cramer v. Sabo, 31 A.D.3d 998, 999 (3d Dep't 2006). Plaintiff does not allege that defendants deceived the court or a party in defending his current action. Insofar as he alleges they did so in the Civil Court proceeding, Equity Preservation, the party with standing to raise that claim, raised

it in that proceeding, where the Civil Court rejected it. Daly Aff. Exs. G, at 2, and H, at 2; Ginzera Assoc, LLC v. Ifantopoulos, 70 A.D.3d at 429; Academic Health Professionals Ins. Assn. v. Lester, 30 A.D.3d at 329. See UBS Sec. LLC v. Highland Capital Mgt., L.P., 93 A.D.3d at 490; Casa de Meadows Inc. (Cayman Is.) v. Zaman, 76 A.D.3d at 922; Simmons v. New York City Health & Hosps. Corp., 71 A.D.3d at 411. The principal thrust of that claim, moreover, that Lupu misrepresented a conflict of interest on the part of Equity Preservation's attorney and concealed previous proceedings, constitutes neither a "chronic and extreme pattern of legal delinquency," Kaminsky v. Herrick, Feinstein LLP, 59 A.D.3d at 13; Kinberg v. Opinsky, 51 A.D.3d at 549; Nason v. Fisher, 36 A.D.3d at 487; Solow Mgt. Corp. v. Seltzer, 18 A.D.3d at 400, nor a part of any alleged "larger fraudulent scheme," Specialized Indus. Servs. Corp. v. Carter, 68 A.D.3d at 752, as would be required to maintain the claim, even for the first time, in this action.

Insofar as plaintiff alleges that defendants deceived the court or a party in defending his prior Supreme Court action, where he maintained standing to raise any such claim, the Supreme Court dismissed all his claims there. His claim of defendants' deceit in that action, moreover, that the attorneys delayed in appearing, with malicious intent to prevent plaintiff from obtaining a judgment, again falls short of the requisite pattern of delinquency or component of a fraudulent scheme spanning defendant attorneys' conduct of litigation involving plaintiff,

to maintain the claim in this action.

Finally, plaintiff fails to draw a causal connection between defendants' alleged deceit and the adverse results to Equity Preservation and plaintiff in the prior litigation. Mars v. Grant, 36 A.D.3d 561, 562 (1st Dep't 2007). Plaintiff never demonstrates, for example, how he or even Equity Preservation would have obtained a favorable judgment, had Lupu not misrepresented a conflict of interest on the part of Equity Preservation's attorney or concealed previous proceedings, or had the attorneys not delayed in appearing in the Supreme Court action. The absence of damages specifically flowing from a violation of Judiciary Law § 487 is fatal to any such claim. Maksimiak v. Schwartzapfel Novick Truhowsky Marcus, P.C., 82 A.D.3d 652; Kaminsky v. Herrick, Feinstein LLP, 59 A.D.3d at 13; Nason v. Fisher, 36 A.D.3d at 487; Jaroslawicz v. Cohen, 12 A.D.3d at 161. See Kurman v. Schnapp, 73 A.D.3d 435.

III. PLAINTIFF'S CROSS-MOTION FOR DECLARATORY RELIEF

Plaintiff cross-moves for a declaration that defendant 70 Park Terrace East waived its winning bid for the subject apartment 5G by continuing to treat Equity Preservation as the apartment owner. As addressed above, plaintiff lacks standing to seek this declaratory relief on Equity Preservation's behalf. Even if plaintiff maintained standing to seek this relief, the prior judgments in both Civil Court and Supreme Court bar plaintiff's current claim that Equity Preservation or plaintiff as its successor owns the apartment, based on res judicata and

collateral estoppel. Citidress II Corp. v. Hinshaw & Culbertson LLP, 59 A.D.3d 210, 211 (1st Dep't 2009); Active Media Servs., Inc. v. Grant Prideco, Inc., 35 A.D.3d 165, 166 (1st Dep't 2006); Noto v. Bedford Apts. Co., 21 A.D.3d 762, 765 (1st Dep't 2005); Jenkins v. State of N.Y. Div. of Hous. & Community Renewal, 264 A.D.2d 681, 682 (1st Dep't 1999).

Even if res judicata or collateral estoppel did not bar plaintiff's claim, plaintiff has failed to demonstrate that the transmittal of invoices for maintenance charges to Equity Preservation, after 70 Park Terrace East's successful bid at a foreclosure sale for the shares allocated to the apartment, waived 70 Park Terrace East's right to possession of the apartment. A waiver of rights may not be inferred from particular circumstances unless plaintiff establishes that defendants manifested a voluntary and intentional abandonment or relinquishment of a known right. Fundamental Portfolio Advisors, Inc. v. Tocqueville Asset Mgt., Ltd., 7 N.Y.3d 96, 104 (2006); Gilbert Frank Corp. v. Federal Ins. Co., 70 N.Y.2d 966, 968 (1988); Jefpaul Garage Corp. v. Presbyterian Hosp., 61 N.Y.2d 442, 446, 448 (1984); Jumax Assoc. v. 350 Cabrini Owners Corp., 46 A.D.3d 407, 408 (1st Dep't 2007). The monthly invoices payable to 70 Park Terrace East that Prime Locations transmitted to Equity Preservation, the apartment's former lessee, do not constitute a waiver of 70 Park Terrace East's rights to foreclose on the premises that were subject to a foreclosure sale due to Equity Preservation's default under the proprietary lease. Bercy

Invs. v. Sun, 239 A.D.2d 161, 162 (1st Dep't 1997).

Were the court to consider plaintiff's belated claim, raised neither in his complaint nor in his cross-motion, but only in a letter dated July 26, 2012, the claim is without merit. Plaintiff now claims, relying on Plotch v. 375 Riverside Dr. Owners, Inc., 92 A.D.3d 478 (1st Dep't 2012), that 70 Park Terrace East's ownership of the shares to apartment 5G is a nullity because 70 Park Terrace East failed to close title on them within the deadline set by the terms of the sale. 70 Park Terrace East's delay in closing on the shares after its successful bid at the foreclosure sale does not confer any rights on plaintiff or even on Equity Preservation, as neither was a party to the terms of the sale established by 70 Park Terrace East's winning bid. See id. Finally, were any of the complaint's claims viable, plaintiff's cross-motion for declaratory relief would be premature in any event, since issue has not been joined. C.P.L.R. § 3212(a); McHugh v. Weissman, 46 A.D.3d 369 (1st Dep't 2007); Durkin v. Durkin Fuel Acquisition Corp., 224 A.D.2d 574, 575 (2d Dep't 1996).

IV. CONCLUSION

For all the foregoing reasons, the court grants the motions by defendants 70 Park Terrace East Owners Corp., Prime Locations, Inc., Lupu, Tammaro, and Smith, Buss & Jacobs to dismiss the complaint and denies plaintiff's cross-motion for a declaratory judgment that 70 Park Terrace East waived its right to possession of apartment 5G, 70 Park Terrace East, New York County. C.P.L.R.

§§ 3001, 3211(a)(3), (5), and (7), 3212(a). This decision constitutes the court's order and judgment dismissing this action.

DATED: August 8, 2012

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.

UNFILED JUDGMENT

This Judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).