

**Board of Mgrs. of the 20 Henry St. Condominium v  
CJUF III 20 Henry Prop. LLC**

2017 NY Slip Op 31289(U)

June 6, 2017

Supreme Court, Kings County

Docket Number: 500289/16

Judge: Lawrence S. Knipel

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Commercial Part 4 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 6<sup>th</sup> day of June, 2017

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

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BOARD OF MANAGERS OF THE 20 HENRY STREET CONDOMINIUM, ON BEHALF OF THE INDIVIDUAL UNIT OWNERS,

Plaintiff,

- against -

Index No. 500289/16

CJUF III 20 HENRY PROPERTY LLC, K. ROBERT TURNER, JANINE GETLER, MARCUS NEUPERT, AND DANIEL MILLMAN,

Defendants.

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The following papers numbered 1 to 5 read on this motion:

Papers Numbered

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed_____	<u>1, 2, 3, 4</u>
Opposing Affidavits (Affirmations)_____	<u>5, 6</u>
Reply Affidavits (Affirmations)_____	<u>7, 8</u>
_____ Affidavit (Affirmation)_____	_____
Other Papers_____	_____

In an action by plaintiff Board of Managers of the 20 Henry Street Condominium to recover damages allegedly sustained by the individual unit owners, *inter alia*, for breach of contract, breach of warranty, fraud and misrepresentation, plaintiff moves for partial summary judgment on its seventh cause of action for breach of contract against defendants CJUF III 20 Henry Property LLC (“Sponsor”) and K. Robert Turner.

The seventh cause of action, alleges that the Offering Plan, as incorporated in the Purchase Agreements, contained express promises that the Sponsor would apply for tax benefits, including J-51 benefits for one of the buildings, in a timely and procedurally correct manner. Notwithstanding this representation, it is alleged, the J-51 application was rejected by the Department of Housing Preservation and Development (HPD) for failure to file in a timely and procedurally correct manner. This, it is alleged, was a breach of the obligations contained in the Purchase Agreements and the Offering Plan. Defendant Turner, it is asserted, was liable as principal of the Sponsor, since he executed the certification in his individual capacity.

Defendants oppose, arguing that plaintiff fails to annex an admissible Purchase Agreement, plaintiff Board of Managers lacks standing since it was not a party to the Purchase Agreements, defendants have not been afforded complete discovery and opportunity to question the third-party defendant about the J-51 application, and defendants made no representations or warranties with regard to the J-51 benefits. Further, it is alleged, Turner signed as principal of Sponsor, not

individually, and he therefore cannot be held individually liable for any alleged breach of the Purchase Agreement.

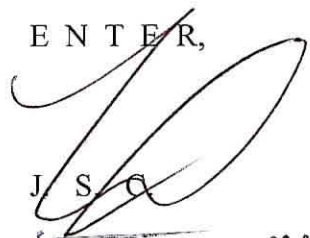
In the instant case, even affording defendants the benefit of all reasonable inferences, plaintiff has adequately and plainly demonstrated that no material issues of fact exist as to the seventh cause of action. The Offering Plan annexed as an exhibit states explicitly that while the Sponsor was not making any warranty or representation that J-51 benefits would definitely be available, it did represent that all information would be true and that it would “file all applications and timely comply with all procedures required to properly process and maintain the tax benefits.” Plaintiff also annexed a letter from HPD in which the agency informed the Sponsor that its application was rejected because, to be eligible for J-51 benefits, an application must be submitted within 36 months following commencement of construction. The architect’s affidavit represented that work commenced on April 18, 2011. The application was submitted May 29, 2014, after the 36-month deadline expired.

Defendants’ opposition based on standing is to no avail (see Real Property Law § 339-dd; *Board of Managers of 550 Grand Street Condominium v Schlegel LLC*, [Sup Court Kings County 2014]; *Sunken Pond Estates Homeowners Association v Sunken Pond Estates*, 36 Misc 3d 1209(A) [Sup Court Suffolk County 2012]). Nor is the failure to conduct discovery of any moment as far as plaintiff’s claims are concerned.

Plaintiff asserts that Turner signed the Offering Plan in his individual capacity and that therefore partial summary judgment must be granted against him as well. The exhibit in the record shows that Turner signed as Sponsor's managing partner and again as Sponsor's principal. On this record, plaintiff has failed to demonstrate as a matter of law that Turner signed in his individual capacity or that he is otherwise responsible for the breach of contract individually.

Accordingly, plaintiff's motion is granted to the extent that partial summary judgment on the seventh cause of action is granted in favor of plaintiff and against the defendant Sponsor only. Moreover, partial summary judgment is granted on liability only. Plaintiff still has the burden of proving that the building would have been granted J-51 benefits had an application been timely made and/or to establish what damages, if any, resulted from the Sponsor's failure to timely apply therefor.

The foregoing constitutes the decision and order of this court.

ENTER,  
  
 J. S.  
 Justice Lawrence Krippl