

**Pignatelli Trust v Dalio**

2025 NY Slip Op 34098(U)

October 23, 2025

Supreme Court, New York County

Docket Number: Index No. 151936/2022

Judge: Denis Reo

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  
COUNTY OF NEW YORK: PART 65

-----X

THE PIGNATELLI TRUST, FEDERICO PIGNATELLI,  
  
Plaintiff,

INDEX NO. 151936/2022

MOTION DATE 07/08/2025

- v -

MOTION SEQ. NO. 012

RAY DALIO, 468 W. BROADWAY, LLC, WEST  
BROADWAY ARCHES, INC., BOARD OF DIRECTORS OF  
WEST BROADWAY ARCHES, INC., MATTHEW DICKER,  
ARMAND LEGARDEUR, ARCHITECT, DOMINICK R.  
PILLA ASSOCIATES, P.C., PVE ENGINEERING, LLC.,  
MARK ELLIS, ARCHITECT, HII COMPANY CORP.,  
KRISTINA NIKOLOVA DALIO, INDIVIDUALLY, AND AS A  
MEMBER OF BOARD OF DIRECTORS OF WEST  
BROADWAY ARCHES, INC., MARK DALIO, MAXINE  
PETRY, SULLIVAN STREET ASSOCIATES,  
P.C., CORNERSTONE ARCHITECTS

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

HON. DENIS REO:

The following e-filed documents, listed by NYSCEF document number (Motion 012) 497, 498, 499, 500, 502, 503, 504, 505, 506, 507, 508, 509, 510, 512, 513

were read on this motion to/for AMEND CAPTION/PLEADINGS

The Pignatelli Trust, a shareholder and proprietary lease holder of a cooperative apartment unit within the building located at 468 West Broadway, New York known as the West Broadway Arches (the “Co-op”), and Federico Pignatelli, as the subtenant of the apartment (The Pignatelli Trust and Federico Pignatelli shall be collectively referred to hereinafter as the “plaintiffs”) commenced this action against various defendants for property damage allegedly caused by construction on a roof build-out above a neighboring apartment unit. Plaintiffs seek leave to file its fourth amended complaint after Justice Shlomo Hagler dismissed numerous claims on the record and in written orders dated April 13, 2025 (NYSCEF Doc. No. 484) and May 30, 2025 (NYSCEF Doc. No. 494). For the reasons set forth below, plaintiffs’ motion for leave to amend

its third amended complaint in accordance with CPLR §3025 is DENIED for the reasons set forth below.

### **Background**

By summons and complaint filed on March 4, 2022, The Pignatelli Trust commenced an action against various defendants for damages allegedly caused by construction of a roof deck over a neighboring apartment. The Pignatelli Trust alleged that the roof deck overloaded the century-old timber system within the Co-op and caused cracking and misalignments to the apartment unit leased to The Pignatelli Trust.

Since 2022, there have been various amendments to the allegations and parties within the complaint. The most recent complaint, the third amended complaint, names The Pignatelli Trust and its subtenant, Federico Pignatelli, as plaintiffs and Ray Dalio, 468 W. Broadway LLC, Kristina Nikolova Dalio, Mark Dalio, Maxine Petry, and Sullivan Street Associates, LLC (“Dalio defendants”); West Broadway Arches, Inc., Board of Directors of West Broadway Arches, Inc., and Matthew Dicker (“Co-op defendants”) and various other parties as defendants.

In motion sequence 010 and 011, the Dalio and Co-op defendants successfully moved to dismiss various claims contained within the third amended complaint. Justice Shlomo Hagler held extensive oral argument on the motions on March 24, 2025 and March 25, 2025. (NYSCEF Doc. Nos. 487 and 488). During oral argument, Justice Hagler made various rulings on the record which were also codified in two written orders dated April 13, 2025 (“April 13<sup>th</sup> Order”) and May 30, 2025 (“May 30<sup>th</sup> Order”). (NYSCEF Doc. Nos. 484 & 494). In the April 13<sup>th</sup> Order Justice Hagler:

- Dismissed with prejudice plaintiffs' first (public nuisance), second (ejectment), third (encroachment), fourth (trespass), and seventeenth (violations of the co-op rules) causes of action as brought against the Dalio and Co-op defendants;
- Dismissed the fifth (constructive eviction), sixth (breach of the warranty of habitability), and seventh causes of action (breach of the covenant of quiet enjoyment) against all parties except as to The Pignatelli Trust against defendant West Broadway Arches, Inc.;
- Dismissed the ninth (breach of the duty to repair), eighteenth (breach of fiduciary duty with regards to the co-op rules), and nineteenth (breach of the covenant of good faith and fair dealing) causes of action against the Co-op defendants;
- Dismissed the tenth cause of action (third-party beneficiary) against the Dalio defendants;
- Dismissed Federico Pignatelli's sixteenth cause of action (negligence) that was brought against the Dalio defendants;
- Dismissed with prejudice Federico Pignatelli's eleventh cause of action (breach of fiduciary duty) against the Dalio and Co-op defendants;
- Dismissed without prejudice the eleventh cause of action but permitted the Pignatelli Trust the right to replead;
- Dismissed plaintiffs' claims for emotional damages concerning all causes of action except those for negligence; and
- Dismissed plaintiffs' claims for punitive damages but provided plaintiffs with the right to replead.

In addition, after receiving supplemental briefings by the parties, in the May 30<sup>th</sup> Order Justice Hagler:

- Dismissed plaintiffs' eighth cause of action (breach of the duty to maintain) as against the Co-op defendants; and
- Noted that plaintiffs' twentieth cause of action (attorneys' fees) was withdrawn.

While a majority of plaintiffs' claims were either dismissed or modified by Justice Hagler's April 13<sup>th</sup> or May 30<sup>th</sup> Orders, plaintiffs' proposed fourth amended complaint is remarkably similar to the third amended complaint as it contains virtually all of the previously dismissed claims. The only substantive changes from the third amended complaint to the proposed fourth amended complaint are those to the eleventh cause of action (breach of fiduciary duty) and sixteenth cause of action (negligence).

### Discussion

CPLR §3025(b) provides that leave to amend "shall be freely given." While leave is freely given "concern for the conservation of judicial resources warrants examination of the merit underlying a proposed cause of action." *Konrad v 136 East 64<sup>th</sup> Street Corp.*, 246 AD2d 324, 325 [1st Dept 1998], *citing East Asiatic Co. v Corash*, 34 AD2d 432, 434 [1st Dept 1970]). It is proper for the trial court to deny a motion to amend the pleadings where the "proposed amendment is conclusory and palpably insufficient." (*Feehan v Consolidated Edison Co. of NY, Inc.*, 227 AD3d 522 [1st Dept. 2024]). Furthermore, the simple fact that an amendment will not prejudice the defendants is insufficient for the court to grant a motion to amend. (*16W 8<sup>th</sup> LLC v. Gluckman*, 222 AD3d 449 (1st Dept 2023)) (*quotations omitted*). Plaintiff is not required to "establish the merit of its proposed new allegations" (*MBIA Ins. Corp v Greystone & Co., Inc.*, 74 AD3d 499 [1st Dept. 2010] [*citations omitted*]). However, a motion to amend a complaint is "futile" and should be

denied where “the defects [in the complaint] are [not] cured by the proposed... amended complaint.” (*Meimeteas v Carter Ledyard & Milburn LLP*, 105 AD3d 643, 643 [1st Dept. 2013]; *Garr Silpe, P.C. v Gorman*, 192 AD3d 633 [1st Dept. 2021] [“The court properly denied defendant’s motions for leave to amend because the defects in the original pleading were not cured by either of the proposed amendments”]; see *Brutus v Kelch*, 2025 WL 2609321 [2d Dept 2025] [It is proper for a court to deny a motion to replead where the proposed amended complaint did not cure the defects in the original complaint.]

**A. The Defects in the Third Amended Complaint Were Not Cured and The Proposed Fourth Amended Complaint Continues to Contain Palpably Insufficient Claims**

Despite Justice Hagler’s extensive rulings on the record and his written decisions concerning the same, plaintiffs continue to proffer dismissed causes of action. Plaintiffs also make no effort to amend the claims that were limited by Justice Hagler. Granting plaintiffs’ motion to amend and permitting the proposed fourth amended complaint to proceed in its current form will only waste judicial resources and the time of the defendants. The proposed fourth amended complaint is palpably insufficient as it continues to assert claims that are entirely devoid of merit; therefore, it is proper for this court to deny plaintiffs’ motion for leave to amend but to permit plaintiffs the right to replead, yet again, in accordance with this and Justice Hagler’s prior decisions.

