

**Plotch v 435 E. 85th St. Tenants Corp.**

2019 NY Slip Op 31905(U)

June 29, 2019

Supreme Court, New York County

Docket Number: 157881/2017

Judge: Robert D. Kalish

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This opinion is uncorrected and not selected for official publication.



opposition on said motions or improperly raises new arguments on the instant motion. This Court will, nonetheless, briefly address the crux of Plaintiff's arguments on the instant motion.

In this Court's prior decision, dismissing Plaintiff's action, this Court found, in sum and substance, that, as a mere contract vendee, Plaintiff lacked standing to sue Building Defendants for refusing to approve his application to purchase. This Court also found that Plaintiff could not bring an action against Chase for not exercising its standing to challenge the denial. The Court reasoned that to do so would require the Court to read Plaintiff's contract with Chase as "implicitly giving him, as a contract vendee, a back-door right to challenge Building Defendants' denial of sale by forcing the seller to sue on his behalf." (*Plotch v 435 E. 85th St. Tenants Corp.*, 2018 N.Y. Slip Op. 32643[U], 15 [N.Y. Sup Ct, New York County 2018.]

On the instant motion, Plaintiff argues that, pursuant to CPLR 1004, he should have standing to challenge the Building Defendants' denial of approval "not for his own benefit, or merely in his capacity as a prospective purchaser, but in his capacity as a vendee in a contract entered into 'for the benefit of the bank,' so as to enable the bank to reap the benefit to which it is entitled." (Memo in Supp. at 5.) Plaintiff cites no authority for this novel theory. Regardless of whether such an argument was raised on the underlying motions, for this Court to recognize such a theory would effectively eliminate the rule that a contract vendee lacks standing to challenge a cooperative board's denial of their purchase application.

Plaintiff cites *85 Fifth Ave. 4th Floor, LLC v I.A. Selig, LLC*, 45 AD3d 349 (1st Dep't 2007) for the proposition that his breach of contract claim against Chase and his tortious interference claim against Building Defendants should be allowed to proceed. In *85 Fifth Ave.*, the plaintiff purchaser alleged that "that the board, of which defendant seller's principal was a member, rejected plaintiff's application to purchase the subject cooperative unit and contemporaneously amended the cooperative's by-laws to provide for the possibility of a residential conversion that would increase the market value of the unit." (*85 Fifth Ave.*, 45 AD3d at 349 [emphasis added].) In contrast, Plaintiff does not allege there was any similar impropriety by Chase and Building Defendants. Rather, Plaintiff's position is that, by itself, denying his purchase application gives rise to a tortious interference claim against Building Defendants and that Chase breached their contract with him by not challenging that denial. There is simply no basis in the law for such position—again this would effectively eliminate the rule that a contract vendee lacks standing to challenge a denial of his purchase application

Plaintiff also argues that this Court "overlooked Plaintiff's contention that UCC 9-407(a) bars enforcement of the Bank's security interest from being subject to approval of the Co-op." (Memo in Supp. at 6-7.) Plaintiff further argues that "[t]o the extent that the Co-op contends that this provision in the lease authorizes it or its members or board to block the Bank from enforcing its security interest, the provision is squarely at odds with UCC 9-407, and thus, void." Plaintiff implies that by rejecting his application to purchase, Building Defendants "blocked" Chase from enforcing their security interest. Not commenting on the potential merits of said argument, the problem with Plaintiff's argument is that it is not *his* argument to make—only Chase would have standing to make this argument.

Lastly, this Court notes that a court “is not required to discuss, in its decision, every argument or case made or cited by [a party]. A court need only give its determination or direction ‘in such detail as the judge deems proper.’” (*In re Estate of Ansell*, 191 Misc 2d 252, 253 [Sur Ct 2002] [quoting CPLR 2219 [a].) However, for the sake of clarity this Court now states that it has considered Plaintiff’s other arguments, including those improperly raised for the first time in his reply papers on this motion to reargue, and finds them unavailing.

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**CONCLUSION**

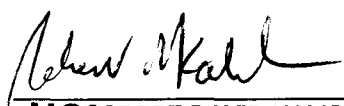
Accordingly, it is hereby

ORDERED that the instant motion by Plaintiff Adam Plotch, pursuant to CPLR 2221, to reargue this Court's decision of October 3, 2018 granting Defendant JP Morgan Chase Bank N.A.'s motion to dismiss (Seq. 001) and Defendants 435 East 85<sup>th</sup> Street Tenants Corp. and Halstead Management Company, LLC's motion to dismiss (Seq. 002) – both pursuant to CPLR 3211 – is denied.

The foregoing constitutes the decision and order of this Court.

6/28/2019  
DATE

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE


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**HON. ROBERT D. KALISH, J.S.C.**