Board of Mgrs. of the Vetro Condominium v 107/31 Development Corp.
2014 NY Slip Op 32748(U)
October 21, 2014
Sup Ct, New York County
Docket Number: 154248/2013
Judge: Saliann Scarpulla
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 39

----------X

BOARD OF MANAGERS OF THE
VETRO CONDOMINIUM,

Plaintiff,

DECISION and ORDER

- against -

Index No154248/ 2013
Motion Seq. Nos. 001,002

107/31 DEVELOPMENT CORP., R.G.F
DEVELOPMENT CORP.,
SHLOMO FRIEDFERTIG, TRIUMPH PROPERTY
GROUP LTD., SJF MANAGEMENT LLC,
PINNER ARCHITECTURE PLLC d/b/a/
PINNER ASSOCIATES, and LAWRENCE PINNER,

Defendants.

----------X

HON. SALIANN SCARPULLA.:

In this action for damages brought by the Board of Managers of the Vetro Condominium ("condominium"), a residential condominium apartment building located at 107 East 31st Street, New York, New York (the "building"), defendants R.G.F. Development Corp. ("R.G.F."), Shlomo Friedfertig ("Friedfertig"), SJF Management LLC ("SJF") , 107/31 Development Corp (the "sponsor"), and Triumph Property Group LTD ("Triumph") (collectively, the sponsor, R.G.F. and Friedfertig are the "sponsor defendants"), move pursuant to CPLR 3013, 3016(b) 3211(a)(1) and/or 3211(a)(7) to dismiss the first, second, fourth, fifth, eighth, ninth, tenth, eleventh, and twelfth causes of action alleged by plaintiff Board of Managers of the Vetro Condominium (the "board" or

"plaintiff") in the complaint (motion sequence no. 001). In addition, defendants Pinner Architecture PLLC d/b/a Pinner Associates, and Lawrence H. Pinner (the "architect defendants") move to dismiss plaintiff's complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action, and pursuant to CPLR 3211(a)(5) for expiration of the applicable statute of limitations (motion sequence no. 002). Motion sequence nos. 001 and 002 are consolidated for disposition.

As alleged in the complaint, the building is a newly constructed 9-story structure containing fifteen (15) residential apartment units.[1] Plaintiff alleges that the sponsor defendants had marketing materials created and made available to the public in an effort to attract potential purchasers, and authorized Triumph to make representations to potential purchasers concerning the quality and features of the building and its units.

The units of the condominium were offered for sale by the sponsor defendants pursuant to the offering plan. The first sale of a residential unit closed on or about June 18, 2008. Plaintiff alleges that as of the date of the complaint, all but two of the units had sold.

---

[1]Unless otherwise indicated, all background facts are taken from the allegations of the complaint, and will be accepted as true only for the purposes of this motion to dismiss. *See Leon v. Martinez*, 84 N.Y.2d 83, 87 (1994) ("On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction [and the court will] accept the facts alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inferences, and determine only whether the facts as alleged fit within any cognizable legal theory") (citations omitted).

Plaintiff alleges that the sponsor/developer and design professionals failed to build the building in accordance with the promises and representations they made in their marketing materials, in the offering plan pursuant to which the units of the condominium were offered for sale, and in other communications with and to prospective purchasers.

Plaintiff asserts that the offering plan promised the purchasers of units of the condominium that the building would be properly constructed in compliance with all applicable laws and local industry standards, and that it would be safe. Plaintiff contends, however that the building contained "rampant defective conditions" which violate applicable government regulations, are contrary to local industry standards, compromise the quality of life for residents, an are patently unsafe.

Plaintiff alleges that the most egregious examples of the building's defects include extensive water infiltration into nearly all individual residential units, which caused mold growth and warped and buckling floors; missing fire stopping in numerous locations in the building; and numerous installation defects with regard to the main bulkhead roof.

In addition, it is alleged that defendants expressly promised in the offering plan that bathrooms and kitchens are ventilated via vertical sheet metal risers with roof-mounted fans. However, plaintiff further alleges that this ventilation was not installed in the building, in violation of the representations made in the offering plan and the New York City Building Code ("Building Code").

Plaintiff alleges that the sponsor defendants never amended the offering plan to reflect the building's pervasive construction defects. As a result, as the construction of the building continued and was eventually completed, the offering plan "came to contain many misrepresentations and misleading statements regarding the [b]uilding's true conditions." The plaintiff alleges that while the offering plan no longer contained accurate information for prospective purchasers, the sponsor defendants continued to disseminate it in an effort to sell the remaining units.

In opposition to the motions to dismiss, plaintiff abandoned the first and second causes of action as against Friedfertig, and "does not oppose dismissal" of the sixth cause of action against the architect defendants. At oral argument before the Court on April 16, 2014, plaintiff also withdrew the fifth, eighth and twelfth causes of action. Additionally, at oral argument, I converted the motion to dismiss the second cause of action for breach of warranty to a motion for summary judgment, and allowed the parties to submitted limited supplemental affidavits to address only the issue of timely notice of claims.

Discussion

Motion for summary judgment on second cause of action

A movant seeking summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, offering sufficient evidence to eliminate any material issues of fact. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Once a showing has been made, the burden shifts to the opposing party who must

then demonstrate the existence of a triable issue of fact. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980).

The second cause of action alleges breach of express warranty against the sponsor, and that the offering plan provides that the sponsor expressly warrants against defects in the common elements of the building caused by defective workmanship, materials or design by the sponsor and/or the design professionals.

Plaintiff alleges that the defects include missing or inadequate fire-stopping, defective construction of the roof and roof areas, which has resulted in water leaking into the building's interior and damaging finishes and fixtures in certain units, inadequate and missing ventilation systems, objectionable odors and noises between residential units, and cracking and staining at various building locations.

Plaintiff further alleges that the sponsor breached its obligation to correct these defects, and breached its duty to construct the building and its residential units in accordance with all applicable codes and filed plans and specifications. Additionally, plaintiff maintains that it (including the unit owners) fully performed all of its obligations under the offering plan, including but not limited to providing the sponsor with the required notice of its breach of the terms of the Common Element Warranty. Plaintiff adds that in the event that the Court finds that plaintiff did not provide the sponsor with the required notice, then the failure to provide such notice was the sponsor's responsibility because the sponsor uninterruptedly controlled the board from the date the

Common Element Warranty took effect through the last date of the Common Element Warranty period, yet refused to provide written notice of the defects on behalf of the board.

In support of the motion to dismiss this cause of action, the sponsor argues that timely notice was not received. There is no dispute that the first unit sale closed on June 18, 2008. Therefore, the sponsor argues, pursuant to the offering plan, the Common Element Warranty Period expired six-months later, on December 18, 2008, and any claim for breach of the Common Element Warranty had to be delivered by January 17, 2009, thirty (30) days after the last day of the Common Element Warranty Period. The sponsor notes that the complaint fails to allege that the plaintiff complied with the notice requirement by January 17, 2009, and therefore the cause of action should be dismissed. Additionally, the sponsor argues that the allegation that it controlled the board is unavailing, because the offering plan provides that either a unit owner or the board can give notice in writing of the claim.

At oral argument, I converted this potion of the developer defendants' motion to dismiss to a motion for summary judgment, and asked the parties to submit additional papers regarding whether or not there had been timely notice, and as I stated on the record if there was not notice I would dismiss anything that would have been covered by the warranty.

The defendants submitted an affidavit by Friedfertig, in which he stated that the first notice the sponsor received under the purchase agreements and offering plan of any warranty claim was a letter dated September 18, 2012 from Steven D. Sladkus, Esq., counsel for the Board of Managers. A copy of the September 18, 2012 letter was annexed to the Friedfertig affidavit.

Plaintiff submitted an affidavit of John Zelinski ("Zelinski"), Treasurer of the Board of Managers, and owner of unit 4A.[2] Zelinski maintains that the board provided the sponsor with proper notice of its claim for common element defects, and also refers to the September 18, 2012 letter from the board's attorney to the sponsor as timely, proper notice. Zelinski also submits a copy of a letter dated March 8, 2013 from the board's attorney to the sponsor requesting that the sponsor make repairs to the building's defective conditions, or pay the cost of the repairs. In addition, Zelinski states that he sent notices by email to Friedfertig and his son regarding some of the defective conditions of the units, such as warped and buckling floors. Zelinski submits copies of the email messages dated December 18, 2008, December 28, 2008, March 11, 2009, March 17, 2009, March 28, 2009 and March 30, 2009.

Plaintiff states in the complaint that the offering plan provides:

---

[2]To the extent that the Zelinski affidavit raises any arguments or facts for the first time, or submits new documents, they will be disregarded. I authorized only limited supplemental affidavits, solely for the purpose of addressing whether notice of warranty defect had been given or received, and when.

> For six months following the First Unit Closing, the Sponsor will correct defects in the Common Elements which are caused by: (I) defective workmanship by Sponsor . . .; (ii) defective materials supplied by Sponsor . . .; or (iii) defective design provided by the architect . . . . The foregoing six-month Common Element Warranty shall commence upon the later of (I) three months from the First Unit Closing or (ii) receipt by the Condominium of written notice from the Sponsor that the General Common Elements are substantially complete, as certified by the Sponsor's architect or engineer (the "Common Element Warranty Period").

Plaintiff, however, does not annex a copy of the offering plan to the complaint, nor does it submit one in opposition to this motion.

In support of their motion to dismiss, the developer defendants submit a copy of the offering plan. As to the Common Element Warranty and Common Element Warranty Period, however, the offering plan provides that "[t]he six month period which follows the First Unit Closing is the 'Common Element Warranty period,'" and does not include the language referred to in the complaint that the Common Element Warranty Period commences upon the later of three-months after the first unit closing or receipt by the condominium of notice from the sponsor of substantial completion of the common elements. This discrepancy was not addressed by either the defendants or plaintiff in their initial motion papers or at oral argument.

I find that due to the discrepancy in the terms of the Common Element Warranty as alleged in the complaint and the terms in the offering plan submitted by defendants, there are questions of fact as to whether notice of breach of the Common Element Warranty was properly provided. The email notices provided by defendants fail on their face to

constitute notice of a believed defect, as they were sent only by email, and not by certified mail as required. The question of whether the September 18, 2012 notice was timely cannot be resolved, because the parties present different version of the Common Element Warranty. As such, questions of material fact exist, and I must deny summary judgment, and will not dismiss this cause of action.

Motion to Dismiss

CPLR § 3211(a)(7) provides that a defendant may move for judgment dismissing the complaint on the grounds that "the pleading fails to state a cause of action." In determining whether to grant a motion to dismiss under CPLR § 3211(a)(7), the "court should accept as true the facts alleged in the complaint, accord plaintiff the benefit of every possible inference, and only determine whether the facts, as alleged, fit within any cognizable legal theory." *Frank v. Daimler Chrysler Corp.*, 292 A.D.2d 118, 121 (1st Dep't 2002).

The developer defendants move to dismiss the first, fourth, ninth, tenth and eleventh causes of action. The architect defendants move to dismiss the seventh cause of action, the only cause of action remaining as against them.

First Cause of Action – Breach of Contract Against the Sponsor

To state a cause of action for breach of contract, plaintiff must plead "the existence of a contract, the plaintiff's performance under the contract, the defendant's breach of that contract, and resulting damages." *See U.S. Bank Natl. Assoc. v. Lieberman,* 98

A.D.3d 422, 423 (1st Dep't 2012) (*citing JP Morgan Chase v. J.H. Elec. of N.Y., Inc.*, 69 A.D.3d 802, 803 (2d Dep't 2010)). *See also Harris v. Seward Park Hous. Corp.*, 79 A.D.3d 425, 426 (1st Dep't 2010) (to prove a breach of contract claim, a plaintiff must demonstrate: (1) the existence of a contract; (2) plaintiff's performance thereunder; (3) defendant's breach; and (4) damages).

As the first cause of action, plaintiff alleges that the sponsor made certain promises about the conditions and features of the units and building in the offering plan and purchase agreement, and that unit owners relied on the representations made by the sponsor in the offering plan prior to signing the purchase agreement. The developer defendants argue that the many alleged breaches outlined in the complaint all constitute an allegation of breach of the terms of the purchase agreement which provides strict notice procedures for notifying the sponsor of defects in the unit, and that the complaint does not contain allegations of timely compliance with the notice provisions. Plaintiff maintains that the breaches alleged are separate and apart from the conditions covered by the warranty contained in the purchase agreements, but rather alleges that the sponsor failed to (1) construct the building in accordance with the requirements of the offering plan and applicable law; (2) pay real estate takes on unsold units as promise in the offering plan; and (3) fund the condominium's "Working Capital Fund" as promised the offering plan.

A review of the complaint shows that plaintiff sets forth a list of alleged misdeeds and actions by the sponsor, which plaintiff purports are contrary to promises and statements made in the offering plan, with reference to particular provisions in the offering plan. Plaintiff specifically refers to and quotes from the offering plan in numerous instances, itemizing what it alleges to be the provisions of the offering plan breached by the sponsor.

In particular, the plaintiff notes that the sponsor expressly represented that "[a]ll bathrooms and kitchens are ventilated via vertical sheet metal risers with roof-counted fans." The plaintiff also alleges in the complaint that the offering plan, at page 12, provides that the "[c]ondominium is being constructed in accordance with all applicable zoning and building laws, regulations, codes and other requirements . . . [and] the Building shall be classified as Class 1-C, non-combustible construction." In addition, plaintiff alleges that firestopping is missing in certain areas, the copings are made of metal and not cast stone, a lack of copper flashings, lack of special precautions to prevent maintenance needs for EIFS, the lobby and public corridors remained unpainted, ventless dryers instead of dryers which vent outside, and lack of available storage in the cellar in violation of the offering plan. The plaintiff also alleges that the completed building contains conditions and features which are materially different from the plan descriptions.

In its motion to dismiss, defendants cites to six (6) paragraphs of the complaint – 3, 42, 51, 95-97 – in support of the argument that the first cause of action pleads a breach

of the purchase agreements, and therefore must be dismissed due to failure to plead compliance with the notice provision. Paragraphs 3, 42, and 51 contain allegations regarding the lack of proper ventilation, and paragraphs 95-97 address the alleged moisture infiltration. There are over 90 paragraphs in the first cause of action, and these paragraphs enumerate numerous other assertions of breaches of specific provisions of the offering plan, separate and apart from those cited by defendants which may arguably be covered by the warranty contained in the purchase agreement. Accordingly, the defendant's motion to dismiss the first cause of action against the sponsor is denied.

Fourth Cause of Action – Fraud in the Inducement against the Sponsor Defendants

It is well settled that where a cause of action for fraudulent inducement is duplicative of a claim for breach of contract it must be dismissed. *See Community Counseling & Mediation Servs. v Chera*, 115 A.D.3d 589, 591 (1st Dep't 2014) ("The proposed claim for fraudulent inducement, based merely on a misrepresented intent to perform, is duplicative of the breach of contract claim") (internal quotation and citations omitted). "In a fraudulent inducement claim, the alleged misrepresentation should be one of then-present fact, which would be extraneous to the contract and involve a duty separate from or in addition to that imposed by the contract, and not merely a misrepresented intent to perform." *Hawthorne Group, LLC v. RRE Ventures*, 7 A.D.3d 320, 323-324 (1st Dep't 2004) (citations omitted).

Here, plaintiff makes no allegations of a separate duty owed by defendants, or of any misrepresentations separate from the promises under the offering plan. In fact, the alleged misrepresentations mirror the alleged breaches of the offering plan. For example, plaintiff alleges in the complaint that the misrepresentations of existing fact include misrepresentations that the bathrooms and kitchens are ventilated via vertical sheet metal risers with roof-mounted fans; the building is constructed as a class 1-C non-combustible structure; the copings are cast stone, the through-wall flashings are copper; the building's lobby and public corridors are painted; and the building complies with applicable rules and regulations and the Building Code These allegations all are also cited as breaches of provisions of the offering plan.[3]

Additionally, this cause of action is preempted by the Martin Act (General Business Law Art. 23-A). "There is no private right of action where the fraud and misrepresentation relies entirely on alleged omissions in filings required by the Martin Act." *Berenger v 261 W. LLC*, 93 A.D.3d 175, 184 (1st Dep't 2012) (citing *Kerusa Co. LLC v W10Z/515 Real Estate Ltd. Partnership*, 12 NY3d 236, 247 (2009)).

---

[3]Moreover, plaintiff nearly concedes that the Offering Plan did not contain affirmative misrepresentations of existing fact, but rather alleges that it "*came to contain* numerous affirmative misrepresentations of existing fact." (Emphasis added.) It is only by virtue of breaching the terms of the Offering Plan that it could *come to contain* misrepresentations of fact, and is therefore is duplicative of the cause of action for breach of the offering plan. And by the plaintiff's own admission, if the offering plan "came to contain" misrepresentations, the alleged misrepresentations could not have been of then-present, or existing facts.

