

Tesniere v Cinotti LLP

2025 NY Slip Op 34269(U)

November 10, 2025

Supreme Court, New York County

Docket Number: Index No. 160760/2024

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. 160760/2024

CLEMENT TESNIERE,

MOTION DATE 01/17/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

CINOTTI LLP, and MATHIAS YOUBI, ESQ.

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for DISMISSAL

Appearances:

Plaintiff: Merle, Brown & Nakamura, P.C. (Stephen Nakamura, Esq.)

Defendants: Cohen Plaut Rajsich LLP (Lee Rajsich, Esq.)

Upon the foregoing documents, and after oral argument, which took place on September 16, 2025, Defendants Cinotti LLP and Mathias Youbie, Esq. ("Youbie") (collectively "Defendants") motion to dismiss Plaintiff Clement Tesnière's ("Plaintiff") Complaint is denied.

On April 28, 2022, Plaintiff retained Defendants to negotiate and to perform due diligence on the purchase of Unit 2B (the "Apartment") in the condominium at 42 Tiffany Place, Brooklyn, New York. Defendants were allegedly advised of a façade project presentation and were provided various board meeting minutes. On May 3, 2022, Defendants allegedly advised Plaintiff of an additional assessment of \$35,000 related to the façade project. Plaintiff alleges based on this information he entered a contract of sale for the Apartment for \$1,615,000.

However, on October 1, 2022, Plaintiff was informed that the estimated cost to complete the façade project was \$894,000 and he would be obliged to contribute \$81,622.20 towards that assessment. Plaintiff alleges board meeting minutes which Defendants allegedly had in their

possession reflect that the second phase of the façade project would cost \$835,000, far greater than the assessment amount Defendants advised Plaintiff of. The assessment for the second phase of the façade project allegedly increased to \$1,044,705. Plaintiff now sues Defendants for legal malpractice based on their alleged failure to conduct proper due diligence. Defendants move, pre-answer, to dismiss the Complaint pursuant to CPLR 3211(a)(1) and (a)(7).

Accepting the facts as true and giving Plaintiff the benefit of all favorable inferences which may be drawn from the Complaint, the Court is constrained to deny Defendants' motion. "In order to survive a motion to dismiss, a plaintiff's complaint in an action for legal malpractice must show that 'but for counsel's alleged malpractice, the plaintiff would not have sustained some actual ascertainable damages'" (*Gopstein v Bellinson Law, LLC*, 227 AD3d 465, 466 [1st Dept 2024] quoting *Pellegrino v File*, 291 AD2d 60, 63 [1st Dept 2002], *lv denied* 98 NY2d 606 [2002]). For purposes of a pre-answer motion to dismiss, Plaintiff has adequately alleged a legal malpractice claim, and Defendants have failed to come forth with documentary evidence definitively contradicting Plaintiff's allegations.

Although Defendants rely on factual arguments made by Youbi in an affirmation (NYSCEF Doc. 12), this does not qualify as documentary evidence and simply highlights issues of fact which cannot be resolved on a motion to dismiss (*Bou v Llamaza*, 173 AD3d 575, 575 [1st Dept 2019]). While Defendants claim they did not have the April 13, 2022 board minutes in their possession at the time of advising Plaintiff on the results of their due diligence, this is an issue which must be flushed out in discovery. Moreover, the e-mail correspondence submitted by Defendants shows that Defendants attempted to access the board minutes on May 2, 2022, but there is no evidence of what board minutes were available for review between the May 2, 2022, e-

mail to the condominium and the May 3, 2022 e-mail from Defendants to Plaintiff (*see* NYSCEF Docs. 15-16).

There is also a question of fact as to whether it was reasonable for Defendants to rely on the condominium's answer to the questionnaire given evidence that Defendants should have been in possession of a façade project presentation that indicated façade restoration would take place in several phases over the span of years (*see* NYSCEF Docs. 17-18). The questionnaire also put Defendants on notice that there was an impending assessment which would be voted on at a May 8, 2022 board meeting, but there is no evidence that was communicated to Plaintiff nor is there any evidence that due diligence into the pending assessment was conducted. Finally, since Defendants knew the façade repair had only completed phase one, it remains an issue of fact as to whether Defendants should have inquired into assessments and costs of the other phases of the façade repair, and the additional costs that Plaintiff would incur if he purchased the Apartment.

Although Defendants claim Plaintiff suffered no actual damages, it cannot be determined on a motion to dismiss whether Plaintiff would have entered a contract to purchase the Apartment had he known about the other assessments, or if he would have succeeded in negotiating more favorable terms prior to entering a purchase agreement using the future assessment costs as leverage. The arguments Defendants are making are more suited for a motion for summary judgment, supported by expert opinions and after written and oral discovery is complete, as opposed to a motion to dismiss based on the pleadings. Therefore, Defendants' motion is denied (*see also Kram Knarf, LLC v Djonovic*, 74 AD3d 628, 628 [1st Dept 2010]).

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Accordingly, it is hereby,

ORDERED that Defendants' motion to dismiss Plaintiff's Complaint is denied, and within twenty days of entry of this Decision and Order, Defendants shall serve an Answer to Plaintiff's Complaint; and it is further

ORDERED that the parties shall immediately meet and confer and submit a proposed preliminary conference order to the Court via e-mail to SFC-Part33-Clerk@nycourts.gov, but in no event shall the proposed preliminary conference order be submitted any later than December 10, 2025. If the parties have a serious discovery dispute requiring Court intervention, they shall notify the Court to be scheduled for a conference; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff 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.

11/10/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE