

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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SOUTHGATE OWNERS CORP.

Plaintiff,

- v -

PHYLIS ESPOSITO,

Defendant.

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INDEX NO. 153710/2024

MOTION DATE 02/26/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 53, 54, 55, 56, 57

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, the defendant’s motion is granted, and the plaintiff’s cross-motion is denied.¹

Background

Plaintiff Southgate Owners Corp. is the owner of the cooperative building at 424 East 52nd Street. When the building became a co-op in 1987, each apartment was issued a number of shares relative to the apartment’s size and location. The By-Laws state that the Board “shall” allocate shares to apartments based on a “reasonable relationship to the portion of the fair market value of equity.” Under the original offering plan, 460 shares were allocated to the unit owned by defendant Phylis Esposito. In 1996, Defendant made changes to the apartment, expanding the interior into the terrace space. No extra shares were allocated to Defendant at that time. In 2011-2012, Plaintiff’s Board President asked Defendant twice if she would voluntarily accept the allocation of additional shares. In 2014, Plaintiff’s then-attorney admitted that he considered the

¹ The Court would like to thank Benjamin Shoyhet for his assistance in this matter.

statute of limitations to have run out on the Board's ability to bring an action against Defendant regarding an additional allocation, but that he hoped Defendant would be willing to meet with the Board on the matter. This meeting apparently never happened. In 2022, Plaintiff's then-attorney wrote a letter to Defendant informing her that "shares are to be allocated to this additional space", but it does not appear that any official allocation was made at that time.

On April 19, 2024, Plaintiff initiated this proceeding by filing the complaint. According to the complaint, the Board had allocated extra shares to Defendant "as of" 1996 at the completion of the expansion. The complaint also alleges "upon information and belief" Defendant refuses to accept the allocation and pay her pro rata share of co-operative expenses. But it was three days *after* filing the complaint that the Board first sent a letter to Defendant, stating that her account had been allocated extra shares and that her account was being charged for the extra shares retroactively to 1996. Defendant timely answered the complaint and asserted two counterclaims, one for attorneys' fees pursuant to the proprietary lease and one seeking to annul the decision that allocated 80 additional shares. Then in November of 2024, Plaintiff initiated another action against a former Board member, alleging there that the Board member in question had failed to allocate extra shares to Ms. Esposito after the expansion.

Standard of Review

It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211, "the pleading is to be liberally construed, accepting all the facts alleged in the pleading to be true and according the plaintiff the benefit of every possible inference." *Avgush v. Town of Yorktown*, 303 A.D.2d 340, 341 [2d Dept. 2003]. Dismissal of the complaint is warranted "if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and

inferences to be drawn from them do not allow for an enforceable right of recovery.”

Connaughton v. Chipotle Mexican Grill, Inc, 29 N.Y.3d 137, 142 [2017].

CPLR § 3211(a)(5) allows for a complaint to be dismissed because of a valid release. While a valid release generally “constitutes a complete bar”, for a signed release the burden shifts to the plaintiff to “show that there has been fraud, duress, or some other fact which will be sufficient to void the release.” *Centro Empesarial Cempresa S.A. v. América Móvil, S.A.B. de C.V.*, 17 N.Y.3d 269, 276 [2011]. A party may move for a judgment from the court dismissing causes of action asserted against them based on the fact that the pleading fails to state a cause of action. CPLR § 3211(a)(7). For motions to dismiss under this provision, “[i]nitially, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law.” *Guggenheimer v. Ginzburg*, 43 N.Y. 2d 268, 275 [1977].

Discussion

Defendant brings the present motion, seeking to dismiss the complaint as time-barred to receive summary judgment in their favor on the counterclaim for attorneys’ fees. Plaintiff opposes, and cross-moves for summary judgment in their favor. For the reasons that follow, the motion is granted, and the cross-motion is denied.

The Complaint is Clearly Time-Barred

Plaintiff asserts a single cause of action, seeking a declaratory judgment that Plaintiff had properly allocated 80 additional shares to Defendant “as of January 1, 1996” and that Defendant is liable for the full pro rata share of the additional expenses together with interest dating from 1996. Declaratory judgments are governed by a six-year statute of limitations under CPLR § 213. Plaintiff argues that their cause of action did not accrue until 2024. This argument fails, and the

complaint is time-barred, for multiple reasons. First, according to Plaintiff's own complaint, the shares were allocated "as of" 1996 and they are seeking charges from that date. The Court notes that according to the terms of the Proprietary Lease, a shareholder can only be obligated to pay rent based off an additional allocation of shares "from and after the date of issuance." To the extent that Plaintiff alleges that the additional shares were not issued until 2024, by the terms of the Proprietary Lease they are not permitted to attempt to retroactively apply charges before the date of issuance. There are allegations that the Board verbally informed Defendant in 1996 that they would not be allocating additional shares, related to Defendant installing a stairwell in the building for common use at her own expense. The Court does not need to reach the issue, however, of if these allegations are sufficient to cause the complaint to be time-barred, nor if the (in)actions of the Board in 1996 constituted a binding determination not to allocate additional shares, because there is an independent reason why the complaint is time-barred.

A claim for declaratory relief first accrues "when there is a bona fide, justiciable controversy between the parties." *Trump Vil. Section 4, Inc. v. Young*, 217 A.D.3d 711, 714 [2nd Dept. 2023]. Such a controversy occurs when "a plaintiff receives direct, definitive notice that the defendant is repudiating his or her rights." *Id.* It is not disputed that from 2011 to 2014, multiple members of the Board, operating under the belief that any cause of action was time-barred, repeatedly attempted to get Defendant to voluntarily accept the additional shares and that she refused. Plaintiff's papers characterize these as requests that would not trigger the statute of limitations, but the Court finds otherwise. Plaintiff attempted to allocate shares to Defendant by at least 2014, and Defendant definitively refused to accept such a proposed allocation. It is at that time, if not earlier, that Plaintiff's cause of action accrued. And as such, the claim is time-barred in 2024.

To the extent that Plaintiff now argues in their papers that Defendant did not definitively repudiate the allocation until 2024, the Court notes that they did not send the letter to Defendant first stating that additional shares had been allocated to her account until *after* filing the complaint (where they aver that Defendant had refused to accept the allocation). By Plaintiff's own complaint and records, clearly Defendant made what Plaintiff considers to be a definitive repudiation worthy of judicial intervention at some time *prior* to the official notification of the share allocation.

Finally, because Defendant was successful in her defense to the complaint, under the terms of the proprietary lease and the Real Property Law, she is entitled to collect attorneys' fees. The Court has considered the Plaintiff's other arguments and finds them unavailing. Accordingly, it is hereby

ADJUDGED that the motion to dismiss the complaint as time-barred is granted; and it is further

ADJUDGED that the motion for summary judgment on the second counterclaim for attorneys' fees is granted; and it is further

ADJUDGED that the cross-motion for summary judgment is denied; and it is further

ORDERED that an assessment of attorneys' fees against Plaintiff Southgate Owners Corp. is directed, and it is further

ORDERED that a copy of this order with notice of entry be served by the movant upon the Clerk of the General Clerk's Office, who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment hereinabove directed; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website).

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LYLE E. FRANK, J.S.C.

7/24/2025

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE