Musey v 425 E. 86 Apts. Corp.
2017 NY Slip Op 30184(U)
January 26, 2017
Supreme Court, New York County
Docket Number: 157316/14
Judge: Paul Wooten

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

PRESENT: HON. PAUL WOOTEN **PART** 7
Justice

J. ARMAND MUSEY,
Plaintiff,

INDEX NO. 157316/14

-against-

MOTION SEQ. NO. 002

425 EAST 86 APARTMENTS CORP., DOUGLAS ELLIMAN PROPERTY MANAGEMENT, FRANK CHANEY, PATRICIA CARBON, DAVID MUNVES, MICHAEL CONSIDINE, SUZANNE KEANE a/k/a SUZANNE JULIG, JENNIFER KRUEGER, GEORGE GREENBERG, ALEXANDER SHAPIRO and LESLIE SPITALNICK,
Defendants.

The following papers were read on this motion and cross-motion by defendants to dismiss the complaint and cross-motion by the plaintiff for summary judgment.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits (Memo)	
Reply Affidavits — Exhibits (Memo)	

Cross-Motion: ■ Yes ☐ No

Motion sequence numbers 002 and 003 are consolidated herein for disposition.

In sequence number 002, plaintiff J. Armand Musey (Musey) moves, pursuant to CPLR 2221 and 3025(b), for an order granting leave to reargue portions of this Court's prior Decision and Order dated July 16, 2015 (Prior Order) and to amend the complaint. Defendant 425 East 86 Apartments Corp. (the Co-op) cross-moves, pursuant to CPLR 2221(d), for an Order granting leave to reargue portions of the Prior Order, and, upon reargument, granting summary judgment in the Co-op's favor on the remaining branch of the fourth cause of action. In sequence number 003, the Co-op moves, pursuant to CPLR §§ 2304, 3101, and 3103, for an order quashing Subpoenas Duces Tecum issued to nonparty Shavelson, Neuman &

Company, LLP (Shavelson Neuman), the accounting firm retained by the Co-op, and nonparty Standard Waterproofing Corp. (Standard Waterproofing), the roof repair company retained by the Co-op, and, pursuant to 22 NYCRR § 130-1.1, imposing sanctions equal to reimbursement of the Co-op's attorneys' fees incurred in connection with the instant motions.

BACKGROUND

The relevant substantive and procedural history of this action has been fully set forth in the Prior Order, and will not be repeated here, except as is necessary for clarification.

On February 27, 2013, Musey purchased the stock shares referable to apartment PH-A (the Apartment) and the adjacent terrace or roof space in the building located at 425 East 86th Street in Manhattan (the Building). The Building is owned by the Co-op. Defendant Douglas Elliman Property (Douglas Elliman) is the Building property manager. The individually named defendants are shareholders in the Co-op, and present or former members of the Co-op Board of Directors (Board), during the relevant time period. All claims asserted against the Board members and Douglas Elliman were dismissed by the Prior Order, leaving the Co-op as the sole defendant in this action.

In this action, Musey alleges that, at the time of the negotiations for the sale of the shares appurtenant to the Apartment and at the closing, the Building's roof was undergoing substantial renovation and repair, and Musey's view of the terrace adjoining the Apartment was entirely obstructed by the construction equipment and materials necessary for the roof repair. Musey also alleges that it was not safe for anyone, other than construction workers and licenced professionals, to access the terrace. Musey alleges that the Board verbally assured both his partner, nonparty Margaret Janicek (Janicek), and himself that, when the roof work was completed, they would have a new terrace for their sole enjoyment and use.

In June 2013, the Board contacted Musey, and advised him that it was drafting new House Rules that would affect his plans for the roof space and terrace. Musey alleges that,

pursuant to sections 7 and 10 of the Proprietary Lease (lease), the Co-op was required to deliver the terrace in a form consistent with Musey's intended use, an outdoor space for leisure and entertainment for Musey's exclusive use. Musey alleges that, on July 23, 2013, when the roof construction crew cleared the equipment and materials from the terrace, Musey learned for the first time that the Co-op had not installed a surface appropriate for the use that he intended to make of the terrace, and that he would be required to pay for the installation of such surface. Musey alleges that such acts and omissions by the Board constitute breaches of the lease. Musey also alleges that the Co-op breached the lease when it refused to replace three exterior doors in the Apartment that open onto the terrace.

