

**Golden Ox Realty LLC v Board of Mgrs. of Golden
Gardens Condominium Inc.**

2024 NY Slip Op 32055(U)

June 14, 2024

Supreme Court, New York County

Docket Number: Index No. 159693/2014

Judge: Richard G. Latin

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

<p>PRESENT: <u>HON. RICHARD G. LATIN</u></p> <p align="center"><i>Justice</i></p> <p>-----X</p> <p>GOLDEN OX REALTY LLC, GOLDEN OX REALTY ER, LLC,</p> <p align="center">Plaintiff,</p>	<p>PART 46M</p> <p>INDEX NO. <u>159693/2014</u></p> <p>MOTION DATE <u>04/03/2023</u></p> <p>MOTION SEQ. NO. <u>010</u></p>
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- v -

THE BOARD OF MANAGERS OF GOLDEN GARDENS CONDOMINIUM INC. A/K/A GOLDEN GARDEN CONDOMINIUM, DAVY LIN, JOHN DOES 1 - 6

DECISION + ORDER ON MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 010) 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319

were read on this motion to/for JUDGMENT - SUMMARY.

On October 3, 2014, plaintiffs Golden Ox Realty LLC and OX Realty ER, LLC (“plaintiffs”) commenced this action against defendants The Board of Managers of Colden Garden Condominium, Inc. a/k/a Colden Garden Condominium (“Board”), and Davy Lin (“Lin”) for breach of contract, breach of a fiduciary duty, and declaratory judgment and injunctive relief concerning the use of a condominium unit. Defendants move for an order pursuant to CPLR 217 (1), 3016 (b), 3211 (a) (1), (7) and (g), and 3212 (b) and (g) granting them summary judgment and dismissing plaintiffs’ first amended complaint. Plaintiffs opposed, and defendants submitted a reply. For the reasons provided below, the motion is granted in part and denied in part.

Background

A. General Background

Plaintiffs are the fee owner of a condominium unit F1B-102 (“Unit”) located on the first floor at 42-31 Colden St, Queens, New York (“Condominium”) (NY St Cts Elec Filing [NYSCEF] Doc No. 242, First Amended Complaint [“FAC”], ¶ 1). The board is an unincorporated association of residential and medical unit owners of the condominium (*id.* ¶ 5). Lin purports to be the president and board member (*id.* ¶ 6). Plaintiffs filed a plan/work application (“PW1”) in February 2010 to convert the use of the unit from a medical office to use as a daycare facility (*id.* ¶ 21). Defendants filed an objection with the Department of Buildings (“DOB”). The DOB revoked the work permit, issued a stop work order and refused to renew the Temporary Certificate of Occupancy (“TCO”) (*id.* ¶¶ 28-29).

B. Condominium’s Governing Documents

The condominium’s governing documents put in place different rules regarding the residential and non-residential units. The Declaration states that the residential units may be used only for residential purpose, and the medical office units, day-care center unit and laundry-room unit may be used for each designated purpose only (NYSCEF Doc No. 245, Declaration and By-Laws at 6). In regard to alterations, the Declaration states “no alterations to the inside of a unit which would impair the structural soundness of the building may be made without the written consent of the Board of Managers” (*id.* ¶ 19). Consent may be requested to the Managing Agent, if any, or to the President of the Board, by mailing a letter by certified mail (*id.*). Additionally, no units shall be used for purposes other than the purpose stated in the certificate of occupancy (*id.*).

The bylaws contemplate a governance structure for the condominium that gives the unit owners powers to act, or prevent the board from acting, with respect to certain matters. Article IV,

section 9 states “all agreements, contracts . . . of the condominium shall be executed by any two (2) officers of the condominium” (*id.*). Article VI, section 13 restricts the use of medical office units only as a medical office (*id.*). Article VI, section 15 restricts unit owner from making any structural addition, alteration or improvement in or to the unit, without prior written consent of the board (*id.*).

C. Facts of Dispute

Ziming Shen

Ziming Shen (“Shen”) is a member of plaintiffs (“Shen Affidavit”) (NYSCEF Doc No. 282). Plaintiffs allege they acquired the Unit upon the condition that they could use it as a preschool and convert it to a daycare (*id.* ¶ 4). The Unit was listed as a medical office prior to plaintiffs acquiring it (*id.*). In 2009, Shen served as the board president (*id.* ¶ 6). At a board meeting in 2009, he informed to the board of plaintiffs’ intent to convert the unit from a medical office to a daycare facility (*id.*). The board also included Davy Lin, Winston Sapigao, and Dr. Wen Te Fan (*id.*). Shen attests he showed the architectural plans, explained the nature of renovations at this meeting and that he would seek permit from the DOB to renovate the unit and amend the certificate of occupancy (“CO”) (*id.*). According to him the board members approved the conversion, and the meeting was recorded in writing as board minutes (*id.* ¶¶ 6-8). From 2009 to 2012, plaintiffs began the conversion process, including approval of plans by the DOB, hiring contractors to renovate the unit, and arranging inspections by agencies, and issuance of a TCO (*id.* ¶¶ 9-10). In August 2014, the DOB was notified by defendants that consent was not given for the renovations or alternations to the unit (*id.* ¶ 11). In September 2014, the DOB issued a stop work order (*id.* ¶ 12). A daycare facility was openly operating in the unit from 2012 to 2014 with a TCO (*id.* ¶ 14). Due to defendants’ actions, plaintiffs sustained damages from lost profits since the closing of the daycare

facility, the cost of renovating the unit, professional costs of legal fees and engineer's fees to convert the unit, and fees incurred to address the issue of the CO and stop work order with the DOB (*id.* ¶ 18).

Davy Lin

Davy Lin ("Lin") is a member of the board (NYSCEF Doc No. 253) ("Lin Affidavit"). He served on the board since 2009 (*id.* ¶ 1). He was the board president from 2012 to 2020 (*id.*). He also is a unit owner and has lived in the condominium since 1998 (*id.*). Lin was never informed of any unit owner in the building who submitted a PW1 to change the use of their unit (*id.* ¶ 4). He confirms Shen served on the board as president during 2009 (*id.* ¶ 5). Lin attests Shen never informed the board that he was converting the unit from a medical office to a daycare facility and no unit owner meetings were ever held to discuss plaintiffs' plans to convert the unit's use (*id.* ¶ 6). The board became aware that the unit was being used as a daycare facility only after plaintiffs filed a PW1 with the DOB (*id.*). The board's counsel objected and sent notice of cease and desist to plaintiffs and related parties regarding plaintiffs' unauthorized filing of the PW1 and illegal conversion of the unit and demanded that the illegal use and occupancy of the unit stop and that it be restored to its original condition (*id.* ¶¶ 7-9). In 2012, the board learned the building did not have a permanent CO because it was changed when plaintiffs filed the PW1 (*id.* ¶ 10). The board never granted permission to plaintiff to change the CO (*id.* ¶ 11). This resulted in the board's counsel sending notice and demand to cease, desist and restore to the original condition of the unit to plaintiffs' counsel (*id.* ¶ 13). Thereafter, defendants informed the DOB that the PW1 was fraudulently submitted to the DOB (*id.* ¶¶ 14-16). Lin attests that there was no meeting attended by the board and unit owners in which Shen informed the unit owners of the plans to convert the unit (*id.* ¶ 21). The board never authorized or approved the conversion of the unit (*id.* ¶ 22). The

conversion of the unit would have required an amendment of the bylaws, and no meeting was called or held to vote on such an amendment (*id.* ¶ 23). The board does not have authority to amend the bylaws at will (*id.*). The board never consented to plaintiffs' submission of the PW1 (*id.* ¶ 24). The PW1 was not signed by an authorized board member, it was signed by two individuals that had no authority to execute the PW1 or any others instruments of the condominium (*id.*).

Discussion

Summary Judgment

“[T]he proponent of a summary judgment motion must make prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). “[F]ailure to make such a showing requires a denial of the motion, regardless of the sufficiency of the opposing papers” (*Ayotte*, 81 NY2d at 1063 [internal quotation marks and citation omitted]). “Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of act which require a trial of the action” (*Alvarez*, 68 NY2d at 324; *see also Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). “[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” (*Zuckerman*, 49 NY2d at 562). “Summary judgment should not be granted where there is any doubt as to the existence of a factual issue or where the existence of a factual issue is arguable” (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 315 [2004]; *see also American Home Assur. Co. v Amerford Intl. Corp.*, 200 AD2d 472, 473 [1st Dept 1994]). “On a summary judgment motion, facts must be viewed in the light most favorable to the

non-moving party” (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] [internal quotation marks and citation omitted]).

A. First and Third Causes of Action for Declaratory Judgment

Defendants contend that plaintiffs’ first and third causes of action should be dismissed because they have an adequate remedy at law in the form of money damages and declaratory relief is unnecessary (NYSCEF Doc No. 277, Memorandum of Law in Support of Manu Leila Davison, Esq. (memo), at 3). The first cause of action demands the conversion of the Unit to a daycare facility be declared legal, and the third cause of action states defendants are in breach of contract because the board approved the conversion of the medical office to daycare (*id.*). Plaintiffs argue that their cause of action for a declaratory judgment cannot be dismissed as a controversy exists regarding whether the board in 2009 approved the physical conversion or alteration of the unit, and whether the board had knowledge of the alternations and approved the conversion (NYSCEF Doc No. 300, Memorandum of Law in Opposition of Enrico De Marco, Esq., at 12). In reply, defendants argue that because there is a breach of contract cause of action, the court need not render a declaratory judgment on the first cause of action (NYSCEF Doc No. 318, Reply Memorandum of Manu Leila Davison, Esq. (reply), at 3).

Here, dismissal of the first cause of action is appropriate because plaintiffs’ breach of contract claims are duplicative of their allegations in the first cause of action (*see Upfront Megatainment, Inc. v Thiam*, 215 AD3d 576, 578 [1st Dept 2023] [dismissal of plaintiffs’ claim for declaratory judgment as duplicative, as plaintiffs have an adequate, alternative remedy in the cause of action for breach of contract]; *see also Apple Records v Capitol Records*, 137 AD2d 50, 54 [1st Dept 1988] [“A cause of action for a declaratory judgment is unnecessary and inappropriate

when the plaintiff has an adequate, alternative remedy in another form of action, such as breach of contract”] [citations omitted]). Based on the foregoing, plaintiffs’ first cause of action is dismissed.

Plaintiffs’ third cause of action seeks a declaratory judgment that the elections for the board be deemed invalid and the board prior to 2012 is reinstated (NYSCEF Doc No. 242 ¶¶ 59-68). Defendants contend that there are no grounds to overturn and annul the elections and reinstate the former board because a quorum was only present for the 2012 and 2013 meetings, and Shen did not receive votes to keep his seat on the board (NYSCEF Doc No. 277 at 11). There has been no quorum present since the 2013 meeting, and the board vacancies were filled by the remaining managers pursuant to Article III, section 5 of the bylaws (*id.*). Additionally, the election challenge is procedurally improper and untimely as plaintiffs did not bring an Article 78 proceeding within four months of the election (*id.* at 12). In opposition, plaintiffs do not take a position to defendants’ arguments, but merely state there is a material issue of fact as to whether the board members were elected properly (NYSCEF Doc No. 281, Affirmation in Opposition of Enrico De Marco, Esq., ¶ 13).

Plaintiffs’ third cause of action is dismissed because it is time-barred (*see Pomerance v McGrath*, 124 AD3d 481, 484 [1st Dept 2015], *lv dismissed* 25 NY3d 1038 [2015] “[c]ause of action, brought more than four months after the election in question, amounts to a time-barred attack on the results of that election”] [citations omitted]). Defendants submitted notices and vote count of the meeting held on January 26, 2013 (*see* NYSCEF Doc No. 267). Plaintiffs did not file a cause of action challenging the election until October 3, 2014, and thus their cause of action is time-barred. Additionally, “[p]laintiffs failed to make a prompt application to the court in an effort to determine its voting rights in the election, and thus there [is] no reason to interfere with the condominium’s internal affairs absent a clear showing that such was warranted” (*Board of Mgrs.*

of Honto 88 Condominium v Red Apple Child Dev. Ctr., a Chinese Sch., 160 AD3d 580, 582-583 [1st Dept 2018] [citations omitted]).

B. Second Cause of Action for Breach of Fiduciary Duty

The second cause of action alleges that Lin and the board breached their fiduciary duty by submitting false information to the DOB with respect to the conversion, failing to provide plaintiffs with the required notice of the 2012, 2013, and 2014 elections, preventing plaintiff from participating in and voting at the respective unit owner's meeting, and failing to treat plaintiffs fairly and evenly (NYSCEF Doc No. 242, ¶¶ 39-57). Defendants contend that the claim against Lin is improper without specific allegations and evidence of independent tortious conduct by him (NYSCEF Doc No. 277 at 6). Lin was sued only because he was the board's president (*id.* at 7). Plaintiffs have no evidence to support that Lin failed to represent every unit's interest, or that Lin intended to harass plaintiffs, but only stated they were looking for evidence of harassment by Lin (*id.*). Plaintiffs did not know how Lin attempted to block him from speaking at a board meeting (*id.*). Furthermore, the allegations against the board are speculation, hearsay, and bald and conclusory assertions (*id.*). Plaintiffs offered no admissible evidence that the conversion was authorized by a mandatory vote of the unit owners to amend the bylaws and the DOB objection was justified because the conversion was inconsistent with the governing documents (*id.* at 10). Plaintiffs have no evidence to support allegations of injury to plaintiffs' character and reputation, or how defendants were collecting fees and engaging in nepotism (*id.* at 7).

In opposition, plaintiffs argue that Lin engaged in tortious conduct by submitting a false affidavit in August 2014 to the DOB claiming that the board in 2009 never authorized alterations to the unit and amendment of the CO, when he knew it was false as he was present during the 2009 board meeting (NYSCEF Doc No. 300" at 25). Plaintiffs claim that Lin admitted in his deposition

testimony that he was aware that the use of unit was discussed by the board yet submitted a false affidavit¹ (*id.* at 25). Additionally, plaintiffs claim there is an issue of fact as to whether Lin improperly converted condominium assets (*id.*). They allege Lin transferred assets from the condominium as evidenced by a \$300 check drawn to him (*id.*). There is an issue of fact as to whether Lin acted in good faith and for the benefit for best interest of the condominium (*id.* at 27). They assert that Lin’s motivation is not in the best interest of the condominium as it would benefit from having a childcare facility within the building for its “residence” [sic] (*id.*). In reply, defendants assert plaintiffs provided no evidence that defendants engaged in unscrupulous conduct, as they were justified in filing the objection with the DOB because the conversion of the unit was contrary to the governing documents (*id.* at 9). They further assert that the \$300 check to Lin was a reimbursement for Chinese New Year gifts given to the condominium employees, and the governing documents do not prevent a member of the board from being reimbursed (*id.* at 10).

As a threshold issue, since plaintiffs are suing both the individual board members and the board, all claims against individual board members are not viable and should be dismissed as the complaint is lacking any specificity alleging individual wrongdoing by the members that can be separate from the collective decision made by the board. “It is well-settled that a breach of fiduciary duty claim does not lie against individual cooperative board members where there is no allegation of individual wrongdoing by the members . . . separate and apart from their collective action taken on behalf of the cooperative” (*Hersh v One Fifth Ave. Apt. Corp.*, 163 AD3d 500, 500 [1st Dept 2018] [internal quotation marks and citations omitted]). Plaintiffs’ allegations against Lin are not distinct from the allegations of actions taken as a board collectively (*id.*).

¹ Lin testified that he became aware in 2009 or 2010 that plaintiffs were operating a daycare center in the unit (NYSCEF Doc No. 290 at 62-63). He knew there were renovations ongoing in the unit prior to 2012 (*id.* at 64-65). The testimony does not indicate Lin was aware of the use of the unit was discussed by the board.

“Pursuant to the [business judgment] rule, the party seeking review of a governing board’s actions has the burden of demonstrating a breach of fiduciary duty, through evidence of unlawful discrimination, self-dealing, or other misconduct by board members” (*Hochman v 35 Park W. Corp.*, 293 AD2d 650, 651 [2d Dept 2002]). Defendants made prima facie showing that there was no specific action by Lin that would amount to a breach of fiduciary duty. In support, defendants submitted the deposition transcript of Shen where he testified that he did not know how Lin failed to represent every unit’s interest (NYSCEF Doc No. 251 at 74). He did not have evidence of the alleged harassment by Lin, and only stated he was looking for evidence (*id.* at 88, *see DeRaffele v 210-220-230 Owners Corp.*, 33 AD3d 752, 753 [2d Dept 2006] [dismissal of breach of fiduciary duty claim as the plaintiff only made conclusory allegations of emotional distress, harassment and humiliation]). He merely claimed he “forgot” how Lin and other board members blocked him from speaking at a meeting (NYSCEF Doc No. 251 at 88-89) Shen further testified that he attended the 2012 meeting and chose not to participate (NYSCEF Doc No. 251 at 27). He received the notice for the 2014 meeting and had a proxy attend and vote on his behalf (*id.* at 102-105). In opposition, plaintiffs failed to make a showing of bad faith, fraud, self-dealing or unconscionability (*see Baxter St. Condominium v LPS Baxter Holding Co., LLC*, 126 AD3d 417, 418 [1st Dept 2015], *lv dismissed* 26 NY3d 948 [2015] [citations omitted]). As such, dismissal of this cause of action against Lin is warranted (*see Park Royal Owners, Inc. v Glasgow*, 19 AD3d 246, 248 [1st Dept 2005] [“[N]o factual basis exists in the record to support what are essentially speculative and conjectural claims by plaintiff, which has failed to demonstrate that defendants breached their fiduciary obligations”] [citations omitted]).

When reviewing a board’s action under the business judgment rule “[a] court’s inquiry is limited to whether the board acted within the scope of its authority under the bylaws . . . and

whether the action was taken in good faith to further a legitimate interest of the condominium” (*Frankel v Board of Mgrs. of the Cent. Park W. Condominium*, 177 AD3d 465, 466 [1st Dept 2019] [internal quotation marks and citations omitted]). “Absent a showing of fraud, self-dealing or unconscionability, the court’s inquiry is so limited, and it will not inquire as to the wisdom or soundness of the business decision” (*Schoninger v Yardarm Beach Homeowners’ Assn.*, 134 AD2d 1, 9 [2d Dept 1987]). Here, defendants established their prima facie entitlement to judgment as a matter of law. Article VI, sections 13 and 15 of the bylaws specified that a unit owner could not make any structural alterations to a unit without the prior written consent of the board and restricts a medical office unit to be used only as a medical office (NYSCEF Doc No. 245). In support, defendants submitted the deposition transcript of Yaniqui Ding, P.E. (“Ding”) a professional engineer, hired by plaintiffs to convert the existing medical office into a daycare facility (NYSCEF Doc No. 250 at 7, 32). He testified that he submitted plans and generated the PW1 documentation for the DOB for approval (*id.* at 33). He did not submit the plans to the board before they were submitted to the DOB or have discussions with the Board (*id.*). He did not meet with the board while the conversion occurred or submit any written plans to the board (*id.* at 37-38). Ding completed the PW1 and filed it with the DOB without obtaining a signature of the board (*id.* at 40, 51). Article VI, section 14 of the bylaws clearly require any application to any department of the City of New York for a permit to make alterations to be executed by the board (*see* NYSCEF Doc No. 245). Defendants established that submitting the objection to the DOB was within its authority, in good faith, and in furtherance of the condominium’s legitimate interest (*see Matter of Levandusky v One Fifth Ave. Apt. Corp.*, 75 NY2d 530, 537-538 [1990]). Additionally, “[i]ndividual defendants are protected by the business judgment rule, because their decisions were within the scope of their authority as board members” (*Board of Mgrs. of the Latitude Riverdale*

Condominium v 3585 Owner, LLC, 199 AD3d 441, 442 [1st Dept 2021] [citations omitted]). In opposition, plaintiffs “failed to raise a triable issue of fact regarding the legitimacy of [defendants’] exercise of authority . . . or misconduct which would warrant further judicial inquiry” (*see Board of Mgrs. of Fishkill Woods Condominium v Gottlieb*, 184 AD3d 785, 790 [2d Dept 2020] [citations omitted]).

Lastly, plaintiffs cause of action for breach of fiduciary duty is dismissed as it is “duplicative of the breach of contract cause of action, which alleges a breach of the same obligations based on the same facts and seeks identical damages” (*Astor Ben Sasha LLC v HFZ 235 W. 75th St. Owner LLC*, 215 AD3d 515, 516 [1st Dept 2023] [citations omitted]); *Federico v Brancato*, 144 AD3d 965, 966-967 [2d Dept 2016] [dismissal of breach of fiduciary duty cause of action because it was duplicative of the breach of contract cause of action and based on the same facts and seeks identical damages]).

C. Fifth Cause of Action for Breach of Contract

The fifth cause of action alleges that defendants are in breach of contract as the sale of the unit was contingent on the conversion of the medical office to a daycare facility, and plaintiffs informed the board of their plan at a meeting, which was not objected to by defendants (NYSCEF Doc No. 243 ¶¶ 74-94). Defendants contend that there is no evidence there was an agreement between the board and plaintiffs to allow the conversion (NYSCEF Doc No. 277 at 17). The cause of action is meritless without a contract (*id.*). The only agreements are the governing documents which, require a formal vote of unit owners to approve any amended changes in the use of units, which did not take place (*id.*). In opposition, plaintiffs assert that they were entitled to use the unit for any lawful use under the declaration and that they were permitted to alter and renovate the unit in accordance with the by-laws and declaration, and defendants are in breach of the by-laws by

refusing to consent to the alterations and maintaining that plaintiffs had no authority to amend the CO (NYSCEF Doc No. 300 at 28). They assert that defendants consented to the alterations (*id.* at 29). In reply, defendants argue that plaintiffs failed to identify any provisions of the governing documents to support their claim that plaintiffs had a right to change the use of the unit without an amendment to the Condominium's governing documents (NYSCEF Doc No. 318 at 11). Plaintiffs do not have proof that the unit conversion was approved by the 2009 board (*id.* at 12).

“The condominium bylaws are, in essence, an agreement among all of the individual unit owners as to the manner in which the condominium will operate, and which set for the respective rights and obligations of unit owners . . . with respect to their own units . . .” (*Board of Mgrs. of the 28 Cliff St. Condominium v Maguire*, 191 AD3d 25, 29 [1st Dept 2020] [internal quotation marks and citations omitted]). As such, plaintiffs were required to obtain written consent for the alterations of the unit. The parties have provided conflicting accounts regarding the 2009 board meeting where defendants allegedly consented to the renovations proposed by plaintiffs. In his affidavit, Shen attests that at a 2009 meeting, he informed the board of the conversion of the unit, showed the plans and received their consent (NYSCEF Doc No. 282). He also testified at his deposition there was no formal vote at the 2009 board meeting, but there was an oral agreement (NYSCEF Doc No. 251 at 59). Lin in his deposition confirmed there were minutes taken at the 2009 board meeting (NYSCEF Doc No. 290 at 25). Absent the 2009 board minutes or documentary evidence indicating what occurred at the 2009 board meeting, defendants are not entitled to summary judgment on this cause of action (*cf. Katz v Board of Mgrs. of Stirling Cove Condominium Assn.*, 201 AD3d 634, 635 [2d Dept 2022] [defendant board established its prima facie entitlement to judgment as a matter of law by showing it acted within the scope of its authority of the bylaws by submitting the affidavit of the general manager and the minutes of the board

meetings that defendant authorized the relevant repairs]; *Hsing Hsung Chuang v Whitehouse Condominium*, 68 AD3d 559, 559-560 [1st Dept 2009] [“The affidavit of a member of the board of managers and the accompanying spreadsheet showing the unit owners’ attendances at the meeting and their votes on the construction work at issue established prima facie that the work was approved in accordance with the condominium’s by-laws”]). Thus, there are issues of fact as to whether plaintiffs obtained consent from defendants for the renovations to the unit. Accordingly, the part of defendants’ motion seeking summary judgment on plaintiffs’ fifth cause of action is denied.

D. Fourth Cause of Action for Injunctive Relief

In their fourth cause of action, plaintiffs seek to enjoin defendants from interfering with plaintiffs’ use of the unit as a daycare facility (NYSCEF Doc No. 242 ¶¶ 69-73). Defendants contend that plaintiffs want the court to enjoin them from enforcing the governing documents and performing their authorized functions, and an injunction is not appropriate as plaintiffs cannot demonstrate a likelihood of success on their merits (NYSCEF Doc No. 277 at 13-14). They argue there is no evidence of a 2009 agreement between the parties where the board agreed to plaintiffs’ filing of the PW1 and conversion of the unit (*id.* at 14). In opposition, plaintiffs maintain they have a right to use the unit as a daycare facility and to make the renovations as approved by the board in 2009, and an injunction is necessary as they cannot continue with renovations without defendants’ interference (NYSCEF Doc No. 300 at 31-32).

“[I]njunctive relief is simply not available when the plaintiff does not have any remaining substantive cause of action against the defendants” (*Weinreb v 37 Apts. Corp.*, 97 AD3d 54, 58-59 [1st Dept 2012]). Here, defendants failed to demonstrate, prima facie, their entitlement to


summary judgment on plaintiffs' claim for breach of contract. As there is a substantive claim outstanding, summary judgment on this cause of action is denied.

In light of the foregoing determination, the parties' remaining contentions need not be addressed.

Accordingly, it is hereby

ORDERED that defendants' motion for summary judgment is granted to the extent of dismissing plaintiffs' first, second, and third causes of action of the complaint, and it is further

ORDERED that defendants shall file and serve a copy of this order with notice of entry on plaintiffs within 20 days of its upload onto NYSCEF and on the County Clerk who shall enter judgment accordingly.

6/14/2024						
DATE			RICHARD G. LATIN, 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 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