

**Board of Mgrs. of the Cent. Condominium v JZ Villa
Realty Corp.**

2026 NY Slip Op 31661(U)

April 17, 2026

Supreme Court, New York County

Docket Number: Index No. 162572/2025

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK **PART** **11M**

Justice

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BOARD OF MANAGERS OF THE CENTRAL
CONDOMINIUM, ON BEHALF OF ALL UNIT OWNERS,

Plaintiff,

INDEX NO. 162572/2025

MOTION DATE 01/09/2026

MOTION SEQ. NO. 001

- v -

JZ VILLA REALTY CORP., VILLA MANAGEMENT
HOLDINGS, LLC, JOHN DOE NO.1 THROUGH JOHN DOE
NO.10 THE NAMES BEING FICTITIOUS AND UNKNOWN,
THE PERSONS OR PARTIES INTENDED BEING THE
TENANTS, OCCUPANTS, PERSONS OR ENTITIES, IF
ANY, HAVING OR CLAIMING ANY INTEREST IN OR LIEN
UPON THE PREMISES DESCRIBED IN THE COMPLAINT,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for DISMISS.

Upon the foregoing documents, the motion is granted.

Background

This motion to dismiss counterclaims arises out of a dispute over the proposed installation of additional venting for a commercial unit in a mixed-use condominium building. The building is managed by Plaintiff, and JZ Villa (“Defendant”) is the owner of the commercial unit at issue. Defendant let the commercial unit to a deli, and in conjunction with that wished to install venting along the courtyard roof of the building. Defendant brought that plan to Plaintiff, seeking approval despite maintaining that they have the right to install such venting under the bylaws. Plaintiff has denied that request, and Defendant alleges that they were told by members of Plaintiff that compensation would be required in order to approve the request.

This present proceeding is one of several that have been commenced between the parties relating to the venting dispute. Plaintiff commenced this proceeding seeking to foreclose on a lien for allegedly unpaid common charges assessed to Defendant. Defendant has answered and asserted a counterclaim for breach of fiduciary duty relating to the alleged request for compensation and denial of the venting request.

Standard of Review

It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211, the pleading is to be liberally construed and the nonmovant is entitled to every favorable inference. *See, e.g., Granite State Ins. Co. v. Transatlantic Reins. Co.*, 132 A.D.3d 479, 481 [1st Dept. 2015]. Dismissal of the complaint is warranted “if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery.” *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 142 [2017].

CPLR § 3211(a)(1) allows for a complaint to be dismissed if there is a “defense founded upon documentary evidence.” Dismissal is only warranted under this provision if “the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” *Leon v. Martinez*, 84 N.Y.2d 83, 88 [1994]. A party may move for a judgment from the court dismissing causes of action asserted against them based on the fact that the pleading fails to state a cause of action. CPLR § 3211(a)(7). For motions to dismiss under this provision, “[i]nitially, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law.” *Guggenheimer v. Ginzburg*, 43 N.Y. 2d 268, 275 [1977].

Discussion

The counterclaim alleges that the fiduciary duties owed to Defendant as a shareholder were breached by demanding consideration in order to approve the venting expansion, thus treating Defendant unequally and unfairly. Plaintiff now moves to dismiss the counterclaim for failure to state a claim, arguing that the decision to deny the venting installation is protected by the business judgment rule. They further argue that any request for compensation in return for permitting the venting installation could not sustain a claim for breach of fiduciary duty, and that the counterclaim does not validly allege such a claim with the requisite particularity. Defendants argue that their allegations of bad faith are sufficient to state a claim at this stage.

Generally speaking, allegations that a board acted in bad faith and out of animus towards a particular shareholder are sufficient to prevail at the motion to dismiss stage for a claim of breach of fiduciary duty. *See, e.g., Board of Mgrs. of the Alfred Condominium v. Miller*, 202 A.D.3d 467, 468 – 69 [1st Dept. 2022]. Plaintiff argues that the allegations are not pled with the requisite particularity. They also argue that even if compensation was requested in exchange for approving the venting installation, by filing an RPAPL license action seeking access to the space in question, Defendant is admitting that compensation in exchange for the installation would be proper. Here, assuming the facts pled by Defendant are true and giving them every favorable inference, they were approached by a board member (or possibly two, the complaint is vague on this point) and told that the Board would require compensation in exchange for approving the vent installation. Plaintiff is correct in that Defendant has acknowledged, through the filing of an RPAPL license proceeding, that there may need to be compensation in exchange for the taking of the common elements in question. On the facts as alleged, Defendant has not alleged a valid claim for breach of fiduciary duty that would override the business judgment rule. Accordingly, it is hereby

ADJUDGED that the motion is granted; and it is further

ORDERED that the counterclaim for breach of fiduciary duty is dismissed.

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4/17/2026

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE