

<b>Barna v 184 Kent Owner, L.L.C.</b>
2020 NY Slip Op 33744(U)
November 10, 2020
Supreme Court, Kings County
Docket Number: 514422/2018
Judge: Debra Silber
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 9**

**X**

**ERIC BARNA, PAOLO LUCIANO, JANE COXWELL,  
SABINE SEYMOUR, NANDITA RAY, JENS MEBES,  
MICHAEL CINQUINO, REBECCA LEE, JEFF WERNER,  
CHRIS REMUS, BARTH BAZYLUK, ROSA BAZYLUK,  
YUICHIRO NISHIZAWA, MARIE KOUADIO AMOUZAME,  
ARNAUD HIREL, ALISA LEONARD, LOTTIE MESSNER,  
STEVEN MILLER, NICOLE COSTELLO, DEE ZAHAV  
KASHI, DANIELLE SPORKIN, JASEN KELLEY,  
BRANDON KOMODA, ROSE KOMODA, DANIEL  
GODDEMEYER, ANDREA SEGATTO, IVAN OLIVEROS,  
JASON MINYO, DYANIS De JESUS COLON, JABEZ  
DEWEY, FRANK BIRCHFIELD, VANESSA GOMES,  
CATHRYN BENNETT, JAMES V. DERCOLE,  
MUOI GUTRAN, JARED SCHARFF, WILL HENSLEY,  
BONNIE MAYO and DIMITRY UMYN,**

**DECISION / ORDER**

**Index No. 514422/2018  
Motion Seq. No. 4  
Date Submitted: 10/1/20**

**Plaintiffs,**

**- against -**

**184 KENT OWNER, L.L.C., d/b/a AUSTIN NICHOLS  
HOUSE and THE AUSTIN NICHOLS HOUSE  
CONDOMINIUM, KUSHNER COMPANIES LLC,  
WESTMINSTER MANAGEMENT, L.L.C., and 184 KENT  
MT, LLC,**

**Defendants.**

**X**

***Recitation, as required by CPLR 2219(a), of the papers considered in the review of defendants'  
pre-answer motion to dismiss***

<b>Papers</b>	<b>NYSCEF Doc.</b>
Notice of Motion, Affirmation and Exhibits Annexed	<u>57-77</u>
Affirmation in Opposition and Exhibits Annexed.....	<u>80-81</u>
Reply Affirmation.....	<u>82</u>

**Upon the foregoing cited papers, the Decision/Order on this motion is as follows:**

This is an action for breach of the warranty of habitability and for damage to property, brought by thirty-nine tenants and former tenants of 184 Kent Avenue, Brooklyn, NY. The action was commenced on July 15, 2018. They allege, in the Third Amended Complaint, dated February 13, 2020, *inter alia*, that commencing on or about May 1, 2015, the building they were living in was substantially renovated and converted to a condominium, and that “Defendants subjected Plaintiffs to residential conditions that were dangerous, hazardous and detrimental to Plaintiffs’ life, health and safety, and that damaged Plaintiffs’ personal property.” Some of the plaintiffs moved out while the work went on, some stayed. The complaint states the date each of the tenants moved out, if they did not stay. All of the plaintiffs allege they were residing in the building when the work started on or about May 1, 2015. All of the plaintiffs are “non-purchasing tenants” under the offering plan for condominium ownership. They claim they have brought this action against the property owner who owned the property when the work commenced, the property owner that took title while the work was ongoing, the management company and the parent company of the management company, which is alleged to have been the construction manager. Their first cause of action is for damages due to the breach of the implied warranty of habitability and their second cause of action is for property damage, for damage to their personal property.

To be clear, the complaint alleges that the construction work at the premises continued to the date the complaint was filed, and infers that it is still continuing, as it claims that whenever an apartment is vacated by a tenant, the apartment is then subjected to [Par 45] “demolition and gut renovation for conversion of rent stabilized

residential apartments within the building into luxury condominiums (the 'construction activity')."

After this action was commenced, plaintiffs amended their complaint as of right. Then, in Motion Sequence #1, defendants moved pre-answer to dismiss the Amended Complaint. In Mot. Seq. #2, plaintiffs cross moved to further amend the complaint. On April 17, 2019, the court so-ordered a stipulation [E-File Doc 31] which withdrew both motions and consented to the plaintiffs' amending their complaint to the form of amended complaint annexed to Mot. Seq. #2, titled the Second Amended Complaint. In Mot. Seq. #3, defendants moved pre-answer to dismiss the Second Amended Complaint. On October 3, 2019 [E-File Doc 54], the court denied the defendants' motion with leave to renew, and gave plaintiffs leave to again amend their complaint. During oral argument it became clear that defendants' motion continued to complain that the complaint was not specific enough. A written order was issued. It states that the Third Amended Complaint "shall specify the dates of the beginning and end of each claim." Plaintiffs had 60 days to amend and defendants had 60 days to answer or move, as stated in the order. Plaintiffs did not amend within 60 days and defendants did not bring the instant motion within 60 days, even if you subtract the days the court was closed due to COVID. The Third Amended Complaint was E-filed on February 13, 2020, and this motion was E-filed on July 3, 2020.

Defendants now move to dismiss the Third Amended Complaint in its entirety, as untimely made, or if that is not granted, then to dismiss it for failing to state a cause of action under CPLR 3211 (a)(7), or for lack of sufficient particularity under CPLR 3013. In the alternative, the motion states that if that relief is not granted, then the complaint

should be dismissed against some of the defendants and the claims of some of the plaintiffs should also be dismissed. The court will address these requests one at a time.

First, the court denies the branch of the motion to dismiss the Third Amended Complaint as untimely. The court directed plaintiffs' counsel to include in the complaint the dates each tenant moved out, or if they are still residing there, and to make the complaint more specific, as one of the grounds in defendants' motion was that it was not specific enough. Counsel for plaintiff, in his affirmation in opposition [Doc 80] states "the defendants failed to inform this Court that counsel for the parties had engaged in good faith, extended negotiations and exchanged proposed stipulations to extend the time to file the Third-Amended Complaint. . . . counsel for the thirty-nine (39) plaintiffs [had] notified defendants' counsel that plaintiffs required additional time to gather the necessary information to comply with the Order of the Court. Plaintiffs completed their task expeditiously and defendants suffered no undue prejudice." The court notes that there is a preference for substance over procedure, and a preference to determine claims on their merits. Further, innumerable cases recite that "pleadings are freely amendable." In any event, the court was closed to filing from mid-March to mid-May, and even excluding that time, the defendants' motion was not timely either.

The branch of the motion to dismiss the complaint for failing to state a cause of action under CPLR 3211 (a)(7), or for lack of sufficient particularity under CPLR 3013, is also denied. Claims for breach of the implied warranty of habitability and for property damage are recognized causes of action in New York (*James v Saltsman*, 99 AD2d 797 [2d Dept 1984]). To the extent that the complaint seems to infer that there is a claim for negligence and the tenants' personal injuries therefrom, this appears to be poor

draftsmanship, as plaintiffs' counsel, in his affirmation in opposition, states clearly at Paragraph 7 "[t]he plaintiffs' causes of action for violations of the warranty of habitability and property damages are well recognized causes of action."

When a court considers a motion to dismiss pursuant to CPLR § 3211(a)(7), the complaint is to be given a liberal construction and "there is a presumption the allegations in the pleading are true and are entitled to the benefit of all favorable inferences that may be made therefrom" (*Morgan Stanley Mtge. Loan Trust 2006-13ARX v Morgan Stanley Mtge. Capital Holdings LLC*, 143 AD3d 1, 7, 36 N.Y.S.3d 458 [1st Dept 2016]). The Court evaluates not whether the complaint states a cause of action, but whether a claim exists based on "any reasonable view" of the allegations in the pleading (*Aristy-Farer v State of New York*, 29 NY3d 501, 509, 58 N.Y.S.3d 877, 81 N.E.3d 360 [2017]). "In deciding such a pre-answer motion, the court is not authorized to assess the relative merits of the complaint's allegations against the defendant's contrary assertions or to determine whether or not plaintiff has produced evidence to support his claims" (*Salles v Chase Manhattan Bank*, 300 AD2d 226, 228, 754 N.Y.S.2d 236 [1st Dept 2002]). However, "allegations consisting of bare legal conclusions, as well as factual claims flatly contradicted by documentary evidence are not" presumed to be true or accorded every favorable inference (*David v Hack*, 97 AD3d 437, 438, 948 N.Y.S.2d 583 [1st Dept 2012]), and the criterion becomes "whether the proponent of the pleading has a cause of action, not whether he has stated one" (*Leon v Martinez*, 84 NY2d 83, 88, 638 N.E.2d 511, 614 N.Y.S.2d 972 [1994]).

More specifically, to establish a cause of action for breach of the implied warranty of habitability, the tenant must show that the premises were not "fit for human habitation

and for the uses reasonably intended by the parties" due to the existence of conditions which were "dangerous hazardous or detrimental to [the occupants'] life, health or safety" (RPL § 235-b [1]). A non-waivable warranty of habitability and reasonable fitness for use is part of every written or oral lease or rental agreement for residential purposes (RPL § 235-b). The "proper measure of damages for breach of the warranty is the difference between the fair market value of the premises if they had been as warranted, as measured by the rent reserved under the lease, and the value of the premises during the period of the breach," (*Park W. Mgt. Corp. v Mitchell*, 47 NY2d 316, 329, 391 N.E.2d 1288, 418 N.Y.S.2d 310 cert denied 444 U.S. 992, 100 S. Ct. 523, 62 L. Ed. 2d 421 [1979]). Moreover, "punitive damages may be awarded in breach of warranty of habitability cases where the landlord's actions or inactions were intentional and malicious" (*Minjak Co. v Randolph*, 140 AD2d 245, 249-250, 528 N.Y.S.2d 554 [1st Dept 1988]). This is solely a claim for economic loss, not for non-economic loss, such as pain and suffering. As described in *74 NY Jur Landlord and Tenant § 207 (2)*:

A breach of the provision of the Real Property Law governing the warranty of habitability does not provide an alternative cause of action to recover damages for personal injuries. That is, a tenant may not rely upon any alleged breach of the warranty of habitability to recover damages for personal injuries. Thus, for example, the mother of a child who sustained lead poisoning while in temporary emergency housing could not bring a claim under the statutory warranty of habitability, since the damages recoverable for breach of the statutory warranty were limited to economic loss.

As a plaintiff cannot recover for property damage in connection with a claim of breach of the warranty of habitability, the plaintiffs have asserted a second cause of action for the alleged damage to their personal property. This too states a claim and is not dismissible (see *Couri v Westchester Country Club, Inc.*, 186 AD2d 712 [2d Dept

1992]).

The court also finds that the complaint is specific enough. The plaintiffs' bills of particulars will need to provide more detailed information about the claimed damages, not the complaint.

Defendants next ask the court to dismiss the complaint as against Kushner Companies, LLC, based on 3211 (a)(1), documentary evidence, and 3211 (a)(7), failing to state a claim, and 3013, lack of particularity. The complaint states that this defendant is named as it is the parent company of defendant Westminster, and "managed" the construction. Defendants claim it is an improper party. Defendants also ask to remove Austin Nichols House Condominium from the caption, as it is "not a legal entity," and to remove "Austin Nichols House" as a d/b/a for defendant 184 Kent Owner, LLC, as this defendant is not "doing business as" Austin Nichols House. Resolution of these requests requires an analysis of the proper parties for a tenant to sue in an action with these causes of action. This must be distinguished from parties that the property owner defendant may wish to bring a third-party action against, parties whom the tenant may not sue directly.

Here, May 1, 2015 is the earliest date that plaintiffs claim their causes of action arose.<sup>1</sup> On April 17, 2015, a deed was executed from 184 Kent Fee LLC to defendant 184 Kent Owner, L.L.C., which transferred the entire property to it [E-File Doc. 12]. Thus, defendant 184 Kent Owner, L.L.C. (this is their legal name, with the periods after the letters, but not how it is named in the caption) was the fee owner of the entire property at

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<sup>1</sup> The court takes judicial notice of the information on the website of the New York State Attorney General's Office, Real Estate Financing Bureau and on the NY City Department of Finance's ACRIS website.

the time plaintiffs allege their causes of action arose, and was thus the “landlord” on May 15, 2015.

On May 5, 2015, an offering prospectus (“red herring”) was submitted by 184 Kent Owner LLC, as Sponsor, to the New York State Attorney General’s Office, Real Estate Financing Bureau, for conversion of the property to a condominium, pursuant to Part 23, the occupied condominium regulations, to be known as the Austin Nichols House Condominium. The plan was accepted for filing on April 25, 2016, as Plan CD150129, which permitted the Sponsor to offer the units<sup>2</sup> for sale. The offering plan apparently indicated that (it is not clear if there were several principals or one) either the principal of the Sponsor, or one of the principals, was Jared Kushner, as the offering plan was amended on or about February 17, 2017, in Plan Amendment 2, to reflect that he was no longer a principal of the Sponsor. On February 28, 2017, the plan was declared to be effective by the Sponsor, which offering plan amendment was accepted for filing on March 20, 2017, as Amendment number 4, by the Real Estate Financing Bureau, which means that at least the requisite minimum number of units had been sold, and permission was granted to commence the closings on the sales agreements.

The court concludes, from this information, that defendant 184 Kent Owner LLC was the property owner from May 1, 2015 until at least March 20, 2017, as none of the condominium units could have been transferred to anyone else during the period of time that the construction work was ongoing, and in fact, the Declaration of Condominium was not, and could not be, executed by 184 Kent Owner LLC to Austin Nichols House

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<sup>2</sup> 338 residential, 63 storage, 1 parking and 1 commercial unit.

Condominium until after the New York State Attorney General's Office, Real Estate Financing Bureau declared the offering plan "effective." ACRIS indicates that the Declaration of Condominium was recorded on June 2, 2017. There was no Austin Nichols House Condominium until that date, as it was just an idea until it became a reality on that date.

The court notes, however, that once the plan was declared effective, the Sponsor was able to sell both vacant and occupied apartments, and so it is possible that one or more investors purchased one or more of plaintiffs' apartments, subject to their occupancy. Therefore, the court cannot conclude that defendant 184 Kent Owner LLC owned all of the plaintiffs' apartments on the date this action was commenced. It is the responsibility of plaintiffs' counsel to determine whether ownership of any of the plaintiffs' apartments changed after the condominium was established.

The condominium form of ownership of real property is established by dividing a parcel of real property into individual units and their appurtenant common elements. A unit owner holds title in fee to his or her individual unit as well as to an undivided interest in the common elements. See, *Residential Comm. of Bd. of Managers of the Sycamore v 250 East 30th Street Owners, LLC*, 17 Misc 3d 1139[A] [Sup Ct, New York County 2007]; *Murphy v State of New York*, 14 AD3d 127 [2d Dept 2004]. A parcel of real property becomes a condominium and is thus subject to the jurisdiction of the Condominium Act (Real Property Law Article 9-B, § 339-d et seq.), through the filing of a Declaration of Condominium (RPL § 339-n). Once created, the administration of the condominium's affairs is governed principally by its Declaration and By-Laws, which are, in essence, an agreement among all of the individual unit owners as to the manner in which the condominium will operate, and which sets forth the respective rights and obligations of

the unit owners concerning their units and the condominium's common elements. See, *Gennis v Pomona Park Bd. of Managers*, 36 AD3d 661, [2d Dept 2007]; *Schoninger v Yardarm Beach Homeowners' Assoc., Inc.*, 134 AD2d, [2d Dept 1987]. Every unit owner executes a Unit Owner Power of Attorney, which gives the board of managers the authority to represent the unit owner in accordance with the terms of the Declaration and By-laws.

The court notes that a condominium is, under NY law, an unincorporated association, and, contrary to defendants' contention, is a legal entity. However, the law (the "General Associations" volume of McKinney's), has a specific provision for suing an unincorporated association, General Associations Law § 13, as follows:

An action or special proceeding may be maintained against the president or treasurer of such an association, to recover any property, or upon any cause of action, for or upon which the plaintiff may maintain such an action or special proceeding, against all the associates, by reason of their interest or ownership, or claim of ownership therein, either jointly or in common, or their liability therefor, either jointly or severally. Any partnership, or other company of persons, which has a president or treasurer, is deemed an association within the meaning of this section.

The plaintiffs herein have improperly brought suit against an unincorporated association and have failed to name either the defendant's president or treasurer in his or her representative capacity, as a party to this action, as is required by General Associations Law § 13. However, that error, by itself, is not jurisdictional and can be corrected by amendment. See, *Montalvo v Bakery & Confectionary Workers International Union Local No. 3*, 137 AD2d 506, 508 [2d Dept 1988]; *Matter of Motor Haulage Co. [International Bhd. of Teamsters]*, 298 NY 208 [1948]; *Bohl Contr. Co. v IUE, AFL-CIO Dist. No. 3*, 73 AD2d 1023 [3d Dept], *lv dismissed* 51 NY2d 704 [1980]. The fact that the

condominium was sued without naming a proper officer in his or her capacity as such, in violation of Section 13 of the General Associations Law, is not a fatal defect but a correctable error. See *Bohl Contracting Co. v IUE, AFL-CIO*, 73 AD2d 1023, 1024.

Here, the court finds that plaintiffs have no cause of action against the condominium, however. First, it did not come into existence until June 2, 2017, and second, it does not own the unsold units and has not and will not be renovating them. Thus, all references to the condominium must be removed from the caption, as requested. It is also noted that movants have established that defendant 184 Kent Owner LLC, a limited liability company, is not “doing business as” the condominium, so to the extent the condominium is referenced in that fashion, it is incorrect and should also be removed from the caption.

The branch of the motion to dismiss the complaint as against Kushner Companies, LLC is granted, as there is no cause of action stated against it. It was not the property owner, the Sponsor of the condominium, the management company, or an entity in privity with any of the plaintiffs. The complaint states that it is the “parent company” of the defendant management company. That may be, but that is not a basis for a suit for property damage or a breach of the warranty of habitability.

The next branch of the motion seeks to dismiss the complaint as against 184 Kent MT, LLC. The notice of motion and the memo of law in support claim it must be dismissed “pursuant to CPLR §3211(a)(2) and (8) and CPLR §1003.” Plaintiffs claim their leases for their apartments for the period 2015 to 2017 list this entity as their landlord, and that their subsequent leases list 184 Kent Owner LLC as their landlord, and that is why they have named both entities. While only 184 Kent Owner LLC has held title,

the court finds some support for this entity being named a defendant in this action in ACRIS, as a memorandum of lease for the entire property (Block 2348 Lot 1) was recorded in 2010, CRFN 2010000056564, from 184 Kent Fee LLC, the prior owner of the property, to 184 Kent MT, LLC. The only thing that can be gleaned from this document is that 184 Kent MT, LLC was given a twenty-two year lease for the entire property, to start when the premises were “developed and rehabilitated and placed in service . . . as evidenced by the issuance of a temporary certificate of occupancy therefor.”

Defendants claim in its affirmation in support that this entity must be dismissed as it was “not added in compliance with CPLR 1003.” This statute provides that a party “may be added at any stage of the action by leave of court or by stipulation of all parties who have appeared . . . or at any time before the period for responding to that summons expires or within 20 days after service of a pleading responding to it.”

