Board of Mgrs. of 141 Fifth Ave. Condominium v 141 Acquisition Assoc. LLC
2015 NY Slip Op 31940(U)
October 15, 2015
Supreme Court, New York County
Docket Number: 651426/2013
Judge: Saliann Scarpulla

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 39

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BOARD OF MANAGERS OF 141 FIFTH AVENUE CONDOMINIUM,

Plaintiff,

- against -

141 ACQUISITION ASSOCIATES LLC, 141 FIFTH AVENUE PARTNERS LLC, 141 FIFTH AVENUE MANAGER LLC, SAVANNA 141 PRINCIPALS LLC, CIF 141 FIFTH AVENUE LLC, J CONSTRUCTION COMPANY LLC CHRISTOPHER SCHLANK, NICHOLAS BIENSTOCK, CETRA/RUDDY INCORPORATED, JOHN A. CETRA ARCHITECTURE, P.C., ALFRED KARMAN and FRANK SETA & ASSOCIATES, LLC,

Defendants.

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DECISION and ORDER

Index No. 651426/2013
Motion Seq. No. 004

SALIANN SCARPULLA, J.:

Plaintiff Board of Managers of 141 Fifth Avenue Condominium, an unincorporated association of unit owners of the condominium building located at 141 Fifth Avenue, New York, New York ("Building"), brings this action to recover damages arising from alleged design and construction defects in the renovation and conversion of the Building. The 18-count amended complaint asserts the following causes of action (the first, second, third and fourth causes of action, respectively) against defendant 141 Acquisition Associates LLC ("Sponsor"): (1) breach of contract based on the Building's improper and inadequate design and construction; (2) breach of contract based on the Sponsor's failure to repair all punch list items; (3) breach of the implied covenant of good faith and fair dealing; and (4) breach of implied warranties. The amended complaint

asserts the following causes of action (the fifth, sixth, seventh, fourteenth, fifteenth and sixteenth causes of action, respectively) against the Sponsor and its affiliates and principals, defendants 141 Fifth Avenue Partners LLC, 141 Fifth Avenue Manager LLC, Savanna 141 Principals LLC, CIF 141 Fifth Avenue LLC, Christopher Schlank ("Schlank") and Nicholas Bienstock ("Bienstock") (together with Sponsor, "Sponsor Defendants"): (1) breach of statutory warranties; (2) negligence; (3) a declaratory judgment; (5) violations of General Business Law §§ 349 and 350; and (6) replenishment of the construction contingency fund.

The Sponsor Defendants now move to dismiss the third, fourth, fifth, sixth, seventh, fourteenth, fifteenth and sixteenth causes of action, pursuant to CPLR 3211 (a) (1) and (7).

The underlying facts of this case were stated in detail in this court's previous decision and order, dated July 16, 2015 ("Decision"). Unless indicated otherwise, defined terms in the Decision have the same meaning when used herein.

I. Background

The CMA, by which the Sponsor retained J Construction as the construction manager for the Project, provided that, if the Sponsor "agrees to a Guaranteed Maximum Price, the contingency ('**Contingency**') included therein shall be the maximum sum available to cover costs" for, among other things, "correction of defects."

The Offering Plan, which was expressly incorporated into each purchase agreement for the individual condominium units ("Purchase Agreement"), stated:

> As the Building will be newly renovated, Sponsor does not anticipate the imminent need for such capital repairs, replacements or improvements; however, no assurance or guaranty is given by the Sponsor or any of its principals, managers, members, agents, designees, employees or affiliates that such needs shall not arise in the future.

It also set out a method to identify "the work which should be performed in order to maintain the Building . . . in a sound first-class condition." Pursuant to the Offering Plan, once formed, the condominium board would have a duty to maintain and repair the Building's common elements, "in conformity with the high dignity, first-class quality, character and standards of the Building."

The Offering Plan contained a "Certification of Sponsor and Principals" ("Certification"), which stated, in pertinent part, that the Sponsor and its principals "read the entire offering plan," "investigated . . . the underlying facts" and "exercised due diligence to form a basis for this certification" that the Offering Plan and any amendments to it "set forth the detailed terms of the transaction and [was] complete, current and accurate," "afford[ed] potential investors, purchasers and participants an adequate basis upon which to found their judgment," did "not omit any material facts" and did not contain any knowingly false statements. Between May 2007 and March 2009, the Sponsor amended the Offering Plan eleven times, each time affirming that there were "no material changes" to the Offering Plan.

In connection with the Project, the Sponsor applied to the New York City Landmarks Preservation Commission ("LPC") for a special permit to allow for the modification of use of the Building ("MOU"). In issuing the MOU, "the LPC found that

the [Sponsor] has agreed to undertake work on the primary Fifth Avenue and East 21 Street facades and at the roof and cupola, to restore the Designated Building and bring it up to a sound, first class condition." "The MOU was disclosed in and incorporated into the Sponsor's Offering Plan."

In support of the Sponsor's application to the LPC, Schlank, as the Sponsor's "[m]ember," executed a declaration ("Declaration") that acknowledged that the LPC's authorization of the Project was "premised on, inter alia, the performance of the construction of the [listed] restoration work on the [Building]." The Declaration was incorporated into the Offering Plan.

According to the amended complaint, "[p]rospective purchasers of the residential units in the Building were advised by the Sponsor in 2010 that remedial work on the façade was underway and thus, purchasers were assured that the façade would be made safe and the Building compliant with Local Law 11 after the conclusion of J Construction's remedial work on the façade." On or around May 24, 2010, the Sponsor and another party allegedly "certified that the remedial work . . . was completed and the Building's façade was then safe and in compliance with Local Law 11." The certification was part of a "Technical Report (TR6)" included with the Local Law 11 filing, stating that:

> (A) . . . I have received and read a copy of the attached report and I am aware of the required repairs and/or maintenance, if any and the recommended time for same.
>
> (B) I certify that all items noted as SWARMP conditions in the previous cycle's report have been corrected/repaired; or this report must be rated as Unsafe.

According to the report, SWARMP stands for "Safe with a Repair and Maintenance Program," which is defined as a "[c]ondition of a building wall . . . that is safe at the time of inspection, but requires repairs or maintenance during the next five years in order to prevent its deterioration . . . into an unsafe condition." Schlank executed the TR6 as "Member."

II. Discussion

"[O]n a motion to dismiss a complaint for failure to state a cause of action, the complaint must be construed in the light most favorable to the plaintiff and all factual allegations must be accepted as true." *Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 (1st Dept 2004). A court may not "assess the merits of the complaint or any of its factual allegations, but only to determine if, assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action." *Skillgames, LLC v Brody*, 1 AD3d 247, 250 (1st Dept 2003). "However, factual allegations that do not state a viable cause of action, that consist of bare legal conclusions, or that are inherently incredible or clearly contradicted by documentary evidence are not entitled to such consideration." *Id.*

Plaintiff may submit affidavits to "remedy[] any defects in the pleadings and [such affidavits] may be considered as supplementary to the complaint to show that the cause of action is valid." *Nat'l Puerto Rican Day Parade, Inc. v Casa Publ'ns., Inc.*, 79 AD3d 592, 595 (1st Dept 2010). Where the defendant seeks to dismiss the complaint based upon documentary evidence, "the documentary evidence [must] utterly refute[] plaintiff's

factual allegations, conclusively establishing a defense as a matter of law." *Goshen v Mut. Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 (2002).

A. Fraudulent Inducement to Sign and Fraud in Connection with the Purchase Agreements (Fourteenth Cause of Action)

The parties dispute whether the claim for fraudulent inducement in connection with the Purchase Agreement is pleaded with the requisite particularity and whether the alleged false statements are actionable. The parties also dispute whether plaintiff may recover against defendants 141 Fifth Avenue Partners LLC, 141 Fifth Avenue Manager LLC, Savanna 141 Principals LLC, CIF 141 Fifth Avenue LLC, Schlank and Bienstock based solely on their execution of the Certification.

"To state a claim for fraudulent inducement, there must be a knowing misrepresentation of material present fact, which is intended to deceive another party and induce that party to act on it, resulting in injury." *GoSmile, Inc. v Levine*, 81 AD3d 77, 81 (1st Dept 2010). "[A] misrepresentation of present fact, unlike a misrepresentation of future intent to perform under the contract, is collateral to the contract, even though it may have induced the plaintiff to sign it, and therefore involves a separate breach of duty." *Id.*; *see also Hawthorne Group v RRE Ventures*, 7 AD3d 320, 323-24 (1st Dept 2004).

Additionally, "the circumstances constituting the [fraud] shall be stated in detail." CPLR 3016 (b). While plaintiff is not required to come forward "with unassailable proof of fraud" at the pleading stage, the complaint must allege "facts [that] are sufficient to permit a reasonable inference of the alleged conduct." *Pludeman v N. Leasing Sys., Inc.*,

10 NY3d 486, 492 (2008); *see also Houbigant, Inc. v Deloitte & Touche, LLP*, 303 AD2d 92, 98 (1st Dept 2003).

A defendant who executes a certification of an offering plan in his individual capacity, and "'thereby knowingly and intentionally advanced the alleged misrepresentations of the offering plan, . . . can be held [separately] liable.'" *Birnbaum v Yonkers Contracting Co., Inc.*, 272 AD2d 355, 357 (2d Dept 2000), quoting *Zanani v Savad*, 228 AD2d 584, 585 (2d Dept 1996); *see also Residential Bd. of Mgrs. of Zeckendorf Towers v Union Sq.-14th St. Assocs.*, 190 AD2d 636, 637-38 (1st Dept 1993). However, a member, manager or agent of a limited liability company is not liable, "whether arising in tort, contract or otherwise, solely by reason of being such member, manager or agent or acting . . . in such capacities." Limited Liability Company Law § 609 (a).

The Martin Act altered the common-law rule of caveat emptor by imposing disclosure requirements on "a broad class of sellers of real estate." *Kerusa Co. LLC v W10Z/515 Real Estate Ltd. P'ship*, 12 NY3d 236, 244-45 (2009). The Attorney General has exclusive authority to implement and enforce the Martin Act. *Id.* Therefore, "a private litigant may not pursue a common-law cause of action where the claim is predicated solely on a violation of the Martin Act or its implementing regulations and would not exist but for the statute." *Assured Guar. (UK) Ltd. v J.P. Morgan Inv. Mgt. Inc.*, 18 NY3d 341, 353 (2011).

Here, the amended complaint fails to allege the elements of fraud in the inducement with requisite particularity. While alleging the existence of discrepancies

between representations made in various documents and the Building as it was actually constructed, the amended complaint fails to identify specific, false statements of material fact or to provide details with respect to when or how such statements were made. Instead, the amended complaint sets forth statements from unspecified marketing materials and the Purchase Agreement about the Building being luxurious and that it "would be and was properly and adequately designed and completed, in a competent and workmanlike manner, in accordance with the Building Plans and Specifications and proper design, engineering and construction practices consistent with applicable standards for a first class, luxury condominium in Manhattan." Thus, the amended complaint does not set forth a specific statement and, often, does not identify a specific document in which these statements allegedly occurred. Such allegations are insufficient to state a fraud claim. *See Gregor v Rossi*, 120 AD3d 447, 447 (1st Dept 2014) (finding "[f]raud and fraudulent inducement [were] not pleaded with the requisite particularity . . . because the words used by defendants and the date of the alleged false representations [were] not set forth"); *Fariello v Checkmate Holdings, LLC*, 82 AD3d 437, 437 (1st Dept 2011) ("causes of action for fraudulent inducement and promissory fraud were properly dismissed" where the pleading was "bare-bones, without referencing . . . specific places and dates of the alleged misrepresentations" [internal quotation marks and citation omitted]).

Additionally, promises contained in "brochures and advertisements, promising, among other things the Building would be a first class luxury building" "amount[] to essentially little more than mere puffery, opinions of value or future expectations that do

not constitute actionable fraud." *Elghanian v Harvey*, 249 AD2d 206, 206 (1st Dept 1998); *see also Int'l Fin. Corp. v Carrera Holdings Inc.*, 82 AD3d 641, 641-42 (1st Dept 2011).

Moreover, plaintiff cannot establish reasonable reliance on statements made outside of the Offering Plan and the Purchase Agreement, as the Purchase Agreement provided "that Purchaser [did] not rel[y] upon any . . . sales plans, selling brochures, advertisements, representations, warranties, statements or estimates of any nature whatsoever . . . except as . . . specifically represented [in the Purchase Agreement or the Offering Plan]." *See Leonard v Gateway II, LLC*, 68 AD3d 408, 409 (1st Dept 2009) (finding dismissal of fraudulent inducement claim proper where "plaintiff [could not] establish reasonable reliance on any of the alleged promises made to her . . . because the purchase agreements expressly state[d] that plaintiff did not rely on any promises not contained therein"); *see also 527-9 Lenox Ave. Realty Corp. v Ninth St. Assocs.*, 200 AD2d 531, 532 (1st Dept 1994) ("The agreement recited that the written contract contained all representations made as to physical condition, rents, leases, expenses, operation or other matters concerning the premises, and thus the assertion of fraudulent inducement based on alleged oral misrepresentations pertaining to the above is without merit.").

To the extent that plaintiff seeks to base its claim on statements made in the Offering Plan and the Purchase Agreement, the amended complaint fails to allege a "misrepresentation of present fact." *GoSmile, Inc.*, 81 AD3d at 81. Instead, plaintiff points to "misrepresentation[s] of future intent to perform under the contract," such as

promises that "the Building w[ould] be newly renovated," of "first-class condition" and "quality," and "that the construction of the Building and Units shall be substantially in accordance with the Plans and specifications of the design and construction professionals." In essence, plaintiff contends that it was promised a first-class, luxury building, but was sold something falling far short of that. Such allegations give rise to a claim for a breach of contract only. *See Leonard*, 68 AD3d at 409 (finding fraud claim "properly dismissed . . . as [it was] no more than a restatement of plaintiff's breach of contract claim, without alleging a breach of duty owed to plaintiff independent of the purchase agreements"); *see also Duane Thomas LLC v 62 Thomas Partners, LLC*, 300 AD2d 52, 52 (1st Dept 2002) (affirming dismissal of fraud claim "based solely on alleged misrepresentations in the contract for the sale of the subject property," as such "misrepresentations [were] not collateral or extraneous to the contract").

To the extent plaintiff seeks to rely on the descriptions of work that would be performed in the MOU and the Declaration, which were incorporated into the Offering Plan, it faces the same difficulty, namely: "a misrepresentation of future intent to perform under the contract" does not give rise to a fraudulent inducement claim. *GoSmile, Inc.*, 81 AD3d at 81. The only statement in connection with the MOU that plaintiff points to is a statement by the LPC that the "Sponsor agreed . . . 'to restore the Designated Building and bring it up to a sound, first class condition.'" Likewise, the Declaration contained an extensive list of work to be completed by the Sponsor and no representations of present fact. Moreover, the Declaration provided that the Sponsor's liability terminated upon the

transfer of its interest in the Building and that, upon the formation the condominium board, the board would become obligated to perform under the Declaration.

For the foregoing reasons, the amended complaint fails to allege a false representation of material fact and reasonable reliance.

The amended complaint also fails to allege "a particularized factual assertion which supports the inference of scienter." *Houbigant, Inc.*, 303 AD2d at 98. Plaintiff contends that at the time of the Offering Plan's eleventh amendment, dated March 23, 2009, "Sponsor was already aware of the serious safety issues with the Building's façade which was being remediated by Karman," and that "by the end of 2009 and in early 2010, Sponsor was aware of the serious defects in the design, manufacture and installation of the windows." As such, plaintiff argues, the Sponsor Defendants knew that their statements about the Building's first-class quality were false at the time they were made to, and relied on by, purchasers.

However, the amended complaint's allegations do not allow an inference that the Sponsor Defendants knowingly made false statements about these, or any other, defects. According to the amended complaint, the Sponsor Defendants identified the defects with the façade, hired professionals to evaluate the hazard and to perform repairs, advised prospective purchasers that remedial work was ongoing and, upon the work's completion, certified, along with the architect hired to make the determination, that the façade was compliant with Local Law 11. Nothing in these allegations supports an inference that the Sponsor Defendants knew the repairs were not adequately performed or misled prospective purchasers.

With respect to the defective windows, the amended complaint states that the Sponsor Defendants have replaced the defective windows, but it fails to allege that they knowingly made false statements about the windows to prospective purchasers. Moreover, none of the amended complaint's allegations support an inference that the Sponsor Defendants knew of the alleged "defective conditions to the electrical wiring, mechanical, heating, plumbing and sprinkler/fire proofing systems, and to the terraces, dormers, cupola, common areas and interior residential units." The only other allegations of scienter merely state that the Sponsor Defendants knew that certain representations about the Building were false. Such "conclusory statement[s] of intent [do] not adequately plead sufficient details of scienter." *Zanett Lombardier, Ltd. v Maslow*, 29 AD3d 495, 495-96 (1st Dept 2006). Plaintiff must plead specific facts from which it is possible to infer scienter. *See, e.g,. Houbigant, Inc.*, 303 AD2d at 97 (finding that the plaintiffs' allegations sufficiently alleged misrepresentation and scienter when "Houbigant allege[d] that when Deloitte certified the accuracy of RCI's financial statements, it knew, but failed to acknowledge, that RCI's financial statements actually contained numerous serious irregularities and inaccuracies, which it knew could have a material impact on the accuracy of the financial statements' recitation of the corporation's net worth"); *Bd. of Mgrs. of the Park Slope Views Condo. v Park Slope Views, LLC*, 39 Misc 3d 1221(A), 2013 NY Slip Op 50689(U), *4, *11 (Sup Ct, Kings County 2013) (finding complaint pleaded fraud with sufficient specificity against the sponsor, among others, where it alleged that "defendants signed a certification in the Offering Plan and contracts of sale which asserted that the information contained therein

was true, accurate and complete while simultaneously being aware of the probability of significant structural defects," having allegedly received an engineering report detailing such defects prior to the certification). For the foregoing reasons, the amended complaint fails to allege scienter.

Further, plaintiff does not argue that the Offering Plan was false when it was first filed. Instead, plaintiff contends that the Offering Plan's statements about workmanship were false at the time of the eleventh amendment. In essence, plaintiff is seeking to hold the Sponsor Defendants liable for omissions from the Offering Plan amendments. However, "a purchaser of a condominium apartment may not bring a claim for common-law fraud against the building's sponsor when the fraud is predicated solely on alleged material omissions from the offering plan amendments mandated by the Martin Act (General Business Law art 23-A) and the Attorney General's implementing regulations (13 NYCRR part 20)." *Kerusa Co. LLC*, 12 NY3d at 239; *see also Assured Guar. (UK) Ltd.*, 18 NY3d at 352-53 (citation omitted) (discussing holding in *Kerusa* where Martin Act preempted a fraud claim that was based only on a failure "to 'disclose various construction and design defects in the offering plan amendments,'" because the defendants did not have a duty to disclose in the absence of the Martin Act). Therefore, to the extent plaintiff's claim is based on the Sponsor Defendants' failure to make disclosures in the Offering Plan amendments, it is preempted by the Martin Act.

In opposition, plaintiff submits an attorney affirmation and board member affidavits. The attorney affirmation points to several examples of marketing materials, including various webpages advertising the Building. The attorney affirmation has no

probative value since it is not based on personal knowledge of the facts, and it does not "call to the court's attention undisputed documentary evidence." *Subgar Realty Corp. v Gothic Lumber & Millwork, Inc.*, 80 AD2d 774, 774 (1st Dept 1981). The affidavits of plaintiff's board members fail to allege that they relied on any of the materials annexed to the attorney affirmation or to specify the false statements that induced them to purchase their units or how and when such statements were made. For example, the most detailed affidavit states that, in deciding to purchase a unit, the board member "relied on representations made on the website and in discussions with Sponsor Defendants' sales agent, as well as through the Purchase Agreement, Offering Plan and related documents." As explained above, the plaintiff may not rely on statements made outside the Offering Plan and the Purchase Agreement as a matter of law. Accordingly, these documents fail to correct the defects in the amended complaint.

For the foregoing reasons, the motion to dismiss the fourteenth cause of action is granted.

B. Replenishment of the Construction Contingency Fund (Sixteenth Cause of Action)

The parties dispute whether plaintiff has standing to seek a declaratory judgment and an order of specific performance for the replenishment of the Contingency, the fund set aside under the CMA for, inter alia, the correction of defects. Plaintiff contends that as a third-party beneficiary or, alternatively, assignee to the CMA, it has standing to pursue the claim.

"[T]he plaintiff must have standing, i.e. a 'legally protectible interest, that is in direct issue or jeopardy, in order to invoke the remedy of declaratory judgment in the area of private litigation.'" *Matter of Ideal Mut. Ins. Co.*, 174 AD2d 420, 421 (1st Dept 1991) (citation omitted). A plaintiff does not have standing to pursue recovery under a contract unless it had a contractual relationship with defendants or was the contracting parties' intended, third-party beneficiary. *See Kerusa Co. LLC v W10Z/515 Real Estate Ltd. P'ship*, 50 AD3d 503, 504 (1st Dept 2008); *Alicea v City of New York*, 145 AD2d 315, 317 (1st Dept 1988).

Here, plaintiff relies heavily upon the holding in *Kleinberg v 516 West 19th Street, LLC*, where the court held that the plaintiff unit owners were intended third-party beneficiaries under the same provisions of the CMA at issue here. 2010 WL 2150607, 2010 NY Misc LEXIS 2210, *11-12 (Sup Ct, NY County 2010). However, "the doctrine of collateral estoppel does not operate to bar relitigation of a pure question of law, which in this case is the interpretation of an unambiguous contract." *Sterling Nat'l Bank v E. Shipping Worldwide, Inc.*, 35 AD3d 222, 223 (1st Dept 2006) (internal citations omitted). Therefore, the court is not bound by the prior interpretation of the CMA in *Kleinberg*.

Plaintiff next argues that it has standing pursuant to the express language of paragraph 22.5 of the CMA, which stated that "[t]his Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of [the Sponsor]." Plaintiff also points to a provision of the Offering Plan, which stated that "Sponsor [would] deliver, assign or otherwise grant to the Condominium Board . . . the right to proceed under any assignable warranties and other undertakings received by Sponsor from contractors . . . in

connection with the construction and equipping of the Building." The Sponsor Defendants counter with another provision of the CMA, which stated that "[t]he [Sponsor] and Construction Manager [did] not intend to create any interest in favor of any third party by this Agreement . . . ."

The court previously considered these exact arguments in the Decision and concluded, without making a "determination as to whether an assignment took place or whether plaintiff is, in fact, a third-party beneficiary under the CMA," that plaintiff may have standing to pursue a claim under the CMA, but that "[a]t this juncture in the litigation, 'discovery is necessary to ascertain whether there exist[ed] any such assignments.'" (Citation omitted) Therefore, the motion to dismiss the sixteenth cause of action is denied to the extent it seeks recovery against the Sponsor.

However, the sixteenth cause of action is dismissed against defendants 141 Fifth Avenue Partners LLC, 141 Fifth Avenue Manager LLC, Savanna 141 Principals LLC, CIF 141 Fifth Avenue LLC, Schlank and Bienstock. Plaintiff may not impose liability on defendants merely based on their status as members or managers and/or officers of an LLC. Limited Liability Company Law § 609 (a); *Retropolis, Inc. v 14th St. Dev. LLC*, 17AD3d 209, 210 (1st Dept 2005) (stating that individual defendant "[could not] be held liable for the [limited liability] company's obligations by virtue of his status as a member thereof"); s*ee Bd. of Mgrs. of 184 Thompson St. Condo. v 184 Thompson St. Owner LLC*, 106 AD3d 542, 544 (1st Dept 2013) (affirming dismissal of claims against non-sponsor defendants, where "alleged violations of the offering plan and certification" were preempted by the Martin Act and the plaintiff did not pursue an alternate theory of

liability, such as piercing the corporate veil); *Lichtman v. Mount Judah Cemetery*, 269 A.D.2d 319, 320 (1st Dept 2000) ("Corporate officers may not be held personally liable on contracts of the corporation where they did not purport to bind themselves individually.").

C. The Remaining Claims (Fourth, Fifth, Sixth, Seventh and Fifteenth Causes of Action)

Plaintiff has voluntarily withdrawn the third, fourth, fifth, sixth, seventh and fifteenth causes of action against the Sponsor Defendants. Therefore, the Sponsor Defendants' motion, to the extent it seeks dismissal of these claims, is denied as moot.

In accordance with the foregoing, it is hereby

ORDERED that the motion of defendants 141 Acquisition Associates LLC, 141 Fifth Avenue Partners LLC, 141 Fifth Avenue Manager LLC, Savanna 141 Principals LLC, CIF 141 Fifth Avenue LLC, Christopher Schlank and Nicholas Bienstock to dismiss the fourteenth and sixteenth causes of action is granted to the extent that:

(i) the fourteenth cause of action is dismissed;

(ii) the sixteenth causes of action is dismissed as against defendants 141 Fifth Avenue Partners LLC, 141 Fifth Avenue Manager LLC, Savanna 141 Principals LLC, CIF 141 Fifth Avenue LLC, Christopher Schlank and Nicholas Bienstock; and

the motion is otherwise denied; and it is further

ORDERED that the motion of defendants 141 Acquisition Associates LLC, 141 Fifth Avenue Partners LLC, 141 Fifth Avenue Manager LLC, Savanna 141 Principals

LLC, CIF 141 Fifth LLC, Christopher Schlank, and Nicholas Bienstock to dismiss the third, fourth, fifth, sixth, seventh, and fifteenth causes of action is denied as moot; and it is further

ORDERED that the amended complaint is dismissed in its entirety as against defendants 141 Fifth Avenue Partners LLC, 141 Fifth Avenue Manager LLC, Savanna 141 Principals LLC, CIF 141 Fifth Avenue LLC, Christopher Schlank and Nicholas Bienstock; and it is further

ORDERED that the action is severed and continued against the remaining defendants.

Dated: October 15, 2015

ENTER:

J.S.C.

HON. SALIANN SCARPULLA