Board of Mgrs. of the 190 S. First St. Condominium v 190 S. 1 Invs. LLC
2026 NY Slip Op 32072(U)
April 6, 2026
Supreme Court, Kings County
Docket Number: Index No. 501944/2025
Judge: Francois A. Rivera

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 6th day of April, 2026.

P R E S E N T:

HON. FRANCOIS A. RIVERA,
Justice.

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BOARD OF MANAGERS OF THE 190 SOUTH FIRST STREET CONDOMINIUM,

Plaintiff,

-against-

Index No.: 501944/2025

Mot. Seq. Nos. 2 & 3

190 SOUTH 1 INVESTORS LLC, OMRI SACHS, DVIR COHEN HOSHEN, DALIA SHUSTER, "JOHN DOE" Nos. 1 through 10, and "JANE DOE" Nos. 1 through 10, said "John Doe" and "Jane Doe" names being fictitious and unknown to plaintiff but intended to be the recipients of fraudulent conveyances and/or voidable transactions made by defendants,

Defendants.

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The following e-filed papers read herein:	NYSCEF Doc Nos.:
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	57-63, 70 72-74
Opposing Affidavits (Affirmations)	78-81, 83-86
The Sponsor, Sachs, and Hoshen's Memorandum of Law	64
Schuster's Memorandum of Law	71
Plaintiff's Memorandum of Law	82, 87
The Sponsor, Sachs, and Hoshen's Reply Memorandum of Law	88
Schuster's Reply Memorandum of Law	89
Transcript of January 8, 2026 Oral Argument	not e-filed

Upon the foregoing papers, in this action by plaintiff Board of Managers of the 190 South First Street Condominium (plaintiff) against defendants 190 South 1 Investors LLC (the Sponsor), Omri Sachs (Sachs), Dvir Cohen Hoshen (Hoshen), Dalia Shuster (Shuster) (collectively, the Sponsor defendants), John Doe Nos. 1 through 10, and Jane Doe Nos. 1 through 10[1] brought on behalf of condominium unit owners seeking redress for alleged substantial defects in the construction of the condominium building, the Sponsor, Sachs, and Hoshen move, under motion sequence number two, for an order: (1) pursuant to CPLR 3211 (a) (1) and (a) (7), dismissing plaintiff's first cause of action against Sachs and Hoshen and plaintiff's second through seventh causes of action in their entirety, based upon a defense founded upon documentary evidence and the failure of plaintiff to state a claim as a matter of law; and (2) granting them such other and further relief as the court deems just and proper (NY St Cts Elec [NYSCEF] Doc No. 57).

Defendant Dalia Shuster (Shuster) moves, under motion sequence number three, for an order (1) dismissing plaintiff's complaint as against her, pursuant to CPLR 3211 (a) (1) and (7); (2) awarding sanctions against plaintiff; and (3) granting such other and further relief as this court may deem just and proper (NYSCEF Doc No. 70).

Background

This is an action for purported defects in the construction of the 190 South First Street Condominium (the condominium), located at 190 South First Street in Brooklyn, New York. The condominium was a new construction building developed by the Sponsor pursuant to an offering plan accepted for filing by the New York State Attorney General's office on July 6, 2015 (the offering plan) (NYSCEF Doc No. 2, complaint at ¶ 22). Sachs,

[1]John Doe Nos. 1 through 10 and Jane Doe Nos. 1 through 10 are intended to be individual and entity recipients of any fraudulent conveyances or voidable transactions made by the Sponsor.

Hoshen, and Shuster are the principals of the Sponsor (the Sponsor principals). Plaintiff governs the condominium's day-to-day affairs on behalf of all unit owners of the condominium.

The condominium building is a ground-up development project constructed by the Sponsor. The condominium building, which is a 13-story mixed use building, consists of 32 residential units, one community facility unit, 22 parking units, and 32 storage space units (NYSCEF Doc No. 2, complaint at ¶ 23). The offering plan of the condominium was amended and restated several times. The last amendment, which was the Twenty-First Amendment, was accepted for filing on October 30, 2019.

Units in the condominium were sold to purchasers pursuant to a form purchase agreement contained within the offering plan (the Purchase Agreement) (NYSCEF Doc No. 60 at 113-137). The Purchase Agreement contains a merger clause that provides: "This Agreement, together with the Plan, supersedes any and all understandings and agreements between the parties and constitutes the entire agreement between them with respect to the subject matter hereof." To date, all residential units and the community facility unit have been sold by the Sponsor.

The Declaration of the Condominium, dated February 2, 2017, was recorded on July 13, 2017 in the Office of the City Register of the City of New York. This Declaration was subsequently amended and restated in its entirety by a Declaration dated January 9, 2018 and recorded on May 2, 2018. The condominium obtained a temporary certificate of occupancy on December 27, 2017 and the first closing of a unit occurred on that date. On

January 2, 2020, the condominium obtained its permanent certificate of occupancy. All residential units and the community facility use unit of the condominium have been sold.

On January 19, 2025, plaintiff brought this action by filing a summons with notice (NYSCEF Doc. No 1). On March 21, 2025, plaintiff filed its complaint (NYSCEF Doc. No. 2). Plaintiff's complaint contains seven causes of action.

Plaintiff's first cause of action against the Sponsor is for breach of contract. Plaintiff's second cause of action against the Sponsor defendants is for fraud in the inducement. Plaintiff's third cause of action against the Sponsor principals is for breach of fiduciary duty. Plaintiff's fourth cause of action against the Sponsor defendants and the John Doe and Jane Doe defendants is for constructive fraudulent conveyances while insolvent pursuant to former Debtor and Creditor Law § 273 and § 278. Plaintiff's fifth cause of action against the Sponsor defendants and the John Doe and Jane Doe defendants is for constructive fraudulent conveyances causing unreasonably small capital pursuant to former Debtor and Creditor Law § 274 and § 278. Plaintiff's sixth cause of action against the Sponsor defendants and the John Doe and Jane Doe defendants is for intentional fraudulent conveyances pursuant to Debtor and Creditor Law § 276 and § 278. Plaintiff's seventh cause of action against the Sponsor defendants and the John Doe and Jane Doe defendants is for voidable transactions pursuant to §§ 273, 274, and 276 of the Uniform Voidable Transactions Act.

Law And Application

Standard for Dismissal

Defendants seek dismissal of plaintiff's complaint, pursuant to CPLR 3211 (a) (7) and (a) (1). In considering a motion to dismiss pursuant to CPLR 3211 (a) (7) for failure to state a cause of action, "'the court should accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory'" (*Matyas v Spitzer*, 240 AD3d 681, 682 [2d Dept 2025], quoting *Saadia v National Socy. of Hebrew Day Schs., Inc.*, 225 AD3d 806, 808 [2d Dept 2024]; *see also Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). A motion to dismiss, pursuant to CPLR 3211 (a) (1), is based upon the documentary evidence, and may be granted "only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002], *see also Leon*, 84 NY2d at 88). For evidence to be considered documentary, it "must be unambiguous and of undisputed authenticity" (*Fontanetta v John Doe 1*, 73 AD3d 78, 86 [2d Dept 2010]).

Breach of Contract

Plaintiff's first cause of action for breach of contract is asserted solely against the Sponsor. The Sponsor defendants nevertheless seek dismissal of the first cause of action as against them because, while in the heading of this cause of action, it is pleaded solely against the Sponsor (NYSCEF Doc No. 2, complaint at 6), the prayer for relief mentions all Sponsor defendants with respect to this cause of action. The Sponsor principals assert that a breac h of contract claim against them is not viable since they were not parties to the offering plan or the Purchase Agreement (*see Board of Mgrs. of the Brighton Tower II Condominium v Brighton Bldr., LLC*, 226 AD3d 736, 737 [2d Dept 2024]). Plaintiff does not dispute this, and asserts that it did not bring a breach of contract claim against the Sponsor principals. Thus, it is clarified that this claim was not brought as against the Sponsor principals and to the extent that it could be construed as such, it is dismissed.

Fraud in the Inducement

The Sponsor defendants seek dismissal of plaintiff's second cause of action for fraudulent inducement. It is well-settled that the Martin Act preempts common-law fraud claims that are "predicated solely on a violation of the Martin Act or its implementing regulations and would not exist but for the statute" (*Assured Guar. [UK] Ltd. v J.P. Morgan Inv. Mgmt. Inc.*, 18 NY3d 341, 341 [2011]). The Martin Act does not preempt a cause of action to recover damages for common-law fraud where it is based on allegations of affirmative misrepresentations, rather than material omissions, in an offering plan.

As such, fraud claims predicated solely on allegations that a defendant omitted to disclose information in an offering plan required under the Martin Act are preempted, but claims based upon allegations of affirmative misrepresentations in the offering plan, rather than omissions, are not precluded (*see Kerusa Co. LLC v W10Z/515 Real Estate Ltd. Partnership*, 12 NY3d 236, 239 [2009]; *Board of Mgrs. of the Latitude Riverdale Condominium v 3585 Owner, LLC*, 199 AD3d 441, 442 [1st Dept 2021]; *Board of Mgrs. of the Walton Condominium v 264 H2O Borrower, LLC*, 180 AD3d 622, 622 [1st Dept 2020]; *Board of Mgrs. of the S. Star v WSA Equities, LLC*, 140 AD3d 405, 405 [1st Dept 2016]; *Hamlet on Olde Oyster Bay Home Owners Assn., Inc. v Holiday Org., Inc.*, 65 AD3d

1284, 1287 [2d Dept 2009], *appeal dismissed* 15 NY3d 742 [2010]; *Board of Mgrs. of 647 & 649 Place Condominium v 647 & 649 Wash. Ave., LLC*, 49 Misc 3d 1216[A], 2015 NY Slip Op 51693[U], *9 [Sup Ct, Kings County 2015]; *Board of Mgrs. of the 231 Norman Ave. Condominium v 231 Norman Ave. Prop. Dev.*, 36 Misc 3d 1232[A], 2012 NY Slip Op 51573[U], *8 [Sup Ct, Kings County 2012]).

Plaintiff's claim for fraudulent inducement is predicated on allegations that the building's construction does not comply with express statements made in the offering plan regarding the conditions, features, and components of the building and individual units. Plaintiff alleges that the Description of Property in the offering plan contained affirmative representations regarding the building's compliance with the Building Code and other requirements, which were false. Specifically, plaintiff alleges that the building does not qualify as a Class 1-B fire-resistive non-combustible structure because the building's fireproofing is compromised or altogether missing; the building's window system is inoperable; and the building was supplied with inferior Daikin instead of Mitsubishi ductless split systems.

Plaintiff claims that the true conditions, features, and components of the building were known to the Sponsor defendants because, upon information and belief, they inspected the building and observed its true conditions, features, and components first-hand prior to selling units to the unit owners. Plaintiff alleges that the Sponsor defendants knew and intended, when circulating the offering plan or promoting sales of units of the condominium based on the offering plan's affirmative representations, that the offering plan would be disseminated to prospective purchasers and that those prospective purchasers would rely upon the truth and accuracy of the affirmative representations in the offering plan. Plaintiff further alleges that the unit owners reasonably relied upon the affirmative misrepresentations and were thereby induced to purchase units from the Sponsor.

Plaintiff's complaint alleges that after the building's construction commenced, as each feature and system of the building was completed, and after construction of the building was completed, defects came to light and the Sponsor defendants continued to circulate the offering plan to prospective purchasers to promote sales of the remaining unsold units in the building. Plaintiff asserts that the Sponsor defendants never disclosed in the offering plan any of the defective conditions in the building, and that the offering plan came to contain numerous misrepresentations of existing fact.

Plaintiff claims that the Sponsor Principals must have been aware of the inept construction performed by the original general contractor because they caused the Sponsor to terminate the general contractor during the building's construction, but then hired a replacement general contractor who was equally amateurish. Plaintiff additionally alleges that the Sponsor principals misrepresented the truthfulness of the offering plan's affirmative representations by swearing to them, personally, in the Sponsor's Certification.

While plaintiff's complaint alleges that the affirmative representations were false at the time that they were made because the building was already constructed, both the Sponsor Certification and the Description of Property were actually made prior to the construction of the building and at the time that the architect's report describing the proposed construction was issued (NYSCEF Doc No. 60 at 305-310). Plaintiff's complaint alleges that "the Offering Plan *came to contain* numerous misrepresentations of existing fact" (NYSCEF Doc No. 2, complaint at ¶ 64 [emphasis added]). This allegation basically concedes that the offering plan did not contain affirmative misrepresentations of then-present existing fact to support a fraud in the inducement claim (*see Board of Mgrs. of 147 Waverly Place Condominium v KMG Waverly, LLC*, 129 AD3d 549, 550 [1st Dept 2015]; *Alexander Condominium, by its Board of Managers v E. 49th St. Dev. II, LLC*, 60 Misc 3d 1232[A], 2018 NY Slip Op 51288[U], *5 [Sup Ct, NY County 2018]).

Plaintiff's complaint does not allege that the Sponsor defendants made any purportedly fraudulent representations to any purchaser, other than through the offering plan and its amendments. The defects alleged by plaintiff were required to be disclosed under the Attorney General's implementing regulations (*see* 13 NYCRR 20.7). Therefore, plaintiff's allegations consist of alleged omissions in disclosures required under the Martin Act (*see Kerusa Co. LLC*, 12 NY3d at 245). Furthermore, the disclosure regulations adopted by the Attorney General specify, at 13 NYCRR 20.5 (a) (2), that "[a]n amendment must include a representation that all material changes of facts or circumstances affecting the property or the offering are included unless the changes were described in prior amendment(s) submitted to but not yet filed with the Department of Law." Thus, "[b]ut for the Martin Act and the Attorney General's implementing regulations . . . the [S]ponsor defendants [also] did not have to make the disclosures in the amendments [to the offering plan]" (*Kerusa Co. LLC*, 12 NY3d at 245).

Plaintiff's allegations that the Sponsor defendants did not disclose the alleged construction and design defects in the offering plan amendments, but, instead, represented that there were no material changes when there were, in fact, problems arising during construction, are preempted by the Martin Act. Indeed, "to accept [plaintiff's] pleading as valid would invite a backdoor private cause of action to enforce the Martin Act . . . " (*id.* at 245).

As plaintiff's fraudulent inducement cause of action alleges only omissions in the offering plan and subsequent amendments, which were filed in accordance with the Martin Act, it is preempted by the Martin Act. It thus fails to state a viable common-law claim for fraud, as distinct from a claim under the Martin Act, which only the Attorney General may bring, and must be dismissed (*see* CPLR 3211 [a] [1], [a] [7]).

Breach of Fiduciary Duty

In addressing plaintiff's third cause of action for breach of fiduciary duty against the Sponsor principals, the court notes that individual members of a condominium board, including sponsor-designated board members, owe fiduciary duties to the unit owners of the condominium (*see Board of Mgrs. of 570 Broome Condominium v Soho Broome Condos LLC*, 231 AD3d 424, 425 [1st Dept 2024]; *Board of Mgrs. of Petit Verdot Condominium v 732-734 WEA, LLC*, 2022 NY Slip Op 33383[U], *6 [Sup Ct, NY County], *affd* 215 AD3d 482 [1st Dept 2023]). Sponsor-appointed board members are "subject to a great potential for conflicts of interest, such that a very high standard of duty must be imposed upon [them]" (*Board of Mgrs. of Fairways at N. Hills Condominium v Fairway at N. Hills*, 193 AD2d 322, 325 [2d Dept 1993] [internal quotation marks omitted]; *see also Petit Verdot Condominium*, 2022 NY Slip Op 33383[U], *6).

Plaintiff alleges that since as early as the first unit closing through and until on or about October 23, 2019 (i.e., the Sponsor control period), the Sponsor principals exercised complete dominion and control over the condominium by controlling the board. Plaintiff further alleges that throughout the Sponsor control period, the Sponsor principals used their control over the board to further the Sponsor's interests at the expense and to the detriment of the condominium and the unit owners by, among other things, engaging in independent tortious conduct. Such tortious conduct is alleged to include intentionally refusing, in bad faith, to take necessary actions to address the construction defects and Building Code violations at the building or to compel the Sponsor to correct the construction-related defects and Building Code violations in and around the building and its units. In addition, it is alleged to include intentionally failing to budget for or perform necessary repairs to the building (including the units) and its systems, or to budget for or perform necessary maintenance to the building. Plaintiff, in its complaint, specifically claims that the Sponsor principals failed to budget for or hire a garage attendant, and, instead, hired three completely unaffordable front desk concierges and a superintendent who was later terminated for improper workplace conduct. Plaintiff also alleges that the Sponsor principals mismanaged the condominium's funds.

In seeking dismissal of plaintiff's breach of fiduciary cause of action, the Sponsor principals claim that they owed no fiduciary duty to the unit owners because they never served on the board. However, the Sponsor principals submitted excerpts from the offering plan, which provide that "the Board will initially consist of three (3) persons designated by Sponsor," and that these "initial members of the Board will be Omri Sachs, Dvir Cohen

Hoshen and Dalia Shuster, all of whom are the Principals of the Sponsor" (NYSCEF Doc. No. 60). Sachs, Hoshen, and Shuster remained on the board until October 23, 2019. Thus, the Sponsor principals held seats on the board and, as a result, owed the unit owners a fiduciary duty (*see Board of Mgrs. of 570 Broome Condominium*, 231 AD3d at 425).

The Sponsor principals further argue that even if they were members of the board, they are protected from liability for breach of fiduciary duty by the condominium's bylaws. The condominium's bylaws provide as follows:

> "The Board of Managers shall have no liability to the Unit Owners in the management of the Condominium *except for gross negligence or willful misconduct or acts made in bad faith* and the Unit Owners shall jointly and severally indemnify all members of the Board of Managers against any liabilities or claims arising from acts taken by a member of the Board of Managers in accordance with his duties as such member *except acts of gross negligence or willful misconduct or acts made in bad faith*" (NYSCEF Doc No. 63, article II, section 14 [emphasis added]).

However, plaintiff's complaint, in paragraph 85, sufficiently alleges that the Sponsor principals engaged in independent tortious conduct and acted "in bad faith" (NYSCEF Doc No. 2). Plaintiff, in its complaint, sufficiently alleges wrongdoing by the Sponsor principals in the form of self-dealing and willful misconduct, which were not actions "taken in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate purposes," but, rather, were actions taken solely for the Sponsor principals' benefit (*Tahari v 860 Fifth Ave. Corp.*, 214 AD3d 491, 492 [1st Dept 2023] [internal quotation marks omitted]; *see also Board of Mgrs. of 570 Broome Condominium*, 231 AD3d at 425).

It is also noted that a claim for breach of fiduciary duty does not have the heightened pleading requirements under CPLR 3016. Therefore, the court finds that plaintiff has stated a viable claim against the Sponsor defendants for breach of fiduciary duty (*see Board of Mgrs. of 570 Broome Condominium*, 231 AD3d at 425).

Constructive Fraud

Plaintiff's fourth and fifth causes of action, and, in part, its seventh cause of action, assert claims for constructive fraud. Claims for constructive fraud, including those under Debtor and Creditor Law § 273 and § 274, are not subject to the heightened pleading standard of CPLR 3016 (b), and allegations supporting such claims may be made "upon information and belief" (*Menaker v Alstaedter*, 134 AD2d 412, 413 [2d Dept 1987]; *see also Hudson Spring Partners, L.P. v P+M Design Consultants, Inc.*, 210 AD3d 553, 554 [1st Dept 2022]; *Ridinger v West Chelsea Dev. Partners LLC*, 150 AD3d 559, 560 [1st Dept 2017]; *Gateway I Group, Inc. v Park Ave. Physicians, P.C.*, 62 AD3d 141, 149-150 [2d Dept 2009]; *Ventnor Beauty Supply Inc. v Primary One LLC*, 2020 NY Slip Op 34323[U], *4 [Sup Ct, Queens County 2020]). Thus, plaintiff's allegations, in its complaint, alleged "upon information and belief," are sufficient to state its claims for constructive fraudulent conveyances (*see Menaker*, 134 AD2d at 413; *UBS Real Estate Sec., Inc. v Fairmont Funding Ltd.*, 19 Misc 3d 1123[A], 2008 NY Slip Op 50829[U], *5 [Sup Ct, NY County 2008]).

The Sponsor defendants assert that plaintiff merely concludes that the equity distributions were made without fair consideration and that this is insufficient to sustain these causes of action. However, plaintiff's complaint alleges that the Sponsor's sole asset was the condominium, that after paying back its loan, the Sponsor used substantially all of the proceeds from sales of condominium units to make equity distribution payments to the

Sponsor principals, that those payments were made when the Sponsor was insolvent or otherwise rendered the Sponsor insolvent, and that the Sponsor was left with an unreasonably small amount of capital after making the payments (NYSCEF Doc No. 2, complaint at ¶¶ 90-108). Contrary to the Sponsor defendants' assertion, these allegations are sufficient to state causes of action for constructive fraudulent conveyances (*see Board of Managers of 45 E. 22nd St. Condominium v 45 E. 22nd St. Prop. LLC*, __ AD3d __, 2026 NY Slip Op 01123 [1st Dept Feb. 26, 2026]; *American Media, Inc. v Bainbridge & Knight Labs., LLC*, 135 AD3d 477, 478 [1st Dept 2016]). Consequently, the court finds that plaintiff has adequately stated its fourth and fifth causes of action for constructive fraudulent conveyances, as well as the constructive fraud component of its seventh cause of action under the Uniform Voidable Transactions Act.[2]

Intentional Fraudulent Conveyances

Plaintiff has sufficiently stated its sixth cause of action for intentional fraudulent conveyances, and the remaining intentional fraud component of its seventh cause of action under the Uniform Voidable Transactions Act. It is well settled that the particularity requirement of CPLR 3016 (b) "is not to be interpreted so strictly as to prevent an otherwise valid cause of action in situations where it may be impossible to state in detail the circumstances constituting a fraud" (*Lanzi v Brooks*, 43 NY2d 778, 780 [1977] [internal

[2] In 2019, New York enacted the Uniform Voidable Transactions Act, which repealed and replaced certain provisions of the Debtor and Creditor Law relating to fraudulent conveyances and which became effective on April 4, 2020 (*see* Uniform Voidable Transactions Act, L 2019, ch 580, § 2 [eff Apr. 4, 2020]; *Rosenfeld v Brody*, 238 AD3d 1084, 1086 [2d Dept 2025]). Transfers made after April 4, 2020 are governed by the current version of the statute, whereas if the allegedly fraudulent conveyance predates the April 4, 2020 effective date of the new provisions, the now-repealed version governs (*see United States v Weathers*, 2024 WL 3431054, *3 n 4, 2024 US Dist LEXIS 125272, *6 n 4 [WD NY, July 16, 2024, No. 22-CV-243S]). Plaintiff states that it was forced to include its seventh cause of action under the Uniform Voidable Transactions Act because the exact dates of the transfers are exclusively within the knowledge of the Sponsor defendants and there has been no discovery.

quotation marks omitted]). For claims of intentional fraudulent conveyances, courts will consider badges of fraud "which are circumstances that accompany fraudulent transfers so commonly that their presence gives rise to an inference of intent" (*Dempster v Overview Equities*, 4 AD3d 495, 498 [2d Dept 2004], *lv denied* 3 NY3d 612 [2004] [internal quotation marks omitted]; *see also Board of Mgrs. of the Aston Condominium v Building 389 LLC*, 234 AD3d 540, 542 [1st Dept 2025]). Such badges of fraud include "(1) the close relationship among the parties to the transaction, (2) the inadequacy of the consideration, (3) the transferor's knowledge of the creditor's claims, or claims so likely to arise as to be certain, and the transferor's inability to pay them, and (4) the retention of control of property by the transferor after the conveyance" (*Dempster*, 4 AD3d at 498; *see also Matter of Schiffman v Affordable Shoes, Ltd.*, 238 AD3d 770, 773 [2d Dept 2025]; *Board of Mgrs. of BeWilliam Condominium v 90 William St. Dev. Group LLC*, 187 AD3d 680, 682 [1st Dept 2020]).

Here, plaintiff has alleged the first two badges of fraud and that the Sponsor defendants had "actual intent to hinder, delay, or defraud" (NYSCEF Doc No. 2, complaint at ¶¶ 109, 110). As previously noted, it is impossible for a plaintiff to allege in detail the circumstances constituting a fraud where, as here, "those circumstances are peculiarly within the knowledge of the [Sponsor defendants], and the plaintiff is in need of discovery relating thereto (*Jered Contr. Corp. v New York City Tr. Auth.*, 22 NY2d 187, 194 [1968]; *see also Kaufman v Cohen*, 307 AD2d 113, 121 [1st Dept 2003]; *Board of Mgrs. of the Park Slope Views Condominium v Park Slope Views, LLC*, 39 Misc 3d 1221[A], 2013 NY Slip Op 50689[U], *14-15 [Sup Ct, Kings County 2013]). Thus, inasmuch as the parties have not yet conducted discovery, and the facts regarding any transfers of assets are exclusively within the knowledge of the Sponsor defendants, plaintiff has sufficiently stated a claim for intentional fraudulent conveyances in its sixth cause of action, and the intentional fraud component of its seventh cause of action against the Sponsor defendants. Therefore, the dismissal of these claims must be denied.

Sanctions

Although Shuster seeks sanctions against plaintiff in her notice of motion, she does not provide any basis for this request in her papers. The court does not find that plaintiff engaged in any frivolous conduct so as to warrant the imposition of sanctions. Thus, Shuster's request for this relief must be denied.

Conclusion

Accordingly, the Sponsor, Sachs, and Hoshen's motion (sequence two) and Shuster's motion (sequence three) are granted insofar as they seek dismissal of plaintiff's second cause of action for fraudulent inducement, and are denied in all other respects.[3]

Any issue raised and not addressed in this decision and order is denied.

This constitutes the decision and order of the court.

E N T E R,

J. S. C.

HON. FRANCOIS A. RIVERA

[3] As discussed and dismissed above, plaintiff's first cause of action for breach of contract was brought only as against the Sponsor and was not brought as against Sachs, Hoshen, or Shuster.