

**Bespoke Harlem W. LLC v Adams**

2025 NY Slip Op 34703(U)

December 9, 2025

Supreme Court, New York County

Docket Number: Index No. 160090/2024

Judge: James d'Auguste

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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. James E. d'Auguste PART 55**

*Justice*

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BESPOKE HARLEM WEST LLC,  
  
Plaintiff,

INDEX NO. 160090/2024

MOTION DATE 02/13/2025

MOTION SEQ. NO. 002

- v -

DANIEL MICHAEL ADAMS, JOHN DOES Nos. 1-5, being  
individuals who aided and abetted the tortious conduct  
alleged herein,

**DECISION + ORDER ON  
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 46, 47, 48, 49, 50, 51, 52

were read on this motion to/for DISMISSAL.

In this action to recover damages for tortious interference with prospective business relations, business disparagement, prima facie tort, and aiding and abetting tortious interference, defendant Daniel Michael Adams (“Defendant”) moves to dismiss plaintiff Bespoke Harlem West LLC’s (“Plaintiff”) amended complaint in this action pursuant to CPLR 3211(g) as a strategic lawsuit against public participation barred by New York’s anti-SLAPP law (codified in relevant part as Civil Rights Law §§ 70-a and 76-a) or, in the alternative, for failure to state a cause of action under CPLR 3211(a)(7). Defendant also moves for an award of costs, attorneys’ fees, and compensatory and punitive damages under the anti-SLAPP law. Plaintiff opposes the motion. The motion is granted in part and denied in part in the manner and for the reasons set forth below.

**Background**

Plaintiff is the sponsor of a mixed-use condominium (the “Condominium”) located at 300 West 122<sup>nd</sup> Street in Manhattan (“the Building”). The Building was a new ground-up

construction, units of which plaintiff began selling in March 2021. Defendant is a resident of the Building, having purchased his unit on April 1, 2022.

Beginning in 2022, a dispute arose between plaintiff and numerous residents, including defendant, about the condition of the Building. Defendant and over 100 other owners and residents sent a letter to two of plaintiff's members on June 30, 2022 to complain about purported defects with the Building and individual units that rendered them "unready even for a walk-through inspection" (NYSCEF Doc. No. 28, "Resident Letter"). The complained-of problems included, among other things, "debris, plaster and waste . . . common spaces, equipment, and amenities unfinished, damaged, littered with debris and otherwise presentable" (*id.*). In 2023, defendant and approximately 75 other unit owners retained non-party RAND Engineering & Architecture, DPC ("RAND") to inspect the conditions of the Building, which resulted in a June 30, 2023, report that found "numerous significant defective conditions" (NYSCEF Doc. No. 32, "RAND Report," at 1-2). Plaintiff disputed those characterizations and ultimately commissioned its own report, issued in December 2024, that concluded that any issues with the Building were de minimis (NYSCEF Doc. No. 42).

Plaintiff alleges that defendant went beyond simply lodging complaints about the Building's purported conditions and instead engaged in a campaign of falsehoods intended to damage its reputation and discourage potential purchasers from buying units at the Building. On May 5, 2023, defendant published a website, [unhappy-living.com](http://unhappy-living.com), which billed itself as showing the "unscrupulous real estate practices of [the Building's developer] Happy Living Development." (NYSCEF Doc. No. 30, "the Unhappy Living Website," NYSCEF Doc. No. 24, Defendant aff ¶ 15).

Plaintiff alleges that the Unhappy Living Website contained false and misleading information about the Building's condition and other misrepresentations that damaged it and Happy Living's reputations. (NYSCEF Doc. No. 26, Amended Complaint, ¶¶ 6-22). The website also included photographs that purported to show incomplete and defective elements of the Building, but which plaintiff claims were deceptive because they were taken long before construction was complete and inaccurately reflected the Building's state at the time of publication (Amended Complaint, ¶ 9). Plaintiff states that it sent defendant a cease-and-desist letter demanding he take down the Unhappy Living Website and that defendant only complied after he was sent a further demand indicating that plaintiff would otherwise commence litigation (Amended Complaint, ¶¶ 19-22). Defendant took down the Unhappy Living Website on November 7, 2023 (Defendant Aff, at 6 n. 1).

