

2023 WL 3235981
Supreme Court, Appellate Division, First
Department, New York.

ROSENTHAL,
Plaintiff–Respondent,

v.

The BOARD OF MANAGERS OF the
CHARLESTON CONDOMINIUM,
Defendant–Appellant.

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Index No. 156072/21
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Case No. 2022–01727
|
Entered May 4, 2023

Attorneys and Law Firms

Braverman Greenspun P.C., New York (Drew E. Pakett
of counsel), for appellant.

Adam Leitman Bailey, P.C., New York (Jeffrey R. Metz
of counsel), for respondent.

Manzanet–Daniels, J.P., Singh, Moulton, Rodriguez,
Pitt–Burke, JJ.

Opinion

*1 Order, Supreme Court, New York County (Paul A.
Goetz, J), entered March 21, 2022, which, to the extent
appealed from, denied defendant’s motion to dismiss the

causes of action for breach of fiduciary duty and breach of
contract, unanimously affirmed, with costs.

The allegations in the complaint, as amplified by
plaintiff’s affidavit and the accompanying exhibits
submitted in opposition to defendant’s motion, were
sufficiently particular to state a claim for breach of
fiduciary duty (see CPLR 3013; *High Definition MRI, P.C.
v. Travelers Cos., Inc.*, 137 A.D.3d 602, 602–603, 29
N.Y.S.3d 23 [1st Dept. 2016]; see also *Parker Waichman
LLP v. Squier, Knapp & Dunn Communications, Inc.*, 138
A.D.3d 570, 571, 28 N.Y.S.3d 603 [1st Dept. 2016]).
Accepted as true, and afforded every possible favorable
inference (see *Leon v. Martinez*, 84 N.Y.2d 83, 87, 614
N.Y.S.2d 972, 638 N.E.2d 511 [1994]), they show that
defendant board failed to promptly and adequately
address plaintiff’s continuous complaints of unsanitary
water issues in her condominium unit, in breach of their
duty to maintain the building’s common plumbing and
water services.

The allegations that defendant failed to comply with its
obligations under the condominium’s bylaws to maintain
and repair the building’s piping and water system
sufficiently stated a claim for breach of contract. Contrary
to defendant’s contention, plaintiff had identified the
applicable provisions of the bylaws in the complaint.

We have considered defendant’s remaining arguments
and find them unavailing.

All Citations

--- N.Y.S.3d ----, 2023 WL 3235981, 2023 N.Y. Slip Op.
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