

**Krutolow v Board of Mgrs. of the Ruppert Yorkville  
Towers Condominium**

2026 NY Slip Op 31656(U)

April 10, 2026

Supreme Court, New York County

Docket Number: Index No. 157245/2025

Judge: Phaedra F. Perry-Bond

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

MARTIN KRUTOLOW, Plaintiff, - v - BOARD OF MANAGERS OF THE RUPPERT YORKVILLE TOWERS CONDOMINIUM, JOEL BURRIS, WELLS FARGO BANK, N.A., PHH MORTGAGE CORPORATION Defendant. INDEX NO. 157245/2025 MOTION DATE 10/23/2025 MOTION SEQ. NO. 002 004 005 007

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 22, 23, 24, 26, 27, 30, 31, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56 were read on this motion to/for INJUNCTION/RESTRAINING ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 004) 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 91, 93, 94, 95, 96, 97, 98, 99, 100, 101, 103 were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 005) 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 92, 104 were read on this motion to/for DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 007) 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 135 were read on this motion to/for SANCTIONS

Upon the foregoing documents, motion sequences 002, 004, 005, and 007 are consolidated for disposition and decided as follows:

- A. Plaintiff's motion for an injunction ("Mot. Seq. 002") is denied as moot.
B. Defendants Board of Managers of the Rupert Yorkville Towers Condominium ("the Board") and Joel Burris's ("Burris") (collectively "Condo Defendants") motion to dismiss Plaintiff's Amended Complaint ("Mot. Seq. 004") is granted. Plaintiff's cross motion seeking leave to amend is denied.

C. Defendants Wells Fargo Bank, N.A. (“Wells Fargo”) and PHH Mortgage Corporation (“PHH Mortgage”) (collectively “Bank Defendants”) motion to dismiss Plaintiff’s Amended Complaint is granted.

D. Defendants’ motion for sanctions and for an injunction restraining Plaintiff from filing further proceedings in civil court is denied without prejudice.

### **I. Background**

As alleged in the Amended Complaint, Plaintiff lives at 1641 Third Avenue, Unit 29F, New York, New York (the “Unit”) with his wife, non-party Carol Dolgon-Krutolow (“Dolgon-Krutolow”). The Unit is a part of the Rupert Yorkville Towers Condominium. Mr. Burris is the president of Yorkville Towers’ board of managers.

Ms. Dolgon-Krutolow, who was formerly known as Carol Hayden, mortgaged the Unit. Ms. Dolgon-Krutolow defaulted on the mortgage and a foreclosure action commenced in 2009. A foreclosure sale was eventually conducted on February 1, 2023 and a referee deed was transferred to the Bank Defendants.<sup>1</sup> At a non-judicial auction, plaintiff placed the winning bid for the Unit and on March 25, 2025, Plaintiff and PHH Mortgage executed a contract for sale (the “Sale Agreement”) of the Unit. However, on May 13, 2025, the Board executed its right of first refusal with respect to the sale of the Unit. This lawsuit arises because Plaintiff argues the Board does not have a right of first refusal. Plaintiff now sues seeking an injunction preventing the Board from closing on the Unit, a declaration that no right of first refusal exists, and alleging tortious interference with contract. Defendants respond with pre-answer motions to dismiss.

In Mot. Seq. 002, Plaintiff seeks an injunction preventing Defendants from closing on the Unit. In Mot. Seq. 004, the Condo Defendants move to dismiss Plaintiff’s Amended Complaint on

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<sup>1</sup> The winning bid at the foreclosure sale was an individual named Saul Friedman, but on February 1, 2023, he assigned his successful bid to the Bank Defendants (*see* NYSCEF Doc. 84).

various grounds, while Plaintiff cross moves seeking leave to amend. In Mot. Seq. 005, the Bank Defendants move to dismiss Plaintiff's Amended Complaint. Finally, in Mot. Seq. 007, the Defendants jointly move for sanctions against Plaintiff and seek an injunction enjoining Plaintiff from filing further pleadings seeking to stay an ongoing Civil Court proceeding and preventing the property's sale. The motions are consolidated for disposition and decided in accordance with the reasons set forth below.

## II. Discussion

### A. Condo Defendants Motion to Dismiss (Mot. Seq. 004)

The Court first addresses the Condo Defendants' motion to dismiss as it may be dispositive of other motions, including Plaintiff's motion for injunctive relief. The Condo Defendants' motion to dismiss is granted. The Court finds the documentary evidence utterly refutes Plaintiff's causes of action sounding in declaratory judgment, injunctive relief, and tortious interference.

As a preliminary matter, dismissal is appropriate under CPLR 3211(a)(3). Plaintiff admits that he never owned any unit in the Condo, yet he seeks to enforce certain provisions of the bylaws pursuant to the Sale Agreement entered with the Bank Defendants. However, the alleged facts establish Plaintiff's relationship to the bylaws is that of a contract vendee, and it has long been held that a contract vendee has no standing to enforce the bylaws (*see, e.g. Soho Bazaar, Inc. v Board of Managers of Soho intern. Arts Condominium*, 266 AD2d 65, 65-66 [1st Dept 1999]). An individual who is not a member of an organization governed by bylaws does not have standing to enforce that organization's internal rules (*see Jacobson v Seddio*, 225 AD3d 448, 449 [1st Dept 2024]).

Because Plaintiff was never a unit owner and his only interest in this litigation stems from his status as a potential purchaser of the Unit, he does not have standing to seek enforcement of the

bylaws, warranting dismissal. Plaintiff cannot transform his unauthorized occupancy of the Unit, which is the subject of eviction proceedings, to confer standing. Therefore, the motion to dismiss pursuant to CPLR 3211(a)(3) is granted (*see also Plotch v 435 East 85th Street Tenants Corp.*, 187 AD3d 614 [1st Dept 2020]; *Segev v 262 N 9 LLC*, 2019 N.Y. Slip Op. 30715[U] at \*3 [Sup. Ct., NY County 2019] [Scarpulla, J.]).

For the sake of completeness, the Court also addresses the arguments made for dismissal under CPLR 3211(a)(1) and (a)(7). The right of first refusal, which is at the heart of this lawsuit, is found in Article VI section 5 of the bylaws (*see* NYSCEF Doc. 69). That provision states:

“ Any such Residential Unit Owner who receives a bona fide offer to (a) purchase his or her Unit covered by the provisions of this Section 5 ("Offeree Unit") together with its Appurtenant Interest or (b) lease his or her Offeree Unit (such offer to purchase or lease an Offeree Unit, as the case may be is called an "Offer ". [T]he party making any such offer is called an "Offeror" and the owner of the Offeree Unit to whom the Offer is made is called an "Offeree"), which he intends to accept shall give notice by certified or registered mail to the Condominium Board of the receipt of such Offer. Said notice shall also state the name and address of the Offeror, the terms of the proposed transaction (including, but not limited to, the intended closing date in the event of a purchase or the intended occupancy date in the event of a lease) and such other information as the Condominium Board may reasonably require. The giving of such notice to the Condominium Board shall constitute an offer by such Unit Owner to sell...his or her Offeree Unit to the Condominium Board, or its designee, on behalf of all other Unit Owners, upon the same terms and conditions as contained in such Offer and shall also constitute a representation and warranty by the Offeree who has received such Offer, to the Condominium Board on behalf of all Unit Owners, that such Offeree believes the Offeror to be bona fide in all respects. The Offeree shall submit in writing such further information with respect thereto as the Condominium Board may reasonably request. Not later than fifteen (15) days after receipt of such notice together with such further information as may have been requested, the Condominium Board may elect, by sending written notice to such Offeree before the expiration of said fifteen (15) day period, by certified or registered mail, to purchase such Offeree Unit together with its Appurtenant interest...on behalf of all Unit Owners, upon the same terms and conditions as contained in the Offer and as stated in the notice from the Offeree.”

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“Any purported sale or lease of an Offeree Unit in violation of this Section 5 of Article VI shall be voidable at the election of the Condominium Board and if the Condominium Board shall so elect.

The exception to this provision, which Plaintiff alleges applies, states:

“The provisions of Section 5 of Article VI shall not apply to...the sale, transfer or lease of a Unit by or to a mortgagee or its nominee (including, without limitation, a foreclosure sale); provided, however, that each succeeding Offeree shall be bound by, and his or her Offeree Unit subject to, the provision of this Article VI.”

Plaintiff’s interpretation of these bylaw provisions is misplaced for various reasons. First, at the time the Sales Agreement was executed, Wells Fargo owned the Unit and pursuant to the Bylaws, they were required to provide notice of the potential sale via certified or registered mail. However, that never happened, because Plaintiff, the purchaser, hand delivered a request for a waiver of right of first refusal to the Board. Moreover, the request for waiver form contained inaccurate information – including listing Plaintiff as the current owner even though the Wells Fargo owned the deed to the unit. Thus, the Board was never provided with the requisite notice to trigger the fifteen day deadline to exercise its right of first refusal. Plaintiff’s allegations that the Board’s election to exercise the right of First Refusal as untimely are without merit.

Plaintiff’s argument that the right of first refusal does not exist since the Sale Agreement is by a mortgagee is likewise unavailing. At the time of the Sale Agreement, Wells Fargo was not a mortgagee (*see, e.g. Dime Sav. Bank of New York, FSB v Kakar*, 203 AD2d 50 [1st Dept 1994] [liens and mortgages on property are extinguished upon foreclosure]). Wells Fargo was in possession of the deed pursuant to a Referee’s Deed executed on March 22, 2023 as a result of a judgment of foreclosure and sale dated July 24, 2019 (*see* NYSCEF Doc. 72). The judgment of foreclosure and sale dated July 24, 2019 extinguished any mortgagee-mortgagor relationship, for the existing mortgage was merged at the time the judgment of foreclosure and sale was entered (*see, e.g. in re Galasso*, 249 B.R. 54 [SDNY 2000]).

Because the documentary evidence establishes the Board's exercise of the right of first refusal was proper, Plaintiff's claims for declaratory judgment and injunctive relief premised on the improper exercise of the right of first refusal must be dismissed. Likewise, because the right of first refusal was properly exercised, the claim for tortious interference necessarily fails as there was no tortious conduct (*see Levine v Yokell*, 245 AD2d 138 [1st Dept 1997]). The Board's actions were justified by the terms of the bylaws (*see Vigoda v DCA Productions Plus Inc.*, 293 AD2d 265, 266 [1st Dept 2002] [tortious interference requires procurement of breach of contract without justification]). Therefore, the Amended Complaint as asserted against the Condo Defendants is dismissed.

Plaintiff's cross motion is denied in all respects. The cross motion is defective in that Plaintiff fails to present a proposed second amended complaint and is therefore in violation of CPLR 3025(b). The Court has considered the remainder of Plaintiff's contentions in the cross motion and finds them to be unavailing.

**B. Bank Defendants' Motion to Dismiss ("Mot. Seq. 005")**

The Bank Defendants' motion to dismiss is also granted. The documentary evidence establishes that in the Sales agreement, Plaintiff waived the right to specific performance and also agreed that the bank Defendants could terminate the Sales Agreement for any reason so long as it returned Plaintiff's deposit and paid a termination fee of twenty-five dollars. This clear, binding, and enforceable language establishes Plaintiff's cause of action for an injunction is without merit. Likewise, the declaratory relief cause of action is without merit for the reasons stated in the Court's analysis of motion sequence 004. Finally, the tortious interference claim was not directed at the Bank Defendants, and therefore is inapplicable to the instant motion. Therefore, the Amended Complaint is dismissed as to the Bank Defendants.

**C. Plaintiff's Motion for a Preliminary Injunction ("Mot. Seq. 002") & Defendants' Motion for Sanctions/Injunctive Relief ("Mot. Seq. 007")**

Because Defendants' motions to dismiss were granted, Plaintiff's motion for a preliminary injunction is denied as moot. Defendants' motion for sanctions is denied, without prejudice. The Court, in the exercise of its discretion, finds that finality is best served by denying Defendants' request for sanctions at this juncture. However, denial is without prejudice. If Plaintiff continues to engage in similar litigation, this decision shall serve as weighty evidence regarding Plaintiff's frivolous or bad faith behavior on a future application for sanctions. Likewise, the Court denies, without prejudice, Defendants' request for an injunction preventing Plaintiff from filing new cases seeking to stay his and Ms. Dolgon-Krutolow's eviction. Plaintiff should take this Decision and Order as a warning to refrain from engaging in frivolous delay tactics.

Accordingly, it is hereby,

ORDERED that Defendants' motions to dismiss are granted in their entirety, and Plaintiff's Amended Complaint is hereby dismissed; and it is further

ORDERED that Plaintiff's motion for a preliminary injunction is moot; and it is further

ORDERED that Defendants' joint motion for sanctions and an injunction barring Plaintiff from filing further proceedings seeking to stay his eviction and delay the sale of the Unit is denied, without prejudice; and it is further

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ORDERED that within ten days of entry, counsel for Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

4/10/26  
DATE

  
HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:

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