Here, as this is a pre-answer motion, plaintiff still had time to add a defendant. The court notes that plaintiffs technically made an oral motion to amend the complaint during the oral argument on Mot. Seq. #3, and as such, there was no proposed amended complaint before the court. This is why the CPLR requires a motion to amend to have a proposed amended complaint. The court cannot remember if plaintiffs asked the court for permission to add a defendant, or to add more plaintiffs. The court’s order dated 10/3/19 is solely addressed to the lack of specificity in the Second Amended Complaint. The Third Amended Complaint [E-File Doc 56] was E-filed on February 13, 2020 and added 184 Kent MT LLC as a defendant for the first time. Paragraphs 58 and 59 of the Third Amended Complaint state “58. Between 2015 and 2017, Kent MT entered into

residential leases with Plaintiffs. 59. Between April 17, 2015, and 2017, Kent MT managed the condominium conversion.”

The court concludes that, as the order issued on October 3, 2019 did not restrict what could or could not be included in the amended complaint, and only required that the complaint state whether any of the plaintiffs had moved out, and if so, when, the plaintiffs were permitted to add a party defendant to the Third Amended Complaint filed on February 13, 2020. Defendants’ counsel states in his affirmation in support that he represents 184 Kent MT, LLC, as well as the other moving defendants. He does not claim this party was not served with the supplemental summons and Third Amended Complaint, or that the statute of limitations has run with regard to this defendant, but solely argues improper joinder. He has therefore waived the defense of lack of personal jurisdiction by failing to include that claim in this pre-answer motion to dismiss (See *Nahoum v Powerhouse Brands, Inc.*, 2019 NY Slip Op 34010[U], [Sup Ct, Nassau County 2019]). While the phrase in CPLR 1003 “at any time before the period for responding to that summons expires,” and as defendants had not answered any of the versions of the complaint by October 3, 2019, when the court granted plaintiffs permission to again amend the complaint and gave defendants leave to renew their motion to dismiss as against the next iteration of the complaint, the Third Amended Complaint, to avoid any problems or appealable issues, the court retroactively grants plaintiffs permission to add this defendant, as while it can be argued that the amendment was as of right, there is some dicta states that a plaintiff only may amend as of right once (see Westlaw practice commentary for CPLR 1003; *Jaramillo v Asconcio*, 151 AD3d 947, 947 [2d Dept 2017]). Therefore, this branch of the motion is denied. The court must note

that while the Notice of Motion and the Memo of Law [Doc 59] conclude that this defendant should also be dismissed pursuant to CPLR §3211(a)(2) [the court has no jurisdiction of the subject matter] and (a)(8) [the court has no jurisdiction over the party], there is not one word in these documents or in the affirmation in support with regard to CPLR §3211(a)(2) or (8). It is not known why these sections of the CPLR were cited, and the court cannot speculate.

Next, defendants move to dismiss the claims of five of the plaintiffs as time barred. They are: Daniel Sporkin, Jasen Kelley, Erfun Guela, James V. Dercole and Muoi Gu Tran. Defendants claim their claims must be dismissed pursuant to CPLR §3211(a) (5) as they are time-barred pursuant to CPLR §214(4). The court notes that Erfun Guela is not in the caption of the Third Amended Complaint, while the body of the complaint states “Plaintiff Erfun Guela resided in apartment C-409 in the building between May 1, 2015 and December 23, 2016”. Plaintiffs’ affirmation in opposition at paragraph 8 states that he is not a plaintiff in this action. The reference to him in the complaint must be an error. The motion is thus granted as to Erfun Guela.

With regard to the other four plaintiffs, plaintiffs’ counsel avers that “these 4 plaintiffs first filed their complaint on November 7, 2018 (NYSCEF Doc. No. 4), which was then well within the applicable statute of limitations.” The statute of limitations for plaintiffs’ two causes of action is three years (see *Kent v 534 E. 11<sup>th</sup> St.*, 80 AD3d 106 [1<sup>st</sup> Dept 2010]). Defendants do not agree, and state “as the court can see, the Third Amended Complaint was filed on February 13, 2020 which is in excess of three years after the aforementioned plaintiffs vacated the premises.” While the action was commenced on July 15, 2018, these four plaintiffs were not in the caption filed on that

date, but they were added to the First Amended Complaint, which was amended as of right on November 7, 2018, before defendants answered or moved to dismiss.

Therefore, their claims for the period November 7, 2015 to November 7, 2018, are covered by the three-year statute of limitations for the two causes of action. All four of these plaintiffs moved out in 2016, which entitles them to prove their damages for the time period from the date which is three years before they made their claim, November 7, 2015, to the date each of them moved out of the building. It must be noted that not every plaintiff needs to have the same time period of recovery as the other plaintiffs, and that each plaintiff will need to prove their damages separately. This is not a class action. The branch of the motion to dismiss the claims of these four plaintiffs is denied.

Finally, defendants move to dismiss the claims of plaintiffs Mayo and Umyrn, claiming they were included as plaintiffs for the first time in the Third Amended Complaint filed on February 13, 2020, and thus were improperly joined. As stated above, they were added before defendants answered the complaint and before defendants filed the instant pre-answer motion to dismiss, and as such, as the court created an ambiguity with the October 3, 2019 order, which did not specify any limitations on plaintiffs' permission to amend the complaint, the court grants plaintiffs permission to add this couple retroactively, and finds that their claims are not dismissible on the ground that they were improperly joined. The court has learned a lesson with regard to granting oral motions to amend. The complaint states that "Plaintiffs Bonnie Mayo and Dimitry Umyrn resided in apartment A-502 in the building between May 1, 2015 and December 20, 2017." Thus, by commencing their action on February 13, 2020, their claims are limited by the three-year statute of limitations to the time period from February 14, 2017 (three years before

they were joined as plaintiffs) to December 20, 2017, the date they moved out. The branch of the motion which seeks to dismiss their claims is denied.

In conclusion, the defendants' motion is granted solely to the extent that the action is dismissed as against Kushner Companies LLC and Austin Nichols House Condominium and is otherwise denied. References to Erfun Guela shall be deemed deleted as they were apparently included in error. The caption is amended to read as follows:

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**ERIC BARNA, PAOLO LUCIANO, JANE COXWELL,  
SABINE SEYMOUR, NANDITA RAY, JENS MEBES,  
MICHAEL CINQUINO, REBECCA LEE, JEFF WERNER,  
CHRIS REMUS, BARTH BAZYLUK, ROSA BAZYLUK,  
YUICHIRO NISHIZAWA, MARIE KOUADIO AMOUZAME,  
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JASON MINYO, DYANIS De JESUS COLON, JABEZ  
DEWEY, FRANK BIRCHFIELD, VANESSA GOMES,  
CATHRYN BENNETT, JAMES V. DERCOLE,  
MUOI GUTRAN, JARED SCHARFF, WILL HENSLEY,  
BONNIE MAYO and DIMITRY UMYN,**

**Plaintiffs,**

**- against -**

**184 KENT OWNER, L.L.C.,  
WESTMINSTER MANAGEMENT, L.L.C.  
and 184 KENT MT, LLC,**

**Defendants.**

\_\_\_\_\_ X

Defendants are granted thirty (30) days from today's date to answer the Third Amended Complaint. The court will then e-file a Preliminary Conference Order, as

preliminary conferences are not being held at the present time due to the Covid-19 pandemic. If one is not received, counsel should contact the Intake Clerk.

This shall constitute the decision and order of the court.

Dated: November 10, 2020

ENTER :

A handwritten signature in black ink, appearing to be 'DS' or similar initials, written over a horizontal line.

Hon. Debra Silber, J.S.C.