

**Murphy Kennedy Group LLC v Board of Mgrs. of the
St. Tropez Condominium**

2025 NY Slip Op 32572(U)

July 3, 2025

Supreme Court, New York County

Docket Number: Index No. 652913/2019

Judge: Arlene P. Bluth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

MURPHY KENNEDY GROUP LLC,

Plaintiff,

INDEX NO. 652913/2019

MOTION DATE 06/30/2025

MOTION SEQ. NO. 011

- v -

BOARD OF MANAGERS OF THE ST. TROPEZ
CONDOMINIUM, SYLVIE DURHAM, IN HER CAPACITY AS
PRESIDENT OF THE BOARD OF MANAGERS OF THE ST.
TROPEZ CONDOMINIUM,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

BOARD OF MANAGERS OF THE ST. TROPEZ
CONDOMINIUM

Third-Party
Index No. 595117/2024

Plaintiff,

-against-

FIRSTSERVICE RESIDENTIAL NEW YORK, INC., FS
PROJECT MANAGEMENT, INC. D/B/A FS PROJECT
MANAGEMENT, LLC

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 011) 274, 275, 276, 277, 278, 279, 280, 281, 282, 287, 292, 296, 297, 324, 326, 329, 330, 331, 332, 333, 334, 335, 336, 337

were read on this motion to/for SANCTIONS.

Defendants Board of Managers of the St. Tropez Condominium and Sylvie Durham (collectively, "Moving Defendants")'s motion for on order sanctioning plaintiff is denied.

Background

The underlying case involves a dispute about whether defendants paid plaintiff Murphy Kennedy Group LLC for construction work that plaintiff contends it performed at defendants' condominium building.

In this motion, Moving Defendants insist that plaintiff has failed to produce key documents in this action, including project documents. For instance, they insist that one of plaintiff's subcontractors filed a mechanic's lien due to plaintiff's failure to make payment for work performed and plaintiff has not turned over any records related to this subcontractor's work. Moving Defendants contend that each of plaintiff's witnesses confirmed that plaintiff did not properly maintain or preserve key documents for this litigation. They point to job reports, QuickBooks records, and change orders that were discussed at these depositions but have not been disclosed. Moving Defendants contend that the only remedy for these discovery violations is for dismissal of plaintiff's claims.

In opposition, plaintiff insists that the instant motion is a late-stage strategy by Moving Defendants to have this case disposed. It points out that this is Moving Defendants' seventh different law firm and that the alleged spoliation happened more than six years ago. Plaintiff questions why Moving Defendants are only now raising these issues. Moreover, plaintiff insists that Moving Defendants have not met the standard for spoliation and have not identified any specific, identifiable documents that were destroyed. Plaintiff also takes issue with Moving Defendants' assertion that because plaintiff has produced all documents in its possession, then plaintiff must have intentionally or negligently destroyed evidence. It observes that it previously disclosed, years ago, that plaintiff implemented a system change in their email servers in 2019-2020 which impacted its email back-up.

In reply, Moving Defendants argue that the failure to maintain evidence was either intentional or negligent. They claim that they pointed to over 20 change orders that were not produced in their moving papers and reject plaintiff's insistence that an issue with email servers is a sufficient explanation for the missing documents.

Discussion

“A party that seeks sanctions for spoliation of evidence must show that the party having control over the evidence possessed an obligation to preserve it at the time of its destruction, that the evidence was destroyed with a “culpable state of mind,” and that the destroyed evidence was relevant to the party's claim or defense such that the trier of fact could find that the evidence would support that claim or defense” (*Pegasus Aviation I, Inc. v Varig Logistica S.A.*, 26 NY3d 543, 547, 26 NYS3d 218 [2015]).

The Court denies the motion as Moving Defendants failed to show that any evidence was destroyed with the requisite culpable state of mind. As plaintiff correctly pointed out, Moving Defendants’ position requires the Court to infer that any missing documents are the product of a culpable state of mind intended to withhold or destroy documents. The Court cannot take that leap based on this record. It is axiomatic that in litigation, sometimes, a party may not possess certain records. But that does not mean that dismissal is required.

As this Court stated in August 2024 in connection with a prior discovery motion in this action, “As is the case in any action, plaintiff will have to prove its claims. If plaintiff lacks certain backup documentation (which is what defendants appear to be largely complaining about), then plaintiff might struggle to convince a fact finder that it is entitled to recover the amounts it seeks. But the Court cannot compel a party to produce records where it has represented over and over again that it does not have any more records” (NYSCEF Doc. No. 264). In this Court’s view, the status quo has not changed since this decision.

That Moving Defendants are now seeking sanctions for spoliation reeks of gamesmanship. The fact is that the purportedly missing documents, on this record, only relate to plaintiff’s proof which suggests that the third element of a spoliation claims has also not been


satisfied. That is, plaintiff may be limited in the amount it could theoretically recover if it lacks documents about change orders. The Court has little doubt that Moving Defendants will raise plaintiff’s alleged lack of back-up at a trial or in a dispositive motion. But the Court declines to impose a drastic remedy of dismissing plaintiff’s case on this record—there is no reason why this case cannot simply be decided on the merits.

Accordingly, it is hereby

ORDERED that defendants’ motion for sanctions is denied.

7/3/2025

DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE