

7-11 E. 13th St. Tenants Corp. v New Sch.

2025 NY Slip Op 33975(U)

October 16, 2025

Supreme Court, New York County

Docket Number: Index No. 151743/2013

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M
Justice

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INDEX NO. 151743/2013
MOTION DATE 07/28/2025
MOTION SEQ. NO. 006

7-11 EAST 13TH STREET TENANTS CORP., DAVID MASENHEIMER, JAMES MORGAN, ASAF YOGEV, THE ESTATE OF BARBARA JEAN THOMPSON, BY ITS CO-EXECUTORS SARAH THOMPSON, STEFAN THOMPSON AND EDWARD C. KLINE, EVAN OPPENHEIMER, LIA LEVENSON, MATT ONER, DANIELLA VAN GENNEP, PETER NAKADA, DONALD WILMOTT, SEAN FARQUHARSON, JOHN DONAHUE, CHARLES STIMSON, ADAM SINGER, JAMES MCCARTHY, JOSHUA KESSLER, BETTINA MICHELI, PHILLIP LIU, LESLEY SKILLEN, LAURENCE CANTOR, RICHARD MARTIN, PATRICIA WHITE, ROBERT ANGERT, SHANA SCHWARTZ, HARLEYSVILLE WORCESTER INSURANCE COMPANY, AS SUBROGEE OF 7-11 EAST 13TH STREET CONDOMINIUM, THE BOARD OF MANAGERS OF THE 7-11 EAST 13TH STREET CONDOMINIUM,

Plaintiff,

- v -

THE NEW SCHOOL, TISHMAN CONSTRUCTION CORPORATION OF NEW YORK, THE DURST ORGANIZATION, INC., URBAN FOUNDATION/ENGINEERING, LLC, DESIMONE CONSULTING ENGINEERS, SKIDMORE, OWINGS AND MERRILL, LLP,

Defendant.

DECISION + ORDER ON MOTION

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THE NEW SCHOOL, TISHMAN CONSTRUCTION CORPORATION OF NEW YORK, THE DURST ORGANIZATION, INC., URBAN FOUNDATION/ENGINEERING, LLC

Plaintiff,

-against-

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Defendant.

Third-Party
Index No. 590971/2013

The following e-filed documents, listed by NYSCEF document number (Motion 006) 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335

were read on this motion to/for _____ RENEWAL _____.

Upon the foregoing documents, and after a final submission date of August 13, 2025, Plaintiffs'¹ motion to renew the Court's Decision on motion sequence 004 issued on May 6, 2022 (Kraus, J.) pursuant to remand instructions by the First Department (*see 7-11 East 13th Street Tenants Corp. v New School*, 221 AD3d 401 [1st Dept 2023]), and upon renewal denying Defendants/Third-Party Plaintiffs The New School, Durst Organization, Inc., Tishman Construction Corporation of New York ("Tishman") and Urban Foundation/Engineering, LLC's (collectively "New School Defendants") motion for summary judgment dismissing portions of Plaintiffs' Complaint based on lack of standing is granted. The New School Defendants' cross motion seeking leave to renew their prior summary judgment motion and upon renewal granting them summary judgment is denied as academic.

I. Background

This case involves property damage to two adjoining buildings—one located at 9 East 13th Street and the other at 12 East 14th Street, which together make up one condominium—which were allegedly damaged during the New School's construction of an academic and dormitory building at 65 Fifth Avenue, New York, New York. Pertinent to this motion, in a prior Decision and Order dated June 15, 2022 (the "Prior Order") the Court (Kraus, J.) ruled Defendants waived the affirmative defense of lack of standing. On appeal, the First Department modified the Prior Order and found Defendants did not waive the issue of standing and remanded for the Court to determine the substantive arguments for dismissal based on lack of standing (*7-11 East 13th Street Tenants Corp. v New School*, 221 AD3d 401, 402 [1st Dept 2023]). When the case was remanded on November 2, 2023, the case remained on General IAS Part 57's docket. The parties

¹ Except for Plaintiff Harleysville Worcester Insurance Company.

corresponded with Part 57 to submit subsequent filings on the issues to be determined on remand (*see, e.g.* NYSCEF Docs. 289-90). A motion for leave to amend (“Mot. Seq. 005”) was filed by Defendants to assert the affirmative defense of lack of capacity on November 15, 2023.

This matter was then re-assigned to Part 33 in December of 2023. This Court ruled on Motion Sequence 005 on July 8, 2024, and granted Defendants leave to amend. However, neither Part 33 nor Part 57 ruled on the issues to be determined on remand from the First Department. After a conference with the parties, this Court and the parties agreed a motion to renew the prior motion for summary judgment to determine the issues remanded by the First Department would be filed to ensure a clearer record for any appellate review.² After considering the parties arguments and filings, the Court grants leave to renew and upon renewal, denies Defendants’ motion for summary judgment on the issue of standing.

II. Discussion

Plaintiffs are granted leave to renew. The First Department’s Decision and Order (7-11 *East 13th Street Tenants Corp. v New School*, 221 AD3d 401, 402 [1st Dept 2023]) which modified the Court’s Prior Order constitutes a change or clarification of the application of the law and facts to this case sufficient to grant leave to renew (*see, e.g. 435 Cent. Park West Tenant Ass’n v Park Front Apartments, LLC*, 235 AD3d 568, 569-70 [1st Dept 2025]).

Upon renewal, the Court reviews the motion under a summary judgment standard. It is well established that summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact.” (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party’s “burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the

² This Court contacted Part 57 to determine if they would hear the motion to renew pursuant to CPLR 2221, but Part 57 declined to hear the motion.

non-moving party.” (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact (*See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Issues of fact as to standing will preclude summary judgment where the record is unclear as to the relationship between various corporate entities or where references to an incorrect corporate entity are deemed to arise from inadvertent errors (*see, e.g. Esurance v Louis Provenzano, Inc.*, 49 AD3d 377, 377-78 [1st Dept 2008]; *Didco Urban Renewal Co. v Mann Management, Inc.*, 224 AD2d 195, 195 [1st Dept 1996]).

The New School Defendants argue that pursuant to New York Real Property Law § 339-dd, only an appointed board of managers has authority to bring suit for damages to the common elements of a condominium building. They argue the undisputed evidence shows no board of managers exists and thus nobody has standing to bring claims for damages to the common elements. However, the documentary and testimonial evidence submitted by Defendants raise, at a minimum, issues of fact as to the existence of the Board of Managers.

In support of their motion for summary judgment, Defendants submitted documents including the condominium declaration (NYSCEF Doc. 130) and the condominium by-laws (NYSCEF Doc. 134) which expressly reference a board of managers. The New School Defendants submitted other documents which, although not expressly referencing a board of managers, identified an insured entity named “7-11 East 13th Condominium” and included payments from an insurer for damages related to this lawsuit to “7-11 East 13th Condominium” (NYSCEF Docs. 147 and 150). The New School Defendants likewise submitted testimony from a witness, Mr. Singer who testified there is a board of managers for the condominium and that he was the president of the board (NYSCEF Docs. 133 at 55-56). The lawyer conducting the deposition in asking

questions confirmed his understanding the witness sits on the board of both the residential co-op and the condominium building's board of managers (NYSCEF Doc. 133 at 77).

The New School Defendants submitted the testimony of another witness, Ms. Skillen, who testified that as the president of the residential co-op, which made up one unit of the condominium building, she held conversations on issues affecting the condominium with the owner of the commercial unit, which represented the other unit of the condominium building (NYSCEF Doc. 135 at 33). She further testified she retained counsel to negotiate the condominium's air rights with the New School prior to the construction giving rise to this lawsuit (NYSCEF Doc. 135 at 50-51). The New School was purportedly sent a draft agreement during the air rights negotiations which included Ms. Skillen's signature as president of both the Condominium and the co-op (NYSCEF Doc. 187). Viewing the facts in the light most favorable to the non-movant, and given the movant's heavy burden, the Court must deny the New School Defendants' motion for summary judgment based on standing. Simply, the New School Defendants' submissions did just the opposite of meeting their burden on summary judgment and instead raised issues of fact as to standing (*see, e.g. Johnson v Lancet 150 Nassau LP*, 208 AD2d 463, 463 [1st Dept 1994] citing *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985] [failure to eliminate material issues of fact requires denial of the motion regardless opposing papers' sufficiency]).

Because the New School Defendants' own submissions raised issues of fact as to standing, the Court does not need to address the sufficiency of Plaintiffs' papers, including the New School Defendants' arguments about evidence submitted in opposition by Plaintiffs, which the New School Defendants claim either contradicts prior testimony or was not exchanged during discovery. Moreover, as Plaintiffs' motion has been granted to the extent the Court finds issues of fact preclude summary dismissal based on the New School Defendants' standing argument, the

New School Defendants' cross-motion which sought mirror-image relief - namely dismissal pursuant their standing defense, is denied as academic.

Accordingly, it is hereby,

ORDERED that Plaintiffs' motion for leave to renew the Court's prior Decision and Order dated May 6, 2022 pursuant to the First Department's remand instructions in its Decision and Order dated November 2, 2023 is granted, and upon renewal, the New School Defendants' motion for summary judgment dismissing all claims of damages related to common elements is denied, and the prior order amending the caption is granted³; and it is further

ORDERED that the New School Defendants' cross motion seeking leave to renew is denied as academic in light of this Court's Decision and Order on Plaintiffs' motion; and it is further

ORDERED that within ten days of entry, counsel for Plaintiffs shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

<u>10/16/2025</u> DATE		<u>Mary V Rosado JSC</u> HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE

³ The caption remains amended on NYSCEF so there is no need to direct the County Clerk to amend the caption.