| **Board of Mgrs. of the Cobblestone Lofts Condominium v McMahon** |
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| 2022 NY Slip Op 31882(U) |
| June 10, 2022 |
| Supreme Court, New York County |
| Docket Number: Index No. 150076/2020 |
| Judge: Lucy Billings |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41
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BOARD OF MANAGERS OF THE COBBLESTONE LOFTS CONDOMINIUM,

Plaintiff

Index No. 150076/2020

- against -

DECISION AND ORDER

SHANE McMAHON and MARISSA McMAHON
8 Laight Street
New York, NY 10013

- and -

CITIMORTGAGE, INC., WORKERS' COMPENSATION BOARD OF THE STATE OF NEW YORK, and JOHN DOE #1 through JOHN DOE #10, the last ten names being fictitious and unknown to plaintiffs, the persons or parties intended being the tenants, occupants, persons, or corporation, if any, having or claiming an interest in or lien upon the premises, described in the complaint,

Defendants

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LUCY BILLINGS, J.S.C.:

Plaintiff Board of Managers of the Cobblestone Lofts Condominium sues Shane McMahon and Marissa McMahon, who own units PHS, PS6, and PS7 in Cobblestone Lofts' condominium building; CitiMortgage, Inc., which holds a subordinate mortgage on one or more of the units; and the Workers' Compensation Board of the State of New York, which holds a judgment against Marissa McMahon. Cobblestone Lofts alleges that the McMahon defendants failed to pay the common charges and assessments required by the

condominium's bylaws. Cobblestone Lofts seeks $930,532.59, further accruing charges and assessments, and foreclosure of the McMahon defendants' units, on which Cobblestone Lofts has recorded liens. The McMahon defendants move to dismiss or stay the action. C.P.L.R. §§ 2201, 3211(a)(4), (5), and (7). CitiMortgage separately moves to dismiss or stay the action, but joins in the McMahon defendants' grounds for dismissal or a stay and presents no distinct grounds. Therefore the court considers the motions together.

I. DISMISSAL BASED ON LACHES

The moving defendants seek dismissal based first on the complaint's failure to state a claim for which relief may be granted because the action is untimely. C.P.L.R. § 3211(a)(5) and (7). The moving defendants claim that laches, not the applicable statute of limitations, bars this action over a dispute that dates back to arrears from 2012 and to extensive prior litigation between Cobblestone Lofts and the McMahon defendants beginning in 2014.

Laches is an equitable doctrine that deprives a party of a right that the party has neglected to claim, if the delay has prejudiced the parties invoking laches. Saratoga County Chamber of Commerce v. Pataki, 100 N.Y.2d 801, 816 (2003); Reif v. Nagy, 175 A.D.3d 107, 130 (1st Dep't 2019). Prejudice to the parties invoking the laches defense is vital. Matter of Flamenbaum, 22

N.Y.3d 962, 966 (2013); Saratoga County Chamber of Commerce v. Pataki, 100 N.Y.2d at 816; People v. Burden, 176 A.D.3d 524, 525 (1st Dep't 2019); Reif v. Nagy, 175 A.D.3d at 130. An injury, a change in position, a loss of evidence, or another disadvantage in litigation would show prejudice. Matter of Linker, 23 A.D.3d 186, 189 (1st Dep't 2005).

The McMahon defendants point to the expenses of the prior litigation and the further expenses required to litigate this action as evidence of prejudice. None of these burdens, however, is attributable to Cobblestone Lofts' delay in commencing this action. If anything, the delay works to the McMahon defendants' advantage, because the applicable statute of limitations bars Cobblestone Lofts' claim for arrears from 2012 to 2014. C.P.L.R. § 213(4). Since the moving defendants have not shown any prejudice from Cobblestone Lofts' delay in commencing this action, laches does not apply.

Finally, the moving defendants rely on the dissent in Wesselman v. Engel Co., 283 A.D. 1020, 1020 (1st Dep't 1954), for the bald proposition that laches may apply to a foreclosure action. The First Department more recently has held that "the doctrine of laches is not available in a foreclosure action brought within the period of limitations," as this action undisputedly was. New York State Mtge. Loan Enforcement & Admin. Corp. v. North Town Phase II Houses, 191 A.D.2d 151, 152 (1st

Dep't 1993). See Wilmington Sav. Fund Soc'y FSB v. Deliberto, 184 A.D.3d 1081, 1084 (4th Dep't 2020); Schmidt's Wholesale v. Miller & Lehman Constr., 173 A.D.2d 1004, 1005 (3d Dep't 1991).

II. DISMISSAL BASED ON A PRIOR ACTION PENDING

Next, the moving defendants seek to dismiss the first two causes of action, for breach of a contract and for attorneys' fees, because of the prior action pending, McMahon v. Cobblestone Lofts Condominum, Index No. 151136/2014 (Sup. Ct. N.Y. Co.). C.P.L.R. § 3211(a)(4). The moving defendants further contend that the dismissal, based on that pending 2014 action, of another prior action by Cobblestone Lofts collaterally estops this action. Board of Managers of the Cobblestone Lofts Condominium v. McMahon, Index No. 850173/2016 (Sup. Ct. N.Y. Co. Oct. 25, 2017), NYSCEF Doc. No. 115. Defendants maintain that, even if the 2016 action does not collaterally estop this action, the continued pendency of the 2014 action still bars this action.

Collateral estoppel precludes relitigation of issues decided in a forum where all parties received a full and fair opportunity to be heard. Platt v. Berkowitz, 203 A.D.3d 447, 448 (1st Dep't 2022). In the 2016 action, the court dismissed Cobblestone Lofts' breach of contract claim without prejudice, due to Cobblestone Lofts' failure to serve a notice of pendency, a curable deficiency, so that decision does not collaterally estop any subsequent claim. Nor does the 2014 action collaterally

estop Cobblestone Lofts' breach of contract or attorneys' fees claim, since no such claims by Cobblestone Lofts in that action have been decided.

The final question is whether the moving defendants are entitled to dismissal or a stay of this action because the 2014 action still is pending. In that action the McMahons seek damages for the diminution of their condominium units' value and for their physical injuries due to conditions in their units and in the building for which the McMahons claim Cobblestone Lofts is liable. The Appellate Division already determined in the 2014 action that the McMahons are not entitled to an abatement of common charges and assessments under the condominium's bylaws. McMahon v. Cobblestone Lofts Condominum, 161 A.D.3d 536, 537 (1st Dep't 2018). Cobblestone Lofts does not counterclaim in that action, but only defends it on the ground that the McMahons' nonpayment abrogates any obligation of Cobblestone Lofts to repair the conditions of which the McMahons complain, and pleads the outstanding charges and assessments as an offset against the McMahons' claimed damages.

Thus the 2014 action concerns whether Cobblestone Lofts caused a diminution in the value of the McMahons' units and caused the McMahons physical injuries. This action concerns neither issue. The 2014 action involves a defendant and a third party defendant that worked in the units or building as

contractors, parties not implicated here. This action involves the subordinate mortgagee CitiMortgage and the judgment creditor Workers' Compensation Board, neither of which is implicated in the 2014 action. Whether the outstanding common charges and assessments at issue here are paid or remain outstanding will affect the valuation of the units in the 2014 action, but that interrelationship will not produce any inconsistent rulings. To the extent that factual or legal issues in the two actions do overlap, because the 2014 action is at a far more advanced stage and ready for trial, those issues more than likely will be determined in that action before they are reached here. Therefore, while the results of the 2014 action may have preclusive effect here, that very effect eliminates the risk of contradictory or conflicting decisions if this action proceeds.

In sum, the purposes, claims, and relief sought in the two actions, although related, are not sufficiently similar to warrant dismissal of this action. C.P.L.R. § 3211(a)(4); Natixis Funding Corp. v. GenOn Mid-Atl., LLC, 181 A.D.3d 481, 484 (1st Dep't 2020); Sprecher v. Thibodeau, 148 A.D.3d 655, 657 (1st Dep't 2017); Wimbledon Fin. Master Fund, Ltd. v. Bergstein, 147 A.D.3d 644, 645 (1st Dep't 2017); Anonymous v. Anonymous, 136 A.D.3d 506, 507 (1st Dep't 2016). The dissimilar claims and relief sought, moreover, implicate additional dissimilar parties in each action, compromising the identity of parties in the two

actions. Sprecher v. Thibodeau, 148 A.D.3d at 657; Wimbledon Fin. Master Fund, Ltd. v. Bergstein, 147 A.D.3d at 645.

III. REQUEST FOR A STAY

Alternatively, the moving defendants seek a stay of this action pursuant to both C.P.L.R. § 3211(a)(4), which allows the court to "make such order as justice requires," and C.P.L.R. § 2201. All the same reasons that dictate denial of dismissal dictate denial of a stay pursuant to C.P.L.R. § 3211(a)(4). The moving defendants do not indicate how C.P.L.R. § 2201, which allows a stay "upon such terms as may be just," as long as it is not otherwise prohibited, affords any basis for a stay that § 3211(a)(4) does not afford. Since the 2014 action will not resolve all the issues in this action, and the two actions pose little risk of inconsistent rulings, C.P.L.R. § 2201 does not dictate a stay. In re Qudian Litig., 189 A.D.3d 449, 449 (1st Dep't 2020); Fewer v. GFI Group Inc., 59 A.D.3d 271, 271-72 (1st Dep't 2009).

The McMahons lament that the court in their 2014 action permitted Cobblestone Lofts to add affirmative defenses after disclosure concluded in that litigation. If this action is not dismissed or stayed, however, the McMahons may pursue the disclosure they were denied there. In this action they also may use the disclosure they obtained in the 2014 action, rather than duplicating those proceedings. Thus there is just as much or

more reason to deny a stay as to deny dismissal.

IV. CONCLUSION

For all the reasons explained above, the court denies the separate motions by defendants Shane McMahon and Marissa McMahon and by defendant CitiMortgage, Inc., to dismiss or stay this action. C.P.L.R. §§ 2201, 3211(a)(4), (5), and (7). Defendants shall answer the complaint within 10 days after service of this order with notice of entry. C.P.L.R. § 3211(f). The parties shall appear for a Preliminary Conference by Microsoft Teams June 30, 2022, at 11:30 a.m.

DATED: June 10, 2022

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C