Soybean Parking LLC v Board of Mgrs. of the Amherst Condominium
2025 NY Slip Op 34327(U)
November 13, 2025
Supreme Court, New York County
Docket Number: Index No. 650692/2024
Judge: Lyle E. Frank

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK** **PART** **11M**

Justice

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SOYBEAN PARKING LLC

Plaintiff,

- v -

BOARD OF MANAGERS OF THE AMHERST CONDOMINIUM,

Defendant.

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INDEX NO. 650692/2024

MOTION DATE 07/11/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, the motion is granted in part.

Background

Plaintiff is the owner of a garage unit in a mixed-use condominium governed by the Defendant. The building consists of three portions: a Residential Unit consisting of apartments taking up a portion of the basement plus the ground through twentieth floors, a Commercial Unit on a portion of the ground floor, and the Garage Unit owned by Plaintiff, which covers portions of the basement and ground floor. The Declaration for the co-op lays out the definitions of the units, common elements, and common expenses. The building's By-Laws give Defendant the right to determine common expenses and levy common charges and special assessments against the three entities, as defined in the Declaration. Under Local Law 11 ("LL11"), Defendant is required to periodically assess and make necessary repairs to the building's façade. The costs of these compliance measures are assessed to the three units in proportion to their interest as laid out in the governing documents.

Local Law 11 Work and Special Assessment Dispute

Between June of 2017 and July of 2020, Plaintiff was levied special assessments related to the LL11 work. Plaintiff paid the charges without protest. Then in August of 2020, a special assessment was levied and Plaintiff now requested documentation to support the charge. When this request was not responded to promptly, Plaintiff retained counsel. In May of 2021, Plaintiff's counsel informed Defendant that their position was that Plaintiff was not required to pay for the LL11 work, as they did not consider the façade to be part of their unit but rather solely part of the Residential Unit. Plaintiff then paid the August 2020 assessment under protest and began to challenge the next several special assessments that were levied through August of 2023. Three days after the May 2021 assessment was due, Defendant filed a lien against Plaintiff for failure to pay. Defendant eventually admitted that the lien had not been filed properly (as they were not entitled to file a lien until thirty days after nonpayment, rather than three) and voluntarily discharged the lien. Defendant's legal fees for this incident were then assessed to Plaintiff (the "Lien Legal Fees").

Local Law 126 Repairs and Litigation

Under New York City Local Law 126 ("LL126"), owners of parking garages are required to inspect their structure every six years. When Plaintiff did so in early 2024, the report stated that there were "some minor issues" requiring attention, including some firestopping work. Plaintiff informed Defendant that they considered the firestopping and ceiling repair work to be part of the Common Elements as defined in the Declaration, and therefore the repair cost should be shared among the unit owners. Defendant disagreed and declined to levy a special assessment. Plaintiff hired a contractor, performed the work, and presented the work and evaluation invoices to Defendant who refused to pay it. In February of 2024, Plaintiff brought this present

proceeding, pleading claims in the amended complaint for breach of contract, unjust enrichment, accounting, and for declaratory judgments. Defendant brings the present pre-answer motion to dismiss the amended complaint in its entirety.

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

The gravamen of Plaintiff's case is that they are not obligated to pay for the LL11 façade repairs or the Lien Legal Fees, but that the building is required to pay for the garage repairs.

They base these arguments in their interpretation of the building's governing documents. Defendant moves to dismiss the amended complaint based on the argument that the governing documents conclusively establish that the LL11 work is to be charged to all unit owners and that the LL126 work was to be borne solely by Plaintiff. Plaintiff opposes the motion. For the reasons that follow, the motion to dismiss is granted as to the first, second, and third causes of action in their entirety, partly granted as to the fourth cause of action, and denied as to the rest.

The Façade Is a Common Element

Defendant moves to dismiss the first through fifth causes of action on the grounds that the façade is a common element as defined in the Declaration. Section 7 of the Declaration defines a common element as those portions of the building that are either "for the common use of, or which service, benefit, or enclose more than one Unit or Unit Owner" or that which is "necessary for, or convenient to, the existence, maintenance, management, operation, or safety of the Property." Defendant argues that the exterior façade and the legally mandated work on it are clearly necessary for the safety of the building. The façade also extends from the ground floor to the twentieth floor, and Defendants argue that it therefore encloses more than one Unit. Furthermore, the Declaration in Article 10 states that there is an easement "for the enjoyment of the common elements" that includes the "exterior walls of the Building."

Plaintiff argues that they should only be assessed for LL11 work that was done to the façade on the ground floor, and that any work done to the remainder of the façade was done solely for the benefit of the Residential Unit and therefore should not be assessed to other unit owners. This argument fails. The LL11 work and inspection is, by law, done to the façade as a whole, and there is no indication from the governing documents that work done to the entirety of the façade was meant to be apportioned in the manner that Plaintiff suggests. To the contrary, the

clear language of the Declaration makes the building's façade as a whole a common element, both because it encompasses multiple units and because it benefits the building as a whole. As the Defendant is permitted to make assessments to the unit owners for repairs done to common elements, the assessments made to Plaintiff for the LL11 work were valid under the building's governing documents.

Plaintiff's first, second, and third causes of action are entirely based on the premise that the Plaintiff is not responsible for the LL11 work to the façade above the ground floor. The fourth cause of action seeks in part a declaratory judgment that Plaintiff is not required to pay the most recent assessment related to the LL11 work. Because documentary evidence conclusively establishes that the LL11 work was done to a common element and therefore Defendant was entitled to levy related assessments, these claims fail as a matter of law and must be dismissed. And as the governing documents defeat these claims, the Court does not need to reach the estoppel and voluntary payment doctrine arguments brought by Defendant. In the interests of thoroughness, however, the Court will briefly address the voluntary payment doctrine argument.

The Voluntary Payment Doctrine Partly Bars Recovery

Defendants argue that Plaintiff is barred from recovering any payments made prior to the August 2020 assessment, as they admittedly paid voluntarily and never protested. Plaintiff argues that because the charges did not come with an accompanying notice explaining the source of the charges, the voluntary payment doctrine does not apply. This doctrine "bars recovery of payments voluntarily made with full knowledge of the facts, and in the absence of fraud or mistake of material fact or law." *Dillion v. U-A Columbia Cablevision of Westchester, Inc.*, 100 N.Y.2d 525, 526 [2003]. According to Plaintiff's own amended complaint, they paid the charges for years without even inquiring as to the reason why the charges were assessed or the source.

When a sophisticated party fails to engage in any due diligence as to charges levied against them, the voluntary payment doctrine bars recovery. *Eighty Eight Bleecker Co., LLC v. 88 Bleecker St. Owners, Inc.*, 34 A.D.3d 244, 246 [1st Dept. 2006]. Even if Defendants were not entitled to assess charges related to the LL11 work on a common element, as addressed above, the voluntary payment doctrine would bar recovery for those payments that Plaintiff made without protest.

The Accounting Claim Stands

Defendant argues that Plaintiff is not entitled to an accounting related to the LL11 assessments because Plaintiff cannot establish a breach of fiduciary duty related to the levying of those charges. Plaintiff has alleged that Defendant is required to provide information at the time of assessment as to what work the charges are used to fund, and that Defendant has failed to do so despite repeated requests. Defendant has not pointed to any documentary evidence conclusively showing that they have no duty to provide such information and therefore have not met their burden to dismiss this cause of action.

The Lien Legal Fees Claim Stands

Plaintiff's fourth cause of action seeks a declaratory judgment stating in part that they are not entitled to pay the Lien Legal Fees for the improper lien that was voluntarily discharged. They argue that because the lien in question was improperly filed in violation of the governing documents and did not result in the recovery of amounts owed, Defendant has no legal entitlement to these fees. Defendant argues that the legal fees were incurred in relation to actions to forestall a breach by Plaintiff. Because Plaintiff alleges, and Defendant has not conclusively disputed, that Defendant admitted that the lien had been improperly filed prematurely and voluntarily discontinued said lien, Defendant has not met their burden to dismiss the portion of

the fourth cause of action dealing with the Lien Legal Fees. Therefore, the fourth cause of action will only be partly dismissed.

Factual Issues Regarding the Local Law 126 Work

Defendant moves to dismiss the sixth through eighth causes of action, which are claims related to the LL126 work, based on the theory that Plaintiff was entirely responsible for such work. The Declaration defines each Unit as consisting of the "area measured vertically from the top of the concrete floor to the underside of the concrete ceiling." The Bylaws state that all repairs and maintenance that is done solely for one Unit shall be the responsibility of that Unit owner. Defendant argues that all the LL126 repairs were done within the Garage Unit and therefore is the sole responsibility of Plaintiff. They also argue that because the report stated that there were no unsafe conditions, the repairs exclusively benefitted Plaintiff. In response, Plaintiff argues that the repairs were made to pipes, concrete slabs, and electrical conduits that service more than one unit, and therefore these repairs were to common elements. They also allege that Defendant initially admitted that the firestopping work related to a common element. Defendant states that they are not now conceding that the firestopping work was to a common element, and any statements to the effect of acknowledging the LL126 work was in common interest were made under protest. But these are all factual arguments, and at this stage Plaintiff is entitled to every favorable inference. Ultimately, Defendant has not made the necessary showing that the LL126 repairs were solely within and for the benefit of Plaintiff's unit, therefore the motion to dismiss these claims fails. Accordingly, it is hereby

ADJUDGED that the motion is granted in part; and it is further

ORDERED and ADJUDGED that the first, second, and third causes of action are dismissed in their entirety, and the fourth cause of action is dismissed except to the extent that it seeks a declaratory judgment regarding the assessment of legal fees; and it is further

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

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11/13/2025
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:		**CASE DISPOSED**			X	**NON-FINAL DISPOSITION**	
		GRANTED		**DENIED**	X	**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**