To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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LOIS SACKS,

Plaintiff,

DECISION & ORDER
INDEX NO. 58955/2014
SEQ NOS. 12,13,14

THE KNOLLS AT PINEWOOD, LLC, PINEWOOD DEVELOPMENT CORP., URI HASON, EDMOND GEMMOLA and GEMMOLA & ASSOCIATES,

Defendants.

CRONIN ENGINEERING PROFESSIONAL ENGINEER P.C., JOHN DOE 1, JOHN DOE 2 and JOHN DOE 3,

Supplemental Defendants.

JASON FARINA, in his capacity as President of the unincorporated association known as THE BOARD OF MANAGERS OF THE HOME OWNERS ASSOCIATION OF THE PRESERVE AT GREENBURGH CONDOMINIUM,

Additional Supplemental Defendant

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And Third-Party Actions

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WOOD, J.

The following documents were read in connection with defendants The Knolls at Pinewood, LLC, Pinewood Development Corp and Uri Hason's ("Hason") ("collectively "Hason Defendants") motion for leave to renew (Seq 12); Third Party Defendant Mark Freedman motion to dismiss (Seq 13); and Defendant and Third party Plaintiff the Preserve at Greenburgh Condominium ("the Condominium") cross-motion (Seq 14):

Hason Defendants' Notice of Motion, Counsel's Affirmation, Exhibits,
Plaintiff's Memorandum of Law in Opposition.
Hason Defendants' Counsel's Affirmation in Reply, Exhibits.

Freedman's Notice of Cross-Motion, Counsel's Affirmation, Freedman Affidavit, Exhibits.
Condominium's Notice of Cross-Motion, Counsel's Affirmation, Exhibits,
Hason Defendants' Counsel's Reply Affirmation.
Plaintiff's Memorandum of Law in Opposition to Hason's motion to Renew.
Freedman's Counsel's Affirmation in support of cross motion and opposition to Condominium's Cross Claim.
Hason Defendants' Reply Affirmation, Exhibits.
Condominium's Counsel's Reply.

By way of background, plaintiff purchased Unit 17 in a condominium development in Greenburgh known as "The Preserve at Greenburgh Condominium" ("the Condominium") from Knolls at Pinewood ("the Knolls"), which is the developer and sponsor for the Condominium, for $725,000, pursuant to a Purchase Agreement dated October 30, 2009 ("the Purchase Agreement"). Shortly after her purchase of Unit 17, she started noticing cracks, sloping floors, problems with windows, and other issues. According to plaintiff, each of the Knolls, Pinewood Development Corp. (the general contractor) and Uri Hason (the person overseeing the construction operations at the Preserve) were responsible for making sure that such defects did not occur. Some of the conditions have been repaired, some of the repaired areas have re-cracked and other conditions have been getting worse. Starting in the spring of 2012, Hason's brother, Eli Hason, attempted to fix the cracks in the Condo from a cosmetic prospective, but they reappeared a year later. Eli Hason again repaired the cracks in the Spring of 2013, but by the fall of 2013, the cracks reappeared. Plaintiff asserts that material defects in the foundation has made Unit 17 unsafe. In August 2013, she hired a local engineer, John Annuziata to investigate the problem. He reported that he suspected the exterior walls settled unevenly causing the off level window sills, sloped floors, etc., but assured plaintiff that the building is stable. Plaintiff has a six year warranty for the Condo which states "six years from and after the warranty date the home will be

free from material defects. Plaintiff alleges that the Knolls has not honored said warranty, and to date, the Knolls have not fixed Unit 17. Plaintiff believes that the Knolls likely knew the foundation did not have suitable soil.

On June 4, 2014, plaintiff commenced this action against Knolls, and others. Plaintiff filed a supplemental summons and amended complaint on July 29, 2014 ("Amended Complaint"). Defendants have interposed answers. Hason Defendants claim that as a result of an impasse wherein the Board allegedly failed to approve proposed repair plans, plaintiff joined the as a defendant in this action claiming they had failed in their duties under the Offering Plan to repair the common elements.

Hason Defendants now brings a motion for leave to renew a prior court's decision; Freedman cross moves for similar relief, and the Condominium cross-moves to reinstate cross claims in the case if the court grants Hason's and Freedman's relief.

Based upon the foregoing, the motions are decided as follows:

As relevant to the instant motions, particularly (Seq 12) , this court rendered its Decision and Order on July 22, 2016 ("Prior Decision"), which denied Hason Defendants' motion to dismiss the Board's breach of contract claim against Hason individually. In said decision, this court found that by executing the certification of the offering plan in his individual capacity, Hason could be held personally liable for breach of the offering plan. Hason Defendants now move for renewal of the Prior Decision based upon new law discussed by the Second Department, and had not yet been rendered at the time of this court's decision on July 22, 2016.

Specifically, the Second Department has now held that "the sponsor principals and the managing member demonstrated their prima facie entitlement to judgment as a matter of law by submitting evidence establishing that they cannot be held individually liable for the breach of

contract alleged by the plaintiff, based solely on alleged violations of the offering plan, merely by their certification of that offering plan in their representative capacities on behalf of the sponsor, in accordance with the requirements of the Martin Act and the implementing regulations promulgated thereunder" (Bd. of Managers of 125 N. 10th Condo. v 125North10, LLC, 150 A.D.3d 1065, 1066 [2d Dept 2017]).

In opposition, and in interpretation of the Second Department decision, plaintiff argues that Hason signed the condominium offering plan in his individual capacity and the Second Department case only dealt with signing in a representative capacity.[1]

At the heart of the matter, Hason signed the Certification by Sponsor and Sponsor's Principals Pursuant to 13NYCRR 20.4(b) twice, once on behalf of the sponsor, and then as a sponsor principal. Specifically, Hason signed the October 29, 2007 certification on a signature line under the name "The Knolls At Pinewood, LLC," indicating that he was signing it on its behalf, and then signed the Certification a second time, under the title "sponsor's principal". Plaintiff acknowledges that the lower court in Board of Managers case noted a similar dual signature as in the present case, and that the Appellate Division did not mention this.

In the Prior Decision, this court held, "it cannot be said that the alleged misrepresentations by Hason were confined to the Offering plan, thus are not precluded by the Martin Act, as they do not rely entirely on alleged omission from filings required by the Martin Act and the Attorney General's implementing regulations" (Bd. of Mangers of Marke Gardens Condo. v 240/242 Franklin Ave., LLC, 71AD3d 935, 936 [2d Dept 2010]).

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[1]Even if plaintiff's opposing papers were untimely in this matter, as Hason argues, this court has reviewed the applicable cases and comes to its conclusions based upon the language of the Second Department's decision, applying it to the facts of this matter.

Now, considering the Second Department recent ruling and the record of this case, this court is constrained to find that Hason and Freedman signed the Certification in their representative capacities, and plaintiff fails to allege particularized facts to warrant piercing the corporate veil so as to allow the claims against the principals to continue (Pine St. Homeowners Ass'n v 20 Pine St. LLC, 109 AD3d 733, 735 [2d Dept 2013]).

Under CPLR 2221, "a motion for leave to renew must be based upon new or additional facts, which although in existence at the time of the original motion, were not made known to party seeking renewal, and were not known to the court" (Morrison v Rosenberg, 278 AD2d 392 [2d Dept 2000]). Leave to renew is not warranted "where the factual material adduced in connection with the subsequent motion is merely cumulative with respect to the factual material submitted in connection with the original motion" (Orange and Rockland Utilities, Inc. v Assessor of the Town of Haverstraw, 304 AD2d 668, 669 [2d Dept 2003] quoting Stone v Bridgehampton Race Circuit, 244 AD2d 403 [2d Dept 1997]). Yet, the rule is flexible and additional facts known to the party seeking renewal may be offered if the movant first establishes a reasonable excuse as to why the additional facts were not submitted on the original application (Matter of Gold v Gold, 53 AD3d 485, 487 [2d Dept 2008]; Granato v Waldbaum's, Inc., 289 AD2d 289 [2d Dept 2001]).

In light of the foregoing, the court grants Hason Defendants' leave to renew the Prior Decision; and upon due consideration and deliberation of said new ruling from the Second Department as it impacts the instant facts, upon renewal, the court grants the renewal motion.

For the sames reasons as above, Freedman's cross-motion to dismiss the First Cause of Action of the Third Third-Party Action is granted as well. Freedman represents that he is in the same position as Hason, as both were members of the Sponsor. Notably, Freedman also executed

the certification as a principal of the sponsor. Freedman was also an investor in the subject project. Similarly, the basis of the cause of action for breach of the offering plan as against Freedman is breach of contract, the First Cause of Action in the Third Third Party Complaint.

Next is the Condominium's cross-motion for leave to renew the motion that resulted in the Court's prior decision dismissing the Condominium's cross-claims for negligent misrepresentation, unjust enrichment and breach of fiduciary duty against the Hason Defendants. The Condo seeks the granting of reargument and/or renewal, and an order reinstating the aforesaid cross-claims against the Hason Defendants and recognizing that said cause of action applies to third party defendant Freedman.

In light of this court's decision, the court grants leave to renew, and upon said renewal, has duly considered the Condominium's argument to reinstate causes of action sounding in negligent misrepresentation and unjust enrichment, as the Condominium claims that those causes of action would no longer be duplicative of the breach of contract claims. Thus, the Condominium claims that if the court deems the breach of contract claim against Hason barred by recent caselaw, as the court indeed has found, then it follows that the court should grant renewal and reinstate the breach of fiduciary claims against Hason. However, the court finds these causes of action not to be supported by the evidence in this recored, even in light of the fact that there is no longer a breach of contract against Uri Hason, individually.

Accordingly, it is hereby

ORDERED, that defendant Uri Hason's motion for renewal (Seq 12) is **granted**, and upon renewal, the court grants the dismissal of the cause of action for breach of contract as against Uri Hason; and it is further

ORDERED, that Freedmans' motion to dismiss the First Cause of action of the Third

Third-Party Action, is similarly **granted** (Seq 13); and it is further

ORDERED, that the Condominium's motion (Seq 14) is **denied**; and it is further

ORDERED, that the parties are directed to appear at the Compliance Part on February 23, 2018, at 9:30 A.M. in Room 800, of the Westchester County Courthouse, 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York 10601; and it is further

ORDERED, that plaintiff is directed to serve a copy of this Decision and Order, with notice of entry, upon the parties within 10 days of such entry, in accordance with NYSCEF protocols.

All matters not herein decided are denied.

This constitutes the Decision and Order of the court.

Dated: January 25, 2018
White Plains, New York

HON. CHARLES D. WOOD
Justice of the Supreme Court

To: All parties via NYSCEF