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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Saliann Scarpulla PART 19

Index Number : 108678/2010

GORDON, ANTHONY J.

VS

18 EAST 12TH STREET

Sequence Number : 001

AMEND

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

or _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

decided per the memorandum decision dated 4/16/12

which resolves motion seq. no. 001, 002, 003

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

FOR THE FOLLOWING REASON(S):

FILED

APR 18 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 4/16/12

Saliann Scarpulla J.S.C.

SALIANN SCARPULLA

1. CHECK ONE: ..... ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION

2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER

3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER

☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

[* 2]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 19

---------- X

ANTHONY J. GORDON,

Plaintiff,

- against-

BOARD OF MANAGERS OF THE 18 EAST 12TH STREET CONDOMINIUM, KEY REAL ESTATE ASSOCIATES, LLC, 16-20 REALTY ASSOCIATES L.P., SWEET CONSTRUCTION CORP. AND "XYZ CORP.",

Defendants.

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Index No.: 108678/10
Submission Date: 12/14/11

DECISION AND ORDER

For Plaintiff:
Rosenberg & Estis, P.C.
733 Third Avenue
New York, NY 10017

For Defendants Board of Managers and Key Real Estate:
Wolf Haldenstein Adler Freeman & Herz LLP
270 Madison Avenue
New York, NY 10016

For Defendant Sweet Construction Corp.:
Bonner Kiernan Trebach & Crociata, LLP
Empire State Building, 59th Floor
New York, NY 10118

HON. SALIANN SCARPULLA, J.:

In this action to recover for property damage, defendants Board of Managers of the 18 East 12th Street Condominium ("Board") and Key Real Estate Associates, LLC ("Key") move to amend their answer (motion sequence 001) and plaintiff Anthony J. Gordon ("Gordon") cross moves for partial summary judgment and to dismiss certain affirmative defenses and counterclaims; Gordon moves for a protective order striking and/or quashing certain non-party subpoenas (motion sequence 002); and defendant

Sweet Construction Corp. ("Sweet") moves for summary judgment dismissing the complaint insofar as asserted against it (motion sequence 003).

Gordon commenced this action by summons and notice, which was filed on June 30, 2010. Gordon originally filed his complaint on August 26, 2010, and then filed an amended complaint on October 5, 2010. According to the allegations of the amended complaint, in or about January 2007, Gordon became the deeded owner of duplex condominium unit 9/10C in a building governed by the Board located at 18 East 12th Street. Defendant Key was the managing agent for the building. The condominium sponsor, defendant 16-20 Realty Associates ("Sponsor"), had commenced the process of converting the building into a condominium in September 1983. As part of the conversion process, additional floors were added to the building, including the tenth floor. Sweet and/or "XYZ Corp." were responsible for the construction of the additional floors.

Gordon decided to undertake certain renovations to his unit and on or about February 8, 2007, David Fratianne Architect, PLLC ("DFA") submitted an initial set of construction plans on Gordon's behalf. On February 10, 2007, DFA submitted a security deposit along with an alteration agreement to the Board. The renovation plan was approved by Key's account executive John Cummings ("Cummings") with certain conditions specified in letters dated April 26, 2007 and May 18, 2007.

Renovations began in or about June 2007. On or about July 31, 2007, Gordon's contractors undertook a project to expose the structural steel beams above the ceiling of

the ninth floor portion of the unit in order to cover them in intumescent fire-retardant paint ("the steel beam exposure work"). Gordon's contractors started to expose the steel beams by removing the existing fireproofing surrounding them, when one of the building's northern structural concrete slab bays collapsed. Gordon allegedly requested that the Board repair the damage, but when the Board refused to do so, Gordon repaired the damage and completed the slab replacement on or about October 29, 2007.

In his amended complaint, Gordon alleged, *inter alia*, that (1) the slab bays were part of the common elements of the building, for which the Board was responsible, yet, in breach of the by-laws and declaration, the Board did not undertake to repair the damage and would not reimburse Gordon when he ultimately repaired the damage; (2) Board and Key were aware of the structural unsoundness of the concrete slabs in the building and were negligent in failing to properly maintain the slab bays; and (3) Sweet negligently constructed the concrete slab bays, used substandard materials, and created a defective condition. Gordon claimed that as a result of the collapse, he spent significant funds to repair the damage and sustained significant delays to the renovation schedule.

Board and Key now move to amend the answer to add counterclaims alleging Gordon's breach of the alteration agreement and breach of the terms of the condominium's declaration and by-laws. They claim that, in direct contravention of the condominium's declaration and by-laws, Gordon failed to obtain the Board's written consent to every item of alteration work he was going to perform before performing such

work. One such item of unapproved work was Gordon's removal, on July 31, 2007, of the concrete and fireproofing supporting the concrete slab that was part of the middle floor of Gordon's unit, which precipitated the slab collapse. They seek money damages and an order directing Gordon to remove all unapproved or otherwise prohibited alterations and return the wrongfully altered portions of the unit to their condition prior to such alterations.

In support of the motion, they submit the affidavit of Board officer and member Philip Hecht ("Hecht"). Hecht avers that Gordon performed unapproved and expressly prohibited work in the apartment, and specifies certain unapproved work performed by Gordon, including the steel beam exposure work. He maintains that Gordon's actions were in breach of the alteration agreement and violated the condominium's declaration and by-laws, directly injuring the condominium by causing it to incur increased professional expenses and damage to the building.

They also submit the affidavits of the Board's architect Elliott Glass ("Glass") and Cummings, who aver that they never approved any of Gordon's work, nor could they have done so because they had no authority to approve anything on behalf of the Board. They made it clear to both Fratianne and Gordon, from the beginning, that any approval had to be in writing from the Board. They claim that there was no prior indication of any slab removal work to be done. Rather, at a meeting on the day prior to the slab collapse, Gordon merely informed them that he would be adding fireproofing paint to the existing

steel beams, no mention being made of removing the existing fireproofing. If it had, they would have insisted on Gordon obtaining written approval from the Board. There were several occasions where the Board had to stop work because Gordon was performing unapproved work.

Further, counsel maintains that Gordon never asked the Board to repair and/or replace the slabs after the collapse, rather, in a letter dated August 8, 2007, Fratianne sought approval to replace all ten structural slab bays on behalf of Gordon. Under the terms of the by-laws and the alteration agreement, Gordon was required to repair any and all damage to the building which resulted from his alteration work, regardless of whether such damage was to the building's common elements.

Finally, Board and Key ask the court to search the record and grant them summary judgment dismissing Gordon's first cause of action, and summary judgment on their counterclaim for indemnification.

In opposition to the motion to amend, Gordon first claims that Board and Key waived their first proposed counterclaim because they signed off on the project when it was complete and refunded his security deposit. Pursuant to the alteration agreement, Gordon gave the Board a security deposit as "faithful performance of all terms and conditions of this Agreement" and therefore, because they returned the security deposit, they agreed that he faithfully performed. In fact, the Board's representatives inspected the renovation work on many occasions to ensure that the work was being properly

performed and in accordance with the terms of the alteration agreement. By letter dated September 4, 2008, Glass sent a letter to Cummings, indicating that the work was substantially completed and in general conformance with the plans approved by the building. In addition, the NYC Department of Buildings issued a letter to Fratianne indicating that the subject renovation was completed and signed off upon on February 22, 2010.

They also entered into a security deposit return agreement on November 7, 2009, whereby they agreed to resolve all claims related to the security deposit, which, according to Gordon, refers to all claims relating to Gordon's faithful performance under the alteration agreement.[1] Any concerns that the Board had were resolved when the Board's representatives returned Gordon's security deposit.

Gordon next claims that the second proposed counterclaim has no merit because money damages would be sufficient to compensate Board and Key for their alleged damages and the burden that would be imposed upon Gordon if he had to remove all allegedly unapproved alterations and return those portions of the unit to their condition prior to such alterations greatly outweighs any benefit to Board and Key.

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[1] According to the terms of the security deposit return agreement, Gordon agreed that the condominium would retain $15,000 of his security deposit in settlement of any outstanding fees, charges or expenses that the condominium might claim in connection with the alteration. Gordon and the condominium agreed to release one another from any claims, actions, etc. concerning the security deposit and any charges, costs and fees incurred pursuant to the alteration agreement.

In an affidavit, Fratianne explains that he attended many meetings with Cummings and Glass and they actively oversaw the construction project. He provides that no work was performed at the premises without prior approval from the Board's professionals. Specifically, on July 30, 2007, Fratianne attended a site meeting at the unit with Cummings, Glass and the general contractor for the unit renovations Fong Construction ("Fong"). At that meeting, Cummings and Glass gave DFA verbal approval to proceed with the steel beam exposure work. Fratianne refers to his notes from the meeting where he wrote "intumescent paint - ok - 2 hr."

Gordon cross moves for partial summary judgment on his first cause of action asserted against Board and Key to recover damages for the slab repair and replacement work performed by Gordon, and for summary judgment dismissing the first counterclaim for indemnification and the ninth, fourteenth, fifteenth, sixteenth and eighteenth affirmative defenses set forth in Board and Key's October 25, 2010 answer.

In support of his cross motion, Gordon submits an affidavit from Fratianne who first avers that the structural concrete slab that collapsed was situated above the drywall that formed the upper ceiling of the unit, and therefore, the slab was not part of the unit. Rather, it was part of the "common area" for which the Board was responsible. In addition, the tenth floor terrace, which was directly above the structural concrete slab and the structural fill located thereon, was also not part of the unit. Rather, it was a "residential limited common element" pursuant to the declaration and by-laws, for which

the Board was responsible. Therefore, the Board was responsible for repairing and/or replacing the slab bays after the collapse.

Gordon also submits the August 1, 2007 report of his structural engineer Harry Hong ("Hong") who inspected the unit and collapsed area of slab. Hong indicated that the building structure between the ceiling of the ninth floor portion of the unit and the tenth floor terrace was substandard. Further, on August 15, 2007, Glass issued a report indicating that the failure was likely the result of the original construction and that the portion of slab below the roof terrace should be removed and reconstructed. The Board's engineer Gene Kleinsmith ("Kleinsmith") also inspected the area and opined that removal of all ten slabs above the ninth floor portion of the unit would benefit the building owners by reducing structural concerns in the apartment and would also benefit the tenant. Kleinsmith further maintained that the work performed by Gordon to that area should not have caused the collapse or precipitated the failure of the slab.

According to Gordon and Fratianne, Gordon asked the Board to repair the damage but the Board refused. Instead, on August 8, 2007, Fratianne submitted a proposal to Cummings requesting building approval to remove and replace the concrete slab bays.

In reply, Board and Key argue that their proposed first counterclaim is not waived because (1) they do not only allege breach of the alteration agreement but also violations of the condominium declaration and bylaws; and (2) the security deposit settlement agreement and the releases thereunder were only limited to the deposit and to fees. Board

and Key next argue that their proposed second counterclaim is valid in that injunctive relief rather than money damages is appropriate because the alterations were made inside of the unit and are therefore in areas of Gordon's exclusive control. Further, there is no evidence to support Gordon's allegations that removal of his unauthorized alterations would be unduly burdensome on him or result in great damage to the unit.

They further argue that Gordon's obligation to repair the damage is set forth in paragraph 3(a) of the alteration agreement which provides that Gordon "assume[s] all risk of damage to the building and its mechanical systems, and to persons and property in the building which may result from or be attributable to the work being performed hereunder..." Pursuant to paragraph 3(d) of the alteration agreement, Gordon was required to indemnify the condominium "for any damages suffered to person or property as a result of the work performed hereunder, whether or not caused by negligence, and to reimburse [the condominium] and [its] managing agent for any expenses (including, without limitation, attorneys' fees and disbursements) incurred as a result of such work."

In reply, Gordon submits an affidavit in which he maintains that while he undertook to repair the damage caused by the slab collapse, he in no way intended to absolve or release Board and Key of their responsibility to make those repairs. He expected to be reimbursed. Gordon also maintains that during the course of the renovation work, written approval was not needed for every part of the project.[2]

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[2] Gordon submits several email chains, in which Cummings and other members of the Board recognize that there existed an issue of who would pay for the repair job, and in which it was

Finally, Fratianne submits an affidavit indicating that he obtained approval for the steel beam exposure work, as evidenced by a memorandum sent by his former associate Scott Jardine ("Jardine") to Cummings on July 25, 2007 covering a revision to certain of the construction plans. In the memorandum, Jardine provided, "...please see additional full size drawings for Elliott Glass' review to clarify the proposed expanded opening in terrace, as well as proposed painting of existing steel beams to code with 2-hour intumescent paint..." Attached to the memorandum was a section revision drawing which included mention of the planned two hour intumescent painting of the steel beams. Counsel then met with Glass and Cummings on July 30, 2007 to discuss, among other things, the steel beam exposure work. Cummings even confirmed, in his affidavit, that at the July 30, 2007 meeting, Fratianne told him that the contractor would be painting the steel beams with an intumescent paint, but admitted that he did not give it much thought at the time because "painting jobs generally do not require board approval."

Gordon also moves for a protective order to quash and/or strike certain non-party subpoenas on the ground that they are impermissibly broad and vague, there are no special circumstances required by applicable law, and Board and Key disingenuously threatened the non-parties with contempt of court. Gordon maintains that he has represented that he intends to produce additional documents to supplement his initial discovery productions and party discovery is not yet complete. In addition, the subpoenas

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acknowledged that verbal approval was given for certain aspects of the work

are not clear in that the deadlines on the subpoenas conflict with the deadlines set forth in the subpoena cover letters. In further support of the motion, Rick Watsky, one of the subpoenaed non-parties, submits an affidavit indicating that it would be burdensome for him to hire an attorney, appear at a deposition and search his files for related documents. Further, his work was not related to the collapse of the concrete slab, rather he was retained in 2009 to perform work in the apartment relating to a leak.

In opposition, Board and Key submit an affidavit from Cummings who avers that all of the subpoenaed witnesses are contractors, consultants and professionals who were retained by Gordon in the course of his renovation project that is the subject of this litigation. Each has knowledge and documents material to the defense of Gordon's claims. Cummings maintains that any error on the cover letters is trivial, and the subpoenas reflect the correct deadline dates. They are not overbroad, in that they merely seek documents related to the work performed by each contractor for Gordon at the subject unit. He further argues that there is no requirement that all discovery be complete before non-party subpoenas can be issued and there is no requirement for a showing of special circumstances. Board and Key's counsel avers that he spoke to each subpoenaed party and made it clear that he would accommodate reasonable requests to adjourn dates for their convenience.

In reply, Gordon argues that the material sought in the subpoenas does not relate to claims asserted in this litigation, rather, they relate to claims asserted in the proposed counterclaims, which are the subject of Board and Key's motion to amend.

Sweet moves for summary judgment dismissing the complaint insofar as asserted against it. Sweet maintains that as alleged by Gordon, any work performed by Sweet was done between 1983 and 1986 and therefore, because the complaint was instituted in or about June 2010, Gordon's claim asserted against it is barred by the statute of limitations.

In opposition, Gordon argues his claim asserted against Sweet is not time barred because the three year statute of limitations for negligent construction/property damage causes of action instituted by a non-party to the contract pursuant to which construction work was completed begins to run when the injury occurs.

Discussion

Board and Key's Motion to Amend

Pursuant to CPLR 3025, leave to amend a pleading is freely granted absent prejudice or surprise resulting directly from any delay in asserting the proffered claim. The determination of whether to allow the amendment is committed to the court's discretion, and the exercise of that discretion will not be overturned absent a showing that the facts supporting the amendment do not support the purported claim or claims. *See generally Peach Parking Corp. v. 346 W. 40th St., LLC*, 42 A.D.3d 82 (1st Dept. 2007); *Non-Linear Trading Co. v. Braddis Assocs.*, 243 A.D.2d 107 (1st Dept. 1998). Where a

court concludes that an application for leave to amend a pleading clearly lacks merit, leave is properly denied. *Peach Parking Corp. v. 346 W. 40th St., LLC*, 42 A.D.3d 82, 86 (1st Dept. 2007).

Here, the Court denies Board and Key's motion to amend their answer because their application lacks merit. *See IRB-Brasil Resseguros S.A. v. Portobello Intl. Ltd.*, 84 A.D.3d 637 (1st Dept. 2011). Board and Key seek to amend their answer to interpose counterclaims alleging that Gordon breached the alteration agreement and the terms of the condominium's declaration and by-laws by failing to obtain written approval before performing certain work and by performing certain unauthorized work.

However, pursuant to the alteration agreement, Board and Key retained a security deposit from Gordon "as faithful performance of all terms and conditions of this Agreement." They executed a security deposit return agreement with Gordon, whereby they kept a large portion of the security deposit and refunded the remainder, in settlement of any outstanding fees, charges or expenses that the condominium might claim in connection with the alteration, and waiving any claims or actions concerning the security deposit and any charges, costs and fees incurred pursuant to the alteration agreement. They claim that Gordon's work was stopped on several occasions due to either his failure to obtain pre-approval or his performance of unauthorized work, however, Glass and Cummings worked very closely with Gordon and Fratianne and most issues were resolved and work was permitted to continue. Board and Key approved a sign-off of the project as

complete, and indicated that the project was in general conformance with the plans. Only now that Gordon has commenced an action against them, are they claiming that the work was in fact not done in accordance with the terms of the building's by-laws or the alteration agreement. Further, they have not alleged any damages they sustained as a result of Gordon's alleged breaches. Gordon repaired any damage caused to the building by his work, and the Board retained a large portion of the security deposit as compensation for any fees, charges or expenses that it incurred. Whether or not Gordon obtained proper approval or authorization for certain aspects of the project, Board and Key can not now assert these proposed counterclaims because they accepted the work, approved its completion, and executed the security deposit return agreement where they agreed to a mutual release.

Gordon's Cross Motion for Partial Summary Judgment

A movant seeking summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, offering sufficient evidence to eliminate any material issues of fact. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Once a showing has been made, the burden shifts to the opposing party, who must then demonstrate the existence of a triable issue of fact. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980).

The court finds that Gordon has failed to meet his burden of establishing entitlement to summary judgment on his first claim asserted against Board and Key.

Gordon argues that Board and Key were responsible for repairing the damage that occurred on July 31, 2007 because the damage occurred in a common area, and they should have at least reimbursed him after he undertook to repair the damage. However, pursuant to the alteration agreement, Gordon assumed all risk of damage to the building and its mechanical systems, and to persons and property in the building which may have resulted from or have been attributable to the work being performed. The evidence presented establishes that in accordance with these requirements, Fratianne sent a memo to Cummings dated August 8, 2007, only a short while after the incident occurred on July 31, 2007, requesting approval to repair the damage. Gordon immediately sought to repair the damage likely because he wanted to continue with and finish the rest of his renovation project. He can not now seek reimbursement for work that he not only was required to perform pursuant to the agreement, but also undertook to perform only a few days after the incident occurred.

Furthermore, pursuant to the security deposit return agreement, Gordon and Board/Key agreed to a mutual release of any claims or actions concerning the security deposit, which was given as "faithful performance of all terms and conditions" of the agreement, and any charges, costs and fees incurred pursuant to the alteration agreement. The Court notes that Board/Key has argued that the security deposit serves to release Gordon from all claims, yet is only a limited release as to its own claims, and Gordon has argued that the security deposit serves to release Board/Key from all claims, yet is only a

limited release as to his claims. The court finds that the agreement served as a release by Board/Key and Gordon to all claims associated with the performance of the agreement. As such, the court searches the record and grants summary judgment dismissing Gordon's causes of action asserted against Board and Key. *See generally 23 E. 39th St. Mgt. Corp. v. 39th St. Dev., LLC*, 32 Misc.3d 1222A (Sup. Ct. N.Y. Co., 2011).

Further, Gordon's motion seeking summary judgment dismissing Board and Key's first counterclaim and certain affirmative defenses is granted to the extent that the first counterclaim is dismissed, and the remainder of the motion is denied as moot. Further, Gordon's motion seeking a protective order to quash and/or strike certain non-party subpoenas issued by Board and/or Key is denied as moot.

Sweet's Motion for Summary Judgment

Pursuant to CPLR §214(4), the statute of limitations for injury to property based on negligence is three years. Sweet argues that Gordon's claim asserted against it must be dismissed because it is barred by the three year statute of limitations. According to Sweet, the statute of limitations in a cause of action predicated on defective construction begins to run upon the completion of the work, which here, was some time in 1986. Gordon opposes the motion, arguing that the claims are not time barred because the statute of limitations only begins to run at the time of "injury," which here, was on July 31, 2007.

Sweet's argument does not have merit in this context. While Sweet properly notes that a cause of action predicated on defective construction accrues on the date of completion of the actual work, even if the claimed defect is latent, courts have held that such is the case where the claim stems from a contractual or professional relationship between the parties. *See e.g. Rite Aid v. R.A. Real Estate*, 40 A.D.3d 474 (1st Dept. 2007); *Cubito v. Kreisberg*, 69 A.D.2d 738 (2nd Dept. 1979) *affd* 51 N.Y.2d 900 (1980). Courts have held that for the purposes of determining the "accrual date" of the statute of limitations, the owner who retained the allegedly negligent contractor has rights differing from a party outside of that relationship who is injured as a result of that contractor's negligence. *See IFD Construction Corp. v. Corddry Carpenter Dietz*, 253 A.D.2d 89 (1st Dept. 1999). In a situation where a claim for negligent construction is alleged by a party who had no contractual relationship with the contractor or owner at the time of the negligent construction, that claim accrues on the date of injury, which is the date when the claim becomes enforceable. *See e.g. IFD Construction Corp. v. Corddry Carpenter Dietz*, 253 A.D.2d 89 (1st Dept. 1999); *Cubito v. Kreisberg*, 69 A.D.2d 738 (2nd Dept. 1979) *affd* 51 N.Y.2d 900 (1980).

In a case relied upon by Sweet, *City Sch. Dist. v. Hugh Stubbins & Assocs.*, (85 N.Y.2d 535 [1995]), the Court of Appeals clearly explained "an owner's claim arising out of defective construction accrues on date of completion, *since all liability has its genesis in the contractual relationship of the parties* [emphasis added]." *City Sch. Dist.*, 85

N.Y.2d at 538. Here, there was no contractual relationship between Gordon and Sweet, and Gordon, unlike the plaintiff in the above mentioned case, can not be considered a third party beneficiary to the construction contract either. Any purported liability would not have its genesis in any contractual relationship, rather, it would have its basis in the defective construction, which was only realized at the time of the injury. Further, no evidence has been presented that Gordon could have or should have been aware of the defective concrete slab construction. As such, Sweet's motion is denied.

In accordance with the foregoing, it is hereby

ORDERED that defendants Board of Managers of the 18 East 12th Street Condominium and Key Real Estate Associates, LLC's motion to amend their answer is denied; and it is further

ORDERED that plaintiff Anthony J. Gordon's cross motion for partial summary judgment and to dismiss certain affirmative defenses and counterclaim is granted only to the extent that the counterclaim interposed by defendants Board of Managers of the 18 East 12th Street Condominium and Key Real Estate Associates, LLC's in their answer is dismissed; and it is further

ORDERED that plaintiff Anthony J. Gordon's motion for a protective order striking and/or quashing certain non-party subpoenas is denied; and it is further

ORDERED that defendant Sweet Construction Corp. motion for summary judgment dismissing the complaint insofar as asserted against it is denied; and it is further

ORDERED, that upon a search of the record, the complaint insofar as asserted against defendants Board of Managers of the 18 East 12th Street Condominium and Key Real Estate Associates, LLC is dismissed, and the action is severed and shall continue as to the remaining defendants; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

Dated: April 16, 2012
New York, New York

J.S.C.
SALIANN SCARPULLA

FILED
APR 18 2012
NEW YORK
COUNTY CLERK'S OFFICE