

Rubin v Anderson-Song

2025 NY Slip Op 34012(U)

October 16, 2025

Supreme Court, New York County

Docket Number: Index No. 653056/2025

Judge: Lyle E. Frank

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. LYLE E. FRANK **PART** **11M**

Justice

-----X

LAUREL RUBIN,

Plaintiff,

- v -

BETH ANDERSON-SONG, SUSANNE GENNUSA ESQ.

Defendant.

-----X

INDEX NO. 653056/2025

MOTION DATE 07/18/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for DISMISS.

Upon the foregoing documents, the motion to dismiss is denied.

Background

In 2017, Laurel Rubin (“Plaintiff”) and Beth Anderson-Song (“Defendant”) entered into a contract whereby Plaintiff sold Defendant two condominium units in the building known as the Abbey Condominium. Prior to the sale, the two units had been physically altered and combined. The sale was conditioned on the Board of the Condominium waiving its right of first refusal to purchase the units, which the Board stated would require a binding agreement regarding compliance with the bylaws and applicable laws regarding unit combination. Plaintiff, the Board, and Defendant thereby entered into such an agreement (the “Combination Agreement”). Under the Combination Agreement, Plaintiff was required to place \$40,000 into escrow accounts maintained by the nominal defendant, Susanne Gennusa, Esq. The Plaintiff, Defendant, and Nominal Defendant also entered into a separate agreement regarding the post-closing escrow (the “Escrow Agreement”) that required a further \$100,000 be placed into escrow by Plaintiff.

In the years since, Plaintiff has repeatedly attempted to receive updates from the Board regarding the Condominium's responsibilities to satisfy the combination requirements pursuant to the Combination Agreement. The Board has to date failed to complete said requirements. In March of 2024, Plaintiff sent a notice of termination of agreement to the Board and Defendant, informing them that the Plaintiff considered the Combination Agreement terminated. Neither party responded to Plaintiff's notice. Then in April of 2024, Plaintiff sent out a termination notice as required under the Escrow Agreement, informing Defendant and Nominal Defendant that the Combination Agreement had been terminated and therefore the Nominal Defendant would be required to release the escrow funds to Plaintiff. Defendant failed to object to this notice within the ten days required by the Escrow Agreement. The Nominal Defendant, however, is refusing to release the funds to Plaintiff without Defendant's written consent (which is not forthcoming) or a court order. Plaintiff filed this underlying proceeding in May of 2025, seeking to obtain such a court order. Defendant has filed this pre-answer motion to dismiss, which Plaintiff opposes.

Standard of Review

It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211, "the pleading is to be liberally construed, accepting all the facts alleged in the pleading to be true and according the plaintiff the benefit of every possible inference." *Avgush v. Town of Yorktown*, 303 A.D.2d 340, 341 [2d Dept. 2003]. Dismissal of the complaint is warranted "if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." *Connaughton v. Chipotle Mexican Grill, Inc*, 29 N.Y.3d 137, 142 [2017].

CPLR § 3211(a)(1) allows for a complaint to be dismissed if there is a “defense founded upon documentary evidence.” Dismissal is only warranted under this provision if “the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” *Leon v. Martinez*, 84 N.Y.2d 83, 88 [1994]. A party may move for a judgment from the court dismissing causes of action asserted against them based on the fact that the pleading fails to state a cause of action. CPLR § 3211(a)(7). For motions to dismiss under this provision, “[i]nitially, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law.” *Guggenheimer v. Ginzburg*, 43 N.Y. 2d 268, 275 [1977].

Discussion

Defendant moves to dismiss the complaint on the grounds that 1) the Combination Agreement constitutes documentary evidence that conclusively refutes Plaintiff’s claims; 2) the termination of the Combination Agreement was ineffective and therefore the claim against Defendant for failing to arrange for the release of the money in escrow fails to state a cause of action; and 3) in the alternative, the Court should order joinder of the Board as a necessary party to this action or dismiss the complaint for failure to join the Board. Plaintiff opposes the motion. For the reasons that follow, the motion is denied.

The Combination Agreement Does Not Conclusively Bar the Claims Because It Is At Least Ambiguous as To Available Means of Termination

The Combination Agreement contains a clause stating that the Board must use prompt and reasonable efforts to satisfy all legal combination requirements. It continues to state that “[i]n the even that the Condominium is unable to complete the Combination Requirements, through no fault of Unit Owner, this Agreement shall be deemed terminated as to any further

performance of the Combination Requirements and of no further force or effect.” Defendant argues that this process is the only valid way of terminating the Combination Agreement. They further argue that this process is a condition precedent to any obligations that Defendant has under the Escrow Agreement to release the funds, and therefore Plaintiff’s claim against Defendant fails because they have failed to allege that the Board is unable to complete the combination requirements.

Plaintiff argues that the complaint has in fact validly alleged that the Board is unable to complete the combination requirements because the Board did not comply within a reasonable time, but the Court need not reach this issue. Defendant’s argument fails because while the provision in question lays out *a* means of deeming the Combination Agreement terminated, nowhere does the Combination Agreement state that such a method is the *only* means of terminating the Combination Agreement. Defendant’s argument would have the Court read limiting language into the provision that is not present, and this would be improper – certainly on the standard of a pre-answer motion to dismiss. *See, e.g., Almah LLC v. AIG Empl. Servs. Inc.*, 157 A.D.3d 416, 416 [1st Dept. 2018]. Termination of the Combination Agreement is a condition precedent to Defendant’s duties under the Escrow Agreement, and Plaintiff has alleged that the Combination Agreement was terminated. Defendant has not met their burden of disproving this termination in a manner that provides a conclusive defense to the claim under CPLR § 3211(a)(1), nor have they shown that Plaintiff’s claim fails to state a cause of action under CPLR § 3211(a)(7).

The Board Is Not a Necessary Party

Defendant also argues that the complaint should be dismissed for failure to join the Board as a necessary party, or in the alternative, that Plaintiff should be ordered to join the Board.

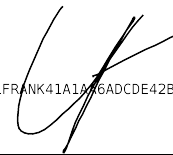
CPLR § 3211(a)(10) states that “the court should not proceed in the absence of a person who should be a party.” Because the termination of the Combination Agreement is a condition precedent in the Escrow Agreement, and the Board is a party to the Combination Agreement, Defendant argues that they are a necessary party to this action. A necessary party is defined in CPLR § 1001(a) as one who “might be inequitably affected by a judgment in the action” or one who would be necessary in order for the parties to the action to be accorded complete relief. The Board cannot be inequitably affected by the relief that Plaintiff seeks, as they are not a party to the Escrow Agreement, and in no scenario have an interest in the funds at issue.

Defendant argues that the Board’s performance or lack thereof under the Combination Agreement is necessary to establish termination of that agreement, and therefore they are necessary in order for the parties to the Escrow Agreement to be accorded complete relief. But the Board’s presence in this action is not necessary for determining whether the condition precedent (termination of the Combination Agreement) has occurred. When the relief sought is not adverse to a party’s interests, and the party would not be inequitably affected by a judgment, they are not a necessary party requiring joinder. *See, e.g., Timoyanis v. Zhongmeng (U.S.A.) Co. Ltd.*, 231 A.D.3d 605, 607 [1st Dept. 2024]. Accordingly, it is hereby

ADJUDGED that the motion is denied; and it is further

ORDERED that defendant is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry.

20251016114211LFRANK41A176AD0CDE42B7A90D9E5154529709



LYLE E. FRANK, J.S.C.

10/16/2025
DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE