

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

PRESENT: O. PETER SHERWOOD
Justice

PART 49

BRIAN M. DELAURENTIS, et al.,

Plaintiff,

-against-

30-32 WEST 9th STREET CONDOMINIUM, et al.,

Defendants.

INDEX NO. 651339/2011

MOTION DATE April 17, 2012

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to dismiss action.

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____


Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion to dismiss action is decided in accordance with the accompanying decision and order.

Dated: April 17, 2012


O. PETER SHERWOOD, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 49**

-----X
**BRIAN M. DELAURENTIS, a unit owner of the
30-32 WEST 9th STREET CONDOMINIUM, suing in
the right of the 30-32 WEST 9th STREET
CONDOMINIUM,**

Plaintiff,

-against-

**30-32 WEST 9th STREET CONDOMINIUM,
30-32 LLC, ROSEMARY PAPARO in her capacity
as a director of the 30-32 WEST 9th STREET
CONDOMINIUM and agent of 30-32 LLC, and
DAISY VENTURES, LLC,,**

Defendants.

-----X
O. PETER SHERWOOD, J.:

Whether windows separating an apartment unit in a condominium from the exterior of the building constitutes a “Common Element” is governed by the Condominium Declaration for the premises (“Declaration”). Despite the general provision of Article 7 of the Declaration which provides that “[e]ach Unit consists of the area measured horizontally from the exterior faces of exterior walls,” section 8.4.10 lists “[t]he windows” as one of the “Common Elements” of the condominium. Further, section 8.4.2 lists as Common Elements, “all ... supports ... together with those portions of the exterior walls of the Building *beyond the Unit side of the glass ...*”(emphasis added).

Windows within an apartment unit benefit more than just the individual unit owner. Windows provide security, insulation and air which benefit all units. Further, if allowed to deteriorate, window parts may become dislodged and fall on pedestrians on the public street thereby exposing the entire condominium to liability. Thus, windows are not a “Common Element [that] benefits only certain Unit Owners” section 8.4.11. Neither the Condominium Act, New York Real Property Law §339-p, nor the tax map on which plaintiff relies, creates any ambiguity as to the intention of the sponsor as set forth in the Declaration designating the windows as a Common Element. Section 339-p requires that the publicly filed floor plan of a condominium show the

**DECISION AND
ORDER**

Index No. 651339/2011

“layout, location and *approximate* dimensions of the units” (emphasis added). The filed tax map lacks much of the detail describing ownership of and responsibility for various elements of the building. That detail is set forth in the Declaration. The tax map does not inform the issue as to whether windows are responsibility of unit owners.

Accordingly, it is hereby

ORDERED that the motion of plaintiff for summary judgment (motion sequence number 002) is DENIED; and it is further

ORDERED that the cross-motion of defendant, 30-32 West 9th Street Condominium, for summary judgment (motion sequence number 002) and the separate cross-motion of defendant, Daisy Ventures, LLC, for summary judgment dismissing the complaint is GRANTED, and it is further

ORDERED that the motion of defendants, Rosemary Paparo and 30-32 LLC to dismiss the complaint (motion sequence number 001) is DENIED as moot, the court having determined to grant the motion of 30-32 West 9th Street Condominium for summary judgment and to dismiss the entire complaint; and it is further

ORDERED that the complaint is dismissed in its entirety with costs and disbursements to defendants as taxed by the Clerk upon submission of appropriate bills of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.

DATED: April 17, 2012

E N T E R,



O. PETER SHERWOOD

J.S.C.