

Avramides v 319 E. 50 St. Owners Corp.

2017 NY Slip Op 30362(U)

February 24, 2017

Supreme Court, New York County

Docket Number: 155420/2015

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

attorneys fees shall be granted.

By the so-ordered Settlement Agreement dated March 19, 2015 in 319 East 50th Street Owners Corp v Avramides, Index No. 160357/2014, plaintiff herein expressly released defendants from any claims in connection with the drainage system that was the subject of such lawsuit. See Pappas v Tzolis, 20 NY3d 228 (2012). Such terms of the Settlement Agreement bar the herein action. In addition, as the claims at bar arise from the claims plaintiff released in such agreement, defendants are entitled to recover from plaintiff the attorneys fees they incurred in this action, as the provisions of the agreement that require that plaintiff indemnify defendants, explicitly include attorneys fees. See Sina Drug Corp v Mohyuddin, 122 AD3d 444, 445 (1st Dept 2014).

To the extent that plaintiff alleges a shareholder derivative claim, his amended verified complaint sets forth no particularized facts that show the individual defendant directors were interested or lacked independence, and therefore his complaint is insufficient as to the element of futility that is required to excuse his failure to make a demand on the board of directors prior to commencing a derivative action. See Korsinsky v Winkelreid, 143 AD3d 427 (1st Dept 2016).

Finally, this court agrees with defendants that the

complaint fails to state a cognizable claim against any of the individual directors, as it does not allege any "individual wrongdoing by the individual defendants, who are members of the cooperative board of directors, separate and apart from their collective actions on behalf of the cooperative" (Granirer v Bakery, Inc., 54 AD3d 269, 272 [1st Dept 2008]).

Accordingly, it is

ORDERED that the motion of defendants to dismiss the complaint is granted pursuant to CPLR 3211(a)(5) and (7); the application of the defendants to recover attorneys fees from plaintiff is granted and severed and shall continue; and the Clerk shall enter judgment dismissing the Amended Verified Complaint; and it is further

ORDERED that the issue attorney fees to be assessed against plaintiff Michael Avramdides is referred to hear and report pursuant to CPLR 4320 to a Special Referee and that within 60 days from the date of this Order the defendants shall cause a copy of this order with notice of entry, including proof of service thereof, to be filed with the Special Referee clerk (Room 119M, 646-386-3028 or spref@courts.state.ny.us) to arrange a date for a reference to hear and report pursuant to CPLR 4320 and for placement at the earliest convenient date upon the calendar of the Special Referees Part; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts.

This is decision and order of the court.

Dated: February 24, 2017

ENTER:

~~Neto P. James~~
DEBRA A. JAMES J.S.C.