

Board of Mgrs. of the Tribeca v Smith

2025 NY Slip Op 33730(U)

October 3, 2025

Supreme Court, New York County

Docket Number: Index No. 152082/2021

Judge: Lori S. Sattler

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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. LORI S. SATTLER PART 02M

Justice

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INDEX NO. 152082/2021

BOARD OF MANAGERS OF THE TRIBECA,

MOTION DATE 04/10/2024

Plaintiff,

MOTION SEQ. NO. 002

- v -

MICHAEL A SMITH, NATALIE A CUCHEL,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 188, 192, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288

were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

This action was commenced by Plaintiff Board of Managers of The Tribeca ("Plaintiff"), the board for a condominium in Tribeca ("Condominium"). Defendants Michael A Smith ("Smith") and Natalie A Cuchel (collectively, "Defendants") are owners of Unit PHK ("Unit") in the Condominium. The Verified Complaint (NYSCEF Doc. No. 170, "Complaint") asserts seven causes of action for injunctive relief, damages, unjust enrichment, fraud in the inducement, continuing fraud, and breach of fiduciary duty. Plaintiff now moves for summary judgment on the first four causes of action. Defendants oppose.

The Condominium is comprised of four buildings, a larger building located at 303-307 Greenwich Street and smaller buildings at 147 Reade Street, 149 Reade Street, and 165 Chambers Street. Collectively, the Condominium has 79 residential units, some of which have been combined, multiple penthouse apartments with rooftop access, and eight commercial units.

Defendants purchased the Unit, a penthouse apartment with a private roof deck in 147 Reade Street, in 1997. The Complaint alleges that at the time, the Unit was a one-bedroom, one and half bathroom apartment with 1,253 square feet of interior space with 1,040 square feet of private outdoor space. As set forth in the Complaint, in 2006 while Smith was an officer of the Condominium's board, Defendants sought permission to enclose their roof deck and acquire an adjacent common roof area to create an enlarged duplex apartment.

On February 22, 2007, the board sent a letter to Defendants (NYSCEF Doc. No. 150) approving the project subject to, *inter alia*, Defendants' payment of \$20,000 "for permission to enclose a portion of the Condominium's limited common elements and incorporate it within the Unit" and the agreement that all work would be performed in accordance with the terms of an alteration agreement, "including provisions for engineering review, applicable law and the Condominium's declaration, by-laws and rules and regulations." The letter further provides that upon receipt of the counter-signed letter and the \$20,000 payment, "the Condominium shall deliver to you a countersigned copy of your Alteration Agreement with respect to the Project" (*id.*). Neither party annexes a copy of the letter signed by a member of the board or a copy of the Alterations Agreement referenced therein. Plaintiff concedes that Defendants made the \$20,000 payment but claim that no agreement was ever entered into between Defendants and the board (Complaint, ¶ 27).

Smith became President of the board in 2008. Plaintiff contends that Defendants then engaged in construction that dramatically exceeded the scope of their proposal, with Smith using his board position to conceal the unapproved expansion, including by withholding architectural plans and lying to board members. The Complaint further alleges that Defendants filed

Department of Buildings (“DOB”) applications that contained misrepresentations and did not align with the alterations proposal made to the board.

In 2018, Smith was ousted, and the current board was formed “with the mandate” to resolve all open issues, including “Defendants’ penthouse construction project and all other open jobs and violations in the Condominium” (Complaint ¶ 70). Plaintiff claims it was subsequently unable to find Condominium records required for Defendants’ expansion due to Smith’s secretive conduct. It finally obtained “Partial As-Built Plans” (NYSCEF Doc. Nos. 168-169) and inspected the Unit in 2020, which Plaintiffs contend exposed the extent of Defendants’ unauthorized construction, revealed that the work performed violated many building code regulations, and confirmed that Smith’s statements over the years were false. Ultimately, Plaintiff maintains it discovered that Defendants had constructed an additional three stories above the one initially proposed, and had installed a rooftop pool, and that the DOB had issued nine violations (*see* NYSCEF Doc. Nos. 151-163), one of which prevented renewal of a Temporary Certificate of Occupancy.

Plaintiff further alleges the unauthorized work triggered requirements that the Condominium perform Local Law 11 work, construct a second means of egress from the building, and install standpipes. According to Plaintiff, the building is without a valid Certificate of Occupancy and property taxes have increased to account for the added square footage. Additionally, Defendants installed a pool heater, fireplace, and grill, which increased the building’s gas usage and caused an 18-month gas shutdown.

Plaintiff commenced this action in 2021, asserting seven causes of action: an injunction compelling Defendants to demolish the unauthorized construction; or in the alternative, an injunction permitting Plaintiff to demolish the unauthorized construction at Defendants’ expense;

damages; unjust enrichment; fraud in the inducement; continuing fraud; and breach of fiduciary duty. Plaintiff now moves for summary judgment on the first four causes of action. As set forth in the papers, Plaintiff seeks an order directing Defendants to resolve all building violations within six months, perform all work such that the building will pass a required safety review, pay back taxes, and reimburse the Condominium for legal fees.

On a motion for summary judgment, the moving party “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Should the movant make its prima facie showing, the burden shifts to the opposing party, who must then produce admissible evidentiary proof to establish that material issues of fact exist (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

The papers are replete with issues of fact preventing the Court from granting summary judgment. At the outset, the absence of an alteration agreement prevents the Court from ascertaining the scope of the original project. It is further unclear whether all of the outstanding building code violations are attributable to Defendants’ construction, and Plaintiff implies that there were other open building violations when it took over management of the Condominium (*see* Complaint, ¶ 70). Furthermore, while Plaintiff contends resolution of the DOB violations is within Defendants’ control, Defendants maintain that the DOB is engaged in a “Special Audit,” and no changes can be made while that is ongoing. Defendants further claim that a “restrictive declaration” is required to resolve the violations, which they say requires board approval. These disputes over the posture of the violations and the extent to which Defendants can affect their resolution prevents the Court from granting summary judgment on the injunctive relief sought.

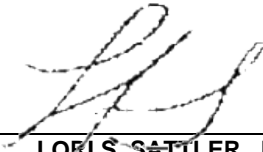
With respect to Plaintiff’s claims for damages and unjust enrichment stemming from their contention that Defendants are responsible for the Condominium’s increased tax burden, issues of fact exist as to whether the alleged tax increases are solely attributable to Defendants’ unauthorized construction, as opposed to a combination of their authorized and unauthorized construction, other unit owners’ improvement projects, and overall market forces.

Finally, in light of the foregoing, summary judgment on Plaintiff’s entitlement to counsel fees is premature.

Accordingly, for the reasons set forth herein, Plaintiff’s motion is denied in its entirety. The parties are directed to appear for a Status Conference on October 28, 2025 at 9:30 a.m. in person at 60 Centre Street, Room 212.

This constitutes the Decision and Order of the Court.

10/3/2025
DATE


LORI S. SATTLER, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE