

**Staller v Board of Mgrs. of 163 Charles St.  
Condominiums**

2025 NY Slip Op 34241(U)

November 5, 2025

Supreme Court, New York County

Docket Number: Index No. 154574/2019

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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JAN STALLER,

Plaintiff,

- v -

BOARD OF MANAGERS OF 163 CHARLES STREET  
CONDOMINIUMS, 163 CHARLES ST. REALTY, LLC,

Defendant.

INDEX NO. 154574/2019

01/17/2025,  
01/17/2025,  
01/17/2025,  
01/17/2025

MOTION DATE 01/17/2025

MOTION SEQ. NO. 005 006 007  
008

**DECISION + ORDER ON  
MOTION**

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163 CHARLES ST. REALTY, LLC

Plaintiff,

-against-

REGELE BUILDERS, INC., REIDMAN CONSTRUCTION  
CORP., REIDMAN CONSTRUCTION INC., REIDMAN  
CONTRACTING CORP., REIDMAN CONSTRUCTION,  
GERALD REID

Defendant.

Third-Party  
Index No. 595098/2023

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 286, 290, 291, 292, 293, 294, 295, 296, 297, 298, 331, 332, 333, 334, 335, 338, 339, 340, 341, 342, 343, 346, 347

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

The following e-filed documents, listed by NYSCEF document number (Motion 006) 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 287, 299, 300, 301, 302, 303, 304, 305, 306, 307, 336, 337

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 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, 288, 308, 309, 310, 311, 312, 313, 314, 315, 316, 344, 345

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 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, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 289, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 348

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER .

Plaintiff Jan Staller (“Plaintiff”) commenced this action against Defendant/Third-Party Plaintiff 163 Charles St. Realty LLC (“163 Realty”) and Defendant Board of Managers of 163 Charles Street Condominiums (“Board”) alleging negligence, trespass, and nuisance, and seeking damages and injunctive relief stemming from property damage to a party wall as part of the construction of a condominium. 163 Realty commenced a third-party action for indemnification against the primary construction company hired for the project, Third-Party Defendant Regele Builders Corp. (“Regele”), and another contractor, Third-Party Defendants Reidman Construction Corp., Reidman Construction Inc., Reidman Contracting Corp., Reidman Construction, and Gerald Reid (collectively, “Reidman”). In these motions, 163 Realty and the Board each move for summary judgment dismissing the Complaint (NYSCEF Doc. No. 148, “Complaint”), while Regele and Reidman each seek summary judgment dismissing both the Complaint and the Third-Party Complaint (NYSCEF Doc. No. 155). The motions are all opposed by Plaintiff, and Regele and Reidman’s motions are opposed by 163 Realty to the extent they seek dismissal of the Third-Party Complaint. The four movants seek dismissal based on a number of arguments, with all asserting that the action is barred by the statute of limitations.

Plaintiff is the owner of 161 Charles Street in the West Village. The property consists of a three-story brick townhouse in which Plaintiff resides, and a two-story rental house directly behind Plaintiff’s home. When Plaintiff purchased the property in 1992, the main house shared a party wall with another three-story brick townhouse at 163 Charles Street. In 2004, 163 Realty purchased 163 Charles Street intending to demolish the house and build an eight-story

condominium building in its place. As part of the conversion, the Board was created and Regele and Reidman were hired.

In 2005, the townhouse at 163 Charles Street was demolished, exposing the western wall of Plaintiff's home. The condominium that was built in its place was set back from the street such that a portion of the newly exposed party wall remained permanently exposed. As part of the work, that wall was covered with stucco. The work was completed in 2007, and a Certificate of Occupancy was issued in 2009 (NYSCEF Doc. No. 197). Some years after the completion of the project, Plaintiff noticed evidence of moisture on the interior of the party wall in his home. The Complaint does not specifically allege when it was first discovered. In 2018, Plaintiff hired an expert who inspected the wall and rendered a preliminary report (NYSCEF Doc. No. 293) which confirmed there was an active leak in 161 Charles Street and noted evidence of, *inter alia*, cracking and bulging in the stucco and degradation of sealant on the exterior of the party wall, which could allow for water infiltration (*id.*). It recommended conducting probes into the stucco system. According to the Complaint, Plaintiff sent the report to 163 Realty and the Board to obtain access to their property to conduct the probes, but the requests were ignored.

In 2019, Plaintiff commenced this action asserting causes of action for negligence, trespass, and nuisance, and seeking damages and injunctive relief in the form of an order compelling 163 Realty and the Board to cooperate with the probes and repairs at their expense. The parties were subsequently able to agree to additional exploratory work and in December 2021, Plaintiff's expert issued a final report (NYSCEF Doc. No. 294). That report opined that "the deteriorated condition of the stucco is due to moisture infiltration at open or deteriorated stucco joints which has led to the degradation of the overall assembly through moisture retention and freeze/thaw cycling" (*id.* at 4).

In 2023, 163 Realty commenced the third-party action against Regele and Reidman asserting causes of action for common law indemnity, contribution, contractual indemnity, and breach of contract for failure to procure insurance. 163 Realty then retained its own expert, whose report conceded that the water damage to Plaintiff's home "was causally related to chronic water infiltration through a deteriorated stucco finish along the 161 Charles Street party wall" (NYSCEF Doc. No. 342, 20).

Plaintiff was deposed in December 2023. He testified that he first noticed evidence of a leak from the party wall "around 2014" (NYSCEF Doc. No. 291, 50). Plaintiff stated that he noticed the "smell of wet plaster" on his second floor, at which point he contacted the condominium's super (*id.* at 50, 52). According to Plaintiff, the interior plaster had started to soften, prompting him to purchase a moisture meter, and while using it, he noticed that mold had appeared behind his artwork (*id.* at 55). He testified that he ultimately spoke to someone from the condominium's building management company, who told him that it would hire a company to do some repair work, which never happened (*id.* at 53). Plaintiff commenced this action five years later, in 2019. After the Note of Issue was filed in September 2024, 163 Realty, the Board, Regele, and Reidman (collectively, "Movants") each moved for summary judgment, *inter alia*, on the basis that the action is untimely.

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]). After the movant makes this showing, "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 which require trial of the action” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

CPLR § 214(4) provides that actions to recover for injury to property are subject to a three-year statute of limitations, which begins to run at the time the damage becomes apparent (*American Constr., Inc. v Cirocco & Ozzimo, Inc.*, 205 AD3d 568, 569 [1st Dept 2022]; *Ellington Owners Corp. v 200 Bradhurst Devs. LLC*, 190 AD3d 550, 551 [1st Dept 2021] quoting *Mark v Eshkar*, 194 AD2d 356, 357 [1st Dept 1993]; see also *Kehagias v Waldo Ave. Bldg.*, 132 AD3d 615 [1st Dept 2015] [causes of action accrued when the damage “became visible and apparent to plaintiff”]). Movants rely on Plaintiff’s deposition testimony that he first noticed evidence of moisture on his interior wall in 2014. They argue that the damage became apparent at that time and the statute of limitations began to run, and therefore the action, commenced five years later, is untimely.

In opposition, Plaintiff argues Movants have failed to meet their burden of eliminating all material issues of fact as to whether water damage Plaintiff testified to noticing in 2014 was caused by the defects his expert later found. Plaintiff maintains that his expert’s final report identified six different defects on the wall and argues Movants have not proven that those defects existed in 2014 or caused the damage that Plaintiff testified to noticing. However, Plaintiff does not point to any other reason there might have been water damage on that wall in 2014. Plaintiff further maintains it was not until his expert recommended additional investigatory probes, in 2018, and the Board refused access, that it became necessary to commence the action. Plaintiff does not explain why he waited four years to hire an expert.

Movants establish prima facie that Plaintiff’s cause of action accrued in 2014 based on Plaintiff’s deposition testimony that he noticed moisture on his wall at that time. The relevant

case law provides that a cause of action accrues when damage complained of “becomes apparent.” There is no issue of fact related to the causation of the leaks, as Plaintiff seeks recovery solely based on the conditions caused by Defendants’ demolition and weatherproofing work, and Defendant does not contest these conditions. Thus, Movants are not required to demonstrate that subsequently identified defects were indeed the cause of the damage Plaintiff first noticed.

Plaintiff further argues that even if the Court finds that the statute of limitations began to run in 2014, his claims would still be timely based on the continuous wrong doctrine. Movants argue the doctrine does not apply because the purported wrong stems from a discrete act that occurred during the condominium’s construction. It is well-settled that injuries to property caused by a continuing nuisance or trespass involve a continuous wrong and give rise to successive causes of action that accrue each time a wrong is committed (*Town of Oyster Bay v Lizza Indus., Inc.*, 22 NY3d 1024, 1031 [2013]; *Bloomingdales, Inc. v New York City Tr. Auth.*, 13 NY3d 61, 66 [2009]). However, where a defendant’s conduct consists of a discrete, single act of negligence, and where the plaintiff does not allege the existence of an unlawful encroachment on their property, the conduct does not give rise to successive causes of action under the continuous wrong doctrine (*Lizza*, 22 NY3d at 1032; *Bloomingdales*, 13 NY3d at 65-66). The doctrine “may only be predicated on continuing unlawful acts and not on the continuing effects of earlier conduct. The distinction is between a single wrong that has continuing effects and a series of independent, distinct wrongs” (*Henry v Bank of Am.*, 147 AD3d 599, 601 [1st Dept 2017] [internal citations omitted]).

The *Lizza* and *Bloomingdales* cases illustrate this distinction. In *Lizza*, the plaintiffs complained of damage to roadways, sidewalks, and curbs due to the faulty construction of a

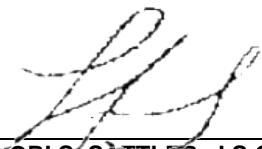
sewer system more than twenty years earlier. The Court of Appeals rejected the argument that the continued presence of roadway defects constitutes a continuing nuisance on the grounds that the tortious conduct, i.e., negligent excavation and backfilling, consisted of discrete acts (22 NY3d at 1032). By contrast, in *Bloomingdales*, as part of a construction project, a working drainpipe was cut and a conduit encased in concrete was installed in its place, leading to flooding. The Court of Appeals held that the ongoing presence of the concrete conduit constituted a continuous interference with the plaintiff's rights such that the statute of limitations had not run (13 NY3d at 66). Plaintiff relies on the *Bloomingdales* case and asserts that the Board's purported refusal to grant Plaintiff access to the party wall, along with its obligation to maintain the party wall pursuant to the New York City Administrative Code, constitute continuing wrongs. Movants argue the facts in this action are more analogous to those in *Lizza* insofar as Plaintiff's injuries are a result of allegedly faulty construction years earlier.

The Court finds that Plaintiff's alleged injury in this action stems from discrete acts of negligence that occurred during the condominium's construction. Both Plaintiff's and 163 Realty's experts concluded that Plaintiff's property damage was caused by water infiltration. Construction was completed, at the latest, in 2009, when the Certificate of Occupancy was issued. In this instance, the stucco degradation and water infiltration that followed is a continuing effect of a single wrong rather than a series of independent, distinct wrongs (*see Ubiles v Ngardingabe*, 194 AD3d 436 [1st Dept 2021]). The trespass and nuisance claims are predicated on the same discrete acts, and any statutory duty to maintain a party wall or a refusal to grant access to its property for investigatory purposes is insufficient to create a continuing wrong.

Accordingly, for the reasons set forth herein, the Court finds that the action is untimely, the motions are granted, and the Complaint and Third-Party Complaint are dismissed.

This constitutes the Decision and Order of the Court.

11/5/2025  
DATE

  
LORI S. SATTLER, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
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<input type="checkbox"/>	SUBMIT ORDER
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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
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