Here, the fourth cause of action for fraud in the inducement is premised on omissions. The complaint alleges that "the Sponsor Defendants never disclosed in the Offering Plan (including in any amendment to the Offering Plan) any of the defective conditions in the Building," and that when the sponsor defendants circulated the offering plan and promoted sales of units of the condominium "based on the Offering Plan's omissions and the omissions in such sales and marketing materials, the Sponsor Defendants knew that such omissions rendered other statements and representations . . . false and/or misleading." Therefore, as the fourth cause of action alleges a claim for fraud in the inducement premised on omissions in the offering plan, it is preempted by the Martin Act. *See Kerusa Co. LLC v W10Z/515 Real Estate Ltd. Partnership*, 12 NY3d 236 (2009); *Berenger,* 93 A.D.3d 175.

Accordingly, the cause of action for fraudulent inducement is dismissed.

Seventh Cause of Action – Fraud in the Inducement Against the Architect Defendants

The seventh cause of action alleges that the architect defendants prepared and filed all or substantially all of the plans and specifications for the building which were filed with the DOB, and that the architect defendants prepared the descriptions of the building and unites contained in the offering plan, including the description of the property. The plaintiff further alleges that the architect defendants prepared the floor plans, architectural illustrations and, upon information and belief, sales and promotional materials provided to unit owners before they purchased their units.

The plaintiff also alleges that, upon information and belief, the architectural defendants continually had opportunities to confirm, through their regular inspections of the building, that it was being constructed in accordance with the plans and specifications, and that it met prevailing construction industry standards and did not violate the Building Code or other applicable laws.

It is also alleged in the complaint that the Architect's certification contains express representations by the architect defendants that the offering plain did not omit any material fact; did not contain any untrue statements of material fact; did contain any fraud or deception; and did not contain any representation or statement which was false.

Plaintiff also lists a number of affirmative representations made by the architectural defendants in the description of the property which plaintiff alleges were false, including that the bathrooms and kitchens were ventilated via vertical sheet metal risers with roof-mounted fans; that the building was constructed as a class 1-C non-combustible structure; the copings are cast stone, through-wall flashings are copper; and the building's lobby and public corridors are painted.

The architect defendants argue that the cause of action should be dismissed because it is preempted by the Martin Act and the complaint fails to plead the elements necessary to prove common law fraud.

The claims here are not, however, preempted by the Martin Act, because 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," i.e., that the lobby was painted or there was vertical ventilation. *Bhandari v Ismael Leyva Architects, P.C.*, 84 A.D.3d 607 (1st Dep't 2011). Further, "[t]he complaint states a cause of action for common-law fraud by alleging that defendant[s] knowingly made a material misrepresentation, purposefully inducing plaintiff[] to rely on it, and that plaintiff[], among other things, purchased" their units. *Id.* at 608.

Accordingly, the architect defendants' motion to dismiss the seventh cause of action is denied.

Ninth Cause of Action – Breach of Contract Against SJF

The elements for a cause of action for breach of contract "include the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages." *Harris v Seward Park Hous. Corp.*, 79 A.D.3d 425, 426 (1st Dep't 2010) (citation omitted). A cause of action purporting to set forth a cause of action for breach of contract must be dismissed where plaintiff fails "to allege, in nonconclusory language, as required, the essential terms of the parties' purported . . . contract, including those specific provisions of the contract upon which liability is predicated, whether the alleged agreement was, in fact, written or oral, and the rate of compensation." *Caniglia v. Chicago Tribune-New York News Syndicate*, 204 A.D.2d 233, 234 (1st Dep't 1994) (internal citations omitted).

Here, plaintiff alleges that the Condominium entered into "one or more contracts with SJF. . . ." That plaintiff does not specify the precise number of agreements entered into between the Condominium and SJF, or whether the contract or contracts were written or oral. This lack of specificity necessitates that the ninth cause of action be dismissed.

