

Alonso v Doherty

2025 NY Slip Op 35078(U)

December 30, 2025

Supreme Court, New York County

Docket Number: Index No. 156760/2022

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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MARK J ALONSO, and MARYANN SERRALLES ALONSO,

Plaintiffs,

- v -

STEPHEN DOHERTY, MICHAEL GOLLUB, ED LINDQUIST, DOUGLAS TURTZ, ADRIAN CHERNOFF, JANINNE MILAZZO, LINDA WATSON, BARBARA RITCHIN, SARAH STEINER, KENNETH SCHULTZ

Defendants.

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INDEX NO. 156760/2022
MOTION DATE 06/26/2025
MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163

were read on this motion to/for RENEWAL

Upon the foregoing documents, and after a final submission date of November 6, 2025, Plaintiffs Mark J. Alonso and Maryann Seralles Alonso's (collectively "Plaintiffs") motion seeking leave to renew this Court's Decision and Order dated January 21, 2025, which dismissed this action pursuant to CPLR 3211(a)(4), and upon renewal, asking this Court to deny Defendants' motion to dismiss for failure to state a claim, statute of limitations, and lack of personal jurisdiction and to grant Plaintiffs' request for preliminary injunctions, is denied.

Plaintiffs are shareholders in a cooperative at 401 East 74 Street, New York, New York (the "Co-Op"). On August 21, 2018, the Co-Op served Plaintiffs with a notice of default based on the allegedly unauthorized presence of a washing machine in Plaintiffs' apartment. On September 9, 2018, Plaintiffs sued the Co-Op seeking a declaratory judgment that the presence of the washing machine in their apartment does not constitute a breach of their proprietary lease (see Alonso et al. v 301 East 74 Owners Corp., Index No. 158349/2018 [the "Prior Action"]). The Note of Issue in

the Prior Action was filed on May 6, 2022 and the Co-Op moved for summary judgment on July 5, 2022, which was denied on July 13, 2023. The Prior Action did not proceed to trial until February 18, 2025.

This second action was commenced after the Co-Op filed summary judgment in the Prior Action. In this action, Plaintiffs sue individually the Co-Op's individual board of directors for breaches of fiduciary duty based on the Defendants' alleged refusal to allow Plaintiff to cure the alleged default, the subject of the Prior Action. According to Plaintiffs, the alleged breaches began on August 21, 2018 (*see generally* NYSCEF Doc. 1). Defendants moved to dismiss under numerous theories, including CPLR 3211(a)(4), arguing the alleged breaches of fiduciary duty are the subject matter of the same alleged wrongs as the declaratory judgment claim in the Prior Action. The prior Justice presiding over this action recused herself on April 12, 2024 while the motion to dismiss was *sub judice*, and the matter was then assigned to this Court, which heard oral argument on September 24, 2024 and issued a Decision and Order on January 21, 2025 dismissing this action based on CPLR 3211(a)(4) without reaching Defendants' other grounds for dismissal.

Then, Plaintiffs orally sought leave to amend in the Prior Action, but the Court (Richard Tsai, J.) denied leave to amend for various reasons, including the application seeking leave to amend was procedurally defective because it failed to include a proposed pleading and was impermissibly late as it was not made until the eve of trial, and would expand the issues scheduled for trial causing prejudice to all parties. Plaintiffs now seek leave to renew this Court's Decision and Order based on the argument that Justice Tsai's denial of their oral application seeking leave to amend in the Prior Action constitutes a clarification of law and new fact. Leave to renew is denied.

Pursuant to CPLR 2221(e)(2) and (e)(3), a motion for leave to renew shall be based upon new facts not offered on the prior motion that would change the prior determination or “shall demonstrate that there has been a change in the law that would change the prior determination”. Here, the Court’s decision to deny Plaintiffs leave to amend in the Prior Action because the Prior Action was on the eve of trial does not constitute a clarification or change in the law for purposes of granting leave to renew. As this Court stated in its Decision and Order dated January 21, 2025, there was nothing preventing Plaintiffs from seeking leave to amend in the Prior Action in the many years it was pending to streamline the litigation in one action and before one judge. Plaintiffs offered no excuse for the failure to do so in this action or in the Prior Action. Because Plaintiffs waited until the eve of trial to seek leave to amend in the Prior Action, and orally at that, the Court presiding over the Prior Action aptly denied Plaintiffs’ motion.¹ Thus, the denial of leave to amend in the Prior Action is neither a clarification of law nor a new fact warranting leave to renew.

Plaintiffs’ proffer of new facts for purposes of seeking leave to renew misconstrues Defendants’ counsel’s position taken in the Prior Action. Defendants’ counsel did not take inconsistent positions. In this action, Defendants argued that Plaintiffs’ claims are based out of the same subject matter and series of transactions as in the Prior Action. In the Prior Action they argued they would be prejudiced if Plaintiffs were granted leave to amend on the eve of trial and that the proposed amendment was devoid of merit. A CPLR 3025(b) analysis, which includes assessing the merits of the claim and weighing the prejudice to the non-movant, is distinct from a CPLR 3211(a)(4) motion, which requires significant overlap between the prior pending action and

¹ The Court is cognizant that the motion to dismiss in this action was pending *sub judice* for years effectively stalling the case until the case was reassigned. But even with those motions *sub judice*, there was nothing preventing Plaintiffs from seeking to consolidate or leave to amend in the Prior Action while the motions remained *sub judice* in this action, and the decision not to do so seems to indicate that the purpose of commencing and maintaining this separate lawsuit was to inflict litigation by attrition on Defendants.

the action which is the subject of the motion to dismiss. In reviewing the requested amendment, the Court in the Prior Action found the proposed amendment was patently devoid of merit because the target of the breach of the fiduciary duty claim – the Co-Op, did not owe Plaintiffs a fiduciary duty (*see* NYSCEF Doc. 140 citing *Suber v Churchill Owners Corp.*, 228 AD3d 414 [1st Dept 2024]). Moreover, nothing in this Court’s prior Decision and Order ever assumed that the causes of action in this case would be automatically subsumed into the Prior Action. Rather, the Court was confounded why Plaintiffs decided to initiate an entirely new and separate action rather than simply seek leave to amend in the Prior Action, which dealt with the same subject matter and series of transactions as the newly commenced action.

Leave to renew is also denied because the ultimate results of or rulings on the underlying motions would not change based on the new developments in the Prior Action. Were the Court to grant leave to renew, this Court would have to consider Defendants’ other grounds for dismissal proffered in their motion to dismiss, including Defendants’ personal jurisdiction, statute of limitations, and CPLR 3211(a)(7) arguments.

Under CPLR 3211(a)(7), the Complaint would be dismissed for failure to sufficiently allege a breach of fiduciary duty against the individual board members (*see Tahari v 860 Fifth Ave. Corp.*, 214 AD3d 491, 492 [1st Dept 2023]; *Hersh v One Fifth Ave. Apartment Corp.*, 163 AD3d 500, 501 [1st Dept 2018] [individual board members must commit an independent wrong that was distinct from the actions taken as a board collectively]; *Hixon v 12-14 East 64th Owners Corp.*, 107 AD3d 546, 547 [1st Dept 2013] [where claims stem solely from co-op’s alleged breaches of proprietary lease, a director is not personally liable for a corporation’s breach of an agreement merely by virtue of his or her decisions that resulted in the corporation’s promise being broken]; *see also Weinreb v 37 Apartments Corp.*, 97 AD3d 54 [1st Dept 2012]).

A claim for breach of fiduciary duty must be pleaded with particularity (*see* CPLR 3016[b]; *see also New York Marine & General Ins. Co. v Wesco Ins. Co.*, 213 AD3d 461, 462 [1st Dept 2023] citing *Board of Mgrs. of Brightwater Towers Condominium v FirstService Residential N.Y., Inc.*, 193 AD3d 672, 673 [2d Dept 2021]). There are no particularized allegations against the individual board members. All the allegations refer to the Defendants' actions taken in the collective as the board of the Co-Op and pursuant to their determination that Plaintiffs breached their proprietary lease, which is the issue currently on trial in the Prior Action. The Complaint is replete with allegations about the wrongful acts of the Co-Op and its managing agent, but there are no specific allegations identifying individual wrongs committed specifically by the various board members aside from alleged wrongs they committed while acting as a collective board (*see also Frankel v Board of Managers of 392 Cent. Park W. Condo.*, 177 AD3d 465, 466 [1st Dept 2019]; *Avramides v Moussa*, 158 AD3d 499, 499-500 [1st Dept 2018]; *Peacock v Herald Sq. Loft Corp.*, 67 AD3d 442, 442-43 [1st Dept 2009]).

Moreover, while Plaintiffs allege in this action that Defendants have prevented them from curing their alleged default under the lease, they sought a *Yellowstone* injunction in the Prior Action, which required a showing that Plaintiffs were willing to cure their default. But Justice Jaffe, in the Prior Action, denied Plaintiffs' request for a *Yellowstone* injunction based on her finding that Plaintiffs did not show they were willing to cure their alleged default by any means short of vacating (*see* Index No. 158349/2018, Doc. No. 66). It was the denial of Plaintiffs' request for a *Yellowstone* injunction, premised on their failure to prove to Justice Jaffe that they were willing to cure their alleged default, that allowed their proprietary lease to be terminated in the first place.

Therefore, because even if the Court were to grant leave to renew this Court's prior Decision and Order which dismissed the action pursuant to CPLR3211(a)(4), upon renewal the action would still be dismissed under CPLR 3211(a)(7). CPLR 2221(e) states that leave to renew shall be granted where the new information presented would change the Court's prior determination. The new developments in the Prior Action do not change this Court's prior determination, which dismissed Plaintiffs' Complaint. Plaintiffs' motion is denied. The Court has considered the parties remaining contentions and finds them to be unavailing.

Accordingly, it is hereby,

ORDERED that Plaintiffs' motion seeking leave to renew and for sanctions against Defendants' counsel is denied; and it is further

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

12/30/2025
DATE

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

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE