

**Parc 56 LLC v Board of Mgrs. of the Parc Vendome  
Condominium**

2022 NY Slip Op 31818(U)

June 8, 2022

Supreme Court, New York County

Docket Number: Index No. 653550/2021

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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PARC 56 LLC,  Plaintiff,  - v -  BOARD OF MANAGERS OF THE PARC VENDOME CONDOMINIUM, BRADFORD WINSTON  Defendant.	INDEX NO. <u>653550/2021</u>  MOTION DATE <u>04/26/2022,</u> <u>04/26/2022</u>  MOTION SEQ. NO. <u>003 004</u>  <b>DECISION + ORDER ON                  MOTION</b>
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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 187, 188, 214 were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 186, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213 were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, Park 56 LLC (the **Unit Owner**)’s renewed motion for partial summary judgment (Motion 004) must be granted to the extent that the alteration agreement originally submitted by the Unit Owner on January 28, 2021 is the binding alteration agreement. On the record before the court, the facts unequivocally demonstrate that the alteration agreement was sent by the Board of Managers of the Parc Vendome Condominium (the **Board**)’s managing agent to the Unit Owner on January 4, 2021 and the Unit Owner signed and returned it on January 28, 2021 (NYSCEF Doc. No. 159). The Board reviewed the plans and specifications submitted in accordance with the proposed use for the unit, which was the exact same use that the Board previously approved for the prior owner of the condominium unit owned by the Unit Owner. In fact, in connection with this use, the Board previously executed an amendment to the

certificate of occupancy. The Board previously falsely told the Court that it did not know the location of the check for the alteration fee. It is now clear that the Board knew exactly where the check was and has been holding it for six years, has never made attempt to return the deposit to the prior owner and always understood that this check was to be applied to this Unit Owner's application. Among other things, additionally, the Unit Owner offered to pay other expenses and a replacement fee. The Board's attempt to argue now that its agent lacked the authority to send the alteration agreement, that the Unit Owner signed the wrong alteration agreement, that they never signed this alterations agreement (even though they clearly took substantial steps in furtherance of accepting this agreement by reviewing the plans) or that the governing documents refer to a different alterations agreement screams of bad faith. The alteration agreement that the Unit Owner received at closing was the alteration agreement that it signed and returned (NYSCEF Doc. No. 208). It does not matter that the contract documents included language that a different alterations agreement would be applicable to this unit as this was the alterations agreement that was delivered to the Unit Owner at closing. Even if the contract documents required a different alterations agreement, when the Board's managing agent sent the alteration agreement and the Board did not say a word for months, they waived their right to then come back and require a different alterations agreement.

The Unit Owner is not, however, entitled to summary judgment as to its claims that the Board waived its right of first refusal. There are issues of fact whether the requests for information and clarification that the Board sent on the 30<sup>th</sup> business day following receipt of the Lease (NYSCEF Doc. No. 86, Art. XIII[2][C]) were (i) proper (and were not a subterfuge as the Unit Owner claims for allegedly pocketing the lease) and (ii) to the extent any such requests for

information or changes to the lease were proper, whether the Unit Owner complied with any such proper requests. For one thing, it is not clear whether the terms or clarifications requested by the Board were reflected in the lease or other documents submitted by the prior owner or otherwise required by the Board. To wit, as discussed above, this use was previously approved by the Board and the Board executed an amendment to the Certificate of Occupancy in connection with such prior owner's proposed tenancy. If these terms were not required of the prior owner, this would be *prima facie* evidence of the Board's continued bad faith and breach of the governing documents if these requests are not necessitated by something specific to this proposed tenancy that was not present in the prior proposed tenancy; the Board's Milrose report indicates that the impact on the building would be *de minimis*.

Finally, for the avoidance of doubt, unless the first lease amendment raised issues that were not apparent in the initial lease, the Board waived its right to request additional information and clarification not previously requested.

The defendants' motion to compel discovery (Motion 003) is granted solely to the extent that the Unit Owner shall produce, subject to any privilege, all communications relating to any extension of time or alleged termination of the lease and all documents which the Unit Owner previously agreed to produce within 30 days.

Accordingly, it is ORDERED that the Plaintiff's renewed motion for partial summary judgment (Motion 004) is granted as set forth above; and it is further

ADJUDGED AND DECLARED that the Plaintiff need not indemnify the Board for costs, expenses and attorneys' fees incurred in connection with the change in use and alterations to the Unit; and it is further

ORDERED that the Unit Owner shall produce all communications relating to any extension of time or alleged termination of the lease and the documents which the Unit Owner previously agreed to produce within 30 days of the date of this order; and it is further

ORDERED that the Unit Owner shall serve a deficiency letter on the defendants by June 10, 2022, and the parties shall meet and confer on all remaining discovery; and it is further

ORDERED that the parties shall appear for a status conference on July 19, 2022, at 11:30am; and it is further

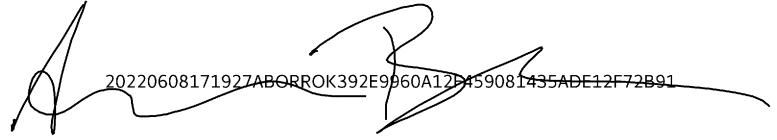
ORDERED that the parties shall submit a deposition schedule with all names and dates by July 19, 2022; and it is further

ORDERED that depositions shall be completed by September 30, 2022; and it is further

ORDERED that expert discovery shall be completed by November 30, 2022; and it is further

ORDERED that the note of issue shall be filed by December 14, 2022; and it is further

ORDERED that dispositive motions shall be filed within 60 days of the note of issue.



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6/8/2022  
DATE

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ANDREW BORROK, 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