Tenth and Eleventh Causes of Action – Constructive Fraudulent Conveyances against the Sponsor Defendants

The tenth cause of action purports to allege a cause of action for constructive fraudulent conveyances while insolvent, pursuant to §§273 and 278 of the New York Debtor and Creditor Law ("DCL"). The eleventh cause of action alleges constructive fraudulent conveyances causing unreasonably small capital pursuant to DCL §§274 and 278.

Plaintiff alleges that the condominium and unit owners are creditors of the sponsor. Plaintiff further alleges that the sponsor completed sales sufficient to repay its institutional lender, and that when it continued to complete closings on the sale of units, failed to retain any of the sale proceeds. The complaint alleges that instead the sponsor distributed the proceeds of the sales to the other sponsor defendants in accordance with their equity interests. Plaintiff alleges that these distributions were transfers of the sponsor's property, made without fair consideration, made to RGF and Friedfertig at a time when the sponsor was insolvent, or in making the distributions the sponsor was made insolvent, or would leave it with an unreasonable small amount of capital. Plaintiff claims that the condominium and unit owners are entitled to set aside the distributions

made to RGF and Friedfertig, and that they are each liable to plaintiff for the amounts of distributions they received.

The sponsor defendants argue that the allegations of fraudulent conveyances should be dismissed because plaintiff failed to allege facts showing a fiduciary or confidential relationship between plaintiff and the sponsor defendants, and for failure to plead with specificity pursuant to CPLR 3016(b).

The sponsor defendants rely on *Sutton Apts. Corp. v. Bradhurst 100 Devel. LLC*, 107 A.D.3d 646 (1st Dep't 2013), where the Court in *Sutton Apts*. held that the Supreme Court "properly dismissed plaintiffs' claims alleging constructive fraudulent conveyance and fraudulent conveyance causing unreasonably small capital, as plaintiffs did not allege facts showing a fiduciary or confidential relationship between them and the sponsor defendants." 107 A.D.3d at 648.

In opposition to the motion, plaintiff asserts only that defendants' "reliance is misplaced because *Sutton* was wrongly decided, and clearly so." Plaintiff asks this court to ignore the decision of the Appellate Division, First Department in *Sutton Apts.* and to instead follow *Sunshine Care Corp. v. Davis*, 2011 N.Y. Slip Op. 32426(U) (Sup. Ct. Nassau Co. Sept. 12, 2011). As plaintiff well knows, however, I am bound to follow the decisions of the Appellate Division, First Department, and *Sunshine Care* decision, out of the Supreme Court, Suffolk County, has no precedential value in this Court.

As plaintiff fails to allege a fiduciary or confidential relationship between the plaintiff and the sponsor defendants, the tenth and eleventh causes of action are dismissed.

Lastly, plaintiff's improper request for leave to amend the complaint is denied. Plaintiff, in a footnote in its opposition papers, stated that if "the Court concludes that any part of the Complaint is insufficiently particular, Plaintiff requests leave to amend the Complaint to correct any perceived deficiency in the fraud claim." This is not the proper way of requesting to amend a pleading. While generally, leave to replead is freely granted, it must be properly requested, on notice, with a proposed amendment submitted. *See* CPLR 3025(b) ("Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading." As plaintiff failed to comply with CPLR 3025(b), the request for leave to replead is denied.

In accordance with the foregoing it is hereby

ORDERED that the motion by defendants 107/31 Development Corp., R.G.F. Development Corp., Shlomo Friedfertig, SJF Management LLC, and Triumph Property Group Ltd. to dismiss (motion seq. no. 001) is granted only to the extent that the first and second causes of action are dismissed as against Shlomo Friedfertig, the fourth, fifth, ninth, tenth, eleventh and twelfth causes of action are dismissed, and is in all other respects denied; and it is further

ORDERED that the motion for summary judgment as to the second cause of action is denied; and it is further

ORDERED that the motion be defendants Pinner Architecture PLLC d/b/a Pinner Associates and Lawrence H. Pinner to dismiss the complaint is granted only to the extent that the sixth and eight causes of action are dismissed, and is in all other respects denied; and it is further

ORDERED that the defendants file and serve an answer to the remaining causes of action within 30 days; and it is further

ORDERED that counsel for the parties appear for a preliminary conference in IA Part 39, 60 Centre Street, Room 208 on December 3, 2014 at 2:15 pm.

This constitutes the decision and order of this Court

Dated: New York, New York
October 21, 2014

ENTER:

Saliann Scarpulla, J.S.C.