10MSW17D LLC v Board of Mgrs. of 10 Madison Sq. W.
2026 NY Slip Op 31427(U)
April 6, 2026
Supreme Court, New York County
Docket Number: Index No. 152665/2024
Judge: Leslie A. Stroth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH **PART** 12M

Justice

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10MSW17D LLC,

Plaintiff,

- v -

BOARD OF MANAGERS OF 10 MADISON SQUARE WEST, THOMAS R. MAY, GIL A. TENZER, MICHAEL C. FOX, NICOLE FOX, THE WRIGHT FIT CONSULTING CORP., THE WRIGHT FIT INC., THE WRIGHT FIT MANAGEMENT CORP., THE WRIGHT FIT SELECT CORP,

Defendants.

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INDEX NO. 152665/2024

MOTION DATE 06/14/2024, 12/16/2024

MOTION SEQ. NO. 003 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 47, 48, 49, 50, 51, 52, 53, , 64, 65, 67, 68, 100, 102

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 73, 74, 75, 76, 77, 78, 79, 80, 81, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 101, 103

were read on this motion to/for ARTICLE 78.

This action arises from a dispute between a residential condominium unit owner, plaintiff 10MSW17D LLC, and the condominium board, defendant Board of Managers of 10 Madison Square West (Board). The dispute relates to the Board's enactment of a house rule governing the use of the condominium's fitness center and other common elements. Plaintiff alleges that the Board impermissibly amended the condominium's by-laws to preclude plaintiff from using the condominium's common elements in violation of the condominium's declaration and by-laws (together, the governing documents). Defendants counter that the Board did not amend the by-laws but merely enacted a house rule as it is authorized to do by the condominium's governing documents. Additionally, defendants maintain that the governing documents empower the Board

to promulgate rules concerning the operation of the common elements and that the business judgment rule protects their determinations regarding the operation of the common elements.

Defendants Board of Managers of 10 Madison Square West (condominium), Thomas R. May, Gil A. Tenzer, Michael C. Fox, and Nicole Fox move to dismiss the complaint pursuant to CPLR 3211 (a) (1) and (a) (7) and for sanctions (motion sequence 003).

Plaintiff moves separately for CPLR article 78 relief seeking an order deeming the house rule at issue null and void (motion sequence 004).

Motion sequence numbers 003 and 004 are hereby consolidated for disposition.

FACTUAL BACKGROUND

10 Madison Square West is an unincorporated association of unit owners (NY St Cts Elec Filing [NYSCEF] Doc No. 2, complaint at 1, ¶ 1). The declaration establishing the condominium was issued on December 10, 2013, and recorded with the New York County Clerk on January 24, 2014, pursuant to Article 9-B of the Real Property Law (NYSCEF Doc No. 3, complaint, exhibit A at 1). The condominium consists of 122 residential units and one retail unit on the first floor (NYSCEF Doc No. 2 at 3, ¶ 15; NYSCEF Doc No. 88 at 3).

Defendants Thomas R. May, Gil A. Tenzer, Michael C. Fox (M Fox), Nicole Fox (N Fox) are, or were at the relevant time, members of the Board (NYSCEF Doc No. 2, at 2, ¶¶ 3-10). Defendants The Wright Fit Consulting Corp.. The Wright Fit Inc., The Wright Fit Management Corp., and The Wright Fit Select Corp. (together, Wright Fit) operate the condominium's fitness center, private rooms, and pilates studio (NYSCEF Doc No. 2 at 3, ¶ 14).

On September 8, 2016, plaintiff purchased a residential unit in the condominium (*id.* at 3, ¶ 17). Plaintiff is a limited liability company allegedly comprised of five members, including Philip N. Weingord (Weingord), Melanie I. Weingord, Bari Weingord, and Erica Rieders

(Rieders) (*id.* at 3, ¶ 19). According to the complaint, the members of plaintiff are immediate family members (*id.* at 3, ¶ 20). The complaint alleges that plaintiff purchased the unit for the residential use and enjoyment of the immediate family (*id.* at 3, ¶ 22). Plaintiff alleges that the unit is not leased to any person or entity and that it is used solely by the members of plaintiff and their immediate family (*id.* at 3, ¶¶ 23-24). Plaintiff allegedly purchased the unit with the "express understanding that unit owners would be permitted to use the amenities of the Condominium," including the fitness center (*id.* at 4, ¶ 25).

