Board of Mgrs. of the One Lincoln Sq. Condominium v SAG 150 Columbus LLC
2026 NY Slip Op 30146(U)
January 13, 2026
Supreme Court, New York County
Docket Number: Index No. 154526/2023
Judge: Paul A. Goetz

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. PAUL A. GOETZ** **PART** **47**

Justice

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THE BOARD OF MANAGERS OF THE ONE LINCOLN SQUARE CONDOMINIUM, SUING ON BEHALF OF THE UNIT OWNERS,

Plaintiff,

- v -

SAG 150 COLUMBUS LLC,

Defendant. SAG 150 COLUMBUS LLC,

Defendant.

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INDEX NO. 154526/2023

MOTION DATE 06/26/2025, 06/26/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 were read on this motion to/for JUDGMENT - SUMMARY.

In this breach of contract action, plaintiff moves pursuant to CPLR § 3212 for summary judgment "regarding Defendant's obligation to pay license fees to Plaintiff under an alteration agreement executed by the parties" and a money judgment of $47,200 in license fees, plus interest (NYSCEF Doc No 13).

BACKGROUND

Defendant owns unit PH2A (the unit) in The One Lincoln Square Condominium, a mixed-use condominium building located at 150 Columbus Avenue, New York, NY 10028 (NYSCEF Doc No 1 ¶¶ 2-3). The condominium's by-laws provide that "no Unit Owner shall make any structural alteration, addition, improvement, or repair in or to his Unit without [plaintiff's] prior written approval" and plaintiff may "require the Unit Owner to execute an

agreement . . . setting forth the terms and conditions under which such alteration, addition, improvement or repairs may be made" (NYSCEF Doc No 18 ¶ 6.11).

The parties entered into an alteration agreement for renovations defendant planned on its unit; the agreement was dated January 18, 2016, and permission to perform the work was granted on April 18, 2016 (NYSCEF Doc No 19). The agreement does not define the scope of the project; it provides that "[a]ll work will be performed strictly in accordance with the approved plans and specifications" as submitted by defendant (*id.* ¶ 2). The agreement also states: "Work shall be completed within 150 calendar days, or such other period approved by the Condominium in writing, from the date of commencement of the Work," otherwise, "the Condominium shall be . . . entitled to apply [] the sum of $100 per calendar day up to 30 days and $200 for each calendar day thereafter that the Work remains incomplete" (*id.*, ¶ 12).

Plaintiff alleges that "SAG 150 commenced work on May 2, 2016 and substantially concluded as of June 7, 2017, exceeding the allotted term by 251 days" (*id.*, ¶ 9). On April 11, 2018, plaintiff sent defendant a notice with the calculation of fees for the 251 additional days, which were then included on defendant's next common charge statement (NYSCEF Doc No 21). Defendant did not pay the outstanding balance.

In its answer, defendant alleges that "[s]ubsequent to the initial substantial completion of its alterations, SAG 150 suffered repeated separate leaks or floods of water into Unit PH2A from the roof or from work on the building facade that were wholly or partially the result of One Lincoln's negligence and breach of its duties of maintenance and repair pursuant to the By-Laws" (NYSCEF Doc No 5).

Plaintiff's causes of action are for (1) breach of contract, (2) collection of common charges, and (3) legal fees and collection expenses (NYSCEF Doc No 1). Defendant's

counterclaims seek to recover (1) $74,400 in remedial work performed due to the leaks, and (2) $450,000 in compensation for the "period of nine months, from August, 2018, through April 2019" that the unit was "rendered [] unusable and untenantable" (*id.*).

DISCUSSION

"It is well settled that 'the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact'" (*Pullman v Silverman*, 28 NY3d 1060, 1062 [2016], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985] [internal citations omitted]). "Once such a prima facie showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to raise material issues of fact which require a trial of the action" (*Cabrera v Rodriguez*, 72 AD3d 553, 553-554 [1st Dept 2010], citing *Alvarez*, 68 NY2d at 342).

"The court's function on a motion for summary judgment is merely to determine if any triable issues exist, not to determine the merits of any such issues or to assess credibility" (*Meridian Mgmt. Corp. v Cristi Cleaning Serv. Corp.*, 70 AD3d 508, 510-511 [1st Dept 2010] [internal citations omitted]). The evidence presented in a summary judgment motion must be examined "in the light most favorable to the non-moving party" (*Schmidt v One New York Plaza Co.*, 153 AD3d 427, 428 [2017], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]) and bare allegations or conclusory assertions are insufficient to create genuine issues of fact (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*id.*).