Upon the Co-op's refusal to renovate the roof and replace the exterior doors, Musey commenced this action, asserting claims against the individual defendant Board members for breach of fiduciary duty and fraud; against the Co-op for a judicial declaration that certain House Rules are null and void, that the terrace should have been delivered in a habitable condition, and that three exterior doors should have been replaced; and against the Co-op and Douglas Elliman for breach of the lease.

Prior to joinder of issue, the Co-op, Douglas Elliman, and the individual defendants moved, and defendant Board member George Greenberg (Greenberg) cross-moved, to dismiss the complaint on a variety of grounds, including statute of limitations, lack of standing, failure to allege actionable tortious conduct against the individual defendants, lack of a fiduciary duty owed by the Board to Musey, and failure to state any legally viable cause of action. Musey cross-moved for summary judgment in his favor on the claims for a declaratory judgment and breach of the lease asserted against the Co-op and Douglas Elliman.

In the Prior Order, the Court granted and denied the motions in part. The Court granted the motions by the Co-op, Douglas Elliman, and the individual defendants, including Greenberg, to the extent that it dismissed all claims asserted against the individual defendants

on the ground that Musey failed to allege actionable tortious conduct by any of them. The Court also dismissed in their entireties the first and second causes of action for breach of fiduciary duty and fraud asserted against the Co-op, on the grounds that those claims should have been commenced pursuant to CPLR Article 78 and that they are time-barred pursuant to the applicable four-month limitations period.

The Court granted summary judgment in favor of the Co-op on that branch of the third cause of action for a judicial declaration that sections of the House Rules are null and void because they violate the terms of the lease relating to the ownership and use of the terrace, holding that branch of the claim to be time-barred. The Court denied summary judgment in favor of either the Co-op or Musey on that branch of the third cause of action for a judicial declaration that the Co-op is solely responsible for the replacement of three exterior doors leading from the Apartment to the terrace and on the fourth cause of action for breach of the lease provision of quiet enjoyment, holding that triable issues existed regarding whether the Co-op or Musey bears sole responsibility for replacement of the doors and for making the terrace fit for its intended purpose. The Court also granted summary judgment in favor of Douglas Elliman, and dismissed all claims asserted against it, on the grounds that Douglas Elliman is not a party to the lease, and, therefore, cannot be held liable in its capacity as managing agent.

Subsequently, in September 2016, Musey commenced a special proceeding pursuant to CPLR Article 78 against the Co-op (*see Musey v 425 E. 86 Apts. Corp.*, Sup Ct, NY County, Index No. 158014/2016).

DISCUSSION

Motion Sequence Number 002

Musey and the Co-op each seek leave to reargue the prior motions for summary judgment on the branches of the third cause of action for a declaratory judgment regarding

who bears sole financial responsibility for installing a protective covering on the roof membrane and for replacing three exterior doors and the fourth cause of action for breach of the lease provision of quiet enjoyment by failing to install an appropriate protective surface on the terrace.

Musey contends that the Court misconstrued the claims, mistakenly characterizing them as untimely attempts to challenge the House Rules. Musey contends that, instead, he seeks to enforce the lease provisions which obligate the Co-op to provide him with exclusive access to a terrace protected by a surface which comports with its intended use.

In opposition, the Co-op contends that the Court did not misapprehend the facts relating to the terrace, and properly granted relief in favor of the Co-op regarding the House Rules. The Co-op also argues that the Court incorrectly denied summary judgment in the Co-op's favor on the branches of the third cause of action regarding the exterior doors and the fourth cause of action regarding breach of the lease, inasmuch as the Court found, in effect, that the House Rules were enforceable.

Musey's motion for leave to reargue is denied.

> "A motion for reargument, addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law. Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided" (*Foley v Roche*, 68 AD2d 558, 567 [1st Dept 1979]; *Belrose Fire Suppression, Inc. v Stack McWilliams, LLC*, 51 AD3d 485, 485 [1st Dept 2008]; *see* CPLR 2221[d]).

Reargument does not "serve to provide a party an opportunity to advance arguments different from those tendered on the original application. It may not be employed as a device for the unsuccessful party to assume a different position inconsistent with that taken on the original motion" (*Foley v Roche*, 68 AD2d at 567-568).

In granting summary judgment in favor of the Co-op on the branch of the third cause of

action for a declaration relating to the terrace, the Court reviewed the relevant portions of the complaint, the lease terms, the House Rules, and the Co-op's previous course of conduct. In the complaint, Musey seeks a declaration that the Co-op bears sole responsibility for renovating the adjacent terrace in order to make it habitable. The lease provides that the lessee of a penthouse with an adjacent roof or terrace "shall have and enjoy the exclusive use of" that space, subject to regulations prescribed by the Board "from time to time" (lease § 7). The House Rules prescribed by the Board and incorporated into the lease at section 13, when read as a whole, provide that all costs incurred in protecting the roof membrane installed by the Co-op are the sole responsibility of the lessee. The Court also reviewed the use made of the terraces by the previous lessee of the Apartment and by Greenberg, the only other lessee of a penthouse apartment with an adjacent terrace, noting that, when Greenberg upgraded that terrace in 1990, he did so at his own expense and pursuant to an agreement with the Co-op.

The Court held that "[i]t is only plaintiff's reading of the proprietary lease that would oblige [the Co-op] to favor him as it has no other owner. The Court cannot declare adherence to an agreement that does not exist" (Prior Order at 9). The Court also held that granting the declaratory relief sought in the third cause of action relating to the terrace would require voiding the House Rules that pertain to the terrace use and maintenance obligations of the Co-op and each shareholder. The Court held that any challenge to the House Rules "must be undertaken by an Article 78 proceeding," granted the Co-op's motion in part, and dismissed that branch of the third cause of action for a declaration regarding financial responsibility for roof and terrace renovations as time-barred.

Musey has failed to demonstrate that the Court misapprehended the facts set forth in the prior motions. The law and documents are clear and unambiguous with regard to the terrace adjacent to each penthouse apartment. The lease terms are governed by the House

Rules, which provide that the lessee bears sole financial responsibility for protecting the roof membrane from the consequences of the lessee's use of the terrace.

Musey's reliance on *Shapiro v 350 E. 78th St. Tenants Corp.* (85 AD3d 601 [1st Dept 2011]) is misplaced. The lease at issue in *Shapiro* provided, in relevant part, that "'the Lessee shall have and enjoy the exclusive use of the . . . roof and/or that portion of the roof appurtenant to the penthouse, subject to the applicable portions of this lease'" (*id.* at 601). Similarly, here, the lease provides that Musey "shall have and enjoy the exclusive use of the terrace or balcony or that portion of the roof appurtenant to the penthouse, subject to the applicable provisions of this Lease" (lease § 7).

Significantly, however, unlike the *Shapiro* lease, the lease here provides that such use is subject to regulations prescribed by the Board from time to time (*see id.*). As discussed above, the Board prescribed regulations that directly affect Musey's use of the terrace, by requiring him, as the lessee of an apartment with an adjoining roof space, to pay for the renovations to render that space fit for the use Musey envisioned.

The *Shapiro* decision is also distinguishable on the ground that the *Shapiro* plaintiff had covered the roof space adjacent to her apartment with wooden decking, furniture, and planters, with the defendant board of director's approval, and removed them upon the request of the board in order to facilitate the inspection of, and repairs to, the roof below her decking (*see id.*). Once the decking was removed, a qualified expert determined that the roof was not structurally sound, and could not withstand the weight of the materials previously installed by the plaintiff (*see id.* at 602). The defendant then banned the plaintiff from walking on the roof (*see id.*). The Court concluded that the defendant improperly failed to repair the roof to enable the plaintiff to use it as she had before, and that such failure deprived the plaintiff of her quiet enjoyment of the roof (*see id.* at 602-603).

Here, Musey contends that the Co-op refused to protect the roof membrane in such a

way as to permit Musey to use the roof as an entertainment terrace space. Significantly, however, Musey does not contend that he previously used the roof space as a terrace, that he removed his property from the roof at the Co-op's request, or that the Co-op banned him from renovating the roof space. Therefore, the *Shapiro* decision does not apply here.

For the foregoing reasons, that branch of Musey's motion for leave to reargue is denied.

