

**Board of Mgrs. of 570 Broome Condominium v Soho
Broome Condos LLC**

2023 NY Slip Op 32182(U)

June 28, 2023

Supreme Court, New York County

Docket Number: Index No. 650950/2023

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

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BOARD OF MANAGERS OF 570 BROOME
CONDOMINIUM,

Plaintiff,

INDEX NO. 650950/2023

MOTION DATE 05/26/2023

MOTION SEQ. NO. 001

- v -

SOHO BROOME CONDOS LLC, YNC EQUITY PARTNERS
LLC, MURAT AGIRNASLI, ERDEN M ARKAN, SELIM
AKYUZ, HILMI ULGUR AYDIN, ERMAN AGIRNASLI,
AGIME GROUP, LLC, "JOHN DOE" Nos. 1 through 10, and
"JANE DOE" Nos. 1 through 10, said names being fictitious
and unknown to plaintiff but intending to be the recipients of
any voidable transactions made by SOHO BROOME
CONDOS LLC,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14,
15, 16, 17, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32,

were read on this motion to/for DISMISS.

Defendants' Soho Broome Condos LLC, YNC Equity Partners LLC, Murat Agirnasli,
Erden M. Arkan, Selim Akyuz, Hilmi Ulgur Aydin, Eрман Agirnasli, and Agime Group LLC
(hereinafter "Movants") motion to dismiss is granted in part and denied in part.

Background

Plaintiff is a residential condo that complains that the sponsor/developer utterly failed to
satisfy various promises made in connection with the offering plan related to the sale of the units.
It complains that shoddy workmanship and faulty construction practices led to numerous
deficiencies at the building for which the current board of managers, plaintiff, must now attempt
to rectify. Plaintiff insists that the sponsor and its principals deliberately misrepresented the
condominium's budget and intentionally set common charges low to induce purchasers to buy

units in the building. Unfortunately, according to plaintiff, the shoddy construction work and the low common charges resulted in a massive assessment for the unit owners after only two years of operation as a condo. It also alleges that the sponsor's business partners have looted the sponsor's assets.

Defendant Soho Broome Condo LLC (the "Sponsor") is the sponsor. The individual defendants were principals of the sponsors and most were also board members appointed by the Sponsor (until plaintiff took over). The complaint alleges that defendants YNC Equity Partners, LLC and Agime Group LLC received distributions from the Sponsor (according to the offering plan they were LLCs controlled by two of the individual defendants).

Movants seek to dismiss the claims against YNC Equity Partners, Agime Group LLC and the individual defendants on the ground that plaintiff did not allege facts sufficient to pierce the corporate veil against the Sponsor. They explain that the Sponsor is a limited liability company and that liability cannot be imposed on individual members of a sponsor entity under these circumstances.

In opposition, plaintiff insists that the Non-Sponsor defendants are liable based on their fraudulent acts, breaches of fiduciary duties, and receipt of fraudulent conveyances. It points out that they swore in the Sponsor certification that they reviewed the entire offering plan and investigated the facts contained in this document. Plaintiff contends that it is not alleging a veil-piercing theory against these defendants; instead, it asserts claims against them in their individual capacity.

The complaint asserts three causes of action against the Non-Sponsor defendants: fraud in the inducement, breach of fiduciary duty and a claim based upon the Debtor and Creditor Law.

Fraud in the Inducement

“To state a claim for fraudulent inducement, there must be a knowing misrepresentation of material present fact, which is intended to deceive another party and induce that party to act on it, resulting in injury. A claim of fraud in the inducement requires proof of actual pecuniary loss” (*Genger v Genger*, 144 AD3d 581, 582, 43 NYS3d 581 [1st Dept 2016]).

The Court observes that this cause of action is alleged against the “Sponsor Defendants” but that is not a defined term in the complaint. The Court will assume, for purposes of this motion, that it is alleged against the individual defendants and the Sponsor (so, all defendants except for the YNC Equity Partners, LLC and Agime Group LLC¹).

The Court denies the branch of the motion that seeks to dismiss this claim. The allegations in the complaint detail that there were affirmative misrepresentations made in the offering plan and certain amendments about the financial health of the condo to induce buyers to purchase units. Plaintiff details that when the units were for sale, the condo’s operating expenses were deliberately low and then, when the units were nearly all sold, the expenses nearly doubled (NYSCEF Doc. No. 13, ¶ 87). In other words, plaintiff insists that the Sponsor and the individual defendants deliberately misled potential purchasers about the budget until after the units were sold in order to get them to buy the units. This included common charges that were intentionally set at a level that did not cover the condo’s expenses. That states an affirmative misrepresentation that is not duplicative of the breach of contract claim (*Bd. of Managers of S. Star v WSA Equities, LLC*, 140 AD3d 405, 405, 30 NYS3d 876 [1st Dept 2016]). While common charges may be subject to change, it is certainly a factor when purchasing a condo.

¹ To the extent it is alleged against these defendants, this cause of action is dismissed as there are no allegations that these defendants made any misrepresentations.

Plaintiff's claim is not simply reliant on the fact that the Sponsor breached the contract (the offering plan). It argues that these defendants made misrepresentations about the financial health of the condo in order to induce people to purchase units while (according to the complaint) there were questions about the condo's ability to continue as a going concern. This is distinct from the failure to construct the building to meet certain parameters in the offering plan, such as the purportedly faulty piping and improper gas room venting (NYSCEF Doc. No. 13 ¶ 68).

The fact is that the individual defendants signed the offering plan, which affirmatively represented that the condo's budget was acceptable and appropriate to ensure the condo could meet its obligations. Plaintiff alleges that right after the last of the 54 units was in contract, common charges were suddenly increased by 65% in February 2022 to reflect the actual costs of the building's expenses. It also observes that in May 2022, the Sponsor-controlled board imposed a \$500,000 assessment to make up for budgetary shortfalls that arose because they did not demand enough for common charges.

It may be that discovery reveals that these actions do not evince fraud. But, on a motion to dismiss, the Court must take the allegations as true. And the allegations here suggest a scheme to make units appear more attractive (with low common charges) while they were for sale and then impose the financial realities of the building once all of the units were sold.

Breach of Fiduciary Duty

This claim (the third cause of action) is alleged against the board members appointed by the Sponsor (defendants Murat Agirnasli, Erden M. Arkan, Selim Akyuz, and Erman Agirnasli). The Court denies this branch of the motion to dismiss this claim as well.

Plaintiff contends that these defendants put the interests of the Sponsor over those of the condo by keeping common charges low and directing the managing agent not to pay certain bills. It argues that they did this to make the units more attractive to potential purchasers (by keeping the common charges low) instead of fulfilling their fiduciary duty to the board. Plaintiff also details how these individuals refused to address the obvious construction defects and left plaintiff to fix these issues. It sufficiently alleged that these actions were done in bad faith and amounted to self-dealing in favor of the Sponsor (*Shatz v Chertok*, 180 AD3d 609, 610, 117 NYS3d 239 [1st Dept 2020]).

Defendants' reliance upon the business judgment rule is, at this stage of the case, not sufficient to dismiss this cause of action. Although the business judgment rule prohibits review of decisions within the scope of the authority of the board members, plaintiff does not merely disagree with the decisions by these defendants. Instead, it contends that these defendants made decisions that were anathema to running a functioning building. Plaintiff alleges that they intentionally did not pay bills, did not set common charges at a level sufficient to cover expenses and did not address clear construction defects all to save money for and to benefit the Sponsor despite the fact that their duties were to the board. Maximizing the profit to the Sponsor and leaving the subsequent board to deal with financial issues states a cause of action for the breach of a fiduciary duty.

Voidable Transactions

The Court severs and dismisses this cause of action because plaintiff did not include factual allegations to sustain this claim, which is based upon Debtor Creditor Law §§ 273, 274, 276 and 276-a. This claim “contain[s] only legal conclusions and no specific factual allegations” (*NTL Capital, LLC v Right Track Rec., LLC*, 73 AD3d 410, 412, 901 NYS2d 4 [1st Dept 2010])

[dismissing certain Debtor Creditor Law claims]). Plaintiff's position is that because the Sponsor is a single purpose entity, it must have no assets since all of the units were sold. But that is a conclusion unsupported by factual allegations.


To the extent that plaintiff alleges that the Sponsor made various equity distributions to defendants and other entities, it did not adequately allege that these were done without fair consideration. It simply offered the conclusory assertion that there was no fair consideration; that does not state a cognizable cause of action (*Bd. of Managers of Loft Space Condominium v SDS Leonard, LLC*, 142 AD3d 881, 882, 38 NYS3d 23 [1st Dept 2016]). And plaintiff's claim that these distributions were made with the intent to hinder, delay, or defraud the Sponsor's creditors is not supported with any details or facts. A mere legal conclusion, without more, cannot save this cause of action.

Accordingly, it is hereby

ORDERED that defendants' motion to dismiss is granted to the extent that the fourth cause of action is severed and dismissed and the second cause of action is severed and dismissed to the extent it is alleged against defendants YNC Equity Partners, LLC and Agime Group, LLC and denied with respect to the remaining requests for relief and the remaining defendants shall answer pursuant to the CPLR.

Conference: August 1, 2023 at 11:30 a.m. By July 25, 2023, the parties shall upload 1) a stipulation about discovery signed by all parties, 2) a stipulation of partial agreement that

identifies the areas in dispute or 3) letters explaining why no agreement about discovery could be reached. The Court will then assess whether a conference is necessary (i.e., if the parties agree, then an in-person conference may not be required). If nothing is uploaded by July 25, 2023, the Court will adjourn the conference.

6/28/2023		
DATE		ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE