

**Board of Mgrs. of the Promenade Condominium v  
Eshaghpour**

2023 NY Slip Op 34036(U)

November 14, 2023

Supreme Court, New York County

Docket Number: Index No. 151598/2022

Judge: Paul A. Goetz

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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. PAUL A. GOETZ PART 47**

*Justice*

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BOARD OF MANAGERS OF THE PROMENADE  
CONDOMINIUM,

Plaintiff,

INDEX NO. 151598/2022

MOTION DATE 07/28/2023

MOTION SEQ. NO. 001

- v -

ROBIN ESHAGHPOUR, ELENA ESHAGHPOUR, EAST RIVER CONDO, LLC, BRAVO REALTY CORP., DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE FOR HARBORVIEW MORTGAGE LOAN TRUST 2005-9, U.S. BANK, N.A., SUCCESSOR TRUSTEE TO BANK OF AMERICA, N.A., SUCCESSOR TO LASALLE BANK, N.A., AS TRUSTEE FOR THE WAMU MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-AR6, CITIBANK, N.A., WELLS FARGO BANK, N.A., ROBERT POON, STROOCK & STROOCK & LAVAN, LLP, CRAIG D. WEINER, NATIONAL CABINET AND MILLWORK INSTALLATION, LLC, SKYLINE WINDOWS, LLC, THE BANK OF NEW YORK MELLON, AS COLLATERAL AGENT AND CUSTODIAN FOR THE NYCTL 2017-A TRUST, JOHN DOES 1-200

**ORDER - AMENDED (MOTION RELATED)**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 50

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

Upon the foregoing documents, it is

Plaintiff Board of Managers of the Promenade Condominium (“Board”) moves pursuant to CPLR § 602(a) to consolidate this action with two related actions pending in this court between the parties (*Robin Eshaghpour et al v The Promenade Condominium et al*, Index No 650320/2022; and *Board of Managers of The Promenade Condominium et al v Robin Eshaghpour et al*, Index No 151028/2022). Defendants Robin Eshaghpour, Elena Eshaghpour, and East River Condo, LLC, oppose the motion, arguing that there are no common issues of law

or fact among the actions. Defendants also argue that consolidation would be improper because they are defendants in two of the actions but are plaintiffs in the third.

CPLR § 602(a) provides that “[w]hen actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all the matters in issue [and] may order the actions consolidated.” The courts favor consolidation when appropriate because “[w]here complex issues are intertwined, albeit in technically different actions, it would be better not to fragment trials, but to facilitate one complete and comprehensive hearing and determine all the issues involved between the parties at the same time.” (*Shanley v Callanan Indus., Inc.*, 54 NY2d 52, 57 [1981]). Consolidation should be granted when “it will avoid unnecessary duplication of trials, save unnecessary costs and expense and prevent the injustice which would result from divergent decisions based on the same facts. (*Chinatown Apartments, Inc. v New York City Tr. Auth.*, 100 AD2d 824, 825 [1st Dept 1984]).

Once the movant has shown that there exists a commonality of law and fact, the party opposed to consolidation can avoid consolidation by showing that it would prejudice their substantial rights (*Grynberg v BP Expl. Operating Co. Ltd.*, 127 AD3d 553 [1st Dept 2015]). Full consolidation should not be granted when it would result in a party being both a plaintiff and a defendant in the same action to avoid jury confusion (*Geneva Temps, Inc. v New World Communities, Inc.*, 24 AD3d 332, 335 [1st Dept 2005]). However, the court may still in its discretion consolidate to the extent of ordering a joint discovery and trial, while still maintaining the party identities (*Id.*).

Here, there exists common issues of law and fact. The first action, filed by defendants in this action Robin Eshaghpour, Elena Eshaghpour, and East River Condo, LLC allege that the Board has breached several agreements regarding renovations the Eshaghpours have made to the

units they own in the Promenade Condominium (Exhibit A, Verified Complaint 650320/2022, NYSCEF Doc No 35). They seek, among other things, a permanent injunction requiring the Board to allow their renovations to be completed. The Board has alleged that these renovations violate the Board's By-Laws and have imposed fines on the Eshaghpour (*Id.*).

The second action, filed by the Board, alleges that Robin Eshaghpour has persisted in a harassment campaign against the Promenade Condominium's managing agent and staff. (Exhibit B, Verified Complaint 151028/2022, NYSCEF Doc No 36). The Board alleges that this harassment stems from the Board's decision to not authorize any additional renovations on their units (*Id.*).

In this action the Board seeks recovery of costs arising from alleged conduct by the Eshaghpours in the first and second actions (Exhibit C, Verified Complaint 151598/2022, NYSCEF Doc No 37). This includes fines for allegedly unauthorized renovations, fines for the threatening behavior allegedly committed by the Eshaghpours against the Board and their agents, and recovery for the hiring of security to protect the Promenade's staff from the allegedly threatening behavior of the Eshaghpours (*Id.*).

There exists a clear commonality of law and fact. Whether the Eshaghpours' renovations violated any of the Board's By-Laws is a dispositive issue to claims in both the first and third action. Answering this question determines whether the Eshaghpours should be permitted to continue their renovations, and in turn would determine whether the fines levied by the Board against the Eshaghpours are proper. Additionally, whether or not the alleged intimidating conduct towards the Board took place will determine the validity of the Board's fines, as well as their alleged increase in security costs.

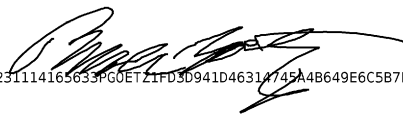
Defendants have failed to demonstrate that consolidation of the cases would prejudice their substantial rights. However, defendants are correct that it would not be appropriate to consolidate actions in which parties will be both plaintiffs and defendants.

Accordingly, it is

ORDERED that the motion of defendants is granted and the above-captioned action shall be joined with *Robin Eshaghpour, et al. v. The Promenade Condominium, et al.*, Index No. 650320/2022; and *Board of Managers of the Promenade Condominium, et al. v. Robin Eshaghpour, et al.*, Index No. 151028/2022, for purposes of discovery and trial.; and it is further

ORDERED that, within 30 days from entry of this order, counsel for plaintiff in *Board of Managers of the Promenade Condominium, v. Robin Eshaghpour, et al.*, Index No. 151598/2022, shall file with the General Clerk’s Office a copy of this order with notice of entry, and the Clerk of the General Clerk’s Office shall reassign such action and *Board of Managers of the Promenade Condominium, et al. v. Robin Eshaghpour, et al.*, Index No. 151028/2022 to the Justice assigned *Robin Eshaghpour, et al. v. The Promenade Condominium, et al.*, Index No. 650320/2022 upon the payment of any appropriate fees; and it is further

ORDERED that such filing with the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website)].



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<u>11/14/2023</u> DATE					<u>PAUL A. GOETZ, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input 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