Notwithstanding the Unhappy Living Website's demise, plaintiff alleges that defendant allegedly continued his antagonistic behavior, specifying one incident on January 11, 2024, in which defendant allegedly made disparaging comments about the Building to a prospective buyer, Dimitri Nuyev ("Nuyev"). (Amended Complaint ¶ 24; NYSCEF Doc. No. 37, Medalie Aff., at 4 n. 1).

Plaintiff alleges that defendant shouted at Nuyev untrue and misleading statements about the condition of the Building and plaintiff's business practices, namely: "the [Building] is not finished," the Building is in "poor condition," that "residents were unhappy living here," and "the Sponsor [plaintiff] had stolen building funds." (Medalie Aff., ¶ 24; Amended Complaint, ¶ 29). Plaintiff claims this "verbal assault" continued for between two and two-and-a-half minutes and that immediately afterwards it became clear that Nuyev had changed his mind about purchasing a unit. (Medalie Aff., ¶¶ 25-26). Nuyev did not purchase a unit in the Building

thereafter. Plaintiff maintains that defendant made these comments with the specific intent of dissuading Nuyev from purchasing a unit and that after this incident no broker from Nuyev's brokerage showed a unit at the Building again. (Amended Complaint, ¶¶ 31-32).

Plaintiff does not submit any affirmation or other documentation from Nuyev or the unidentified broker that it claims witnessed the library encounter, and defendant offers a different account of what took place in the library. Defendant maintains that he was in the library with other residents for a meeting about ongoing issues with the Building, and saw an identified visitor in the library. (Defendant Aff., ¶¶ 23-24). Defendant denies making the alleged comments and offers only that he asked about when "construction of the [B]uilding was going to resume and when the outstanding work would be completed," and that he did not speak to the unidentified visitor at all. (*id.*). Defendant submits affirmations from two other Building residents who state that they were also present at the January 11, 2024, library meeting and corroborate defendant's allegations. (NYSCEF Doc. No. 51, Hernandez Aff, ¶¶ 7-9; NYSCEF Doc. No. 52, Zahn Aff., ¶¶ 7-10). Defendant and the other two residents claim that the interaction lasted less than one minute.

Plaintiff alleges that this incident was part of a pattern in which defendant "instigated, aided and abetted other unit owners to engage in similar misconduct directed to prospective buyers . . . in the midst of showings in the library . . . a lobby and other common areas of the [Building]" and that he "provided substantial assistance in enabling other unit owners to pursue such tortious endeavors" (Amended Complaint, ¶¶ 58-59; *see* Medalie Aff., ¶¶ 38-39). Plaintiff refers to one instance where another resident allegedly "saw a prospective purchaser in the lobby on a showing and made false and misleading statements about the Condominium, expressly warning the would-be purchaser to 'stay away'" (Medalie Aff., ¶ 38). Plaintiff states that this

took place “around the time of the library incident” without further specification as to when this incident took place, nor identify the resident or prospective buyer, or specify the content of the purported false and misleading statements (*id.*).

On August 2, 2024, defendant and 89 other unit owners commenced an action against plaintiff, Happy Living, and other individuals and entities on behalf of themselves individually and derivatively on behalf of the Condominium and its board alleging various construction defects with the Building (*Adams et al v Bespoke Harlem West, LLC et al*, NY County Index No. 653939/2024, “Construction Defects Lawsuit”; NYSCEF Doc. No. 48, “Construction Defects Lawsuit Complaint”). The plaintiffs in the Construction Defects Lawsuit seek damages for alleged breach of contract, fraud, breach of fiduciary duty, and aiding and abetting, as well as injunctive relief. The Construction Defects Lawsuit remains ongoing. Plaintiff contends that the Construction Defects Lawsuit is a culmination of defendant’s “vendetta” against it, while defendant states that plaintiff commenced this action in retaliation for his bringing the lawsuit and for his prior criticisms of its practices and the Building’s conditions.

Plaintiff commenced this action on October 30, 2024. Defendant moved to dismiss the Complaint under the anti-SLAPP law (Motion Seq. No. 001) which was withdrawn upon plaintiff’s filing of the Amended Complaint (NYSCEF Doc. Nos. 8, 20-21).<sup>1</sup> The Amended Complaint seeks \$3.5 million in special and other damages, and an additional \$2.5 million in punitive damages for each of its four causes of action: tortious interference with business relations, business disparagement, prima facie tort (pled in the alternative to the first and second causes of action), and aiding and abetting tortious interference with business relations.

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<sup>1</sup> The initial complaint set forth three causes of action: tortious interference with prospective business relations, defamation, and aiding and abetting tortious interference (NYSCEF Doc. No. 7)

### Discussion

CPLR 3211(g) establishes the standard for motions to dismiss in cases involving “public petition and participation.” “Upon such a motion, the defendant bears the initial burden of showing that the action or claim is a SLAPP suit.” *Reeves v Associated Newspapers, Ltd.*, 232 A.D.3d 10, 12 (1st Dept 2024). Civil Rights Law § 76-a (1)(a) defines “an action involving public petition and participation” as:

- (1) any communication in a place open to the public or public forum in connection with an issue of public interest; or
- (2) any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, or in furtherance of the exercise of the constitutional right of petition.

The statute further directs that “‘public interest’ shall be construed broadly and shall mean any subject other than a purely private matter.” Civil Rights Law § 76-a (1)(d).

Here, defendant has met his prima facie burden of showing that this is an action involving public petition and participation as defined by Civil Rights Law § 76-a (1)(a). First, to the extent that plaintiff’s claims arise out of the statements on the Unhappy Living Website, a publicly available website is a “quintessential public forum.” *See, Reeves*, at 19. Second, defendant’s alleged statements to Nuyev and Medalie in the Building’s common area library and statements of other residents to other buyers he allegedly caused to be made were made pursuant to an issue of public interest, namely the marketing of condominium apartments to members of the public. As these latter alleged statements were made to members of the public, they may be fairly characterized as pertaining to a “subject other than a purely private matter.” Civil Rights Law § 76-a (1)(d).

Defendant having established that this action is a SLAPP, dismissal “shall be granted unless the party responding to the motion demonstrates that the cause of action has a substantial

basis in law or is supported by a substantial argument for an extension, modification or reversal of existing law.” CPLR 3211(g). A “‘substantial basis’ under the anti-SLAPP law means ‘such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact.’” *Reeves*, at 12, quoting *Smartmatic USA Corp. v Fox Corp.*, 213 A.D.3d 512, 512 (1st Dept 2023). A SLAPP plaintiff is required to offer more than simply notice pleading, in contrast to New York’s generally generous pleading standard. *See, e.g., Isaly v. Garde*, 2022 NY Slip Op 34108(U), \*10-12 (Sup. Ct., New York Co. 2022), *affd.*, 216 A.D.3d 594 (1st Dept 2023).

The Court considers plaintiff’s different causes of action in turn.

#### Tortious Interference with Prospective Business Relations

“To state a claim for tortious interference with prospective business relations, a plaintiff must allege (1) business relations with a third party, (2) the defendant’s interference with those business relations, (3) the defendant acted for the sole purpose of harming plaintiff or used wrongful means, and (4) injury to the business relationship” (*Valkyrie AI LLC v PriceWaterhouseCoopers LLP*, 233 A.D.3d 460, 462 [1st Dept 2024], citing *Thome v Alexander & Louisa Calder Found.*, 70 A.D.3d 88, 108 [1st Dept 2009], *lv denied* 15 NY3d 703 [2010]).

“For this cause of action it must be affirmatively alleged that the defendant’s conduct was motivated solely by malice or to inflict injury by unlawful means going beyond mere self-interest or other economic considerations” (*Valkyrie AI LLC*, 233 A.D.3d at 462). “‘Wrongful means’ include . . . fraud or misrepresentation . . . . As a general rule, the offending party’s conduct must amount to a crime or an independent tort” (*Law Offs. of Ira H. Leibowitz v Landmark Ventures, Inc.*, 131 A.D.3d 583, 586 [1st Dept 2015]).

Plaintiff bases its tortious interference cause of action on defendant’s alleged statements to the prospective buyer, Nuyev, during the January 11, 2024, encounter in the Building’s

library. Defendant argues that this claim should be dismissed because plaintiff does not demonstrate that he acted with malice in this encounter or otherwise used wrongful means, such as defamation. He maintains that any statements he made in the library encounter would not be actionable as defamation as they were directed at plaintiff's agent, Medalie, rather than Nuyev and that he was not aware Nuyev was a prospective buyer. Even if he had directed the statements at Nuyev, he argues that they would not have been actionable because they would amount to mere persuasion and plaintiff does not establish that the comments caused Nuyev not to purchase a unit. In opposition, plaintiff argues that Medalie's affirmation sets forth sufficient facts to establish a substantial basis for its claim, namely that defendant knew Medalie was a broker for the building, his quoted statements to Nuyev amount to wrongful means as they were false, and that it demonstrates that Nuyev changed his mind about a purchase because of defendant's comments.

The Court finds that plaintiff has not established a substantial basis in law for its tortious interference with prospective business relations claim. Plaintiff only furnishes Medalie's affirmation that purports to quote defendant's statements to Nuyev in the Building library and which states, without support, that Nuyev changed his mind immediately after this encounter. However, plaintiff does not support these assertions with any corroborating statement from Nuyev himself, the Compass broker whom plaintiff alleges was also present in the library, or any other person with knowledge. *Cf., Isaly v. Garde*, 83 Misc. 3d 379, 391 (Sup. Ct., New York Co. 2024) (noting lack of corroboration and discussing impact). Additionally, insofar as this claim is also premised on the alleged misrepresentations on the Unhappy Living Website, neither the Amended Complaint nor plaintiff's opposition papers set forth any specific allegation connecting

the website to any lost business opportunities. The branch of the motion seeking dismissal of the first cause of action for tortious interference with business relations is accordingly granted.

### Business Disparagement

Defendant next argues that the business disparagement cause of action should be dismissed as untimely insofar as it is based on the Unhappy Living Website, which was published outside the one-year statute of limitations for defamation claims in CPLR 215. As to his alleged statements to Nuyev in the Building library, defendant argues that they were not “of and concerning” plaintiff, nonactionable as either true or pure opinion, and because plaintiff does not adequately show special damages. In opposition, plaintiff contends that it does allege that defendant made statements about it. It further contends that, although it does allege special damages by way of its lost business with Nuyev, it need not allege damages because defendant’s alleged statements were *per se* defamatory, namely his purported statement that “the Sponsor [plaintiff] had stolen building funds.” (Medalie Aff., ¶ 24).

A business disparagement cause of action can be asserted in two forms, neither of which plaintiff has established. First, it can be advanced under a theory of defamation *per se* wherein the defendant is alleged to have made statements that “impugns the basic integrity or creditworthiness of a business,” in which case “an action for defamation lies and injury is conclusively presumed.” *Ruder & Finn v Seaboard Sur. Co.*, 52 NY2d 663, 670-671 (1981). Although “a pleading of special damages is not necessary in a case of defamation *per se*, there must be something that addresses the element of injury to reputation.” *Sandals Resorts Intl. Ltd. v Google, Inc.*, 86 A.D.3d 32, 39 (1st Dept 2011). Where a corporation asserts a claim for defamation *per se*, it must state how alleged defamatory “statements at issue harmed its

reputation, business standing, or corporate integrity, sufficient to withstand a motion to dismiss.”

*161 Ludlow Food, LLC v L.E.S. Dwellers, Inc.*, 176 A.D.3d 434, 435 (1st Dept 2019).

Alternatively, a plaintiff may advance this cause of action under a product disparagement theory wherein the defendant’s “statement is confined to denigrating the quality of the business’ goods or services” in which case the claim will only be sustained “if malice and special damages are proven.” *Ruder & Finn*, at 670-671. “Special damages contemplate ‘the loss of something having economic or pecuniary value.’” *Lieberman v Gelstein*, 80 N.Y.2d 429, 434-435 (1992) (citations omitted). That may include “actual lost dealings.” *Banco Popular N. Am. v Lieberman*, 75 A.D.3d 460, 462 (1st Dept 2010).

The Court first finds that this cause of action is time-barred by CPLR 215(3) insofar as it is based on the Unhappy Living Website. The statute of limitations for defamation, including product disparagement, is one year and accrues at the time of publication. *Thome*, at 107; and *Biro v Condé Nast*, 171 A.D.3d 463, 464 (1st Dept 2019). The Unhappy Living Website was published on May 5, 2023, more than a year before this action’s commencement on October 30, 2024.

As to defendant’s alleged statements in January 2024, the Court finds that plaintiff fails to establish a substantial basis in law for its business disparagement claim under a theory of defamation *per se*. Although defendant’s alleged statements in the library encounter can be reasonably interpreted as being ‘of and concerning’ plaintiff when read in context, they are not actionable as defamation. As quoted in Medalie’s affirmation in opposition, three of defendant’s alleged statements can be fairly characterized as either statements of fact or nonactionable opinion, namely: “‘the building is not finished,’ in ‘poor condition,’ and that its ‘residents were unhappy living here.’” (Medalie Aff., ¶ 24). The record shows that numerous residents of the

Building, including defendant, had complaints about its conditions, which they communicated to plaintiff in the 2022 Resident Letter, supported with the findings of the 2023 RAND Report, and used as the basis for the ongoing Construction Defects Lawsuit.

Plaintiff also cannot sustain a defamation *per se* claim based on defendant's fourth alleged statement that "'the Sponsor [plaintiff] had stolen building funds' (the same allegation he alleged in his lawsuit against the plaintiff)." (Medalie Aff., ¶ 24). The Court first notes that the complaint in the Construction Defects Lawsuit Complaint does not allege that plaintiff or any other affiliated entity "stole" Building funds, merely that plaintiff misused Condominium funds. (Construction Defects Lawsuit Complaint, ¶¶ 43, 137, 138) ("improperly using Condominium funds . . . cover[ing] operating expenses . . . [utilizing] funds to perform work and make repairs . . . for which Sponsor . . . was responsible."). To the extent that defendant may have accused plaintiff of outright theft of Condominium funds during the library interaction, the Court finds that plaintiff fails to meet its burden of showing that this statement "harmed its reputation, business standing, or corporate integrity." *161 Ludlow Food, LLC*, at 435. Plaintiff only offers unsupported and conclusory claims in the Amended Complaint and Medalie's affirmation that, after defendant's encounter in the library, Nuyev declined to buy a unit in the Building and that brokers from Compass no longer showed units to prospective buyers. It provides neither any corroborating statement from Nuyev or Compass for this assertion, nor any other information that would tend to demonstrate reputational damage.

Plaintiff also fails to establish a substantial basis for this cause of action under a product disparagement theory. The Court has already found that plaintiff does not produce proof reasonably demonstrating that plaintiff's alleged statements caused Nuyev or any other person to forgo purchasing a unit in the Building. Therefore, to the extent that any of defendant's alleged

statements denigrated the quality of the Building or plaintiff's other products or services, plaintiff does not demonstrate special damages. The second cause of action alleging business disparagement is, therefore, dismissed.

#### Prima Facie Tort

Plaintiff's third cause of action for prima facie tort is pled in the alternative to its tortious interference and business disparagement claims. "To state a cause of action for prima facie tort, the plaintiff must allege '(1) the intentional infliction of harm, (2) which results in special damages, (3) without any excuse or justification, (4) by an act or series of acts which would otherwise be lawful.'" *Kickertz v New York Univ.*, 110 A.D.3d 268, 277 (1st Dept 2013), quoting, *Freihof v Hearst Corp.*, 65 N.Y.2d 135, 142-143 (1985). "There can be no recovery under this theory 'unless malevolence is the sole motive for defendant's otherwise lawful act or, in [other words], unless defendant acts from disinterested malevolence.'" *Kickertz*, at 277, quoting, *Burns Jackson Miller Summit & Spitzer v Lindner*, 59 N.Y.2d 314, 333 (1983).

Defendant argues that plaintiff's cause of action alleging prima facie tort should be dismissed as duplicative of plaintiff's tortious interference and disparagement claims, and because plaintiff fails to plead special damages or that defendant's actions were motivated solely by malice. In opposition, plaintiff contends that it has alleged special damages by way of lost business with Nuyev and that it has sufficiently pled malice by alleging facts showing that defendant's actions were part of a personal vendetta designed to damage its business.

The Court declines defendant's argument that this cause of action is duplicative as CPLR 3014 provides that "causes of action . . . may be stated alternatively," and it is well-established that a "plaintiff should not be deprived of the opportunity to pursue an alternative, cognizable

claim, provided it is adequately pleaded.” *Brown v Riverside Church in the City of N.Y.*, 231 A.D.3d 104, 105-106 (1st Dept 2024).

However, the Court finds that plaintiff fails to establish a substantial basis for its prima facie tort claim. Plaintiff does not meet its burden of showing that defendant acted solely with the intent to harm it, as it only presents the unsupported conclusory allegations in Medalie’s affirmation claiming that defendant’s actions amounted to a personal vendetta. In contrast, defendant presents ample proof that he and other residents were dissatisfied, citing the 2022 Resident Letter, the 2023 RAND Report, and ultimately the 2024 Construction Defects Lawsuit seeking damages for the Building’s putative defective conditions. Plaintiff also fails to submit proof that it sustained special damages in the form of lost business opportunities for the reasons discussed *supra*, namely that it does not furnish any information outside of Medalie’s affirmation showing that potential buyers were dissuaded from purchasing units because of defendant’s actions. The Court, therefore, grants this branch of defendant’s motion and dismisses the third cause of action for prima facie tort.

#### Aiding and Abetting Tortious Interference with Prospective Business Relations

Defendant maintains that the aiding and abetting cause of action should be dismissed because plaintiff fails to allege any tortious conduct by a third-party individual and only presents conclusory assertions that defendant had knowledge of or substantially assisted in such acts. Plaintiff argues in opposition that it has adequately stated and supported this claim by alleging that defendant started the conduct to dissuade potential purchasers, that he was part of a group of other residents, and that other unit owners employed the same “methodology” as he did. It cites to Medalie’s affirmation stating that defendant was part of a group of owners who “harassed” it,

including one resident who made false and misleading statements to a would-be purchaser and warned them to “stay away.” (Medalie Aff., ¶¶ 38-39).

A defendant may be liable for aiding and abetting a third party’s tort where the plaintiff establishes the existence of the underlying tort, the defendant’s actual knowledge, and substantial assistance. *See, William Doyle Galleries, Inc. v Stettner*, 167 A.D.3d 501, 505 (1st Dept 2018). An aiding and abetting cause of action “will stand[] or fall[] with the underlying tort.” *Iberdrola Energy Projects v MUFG Union Bank, N.A.*, 218 A.D.3d 409, 410 (1st Dept 2023)(internal quotations and citations omitted).

Here, plaintiff fails to demonstrate a substantial basis for its aiding and abetting cause of action. It does not establish an underlying tort by a third party upon which the aiding and abetting claim could be based as it merely alleges that an unnamed resident made false and misleading statements without identifying the resident or prospective purchaser or quoting the alleged statements. Plaintiff fails to set forth the allegedly defamatory words with the particularity required by CPLR 3016(a) and fails to allege the “time, place and manner of the [allegedly] false statement” or to specify the person “to whom it was made” such that it could state a claim for defamation. *Dillon v City of New York*, 261 A.D.2d 34, 38 (1st Dept 1999).

Furthermore, the Amended Complaint and opposition papers do not provide a substantial basis for its claim that the unidentified individual was dissuaded from purchasing a unit in the Building by the resident or that such a purchase would have been made absent the resident’s conduct. *Cf., Trepel v Hodgins*, 183 A.D.3d 429, 429 (1st Dept 2020)(dismissing tortious interference with prospective business relations claims where plaintiff failed to allege contract would have been entered into with third party “but for” defendants’ conduct). Plaintiff further fails to allege any facts indicating that defendant had actual knowledge of this incident or that he

substantially assisted in the unspecified resident's conduct. The Court, therefore, dismisses plaintiff's fourth cause of action for aiding and abetting tortious interference with prospective business relations.

#### Attorneys' Fees, Costs, and Damages

Defendant next moves for an award of attorneys' fees, costs, and damages. Civil Rights Law § 70-a (1)(a) provides for a mandatory award of costs and attorneys' fees "upon a demonstration . . . that [an] action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law," including where such an action is dismissed pursuant to CPLR 3211(g). *See, e.g., Golan v Daily News, L.P.*, 214 A.D.3d 558, 559 (1st Dept 2023), *lv. dismissed*, 41 N.Y.3d 959 (2024), *cert denied*, 145 S. Ct 168 (2024), citing, *Aristocrat Plastic Surgery P.C. v Silva*, 206 A.D.3d 26, 32 (1st Dept 2022). Here, the Court has found that plaintiff commenced this action without a substantial basis in fact and law and dismissed its claims accordingly, and because plaintiff has not argued for the extension, modification or reversal of existing law. The Court, therefore, finds that defendant is entitled to costs and attorneys' fees. *See, Aristocrat Plastic Surgery P.C.*, at 663.


However, the branch of defendant's motion seeking other compensatory and punitive damages pursuant to Civil Rights Law §§ 70-a (1)(b) and (c) is denied. Civil Rights Law § 70-a(1)(b) provides that "other compensatory damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued for the purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights," while § 70-a (1)(c) provides for punitive damages if it is demonstrated that this was the sole purpose of

commencing the action. Although defendant claims that the timing of this action – commenced three months after the Construction Defects Lawsuit – and the nearly \$24 million in damages sought by plaintiff shows that this action initiated as retaliation for his speech and advocacy, the Court finds that he does not make the requisite ‘additional demonstration’ required to make those additional necessary findings. Cf., *Benlevi v. Rukaj*, 2014 N.Y. Misc. LEXIS 5139, \*12-20 (Civ. Ct., New York Co. Jul. 8, 2024) (discussing evidence necessary to sustain additional anti-SLAPP relief). Defendant does not submit any documentation or other proof that would tend to indicate that plaintiff commenced this action for the reasons prohibited by Civil Rights Law § 70-a(1)(b) or (c), and certainly not to what would effectively be summary judgment on those claims. The branch of his motion seeking compensatory and punitive damages is, therefore, denied. As defendant did not plead them as counterclaims, and can only waive them expressly, this decision is without prejudice to defendant commencing a plenary action seeking the same or similar relief.

Accordingly, it is hereby:

ORDERED that the motion (Seq. No. 002) is granted in part to the extent of dismissing the Amended Complaint of plaintiff Bespoke Harlem West LLC in its entirety and setting this matter down for a hearing on attorneys’ fees and costs before Special Master Brian Krist, Esq. (bkrist@nycourts.gov).

This constitutes the decision and order of this Court.

12/9/2025 DATE	 James d'Auguste, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER	<input type="checkbox"/> REFERENCE
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/>