Rieders has routinely used the condominium's fitness center and pilates studio (NYSCEF Doc No. 2, at 4, ¶ 26). On December 7, 2023, Rieders allegedly opened the door to the pilates studio during her reserved timeslot, but defendant N Fox was inside, using the studio (NYSCEF Doc No. 2 at 4, ¶¶ 27-28). According to the complaint, N Fox accosted Rieders for opening the door (*id.* at ¶ 29).

On December 8, 2023, the day after the alleged encounter between Rieders and N Fox, the senior property manager for the condominium notified unit owners and residents by email as follows:

> "With the holiday season upon us, and with that an influx of visiting family and friends, I'd like to take this opportunity to reintroduce the amenity space rule pertaining to who can use the space, which is meant to ensure a safe and enjoyable visit.
>
> Be reminded that use of the fitness center, pool area, locker room area and kids' playroom are for unit owners and/or current occupants only, and their full-time household who lives in the unit with them. Friends and family who do not live in the apartment, regardless of their permission to enter status, are not permitted use of the amenities unless accompanied by the unit owner for the duration of their visit to the amenity space.
>
> Should non-residents try to utilize the amenity space without the unit owner or current occupant present, the non-resident will not be permitted access and asked to leave the facility. This policy also extends to booking pool lanes, studio time, massage room and the children's playroom" (NYSCEF Doc No. 2, complaint, exhibit B).

Plaintiff alleges that the Board adopted this rule (amended amenity rule) in response to the

encounter between Rieders and N Fox (NYSCEF Doc No. 2 at 4, ¶ 30).

After the December 8, 2023 email setting forth the amended amenity rule, Rieders continued to use the fitness center but, according to the complaint, Wright Fit consistently told Rieders she was breaking the condominium's rules and that she must vacate the fitness center (NYSCEF Doc No. 2 at 9, ¶¶ 47-48). Wright Fit also allegedly attempted to cancel her reservations for the pilates studio (NYSCEF Doc No. 2 at 9, ¶¶ 47-48).

On January 26, 2023, the senior property manager sent another email addressed to the condominium's unit owners and residents stating as follows:

> "In early December, we set to reintroduce the amenity space use rule to ensure a safe and enjoyable experience for all. As a result of a request to further clarify use categories, below you will find a breakdown that will be used by The Wright Fit when permitting use of the amenity spaces.
>
> 1. **Full-Time Residents:** full use of amenity spaces whenever available during scheduled hours. Full-Time Resident ("FTR") shall mean an occupant or resident whose domicile is within the Condominium. Note that only FTRs are allowed to utilize personal trainers, physical therapists, or other third-party instructors in the amenity spaces. Furthermore, only FTRs may reserve rooms in the amenity spaces and only for their use.
>
> 2. **Daytime visitors of Full-Time Residents:** may use amenity spaces only when accompanied by a FTR at all times. Examples include a full-time resident family inviting another family to come over and making short-term use of the pool or kids playroom. Such guests must be accompanied by the FTR at all times. Daytime visitors of FTRs may not utilize outside personal trainers, physical therapists, or other instructors in the amenity spaces
>
> 3. **Short-term, overnight guests of Full-Time Residents:** may use public amenity spaces only during their short-term stay. They may not reserve private rooms in the gym or the pool. Examples include a grown child staying with her FTR parents over Thanksgiving. Such guests may use the amenity spaces unaccompanied but may not reserve any private gym rooms or the pool and may not utilize private gym rooms or the pool without the supervision an FTR. Short-term, overnight guests may not utilize outside personal trainers, physical therapists, or other instructors in the amenity spaces
>
> Comparatively, 10 Madison Square West use rules align with similar buildings and ensure wear and tear is not excessive while keeping a safe and private space." (NYSCEF Doc No. 2, complaint, exhibit B; NYSCEF Doc No. 90).

On the same day, Weingord contacted the property manager to inquire whether the rule prohibited Rieders from using the pilates studio (NYSCEF Doc No. 2 at 8, ¶ 43). The property manager replied that since it was Reiders' routine to come to the condominium on Thursday mornings to access the pilates studio, Rieders would be considered a daytime visitor pursuant to the amended amenity rule (NYSCEF Doc No. 2 at 8, ¶ 44 & exhibit B). Rieders continued to use the fitness center until February 15, 2024, when Wright Fit allegedly told Rieders' trainer that the trainer would be banned from the condominium if she continued to work with Rieders and that Wright Fit would call the police should Rieders continue to use the fitness center (NYSCEF Doc No. 2, at 9, ¶¶ 49-51). The complaint alleges that Rieders has not returned to the fitness center or any other amenity at the condominium since February 15, 2024 (*id.* at ¶ 51).

According to plaintiff, the amended amenity rule changed how certain unit owners may use and enjoy common elements in the condominium (NYSCEF Doc No. 2 at 12, ¶ 30). Plaintiff alleges that before the Board implemented the amended amenity rule, the governing documents did not restrict or limit a unit owner's use of the common elements based on limited liability company ownership or on a unit owner's domicile (NYSCEF Doc No. 2 at 10, ¶¶ 60-61). According to the complaint, defendants enacted the rule to target Rieders after the December 7, 2023 encounter; the rule provides an undue benefit to N Fox by eliminating competition for use of the pilates studio; and the rule is retaliatory in nature (NYSCEF Doc No. 2 at 11, ¶¶ 66-68). Plaintiff alleges that since the Board enacted the rule, its members have been "effectively banned from the fitness center, pilates studio and the remainder of the residential common elements (NYSCEF Doc No. 2 at 11, ¶ 69). Plaintiff claims that defendant's use of the amended amenity rule to restrict, limit, and enjoin plaintiff's use of the common elements is arbitrary and capricious and violates the governing documents and the Condominium Act (NYSCEF Doc No,

2 at 12, ¶ 78).

DISCUSSION

Motion to dismiss (mot. seq. no. 003)

Defendants move under CPLR 3211 (a) (7) and CPLR 3211 (a) (1) to dismiss the verified petition and complaint in its entirety. CPLR 3211 (a) (1) permits a party to move for dismissal on the ground that "a defense is founded upon documentary evidence." On a "CPLR 3211 (a) (1) motion to dismiss on the ground that the action is barred by documentary evidence, such motion may be appropriately granted only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (*see Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]).

When considering a CPLR 3211 (a) (7) motion to dismiss, the court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]; *see Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). However, "allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration" (*David v Hack*, 97 AD3d 437, 438 [1st Dept 2012] [internal quotation marks and citation omitted]). It is a well-settled principle that "the sole criterion in reviewing a CPLR 3211(a)(7) motion to dismiss is whether, from the four corners of the pleading, factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*885 3rd Ave. Realty Owners LLC v Alden Global Capital LLC*, 210 AD3d 570, 571 [1st Dept 2022] [internal quotation marks and citations omitted]).

i. CPLR article 78 claim and action for declaratory judgment (first and second causes of action)

The parties' arguments on defendant's motion to dismiss the first and second causes of action in the complaint are nearly identical or closely related to those raised on plaintiff's motion seeking CPLR article 78 relief (mot. seq. no. 004). Therefore, this court considers them together.[1]

In their motion, defendants argue that the by-laws directly authorize the Board to promulgate rules concerning the operation of the condominium's common elements; thus, according to defendants, its enactment of the amended amenity rule was not arbitrary and capricious. According to defendants, they did not violate the by-law requiring an affirmative vote of at least sixty-six and 2/3 percent of the common interest of the residential unit owners to amend the by-laws. Defendants maintain that they did not amend the by-laws but merely clarified a house rule. Defendants also insist that the business judgment rule shields their decision to enact the amended amenity rule because they acted in good faith to ensure the safety

[1] In its motion, plaintiff noted that it moved for the instant relief by notice of motion pursuant to this court's directive in the order dated December 3, 2024 (*see* NYSCEF Doc No. 80). Defendants countered that plaintiff's CPLR article 78 challenge to the amended amenity rule is untimely because plaintiff filed its motion after the expiry of the four-month statute of limitations pursuant to CPLR 217 (1). Here, plaintiff timely interposed its CPLR article 78 challenge to the Board's amended amenity rule by a hybrid petition and complaint, accompanied by a notice of petition (NYSCEF Doc No. 6) and a summons (NYSCEF Doc No. 1), on March 25, 2024 (NYSCEF Doc No. 2), less than four months after the Board issued the amended amenity rule on December 8, 2023. On April 11, 2024, plaintiff's notice of petition was returned by the County Clerk because "this Action was commenced with a Summons and Complaint, not a Petition," and plaintiff was instructed to refile by notice of motion (NYSCEF Doc No. 79). By an order dated April 12, 2024, this court also vacated the previously signed order to show cause seeking injunctive relief dated March 25, 2024 (NYSCEF Doc No. 24). Plaintiff then moved for reargument of the April 12, 2024 order on May 28, 2024 (mot. seq. no. 2) (NYSCEF Doc Nos. 39-42). On December 3, 2024, this court heard argument on plaintiff's motion to reargue and issued an order granting plaintiff leave to proceed by motion within 14 days of the court's order (NYSCEF Doc No. 69). Plaintiff has now moved for CPLR article 78 relief pursuant to this court's directive set forth in its December 3, 2024 order (NYSCEF Doc No. 80). Therefore, the instant motion, which plaintiff filed on December 16, 2024, is properly before this court.

and comfort of the condominium's residents as empowered by the governing documents.

Plaintiff counters that it is entitled to CPLR article 78 relief because defendants promulgated the amended amenity rule in contravention of the Condominium Act (Real Property Law §§ 339-d-339-ll) and the governing documents. Plaintiff insists, among other things, that the governing documents contemplated limited liability companies' unit ownership and, as such, limited liability companies have an easement for the use of the common elements and the facilities located therein. Plaintiff maintains that defendants cannot rely on the protections of the business judgment rule, where they adopted a rule restricting non-resident unit owners' use of the common elements—a restriction that was not contemplated by the governing documents.

Generally, judicial review of an agency's decision is limited to an inquiry into whether the agency's determination had a rational basis or whether its action was arbitrary and capricious, affected by an error of law, or constituted an abuse of discretion (*see* CPLR 7803 [3]; *Matter of Wooley v New York State Dept. of Correctional Servs.*, 15 NY3d 275, 280 [2010]; *Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]; *Matter of Gilman v New York State Div. of Hous. & Community Renewal*, 99 NY2d 144, 149 [2002]). In the context of cooperatives and condominiums, however, the standard of review of a board's decision is analogous to the business judgment rule (*Matter of Levandusky v One Fifth Ave. Apt. Corp.*, 75 NY2d 530, 537 [1990] [citation omitted]; *see Schoninger v Yardarm Beach Homeowners' Assn.*, 134 AD2d 1, 9 [2d Dept 1987]). As such,

> "[w]here a condominium unit owner challenges an action by the condominium's board of directors, courts apply the business judgment rule, and the court's inquiry is limited to whether the board of directors acted within the scope of its authority under the bylaws and whether the action was taken in good faith to further a legitimate interest of the condominium" (*Turan v Meadowbrook Pointe Homeowners Assn., Inc.*, 211 AD3d 985,

> 986 [2d Dept 2022]; *see Matter of Levandusky*, 75 NY2d at 538; *Schoninger*, 134 AD2d at 9).

However, "arbitrary or malicious decision making . . . is not protected by the business judgment rule" (*Fletcher v Dakota, Inc.*, 99 AD3d 43, 48 [1st Dept 2012]); nor is fraud or self-dealing (*Board of Mgrs. of the Apthorp Condominium v Apthorp Garage LLC*, 187 AD3d 632, 633 [1st Dept 2020]; *see LiNQ1, LLC v 170 E. End Condominium*, 221 AD3d 409, 411 [1st Dept 2023] [citations omitted]; *Schoninger*, 134 AD2d at 9). It has been held that

> "[a]lthough the rule protects a board's business decisions and managerial authority from indiscriminate attack, it also permits review of improper decisions, as when the challenger demonstrates that the board's action has no legitimate relationship to the welfare of the [condominium], deliberately singles out individuals for harmful treatment, is taken without notice or consideration of the relevant facts, or is beyond the scope of the board's authority" (*Katz v Board of Mgrs. of Stirling Cove Condominium Assn.*, 201 AD3d 634, 638 [2d Dept 2022] [Duffy, dissenting] [internal quotation marks and citations omitted]).

Plaintiff aptly points out that the condominium is subject to the Condominium Act. The Condominium Act governs the creation and administration of condominiums (*Schoninger*, 134 AD2d at 6), and a "parcel of real property becomes a condominium and thus is subject to the jurisdiction of the Condominium Act (Real Property Law § 339–f) by the filing of a declaration (Real Property Law § 339–n)" (*id.*). However, once the condominium is formed, the administration of its affairs

> "is governed principally by its by-laws, which are, in essence, an agreement among all of the individual unit owners as to the manner in which the condominium will operate, and which set forth the respective rights and obligations of unit owners, both with respect to their own units and the condominium's common elements" (*id.*).

Here, the condominium's by-laws permit "[t]he Board [] from time to time [to] modify, amend or add to [the] Rules and Regulations," except that "a Majority of Unit Owners may overrule the Board with respect to any such modification, amendment or addition" (NYSCEF Doc No. 51 at 43, Section 6.13). Subsection 2.2.1 of the by-laws grants to the Board "the powers

and duties necessary for or incidental to the administration of the affairs of the Condominium (except such powers and duties which by law, the Declaration or these By-Laws may not be delegated to the Board by the Unit Owners)" (NYSCEF Doc No. 51 at 3). Additionally, Subsection 2.2.2 of the by-laws permits the Board, subject to the provisions of Subsection 2.2.1, to

> "make determinations with respect to all matters relating to the operation and the affairs of the Condominium, including, without limitation, the following:
>
> (a) Operation, care, upkeep, maintenance, repair, restoration, addition and improvement to, and alteration and replacement of the Common Elements, in the condition and otherwise in such a manner that maintains standards of quality, service and appearance which are appropriate for a luxury condominium.
>
> . . .
>
> (e) Adoption of, and amendments and additions to, the Rules and Regulations . . ." (NYSCEF Doc No. 76 at 3).

The condominium's Rules and Regulations are annexed to the by-laws and are made part thereof (NYSCEF Doc No. 51 at 43, Section 6.13). Rule 35 of the condominium's rules and regulations provides that

> "The Board reserves the right to rescind, alter, waive or add, as to one or more or all
>
> occupants, any rule or regulation at any time prescribed for the Building when, in the judgment of the Board, the Board deems it necessary or desirable for the reputation, safety, character, security, care, appearance or interests of the Condominium, the Building or the preservation of good order therein, or the operation or maintenance of the Condominium, the Building or the equipment thereof, or the comfort of Unit Owners, occupants or others in the Building. No rescission, alteration, waiver or addition of any rule or regulation in respect of one Unit Owner or other occupant shall operate as a rescission, alteration, waiver or addition in respect of any other Unit Owner or other occupant" (NYSCEF Doc No. 51 at A-6).

The declaration also contains Article 13, which concerns the facilities and all other common elements (NYSCEF Doc No. 51 at 14). Article 13 of the declaration provides that "[e]ach Residential Unit Owner will have . . . an easement for the use . . . of the Residential

Common Elements and any facilities located therein" (*id.*). Together with Article 13 of the declaration, plaintiff cites RPL § 339-v (1) (a) (i) in support of its contention that defendants have impermissibly limited or restricted its right to use the common elements. RPL § 339-v (1) (i) provides in relevant part that

> "the by-laws shall provide for at least . . . [s]uch restrictions on and requirements respecting the use and maintenance of the units and the use of the common elements, not set forth in the declaration, as are designed to prevent unreasonable interference with the use of their respective units and of the common elements by the several unit owners."

Pursuant to the condominium's declaration, the fitness center is a residential common element (NYSCEF Doc No. 51 at 7, Subsection 7.3.5).

The governing documents must be read together (*see Bacharach v Board of Mgrs. of the Brooks-Van Horn Condominium*, 225 AD3d 480, 481 [1st Dept 2024]; *Residential Comm. of Bd. of Mgrs. of the Sycamore v 250 E. 30th St. Owners, LLC*, 17 Misc 3d 1139[A], 2007 NY Slip Op 52344[U], *6-*7 [Sup Ct, NY County 2007]). A condominium board is "statutorily empowered to enforce its by-laws, rules, and regulations" (*Board of Mgrs. of Stewart Place Condominium v Bragato*, 15 AD3d 601, 602 [2d Dept 2005] [citations omitted]; *Board of Mgrs. of Ocean Terrace Towne House Condominium v Lent*, 148 AD2d 408, 409 [2d Dept 1989], *lv denied* 75 NY2d 702 [1989]). To the extent plaintiff argues that the governing documents do not contain language prohibiting the use of any amenity by members of limited liability companies or any provision at all governing the use of the fitness center, the governing documents' plain language permits defendants to promulgate additional Rules and Regulations (NYSCEF Doc No. 51 at 3, Subsection 2.2.2 [e] & at 43, Section 6.13); make determinations with respect to all matters relating to the operation of the common elements (NYSCEF Doc No. 51 at 3, Subsection 2.2.2 [a]); and add any rule at any time when, in the judgment of the Board, it deems it necessary to do so for, among other things, the safety and the comfort of unit owners and occupants

(NYSCEF Doc No. 51 at A-6). Here, the email from the senior property manager dated December 8, 2023, which initially set forth the amended amenity rule, states that the rule is "meant to ensure a safe and enjoyable visit" for visiting family and friends (NYSCEF Doc No. 52). The clarifying email dated January 26, 2024, reiterates that the purpose of the amended amenity rule is "a safe and enjoyable experience for all" and adds that the rule is meant to ensure that "wear and tear is not excessive while keeping a safe and private space" (NYSCEF Doc No. 53). Accordingly, the Board acted within the scope of its authority when it enacted the Amended Amenity Rule, and its action was taken in good faith to further a legitimate interest of the condominium—the safety and comfort of all condominium residents (*see Katz*, 201 AD3d at 636).

Plaintiff's argument that defendants could not implement the amended amenity rule without amending the by-laws, which would require an affirmative vote of at least sixty-six and 2/3 percent of the common interest of the residential unit owners pursuant to Section 13.1 of the by-laws (NYSCEF Doc No. 51 at 57) and RPL § 339-v (1) (j), is without merit. The by-laws authorize defendants to promulgate rules concerning the common elements. Defendants did not amend the condominium's by-laws; therefore, they did not violate Section 13.1 or RPL § 339-v (j) (1).

It is undeniable that Article 13 grants an easement to unit owners over the common elements and that RPL § 339-v (1) (i) prohibits unreasonable interference with unit owners' use of the common elements. In the instant case, the clarifying email dated January 26, 2024, explained that full-time residents could freely use the amenity spaces during scheduled hours; that daytime visitors of full-time residents could use the amenity spaces, such as the pool or the kids' playroom, when accompanied by "an occupant or resident whose domicile is within

the Condominium"; and that short-term and overnight guests of full-time residents could use the amenity spaces unaccompanied and could utilize private gym rooms with the supervision of full-time residents (NYSCEF Doc No. 53). As such, the amended amenity rule permits full-time residents to use the fitness center unrestricted and allows non-resident unit owners to use the fitness center while accompanied by full-time residents. Thus, the rule does not explicitly or tacitly revoke the easement granted to unit owners pursuant to Article 13 of the declaration. Based on the foregoing, the amended amenity rule does not revoke a unit owner's easement over a common element or unreasonably interfere with a unit owner's use of a common element in violation of RPL § 339-v (1) (i).

Additionally, plaintiffs' allegation that the Board enacted the amended amenity rule to gain undue benefit for N Fox by eliminating Rieders as a competitor for the use of the pilates studio is speculative and conclusory. Plaintiff has not provided factual support for this claim (*see 40 W. 67th St. v Pullman*, 100 NY2d 147, 157 [2003]). The amended amenity rule applies uniformly to all limited liability company unit owners. It is plaintiff's burden to show that it is entitled to relief under CPLR article 78 (*Matter of Bergstein v Board of Educ., Union Free School Dist. No. 1 of Towns of Ossining, New Castle & Yorktown*, 34 NY2d 318, 323 [1974]; *Matter of Poster v Strough*, 299 AD2d 127, 138 [2d Dept 2002]). Plaintiff has not demonstrated that the incident between N Fox and Rieders or N Fox's perception of Rieders' as competition for the use of the pilates studio formed the basis for the Board's decision to promulgate the amended amenity rule and, thus, has failed to show that the Board acted in an arbitrary or malicious manner or adopted the rule in an act of self-dealing.

Lastly, both governing documents permit occupation of a unit by any member or employee of a limited liability company unit owner on the conditions that (1) the limited liability

company designate some individual as the primary occupant who refrains from using the unit on a transient basis and (2) the use of the apartment is not in furtherance of any arrangement providing for short-term, fractional, or shared use of the unit (NYSCEF Doc No. 51, declaration at 8, section 8.1 & bylaws at 39, section 6.9). While Section 8.1 of the declaration and Section 6.9 of the by-laws permit ownership and occupation of units by limited liability companies, these sections set limits on transient, short-term, or fractional use of the units. Although these provisions govern the use of the units and do not relate to the use of the common elements, they do not implicitly imbue every member of a limited liability company with a right to use the common elements without limitation regardless of the member's residency status. It is conceded that members of plaintiff have circumvented compliance with the governing documents' mandate regarding the use of units by limited liability companies. Plaintiff's ongoing violation of the governing documents does not lend support to its contention that the amended amenity rule stripped plaintiff of a previously existing right guaranteed by virtue of unit ownership. For the foregoing reasons, defendants did not act outside the scope of their authority or commit fraud or self-dealing, stripping them of the protections of the business judgment rule. Absent a showing that defendants acted in bad faith, the court will not substitute its judgment for that of the Board (*Matter of Levandusky*, 75 NY2d at 544; *see Nuzzo v Board of Mgrs. of Jefferson Vil. Condominium No. 1*, 228 AD2d 568, 568 [2d Dept 1996]). Having found that defendants acted within the scope of their authority when they implemented the amended amenity rule, this court holds that the facts as alleged in the complaint do not state a cause of action pursuant to CPLR article 78.

The complaint also seeks an order declaring that the governing documents as they were prior to the Board's adoption of the amended amenity rule are controlling and that, as such,

petitioner's members may continue to use the common elements. CPLR 3001 provides, in relevant part, that the "court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed." As discussed above, the court has determined that defendants acted within the scope of their authority when they enacted the amended amenity rule; thus, the complaint does not present a justiciable controversy, and this cause of action must be dismissed (*see Rockland Light & Power Co. v City of New York*, 289 NY 45, 51 [1942] ["If the court grants the motion to dismiss then it cannot logically grant, at the same time, a judgment on the merits declaring the rights and legal relations of the parties"]; *Krawczyk v Incorporated Vil. of Lindenhurst*, 216 AD3d 929, 931 [2d Dept 2023]). For the reasons set forth above, defendants' motion to dismiss is granted and the first and second causes of action are hereby dismissed. As such, plaintiff's motion for CPLR article 78 relief is denied.

ii. Breach of contract claim against the Board (third cause of action)

It is well-settled that "[t]o state a claim for breach of contract, a plaintiff must allege: (1) the parties entered into a valid agreement, (2) plaintiff performed, (3) defendant failed to perform, and (4) damages" (*VisionChina Media Inc. v Shareholder Representative Servs., LLC*, 109 AD3d 49, 58 [1st Dept 2013] [citation omitted]). A violation of a condominium's by-laws "is akin to a breach of contract" (*Pomerance v McGrath*, 124 AD3d 481, 482 [1st Dept 2015], *lv dismissed* 25 NY3d 1038 [2015]). Here, upon consideration of plaintiff's motion for relief pursuant to CPLR article 78, this court found that defendants did not violate the governing documents, including the by-laws. Thus, plaintiff did not state a cause of action for breach of contract in that this court has already determined that defendants did not fail to perform under the governing documents. Consequently, plaintiff's third cause of action is hereby dismissed.

iii. Breach of fiduciary duty against individual defendants (fourth cause of action)

To establish a breach of fiduciary duty, the plaintiff must demonstrate the "the existence of a fiduciary relationship, misconduct by the other party, and damages directly caused by that party's misconduct" (*Pokoik v Pokoik*, 115 AD3d 428, 429 [1st Dept 2014] [citation omitted]). The board of managers of a condominium "owes a fiduciary duty to its members to act in good faith when transacting business or handling property on behalf of unit members" (*Michaelson v Albora*, 12 AD3d 648, 649-650 [2d Dept 2004] [citation omitted]). Shareholders "cannot assert allegations of breach of fiduciary duty against a board of directors . . . [but] may assert the claim against the individual directors" (*Tahari v 860 Fifth Ave. Corp.*, — AD3d —, 2025 NY Slip Op 05584, *1 [1st Dept 2025] [citations omitted]). As previously discussed, "the business judgment rule prohibits judicial inquiry into actions of corporate directors taken in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate purposes" (*Matter of Levandusky*, 75 NY2d at 537-538 [internal quotation marks and citation omitted]).

Here, the complaint asserts that the individual defendants breached their fiduciary duty to plaintiff by singling out a member of plaintiff, Rieders, for harmful treatment by restricting her use of the fitness center. Plaintiff alleges that the individual defendants implemented the rule to benefit N Fox by limiting the number of individuals who may use the fitness center. Here, the court finds that plaintiff has not alleged individual wrongdoing "separate and apart from [individual defendants'] collective actions taken on behalf of the condominium" (*20 Pine St. Homeowners Assn. v 20 Pine St. LLC*, 109 AD3d 733, 735 [1st Dept 2013]; *see Brasseur v Speranza*, 21 AD3d 297, 298 [1st Dept 2005]). At most, plaintiff's allegations are individualized enough to state a cause of action against N Fox; however, this court has already determined that plaintiff has not provided factual proof to support its claim that the alleged incident with N Fox

was the basis of the Board's decision to implement the amended amenity rule. Further, this court has made a finding that defendants acted within the scope of their authority and in legitimate furtherance of a corporate purpose to ensure the comfort and safety of the condominium's unit owners when they enacted the amended amenity rule (*see Matter of Levandusky*, 75 NY2d at 538 ["So long as the corporation's directors have not breached their fiduciary obligation to the corporation, the exercise of [their powers] for the common and general interests of the corporation may not be questioned, although the results show that what they did was unwise or inexpedient"] (internal quotation marks and citation omitted)]). For the foregoing reasons, plaintiff failed to state a cause of action for breach of a fiduciary duty, and its fourth cause of action is dismissed.

iv. Negligence claim against the Board (fifth cause of action)

A negligence cause of action requires a plaintiff to "demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom" (*Solomon v City of New York*, 66 NY2d 1026, 1027 [1985]). Plaintiff's claim that its negligence cause of action arises out of defendants' breach of their duties pursuant to the Condominium Act and the governing documents is without merit, where the court has determined that defendants did not violate the relevant provisions of the Condominium Act or the governing documents when they promulgated the amended amenity rule (*see 320 W. 115 Realty LLC v All Bldg. Constr. Corp.*, 194 AD3d 511, 512 [1st Dept 2021] ["[A]bsent allegations of a breach of duty independent of the contract, causes of action based on negligent or grossly negligent performance of a contract are not cognizable"] (internal quotation marks and citation omitted)]). Further, plaintiff's claim that defendants owed plaintiff a duty to appropriately operate and manage the condominium and its common elements, which defendants allegedly

breached is unavailing in view of this court's findings. As such, plaintiff has not stated a negligence cause of action, and the fifth cause of action is hereby dismissed.

v. Punitive damages

Plaintiff acknowledges that "[p]unitive damages are not recoverable for an ordinary breach of contract as their purpose is not to remedy private wrongs but to vindicate public rights" (*Rocanova v Equitable Life Assur. Socy. of U.S.*, 83 NY2d 603, 613 [1994]). This court has already determined that defendants' enactment of the amended amenity rule did not impact any rights as set forth in the governing documents (*see Seymour v Hovnanian*, 211 AD3d 549, 557 [1st Dept 2022]). Further, here, defendants acted within the scope of their authority to further a legitimate corporate purpose. Thus, plaintiff has not sufficiently stated a claim for punitive damages (*see Denenberg v Rosen*, 71 AD3d 187, 196 [1st Dept 2010], *lv dismissed* 14 NY3d 910 [2010] ["The complaint lacks the requisite allegations of egregious conduct or moral turpitude necessary to support punitive damages"]).

vi. Sanctions

Defendants moved for sanctions pursuant Uniform Rules for Trial Cts [22 NYCRR] § 130-1.1 (a). 22 NYCRR § 130-1.1 (a) empowers the court to "impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct." An award of sanctions is within the discretion of the court; as such, this court declines to award sanctions to any party in this action at this time.

All remaining arguments are either without merit or need not be addressed given the findings above.

CONCLUSION

Accordingly, it is

ORDERED that the motion (seq. no. 003) of defendants Board of Managers of 10 Madison Square West, Thomas R. May, Gil A. Tenzer, Michael C. Fox, and Nicole Fox to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendants, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ADJUDGED that plaintiff 10MSW17D LLC's application (seq. no. 004) is denied, with costs and disbursements to respondents; and it is further

ORDERED that counsel for said defendants shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website).

This constitutes the decision and order of the Court.

4/6/2026
DATE

LESLIE A. STROTH, 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