That branch of the Co-op's cross motion for leave to reargue is granted in part and denied in part. Reargument is granted on that branch of the Co-op's prior motion for summary judgment on that branch of the fourth cause of action for breach of the lease provision of quiet enjoyment, and, upon reargument, summary judgment on that branch is granted in favor of the Co-op.

As discussed above, the House Rules are expressly incorporated into the lease, and the lease terms are expressly made "subject to" those Rules (*see* lease §§ 7, 13). Together, the lease and the House Rules operate to contractually obligate Musey, as a penthouse apartment lessee, to pay for the renovation of the roof space into a terrace space usable as an entertainment area. In the Prior Order, the Court determined that any challenge to the House Rules must be made in a CPLR Article 78 special proceeding, and that any such challenge made in the instant action are untimely. For these reasons, the House Rules remain in full force and effect, and govern any disputes between Musey and the Co-op regarding renovation and use of the roof space.

For the Court to grant the relief Musey seeks in the fourth cause of action, it would be forced to disregard the plain meaning of the relevant lease terms and the House Rules and, instead, rewrite them. "[A] court should not rewrite the terms of an agreement under the guise of interpretation" (*FCI Group, Inc. v City of New York*, 54 AD3d 171, 177 [1st Dept 2008] [internal quotation marks and citation omitted]).

Reargument is denied on that branch of the Co-op's prior motion for summary judgment on that branch of the third cause of action for a declaration regarding who bears the financial responsibility for replacing the three exterior doors leading from the Apartment to the terrace space.

In the Prior Order, the Court denied summary judgment in favor of either Musey or the Co-op on that claim, holding that the issue of who bears financial responsibility for the replacement of the exterior doors is fact sensitive. The Court noted that the Co-op voluntarily agreed to replace one of the three doors, at its own expense. The Court held that the Apartment's prior owner's replacement of the doors, at her own expense, might have converted them into the personal property of that shareholder and all her successors in interest, including Musey. The Co-op has not demonstrated that the Court has misapplied the relevant law or misapprehended or overlooked the relevant facts with regard to that branch of the prior motion.

Next, Musey seeks leave to amend the complaint to further define the claims previously asserted and to add claims against the Co-op for breach of contract, breach of the implied warranty of habitability, declaratory relief, and injunctive relief. In opposition, the Co-op contends that portions of the proposed amended complaint are barred by the doctrine of law of the case, and that, even deeming the facts alleged in the proposed pleading to be true, the proposed claims do not state any cognizable cause of action.

Leave to amend the complaint is denied. While leave to amend a pleading must be freely granted, "[w]here the proposed amended pleading is palpably insufficient or patently devoid of merit, or where the delay in seeking the amendment would cause prejudice or surprise, the motion for leave to amend should be denied" (*Lucido v Mancuso*, 49 AD3d 220, 229 [2d Dept 2008]; *Silver v Murray House Owners Corp.*, 126 AD3d 655, 656 [1st Dept 2015]; *see* CPLR 3025 [b]).

In the proposed breach of contract claim, Musey alleges that, on February 27, 2013, he and the Co-op entered into a valid contract, the lease for the "unit," consisting of the Apartment and the appurtenant terrace. Musey alleges that the lease accords him the right to exclusively occupy the Apartment and terrace, and sets forth the rules and regulations governing his rights as a shareholder in the Co-op. Musey further alleges that the Co-op breached section 7 of the lease by failing and refusing to provide him with a terrace usable for its intended purpose and for his exclusive enjoyment. He also alleges that the Co-op breached sections 10 and 25 of the lease by hindering his quiet enjoyment of the terrace and by failing to restore the terrace to its proper and usual condition following completion of the roof work. Musey alleges that he performed all of the obligations imposed upon him by the lease. On these allegations, Musey seeks to recover compensatory damages in excess of $250,000, together with attorneys' fees, pursuant to the lease terms and Real Property Law § 234.

The proposed contract claim is barred by the doctrine of law of the case. That doctrine is an "articulation of sound policy that, when issue is once judicially determined, that should be the end of the matter as far Judges and courts of co-ordinate jurisdiction are concerned" (*Tischler v Key One Corp.*, 67 AD2d 886, 886-887 [1st Dept 1979]).

In the Prior Order, the Court held that any challenge to the House Rules must be made in a special proceeding, and were time-barred at the time that Musey commenced the instant action. The Court then determined that Musey is not entitled to a declaration directing the Co-op "to take all actions required to make the terrace habitable, including . . . the installation of flooring surface over the terrace membrane enabling it to withstand ordinary expected use" (Prior Order at 9).

Inasmuch as the lease provisions upon which Musey relies in the proposed contract claim are subject to the House Rules enacted by the Board, the proposed contract claim is barred by the doctrine of law of the case, and, therefore, is without merit. For that reason,

leave to amend the complaint to add the proposed contract claim is denied.

Leave to amend is also denied with respect to the proposed claims for a judicial declaration and an injunction. In those claims, Musey seeks a declaration that the Co-op is obligated by the lease to renovate the roof space and to replace the exterior doors and an injunction directing the Co-op to perform those acts.

"If the complaint states the substance of a bona fide justiciable controversy which should be settled, a cause of action for a declaratory judgment is stated" (*Metropolitan Package Store Assn. v Koch*, 89 AD2d 317, 322 [3d Dept 1982]). To demonstrate entitlement to a preliminary injunction directing a party to perform a particular act or requiring a party to refrain from certain behavior, the plaintiff must demonstrate that it is likely to succeed on the merits of the claim, that absent an injunction, it will suffer irreparable injury that cannot be compensated by money damages, and that the equities weigh decidedly in favor of the plaintiff (*W. T. Grant Co. v Srogi*, 52 NY2d 496, 517 [1981]; *Coinmach Corp. v Fordham Hill Owners Corp.*, 3 AD3d 312, 314 [1st Dept 2004]; *see* CPLR 6301).

As held above, the lease and incorporated House Rules do not obligate the Co-op to renovate the roof and render it usable as a terrace at its own expense. A declaration to that effect has already been rendered, inasmuch as this Court has held such claims to be untimely asserted. Therefore, a justiciable controversy no longer exists, and the branches of Musey's proposed claims regarding financial responsibility for his intended roof renovations are moot.

As held above, the claims concerning financial responsibility for replacement of the exterior doors present triable issues sufficient to preclude summary judgment in favor of either party. Those claims were not dismissed in the Prior Order, and remain part of this action. Therefore, the branches of the proposed claims concerning the exterior doors are duplicative, and no need for amendment exists.

In addition, the equitable relief sought by Musey in the proposed claims serves no

practical or useful purpose, inasmuch as monetary relief would restore the benefit of his bargain, as evidenced by the contract claim in which he seeks to recover $500,000 in compensatory damages. Where the plaintiff has a remedy at law, extraordinary equitable relief in the form of a declaration or an injunction will not be granted (*see Regini v Board of Mgrs. of Loft Space Condominium*, 107 AD3d 496, 497 [1st Dept 2013]).

For the foregoing reasons, the proposed claims for a declaratory judgment and an injunction are without merit, and, therefore, that branch of Musey's motion for leave to amend the complaint to add those proposed claims is denied.

Similarly denied is leave to amend the complaint to assert a claim for breach of the implied warranty of habitability.

> "In every written or oral agreement for residential premises the landlord or lessor shall be deemed to covenant and warrant that the premises so leased or rented and all areas used in connection therewith in common with other tenants or residents are fit for human habitation and for uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety" (Real Property Law § 235-b [1]).

That warranty was not intended to address every aspect of a tenancy; rather, it was intended to address only those conditions that may materially threaten the health and safety of the tenant or deprive the tenant of an essential function of the leased residence (*see Park W. Mgt. Corp. v Mitchell*, 47 NY2d 316, 327-328 [1979]).

Musey does not allege that his health or safety has been materially adversely impacted, as a result of the Co-op's failure to renovate the terrace to render it usable as an outdoor entertainment area and to replace the exterior doors. Therefore, the proposed contract claim is palpably without merit.

Motion Sequence Number 003

The Co-op seeks an order quashing the 2015 amended Subpoenas Duces Tecum

issued by Musey to nonparties Shavelson Neumann, the Co-op's accountant, and Standard Waterproofing, the Co-op's roofer. The Co-op contends that these subpoenas are overbroad, oppressive, and bear no relation to the issues remaining in this action. The Co-op seeks an order imposing sanctions against Musey and his attorneys equal to the amount of attorneys' fees incurred by the Co-op in moving to quash.

