[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PETER H. MOULTON
Justice

PART 408

Index Number : 104187/2012
GOLDMAN, HARVEY
vs.
7 EAST 35TH STREET OWNERS
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of ~~Motion~~/Order to Show Cause — Affidavits — Exhibits Petition | No(s). 1

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

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this ~~motion is~~ Article 78 proceeding is denied for reasons stated on the record.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

RECEIVED
SEP 30 2013
IAS MOTION SUPPORT OFFICE
NYS SUPREME COURT-CIVIL

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

Dated: 9/26/13

_____, J.S.C.
HON. PETER H. MOULTON

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 40 B

----------x

HARVEY GOLDMAN and JUDITH GOLDMAN,

Petitioners,

-against-

Index No.: 104187/12

7 EAST 35TH STREET OWNERS, INC., BARBARA DYMOND, individually, LOLA GELLMAN, individually, ROY BABITT, individually, and JUDSON KAUFFMAN, individually

Respondents.

----------x

PETER H. MOULTON, J.S.C.:

This proceeding involves a dispute between respondent cooperative 7 East 35th Street Owners, Inc. (the "Coop") and petitioners Harvey Goldman, the Coop's former board president ("Goldman") and his wife. The dispute arises from the Coop's June 8, 2012 reversal of its June 16, 2006 decision not to allocate additional shares to petitioners' apartment in connection with an alteration. Petitioners seek a judgment annulling, as unlawful and arbitrary and capricious, the Coop's June 8, 2012 decision to allocate 400 additional shares to petitioners' apartment. Petitioners further seek a declaration that a 2007 alteration agreement is valid and enforceable.[1] They seek compensatory and

[1]Respondents do not contest petitioners' first cause of action for a declaration that the alteration agreement is enforceable because they agree that it is enforceable (*see* Respondents' Mem of Law footnote 1).

punitive damages for respondents' alleged breach of fiduciary duty to them, under Business Corporation Law § 717 (a).

Respondents include three of the four board members who made the 2006 decision not to allocate any additional shares to petitioners' apartment. Respondents contend that the petition should be dismissed based on Goldman's "undue influence and breach of fiduciary duties/self dealing by which he procured a vote by a Coop board to not allocate additional shares" (Cantor 1/11/13 Aff. at 1). According to respondents, they discovered Goldman's breach in late 2012, as a result of disclosure of emails which they had not previously seen. Those emails, they contend, reflect that Goldman aggressively took steps to conceal his actions, by using his position as board president, and "plotted" to have his strategems presented to the board as if conceived by the Coop's attorney and/or the Coop's managing agent.[2]

Background

In 2005, when Goldman was board president, he sought approval from the Coop to remove an existing bulkhead structure on the Coop's roof and to enclose most of his roof terrace to create a master bedroom suite and bath.[3] The alteration was approved by the

---

[2]Motion sequence 001 (the petition) is consolidated for disposition with motion sequence 002 (respondents' cross motion).

[3]Goldman was board president until his May 17, 2012 resignation.

Coop on June 16, 2006 at a special board meeting. Goldman did not vote at this meeting or at any other meeting involving the alteration.[4] Among other terms, the board determined that in connection with the alteration "[n]o additional monthly charges such as maintenance and/or assessments would be charged to the apartment" (Petition, Ex D). An alteration agreement (the "Agreement") was subsequently signed May 7, 2007, by petitioners and Maxwell-Kates, Inc., the managing agent for the building ("MKI"). The Agreement did not allocate additional shares to petitioners' apartment or impose additional maintenance charges (Petition, Ex G).

After petitioners decided to sell their apartment in late 2010, two new board members raised questions and concerns regarding what had transpired. Over one year later, the board reversed its position. On June 8, 2012 an executive committee of the board promulgated a resolution which allocated 400 additional shares to petitioners' apartment, along with a proprietary lease covering the alteration.[5] They delayed calculation of the price per share to a later date.

---

[4]The minutes of that meeting indicate that the directors who were present for the vote were Roy Babbit, Lola Gellman, Carol Kaimowitz, Barbara Dymond, and Alyson Castillo by phone. Also present was the managing agent account representative and another managing agent employee. An email from the managing agent to Goldman indicates that the vote at the special meeting was 4 to 0 with one abstention and one member absent.

[5]The stock certificate is dated October 25, 2012.

The emails at issue reflect that Goldman was aggressive and manipulative in advocating his position to the Coop's attorney Aaron Schmulewitz ("Schmulewitz") and the Coop's managing agent MKI. For example, when Goldman did not like Schmulewitz's position, he said "if you will not render an opinion consistent with unit owner rights under the bylaws, I will be compelled to get another opinion which focuses on my rights." Goldman also disparaged Schmulewitz to MKI and admonished the MKI account executive. When the account executive tried to distance himself from Goldman, Goldman insisted that Shmulewitz was "confused" but the account executive was "in a better position of experience and practical judgment to make a recommendation to the board."[6]

The emails further reflect that Goldman applied pressure on the account executive to try to persuade Roy Babbit, another board member (who had appeared to agree with Goldman) to convince other board members of the correctness of Goldman's position. In attempting to gain Babitt's vote, Goldman told the account executive "I'd rather not be 'credited' with bringing this to your attention, as it might be interpreted as self-serving on my part." Goldman also conveyed to the account executive that if the board

---

[6]The account executive submitted an affidavit in support of respondents' cross motion stating that he was afraid of alienating Goldman because "MKI did not want to 'lose' this building, and that therefore Goldman-who controlled the board-had to be mollified" (Wishnia 1/9/13 Aff ¶ 14).

decided to increase Goldman's maintenance as a result of the alteration, the board was at "potential legal risk."

Respondents' Cross Motion

A. Respondents' Arguments

Despite the fact that the Coop was represented by counsel, respondents essentially contend that they were duped. To support their arguments, respondents cite numerous 2005-2007 emails sent by or to Goldman, which respondents characterize as "secret" despite the fact that they are sent by or to Schmulewitz and/or MKI. Respondents also complain that they were not made aware of an internal MKI memorandum discussing whether the Coop possessed the authority to issue additional shares in connection with the alteration, which memorandum concluded that "it would seem logical that an additional 'lease payment' for the changed use of the space could be charged." (Cantor 1/11/13 Aff, Ex R). Respondents further complain that petitioner devised "stratagems" to prevent Shmulewitz's opinion (that the Coop has the right to allocate shares) from being presented to the board. Apparently, and inexplicably, the board was content with having the matter handled by Schmulewitz and MKI, with little or no involvement from the board.[7]

---

[7]The May 22, 2006 Minutes reflect that in determining whether petitioner "should be charged a surcharge for increasing his living space it was determined that Aaron Schmulewitz should

On June 16, 2006 when the board voted to approve the alteration without allocating additional shares, a presentation was made to the board. Respondents assert that Shmulewitz's and MKI's opinion were not presented because they were excluded as a result of Goldman's "vetos." Apparently, the only opinion discussed was that of Goldman's attorney.[8] Respondent Lola Gellman, one of the board members who approved the 2006 decision not to increase the number of shares, states that board proceeded "on the mistaken belief that the Dennis opinion [petitioners' counsel] also represented the opinions of MKI and Shmulewitz, since no opinions attributable to them were presented" (Gellman 1/11/13 Aff ¶ 4).

Respondents' verified answer asserts affirmative defenses based on the business judgement rule, documentary evidence, unclean hands, failure to act in good faith and breach of fiduciary duty. The answer also asserts two counterclaims for money damages. The first counterclaim asserts that Goldman breached his fiduciary duty as director of the Coop by (1) "taking an inappropriate role as an advocate for having no additional shares issued during the board's

---

speak with Neil and Maxell-Kates' In House Council to determine if the surcharge can and should be carried out by the Board. $200 was the suggested surcharge." Although that conversation took place, no one from the board states that they followed up with either Schmulewitz or MKI regarding that conversation.

[8]The minutes of the meeting do not reflect that Goldman's attorney Dennis was present at the meeting; accordingly respondents presumably refer to Dennis's opinion, which was contained in an email.

consideration of whether to allocate additional shares, without informing the board of the actions he was taking" (2) "forc[ing] Maxwell-Kates, Inc. into withholding from the board the legal opinion of the Coop's attorney, Aaron Shmulewitz" and "withhold[ing] from the board a memorandum prepared by MKI" (3) convincing MKI to present Goldman's arguments to the board although they were MKI's arguments, and (4) providing false information to newly elected board members in 2010 that the 2006 decision not to allocate shares was made upon the recommendation of the board's independent counsel. The second counterclaim seeks attorney's fees.

B. Petitioners' Arguments

Petitioners argue that the cross motion is improper because it does not assert any objection in point of law as required under CPLR § 7804 (f). Petitioners also assert that respondents' motion is really one for summary judgment, and is premature because it was made concurrent with service of respondents' verified answer, depriving petitioners of the opportunity to reply to the counterclaims.[9]

Goldman also maintains that "[t]here could not have been any doubt that I was openly working in my own, disclosed, self-

[9]Petitioners have since served a reply to respondents' counterclaims.

interest" and he points to the fact that the Coop was represented (Goldman 1/25/13 Aff ¶ 5). Goldman downplays his behavior by characterizing it merely as an expressed disagreement with Shmulewitz's opinion, because it was inconsistent with the by-laws and the Coop's prior practices. To address respondents' evidence regarding his attempts to manipulate Schmulewitz and MKI, Goldman points to a June 25, 2005 meeting. At that meeting, it was resolved (as reflected in the June 23, 2005 Minutes) that Goldman "would be permitted to be present for the discussion of the alteration request" but would excuse himself prior to any vote. Goldman also explains that at that meeting, there was a lengthy discussion about the share allocation issue where Goldman circulated his attorney's opinion, which referenced disagreement with Shmulewitz's opinion. He also contends that one board member, Roy Babitt, told him that he agreed with Goldman's position. Despite the tenor of emails submitted, Goldman states that he "worked to ensure that the process for approving the Alteration was conducted properly" and denies asking the board or MKI for special treatment (*id.* at ¶ 25). Goldman further states that he "relied on the Board's decision not to allocate additional shares to the Unit and believed that it exercised its business judgment in reaching that decision" (*id.* at ¶ 33). He also points to the benefits that the alteration provided to the Coop: petitioners' expenditure of $30,000 to repair the roof, petitioners' responsibility to maintain

that part of the roof which became the floor of the alteration, and the additional flip tax which would be generated from a higher sale price.

C. Supplemental Arguments

Subsequent to submission of the papers in this proceeding the court requested additional briefs on the issue of whether respondents' claims and/or defenses were barred by the statute of limitations.[10] Respondents maintain that the first counterclaim was timely because the statute of limitations was tolled pursuant to the "open repudiation rule" which tolls the statute of limitations until a fiduciary has openly repudiated his or her obligation or the relationship has been otherwise terminated. Open repudiation did not occur, respondents maintain, until Goldman's resignation from the board.[11] Respondents correctly point out that the statute of limitations for a breach of fiduciary duty is six years if equitable relief is sought, and three years if money damages are sought, citing *Kaufman v Cohen* (307 AD2d 113 [1st Dept 2003]). It was not until Goldman resigned his position as president of the

---

[10]The statute of limitations defense was asserted in petitioners' verified reply to respondents' counterclaims but was not developed in the parties' papers.

[11]Respondents assert that the second counterclaim for attorneys' fees is based on the proprietary lease and the June 16, 2006 resolution and is not time-barred assuming that the court grants respondents' motion to dismiss the petition.

board on May 17, 2012, respondents argue, that the statute of limitations started to run. Respondents cite *Westchester Religious Inst. v Kamerman* (262 AD2d 131 [1st Dept 1999] [statute of limitations in an action against corporate officers for breach of fiduciary duty was not time-barred because the officers "cannot have been said to have openly repudiated their fiduciary obligations prior to leaving their position of trust"]) and *196 Owners Corp. v Hampton Mgt. Co.* (227 AD2d 296 [1st Dept 1996] [in light of the continuing confidential relationship which existed between a cooperative and its management company, an action against the management company for failing to exercise due care in connection with a repair contract was not time-barred]).

Respondents further maintain that their affirmative defenses are not barred because affirmative defenses are not subject to any statute of limitations, even if they are based on the same facts and theories as a time-barred counterclaim. Respondents cite *Rebeil Consulting Corp. v Levine* (208 AD2d 819 [2d Dept 1994] [affirmative defenses, such as usury, are not subject to the statute of limitations]) and *118 East 60th Owners, Inc. v Bonner Props., Inc.* (677 F2d 200 [2d Cir 1982] [interpreting CPLR § 203 (d), noting that "it would be highly inequitable to permit a party to place a question before a court and then prevent the opposing party from disputing issues lying at the foundation of the

claim"]).[12]

Petitioners agree, except for respondents' affirmative defense asserting breach of fiduciary duty, that the "statute of limitations does not apply to validly-asserted defenses" (Petitioners' Mem in Response at 5). Instead, petitioners argue that the affirmative defenses are "unfounded" (Petitioners' Mem In Support of Dismissal at 10).

However, petitioners maintain that the open repudiation rule does not apply to respondents' counterclaims, which seek monetary relief. Petitioners assert that the rule only applies to a breach of fiduciary claim seeking equitable relief, citing *Ingham v Thompson* (88 AD3d 607 [1st Dept 2011]). Petitioners also point to Goldman's status as an unpaid "volunteer". They further argue that unlike the facts in the cases cite by respondents, the board was aware that Goldman was acting on his own behalf and signaled that he was doing so by recusing himself from any board votes on the alteration. Petitioners cite to *Access Point Med., LLC v Mandell*

---

[12]CPLR § 203 (d) provides:
Defense or counterclaim. A defense or counterclaim is interposed when a pleading containing it is served. A defense or counterclaim is not barred if it was not barred at the time the claims asserted in the complaint were interposed, except that if the defense or counterclaim arose from the transactions, occurrences, or series of transactions or occurrences, upon which a claim asserted in the complaint depends, it is not barred to the extent of the demand in the complaint notwithstanding that it was barred at the time the claims asserted in the complaint were interposed.

(106 AD3d 40 [1st Dept 2013] [the open repudiation rule applies "in circumstances in which the beneficiaries would otherwise have no reason to know that the fiduciary was no longer acting in that capacity"]).

Discussion

A. Procedural Issues

Objections in point of law may be raised either in the answer or, in a motion to dismiss made within the time allowed for an answer (*see* CPLR 7804 [f]). Such a motion may be based on failure to state a cause of action, lack of standing, lack of finality, failure to exhaust judicial remedies, statute of limitations, failure to join a necessary party and lack of jurisdiction (*see* Alexander, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B CPLR C7804:7). Such a motion is returnable at the same time as the hearing on the petition (*see* CPLR § 406). If the motion is denied, the respondent answers the petition and the hearing date is renoticed (*see* Alexander, Practice Commentaries, *supra*). Petitioners correctly assert that respondents have not employed the proper procedures by simultaneously serving a motion to dismiss and an answer.

Additionally, except as to the individuals board members, the cross motion to dismiss is not based on any objection in law. Contrary to petitioners' arguments, the petition fails to state a

cause of action against the individual board members (discussed *infra*) and the cross motion to dismiss is granted as to them. The balance of the cross motion is deemed opposition to the petition.

B. The Statute of Limitations

Respondents' counterclaims are time-barred. The open repudiation rule does not salvage respondents' first counterclaim. The rule does not apply when the fiduciary has openly terminated his or her relationship or the relationship has been terminated (*see Westchester Religious Institute v Kamerman*, 262 AD2d 131, *supra*). The rule applies in circumstances "in which the beneficiaries would otherwise have no reason to know that the fiduciary was no longer acting in that capacity. In those circumstances, it is appropriate to toll the limitations period until the beneficiary has reason to know that the fiduciary relationship has unequivocally ended" (*Access Point Med. LLC*, 106 AD3d 40, *supra*).

Here, while the relationship had not been terminated (Goldman was still board president), the board knew that Goldman was representing his own interest and not the Coop's interest in the alteration. The Coop's knowledge is apparent from the fact that the alteration was to Goldman's own apartment, from the fact that he did not participate in any vote on the subject and from the fact that the board and Goldman had hired separate counsel to represent

their interests (*see Pappas v Tzolis*, 20 NY3d 228 [2012] [members of an LLC failed to state a claim for breach of fiduciary duty against another member for failing to disclose certain negotiations to them because they were all sophisticated businessmen represented by counsel and had an antagonistic relationship which made any reliance unreasonable]). The counterclaim for legal fees is time-barred because it is dependant upon the first counterclaim.

Petitioners agree that the affirmative defenses are not time-barred, except for the affirmative defense of breach of fiduciary duty. As to that defense, petitioners maintain that respondents are circumventing the statute of limitations by characterizing a counterclaim as an affirmative defense. However, this can be said of all of respondents' affirmative defenses. As a result of petitioners' concession, the court does not find that the affirmative defenses are time-barred.

C. The Petition and Respondents' Affirmative Defenses

Petitioners' first cause of action for a declaration that the alteration agreement is enforceable is granted on consent of respondents.

Petitioners second cause of action, for a judgment annulling the Coop's June 8, 2012 decision allocating 400 additional shares to the apartment and issuing a propriety lease to cover the alteration, is granted. Respondents affirmative defenses based on

the business judgement rule, documentary evidence, unclean hands, failure to act in good faith and breach of fiduciary duty are not a bar to this determination.

The business judgment rule protects a board from actions taken in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate purposes (*see Levandusky v One Fifth Ave. Apt. Corp.*, 75 NY2d 530 [1990]).[13] However, the Coop's June 8, 2012 decision is an improper attempt to rescind the Coop's June 16, 2006 decision, and is not protected by the business judgment rule (*see e.g., Whalen v 50 Sutton Place S. Owners, Inc.*, 276 AD2d 356 [1st Dept 2000] [in an action involving a cooperative's rescission of its prior approval to renovate an apartment, the court held "[w]e reject the claim that the cooperative's decision to rescind approval was not an impermissible breach of contract but was a valid exercise of discretion protected by the business judgment rule"]; *Demas v 325 W. End Ave. Corp.*, 127 AD2d 476 [1st Dept 1987] [in an action alleging that a cooperative arbitrarily and illegally rescinded its approval to renovate an

---

[13]The business judgment rule is is not a defense to a board's action which has no legitimate relationship to the welfare of the cooperative, deliberately singles out individuals for harmful treatment, is taken without notice or consideration of the relevant facts, or is beyond the scope of the board's authority (*see Levandusky*, 75 NY2d 530, *supra*). Individual board members may be validly sued for breach of fiduciary duty if the complaint pleads independent tortious acts on the part of those individual directors (*see Weinreb v 37 Apts. Corp.*, 97 AD3d 54 [1st Dept 2012]).

apartment, the court found that the board was not entitled to rescind its approval where "the resolution was, on its face, a binding commitment upon which plaintiffs were entitled to rely"]).[14]

Respondents' affirmative defenses of breach of fiduciary duty and to the extent stated, fraud, are not a bar to this proceeding. To establish a cause of action or a defense based on breach of fiduciary duty, the plaintiff must show the existence of a fiduciary relationship, misconduct that induced the plaintiff to engage in the transaction, and damages directly caused by that misconduct (*see e.g., Barrett v Freifield*, 64 AD3d 736 [2d Dept 2009]). For fraud, the proponent must show representation of material fact, falsity, scienter, reliance, and damages; if the fraud is based on an omission or concealment of material fact, the plaintiff must also allege a duty to disclose material information and failure to do so (*id.*).

The fatal flaw in respondents' breach of fiduciary duty defense is that respondents have not demonstrated that Goldman was acting as a fiduciary in connection with the alteration, or that the damages were caused by Goldman's misconduct, as opposed to the board's own failures in communicating with their attorney and managing agent. Similarly, respondents cannot demonstrate fraud because they cannot show that Goldman had a duty to disclose to the

---

[14]For the first time in reply, respondents clarify that their position is that the June 16, 2006 decision is "void" based on Goldman's actions.

board the opinions of their own agents.

Respondents' defense of unclean hands also fails. "The doctrine of unclean hands is used only to bar the grant of equitable relief to a party" (*Wells Fargo Bank v Hodge*, 92 AD3d 775 [2d Dept 2012]). Here, petitioners are not seeking equitable relief by seeking a judgment annulling the Coop's June 8, 2012 decision as unlawful and arbitrary and capricious. Moreover, the doctrine "is never used unless the plaintiff is guilty of immoral, unconscionable conduct and even then only 'when the conduct relied on is directly related to the subject matter in litigation and the party seeking to invoke the doctrine was injured by such conduct'" (*National Distillers & Chem. Corp. v Seyopp Corp.*, 17 NY2d 12, 15-16 [1966] [citations omitted]; *see also Smith v Long*, 281 AD2d 897 [4th Dept 2001] [unclean hands bars causes of action to enforce an agreement that results from deception and deceit and rests on the premise that one cannot prevail in an action to enforce an agreement where the basis of the action is immoral]). While the evidence demonstrates that Goldman acted in an untoward manner in dealing with the managing agent and attorney, a finding of immorality and unconscionability is based on an assumption that Goldman owed the Coop a duty to disclose the opinions of the Coop's own agents to the Coop. However, Goldman had no such duty, for the reasons previously explained. Additionally, the doctrine applies when the "party seeking to invoke the doctrine was injured by such

conduct" (*National Distillers & Chem. Corp.*, 17 NY2d 12, *supra*). The Coop can not demonstrate that it was injured by Goldman's conduct, as opposed to the Coop's own conduct in failing to consult with its own agents.

Petitioners' third cause of action for money damages under Business Corporation Law § 717 (a), in an amount not less than $100,000 plus interest and punitive damages, is denied.[15] Business Corporation Law § 717 (a) provides that "[a] director shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith and with that degree of care which an ordinarily prudent person in a like position would use under similar circumstances."

Petitioners allege nothing to indicate that the individual board members violated Business Corporation Law § 717 (a) (*compare Demas*, 127 AD2d 476, *supra* [lower court erred in dismissing a claim for breach of a board's duties of good faith where the allegations in the complaint indicated that the board imposed conditions on the plaintiff which were not imposed on other shareholders]; *Bernheim v 136 East 64th St. Corp.*, 128 AD2d 434 [1st Dept 1987] [lower court

---

[15]Petitioners seek damages because they "have been unable to properly market and sell the Unit and have been forced to expend time and money" contesting the board's actions. Petitioners submitted no evidence indicating that they were prevented from selling their apartment. Petitioners' argument is that they have delayed any sale based on the possibility that they might obtain a higher price for the apartment if they prevail in this lawsuit.

erred in dismissing a claim for the board's violation of Business Corporation Law § 717 (a) where a cooperative shareholder alleged that one or more of the members of the board rejected the tenant's attempt to purchase the next door neighbor's apartment because the board members wanted to purchase that apartment below market to sell to a third party]). The Coop's June 8, 2012 decision was a good faith-albeit misguided-response to Goldman's past acts. Accordingly it is hereby

ORDERED that the cross motion is granted as to dismissal of the claims against the individuals board members against whom the petition fails to state a cause of action and is otherwise deemed opposition to the petition; and it is further

ORDERED that the petition is granted to the extent stated herein without costs and disbursements and without attorneys' fees for which no basis is cited; and it is further

DECLARED on consent, that the alteration agreement is enforceable; and it is further

ADJUDGED that the Coop's June 8, 2012 decision, allocating 400 additional shares to the apartment and issuing a propriety lease in connection therewith, is annulled; and it is further

ORDERED that the Coop is directed to void the stock certificate dated October 25, 2012 and the proprietary lease that was issued with it, within 20 days after receipt of a copy of the Decision Order and Judgment with notice of entry.

This Constitutes the Decision, Order and Judgment of the Court.

Dated September 26, 2013

JSC

E[illegible]H. MOULTON
SUPREME COURT JUSTICE