SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. KATHLEEN WATERMAN-MARSHALL** **PART** **31**

Justice

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HAO ZHE WANG,

Plaintiff,

- v -

HALSTEAD MANAGEMENT COMPANY, LLC,

Defendant.

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INDEX NO. 159277/2023

MOTION DATE 05/17/2024, 05/22/2024

MOTION SEQ. NO. 004 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 46, 47, 48, 49, 50, 51, 52, 53, 60, 61

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 54, 55, 56, 57, 58, 59, 62

were read on this motion to/for SANCTIONS.

Upon the foregoing documents, Halstead Management ("Halstead") moves to dismiss the complaint (motion sequence 004).[1] Upon the same record, *pro-se* plaintiff Hao Zhe Wang ("Mr. Wang") opposes dismissal and separately moves for sanctions (motion sequence 005). Halstead opposes Mr. Wang's motion for sanctions against it and cross-moves for sanctions against Mr. Wang.

Background

This matter was administratively transferred to Part 31 in late January 2025.

Mr. Wang is a shareholder and tenant of a co-operative apartment managed by Halstead. Prior to this matter's transfer to Part 31, Mr. Wang moved to dismiss Halstead's affirmative defenses and for sanctions. Halstead separately moved to dismiss the complaint. The jurist previously assigned to this matter (Hon. Richard Latin, JSC) converted Halstead's motion to dismiss into a motion for a more definite statement under CPLR 3024(a), directed Mr. Wang, as *pro-se* plaintiff, to serve an amended complaint clearly identifying each cause of action as a subheading together with the relevant facts related to each cause of action, and denied Mr. Wang's motion to strike Halstead's affirmative defenses and sanctions motion. Justice Latin

[1] Both plaintiff's and defendant's papers in chief exceed the 7,000-word limit imposed by the Uniform Rules, and the record does not indicate that any party was granted an enlargement of the word limit. The Court may reject papers that fail to comply with the word limits (*Kaplan v 55th St. Apts. Inc.*, 235 AD3d 589 [1st Dept 2025]). Nevertheless, the Court has reviewed the non-complying submissions and issues this Decision and Order on the merits.

further cautioned Mr. Wang that a complaint cannot raise both direct and derivative claims. Mr. Wang, continuing *pro-se*, then filed an amended complaint.

By amended complaint, Mr. Wang alleges that in 2023 he ran for election to the co-operative's board of directors, but was the sole candidate, out of eight candidates, that lost the election. In the main, Mr. Wang alleges Halstead refused to provide him with access to the stock book in order to thwart his election campaign, manipulated the co-operative board elections, initiated a sham investigation into the 2023 election, conspired with building staff surrounding board elections, corrupted the board, discriminated and retaliated against him, and engaged in favoritism with board members, diminishing the value of his shares and damaging the co-operative. Mr. Wang contends that the 2023 board of directors was improperly elected due to Halstead's interference. He also contends that he suffered harassment and racially motivated retaliation and discrimination by a former director-shareholder. Mr. Wang's amended complaint asserts claims of: (1) racial discrimination and retaliation; (2) intentional infliction of emotional distress; (3) false advertisement; (4) fraudulent and tortious interference of shareholder rights; (5) gross negligence in management of plaintiff's apartment; (6) fraud upon co-op; (7) unfair and deceptive business practice; and (8) gross negligence in co-op management.

Halstead moves to dismiss the amended complaint, contending, chiefly, that Mr. Wang has again impermissibly intermixed both direct and derivative claims in his amended complaint; Mr. Wang lacks standing to bring a derivative claim in his personal capacity; Mr. Wang failed to seek relief pursuant to the co-operative by-laws via a petition for a special meeting before seeking judicial relief; Mr. Wang's claims are refuted by documentary evidence vis-à-vis an election inspection report; and the amended complaint otherwise fails to state a claim. Briefly stated, Halstead contends that the amended complaint amounts to non-actionable general grievances.

Mr. Wang opposes dismissal, contending that his direct and derivative claims are "wide apart in time and in nature." He further disputes that the election inspection report is documentary evidence of a properly held election of the board of directors and contends that the amended complaint otherwise asserts valid causes of action.

Discussion

On a motion to dismiss for failure to state a claim under CPLR § 3211(a)(7), the complaint is afforded the benefits of liberal construction, a presumption of truth, and any favorable inference *(see e.g. M & E 73-75, LLC v 57 Fusion LLC*, 189 AD3d 1 [1st Dept 2020]; *Askin v Department of Educ. of City of N.Y.*, 110 AD3d 621, 622 [1st Dept 2013]). The motion must be denied if, from the four corners of the pleadings, "factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*Polonetsky v Better Homes Depot*, 97 NY2d 46, 54 [2001] [internal quotation omitted]). A complaint should not be dismissed so long as, "when the plaintiff's allegations are given the benefit of every possible inference, a cause of action exists," and a plaintiff may cure potential deficiencies in its pleading through affidavits and other evidence (*R.H. Sanbar Projects v Gruzen Partnership*, 148 AD2d 316, 318 [1st Dept 1989]). However, bare legal conclusions and factual allegations which are inherently incredible or contradicted by documentary evidence are not presumed to be true (*Mark Hampton, Inc. v Bergreen*, 173 AD2d 220 [1st Dept 1991]).

The Court is conscious of Mr. Wang's *pro-se* status; however, in determining this motion the Court is also mindful that "[a] *pro se* litigant acquires no greater rights than those of any other litigant and cannot use such status to deprive defendant of the same rights as other defendants" (*Stewart v ARC Dev. LLC*, 138 AD3d 413 [1st Dept 2016] *quoting Brooks v Inn at Saratoga Assn*, 188 AD2d 921 [3d Dept 1992]).

I. Intermingling Derivative and Individual Claims

"It is black letter law that a stockholder has no individual cause of action against a person or entity that has injured the corporation. This is true notwithstanding that the wrongful acts may have diminished the value of the shares of the corporation" (*Serino v Lipper*, 123 AD3d 34 [1st Dept 2014] [Gische, J.]). Nevertheless, if a duty is owed directly to the shareholder, and such duty is independent from the duty owed to the corporation, the shareholder may maintain a direct claim for the breach of this independent duty (*id*.; *see also Abrams v Donati*, 66 NY2d 951 [1985]). "[T]o distinguish a derivative claim from a direct one, the court considers (1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)" (*id*. [internal quotations omitted] citing *Yudell v Gilbert*, 99 AD3d 108 [1st Dept 2012]). Where a complaint intermingles or confuses derivative and individual claims, dismissal of the complaint or leave to replead is proper (*Abrams*, 66 NY2d at 953).

> The court should not be compelled to wade through a mass of verbiage and superfluous matter in order to pick out an allegation here and there, which, pieced together with other statements taken from another part of the complaint, will state a cause of action. The time of the court should not be taken in a prolonged study of a long, tiresome, tedious, prolix, involved and loosely drawn complaint in an effort to save it (*Barsella v City of New York*, 82 AD2d 747, 748 [1st Dept 1981] quoting *Issacs v Washougal Clothing Co.*, 233 App Div. 568, 572 [4th Dept 1931]).

Despite Justice Latin cautioning Mr. Wang that a complaint cannot intermingle both direct and derivative claims, and directing him to file an amended complaint instead of dismissing the complaint, Mr. Wang's amended complaint continues to raise claims on both his own behalf and that of the co-operative. This is impermissible (*Abrams*, 66 NY2d at 953). While leave to replead a complaint that intermingles direct and derivative claims may be granted "in an appropriate case" (*id*. citing *Greenfield v Denner*, 6 NY2d 867 [1959]), Mr. Wang has already been afforded an opportunity to replead and was warned against intermingling derivative and individual claims in his amended complaint. Nevertheless, Mr. Wang did not comply with Justice Latin's directives and his amended complaint continues to intermingle individual and derivative claims. Under these circumstances, leave to replead or amend the complaint is not warranted.

Mr. Wang's contention that he may intermingle direct and derivative claims because the direct and derivative claims are based upon separate events is without merit, and his reliance on *Gjuraj v Uplift El. Corp.* and *Herbert H. Post & Co. v Sidney Bitterman, Inc.* for such proposition is misplaced (110 AD3d 540 [1st Dept 2013]; 219 AD2d 214 [1st Dept 1996]). To be

sure, where a duty is owed to a shareholder individually, the shareholder may maintain a direct cause of action for a breach of that duty (*Serino*, 123 AD3d 34; *Abrams*, 66 NY2d 951). However, the cases cited by Mr. Wang are factually inapposite; in those matters there was a simultaneous breach of the duty to an individual shareholder and to the corporation. In *Gjuraj*, a minority shareholder was frozen out of a corporation, instantaneously suffering harm as both an individual and shareholder (110 AD3d at 540). Similarly, in *Herbert H. Post & Co*., an accountant/tax advisor acted simultaneously on behalf of defendants individually and their business, where the individual defendants "were the companies to all intents and purposes" (219 AD2d at 225). In stark contrast, Mr. Wang alleged in this matter a series of separate unrelated events by various individuals occurring over many years, some of which allegedly harmed him individually and some of which harmed the co-operative. Notably, unlike this matter, the individuals in *Gjuraj* and *Herbert H. Post & Co*. would receive the total benefits of any recovery, not the corporation (*id*.). Although Mr. Wang would receive the benefit of recovery for his individual claims, he has no claim to receive the total benefit of his derivative claims – instead, the co-operative would receive those benefits. Under these circumstances, proceeding with intermingled direct and derivative claims is inappropriate.

Accordingly, the amended complaint is dismissed for intermingling individual and derivative claims. Additionally, the amended complaint is dismissed as being loosely drawn – the facts alleged in support of the individual and derivative claims are so intermingled that to save his claims would require this Court to engage in a tiresome and tedious effort to parse through significant prolix to piece together a cause of action. This is inappropriate (*Barsella*, 82 AD2d at 748).

II. First and Second Causes of Action

Alternatively, assuming that the amended complaint was not dismissed for impermissibly intermingling direct and derivative claims, or as loosely drawn, dismissal of the first (racial discrimination and retaliation) and second (intentional infliction of emotional distress) causes of action is required.

In order to state a claim for retaliation under the New York State and City Human Rights Laws, a plaintiff must allege, among other things, that they were engaged in a protected activity and suffered an adverse action as a result (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295 [2004]; *Herskowitz v State*, 222 AD3d 587 [1st Dept 2023]; NY Executive Law § 296[7]). To plead a claim for intentional infliction of emotional distress, a plaintiff must allege: extreme and outrageous conduct; an intent (or disregard) to cause severe emotional distress; a causal connection between the conduct and harm; and severe emotional distress (*see e.g. Lau v S&M Enterprises*, 72 AD3d 497 [1st Dept 2010]). Extreme and outrageous conduct is that which goes "beyond all possible bounds of decency" and "is utterly intolerable in a civilized community" (*164 Mulberry Street Corp. v Columbia University*, 4 AD3d 49, 56 [1st Dept 2004]).

Mr. Wang's amended complaint does not allege he was engaged in any protected activity, nor does it allege any adverse action taken by Halstead on the basis of Mr. Wang's ethnic or racial background. To the extent that the amended complaint may be read to claim that Mr. Wang was engaged in activism on behalf of his neighbors by signing a special petition for certain board decisions, there is nothing in the complaint to infer that he was treated disparately by

Halstead for this activity. Seeking to have Mr. Wang speak at the board meeting in support of the special petition he signed is neither discriminatory nor retaliatory. Nor is this alleged "extreme and outrageous conduct" necessary to support a claim of intentional infliction of emotion distress.

Mr. Wang admits that Halstead did not perform the acts alleged to be racially discriminatory/retaliatory or to have caused him emotional distress: "[Halstead] were not the ones who screamed racial epithets … or hire[d] thugs to come to plaintiff's apartment" (Amended Complaint at ¶ 87). Mr. Wang alleges that these acts were committed by a "drunkard" former-director-shareholder, who appeared at his door and went on a racist tirade, and otherwise harassed him. Notably, the amended complaint is devoid of an allegation connecting Mr. Wang's racial or ethnic background and Halstead's treatment of Mr. Wang. Stated simply, Mr. Wang does not allege any race-based actions by Halstead. Thus, Mr. Wang has not alleged a racially discriminatory or retaliatory act by Halstead.

In the same vein, as Mr. Wang admits the alleged racist and harassing behavior was committed by the former-director-shareholder, he has failed to allege extreme and outrageous conduct by Halstead necessary for a claim of intentional infliction of emotional distress.

Mr. Wang's contention that Halstead is responsible for the former-director-shareholder's racist tirade because Halstead should not have allowed the former-director-shareholder access to the building after they sold their unit, is without merit. The amended complaint admits that the former-director-shareholder owned several units in the building, often buying and "flipping" units, and there is nothing in the complaint to suggest that the former-director-shareholder was not entitled to access the co-operative building as the owner of any of these units (Amended Complaint ¶ 41). To the extent that Mr. Wang now contends that the former-director-shareholder did not own a unit during periods "in late 2021 or in 2022 or ever since" when the former-director-shareholder allegedly threatened or insulted Mr. Wang (NYSCEF Doc. No. 60 at n 2), the amended complaint does not so state, and Mr. Wang has submitted no evidence in support of this claim. The amended complaint merely alleges that the former-director-shareholder was allowed access to the building for an unspecified period of "months and years" after resigning from the board and selling one unit (Amended Complaint ¶¶ 73 - 74). Affording the amended complaint with the presumption of truth and every favorable inference, it simply fails to allege that the former-director-shareholder was not a shareholder at the time of the alleged racist and harassing behavior. This failure is not cured by Mr. Wang's motion papers.

Accordingly, Halstead granting a fellow shareholder access to the co-operative building is not discriminatory, retaliatory, or extreme and outrageous and Mr. Wang has not stated a claim as against Halstead for discrimination/retaliation or intentional infliction of emotional distress.

III. Third and Seventh Causes of Action

Assuming that Mr. Wang's third (false advertisement) and seventh (unfair and deceptive business practice) causes of action were not dismissed as derivative claims intermingled with his direct claims, they would nevertheless be dismissed as insufficiently pled.

To state a claim for false advertisement or unfair business practices, a plaintiff must "allege that the defendant has engaged in an act or practice that is deceptive or misleading in a material way and that plaintiff has been injured by reason thereof" and the harm alleged must be actual (*Small v Lorillard Tobacco Co*., 94 NY2d 43, 55-56 [1999]; *Solomon v Bell Atlantic Corp*., 9 AD3d 49 [1st Dept 2004]; General Business Law §§ 349 and 350). A deceptive or misleading act is one that is "likely to mislead a reasonable consumer acting reasonably under the circumstances" (*Solomon*, 9 AD3d at 54 *quoting Oswego Laborers' Local 214 Pension Fund v Marine Midland Bank*, 85 NY2d 20, 26 [1995]).

Mr. Wang's amended complaint fails to allege that he relied on a deceptive or misleading statement by Halstead, or that he suffered actual damages based upon Halstead's advertisements. He claims that Halstead advertised its non-discrimination policies on its website; however, he does not allege that he relied on Halstead's advertisement regarding non-discrimination. Instead, Mr. Wang alleges he relied on Halstead's reputation as a leading brokerage firm and choose to purchase a unit in this co-operative because of this reputation.

Additionally, Mr. Wang has not alleged he suffered actual damages. The only damages alleged in his amended complaint are abstract, and related to the management fees collected by Halstead for the numerous unspecified co-operative and condominium buildings Halstead manages, which are not the subject of this action (Amended Complaint at ¶ 93). Stated simply, Mr. Wang's assertion of damages conflates his own alleged damages for false advertisement with alleged damages of his co-operative building along with other unspecified non-party buildings managed by Halstead (*id*. [buyers in all buildings managed by Halstead generally damaged]). This is insufficient to meet the actual damage requirement.

Accordingly, the third and seventh causes of action must be dismissed.

IV. Fourth, Fifth, Sixth, and Eighth Causes of Action

Similarly, again assuming that the complaint was not dismissed for impermissibly intermingling direct and derivative claims, dismissal of the fourth (fraudulent and tortious interference of shareholder rights), fifth (gross negligence in management of plaintiff's apartment), sixth (fraud upon co-op), and eighth (gross negligence in co-op management) causes of action is required under BCL § 626(c). These claims are brought on behalf of the co-operative, and are thus derivative claims.

BCL § 626(c) requires that the complaint in a shareholder's derivative action must "set forth with particularity the efforts of the plaintiff to secure the initiation of such action by the board or the reasons for not making such effort". "The demand requirement [of BCL § 626(c)] rests on basic principles of corporate control – that the management of the corporation is entrusted to its board of directors, who have primary responsibility for acting in the name of the corporation and who are often in a position to correct alleged abuses without resort to the courts" (*Bansbach v Zinn*, 1 NY3d 1 [2003] [internal quotation and citation omitted]).

Mr. Wang has not pled with particularity any efforts he took to secure the action of the co-operative board. Indeed, he admits that he failed to comply with the co-operative by-laws, which require a shareholder to submit a petition for a special meeting to the co-operative board

to secure the co-operative board's action. Instead, Mr. Wang simply alleges any effort to demand the board take certain actions would be futile.

The demand under BCL § 626(c) may be excused as futile when: a majority of the board of directors are interested in the transaction; the non-interested directors are controlled by a self-interested director; the board is not fully informed of the transactions complained of; or the transactions complaint of are so egregious on their face that they cannot be sound business judgment (*Marx v Akers*, 88 NY2d 189, 200-201 [1996]; *Wandel ex rel. Bed Bath & Beyond, Inc. v Eisenberg*, 60 AD3d 77 [1st Dept 2009]). Although the demand may be excused for futility, the complaint must nevertheless allege the basis for futility with particularity (*id*.).

Mr. Wang has not pled with particularity the basis for futility. He has not alleged with particularity that a majority of the board of directors are interested or were controlled by a self-interested director. To be sure, Mr. Wang takes issue with decisions of the board and Halstead, but does not allege how the board is self-interested. Similarly, other than a general conspiracy, Mr. Wang's amended complaint fails to plead with particularity that the board was not fully informed of the transactions complained of or that the board's decisions are so egregious on their face that they cannot be sound business judgment. Given that Mr. Wang did not comply with the demand requirements of BCL § 626(c), his failure to plead the basis for demand futility with particularity is fatal to these claims (*id.*). That Mr. Wang disputes the validity of the board of directors' election does not render a demand under BCL § 626(c) futile.

To the extent that Mr. Wang alleges Halstead's election inspection certification of the 2023 board of directors election does not comply with BCL §§ 610 or 611, and thus supports any of his causes of action, his reliance on §§ 610 and 611 is misplaced. Both sections expressly exclude corporations which are not publicly traded: "this section shall not apply to a corporation that does not have a class of voting stock that is listed on a national securities exchange" (BCL §§ 610[b] and 611[d]). It is undisputed that the co-operative is not publicly traded; thus, BCL §§ 610 and 611 are inapplicable to this action.

V. Sanctions

The parties' sanction motions center on the interpretation of an election inspector's report, which they bitterly dispute, despite its brevity. Briefly, as relevant to these sanction motions, following the 2023 election of the co-operative's board of directors, election irregularities were discovered. Chiefly, forged proxy ballots were cast. An investigation was undertaken, and two shareholders of the co-operative who were not running for board positions volunteered as election inspectors. The election inspectors' report stated that they removed the suspected forged ballots, and nullified a stapled ballot which comprised two contradictory ballots cast by the same shareholder. The election inspector's report concluded:

> None of the questionable ballots we reviewed would have affected the results of the voting. The two ballots that Halsted [sic.] identified as forgeries and were not resolved were not counted and remained with Halstead. We were told by Mr. Fleishman that an investigation has been launched.

(NYSCEF Doc. No. 49).

The investigation later found that a doorman of the co-operative had cast fraudulent proxy ballots, and he was suspended without pay for one day.

The parties each devoted significant portions of their motion papers on dismissal to the interpretation and weight that should be afforded to the election investigation report. However, as dismissal turned on other grounds, the Court was not required to pass upon the parties' differing interpretations of the election investigation report in the dismissal motion, and omitted these arguments for clarity and brevity.

Mr. Wang contends that Halstead should be sanctioned for stating in its motion papers that the board of directors' election was duly certified without proper evidence of same. He contends that the investigation report does not constitutes documentary evidence certifying the 2023 board of directors' election or otherwise demonstrating that the correct candidates won election. Instead, he alleges that the investigation report reflects that the election investigators improperly delegated authority to, or relied upon information from, Halstead, as the report does not contain a certification or a vote count.

Halstead contends that Mr. Wang's sanction motion is itself sanctionable. It alleges that Mr. Wang essentially ignores the election investigation report in seeking sanctions and that Halstead's position, that the report constitutes documentary evidence certifying the election, is supported by a plain reading of the report. Halstead contends that it offered safe harbor to Mr. Wang, requesting that he withdraw the sanction motion, before filing its cross-motion for sanctions.

The Court is afforded discretion to impose sanctions and costs for frivolous conduct (22 NYCRR § 130-1.1[a]). "Conduct is frivolous if it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law" (*Newman v Berkowitz*, 50 AD3d 479 [1st Dept 2008] [internal quotations omitted]; 22 NYCRR § 130-1.1[c]). Likewise, materially false statements are sanctionable (22 NYCRR § 130-1.1[c]). In determining whether conduct is frivolous, the Court considers the totality of the circumstances, as well as the dual purposes of sanctions: (1) retributive, in punishing past conduct and (2) deterrent, preventing future frivolous conduct by the parties and the greater bar at large (22 NYCRR 130.101[c]; *Levy v Carol Mgmt. Corp.*, 260 AD2d 27, 34 [1st Dept 1999]). The deterrent purpose of imposing sanctions includes consideration of the waste of judicial resources (*id*.). "[T]here is no requirement that the dictates of [22 NYCRR] § 130-1.2 be followed in any rigid fashion, the court's decision was sufficient to set forth the conduct on which the [sanctions] award was based, the reasons why it found this conduct to be frivolous and the amount to be appropriate" (*Benefield v New York City Hous. Auth.*, 260 AD2d 167 [1st Dept 1999]).

Differing interpretations of evidence argued in good faith, and which are not completely devoid of merit, are not frivolous within the meaning of 22 NYCRR § 130-1.1 (*Talos Capital Designated Activity Co. v 254 Church Holdings LLC*, 226 AD3d 414 [1st Dept 2024]). The parties here have wildly different interpretations of the election inspectors' report, though it does

not appear that either interpretation is completely devoid of merit. Accordingly, the Court, in its discretion, declines to impose sanctions against either party, at this time.

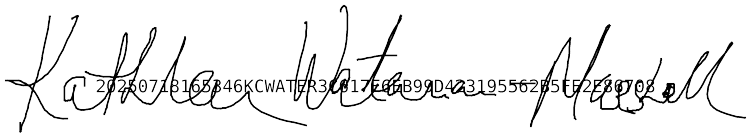
Accordingly, it is

ORDERED that Halstead Management Company's motion to dismiss the complaint is granted (motion sequence 004); and it is further

ORDERED that Hao Zhe Wang's sanctions motion and Halstead Management Company's cross-motion for sanctions are denied (motion sequence 005); and it is further

ORDERED that the matter shall be marked disposed; and it is further

ORDERED that any requested relief not expressly addressed herein has nevertheless been considered and is denied.



7/18/2025
DATE

KATHLEEN WATERMAN-MARSHALL, J.S.C.

CHECK ONE:	[X]	**CASE DISPOSED**		[ ]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[ ] **DENIED**	[X]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**