3041 Ocean Inc. v R & R 3041 LLC
2026 NY Slip Op 30604(U)
February 10, 2026
Supreme Court, Kings County
Docket Number: Index No. 537306/2023
Judge: Peter P. Sweeney

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 73
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3041 OCEAN INC.,

Plaintiff,

-against-

R AND R 3041 LLC, SERGEY RYBAK, RYBAK DEVELOPMENT AND CONSTRUCTION CORP., RYBAK DEVELOPMENT CORPORATION, JASON REZNIK, IGOR ZASLAVSKIY, ZPROEKT ARCHITECTURE PPLC, and 3041 OCEAN AVE DEVELOPMENT LLC,

Defendants.
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Index No.: 537306/2023
Motion Date: 10/7/24
Mot. Seq. No.: 4, 5, and 3

DECISION/ORDER

Upon the following e-filed documents, listed by NYSCEF as item numbers 48-54, 56-64, 65-70, 72-75, and 79-84: (a) the pre-answer motions of defendants R AND R 3041 LLC, SERGEY RYBAK, RYBAK DEVELOPMENT AND CONSTRUCTION CORP., RYBAK DEVELOPMENT CORPORATION, JASON REZNIK, and 3041 OCEAN AVE DEVELOPMENT LLC (collectively, the "sponsor defendants"), and defendants IGOR ZASLAVSKIY and ZPROEKT ARCHITECTURE PPLC (collectively, the "architect defendants"), in each instance, for an order, pursuant to (among other provisions) CPLR 3211 (a) (5) and (7), dismissing the amended complaint, dated May 10, 2024 (the "amended complaint"), of plaintiff 3041 OCEAN INC. ("plaintiff") (Seq. Nos. 4 and 5, respectively), and (b) plaintiff's motion for an order, pursuant to 22 NYCRR 130-1.1, imposing sanctions on the architect defendants' counsel for his allegedly frivolous conduct (Seq. No. 3), are decided as follows:

In Seq. No. 4, the sponsor defendants' motion is *granted to the extent* that the first and second causes of action of the amended complaint alleging, respectively,

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(1) careless/negligent construction resulting in the "premature wear and deterioration to [the condominium] façade and balconies,"[1] and (2) fraudulent inducement,[2] are *dismissed in their entirety* as time-barred and for failure to state a cause of action, whereas the remainder of their motion is denied. "A claim for damages arising from defective construction accrues on the date of completion of the work." *Board of Managers of 23-23 Condominium v 210th Place Realty, LLC*, 185 AD3d 890, 890-891 (2d Dept 2020); *Kamath v Building New Lifestyles, Ltd.*, 146 AD3d 765, 766 (2d Dept 2017); *Starakis v Baker*, 121 AD3d 669, 671 (2d Dept 2014). "This rule applies *no matter how a claim is characterized in the complaint* because all liability for defective construction has its genesis in the *contractual* relationship of the parties." *Town of Oyster Bay v Lizza Indus., Inc.*, 22 NY3d 1024, 1030 (2013) (internal quotation marks and citations omitted; emphasis added), *rearg denied* 23 NY3d 934 (2014). Here, the sponsor defendants satisfied their initial burden of demonstrating, prima facie, that the time within which to commence the action has expired. The sponsor defendants established that plaintiff's claims against them accrued on January 11, 2016 (the date the certificate of occupancy was issued[3]), and that this action was not commenced until December 21, 2023 (more than seven years later[4]), at which time the applicable six-year statute of limitations had expired. *See Board of Managers of 23-23 Condominium*, 185 AD3d at 891. In opposition,

[1] Amended Complaint, ¶¶ 20 and 25.

[2] Amended Complaint, ¶¶ 38-47.

[3] Sixth Amendment to the Offering Plan, dated June 14, 2016 (NYSCEF Doc No. 28), ¶ 2 and Exhibit I (Certificate of Occupancy). The date of closing on the first condominium unit occurred nine days later on January 20, 2016. *See* Sixth Amendment to the Offering Plan, ¶ 1 ("The title closing to the first unit took place on January 20, 2016. . .").

[4] Summons and Original Complaint, e-filed December 21, 2023 (NYSCEF Doc No. 1).

plaintiff failed to raise an issue of fact. Plaintiff's position that it is a stranger to the condominium offering plan – and thus could not be bound by the six-year statute of limitations governing contract actions – is inherently untenable. As an individual unit owner,[5] plaintiff "may not, as a general matter, sue individually to protect [its] interest in the common elements of the condominium." *Caprer v Nussbaum*, 36 AD3d 176, 190 (2d Dept 2006). Although "a unit owner may bring a derivative action on behalf of the condominium (*Carper*, 36 AD3d at 190), the instant action is *not* a derivative action.[6] Further, plaintiff's likewise-untimely second cause of action for fraudulent inducement fails to state a claim under CPLR 3211 (a) (7) because it is duplicative of plaintiff's first cause of action which is essentially for breach of contract, though denominated as one for negligence. *See Board of Managers of Aston Condominium v Building 389 LLC*, 234 AD3d 540, 542 (1st Dept 2025); *Board of Mgrs. of Latitude Riverdale Condominium v 3585 Owner, LLC*, 199 AD3d 441, 442 (1st Dept 2021).

In Seq. No. 5, the extant branches of the architect defendants' motion are *granted to the extent* that plaintiff's first cause of action for negligence/malpractice is dismissed,[7] and are otherwise denied. "[A]n action to recover damages for malpractice, other than

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[5] Amended Complaint, ¶ 11 ("[Plaintiff] at all relevant times herein mentioned was a Condominium located at 3041 Ocean Avenue, Brooklyn, New York.").

[6] *See Pascual v Rustic Woods Homeowners Assoc., Inc.*, 134 AD3d 1006, 1006 (2d Dept 2015) ("An unincorporated association such as the [c]ondominium has no legal existence separate and apart from its individual members," and "may not sue . . . solely in the association name.") (internal quotation marks omitted); *Tiffany at Westbury Condominium By Its Bd. of Managers v Marelli Dev. Corp.*, 40 AD3d 1073, 1076 (2d Dept 2007) ("pursuant to Real Property Law § 339-dd, the Board [of Managers of a condominium] may bring any cause of action relating to the common elements of more than one unit").

[7] By short-form order, dated October 7, 2024, the Court (Sweeney, J.) memorialized plaintiff's agreement in open court "to withdraw the second cause of action (fraudulent inducement) against [the architect defendants] with prejudice" (NYSCEF Doc No. 84).

medical, dental or podiatric malpractice, *regardless of whether the underlying theory is based in contract or tort*[,] is subject to a three-year statute of limitations." *Anderson v Pinn*, 185 AD3d 534, 535 (2d Dept 2020) (internal quotation marks omitted; emphasis added). "The cause of action alleging faulty construction or design, whether characterized as negligence, malpractice, or breach of contract, accrued upon the date of completion of construction, not when the injury occurred or the defective condition is discovered." *Regatta Condominium Assn. v Village of Mamaroneck*, 303 AD2d 737, 738 (2d Dept 2003). Here, the architect defendants satisfied their initial burden of demonstrating, prima facie, that this action was commenced more than three years after they completed the contemplated work. *See Trump Vil. Section 4, Inc. v Lawless & Mangione Architects & Engineers, LLP*, 235 AD3d 928, 931 (2d Dept 2025). In opposition, plaintiff failed to raise an issue of fact. Contrary to plaintiff's contention, its cause of action for negligence/malpractice against the architect defendants "accrued upon the date of completion of construction, not when the injury occurred or [when] the defective condition was discovered," both of which allegedly happened on March 16, 2022 in this case.[8] *See Heritage Hills Soc., Ltd. v Heritage Dev. Group, Inc.*, 56 AD3d 426, 427 (2d Dept 2008). Thus, plaintiff's first cause of action for negligence/malpractice against the architect defendants became time-barred well before this action was commenced. *Manhattanville Coll. v James John Romeo Consulting Engr., P.C.*, 5 AD3d 637, 640 (2d Dept 2004).

[8] Amended Complaint, ¶¶ 22-23.

In Seq. No. 3, plaintiff's motion for the imposition of sanctions on the architect defendants' counsel for his allegedly frivolous conduct is *denied* in the Court's discretion. *See e.g. U.S. Bank N.A. v Jack*, 219 AD3d 1369, 1372 (2d Dept 2023); *Kantrowitz, Goldhamer & Graifman, P.C. v Ayrovainen*, 204 AD3d 652, 653 (2d Dept 2022). For the same reasons, the remaining branches of the sponsor defendants' and the architect defendants' respective motions for the imposition of sanctions on plaintiff and/or its counsel are likewise *denied* in the Court's discretion.

Accordingly, it is

ORDERED that, in Seq. No. 4, the sponsor defendants' pre-answer motion to dismiss is *granted to the extent* that the amended complaint is dismissed in its entirety as against them without costs or disbursements, and the remainder of their motion which is for the imposition of sanctions is denied; and it is further

ORDERED that, in Seq. No. 5, the architect defendants' pre-answer motion to dismiss is *granted to the extent* that the amended complaint is dismissed in its entirety as against them without costs or disbursements, and the remainder of their motion which is for the imposition of sanctions is likewise denied; and it is further

ORDERED that, in Seq. No. 3, plaintiff's motion for the imposition of sanctions on the architect defendants' counsel for his allegedly frivolous conduct is *denied in its entirety*; and it is further

ORDERED that the architect defendants' counsel is directed to electronically serve a copy of this Decision/Order with notice of entry on the other parties' respective

counsel and to electronically file an affidavit of service thereof with the Kings County clerk.

The part clerk is directed to mark this action as disposed.

This constitutes the decision and order of the court.

Dated February 10, 2026

PETER P. SWEENEY, J.S.C.