In opposition, Musey contends that the information he seeks is pertinent to the claims asserted in the complaint and in the proposed amended complaint.

That branch of the motion to quash the subpoenas is granted. Such motions are granted where, as here, the subpoena at issue is overbroad, and seeks material and information irrelevant to the action (*see Humphrey v Kulbaski*, 78 AD3d 786, 787-788 [2d Dept 2010]; *Matter of Reuters Ltd. v Dow Jones Telerate*, 231 AD2d 337, 342-345 [1st Dept 1997]). Such motions are also granted where, as here, the party issuing the subpoena fails to demonstrate that the information sought from the nonparty could not be obtained from the parties (*see Schorr v Schorr*, 113 AD3d 490, 491 [1st Dept 2014]; *Menkes v Beth Abraham Servs.*, 89 AD3d 647, 647 [1st Dept 2011]).

With the Shavelson Neumann subpoena, Musey seeks production of all documents, including contracts, correspondence, reports, and memoranda, generated from January 2, 2010 to the present relating to the Co-op's annual audited financial statements, allocation of shares of the Co-op, façade and roof renovation project, and replacement of the Apartment's exterior doors.

However, while the subpoena is addressed to Shavelson Neuman, it commands that firm to appear and give testimony on behalf of Standard Waterproofing. Therefore, the subpoena is fatally defective, and without force or effect.

With the Standard Waterproofing subpoena, Musey seeks production of all documents, including contracts, correspondence, reports, memoranda, invoices, generated from January

2, 2010 to the present relating to any work performed by Standard Waterproofing on the Building. None of the material or information sought from Standard Waterproofing has any bearing on the issues remaining in this action. In addition, Musey has failed to show that he could not obtain the information sought during party discovery. Party discovery has not yet commenced in this action.

Lastly, that branch of the Co-op's motion for the imposition of sanctions equal to the Co-op's reasonable legal fees, costs and disbursements incurred in defending a frivolously maintained action is denied. Part 130 of the Rules of the Chief Administrator empowers the courts to impose sanctions upon an attorney or a party for engaging in frivolous conduct, which includes conduct: "(1) completely without merit in law; (2) undertaken primarily to... harass or maliciously injure another; or (3) assert[ing] material factual statements that are false" (*see* 22 NYCRR § 130-1.1[c][1]-[3]; *Tavella v Tavella*, 25 AD3d 523, 524 [1st Dept 2006]). "Conduct which violates any of the three subdivisions is grounds for the imposition of sanctions" (*DeRosa v Chase Manhattan Mtge. Corp.*, 15 AD3d 249, 249 [1st Dept 2005]). Conduct can only be found frivolous, and, therefore, sanctionable, where "it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law" (22 NYCRR § 130-1.1 [c] [1]). Although Musey's arguments were not persuasive, they were not so completely without merit so as to be frivolous, as that word is defined by 22 NYCRR § 130-1.1 (*see Lewis v Stiles*, 158 AD2d 589, 590-591 [2d Dept 1990]).

CONCLUSION

Accordingly, it is hereby

ORDERED that motion sequence number 002 by plaintiff J. Armand Musey to reargue and to amend is denied in all respects; and it is further,

ORDERED that the cross-motion by defendant 425 East 86 Apartments Corp. is

granted to the extent that reargument is granted on the branch of the prior motion for summary judgment on the branch of the fourth cause of action for a declaration regarding who bears sole financial responsibility for renovation the terrace space, and, upon reargument, summary judgment in favor of that defendant is granted on that branch of that cause of action, and the cross-motion is otherwise denied; and it is further,

ORDERED that motion sequence number 003 by defendant 425 East 86 Apartments Corp. is granted to the extent that the August 27, 2015 subpoenas issued by plaintiff to nonparties Shavelson, Neuman & Company, LLP and Standard Waterproofing Corp. are quashed, and the motion is otherwise denied; and it is further,

ORDERED that counsel for 425 East 86 Apartments Corp. is directed to serve a copy of this Order with Notice of Entry upon all remaining parties.

This constitutes the Decision and Order of the Court

Dated: 1/26/17

PAUL WOOTEN ***J.S.C.***

Check one: ☐ **FINAL DISPOSITION** ■ **NON-FINAL DISPOSITION**

Check if appropriate: ☐ **DO NOT POST** ☐ **REFERENCE**