Plaintiff made a prima facie showing of defendant's breach of contract by establishing: (i) the existence of a contract (NYSCEF Doc No 19); (ii) plaintiff's performance pursuant to the contract (NYSCEF Doc No 1 ¶ 5 [plaintiff "allow[ed] [defendant] to perform [the] construction and renovation work"]); (iii) defendant's breach of its contractual obligations "by refusing to pay Plaintiff the license fees" (NYSCEF Doc No 14, p. 3); and (iv) damages resulting from the breach (NYSCEF Doc No 21 [indicating an outstanding balance of $47,200]).

i. Existence of a Contract

In opposition, defendant argues that "Plaintiff fails to establish that a valid and binding contract covered the work that is referenced in the Complaint" because the "Alteration Agreement only related to work on the second level of the duplex unit (the Phase One work), not the first level (Phase Two)" (NYSCEF Doc No 26, p. 8). Defendant's former employee, William Walther, states that Phase Two "was subject to a different set of plans" from those "presented to the Board" in connection with the alteration agreement, and therefore "was not subject to the same schedule or timelines" (Walther Affirmation, NYSCEF Doc No 27, pp. 3-4). Walther further avers that "if anything, the Phase One work did not formally commence until mid-June 2016 [and] was then completed in October 2016," whereas "Phase Two started in or around September or October 2016 [] and continued without an Alteration Agreement through early 2017" (*id.*, pp. 4-5).

While defendant asserts that plans for the second phase, i.e., the first-floor renovations, were not included in the plans submitted to the board, it does not address the fact that the plans reflect renovations to the "lower level" of the unit (Project Plans, NYSCEF Doc No 20, p. 21).[1] Additionally, though defendant asserts that the second phase of the project was subject to a

[1] The court cannot confirm the full scope of the project plans because they are largely illegible.

different set of plans, it does not submit those plans. Walther's unilateral belief that the parties intended to "treat this second phase of work as outside of any schedule or timeline imposed on the first phase as part of the Alteration Agreement" (NYSCEF Doc No 27, p. 4) is insufficient to raise a material issue of fact as to whether there were separate and distinct phases of the project, one of which was not covered by the alteration agreement (*Vesta Capital Mgt. LLC v Chatterjee Group*, 78 3d 411, 411 [1st Dept 2010] ["plaintiff's principal's affidavit stating that she understood that 'profit' meant the value of a marketable investment less the cost of the investment is insufficient to raise an issue of fact as to the meaning of that term"]; *Thaler & Gertler, LLP v Weitzman*, 282 AD2d 522, 523 [2nd Dept 2001] ["defendants' unsubstantiated conclusory allegation that they believed they were to pay the plaintiff on a contingency basis is unsupported by any evidence and was insufficient to raise a triable issue of fact"]).

Defendant also argues that the "Alteration Agreement was [] not based on any legitimate authority in the Condominium's By-Laws, calling its enforceability into question" (NYSCEF Doc No 26, p. 8). Specifically, defendant notes that the by-laws "only authorize[] the Board to require an Alteration Agreement" where its consent is needed because the unit owner is performing "a *structural* alteration," and avers that here, the renovation involved only non-structural changes to the unit (*id.*).

Plaintiff asserts that the project plans reflect "a gut renovation of the Unit, including extensive wall removal, installation, plumbing and mechanical ductwork and electrical work" (NYSCEF Doc No 14 ¶ 13).[2] In opposition, defendant states that "[t]he plans were not structural in nature and [were] purely cosmetic improvements" (NYSCEF Doc No 27 ¶ 5 ["The project did

[2] Plaintiff further asserts that "[t]he Agreement was mandatory as *Plaintiff defines* structural work as work that connects to or otherwise affects building systems, which was what was performed by Defendant" (NYSCEF Doc No 44, p. 2 [emphasis provided]). However, the by-laws do not define what is "structural," and plaintiff does not offer an affirmation by an expert such as an architect or engineer defining the term "structural" (*id.*, p. 10).

not alter any plumbing, electrical, waste, or other risers serving other units. It did not drill through or channel into structural slabs or move or alter any structural beams, slabs, or walls"]).

Neither party has adequately supported their position as to whether the renovations were structural because: as noted *supra*, the project plans submitted are largely illegible (NYSCEF Doc No 20); the JMA report reflects uncertainty "as to the precise scope of [the] work" as of February 1, 2016 (NYSCEF Doc No 38), i.e., more than two months before the construction was approved; and the affidavits submitted in support of the parties' memoranda of law are made by representatives of the parties, rather than engineers or other professionals who could interpret the plans.

Additionally, neither party addresses the ambiguity in the relevant provision of the by-laws, which provides that "no Unit Owner shall make any structural alteration, addition, improvement or repair in or to his Unit without the prior written approval of" the board (NYCEF Doc No 18 ¶ 6.11). "Since the word '[structural]' could [] be reasonably interpreted to only modify the word '[alteration],' . . . the phrase is ambiguous" as to whether unit owners must seek the board's approval for any additions, improvements, or repairs to the units (*Superior Ice Rink, Inc. v Nescon Contr. Corp.*, 52 AD3d 688, 691 [2nd Dept 2008]).

Nevertheless, regardless of whether plaintiff was authorized to *require* defendant to enter into the agreement, the parties did, in fact, do so. Defendant does not cite any authority supporting its position that the agreement is unenforceable because defendant was not required to enter into it, or because defendant did not anticipate that plaintiff would enforce its terms (NYSCEF Doc No 27, p. 3 [Walther avers that Marc Kotler, plaintiff's managing agent, "treated the agreement with SAG as a mere formality, not something that would be strictly followed or applied" because "the work was non-structural"]).

In sum, defendant failed to raise an issue of fact as to whether there existed a valid and binding contract which applied to the full unit renovation.

ii. Plaintiff's Performance

Defendant next argues that "Plaintiff should not be permitted to strictly enforce the calendar-day requirement without establishing that they noticed and set a commencement date as required by the Agreement" (NYSCEF Doc No 26, p. 9). In support of this argument, defendant cites the following provision of the alteration agreement: "After the Managing Agent has notified the Unit Owner that the Board has indicated that the Work may commence, the Unit Owner shall notify the resident manager and the neighbors [] by written note, distributed at least one week before commencing the Work, informing them of the nature and duration of the Work" (NYSCEF Doc No 19 ¶ 4). Walther asserts that "it was never communicated to [him] or anyone at SAG that there would be a formal commencement date for the work" (NYSCEF Doc No 27, p. 4). Plaintiff does not address this issue in its reply (NYSCEF Doc No 44) or submit evidence that it "notified the Unit Owner that . . . the Work may commence" (NYSCEF Doc No 19 ¶ 4).

Defendant does not explain why plaintiff's obligation to give defendant notice that the work may commence should be considered a condition precedent to its own obligations under the alteration agreement. Notably, the provision is titled "*Unit Owner* to Give Notice of Actual Commencement of Work" (NYSCEF Doc No 19 ¶ 4 [emphasis provided]), indicating that it was defendant's obligation to give notice to the resident manager and neighbors, rather than plaintiff's obligation to give notice to defendant. Therefore, defendant fails to raise an issue of fact as to plaintiff's substantial performance under the contract.

iii. Defendant's Breach

Regardless of whether plaintiff met its notice obligation, plaintiff asserts that the construction began "on May 2, 2016, and substantially concluded as of June 7, 2017" (NYSCEF Doc No 14 ¶ 14). Defendant purports to dispute this fact, stating that "the work . . . started while the scope of work and the Alteration agreement were being determined and reviewed, which continued into mid-June 2016" (NYSCEF Doc No 27 ¶ 13), but this timeframe encompasses May 2, 2016, and thus defendant does not dispute that the work commenced on that date. Defendant also asserts that "Phase Two work . . . continued [] through early 2017" (*id.*) but does not provide a specific date to refute plaintiff's assertion that the construction concluded on June 7, 2017. As such, defendant has not raised an issue of material fact as to whether it breached the agreement by allowing the renovation to proceed 251 days beyond the allotted time.

Accordingly, plaintiff is entitled to summary judgment on its cause of action for breach of contract, and therefore to recover the amount accrued as common charges (NYSCEF Doc No 19 ¶ 12 ["Any unpaid amounts shall be deemed additional rent under the terms of the By-laws."]).

iv. Damages

Plaintiff has thus established its entitlement to recover: (i) $47,200.00 in license fees (NYSCEF Doc No 21); (ii) $3,540.00, representing interest at the statutory rate of 9% per annum from June 8, 2017 to April 10, 2018 (CPLR § 5001); (iii) interest accruing from April 11, 2018 to the date of entry of judgment at a rate of 1.5% per month (NYSCEF Doc No 18 ¶ 6.6); and (iv) attorneys' fees and costs plaintiff incurred in collecting the license fee (*id.*; NYSCEF Doc No 19 ¶ 6).

Defendant asserts even if "monetary damages [are] owed to Plaintiff under the Agreement," such damages "would be completely dwarfed by the damages owed to Defendant for its counterclaims" (NYSCEF Doc No 26). As plaintiff notes, even though its damages may be offset by defendant's potential recovery, plaintiff is not barred from seeking those damages at this stage (*Padia v Toha*, 216 AD3d 491 [1st Dept 2023]). Nevertheless, the amount of attorneys' fees and costs owed is yet to be determined, and therefore a money judgment will not be entered at this time.

CONCLUSION

Based on the foregoing, it is

ORDERED that plaintiff's motion for summary judgment is granted on the issue of liability for each of its causes of action; and it is further

ORDERED that plaintiff is entitled to a money judgment for: (i) $47,200.00 in license fees; (ii) $3,540.00 in interest from June 8, 2017 to April 10, 2018; (iii) interest accruing from April 11, 2018 to the date of entry of judgment at a rate of 1.5% per month; and (iv) attorneys' fees and costs; and it is further

ORDERED that within 30 days of entry of this order, plaintiff shall submit proof of attorneys' fees and costs it accrued in its efforts to collect on the license fees, and email the Part 47 Clerk when it has done so; and within 20 days thereafter, defendant may file an opposition to the fees sought, and email the Part 47 Clerk when it has done so; and it is further

ORDERED that defendant's counterclaims are severed and continued; and it is further

ORDERED that the parties are directed to appear for an in-person preliminary conference on March 5, 2026 at 9:30 a.m.

1/13/2026
DATE

PAUL A. GOETZ, J.S.C.

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