Victor v Board of Mgrs. of Manhattan Place Condominium
2026 NY Slip Op 31337(U)
March 31, 2026
Supreme Court, New York County
Docket Number: Index No. 653757/2025
Judge: Hasa A. Kingo
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. HASA A. KINGO** **PART** **65M**

Justice

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ADAM VICTOR,

Plaintiff,

- v -

BOARD OF MANAGERS OF MANHATTAN PLACE CONDOMINIUM, JOHN AND JANE DOE #1 THROUGH 10,

Defendant.

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INDEX NO. 653757/2025

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12

were read on this motion to DISMISS.

Defendant Manhattan Place Condominium (sued herein through its Board of Managers, and hereinafter referred to as "defendant") moves, pursuant to CPLR §§ 3211(a)(3) and (7), for an order dismissing the complaint in its entirety on the grounds that (i) plaintiff lacks standing/capacity to sue as to the asserted fiduciary-duty claim because the allegations are derivative in nature, and (ii) the complaint fails to state any cognizable cause of action for defamation or breach of fiduciary duty.

BACKGROUND AND PROCEDURAL HISTORY

Plaintiff Adam Victor ("plaintiff") is alleged to be a unit owner at 630 First Avenue and to own multiple units. According to the pleadings, plaintiff served on the condominium board for many years and was formerly board president. The relationship between plaintiff and the current Board is alleged to be contentious, with the motion papers describing prior litigation between the parties.

The complaint (filed June 20, 2025) pleads two causes of action:

First, plaintiff asserts defamation based on (a) a statement appearing on a single slide in a PowerPoint presentation shown at the condominium's annual unit owners' meeting in July 2024 ("$519K are the estimated number which related to hallway holdover"), which plaintiff claims conveyed to unit owners that plaintiff was over $500,000 "in arrears," and (b) an email, allegedly sent to unit owners, stating that plaintiff "wore an ankle bracelet for 6 months under house arrest mandated by a judge on financial corruption."

Second, plaintiff asserts breach of fiduciary duty based on numerous allegations of purported mismanagement of condominium affairs and finances, including allegations challenging the Board's choices regarding capital projects, building systems, staffing, and litigation decisions. Defendant now moves to dismiss. Plaintiff opposes.

ARGUMENTS

Defendant contends that the defamation claim must be dismissed because plaintiff has not satisfied the heightened pleading requirement applicable to defamation claims (CPLR § 3016[a]), because communications between a condominium board and unit owners are protected by the "common interest" qualified privilege, and because plaintiff fails to plead special damages. Defendant further contends that the fiduciary-duty claim must be dismissed because the allegations sound in generalized mismanagement and therefore are derivative (not direct), such that plaintiff lacks standing to assert them individually; because plaintiff fails to plead demand or demand futility with the particularity required for derivative litigation; and because the complaint fails to allege actionable misconduct by any individual board member separate and apart from collective board decision-making, particularly in light of the business judgment rule applicable to condominium governance.

Plaintiff responds that the complaint adequately pleads the "particular words" at issue for both alleged defamatory publications, along with sufficient contextual detail (including the allegation that the PowerPoint was presented at the July 2024 annual meeting), and that any remaining details are not required at the pleading stage. Plaintiff argues that the common-interest privilege does not warrant dismissal because the complaint alleges fault "at least" amounting to negligence and, in any event, the "ankle bracelet/house arrest" email materially exceeds any legitimate common interest of unit owners. Plaintiff also argues that special damages are sufficiently alleged by the claimed adverse effect on the value of plaintiff's units, and alternatively that the "house arrest/financial corruption" statement constitutes defamation *per se* such that special damages are not required.

With respect to fiduciary duty, plaintiff argues that the claim is properly direct, at least in part, because plaintiff alleges certain injuries particular to him (including issues relating to mailbox keys, alleged non-return of personal property loaned to the condominium, and alleged failure to indemnify him). Plaintiff argues that the statutory demand requirement invoked by defendant is inapplicable to these direct claims, and that even if applicable, demand would be futile due to alleged hostility and retaliatory conduct. Plaintiff further contends that the business judgment rule does not bar review where a board lacks a legitimate relationship to condominium welfare, singles out individuals for harmful treatment, or acts without due consideration of the facts.

DISCUSSION

I. Standard of Review

On a CPLR § 3211(a)(7) motion to dismiss for failure to state a cause of action, the court must accept the facts alleged in the complaint as true, accord the plaintiff the benefit of every favorable inference, and determine only whether the alleged facts fit within any cognizable legal

theory (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]; *Connaughton v Chipotle Mexican Grill, Inc*., 29 NY3d 137, 141 [2017]). Conclusory allegations, however, are not entitled to such favorable treatment, and where the pleading states "bare legal conclusions with no factual specificity," dismissal is appropriate (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]).

Where a claim is subject to a heightened pleading requirement (as in defamation under CPLR § 3016[a], and in certain fiduciary-duty theories), liberal construction does not eliminate the requirement that the pleading provide sufficient factual detail to give meaningful notice of the challenged conduct and the legal basis for the claim (*see Dillon v City of New York*, 261 AD2d 34, 38 [1st Dept 1999]; *Murphy v City of New York*, 59 AD3d 301, 301 [1st Dept 2009]).

On a CPLR § 3211(a)(3) motion, dismissal is warranted where the plaintiff lacks capacity/standing to sue on the claim asserted. Where the gravamen of a claim is injury to an entity (or to all owners collectively), and the remedy would flow to the entity (or all owners), such a claim is derivative and may not be asserted as an individual claim absent compliance with derivative standing rules (*Abrams v Donati*, 66 NY2d 951, 953 [1985]; *Yudell v Gilbert*, 99 AD3d 108, 113-115 [1st Dept 2012]).

II. Defamation

To state a defamation claim, a plaintiff must allege (1) a false statement of fact, (2) publication to a third party without privilege or authorization, (3) fault at least amounting to negligence, and (4) either special damages or defamation *per se* (*Stepanov v Dow Jones & Co*., *Inc*., 120 AD3d 28, 34 [1st Dept 2014]). In addition, the allegedly defamatory statement must be "of and concerning" the plaintiff—that is, the plaintiff must plead and ultimately prove that the statement referred to plaintiff and that a person reading or hearing the statement reasonably could have interpreted it as referring to plaintiff (*Three Amigos SJL Rest., Inc. v CBS News Inc*., 28 NY3d 82, 86 [2016]).

A. CPLR § 3016(a) and Attribution of Publication

CPLR § 3016(a) requires that, in an action for libel or slander, the complaint set forth "the particular words complained of," although "their application to the plaintiff may be stated generally." While plaintiff has reproduced certain words, controlling Appellate Division, First Department, authority makes clear that a defamation pleading must also provide the time, place, and manner of the allegedly false statement and specify to whom it was made, in order to provide the defendant meaningful notice of what publication is being challenged (*Dillon*, 261 AD2d at 38; *Murphy*, 59 AD3d at 301).

Here, the complaint's defamation allegations as to the PowerPoint slide are deficient in two respects that are fatal at this stage.

First, the pleading does not identify who made the allegedly defamatory statement or the manner in which it was published (e.g., whether it was spoken, displayed, distributed, or otherwise conveyed), beyond the general allegation that the Board "made a PowerPoint presentation" to unit owners. Under *Murphy* and *Dillon*, that absence of detail warrants dismissal where, as here, the

claim turns on a specific publication event and the identity and role of the speaker/publisher are core to determining privilege and scope.

Second—and independently—the slide alleged to be defamatory does not identify plaintiff by name, unit number, or otherwise on its face. The words pleaded ("$519K are the estimated number which related to hallway holdover") are, as pleaded, opaque. Even affording plaintiff every favorable inference, the complaint does not plead with sufficient specificity facts showing that ordinary unit owners, viewing the slide in context, reasonably would interpret it as stating that plaintiff was $500,000 "in arrears," as opposed to some other "estimated number" relating to a "hallway holdover" dispute, which could refer to litigation costs, projected exposure, settlement posture, or another category of expense. A court must determine, as a threshold matter, whether the words are susceptible of the meaning plaintiff assigns and whether they are reasonably "of and concerning" plaintiff (*Three Amigos*, 28 NY3d at 86). On this pleading, they are not.

With respect to the email accusing plaintiff of wearing an ankle bracelet and being under house arrest "mandated by a judge on financial corruption," the complaint pleads the words, but it does not plead the date of the email, its author, or facts supporting that defendant (as opposed to an unidentified third party) published or republished the statement. Indeed, the complaint pleads only "information and belief" that the email may have been sent by a former purported employee of plaintiff, and it does not set forth facts connecting that sender to the Board. Where the pleading fails to identify the speaker/publisher and thereby fails to connect the publication to the defendant, dismissal is warranted (*Murphy*, 59 AD3d at 301; *Dillon*, 261 AD2d at 38).

Those CPLR § 3016(a) deficiencies are not cured by plaintiff's invocation of liberal pleading principles. Liberal construction does not permit a plaintiff to proceed on a defamation claim where the defendant cannot discern, from the face of the pleading, the essential details of the publication being challenged.

B. Qualified "Common Interest" Privilege

Even if plaintiff had pleaded publication with sufficient particularity, the defamation claim would still be subject to dismissal on the additional, independent ground of qualified privilege. New York recognizes a conditional (qualified) privilege for communications made between persons sharing a common interest in the subject matter, because "the flow of information between persons sharing a common interest should not be impeded" so long as the privilege is not abused (*Liberman v Gelstein*, 80 NY2d 429, 437 [1992]). The Court of Appeals has repeatedly reaffirmed that the privilege applies where the communication concerns matters of shared interest and is published to those with responsibility or stake in the subject matter (*Foster v Churchill*, 87 NY2d 744, 751-752 [1996]).

The communications at issue here, as pleaded, were directed to condominium unit owners in connection with condominium affairs and, according to plaintiff, even a board election. Such topics fall at the core of unit owners' shared interest in the governance, finances, and leadership of their residential community.

A plaintiff may defeat the qualified privilege only by pleading and ultimately proving malice sufficient to show abuse of the privilege—either common-law malice (spite or ill will that is the sole motivating cause of the publication) or constitutional malice (knowledge of falsity or reckless disregard for truth), i.e., statements made with "a high degree of awareness of their probable falsity" (*Liberman*, 80 NY2d at 437-438; Foster, 87 NY2d at 751-752). Critically, there is "a critical difference between not knowing whether something is true and being highly aware that it is probably false" (*Liberman*, 80 NY2d at 438; *Foster*, 87 NY2d at 752).

Here, plaintiff pleads, at most, negligence—i.e., that defendant allegedly made statements "without verifying their accuracy" and with fault "at least" amounting to negligence. Negligence does not suffice to defeat the privilege (*Foster*, 87 NY2d at 751-752). Nor does the complaint plead nonconclusory facts from which reckless disregard or knowledge of falsity could be inferred. As pleaded, the complaint asserts plaintiff's belief that the statements were retaliatory, but it does not allege concrete facts establishing that malice was the sole cause of publication (common-law malice) or that defendant entertained "serious doubts" about truth while publishing anyway (constitutional malice) (*Liberman*, 80 NY2d at 438).

Accordingly, even if the defamation cause of action were pleaded with sufficient particularity, it would be barred by qualified privilege as currently pleaded.

C. Special Damages and Defamation *per se*

Finally, the complaint fails, as pleaded, to satisfy the damages element for at least the PowerPoint-slide theory.

Where the alleged defamation does not fall within a defamation *per se* category, the plaintiff must plead special damages with particularity—i.e., "the loss of something having economic or pecuniary value" that flows directly from the reputational injury (*see Franklin v Daily Holdings, Inc.*, 135 AD3d 87, 93 [1st Dept 2015]; *Christopher Lisa Matthew Policano, Inc. v N. Am. Precis Syndicate*, 129 AD2d 488, 490 [1st Dept 1987]). Defendant correctly argues that plaintiff's allegation of an unspecified "adverse effect" on the value of plaintiff's real estate holdings, without itemization or concrete pleading of actual pecuniary loss, is not the kind of special damages pleading required by the Appellate Division, First Department.

The email allegation, if attributable to defendant, would on its face arguably impute serious criminal conduct and could be considered defamation *per se* (*Liberman*, 80 NY2d at 435). However, that does not salvage the pleaded claim for the reasons stated above: plaintiff has not pleaded publication by defendant with the particularity required by CPLR § 3016(a), nor has plaintiff pleaded malice sufficient to overcome the qualified privilege as to a communication made to unit owners in the context of condominium governance and elections.

For all these reasons, independently and cumulatively, the first cause of action is dismissed for failure to state a claim (CPLR § 3211[a][7]).

III. Breach of Fiduciary Duty

The second cause of action is pleaded as breach of fiduciary duty against the Board, grounded in a list of alleged mismanagement decisions relating to building operations, capital projects, staffing, safety, and litigation strategy.

A. Direct Versus Derivative Character

The threshold question is whether the pleaded fiduciary-duty claim is direct (belonging to plaintiff individually) or derivative (belonging to the condominium/owners collectively). Under controlling Appellate Division, First Department, authority, courts assess (1) who suffered the alleged harm, and (2) who would receive the benefit of any recovery—an analysis consistent with longstanding New York law and the *Tooley* framework[1] adopted in *Yudell* (*Yudell*, 99 AD3d at 113-115; *Abrams*, 66 NY2d at 953).

Recent Appellate Division, First Department, condominium precedent illustrates the application of this distinction: direct and derivative claims may coexist, but they must be separately pleaded and must show distinct harms—direct claims focusing on damage to an individual unit or individualized injury, derivative claims focusing on damage to common elements or the condominium as a whole (*Calderoni v 260 Park Ave. S. Condominium*, 220 AD3d 563, 563-564 [1st Dept 2023]).

Measured against those controlling principles, the pleaded fiduciary-duty claim here is derivative in substance. The bulk of the allegations challenge management and governance decisions that, if wrongful, would constitute injury to the condominium community generally (e.g., the handling of condominium funds and assessments, infrastructure and capital projects, building wide systems, safety compliance, and litigation positions). Any recovery—whether damages or equitable relief—would run to the condominium or to the unit owners collectively, rather than to plaintiff alone. Under *Abrams*, mismanagement allegations "without more" plead a wrong to the entity and are derivative claims (*Abrams*, 66 NY2d at 953).

Plaintiff's attempt to characterize the overall fiduciary-duty claim as direct by pointing to several individualized grievances does not cure the pleading defect, because the complaint does not separately plead direct, individualized fiduciary-duty theories distinct from the broad mismanagement allegations. Indeed, as the Appellate Division, First Department, has held, where a pleading "mingl[es]" derivative allegations with individual allegations in the same cause of action, dismissal is required (*Barbour v Knecht*, 296 AD2d 218, 227-228 [1st Dept 2002]).

On this motion, therefore, plaintiff lacks standing to pursue the second cause of action as pleaded, because the cause is derivative in nature but not pleaded as such.

B. Demand and Demand Futility

[1] Originating from *Tooley v. Donaldson, Lufkin & Jenrette, Inc*. (845 A2d 1031, 1039 [Del. 2004]) the *Tooley* framework is a Delaware Supreme Court test adopted by New York to determine whether a shareholder claim is direct or derivative based on who suffered the alleged harm and who receives the recovery. This two-pronged approach provides a simplified standard over previous, more complex tests by focusing on the nature of the injury and the resulting remedy.

Where a claim is derivative, a plaintiff must plead compliance with the demand requirement or plead demand futility with particularity (*see Bansbach v Zinn*, 1 NY3d 1, 8-9 [2003]; *Marx v Akers*, 88 NY2d 189, 200-201 [1996]). The demand requirement embodies "basic principles of corporation control" by affording the board an opportunity to address alleged abuses without litigation, limiting judicial intrusion into internal governance, providing protection from harassment, and discouraging "strike suits" launched for personal rather than corporate benefit (*Bansbach*, 1 NY3d at 8-9).

Demand futility is excused only where the complaint pleads, with particularity, one of the *Marx* categories (*Marx*, 88 NY2d at 200-201). Conclusory assertions of hostility or generalized allegations of disagreement with board decisions are not a substitute for the required particularized pleading of interestedness, lack of independence, or egregiousness beyond the bounds of business judgment.

Here, the complaint does not plead demand at all, nor does it plead demand futility with the particularity required by *Marx*. Plaintiff's opposition suggests futility based on alleged hostility, but the pleaded cause of action itself does not supply the required demand allegations. Accordingly, even if plaintiff could establish standing to bring a derivative claim (or attempted to do so), the claim, as pleaded, would be dismissed for failure to plead demand or demand futility adequately.

C. Business Judgment Rule and Condominium Governance

The business judgment rule applies to condominium boards in the Appellate Division, First Department. The Appellate Division, First Department, has held that courts should defer to the board's determination "so long as the board acts in good faith, within the scope of its authority under the bylaws, and to further a legitimate interest of the condominium," with the scope-of-authority inquiry being a threshold issue (*Perlbinder v Bd. of Mgrs. of 411 E. 53rd St. Condominium*, 65 AD3d 985, 989 [1st Dept 2009]; *Pomerance v McGrath*, 124 AD3d 481, 483 [1st Dept 2015]; *40 W. 67th St. v Pullman*, 100 NY2d 147, 153 [2003]).

Many of plaintiff's allegations (i.e. attacking the Board's choices regarding repairs, capital improvements, vendor selection, staffing structures, and whether and how to pursue or settle litigation) concern quintessential discretionary governance decisions. Indeed, Appellate Division, First Department, precedent specifically treats a condominium board's choices about "how aggressive" to be in litigation and whether to discontinue or settle litigation as matters of business judgment when undertaken pursuant to board authority (*Pomerance*, 124 AD3d at 483).

Plaintiff quotes *Levandusky*'s articulation that boards may be reviewed where conduct lacks any legitimate relationship to welfare, singles out individuals for harmful treatment, is taken without notice or consideration of relevant facts, or exceeds authority (*Levandusky v One Fifth Ave. Apt. Corp.*, 75 NY2d 530, 540 [1990]). That standard, however, underscores why plaintiff's pleading fails as currently constructed: the complaint largely offers disagreement with outcomes and labels those decisions "mismanagement," but it does not allege nonconclusory facts showing fraud, self-dealing, illegality, or other bad-faith conduct that would take the challenged decisions outside protected discretion.

To the extent plaintiff alleges personal targeting (e.g., mailbox key changes, alleged refusal of minor maintenance), those allegations are not pleaded in a manner that states a properly separated direct fiduciary-duty claim with the required particularity and elements, nor do they cure the derivative mismanagement structure of the asserted cause of action.

D. Individual Board Member Misconduct

Finally, to the extent plaintiff seeks to hold individual board members liable for breach of fiduciary duty, the complaint is deficient. Appellate Division, First Department, law is clear that a breach of fiduciary duty claim does not lie against individual board members absent allegations of "individual wrongdoing … separate and apart from their collective actions taken on behalf of the condominium" (*20 Pine St. Homeowners Assn. v 20 Pine St. LLC*, 109 AD3d 733, 735-736 [1st Dept 2013]; *Konrad v 136 E. 64th St. Corp*., 246 AD2d 324, 326 [1st Dept 1998]).

Here, the complaint chiefly challenges collective board actions. While plaintiff alleges that a board member (Walter Brindak) ordered a mailbox lock change, the pleaded fiduciary-duty cause of action remains, in substance, a broad mismanagement challenge directed at the Board's collective management choices, and it does not plead individualized misconduct by multiple directors that would support personal liability under Appellate Division, First Department, standards.

Accordingly, the second cause of action is dismissed pursuant to CPLR § 3211(a)(3) and (7) because (i) it is derivative in essence and plaintiff lacks standing to pursue it as pleaded, (ii) it improperly commingles derivative and direct allegations, and (iii) it fails to plead demand or demand futility with the particularity required for derivative litigation under controlling Court of Appeals authority. Accordingly, it is hereby:

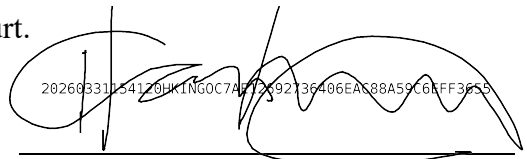
ORDERED that defendant's motion to dismiss is granted; and it is further

ORDERED that the complaint is dismissed in its entirety; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that dismissal of the fiduciary-duty claim is without prejudice to the extent plaintiff may, if so advised, commence or seek leave to plead a properly framed derivative claim consistent with the governing standards for derivative actions (including demand or demand futility pleaded with particularity) as set forth by the Court of Appeals and the Appellate Division, First Department (*see Marx v Akers*, 88 NY2d 189, 200-201 [1996]; *Bansbach v Zinn*, 1 NY3d 1, 8-9 [2003]; *Calderoni v 260 Park Ave. S. Condominium*, 220 AD3d 563, 563-564 [1st Dept 2023]).

This constitutes the decision and order of the court.



3/31/2026
DATE

HASA A. KINGO, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION			
	[X]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER	
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER			
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