[* 1]

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

PRESENT: HON. JUDITH J. GISCHE PART 10

Justice

Index Number : 108432/2009

BEEKMAN REGENT CONDOMINIUM

VS.

BAUER, GERI

SEQUENCE NUMBER : 003

DISQUALIFY COUNSEL

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. 003

MOTION CAL. NO. _____

this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☒ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION.

Dated: August 1, 2011

HON. JUDITH J. GISCHE J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG. ☐ SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 10

----------x

Board of Managers of the Beekman Regent Condominium acting on behalf of the unit owners of the Beekman Regent Condominium,

Plaintiff (s),

-against-

Geri Bauer, Palisades Collection, LLC, New York City Environmental Control Board, "John Doe" and "Jane Doe,"

Defendant (s).

----------x

Geri Bauer,

3rd Party Plaintiff,

-against-

Beekman International Center, LLC,

3rd Party Defendant.

---------- x

In the matter of the application of
Geri Bauer,

Petitioner,

-against-

Board of Manager of the Beekman Regent Condominium,

Respondent.

DECISION/ ORDER
Index No.: 108432/09
Seq. No.: 003

PRESENT:
Hon. Judith J. Gische

T.P. Index No.
5905[illegible]

Index No.
114859/09

Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of this (these) motion(s):

Papers	**Numbered**
Bauer n/m (disqualify) w/amended notice, ED affirm, exhs	1,2
Board and Sponsor x/m (3212, sanctions, preclude) w/DBK affirm,	

GS, DH affids, exhs (w/sep volume) 3, 4
Bauer opp to x/m w/GB affid, exhs 5
Board & Sponsor in further support and sur-reply w/DH affid, exh . . . 6
Bauer sur reply w/DBK affirm 7
Steno Minutes 3/3/11 8

Upon the foregoing papers, the decision and order of the court is as follows:

GISCHE J.:

This is an action by plaintiff, the Board of the Beekman Regent Condominium ("Board") against Geri Bauer ("Bauer"), the fee owner of residential unit 10D at the building located at 351 East 51st Street, New York, New York. The other defendants are nominally named. The Board contends, among other things, that Bauer has outstanding, unpaid common charges, fines and other fees since March 2002 and that those unpaid charges are in the principal sum of $129, 414.21. The Board is looking to foreclose its lien pursuant to RPL § 339-aa.

Bauer has answered the complaint and asserted counterclaims against the Board for breach of the condominium documents, claiming that the Board has (among things) failed to obtain a permanent certificate of occupancy for the building and improperly maintained the common elements. Bauer has commenced a third party action against Beekman International Center, LLC, the sponsor of the condominium ("Sponsor"). Bauer is also the petitioner in an Article 78 summary proceeding against the Board for nullification of amendments the Board made to the condominium documents (In the Matter of Bauer -v- Board of Managers of the Beekman Regent Condominium, Index No. 114859/09) ("Article 78"). By prior order of this court dated June 28, 2010, the Article 78 was consolidated with this action under Index no.

108432/09.

Presently before the court is Bauer's motion for the disqualification of the Law Firm of Rosen Livingston & Cholet, LLP ("RLC") from representing the Board and the Sponsor on the basis that it is an inherent conflict of interest for RLC to simultaneously represent both those parties. The second branch of Bauer's motion, for access to the books and records of the condominium, was resolved when the parties appeared to argue their motion. The stipulation was set forth on the record (Steno Minutes, 3/3/11). Therefore, this branch of the Board and Sponsor's motion is granted to the extent of the parties' transcribed stipulation.

The Board and Sponsor oppose the disqualification motion and have cross moved for summary judgment dismissing Bauer's counterclaims and the petition in the Article 78 proceeding. They also seek the imposition of sanctions on Bauer (CPLR 3126) for not providing discovery and for bringing this allegedly frivolous motion to disqualify. Bauer opposes the cross motion in its entirety. Hereinafter, any reference to "defendants" shall mean the Board and the Sponsor, unless otherwise specified.

Since issue has been joined in the plenary action, summary judgment relief is available (CPLR § 3212 [a]; Myung Chun v. North American Mortgage Co., 285 AD2d 42 [1st Dept 2001]). Although, as discussed at greater length later in this decision, the applicable standard for a motion to deny a petition and dismiss an Article 78 summary proceeding is somewhat different, that motion will be decided on the merits as well.

Background, Arguments and Facts

The Board contends that Bauer has repeatedly violated the rules and regulations of the residential condominium by-laws and declaration (hereinafter "condominium

documents") by failing to provide its managing agent with a key to her unit and not paying common charges or paying them sporadically. Some of the unpaid common charges are attributable to a $500 a day fine being imposed on Bauer because of her (alleged) refusal to provide management with the key. The fines date back to 2004.

Bauer argues that RLC should be disqualified from representing the Sponsor and the Board because the defendants have different interests. Thus, according to Bauer, so long as the Board and Sponsor are jointly represented, the Board will not act to protect the rights and interests of the unit owners, which is a breach of its fiduciary duty.

The Board denies that there is any conflict of interest in both defendants having the same attorneys because Bauer has only asserted one claim against both the Board and Sponsor, which is that they have failed to obtain a permanent certificate of occupancy ("CO") for the building and only have a temporary CO. The Board and Sponsor argue that as to that claim, defendants have the same objectives and legal position which is that there is no additional work to performed by either defendant in order to obtain a permanent CO.

In response to these arguments, Bauer alleges that this only underscores that the defendants "act as one and the same," even sharing the same accountant and that by having the same counsel, the Board remains "under great pressure" from the Sponsor, acting its alter-ego.

The defendants seek summary judgment dismissing Bauer's counterclaims against the Board in the plenary action, her claims against the Board in the petition and her claims against the Sponsor in the third party action. The counterclaims asserted in this action (against the Board only) are as follows:

1st, 2nd, 3rd counterclaims - damages arising from the alleged failure to obtain the permanent CO.

4th, 5th counterclaims- failure to make repairs to necessary building systems and common elements; also failure to insure working vents, electricity, etc., in her individual unit.

6th counterclaim - "retaliation" in the form of "late fees" which are levied illegally and usurious; equitable relief sought - declaration that the late fees imposed are illegal, null and void.

7th counterclaim - $200,000 in damages with prejudgment interest

8th counterclaim - permanent injunction against Board bringing any action against Bauer to evict or eject her; also to find that by refusing to make repairs and taking other actions, the Board has forfeited the right to collect common charges, special assessment or fees.

9th counterclaim - production of condominium books and records.

10th counterclaim - breach of fiduciary duty by failing to enforce the condominium documents.

11th counterclaim - declaratory judgment that the vote and actions taken at the April 2009 unit owner annual meeting, amending the bylaws are invalid.

The Article 78 petition, which is only against the Board, contains the following claims:

1st cause of action - to annul the action taken at the April 2009 unit owner annual meeting

2nd cause of action - to compel inspection of the condominium books and records

In her third party action, which is against the Sponsor only, Bauer asserts three causes of action, the 1st cause of action is for breach of contract based upon the Sponsor abandoning its contractual obligations under the offering plan by, among other things, letting it lapse; the 2nd cause of action, which is brought derivatively on behalf of all unit owners, is that the Sponsor has breached its contract with all the units owners who bought units in the building; the 3rd cause of action asserts that by failing to obtain a permanent CO for the building, the Sponsor has violated the applicable law, statutes, etc., and breached its contract with Bauer.

The Board and Sponsor each argue that the fact that closings have taken place, and lenders are willing to extend mortgages to purchasers interested in buying units at the building shows that there are no legal issues with respect to occupancy of the units. Defendants point out the temporary CO has been regularly renewed by the New York City Department of Buildings, certifying that the building is safe for occupancy because it meets all applicable laws, rules and regulations for residential occupancy. Furthermore, according to defendants, Bauer has failed to identify what her damages are because no law suits have been commenced nor have any fines, etc., been levied against the defendants or the building it does not have a permanent CO.

Defendants also deny that it is their responsibility to obtain the permanent CO, but even if it is, the only delay is due to some recent construction in connection with a pharmacy opening in the commercial store at street level. Defendants cite the decision of Hon. Alice Schlesinger in an action brought by the Sponsor against its surety[1]

---

[1]The surety is United States Fire Insurance Company, the insurance company for IDI Construction, the general contractor that renovated the building for the Sponsor

(Beekman International Center, Inc. v. United States Fire Insurance Company, Index No.116868/04). In her decision dated January 19, 2005, Judge Schlesinger ordered that the surety company had to install a water meter at the building and once it had done so, the surety had "to apply for a permanent certificate of occupancy ...and that will be defendant's [the surety's] obligation." They argue further that, even if it is the Board's ultimate responsibility to obtain a permanent CO, there is no time frame or deadline by which it has to be done.

Defendants also argue that Bauer has no claim for failure to maintain the common elements because the conditions she describes and the items she claims have not been repaired are her responsibility because they are a part of her unit. For example, the electricity failing in the master bedroom, no working vent in her bathroom, toilet running in the second bathroom and improperly working temperature controls, and problems with the air conditioning units. The Board denies that the offering plan requires that the bike room be ventilated or that it ever made a representation that it would be ventilated.

The Board contends that the April 2009 annual meeting was properly held and that all the unit owners had the right to vote on the proposed amendment which Bauer claim is invalid. The Board also contends that the other fees that were imposed for violations of the by-laws (i.e. late fees) could have been enacted by the Board, even without holding a meeting and vote.

Defendants also assert statute of limitations arguments, arguing that Bauer's

---

at a cost of more than $37 million.

breach of contract are time barred because she entered into the purchase contract with the Sponsor in 2000 but she did not assert her (counter)claims until this action was commenced in 2009. Defendant also deny that Bauer has any right to bring a derivative breach of contract claim on behalf of "all the unit owners," arguing that contractual rights must be based on privity.

Discussion

Disqualification

A motion for disqualification presents competing concerns. On the one hand, there is an interest in avoiding even the appearance of impropriety. On the other hand, however, there is a concern that such a motion can become tactical "derailment" weapon for strategic advantage in litigation, thereby depriving a party's right to representation by counsel of its choice (S & S Hotel Ventures Ltd. Partnership v. 777 S.H. Corp., 69 N.Y.2d 437, 443 [1987]).

Rule 1.7 (a) (1) of the Rules of Professional Conduct prohibit an attorney from representing a client "if the representation will involve the lawyer in representing differing interests..." However, "[notwithstanding] the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

> (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing.

Bauer has failed to establish that the Board and Sponsor have differing interests,

but even if they do, defendants' counsel has satisfied the requirements set forth in Rule 1.7 (b) which permit RLC's continued defense of the Board and the Sponsor. The sworn affidavits provided by defendants attest that the Board and Sponsor are united on the permanent CO claim asserted by Bauer against them and that they are confident they can vigorously and competently represent both defendants without any conflict of interest. This belief expressed by RLC is reasonable, the representation is not prohibited by law, there are (at the present time) no cross claims between the Board and Sponsor and each defendant has consented to RLC's continued representation.

Arguments by Bauer, that the Board is simply an alter ego of the Sponsor and that joint legal representation should not be countenanced, distort the purpose of the Rules of Professional Conduct. They are intended to protect the client from unscrupulous lawyers. It is for Bauer to prove her (counter)claims that the Board is being dominated by the Sponsor. Disqualification of counsel cannot be used to bootstrap her claim and, therefore, Bauer's motion to disqualify RLC is denied.

Since the issue of disqualification has been decided, the court turns to the joint cross motion by the defendants for summary judgment dismissing Bauer's counterclaims and Article 78 claims against the Board as well as her 3rd party claims against the Sponsor.

Summary Judgment

On this motion for summary judgment, the defendants bear the initial burden of setting forth evidentiary facts to prove their prima facie case that would entitle them to judgment in their favor, without the need for a trial (CPLR § 3212; Winegrad v. NYU Medical Center, 64 N.Y.2d 851 [1985]; Zuckerman v. City of New York, 49 N.Y.2d 557,

562 [1980]). Only if this burden is met, will it then shift to the plaintiff who must then establish the existence of material issues of fact, through evidentiary proof in admissible form, that would require a trial of this action (Zuckerman v. City of New York, *supra*). If defendants fail to make out their prima facie case for summary judgment, however, then the motion must be denied, regardless of the sufficiency of the opposing papers (Alvarez v. Prospect Hospital, 68 N.Y.2d 320 [1986]; Ayotte v. Gervasio, 81 N.Y.2d 1062 [1993]).

Since an Article 78 proceeding is a special proceeding, it may be summarily determined upon the pleadings, papers, and admissions to the extent that no triable issues of fact are raised (CPLR § 409 [b]; CPLR §§ 7801, 7804 [h]). Thus, much like a motion for summary judgment, the court should decide the issues raised on the papers presented and grant judgment for the prevailing party, unless there is an issue of fact requiring a trial (CPLR § 7804 [h]; York v. McGuire 1984, 99 A.D.2d 1023 *aff'd* 63 N.Y.2d 760 [1984]; Battaglia v. Schumer, 60 A.D.2d 759 [4th Dept 1977]).

At the outset, the issue of whether any of the claims asserted by Bauer against either defendant is time barred must be decided. Bauer purchased her apartment in 2000 and closed in 2002. According to Bauer, her claims against the Sponsor are timely because its obligation to obtain a permanent CO is an ongoing obligation. This argument is based upon the "Rights and Obligations of Sponsor: Sponsor's Obligations with Respect to the Building." In relevant part, subsection (b) provides as follows:

> Sponsor will obtain a temporary or permanent certificate of occupancy for the Building. A permanent Certificate of Occupancy is required for permanent residential use of the Building and the Residential Units. Temporary residential use of the Building is permitted upon the

> issuance of a temporary Certificate of Occupancy, but if a temporary Certificate of Occupancy, which may be extended up to a total of two years, expires prior to obtaining a permanent Certificate of Occupancy, residential occupancy of the condominium will be in violation of the Dwelling Law . . . Sponsor makes no representation or guarantee that the Department of Buildings will issue a permanent certificate of occupancy within two (2) years after the issue of the first temporary certificate of occupancy. In the event that Sponsor does not obtain a permanent Certificate of Occupancy for the Building, the Condominium Board will be obligated to obtain the permanent certificate of occupancy and any costs associated therewith could be assessed against all Unit Owners as a Common Expense.

Subsection (c) further provides that:

> If Sponsor fails to obtain a permanent Certificate of Occupancy for the Property prior to the First Closing, Sponsor will be obligated to (1) direct the Escrow Agent to hold and maintain those monies received . . . in a special trust account . . .

Where a duty imposed prior to a limitations period is a continuing one, the statute of limitations is not a defense to actions based on breaches of that duty occurring within the limitations period (Westchester County Correction Officers Benev. Ass'n, Inc. v. County of Westchester, 65 A.D.3d 1226 [2nd Dept. 2009]). Thus, each breach may begin the running of the statute anew such that accrual occurs continuously and plaintiffs may assert claims for damages occurring up to six years prior to filing of the suit (Sirico v. F.G.G. Productions, Inc., 71 A.D.3d 429 [1st Dept 2010] internal citations omitted). Assuming, as argued, by Bauer, that the Sponsor (and/or the Board) have an ongoing obligation to obtain a permanent CO, but have failed to do so, preferring instead, to continue renewing the temporary CO, then the statute of limitations starts to run as of the date when a demand for performance could have been

made (*see*, Transpacific S.S. Co. v Marine Office of America, 6 Misc. 2d 881, 884 [Sup Ct, NY County 1957] *aff'd* 5 AD2d 860 [1st Dept 1958] *app den* 5 AD2d 982 [1958]). Since there is no permanent CO and the temporary CO is renewed each time it expires, Bauer's claims against the Sponsor (and/or Board) for failure to obtain a permanent CO, regardless of whether asserted as a counterclaim, 3rd party claim or cause of action in the Article 78 petition, are not time barred. Therefore, the joint motion by the Sponsor and Board to dismiss Bauer's claims for that reason is denied.

The court has also considered defendants' argument, that they have no obligation to obtain a permanent CO because Judge Schlesinger has decided it is the responsibility of the Sponsor's surety to do so. This argument is rejected and not a defense to Bauer's claims against them as Bauer has no legal relationship with the surety.

Although the 3rd cause of action in the 3rd party action (i.e. related to the permanent CO) survives defendants' motion for summary judgment, defendants have raised valid arguments that the other two causes of action asserted by Bauer do not arise from, nor are they conditioned upon, the liability asserted her in the main action (BBIG Realty Corp. v. Ginsberg, 111 A.D.2d 91 [1st Dept. 1985]). The Board's claims against Bauer are based upon her alleged violations of the bylaws, i.e. her alleged refusal to provide a pass key for her unit and nonpayment of common charges. Bauer's third party claims against the Sponsor, that it abandoned its contractual obligations under the offering plan by, among other things, letting it lapse (1st cause of action) and that the Sponsor breached its contract with all the units owners who bought units in the building (2nd cause of action).

Pursuant to CPLR 1007, once issue has been joined, the "defendant may proceed against a person not a party who is or may be liable to that defendant for all or part of the plaintiff's claim against that defendant." The salutary goal of third-party practice is to avoid "multiplicity and circuity" of actions and to resolve the issues of "primary liability as well as the ultimate liability in one proceeding, whenever convenient" (George Cohen Agency, Inc. v. Donald S. Perlman Agency, Inc., 51 N.Y.2d 358 [1980]).

Although a third-party complaint may be based on a theory of liability different from and independent of the cause of action pleaded against the primary defendant there still must be some relationship, aside from possible common questions of fact or law, between the liability of the defendant asserted in the main action and the liability over claim in the third-party complaint (JP Morgan Chase Bank, N.A. v. Strands Hair Studio, LLC, 84 A.D.3d 1173 [2nd Dept. 2011]). Thus, the "third-party claim must be sufficiently related to the main action to at least raise the question of 'whether the third-party defendant may be liable to defendant-third-party plaintiff, for whatever reason, for the damages for which the latter may be liable to plaintiff'. . ." (JP Morgan Chase Bank, N.A. v. Strands Hair Studio, LLC, 84 A.D.3d at 1174). Neither the 1st nor 2nd third party causes of action meet the requirements of CPLR 1007 applicable to third party practice. Therefore, these two claims are hereby severed and dismissed. The dismissal is, however, without prejudice to Bauer commencing a new action.

On this motion, defendants have the burden of proving Bauer's claims regarding the common elements and related to the Board's alleged improper maintenance of and repairs to the common elements are problems or conditions that are unique to her individual unit. Some of the conditions, however, suggest that the problem is more

widespread than just something wrong in her unit. Bauer's affidavit raises triable issues of fact that some of the systems servicing or within her apartment are not working properly and she claims that there is well documented "history" of problems in the "D" line. The Board acknowledges that there was a clog in the HVAC system servicing the "D" line and one of Bauer's complaints is about ventilation to her unit. Therefore, defendants' motion for summary judgment dismissing Bauer's common elements related claims is denied as defendants have not established they are entitled to summary judgment in their favor.

Bauer's 8th counterclaim is for a permanent injunction against the Board bringing any eviction or ejectment action against her because they have failed to make repairs to her apartment which she claims are affected by problems in the common elements. Since Bauer's counterclaims related to repairs of the common elements survive summary judgment, this separate counter claim survives as well.

Bauer's claims, that certain fines and/or fees are being selectively enforced against her and/or that they have been levied against her as retaliation, survive defendants' motion for summary judgment not only because discovery in this action is not yet completed (CPLR 3212 [f]), but also because the Board has not proved that the manner in which such fees have been set and enforced is legitimate. Although the Board contends it is authorized to set and impose such fines and/or fees pursuant to the condominium documents, Bauer has raised triable issues of fact that such fees were not set in accordance with the condominium documents, and even if they were, whether they are unconscionable and/or being applied selectively.

Defendants have, however, proved that the actions taken at the April 2009

annual meeting with respect to the flat fee for electrical charges was done in accordance with the condominium documents. Bauer does not deny that the unit owners were notified of the meeting or advised that the proposed amendment was put to a vote. Her sole objection to the process is that in the Notice of the meeting, the term "ratify" was used but it was not defined or explained in the Notice. Beyond highlighting this term, Bauer has not further articulated why the absence of this definition gives rise to a cause of action. Therefore, defendants are granted summary judgment on Bauer's claim that the April 2009 meeting was illegal and that the amendments voted on and passed at that meeting are invalid.

Since the 7th counterclaim is apparently related to Bauer's claims that fines and/or fees are being selectively enforced, the 7th counterclaim survives defendants' motion for summary judgment.

Bauer's 9th counterclaim, for the production of documents, was already addressed and resolved by the parties on the record at oral argument. Therefore, the motion for summary judgment on this counterclaim is now moot.

Discovery Sanctions and Sanctions under Part 130

Defendants' motion for sanctions against Bauer for her alleged failure to comply with discovery and for asserting claims against them which they contend are frivolous is denied in its entirety. Even if, as argued, Bauer's document production was incomplete, the actions alleged do not rise to the level of being sanctionable. Furthermore, Part 130 sanctions may be imposed for "frivolous conduct." Conduct is "frivolous" if:

> "(1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;

(2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or

(3) it asserts material factual statements that are false."

Although Bauer did not prevail on her motion to disqualify, it was supported by reasonable arguments, albeit ones which did not persuade the court. Thus, Bauer's motion was not frivolous within the meaning of the Court Rules and, therefore, defendants' motion for sanctions is denied.

Recapitulation

Bauer's motion to have RLC disqualified is denied for the reasons set forth herein.

The joint motion by plaintiff/ counterclaim defendant/ respondent the Board of the Beekman Regent Condominium ("Board") and 3rd party defendant Beekman International Center, LLC ("Sponsor") is denied in part and granted in part as follows:

1st, 2nd, 3rd counterclaims - damages arising from the alleged failure to obtain the permanent CO: summary judgment denied.

4th, 5th counterclaims- failure to make repairs to necessary building systems and common elements; also failure to insure working vents, electricity, etc., in her individual unit: summary judgment denied

6th counterclaim - "retaliation" in the form of "late fees" which are levied illegally and usurious; equitable relief sought - declaration that the late fees imposed are illegal, null and void: summary judgment denied.

7th counterclaim - $200,000 in damages with prejudgment interest: summary judgment denied.

8th counterclaim - permanent injunction against Board bringing any action against Bauer to evict or eject her; also to find that by refusing to make repairs and taking other actions, the Board has forfeited the right to collect common charges, special assessment or fees: summary judgment denied.

9th counterclaim - production of condominium books and records: motion for summary judgment denied as moot.

10th counterclaim - breach of fiduciary duty by failing to enforce the condominium documents: summary judgment denied.

11th counterclaim - declaratory judgment that the vote and actions taken at the April 2009 unit owner annual meeting, amending the bylaws are invalid: summary judgment granted.

The Article 78 petition (against Board):

1st cause of action - to annul the action taken at the April 2009 unit owner annual meeting: summary judgment granted.

2nd cause of action - to compel inspection of the condominium books and records: motion for summary judgment denied as moot.

Third Party Action (against the Sponsor):

1st cause of action - breach of contract based upon the Sponsor abandoning its contractual obligations under the offering plan by, among other things, letting it lapse: summary judgment granted; dismissal without prejudice.

2nd cause of action - (derivatively on behalf of all unit owners) based upon claims that the Sponsor has breached its contract with all the units owners who bought units in the building: summary judgment granted; dismissal without prejudice.

3rd cause of action - failure to obtain a permanent CO for the building: summary judgment denied.

Any relief requested but not specifically addressed is hereby denied.

This constitutes the decision and order of the court.

Dated: New York, New York
August 1, 2011

So Ordered:

Hon. Judith J. Gische, JSC