

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

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A&F HAMILTON HEIGHTS CLUSTER, INC.,
derivatively on behalf of HAMILTON HEIGHTS
CLUSTER ASSOCIATES, L.P., and JAMES FENDT,
derivatively on behalf of A&F HAMILTON HEIGHTS
CLUSTER, INC., PLEASANT AVENUE ASSOCIATES,
L.P., FAM PLEASANT AVENUE LLC, AFF-PSA
BRONX 9-D, INC. and TAF ALEXANDER AVE. INC.,

Assigned Justice:
Hon. O. Peter Sherwood

Index No.: 653038/2014

Motion Sequence. No. 024

Plaintiffs,

ORDER

-against-

URBAN GREEN MANAGEMENT, INC. and
ERIC ANDERSON,

Defendants,

and

HAMILTON HEIGHTS CLUSTER ASSOCIATES, L.P.,
A&F HAMILTON HEIGHTS CLUSTER, INC.,
PLEASANT AVENUE ASSOCIATES, L.P., FAM
PLEASANT AVENUE LLC, AFF-PSA BRONX 9-D, INC., and
TAF ALEXANDER AVE., INC.,

Nominal Defendants.

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URBAN GREEN MANAGEMENT, INC., and ERIC
ANDERSON, derivatively on behalf of AFF-PSA
BRONX 9-D, INC., and FAM PLEASANT AVENUE LLC,

Third-Party Plaintiffs,

-against-

JAMES FENDT, ALEX ABREU, and
YASMIN ROSADO,

Third-Party Defendants,

and

AFF-PSA BRONX 9-D, INC., and FAM PLEASANT
AVENUE LLC,

Nominal Third-Party Defendants.

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WHGA HAMILTON HEIGHTS CLUSTER, INC.
and WEST HARLEM HAMILTON HEIGHTS CLUSTER, INC.,

Intervenor-Plaintiffs,

-against-

HAMILTON HEIGHTS CLUSTER ASSOCIATES, L.P.,
A&F HAMILTON HEIGHTS CLUSTER, INC.,
A&F EQUITIES, LLC; and A&F HHC EQUITIES, LLC,

Intervenor-Defendants.
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WHEREAS, on January 11, 2018, Defendants Urban Green Management, Inc. and Eric Anderson (“Defendants”) moved for summary judgment to dismiss all derivative claims asserted against them in Plaintiff’s Second Amended Complaint, dated August 28, 2015 (motion. seq. no. 24) (“Motion”), filing in support thereof a notice of motion, dated January 11, 2018; affirmation of Andrew W. Hayes, filed January 11, 2018; Rule 19-a statement, dated January 11, 2018; reply affirmation of Andrew W. Hayes, dated April 13, 2018; and revised Rule 19-a statement, dated October 12, 2018, with exhibits annexed thereto; and

WHEREAS, on February 28, 2018, Plaintiff James Fendt, derivatively on behalf of A&F Hamilton Heights Cluster, Inc. (“Plaintiff”), opposed the Motion, filing in support of the opposition an affirmation of Sheila Tendy, Esq., dated February 27, 2018, with exhibits annexed thereto; affidavit of James Fendt, dated February 27, 2018; response to the Rule 19-a statement, dated February 28, 2018; memorandum of law, dated February 28, 2018; response to the revised Rule 19-a statement, dated October 23, 2018; and supplemental affirmation of Michael, J. Antongiovanni, dated March 28, 2018.

WHEREAS, Defendants’ Motion having duly come on to be heard before Justice O. Peter Sherwood, at a Commercial Term of this Court, Part 49, held at the courthouse located at 60 Centre Street, New York, NY 10007, on August 27, 2018; and

UPON, the issues having been duly heard, the Court, after due consideration and deliberation having been had upon the foregoing, made and issued its decision and order, dated November 2, 2018 and entered by the New York County Clerk on November 7, 2018 (a copy of which is annexed hereto), granting Defendants' Motion in its entirety and directing Defendants to settle an order on the Motion.

NOW, it is hereby

ORDERED that Defendants' Motion for summary judgment, dismissing all derivative claims asserted against Defendants in Plaintiff's Second Amended Complaint (NYSCEF doc. no. 257) is hereby GRANTED, and the Second Amended Complaint is DISMISSED WITH PREJUDICE.

ORDERED that the Preliminary Injunction entered in this action against Defendants by order, dated October 20, 2014 (NYSCEF doc. no. 39), is hereby dissolved, and of no further force or effect.

Order signed and entered this 8th day of May, 2019.


HON. O. PETER SHERWOOD, J.S.C.
O. PETER SHERWOOD
J.S.C.