

Board of Mgrs. of Brighton Tower II Condominium v Brighton Bldr., LLC
2019 NY Slip Op 33848(U)
December 2, 2019
Supreme Court, Kings County
Docket Number: 506732/2016
Judge: Devin P. Cohen
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**Supreme Court of the State of New York
County of Kings**

Index Number 506732/2016
Seq # 009

Part 91

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

BOARD OF MANAGERS OF THE BRIGHTON TOWER II
CONDOMINIUM,

Plaintiff,

against

BRIGHTON BUILDER, LLC, MIKHLIN HOLDINGS INC.,
LEON MIKHLIN, ALEXSANDER BOMSTEIN, P.E. AND
JOHN DOES 1-10 (THE FULL INDIVIDUAL, CORPORATE OR
OTHER ENTITY NAME OF "JOHN DOES" BEING UNKNOWN
TO PLAINTIFF, THE PERSON OR ENTITIES INTENDED
BEING THE INDIVIDUALS, CORPORATIONS, LIMITED
LIABILITY COMPANIES OR OTHER PERSONS OR ENTITIES
THAT PARTICIPATED IN THE WRONGS COMPLAINED OF),

Defendants.

Papers

Numbered	
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Order to Show Cause and Affidavits Annexed...	<u>2</u>
Answering Affidavits.....	<u>3</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>3</u>
Other	<u>3</u>

FILED
JAN 17 2020
KINGS COUNTY CLERK'S OFFICE

DC
2020 JAN 17 PM 3:05
FILED
KINGS COUNTY CLERK

Upon the foregoing papers, non-party Sagacious Minds, Inc.'s motion to substitute is decided as follows:

Factual Background

Plaintiff is a condominium board for a building located at 3015 Brighton 6th Street, in Brooklyn, New York. Plaintiff alleges in its complaint that, in contravention of the condominium's offering plan, the building is not constructed in accordance with local laws. By way of example, plaintiff alleges that the building has poor ventilation, which causes mold to grow, and that the building has numerous construction defects. Plaintiff further alleges that defendants misappropriated insurance proceeds and maintenance fees, and have not themselves paid maintenance fees. Based on these allegations, plaintiff asserts claims for breach of contract, fraud, breach of fiduciary duty, and breach of the common law housing merchant warranty.

Defendants Brighton Builder, LLC and Leon Mikhlin allege that they loaned plaintiff \$292,421.22 for the payment of the condominium's expenses, and plaintiff did not repay the loan. Defendant Mikhlin Holdings, Inc. alleges that it spent \$79,706.90 to make repairs to the condominium building, and plaintiff did not repay it. Based on these allegations, defendants assert two separate counterclaims for unjust enrichment. Defendant Brighton Builder further alleges that plaintiff has not made certain repairs to the building, which prevents it from renting or using four commercial units in the building. It seeks \$1.4 million for the estimated cost of the repairs.

Sagacious Minds submits that it is now the owner of the four commercial units in the building. Yuliya Darchenko, the principal of Sagacious Minds, states in her affidavit that the company purchased the commercial units on March 15, 2019. Sagacious Minds submits a certified copy of the deed showing a transfer of the units from LM Studio LLC, signed by Mr. Mikhlin, to Sagacious Minds. Ms. Darchenko states in her affidavit that she attended a meeting with plaintiff on April 4, 2019 to discuss the repairs to the building. She also states that, on May 8, 2019, she sent a letter to the unit owners of the building. A copy of the letter is attached, and it discusses the need for repairs. Plaintiff responded by email to the unit owners the next day objecting to and questioning the transfer of the commercial units. A copy of this email is also attached.

Analysis

Sagacious Minds asks this court for leave to substitute itself into the action as the real party-in-interest to Brighton Builder's third counterclaim for repairs. Pursuant to CPLR 1018, "[u]pon any transfer of interest, the action may be continued by or against the original parties

unless the court directs the person to whom the interest is transferred to be substituted or joined in the action". Furthermore, pursuant to CPLR 1021, "[a] motion for substitution may be made by the successors or representatives of a party or by any party". In order to substitute as the real party-in-interest, the movant must establish the transfer and that it is the successor to the claim (*U.S. Bank, N.A. v Duran*, 174 AD3d 768, 769 [2d Dept 2019]).

Here, Brighton Builder alleged in its counterclaim that it was the owner of the commercial units in the building (answer and counterclaims at ¶ 150). However, the deed shows that the owner is "LM Studio LLC". There is no proof of the chain of title from Brighton Builder to LM Studio. Accordingly, Sagacious Minds has not sufficiently established that it is the proper successor in interest to Brighton Builder (*Citicorp Mortg. v Adams*, 153 AD3d 779, 780 [2d Dept 2017], compare *First United Mortg. Banking Corp. v Valdivieso*, 45 Misc 3d 1216[A], 2014 NY Slip Op 51608[U], *3-4 [Sup Ct. Kings County 2014] [interest established through a chain of assignments]).

Plaintiff also objects to the transfer because, it argues, there was no sufficient consideration and because the sale was contrary to the condominium's bylaws. As to the first point, plaintiff's counsel states in his affirmation that the offering plan valued the commercial units at approximately \$5.5 million, and that Sagacious Minds paid only \$200,000. However, plaintiff provides no admissible evidence to support that assertion and plaintiff's counsel does not explain how he has personal knowledge of these amounts (*Onewest Bank, FSB v Michel*, 143 AD3d 869, 871 [2d Dept 2016]). As to the second point, plaintiff provides no legal authority for voiding the deed because the sale was contrary to the condominium bylaws.

Lastly, plaintiff argues that the motion is untimely. A motion for substitution must be

made within a reasonable time (*Rosenblatt v Doe*, 172 AD3d 936, 937 [2d Dept 2019]). Here, Sagacious Minds moved approximately four months after the supposed transfer. This is not untimely under the circumstances, and plaintiff does not explain how it would be prejudiced by the substitution.

Conclusion

For the foregoing reasons, Sagacious Minds's motion is denied.

This constitutes the decision and order of the court.

December 2, 2019

DATE



DEVIN P. COHEN

Justice of the Supreme Court

