SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. BARBARA JAFFE **PART** 12

Justice

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MARK ALONSO and MARYANN ALONSO,

Plaintiffs,

- v -

401 EAST 74 OWNERS CORP.,

Defendant.

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INDEX NO. 158349/2018

MOTION DATE

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 93-102, 104-106, 108-134

were read on this motion for discovery.

By notice of motion, plaintiffs move for an order compelling defendant to produce documents demanded in plaintiffs' first and second discovery notices or, alternatively, striking defendant's answer and counterclaims and granting a default judgment and precluding defendant from offering evidence. Defendant opposes.

At issue on this motion are the following requested documents: (1) board minutes from 1995 to the present; (2) alteration applications of other building shareholders; and (3) all correspondence regarding the recreation of the grandfathered-in list. (NYSCEF 102).

I. PERTINENT BACKGROUND

A. Complaint (NYSCEF 1)

In this action, plaintiffs, owners of shares of stock in defendant cooperative association, allege that in 2001, they installed a washing machine and dryer in their apartment, which was known to defendant, as its employees inspected and/or entered the apartment at least 500 times between 2001 and 2018.

In or about 2010, defendant enacted a rule whereby any shareholder who had a washing machine and/or dryer could retain them until they ceased to operate or the apartment was sold.

In 2013, after plaintiffs complained to defendant about a backed-up toilet and defendant charged them for cleaning the building's entire waste line, plaintiffs sued it in Civil Court to recover the amount of the charges; the case ultimately settled, with defendant agreeing to repay plaintiffs.

In 2017, plaintiffs removed the dryer but retained the washing machine.

On October 21, 2018, defendant issued plaintiffs a notice to cure, contending that they were in default of their proprietary lease for having a washing machine, and demanding that they remove it and make other changes and payments related thereto.

Plaintiffs thus commenced the instant action, seeking a judgment declaring that they are not in default of the lease and granting them attorney fees for having to institute the action.

B. Alonso affidavit (NYSCEF 94)

According to plaintiff Mark Alonso, shortly after defendant enacted its rule permitting the grandfathering-in of existing washers and dryers in 2010, the building's then-managing agent inspected each washer and dryer in the building and compiled a list of them. Mark was present when his washer and dryer were inspected and observed the agent photograph the machines and record on a form their make, model, and serial number. At that time, there were more than 30 existing washers and dryers in the building.

In 2015, the building hired Midboro Management as its new managing agent and thereafter, Midboro's building representative began to retaliate against plaintiffs because of the plumbing bill lawsuit and their support of building employees whom the representative sought to fire from their employment at the building.

In 2018, Midboro's representative visited plaintiffs' apartment for an unrelated inspection and allegedly "discovered" their washing machine; defendant's notice to cure issued thereafter.

To avoid a fight with defendant, plaintiff tried to cure by capping the water connection. Defendant required plaintiffs to submit an alteration agreement, which, on information and belief, was not required of any other shareholders in the building. The representative then repeatedly rejected plaintiffs' alteration agreement until the cure period had expired, and then terminated plaintiffs' proprietary lease.

II. CONTENTIONS

A. Plaintiff (NYSCEF 102)

Plaintiffs contend that they are entitled to review all board minutes from 1995 to the present, and reject defendant's allegation that the minutes do not exist given deposition testimony that Midboro takes and keeps all minutes. They seek information related to any meetings or discussions about washer/dryers machines and plaintiffs' proposed alteration and argue that they need copies of all alteration agreements submitted by other shareholders related to washer/dryers, claiming that they would show whether others were required to submit such agreements and/or whether plaintiffs' proposed agreements were scrutinized more closely than others. Plaintiffs maintain that the emails related to the board's attempt to recreate the grandfathered-in washing machine/dryer list are relevant to their claims.

B. Defendant (NYSCEF 109, 127)

According to defendant, plaintiffs' motion is moot as it has provided them with the minutes, and that the emails cannot be located despite a diligent search for them. Moreover, the alteration agreement issue is outside the scope of plaintiffs' complaint. It disavows possessing documents from before 2015, when the building changed management companies, and questions

plaintiffs' counsel's apparent unwillingness to subpoena the former management company for pre-2015 records. It asserts that the alteration agreements are not relevant nor likely to lead to relevant evidence about whether plaintiffs are permitted to retain the washing machine in their apartment.

C. Reply (NYSCEF 134)

Plaintiffs complain that defendant's counsel has repeatedly claimed to have produced all relevant documents in defendant's possession, only to find and produce more documents. They thus contend that they are warranted disbelieving defense counsel's assertions that all relevant discovery has been provided to date. They argue that the alteration agreements are relevant to their claims and that sanctions and costs should be assessed against defendant and its counsel.

III. ANALYSIS

Pursuant to CPLR 3101(a), a party is entitled to full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of burden of proof. However, the right to full disclosure, while broad, is not unlimited. (*Forman v Henkin*, 30 NY3d 656 [2018]).

Here, defense counsel has stated, as an officer of the court, that he has provided plaintiff with all relevant meeting minutes, and that no emails regarding the grandfathered-in list have been found. At this point, there is no reason to doubt his assertion. In any event, plaintiffs can pursue the issue further during depositions, and if defendants later discover more minutes or the missing emails, plaintiffs may then move for any appropriate relief.

To the extent that evidence of alteration agreements submitted by other shareholders is related to plaintiffs' claim that the building has engaged in bad faith toward them by imposing a more onerous requirement on them than others, plaintiffs are entitled to such evidence.

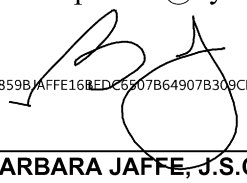
I decline to impose sanctions at this time.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that plaintiffs' motion is granted solely to the extent of directing defendant to provide plaintiffs with any alteration agreements submitted by other shareholders in the building since 1995 and related to washing machines and/or dryers within 30 days of the date of this order, and is otherwise denied; and it is further

ORDERED, that the parties submit a stipulation regarding any remaining discovery within 30 days of the date of this order, in Word format and by email to cpaszko@nycourts.gov.



11/22/2021
DATE

BARBARA JAFFE, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE