

**Board of Mgrs. of 252 Condominium v World-Wide Holdings Corp.**

2025 NY Slip Op 31343(U)

April 11, 2025

Supreme Court, New York County

Docket Number: Index No. 652387/2022

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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THE BOARD OF MANAGERS OF 252 CONDOMINIUM,  
ON BEHALF OF THE UNIT OWNERS,

Plaintiff,

- v -

WORLD-WIDE HOLDINGS CORP., SNOWPLOW LH 2  
LLC, JAMES STANTON, DAVID LOWENFELD, ADAM R.  
ROSE, SNOWPLOW LH LLC, ROSE ASSOCIATES, INC.,  
BENSON INDUSTRIES, INC., and TECNOGLASS INC.,

Defendants.

INDEX NO. 652387/2022

MOTION DATE --

MOTION SEQ. NO. 013

**DECISION + ORDER ON  
MOTION**

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SNOWPLOW LH 2 LLC and SNOWPLOW LH LLC,

Plaintiffs,

-against-

LEND LEASE (US) CONSTRUCTION LMB INC., SLCE  
ARCHITECTS, LLP, SKIDMORE, OWINGS & MERRILL LLP,  
DESIMONE CONSULTING ENGINEERS PLLC, WSP USA  
BUILDINGS INC. F/K/A WSP FLACK KURTZ, INC.  
STRUCTURAL ENGINEERS, and GMS, LLP F/K/A GILSANZ  
MURRAY STEFICEK LLP,

Defendants.

Third-Party  
Index No. 595920/2022

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LEND LEASE (US) CONSTRUCTION LMB INC.,

Plaintiff,

-against-

ASM MECHANICAL SYSTEMS, BENSON INDUSTRIES, LLC,  
EPIC MECHANICAL CONTRACTORS, LLC, FD  
SPRINKLERS, INC., ISLAND ACOUSTICS, LLC, JANTILE  
INC., L&L PAINTING CO., INC., L.I.F. INDUSTRIES, INC.,  
LYNBROOK GLASS & ARCHITECTURAL METALS CORP.,  
MARTIN ASSOCIATES, INC., MENT BROS IRON WORKS  
CO., INC., NAVILLUS TILE, INC., PARKVIEW PLUMBING  
AND HEATING CORP., SJ ELECTRIC, INC., WOLKOW  
BRAKER ROOFING CORP., WOODWORKS  
CONSTRUCTION COMPANY INC., and JOHN DOES,

Defendants.

Second Third-Party  
Index No. 595359/2024

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 013) 737, 738, 739, 740, 741, 742, 743, 744, 753, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 795, 796, 797, 798, 799, 800, 801, 802, 836

were read on this motion to/for DISCOVERY.

In motion sequence 013, plaintiff The Board of Managers of 252 Condominium (Board) moves pursuant to CPLR 3013 (a) for a protective order limiting the number of unit owner depositions to no more than ten (exclusive of the unit owner depositions previously taken or scheduled).

Defendants World-Wide Holdings Corp., David Lowenfeld, James Stanton, Snowplow LH, LLC, and Snowplow LH 2, LLC (collectively, Cross-Moving Defendants) cross-move pursuant to CPLR 3211 (a)(1) and (a)(7) to dismiss the second amended complaint to the extent it alleges that defendants fraudulently misrepresented the budgets regarding projected repair costs within the Offering Plan and its amendments.

### **Background<sup>1</sup>**

This action arises from alleged construction defects in a building located at 252 East 57th Street, New York, NY 10022. The building's Board filed this action pursuant to Real Property Law § 339-dd on behalf of the residential unit owners. (NYSCEF Doc. No. [NYSCEF] 2, Complaint ¶ 8.) This court dismissed in part the amended complaint and granted in part leave to file a second amended complaint. (See NYSCEF 534, Decision and Order at 30-32 [mot. seq. nos. 003, 004, 006].) Following partial

<sup>1</sup> The background of this action is set forth in further detail in the court's July 14, 2024 decision and order. (See NYSCEF Doc. No. [NYSSCEF] 534, Decision and Order at 3-5 [mot. seq. nos. 003, 004, 006].)

dismissal, the causes of action of the operative second amended complaint are: (i) breach of the Option Agreement against Snowplow LH 2 LLC, Snowplow LH LLC, and World-Wide Holdings Corp., (ii) fraud and fraudulent inducement against Snowplow LH 2 LLC, Snowplow LH LLC, James Stanton, David Lowenfeld, and Adam R. Rose, (iii) aiding and abetting fraud against Rose Associates, Inc., (iv) breach of indemnity against Snowplow LH 2 LLC and Snowplow LH LLC, (v) breach of contract warranty against Benson Industries, Inc. and Tecnoglass Inc., (vi) and breach of contract claim against Rose Associates, Inc. (See *id.*; NYSCEF 324, SAC ¶¶ 171-241.)<sup>2</sup>

Motion Seq. 013 for Protective Order

The Board seeks a protective order limiting the number of unit owner depositions to ten. The Board argues that given the central role that expert, documentary evidence, and the testimony of the building's developers and contractors will play in this case, depositions of all unit owners would be wasteful and inefficient.

"There shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof." (CPLR 3101

[a].) The court, however,

"may at any time on its own initiative, or on motion of any party or of any person from whom or about whom discovery is sought, make a protective order denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense,

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<sup>2</sup> The Board was directed to refile the second amended complaint to avoid confusion. (See NYSCEF 534, Decision and Order at 32 [mot. seq. nos. 003, 004, 006].) The second amended complaint and supplemental summons, as refiled (NYSCEF 542, 544), were returned for correction on July 23, 2024 due to caption discrepancy. Upon review of the NYSCEF file, the caption has been corrected to remove Neal Cohen who was dismissed. Accordingly, the caption of the second amended complaint and supplemental summons now matches the NYSCEF record. The Board shall refile the second amended complaint and supplemental summons within five days of the date of this decision and order.

embarrassment, disadvantage, or other prejudice to any person or the courts.” (CPLR 3103 [a].)

“Trial courts are vested with broad discretion to issue appropriate protective orders to limit discovery.... [T]his discretion is to be exercised with the competing interests of the parties and the truth-finding goal of the discovery process in mind.” (*Nunez v Peikarian*, 208 AD3d 670, 671 [2d Dept 2022] [internal quotation marks and citations omitted].) “It is important that counsel’s discovery requests, including depositions, are both proportional and reasonable in light of the complexity of the case and the amount of proof that is required for the cause of action.” (Rules of Commercial Div of Sup Ct [22 NYCRR 202.70 (g)] preamble to rule 11.)

The Board alleges defects in the building’s common areas and units. (See e.g. NYSCEF 324, SAC ¶¶ 82, 90, 93.) The Board states that there are 93 units in total, 31 of which have no alleged defects. Of the 62 units with alleged defects, 41 units have window-related defects, and the remaining 21 units “are complaining about problems ... which are largely related to defective HVAC systems and wood flooring.” (NYSCEF 802, Reply Brief at 6/19.)

In opposition, defendants argue in sum that depositions of all unit owners are necessary to explore whether the unit owners relied on the alleges misrepresentations, as relevant to the fraud and fraudulent inducement claim. Defendants further insist that depositions of all 62 unit owners who complaint of unit-specific defects are necessary to explore the defects, the unit owners’ alterations to the units, and damages.

The motion is granted, in part. Depositions of all unit owners would be excessive at this stage. By April 25, 2025, defendants shall submit a questionnaire to the owners of the 62 units with alleged unit defects in an attempt to narrow down the number and

scope of unit owner depositions, as discussed on the record. (See NYSCEF 836, tr at 32:5-33:13 [oral argument].) The parties shall meet and confer on the questions to be included in the questionnaire. Upon review of the completed questionnaires, if the parties cannot agree on how many of the 62-unit owners shall be deposed, the parties shall request a conference with the court. If the parties can agree, the parties shall provide a proposed schedule for depositions of the unit owners. In addition to the depositions of the owners of the units with unit-specific defects, defendants may depose five additional unit owners of units of their choosing to inquire on the issue of reliance. Any unit inspections shall be completed by May 30, 2025.

### Cross-Motion to Dismiss

The Cross-Moving Defendants' previous motions to dismiss<sup>3</sup> the fraud and fraudulent inducement claim were granted in part. Specifically, the court dismissed the fraud and fraudulent inducement claim in the entirety as against World-Wide Holdings Corp. (See NYSCEF 534, Decision and Order at 31 [mot. seq. nos. 003, 004, 006].) As against Lowenfeld, Stanton, Snowplow LH, LLC, and Snowplow LH 2, LLC, the court dismissed the fraud and fraudulent inducement claim in part, to the extent that the claim was predicated on certain omissions from the Offering Plan, as barred by the Martin Act (General Business Law Art. 23-A). (See *id.* at 8-12, 23.) The court, however, rejected the remaining arguments for dismissal. (*Id.* at 7-8, 13-16, 21-23 [rejecting arguments

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<sup>3</sup> The Cross-Moving Defendants' previous motions to dismiss were motions sequence 003 and 004. (NYSCEF 64, Notice of Motion by Snowplow LH 2 LLC and Snowplow LH LLC [mot. seq. no. 003]; NYSCEF 70, Notice of Motion by World-Wide Holdings Corp., Stanton, Lowenfeld, Adam R. Rose, and Neal Cohen [mot. seq. no. 004].) At the time motions sequence 003 and 004 were filed, the Cross-Moving Defendants were represented by their previous counsel.

that monetary damages were limited, justifiable reliance is disclaimed, claim is duplicative of breach of Option Agreement claim, and Stanton, Lowenfeld and Rose are not personally liable for fraud; see NYSCEF 69, Moving Brief at 9-18/19 [mot. seq. no. 003]; NYSCEF 76, Moving Brief at 13-23/24 [mot. seq. no. 004].) Finally, the court granted leave to amend the fraud and fraudulent inducement claim. (*Id.* at 27.) The amendments were minor and did not cure the deficiencies that warranted partial dismissal of the claim. (*Id.* at 27-28; see NYSCEF 326, Redlined SAC ¶¶ 171-194.)

The fraud and fraudulent inducement causes of action remain against Lowenfeld, Stanton, Snowplow LH, LLC, and Snowplow LH 2, LLC to the extent predicated on alleged affirmative misrepresentations (i) in the budgets regarding projected repair costs and (ii) about the waterproofing, air conditioning system, and compliance with local industry standards. (NYSCEF 534, Decision and Order at 11, 30-31 [mot. seq. nos. 003, 004, 006]; NYSCEF 324, SAC ¶¶ 109 [c]-[d], 196 [a], 199-201.)

The Cross-Moving Defendants cross-move<sup>4</sup> to dismiss the fraud and fraudulent inducement cause of action, to the extent it is predicated on the alleged misrepresentations in the budgets regarding projected repair costs, on the grounds that (i) the Board fails to plead the claim with particularity as required pursuant to CPLR 3016 (b), (ii) the Board uses impermissible group-pleadings, (iii) the claim is barred by the Martin Act, and (iv) the Offering Plan disclaimed the guarantee of the budget's accuracy.

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<sup>4</sup> Although World-Wide Holdings Corp. is one of the cross-movants the court dismissed the fraud and fraudulent inducement claim in the entirety as against World-Wide Holdings Corp.

The cross-motion fails. “[A] party may move on one or more of the grounds set forth in subdivision (a) of [CPLR 3211], and no more than one such motion shall be permitted.” (CPLR 3211 [e].) Lowenfeld, Stanton, Snowplow LH, LLC, and Snowplow LH 2, LLC’s “had the opportunity to assert, in [their] prior motion[s] to dismiss,” all of the new arguments for dismissal asserted in this cross-motion, but they failed to do so. (*TRB Acquisitions LLC v Yedid*, 225 AD3d 508, 508 [1st Dept 2024].) Additionally, Lowenfeld, Stanton, Snowplow LH, LLC, and Snowplow LH 2, LLC attempt to improperly reargue through a second motion to dismiss the issue already decided by this court – whether the fraud and fraudulent inducement claim is barred by the Martin Act. No motion to reargue this court’s July 14, 2024 decision on the previous motions to dismiss was filed. (See CPLR 2221 [d]; NYSCEF 536 & 538, July 16, 2024 Notices of Entry.)

The court’s remarks at the October 25, 2024 discovery conference to the effect that any problems with the pleading may require a motion (NYSCEF 785, tr at 17:9-12; 18:3-12 [Oct. 25, 2024 conference]) were not an invitation to Lowenfeld, Stanton, Snowplow LH, LLC, and Snowplow LH 2, LLC to make an improper second motion to dismiss.

The court has considered the parties’ remaining arguments in connection with the motion for a protective order and cross-motion to dismiss and finds that such arguments are without merit or do not affect the outcome.

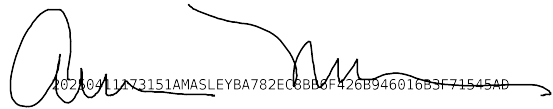
Accordingly, it is

ORDERED that motion sequence 013 is granted, in part. By April 25, 2025, defendants shall submit a questionnaire to the owners of the 62 units with alleged

defects. The parties shall meet and confer on the questions to be included in the questionnaire. Upon review of the completed questionnaires, if the parties cannot agree on how many of the 62-unit owners shall be deposed, the parties shall request a conference with the court. If the parties can agree, the parties shall provide a proposed schedule for depositions of the unit owners. In addition to the depositions of the owners of the units with unit-specific defects, defendants may depose five additional unit owners of units of their choosing to inquire on the issue of reliance; and it is further

ORDERED that any unit inspections shall be completed by May 30, 2025 and it is further

ORDERED that the cross-motion is denied.



4/11/2025  
DATE

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ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE