

Board of Mgrs. of the S. Star v WSA Equities, LLC

2021 NY Slip Op 31272(U)

April 15, 2021

Supreme Court, New York County

Docket Number: 159128/2012

Judge: Arthur F. Engoron

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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. ARTHUR F. ENGORON

PART IAS MOTION 37EFM

Justice

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BOARD OF MANAGERS OF THE SOUTH STAR,

Plaintiff,

- v -

WSA EQUITIES, LLC, 80 JOHN CONDOMINIUM LLC, FRED OLIVER, CAROL ACHENBAUM, WILLIAM ACHENBAUM, MICHAEL ACHENBAUM, CORCORAN GROUP MARKETING, THE CORCORAN GROUP, INC., WSA MANAGEMENT LTD., STEPHEN B. JACOBS GROUP, P.C., STEPHEN JACOBS, STEVEN KAPLAN CONSULTING ENGINEER, STEVEN KAPLAN, ETTINGER ENGINEERING ASSOCIATES, ERIC ETTINGER, BENI CONSTRUCTION CO., INC,

Defendant.

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BENI CONSTRUCTION CO., INC

Plaintiff,

-against-

MARTIN FELD OF SOVEREIGN, LTD., FOUR DAUGHTERS LLC, FOUR DAUGHTERS LLC D/B/A FOUR DAUGHTERS ARCHITECTURAL WOODWORKERS LLC, FOUR DAUGHTERS ARCHITECTURAL WOODWORKERS LLC, FORO MARBLE COMPANY, INC., NEW SUPERIOR TUB REFINISH CORP.

Defendant.

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WSA EQUITIES, LLC, 80 JOHN CONDOMINIUM LLC, FRED OLIVER, CAROL ACHENBAUM, WILLIAM ACHENBAUM, MICHAEL ACHENBAUM, WSA MANAGEMENT LTD.

Plaintiff,

-against-

KAPLAN STEVEN, STEVEN KAPLAN CONSULTING ENGINEER, B&A RESTORATION CONTRACTORS, INC., AM BUILDING MAINTENANCE CORP., HLS BUILDERS CORP.,

INDEX NO. 159128/2012

MOTION DATE N/A, N/A, N/A,
N/A, N/A, N/A,
N/A, N/A

MOTION SEQ. NO. 014 015 016
017 018 019
019 020

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595742/2015

Second Third-Party
Index No. 595535/2016

HOWARD L. ZIMMERMAN ARCHITECTS P.C. A/K/A HLZA2,
 LLC, TRANSPORTATION TECHNOLOGY, INC. D/B/A
 POWER PERFORMANCE INDUSTRIES, NEW YORK
 ELEVATOR CO, INC., HECHT & SOHN GLASS CO., INC.,
 FLEET PUMP & SERVICE GROUP, INC., FIGLIA & SONS,
 INC., EVERGREEN PRODUCTS, LLC, D.S.C.
 CONSTRUCTION, INC., HALSTEAD MANAGEMENT
 COMPANY, LLC, AS SUCCESSOR-IN-INTEREST TO
 LAWRENCE PROPERTIES

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 014) 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 612, 613, 614, 615, 616, 617, 618, 620, 623

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 015) 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 622, 631, 649, 650, 651, 652, 653, 686

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 016) 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 624, 632, 662, 682, 685

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

The following e-filed documents, listed by NYSCEF document number (Motion 017) 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 625, 629, 647, 654, 655, 656, 657, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 683, 698

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 018) 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 626, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 659, 660, 661, 679, 680, 681

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 019) 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 627, 630, 648, 658, 663, 664, 665, 684, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 019) 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 627, 630, 648, 658, 663, 664, 665, 684, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697

were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 020) 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717

were read on this motion to/for

RENEW/REARGUE/RESETTLE/RECONSIDER

Upon the foregoing documents, motions 14-19 are denied, and motion 20 is granted.

In this long-enduring and contentious action, plaintiff, the Board of Managers of The South Star (“the Board”), a condominium building located at 80 John Street, New York, New York (“the Condo”), alleges that while the building was being converted into a condominium, the sponsor and related entities knowingly misrepresented material terms about the condition of the building in their Offering Plan.

After over 8 years of discovery and motion practice, each of the remaining defendants now moves for summary judgment (motion sequences 014, 015, 016, 017, and 018). Plaintiff now moves for partial summary judgment (motion sequence 019) and to renew and reargue, based on a recent change of law by the Appellate Division, First Department, a prior order by this Court that dismissed constructive fraudulent conveyance claims.

Following a long (virtual) oral argument this morning, the Court hereby issues the following rulings:

Defendant Steven B. Jacobs & Associates’ motion for summary judgment (motion sequence 014) is denied as the breach of contract claims and the fraud claims are subject to a 6-year statute of limitations which began running on the date of the first unit closing, and are not simple professional malpractice claims which would otherwise be subject to a 3-year statute of limitations. Additionally, plaintiff’s fraud claim is not duplicative of the breach of contract claim as plaintiff has plead with specificity allegations of fraud separate and apart from the contract. Accordingly, motion sequence 014 is denied.

Defendant Foro Marble Company’s motion for summary judgment (motion sequence 015), defendant B&A Restoration Contractors Inc.’s motion for summary judgment (motion sequence 016), and defendant Beni Construction’s motion for summary judgment (motion sequence 018) are each denied as there remain disputed material issues of fact as to whether the work each respective defendant performed was defective. Similarly, WSA’s motion for summary judgment (motion sequence 017) is granted only to the extent of dismissing Michael Achenbaum as a party (who plaintiff concedes was named in error) and is otherwise denied as there are disputed issues of fact as to whether WSA misrepresented the condition of the building in its Offering Plan. Similarly, plaintiff’s motion for partial summary judgment as against WSA (motion sequence 019) is also denied for the same reasons, and because some of the alleged misrepresentations and/or defects appear to be de minimis.

Simply put, and not surprisingly in a case of this nature, the motions for summary judgment must be denied because there are issues of fact as to the condition of the building at various relevant times, and who, if anyone, is liable for the alleged defects.

Plaintiff argues (motion sequence 020) that the First Department’s change of position in Bd. Of Managers of Be@William Condo v 90 William St. Dev. Grp. LLC, 187 AD3d 680 (1st Dept. 2020), warrants reargument of this Court’s previous order, which dismissed the constructive fraudulent conveyance claims in reliance on Sutton Apts. Corp. v Bradhurst 100 Dev. LLC, 107 AD3d 646 (1st Dept. 2013), which required demonstrating a fiduciary or confidential relationship between the Board and the sponsor to support a claim for constructive fraudulent conveyance. However, the First Department made clear in Bd. Of Managers of Be@William Condo that such requirement should no longer be imposed. Accordingly, plaintiff’s motion for leave to renew and reargue is granted, and upon renewal, the previously dismissed causes of action for constructive fraudulent conveyances are hereby reinstated, and plaintiff is granted leave to supplement the summons and complaint to add “The Achenbaum Family Partnership, L.P.” as a defendant. The Court will extend, nunc pro tunc, plaintiff’s time to serve the new defendant to 30 days from the date of this Order.

Consequently, motion sequences 014, 015, 016, and 018 are hereby denied; motion sequence 017 is hereby granted only to the extent of dismissing Michael Achenbaum as a party and is otherwise denied, motion sequence 019 is hereby denied, motion sequence 020 is hereby granted, and, accordingly, the Clerk is hereby directed to enter judgment dismissing the case as against Michael Achenbaum only



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4/15/2021

DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE