

Beautiful Spaces, LLC v 617 Apts. Corp.

2025 NY Slip Op 32700(U)

August 1, 2025

Supreme Court, New York County

Docket Number: Index No. 152305/2019

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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BEAUTIFUL SPACES, LLC,

Plaintiff,

- v -

617 APARTMENTS CORP.,

Defendant.

-----X

INDEX NO. 152305/2019

MOTION DATE 01/22/2025

MOTION SEQ. NO. 006

ORDER - AMENDED (MOTION RELATED)

The following e-filed documents, listed by NYSCEF document number (Motion 006) 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 479, 483, 484, 485, 486, 489

were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

ORDERED that the decision and order dated July 25, 2025 (NYSCEF Doc No 489) is amended as follows:

By decision and order dated July 14, 2021, the court directed “that a Judicial Hearing Officer (“JHO”) or Special Referee shall be designated to hear and report to this court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose: the issue of the amount of damages under paragraph 6 of the temporary license agreement” (MS #5, NYSCEF Doc No 188). Plaintiff sought damages totaling \$291,201, representing: \$162,335 for repairs to its façade and stoop, \$70,600 for the roof, \$47,420 for the sidewalk, \$7,646 for landscaping, and \$3,200 for asbestos removal. On December 20, 2024, the referee determined that “[t]he testimony and evidence presented that Defendant is responsible for the claimed damage to [plaintiff’s property] is credible” but recommended the following adjustments to the amount to be awarded: “withdrawal [of the repair cost] related to the chip in

the stoop's stair;" withdrawal of the costs related to replacement of the roof, since plaintiff's expert architect and engineer, John Nakrosis, "stated a new top layer would be adequate and the entire roof need not be replaced"; and for an overall "10% reduction" of the remaining total (NYSCEF Doc No 454). The referee did not make a recommendation as to attorneys' fees owed to plaintiff, as this issue was "outside the scope of the reference" (*id.*).

Plaintiff moves for an order confirming the referee's report. In calculating the total owed for property damages, plaintiff deducted \$626 for the estimated cost to repair the chip in the stoop's stair (NYSCEF Doc No 460) but asserts that "[b]ecause plaintiff's evidence that \$70,600 included the cost of a new top layer, and not the cost of an entire roof replacement, [the roof costs] need not be adjusted" (NYSCEF Doc No 457 ¶ 17). Plaintiff thus seeks a total of \$261,518 ($\$291,201 - \$626 = \$290,575$; $\$290,575 \times 0.9 = \$261,517.50$). Defendant does not challenge the cost to repair the chip in the stoop (NYSCEF Doc No 484, p. 10). However, defendant asserts that "Plaintiff is only entitled to the cost of a new roof top layer [and] [a]ccording to Plaintiff's own calculations . . . [that] would amount to \$19,400" (NYSCEF Doc No 484, p. 5).¹

The referee relied on Nakrosis's opinion that the roof need not be completely replaced, but "[t]o repair all damage [to] the roofs and to prevent premature failure of the membrane[,] the entire surface should receive a new ply of MB aggregate coated membrane at all three roofs" and certain parts of the roof needed replacing (NYSCEF Doc No 312). Nakrosis stated that he "recommended to Ms. White that she seek a roof repair estimate based on these requirements and [] she obtained one from Tri-State Quality Contracting" (*id.*). Tri-State Quality Group LLC provided a cost proposal for "new membrane installation on main roof and lower terrace," which

¹ Defendant also argues that there should be additional reductions beyond those recommended by the referee but provides an insufficient basis "to disturb the Referee's credibility determinations and factual findings, which are afforded great deference" (*Castelloe v Fong*, 203 AD3d 654, 655 [1st Dept 2022]).

amounted to \$70,600 (NYSCEF Doc No 398). Plaintiff is correct that the proposal did not account for a full replacement of the roof, as evidenced by the fact that Tri-State Quality Group LLC roofing contractor Christopher Zuba testified that replacement of the entire roof “would have cost at least \$103,540” (NYSCEF Doc No 486). Therefore, the proposed cost does not need to be adjusted and defendant will be directed to pay plaintiff a total of \$261,517.50.

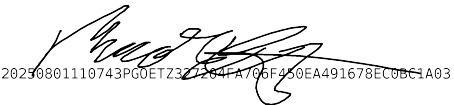
Plaintiff also seeks an award of attorneys’ fees totaling \$199,969.50 and costs totaling \$24,257.77 based on the temporary license agreement entered into by the parties (NYSCEF Doc Nos 457, 486). The agreement provides that defendant shall indemnify plaintiff “against any and all claims resulting in liabilities [and] costs[,] including without limitations reasonable attorneys’ fees and expenses incurred . . . in connection with and/or arising from or out of . . . property damage to the Licensor Premises, arising from Licensee’s use or entry [] pursuant to this Agreement” (NYSCEF Doc No 462 ¶ 9). Defendant asserts that “Plaintiff’s demand for attorney’s fees and expenses is completely inappropriate and premature and should not even be considered at this time” because the referee noted that the issue of counsel fees was outside the scope of the reference (NYSCEF Doc No 484). Defendant offers no explanation as to why the referee’s appropriate deferment of this issue should prevent the court from addressing it now. Plaintiff provided adequate documentation supporting its application for attorneys’ fees and costs (NYSCEF Doc Nos 466-476) and therefore is entitled to an award in the amount sought.

Based on the foregoing, it is

ORDERED that the part of plaintiff’s motion seeking to confirm the referee report issued by special referee Elizabeth Shamahs on December 20, 2024 (NYSCEF Doc No 454) is granted, and the report is hereby confirmed; and it is further

ORDERED that the part of plaintiff’s application for attorneys’ fees and costs is granted;
and it is therefore

ADJUGED that plaintiff be awarded judgment as against defendant for a total of \$485,744.77, comprised of: (a) \$261,517.50 in damages (the cost of repairs, with the referee’s recommended adjustments) **with interest accruing as of March 17, 2021**, (b) \$199,969.50 in attorneys’ fees, and (c) \$24,257.77 in costs; and the judgment clerk is directed to enter judgment accordingly.


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<u>8/1/2025</u>			<u>PAUL A. GOETZ, J.S.C.</u>
DATE			
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> SUBMIT ORDER
			<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE