

**Board of Mgrs. of 111 Hudson St. Condominium v
111 Hudson St., LLC**

2018 NY Slip Op 30858(U)

May 7, 2018

Supreme Court, New York County

Docket Number: 651959/2014

Judge: Barry Ostrager

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 61

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THE BOARD OF MANAGERS OF 111 HUDSON STREET
CONDOMINIUM,

Plaintiff,

- v -

111 HUDSON STREET, LLC, CHRISTINA SCHUITEMAKER,
PETER MOORE, GIORA MANOR, TRIPLE ONE REALTY,
L.L.C., MARK ANG, JOSEPH DUMBACHER, JOHN
DUMBACHER, SETHURAMAN PRAKASH, VANDANA SHETH,
DANIELLE RICH, 111 HUDSON STORE LLC,

Defendant.

INDEX NO. 651959/2014

MOTION DATE _____

MOTION SEQ. NO. 015

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 398, 399, 400, 401, 402, 404

were read on this application to/for Partial Summary Judgment

HON. BARRY R. OSTRAGER:

Plaintiff Board of Managers of 111 Hudson Street Condominium (the "Board") moves for partial summary judgment on its sixth cause of action against Defendant 111 Hudson Street, LLC (the "Unit Owner") for certain unpaid common charges and assessments. The motion is granted in part for the reasons stated herein.

The Unit Owner is the owner of the ground floor and basement commercial condominium unit at 111 Hudson Street. Under the bylaws of the condominium, all of the building's unit owners are required to pay their proportionate share of common charges and special assessments. On July 1, 2014, the Board voted to authorize a \$25,000 special assessment on all unit owners to be used for legal fees and expenses incurred in connection with the instant

litigation, which arose because of various building maintenance issues. The Board also authorized an additional common charge of \$227,000, over a twenty-two-month period, for the funding of reserves to pay legal fees and expenses in connection with the instant litigation.

Monthly billing statements including the Unit Owner's proportion of the additional common charges and special assessment were delivered to the Unit Owner. It is undisputed that these charges were levied against the Unit Owner and that the Unit Owner failed to pay them. The Board now moves for partial summary judgment on its claim against the Unit Owner for the unpaid common charges and special assessment.

"The proponent of a motion for summary judgment must establish that there are no material issues of fact in dispute and that it is entitled to summary judgment as a matter of law." *Mazurek v. Metropolitan Museum of Art*, 27 A.D.3d 227, 228 (1st Dep't 2006). Where the movant has made such a showing, the burden then shifts to the party opposing the motion to raise genuine, triable issues of fact necessitating a trial. *Id.*

A plaintiff may establish "its prima facie entitlement to judgment as a matter of law by submitting, inter alia, evidence of its authority to collect certain assessments of common charges and fees, invoices reflecting the defendants' account, and an affidavit of the president of the plaintiff attesting to the defendants' failure to pay the balance on the account." *Board of Mgrs. of Brightwater Towers Condominium v. Cheskiy*, 109 A.D.3d 944, 945 (1st Dep't 2013). Here, it is undisputed that the Board levied a special assessment and certain additional common charges and that the Unit Owner failed to pay. The sole dispute is whether the Board had the authority to levy the common charges in the first instance.

Article V of the condominium bylaws states:

- (a) The Board of Managers shall, from time to time and at least annually, prepare a budget for the Common Expenses of the Condominium and fix the Common

Charges payable by the Unit Owners The Common Expenses shall include the cost of all insurance premiums on all policies of insurance required to be or which the Board of Managers has obtained pursuant to the provisions of Section 2 of this Article V. The Common Expenses may also include (i) such amounts as the Board of Managers may deem proper for the operation and maintenance of the Property, including, without limitation, an amount for working capital of the Condominium, *for a general operating reserve*, for a reserve fund for replacements, and to make up any deficit in the Common Expenses for any prior year ... (iii) such assessments as are necessary to provide funds for other Condominium purposes including, without limitation, capital improvements to, and repairs and replacements of Condominium real or personal property, the acquisition of real or personal property on behalf of the Unit Owners, and *expenses which were not anticipated at the last time Common Expenses were determined....*

Notwithstanding any other provision of these By-Laws, *any Common Expense of the nature described in (iii) above and which is in excess of \$25,000 shall require the approval of fifty percent (50%) in number and Common Interest of the Unit Owners.* (Condominium Bylaws [NYSCEF Doc. 385]) (emphasis added).

It is undisputed that the Unit Owners did not vote to approve the \$227,000 in additional common charges. The Board argues that no vote was necessary because the additional common charges fall under Article V.1(a)(i) as funds “for a general operating reserve.” No unit owner approval is necessary to levy funds under such category. The Unit Owner, in opposition, argues that the additional common charges required approval of the unit owners since it was for “expenses which were not anticipated at the last time Common Expenses were determined” and for an amount in excess of \$25,000. Therefore, the Unit Owner asserts, the Board lacked the authority to levy the additional common charges and the motion for summary judgment on such claim must fail.

The Court finds that the Board failed to submit sufficient evidence of its authority to levy the additional common charges. It is unclear whether the “general operating reserve” was intended to include funds for potential litigation, and the Board failed to tender evidence demonstrating such. The Unit Owner has raised a triable issue as to whether the general

operating reserve was intended to include funds for litigation expenses. Therefore, the Board's motion for partial summary judgment on its claim for additional common charges is denied.

However, there are no disputed issues of fact as to the Board's claim for the unpaid special assessment. The special assessment was not in excess of \$25,000 and thus did not require unit owner approval. The July 21, 2014 invoice clearly charged the Unit Owner \$5,035—its portion of the \$25,000 special assessment. Payment was due on August 1, 2014. The Unit Owner did not pay the special assessment charge. Further, the Unit Owner does not contest the portion of the Board's motion that relates to the special assessment. Therefore, the Board's motion for partial summary judgment on its claim for the special assessment is granted.

Accordingly, it is hereby

ORDERED that Plaintiff's motion for partial summary judgment on the sixth cause of action is granted in part. The Clerk is directed to enter judgment in favor of The Board of Managers of 111 Hudson Street Condominium against 111 Hudson Street, LLC on so much of the sixth cause of action that relates to the special assessment in the amount of \$5,035.00, with interest accruing at the contractual rate of 18% per annum from August 1, 2014. (Condominium Bylaws, Article V.5 [NYSCEF Doc. 385]). The remaining claims shall continue.

5/7/2018
DATE


BARRY R. OSTRAGER, J.S.C.
BARRY R. OSTRAGER

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input checked="" type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	DO NOT POST	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	