**B. The Eleventh Cause of Action (Breach of Fiduciary Duty) is Palpably Insufficient**

While Plaintiffs amend their eleventh cause of action to add specific details concerning their claims for breach of fiduciary duty, it remains palpably insufficient and therefore plaintiffs’ motion to amend its complaint is denied. A claim for breach of fiduciary duty must demonstrate

“1) the existence of a fiduciary relationship, 2) misconduct by the defendant, and 3) damages directly caused by the defendant’s misconduct” in order to state a claim for breach of fiduciary duty. (*Golobe v Mielnicki*, 2025 WL 864512 [2025]; quoting *Village of Kiryas Joel v County of Orange*, 144 AD3d 895, 898 [2d Dept 2016] [citations omitted]). A board of directors is not an entity that may be sued separately from the corporation. (*Tahari v. 860 Fifth Avenue Corp.*, 2025 WL 2857263 [1st Dept 2025], see *Peacock v. Herald Square Loft Corp.*, 67 AD3d 442, 443 [1st Dept. 2009]; quoting *Hyman v New York Stock Exch., Inc.*, 46 AD3d 335, 337 [1st Dept 2007]; *Stalker v Stewart Tenants Corp.*, 93 AD3d 550 [1st Dept. 2012] [“[i]t is black letter law that a corporation does not owe fiduciary duties to its members or shareholders.”][*quotations omitted*]). Also, “[A] ‘fiduciary relationship arises between *two persons* when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation’ ” (*Oddo Asset Mgt. v Barclays Bank PLC*, 19 NY3d 584, 592–593 [2012] [*emphasis added*], quoting *Roni LLC v Arfa*, 18 NY3d 846, 848 [2011]). “A fiduciary relationship is ‘necessarily fact-specific’ and is also ‘grounded in a higher level of trust than normally present in the marketplace between those involved in arm’s length business transactions’” (*id.* at 593, quoting *EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]). It is undisputed that that the members of the board of directors of a cooperation owe shareholders a fiduciary duty. (See *Matter of Levandusky v One Fifth Ave. Apt. Corp.*, 75 NY2d 530, 538 [1990]. “[I]n the context of cooperative dwellings, the business judgment rule provides that a court should defer to a cooperative board’s determination ‘so long as the board acts for the purposes of the cooperative, within the scope of its authority and in good faith’ ” (*40 W. 67th St. v Pullman*, 100 NY2d 147, 153 [2003] [*brackets omitted*], quoting *Matter of Levandusky v One Fifth Ave. Apt. Corp.*, 75 NY2d at 538). However, “[w]hile unequal treatment of shareholders is sufficient to overcome the directors’ insulation from liability under the business

judgment rule, individual directors and officers may not be subject to liability absent the allegation that they committed separate tortious acts.” (*Decastro v Bhokari*, 201 AD2d 382 [1st Dept 1994]).

First, plaintiffs motion is denied because they continue to improperly bring breach of fiduciary duty claims on behalf of Federico Pignatelli, a subtenant of The Pignatelli Trust. (NYSCEF 487, pg. 46, ln 2-11). This claim was already addressed by Justice Hagler in the April 13<sup>th</sup> Order and is barred by res judicata. (*Brutus v Kelch*, 2025 WL 2609321 [2d Dept. 2025]). In addition, a claim for breach of fiduciary duty must allege “the existence of a fiduciary relationship.” Here, plaintiffs have not sufficiently pled, except in conclusory fashion, that there was a fiduciary relationship between Mr. Pignatelli, as a subtenant of The Pignatelli Trust, and members of the board of directors of the cooperative. As such, Mr. Pignatelli’s motion for leave to amend the third amended complaint to amend a cause of action for breach of fiduciary duty is denied.

Second, plaintiffs have not established that they have standing to bring the claims set forth in the proposed fourth amended complaint. In general, plaintiffs only have standing to bring claims on behalf of themselves unless organizational or associational standing can be demonstrated. (CPLR 1004; *Rudder v Pataki*, 93 NY2d 273, 278 [1999]). In general, a party does not have standing to commence an action on behalf of another. (*See Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 773 [1991]). Here, plaintiffs have not asserted that they have organizational or associational standing necessary to represent the shareholders within the Co-op. Plaintiffs’ proposed fourth amended complaint asserts damages on behalf of plaintiffs and other shareholders within the cooperative. (NYSCEF Doc No. 513, ¶¶ 118, 119, 122, 127, 129, 130, 132, and 137). Plaintiffs do not represent these “other shareholders” and cannot prosecute claims on their behalf.

Likewise, plaintiffs have not demonstrated that they have standing to bring a claim for damages caused to the corporate entity. Where an action is brought by shareholders for damages to the cooperative as a whole, the action must be brought derivatively. (*See Yudell v Gilbert*, 99 AD3d 108, [1st Dept. 2012] [[a] plaintiff asserting a derivative claim seeks to recover for injury to the business entity. A plaintiff asserting a direct claim seeks redress for injury to him or herself individually.'], see also *Caprer v Nussbaum*, 36 AD3d 176 [2d Dept 2006] [“[a] derivative action proceeds not on the basis of any individual right, but as an assertion of the interest of the entity by one or more of its owners or members when the management of the entity fails to act to protect that interest.... In the corporate context, where a wrong has been committed by corporate officers, directors or managers that adversely affects the corporation.”] [citations omitted]). As a cooperative is a corporation, a shareholder has unquestionable authority to bring an action derivatively on behalf of the shareholders. (*Id.* at 187, citing *FeBland v Two Trees Mgt. Co.*, 66 NY2d 556, 567 [1985]).

Plaintiffs’ proposed fourth amended complaint improperly asserts damages that can only be recovered derivatively. Specifically, plaintiffs seek damages because of defendant Dicker’s “failure to act in the *Cooperative’s best interests.*” (NYSCEF Doc. No. 513, ¶ 135) (emphasis added). Plaintiffs also “seek damages for the harm caused by the Board’s breach of fiduciary duty, including compensatory for financial losses and an order directing the Board to enforce compliance with safety and regulatory standards.” (NYSCEF Doc. No. 513, ¶ 136). These claims benefit the corporation as a whole and should be brought derivatively. As plaintiffs have not pled the action as a derivative action, those claims that seek damages belonging to the corporation are palpably insufficient and devoid of merit. As such, plaintiffs’ motion to amend the eleventh cause of action is denied.

**C. Sixteenth Cause of Action (Punitive Damages Amendment)**

Plaintiffs' proposed fourth amended complaint seeks punitive damages on their claim for negligence. Punitive damages may be appropriate in certain negligence cases. (*e.g. Reid v. St. Luke's-Roosevelt Hosp. Ctr.*, 191 AD3d 545 [1st Dept 2021]; *see also B.F. Reproductive Medicine Assoc. Of NY, LLP*, 136 AD3d 73, 82 [1st Dept 2015]). In order “[t]o sustain a claim for punitive damages in tort, one of the following must be shown: intentional or deliberate wrongdoing, aggravating or outrageous circumstances, a fraudulent or evil motive, or a conscious act that willfully and wantonly disregards the rights of another (*Don Buchwald & Assocs., Inc. v. Rich*, 281 AD2d 329, 330 [1st Dept. 2001]; citing *Swersky v. Dreyer & Traub*, 219 AD2d 321, 328 [1st Dept. 1996]). While punitive damages are available in matters involving a breach of fiduciary duty, the purported breach must be “egregious.” (*O'Mahony v Whiston*, 224 AD3d 609, 610 [1st Dept. 2024]).

The allegations set forth in the proposed sixteenth cause of action are insufficient to support a claim for punitive damages. Plaintiffs simply seek punitive damages from their neighbor, Ray Dalio (“R. Dalio”), for purported improper construction work that was authorized by the board of directors at the Co-op. The amendment adding punitive damages to the sixteenth cause of action simply contains conclusory buzz words and phrases such as “reckless, willful and wanton”, “egregious misconduct”, and “the kind of morally culpable behavior warranting punitive damages.” These vague and conclusory phrases are insufficient to sustain a claim for punitive damages. The allegations asserted by plaintiffs demonstrate, at best, negligent construction work performed by a contractor and R. Dalio’s input concerning the work. Plaintiffs further claim that they did not receive advance notice of the purported construction; however, there is no assertion

that it was R. Dalio’s duty to provide them with notice. In short, plaintiffs do not allege any “evil” or “egregious misconduct” that would support a claim for punitive damages. Rather, plaintiffs’ allegations in the sixteenth cause of action sound in ordinary negligence and do not rise to the heightened level necessary for punitive damages.

**Conclusion**

Accordingly, it is

ORDERED that Plaintiff’s motion for leave to amend pursuant to CPLR §3025(b) is DENIED; with leave to renew in accordance with this and the prior orders issued in this matter.

10/23/2025

DATE



DENIS REO, A.J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: