| **Saratoga Urban Living, LLC v Board of Mgrs. of 30 Whistler Ct. Condominium** |
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| 2023 NY Slip Op 33452(U) |
| October 6, 2023 |
| Supreme Court, Saratoga County |
| Docket Number: Index No. EF2023323 |
| Judge: Richard A. Kupferman |
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STATE OF NEW YORK
SUPREME COURT COUNTY OF SARATOGA

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**SARATOGA URBAN LIVING, LLC,**

Plaintiff,

-against-

**THE BOARD OF MANAGERS OF 30 WHISTLER COURT CONDOMINIUM,**

Defendant.

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**DECISION & ORDER**

Index No.: EF2023323

Appearances:

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KUPFERMAN, J.,

This case concerns the ownership of parking spaces and a storage locker in a condominium. The plaintiff is the sponsor of the condominium and asserts that it owns certain parking spaces and a storage locker. The defendant is the governing body of the condominium (board of managers) and contends that any right the plaintiff may have once had in these parking spaces and storage locker has since lapsed and no longer exists.

## Background
## (Viewed in the Light Most Favorable to the Plaintiff)

The condominium is the first phase of a mixed-use community known as Excelsior Park, which is being developed in Saratoga Springs, New York. In 2005, the plaintiff issued an offering plan for the condominium, marketing thirty new residential units for sale. Each unit was assigned a parking space in the garage as part of the sale, with two spaces assigned to one of the units. Some of the units also included the assignment of a storage locker. The first closing occurred in or around August 2005. The plaintiff sold the last unit in or around February 2007.

During the sales process, the plaintiff also offered for sale fifteen additional parking spaces in the garage. The offering plan provides that these parking spaces "will be available for purchase by [the condominium unit owners] as an Owner's additional assigned parking space" (Offering Plan at page 5). The plaintiff, however, was apparently unsuccessful in selling these parking spaces during the offering period. Afterwards, the plaintiff nevertheless continued to exercise ownership and control over these parking spaces. The plaintiff alleges that it leased the parking spaces to the unit owners for over 15 years, with full knowledge and without any objections from the defendant. The plaintiff further alleges that it sold one of these additional parking spaces to a unit owner in or around 2019 and that the defendant approved the sale.

The plaintiff also alleges that it owns one of the storage lockers on the garage floor, denoted as "Water SVC/Jan." This storage locker was allegedly offered for sale as part of the offering plan, but apparently no one purchased it. The plaintiff alleges that it has owned this storage locker for over fifteen years, with full knowledge and without any objections from the defendant. The plaintiff further alleges that throughout the years, the defendant has acknowledged that the plaintiff's principal has the right to own the storage locker.

In 2022, the defendant began disputing the plaintiff's ownership rights to the parking spaces and storage locker. The defendant took the position that the parking spaces were common elements and directed the unit owners to pay rent for the parking spaces directly to the defendant rather than to the plaintiff. The unit owners allegedly complied with the defendant's directive. In addition, the defendant also directed the plaintiff's principal to vacate its possession of the storage locker on the garage floor.

In 2023, the plaintiff commenced this action asserting causes of action for declaratory judgment, adverse possession, intentional interference with contract, trespass, and quiet title (RPAPL Article 15). In response, the defendant filed this pre-answer motion to dismiss the complaint pursuant to CPLR 3211(a)(1), (7), and (10).

**Analysis**

The defendant contends that the offering plan and the declaration utterly refute the allegations in the complaint and require dismissal. According to the defendant, these documents establish that the disputed parking spaces and storage locker are common elements (or limited common elements). The defendant contends that the plaintiff has no right to own or control any portion of the common elements, including these parking spaces and the storage locker, and that any right the plaintiff may have once had to sell the parking spaces has since escheated to the defendant.

A motion to dismiss pursuant to CPLR 3211(a)(1) "will be granted only if the documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim" (Carr v Wegmans Food Mkts., Inc., 182 AD3d 667, 668 [3d Dept 2020] [internal quotation marks and citation omitted]). Here, the offering plan submitted on the motion discloses that, in addition to the units (and the parking spaces assigned to the units), the plaintiff also offered for

sale fifteen additional parking spaces in the garage for an additional charge. The price disclosed in the offering plan for these fifteen parking spaces is listed as $27,500.00 per parking space, with the total maximum collective value listed as $418,500.00 (presumably, intended to be $412,500.00). In addition to specifying the maximum sale price for these additional parking spaces, the offering plan (as well as the declaration) further contains an express provision regarding the sale of these parking spaces to unit owners. The offering plan provides, as follows:

> "There will be forty eight (48) parking spaces within the garage area. Each of twenty nine (29) Units will be assigned one (1) parking space and Unit 231 [the 30th unit] will be assigned two parking spaces within the garage area, spaces 33 and 34 will be 'reserved for handicap Parking' and **the remaining fifteen (15) spaces will be available for purchase by Whistler Court Owners as an Owner's additional assigned parking space, as shown on the Site Plan set forth in Part II of this Offering Plan**. Other than the handicap reserve parking spaces, **the purchase of the additional parking spaces will be on a 'first come' basis"** (Offering Plan at page 5 [emphasis added]).

These documents do not expressly state the identity of the seller of the parking spaces. However, when considering these provisions (including the asking price for the parking spaces), it would appear illogical to conclude that the plaintiff (as the sponsor) intended for anyone other than itself or its assigns to have the right to sell these parking spaces.

The plaintiff's contention that it continued to possess the right to sell the parking spaces even after it sold the last unit does not appear to be unreasonable. The plaintiff's right to sell these additional parking spaces, for instance, is contained in separate provisions from the provisions defining the common elements, and the documents should be "read as a whole" and "interpreted in a way that reconciles all [the] provisions, if possible" (Matter of Olszewski v Cannon Point Assn., Inc., 148 AD3d 1306, 1309 [3d Dept 2017] [internal quotation marks and citations omitted]). In addition, the parking spaces were expected to provide the plaintiff with hundreds of

thousands of dollars in additional income, however, there is nothing in the documents expressly stating that the plaintiff would lose the right to sell these parking spaces after it sold the last unit. The plaintiff's loss of substantial income from the sale of the garage parking spaces would arguably amount to a forfeiture, which is strongly disfavored (see Charlebois v J.M. Weller Associates, Inc., 72 NY2d 587, 595 [1988]). Moreover, the defendant's contention that ambiguities should be interpreted against the plaintiff, as the drafter, is also not dispositive of this motion, as that is "a rule of construction that should be employed only as a last resort" (Fernandez v Price, 63 AD3d 672, 676 [2d Dept 2009]).

Admittedly, the defendant makes several persuasive arguments that the plaintiff's right in these parking spaces (as the sponsor) was limited to only the duration of the offering plan. After all, the declaration does not appear to exclude parking spaces from the definition of common elements; the plaintiff arguably did not disclose any special risk that it would own, lease, or control any portion of the condominium after it had sold all the units; the plaintiff apparently did not create separate tax parcels for the parking spaces to treat them independent of the common elements; and the plaintiff, as the drafter of the documents, could have clearly specified its continuing interest in the condominium property when it offered the units for sale.

The plaintiff's alleged right to sell the parking spaces also appears limited. It represented that it would offer the parking spaces for sale. Arguably, the plaintiff is not entitled to instead maximize profits by renting out the parking spaces rather than selling them. The documents also do not appear to contain any provision expressly allowing the plaintiff to lease the parking spaces or to lease them without the defendant's permission. In addition, while the plaintiff alleges that these parking spaces are not common elements, this allegation may be undermined if these parking spaces have been treated in the past as common elements for purposes of taxation and maintenance.

Notwithstanding, the Court need not reach the merits of any of these issues to determine the outcome of this motion. Rather, the Court finds dispositive those allegations in the compliant regarding the parties' subsequent conduct from 2007 to early 2022. Specifically, the parties' subsequent conduct (assumed as true for purposes of this motion) raises several possible defenses to the defendant's strict reliance on the terms of the offering plan and declaration, including defenses such as waiver, estoppel, acquiescence, and/or acknowledgement (see e.g. North Shore Towers Apts. Inc. v Three Towers Assoc., 153 AD3d 632, 634 [2d Dept 2017]; Board of Mgrs. of Stewart Place Condominium v Bragato, 15 AD3d 601, 601-602 [2d Dept 2005]). Based on the potential application of these defenses, the documents do not conclusively resolve the plaintiff's claims and cannot serve as grounds to dismiss the claims.

Moreover, the Court agrees with the defendant that the roles of the plaintiff and/or its principal as the sponsor, a unit owner, and a fiduciary on the board of managers is relevant to these defenses and may ultimately refute the plaintiff's allegations and render these potential defenses as meritless. Nonetheless, this issue largely dehors the documents and should be explored during discovery rather than relied upon as grounds for dismissal on this motion to dismiss.

Regarding the storage locker, the Court agrees that the offering plan (at least the one submitted by the defendant) does not appear to contain the language referenced in the complaint. Nonetheless, the defendant has submitted only part of the offering plan, and the document offered by the defendant has not been properly authenticated. Given that the parties apparently dispute the terms of the offering plan on this issue (and neither side has submitted an authenticated copy of it), the Court cannot conclude that documentary evidence conclusively resolves the plaintiff's claim regarding the storage locker.

There are also several unresolved factual issues regarding the storage locker that preclude dismissal, including the uncertainty over the identity/nature of the storage locker, as well as the storage locker's ownership, use, maintenance, and taxation. In addition, as with the additional parking spaces, the plaintiff's use of the storage locker for more than fifteen years creates unresolved issues of fact and raises the possible application of several potential defenses to the defendant's strict reliance on the documents.

Turning to that portion of the motion to dismiss pursuant to CPLR 3211 (a) (7) for failure to state a claim, the Court "must afford the complaint a liberal construction, accept the facts as alleged in the pleading as true, confer on the nonmoving party the benefit of every possible inference and determine whether the facts as alleged fit within any cognizable legal theory" (State of New York v Alfa Laval Inc., 213 AD3d 1171, 1173 [3d Dept 2023] [internal quotation marks and citations omitted]). Applying this standard, no basis exists to dismiss the plaintiff's claims on this ground. The causes of action are adequately pleaded in the complaint. Moreover, to the extent that the defendant relies largely on the offering plan and declaration as a basis to dismiss under this ground, these documents are insufficient to grant the motion, as discussed above.

While the Court recognizes the novelty of an adverse possession claim against condominium property by a sponsor/owner/board member, the application (at least as pleaded) is nevertheless theoretically possible. The parties may therefore conduct discovery and resubmit their arguments on a summary judgment motion for the Court to consider whether an evidentiary basis exists to support the continuation of such a claim in this action.

Turning to the grounds for dismissal under CPLR 3211(a)(10), the Court rejects the defendant's assertion that the unit owners are necessary parties (see CPLR 1001). None of the unit owners appear to have any individual interest in the disputed parking spaces or storage locker (see

Davis v Prestige Mgt. Inc., 98 AD3d 909, 910 [1st Dept 2012] [holding that a unit owner "lacks standing to sue individually for injury to the common elements or finances"]). To the contrary, the rights (if any) of the unit owners are derivative and properly represented by the board of managers (see id.; Pekelnaya v Allyn, 25 AD3d 111, 120 [1st Dept 2005] [holding that "condominium common elements are solely under the control of the board of managers"]; see also Real Property Law § 339-dd). In addition, none of the unit owners have attempted to join this action or otherwise expressed any desire to participate in this litigation. Based on the circumstances, the Court declines to find that all the unit owners are necessary parties.

Regarding the remaining grounds for dismissal under CPLR 3211(a)(10), the defendant asserts that the plaintiff's principal is a necessary party. In particular, the defendant asserts that the plaintiff's principal appears to be claiming ownership rights to the parking spaces and storage locker, and that the plaintiff's principal (rather than the plaintiff) sold the parking space in 2019/2020. As a practical matter, if the plaintiff previously transferred its interest(s) to the plaintiff's principal, or if he otherwise claims ownership rights in his individual capacity, the plaintiff's principal should be added to the action. Otherwise, the Court may ultimately rule adversely against the plaintiff and/or dismiss its claims if it lacks the necessary ownership interest required to establish its claims. Similarly, to the extent that the plaintiff desires to obtain a declaration in this action that the 2019/2020 sale of the parking space was valid, the plaintiff should join, as necessary parties, the plaintiff's principal (if he was the grantor) and the unit owner who purchased the parking space. Otherwise, the Court will not issue a declaration regarding the sale's validity.

Nonetheless, the plaintiff, as the master of the complaint, has not interjected these claims into the case. The complaint asserts that the plaintiff (rather than its principal) owns the parking

spaces and storage locker and seeks a declaration of the plaintiff's rights (rather than its principal's rights) as against the defendant. Based on these allegations, the Court does not currently consider the plaintiff's principal as a necessary party. Indeed, as far as the Court is concerned, the only rights that will be adjudicated in this action are those rights of the plaintiff and the defendant (including the derivative rights of the unit owners). If any other parties desire their rights to be adjudicated, they should promptly join the action.

It is therefore,

**ORDERED**, that the defendant's motion seeking to dismiss the complaint is **DENIED,** and the defendant should serve and file its answer by way of NYSCEF within 20 days of this Decision & Order; and it is further

**ORDERED**, that the parties may, but are not required to, add any additional parties pursuant to CPLR Article 10, within 60 days of this Decision & Order; and it is further

**ORDERED**, that the parties are directed to complete discovery by **April 5, 2024** and appear for an in-person compliance/settlement conference on **April 17, 2024 at 11:00 a.m.** Any requests for an extension of time to complete discovery should be made at the conference.

This shall constitute the Decision & Order of the Court. No costs are awarded to any party. The Court is hereby uploading the original Decision & Order into the NYSCEF system for filing and entry by the County Clerk. Counsel is still responsible for serving notice of entry of this Decision & Order in accordance with the Local Protocols for Electronic Filing for Saratoga County.

Dated: October 6, 2023
at Ballston Spa, New York

HON. RICHARD A. KUPFERMAN
Justice Supreme Court

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