

**Frankel v Board of Mgrs. of the 392 Cent. Park W.
Condominium**

2020 NY Slip Op 32588(U)

August 6, 2020

Supreme Court, New York County

Docket Number: 654501/2017

Judge: Robert R. Reed

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ROBERT R. REED PART 43

Justice

-----X

KEVIN FRANKEL,

Plaintiff,

- v -

BOARD OF MANAGERS OF THE 392 CENTRAL PARK
WEST CONDOMINIUM, SCOT GLEASON, JOHN
FLEMING, ROBIN KELLY, NAOMI HOLOCH, JANET
SMITH, JANISE POTICHA, PATRICIA WILLIAMS, TOM
BRENNAN, JOHN DOES AND JANE DOES, THE 392
CENTRAL PARK WEST CONDOMINIUM,

Defendant.

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INDEX NO. 654501/2017
MOTION DATE 09/15/2020
MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 70, 71, 72, 73, 75, 79, 80, 81, 82, 83, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

were read on this motion to

STRIKE PLEADINGS

Upon the foregoing documents, it is ordered that this motion is granted in part and denied in part.

In this declaratory judgment action, plaintiff, a condominium unit owner, seeks access to the condominium's books and records and a declaration that the condominium's 2017 election of its board of managers was invalid. Plaintiff alleges that defendants violated the condominium bylaws during the 2017 board election and that defendants now refuse to allow unit owners to inspect condominium books and records. In plaintiff's amended complaint, he asserts four causes of action: (1) access books and records of the condominium; (2) declaratory judgment that the condominium board 2016 election was null and void; (3) declaratory judgment that the condominium board 2017 election was null and void; and (4) breach of fiduciary duty. Upon re-argument of a motion to dismiss, this court dismissed plaintiff's second and fourth causes of action. The Appellate Division, First Department affirmed this court's decision to dismiss those

portions of plaintiff's amended complaint (*see Frankel v. Board of Mgrs. of the Cent. Park W. Condominium*, 177 AD3d 465). In his cause of action seeking access to the condominium's books and records, plaintiff asserts that he is entitled to view documents including, but not limited to (1) ballots from the 2016 election, (2) tabulated results of the 2016 election, (3) ballots from the 2017 board election, (4) tabulated results from the 2017 board election, (5) the complete records reflecting parking space assignments, and (6) the complete financial records of the condominium.

Plaintiff now moves, pursuant to CPLR 3126, for an order to strike defendants' pleadings and render a default judgment against defendants for their failure to comply with discovery demands. Plaintiff alleges that defendants have failed to produce internal correspondence, ballots and tabulated election results for the 2016 and 2017 board elections, parking waiting lists, the historic parking fee schedules, and any documents reflecting that defendants investigated plaintiff's allegations of impropriety. Plaintiff also alleges that defendants have failed to provide any interrogatory responses. Defendants oppose plaintiff's motion, and cross-move pursuant to 22 NYCRR 130-1.1 to sanction plaintiff for his materially false statements regarding discovery and his "frivolous" discovery motion. Defendants argue that a majority of plaintiff's discovery demands are only relevant to plaintiff's already dismissed claims, that plaintiff's discovery demands require legal analysis and discussion, that plaintiff's demands actually appear to be deliberately abusive, and that plaintiff is using the discovery process to obtain the ultimate relief he seeks in this action. Additionally, defendants argue that they have provided documents to plaintiff and that these demands are duplicative.

CPLR 3101 requires full disclosure of all matter material and necessary in the prosecution or defense of an action. The phrase "material and necessary" is "to be interpreted

liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason” (*Allen v. Crowell-Collier Publishing Co.*, 21 NY2d 403.)

Plaintiff seeks documents that relate to the 2016 and 2017 condominium board elections, which include ballots from the 2016 and 2017 elections, the tabulated results from the 2016 and 2017 elections, records related to parking space assignments, responses to interrogatories and internal correspondences. Plaintiff has asserted as a cause of action his entitlement to review the books and records of defendant condominium that include the very documents he now seeks in discovery. This court has not yet made a determination on the merits of this action, and thus, plaintiff cannot seek the same documents in discovery as he seeks for relief in his cause of action. Plaintiff cannot use the discovery process as a guise to attain the ultimate relief that he seeks (*see Rothman v. RNK Capital, LLC* 2017 NY Misc. LEXIS 3846; *see also AAA Vascular Care, PLLC v. Integrated Healthcare Mgt., LLC*, 99 AD3d 642). Plaintiff has alleged that defendants have failed to produce emails and documents reflecting that defendants investigated plaintiff’s allegations of impropriety. Plaintiff has acknowledged in his papers that certain emails have been produced. Notably, plaintiff has failed to demonstrate that the specific emails to which he refers -- to the extent that they exist -- have not been produced.

Defendants in their reply papers assert that bates stamped documents were provided to plaintiff in response to his discovery demands. Nevertheless, defendants concede that certain documentary production remains outstanding, including copies of the condominium’s general ledgers dating back to 2012 and additional documents from prior to 2017. Defendants concede as well that interrogatory responses remain outstanding. To the extent defendants have conceded that discovery that was not objected to remains outstanding, such discovery should be provided.

Defendants' cross-motion for sanctions is denied. Costs upon a motion may be awarded to any party in the discretion of the court. (See CPLR 8106). It cannot be said that plaintiff's motion was undertaken to delay or prolong litigation, or to harass or maliciously injure another (22 NYCRR 130-1.1[c] [2]).

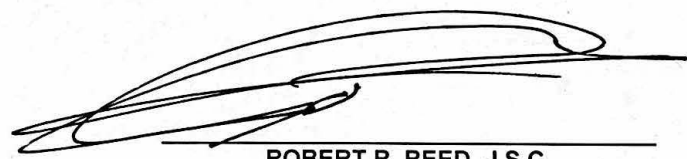
Accordingly, it is

ORDERED that plaintiff's motion to strike defendants' pleadings and enter a default judgment is denied, except that defendants are directed to provide, within 45 days from entry of this order, all outstanding, not previously objected to, documentary production, including copies of the condominium's general ledgers dating back to 2012 and additional documents from prior to 2017, together with appropriate responses to plaintiff's interrogatories; and it is further

ORDERED that defendants' cross-motion seeking sanctions is denied in its entirety.

This constitutes the Decision and Order of this court.

8/6/2020
DATE


ROBERT R. REED, J.S.C.

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