

**Board of Mgrs. of One Sunset Park Condominium v  
Wong**

2024 NY Slip Op 33557(U)

September 20, 2024

Supreme Court, Kings County

Docket Number: Index No. 508641/20

Judge: Kerry J. Ward

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 9 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 20<sup>th</sup> day of September, 2024.

P R E S E N T:

HON. KERRY J. WARD,

Justice.

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BOARD OF MANAGERS OF ONE SUNSET PARK  
CONDOMINIUM,

Plaintiff,

- against -

Index No. 508641/20

WILSON WONG, JOSHUA LEE, DOROTHEA LEE,  
JIN XIA HUANG, JIE SHAN LEE, JIAN MING WENG,  
4401 SUNSET HOLDINGS LLC, MEI – CHAU KWOK,  
BILLY HUM, XUAN LING PAN, EN LI CHEN, LARRY  
ROTHCHILD, MARTIN CURPHEY, MARINA RASINA,  
AARON M. MESHON, AYAKO OTOSHI, JIAYUAN PENG,  
OAKVILLE HOLDINGS LLC, JIAN LIN LI, XI PING  
CHEN, TING LIN, SHI QIANG LIN, LORRY WALL-  
GIBSON, PETER GIBSON, MINNEA LIN, JONATHAN  
RINEHART, JOHN BENSON, MAXIM PLYSHEVSKY,  
SUI TING CAO, HONGPEI CAO, PEI ZHU LUO,  
PATRICK B. COLEMAN, MUXIAN WANG, XUE  
FANG NI, EMILY MANN, 702 44<sup>TH</sup> STREET, LLC,  
DAVID Y. AKEY, CHELSEA R. SMITH, SALLY YAP,  
JANET MATTHEWS, DORIS RENATE KIMBROUGH,  
ELEANOR C. WHITNEY, SHEPHERD TRUST,  
ROBERT GERTLER, VIVIAN PARRILLA, ANNA  
ZHENG, MENG LI WANG, KE YONG WANG,  
ZHEN LIANG LI, BIN BIN CHENG, JODIE C. CHENG,  
HIU MING CHENG, SHENG LIAN WANG, HE ZHU  
CHEN AND SHU YU ZHENG,

Defendants.

-----X  
The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and  
Affidavits (Affirmations)\_\_\_\_\_

195, 197-198

Opposing Affidavits (Affirmations)\_\_\_\_\_

201

Upon the foregoing papers in this partition action regarding the 54-unit condominium building located at 702 44<sup>th</sup> Street in Brooklyn (Building), non-party 41-31 Haight LLC (Proposed Intervenor) moves (in motion sequence [mot. seq.] six) for an order: (1) granting it leave to intervene in this action, pursuant to CPLR 1012 (a) (3) and 1013, and (2) vacating or modifying the court's September 25, 2023 decision and order (Silber, J.) (NYSCEF Doc No. 179) regarding the forfeiture of its \$980,000.00 down payment under a purchase and sale agreement for the Building (PSA) (NYSCEF Doc No. 195).

### **Background**

On April 3, 2019, there was a fire in the Building and the entire structure was declared unsafe for habitation. On January 14, 2020, 72.45% of the condominium unit owners voted to not restore the Building, but to sell the burnt-out shell and distribute the sale proceeds and the condominium's insurance among the unit owners, pursuant to a partition action, as required by RPL 339-cc. On May 20, 2020, this partition action was commenced for that purpose.

By a March 1, 2021 order, the court (Silber, J.) granted plaintiff's summary judgment motion and appointed a referee to ascertain the rights, shares and interests of the parties (NYSCEF Doc No. 88). The referee subsequently filed a March 23, 2022 referee report (NYSCEF Doc No. 89), after which the parties sought to settle this partition action with a private sale of the Building. On October 17 2022, an Interlocutory Judgment of Partition and Sale was entered, authorizing a private sale of the Building (NYSCEF Doc No. 141).

The Proposed Intervenor entered into an Agreement of Purchase and Sale (PSA) for the purchase of the Building but failed to appear at the “time of the essence” closing on July 11, 2023, as set forth in the referee’s August 2, 2023 report (NYSCEF Doc No. 148). The referee subsequently moved, by order to show cause, to confirm the August 2, 2023 referee report, find the Proposed Intervenor in default under the PSA, allow the condominium to retain the Proposed Intervenor’s down payment and authorize the referee to re-market the Building for sale (NYSCEF Doc No. 165).

By a September 25, 2023 decision and order, the court (Silber, J.) ordered, adjudged and declared that “the Buyer has defaulted under the P[SA] previously approved by the Court, and the plaintiff condominium, the Seller, is entitled to retain the down payment as result of the default, pursuant to the terms of the [PSA]” (NYSCEF Doc No. 179 at 2).

On February 16, 2024, nearly five months after the court’s September 2023 decision and order, non-party 41-31 Haight LLC moved for an order granting it leave to intervene in this action, pursuant to CPLR 1012 (a) (3) and 1013, and, upon intervention, vacating or modifying the court’s September 25, 2023 decision and order regarding the forfeiture of its down payment. Importantly, the Proposed Intervenor’s motion for leave to intervene, pursuant to CPLR 1012 and 1013, does not include a proposed pleading, as specifically required by CPLR 1014.

### Discussion

CPLR 1014 provides that “[a] motion to intervene shall be accompanied by a proposed pleading setting forth the claim or defense for which intervention is sought.” The

Second Department has held that it is reversible error for the trial court to grant a motion for leave to intervene where the proposed intervenor failed to submit a proposed pleading, as required by CPLR 1014 (*MTGLQ Investors, L.P. v Noftell*, 204 AD3d 786, 786 [2022] [holding that “(a) motion seeking leave to intervene, whether pursuant to CPLR 1012 or 1013, shall be accompanied by the proposed intervenor’s proposed pleading . . .”]; *Beneficial Homeowner Serv. Corp. v Chambers*, 145 AD3d 750, 752 [2016] [holding that motion for leave to intervene should have been denied because proposed intervenor failed to submit a proposed pleading]).

Here, the Proposed Intervenor failed to submit a proposed pleading with its intervention motion, as required by CPLR 1014. Consequently, the Proposed Intervenor’s motion for leave to intervene in this partition action is denied. Having denied intervention on this insufficient record, the court need not consider that branch of the Proposed Intervenor’s motion seeking to vacate or modify the court’s September 25, 2023 decision and order. Accordingly, it is hereby

**ORDERED** that Proposed Intervenor’s motion (mot. seq. six) is denied without prejudice and with leave to renew upon submission of proper papers.

This constitutes the decision and order of the court.

E N T E R,

KW

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A. J. S. C.