

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

PRESENT: HON. HASA A. KINGO PART 65M

Justice

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THE BOARD OF MANAGERS OF THE 5 EAST 17TH
STREET CONDOMINIUM

INDEX NO. 151186/2019

Plaintiff,

- v -

**DECISION AND ORDER
FOLLOWING BENCH TRIAL**

IAN PECK,

Defendant.

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In the instant matter, Plaintiff the Board of Managers of the 5 East 17th Street Condominium (“Plaintiff”) seeks judgment for unpaid common charges, assessments, late charges, interest, water charges, and attorneys’ fees arising from defendant Ian Peck’s (“defendant”) ownership and occupancy of Unit 5 at the 5 East 17th Street Condominium through July 2024. Plaintiff contends that defendant failed for years to pay ordinary common charges and related charges imposed pursuant to the condominium’s bylaws, while continuing to possess, use, transfer, finance, and derive economic benefit from the unit.

Defendant denies liability in the amount claimed. His principal defenses are that the Board’s accounting is unreliable; that the 2015 and 2017 assessments were improper; that portions of the elevator and roof work were undertaken for the private benefit of the eighth-floor unit and its owners; that the roof was a limited common element from which he received no benefit; and that plaintiff’s claim is therefore overstated by what defendant characterizes as improper assessments and cascading interest and late-fee calculations.

After a nonjury trial, the court finds in favor of plaintiff, and against defendant. The court credits the testimony of plaintiff’s witnesses, finds that plaintiff established by a preponderance of the credible evidence that the challenged common charges, assessments, late charges, interest, water charges, and contractual fee-shifting obligations were properly imposed under the condominium’s governing documents and applicable law, and finds that defendant’s testimony was, in material respects, not credible.

Indeed, the court rejects defendant’s defenses and counterclaims, credits plaintiff’s proof, and awards plaintiff judgment in the amount established by plaintiff’s trial ledger and proof, together with contractual attorneys’ fees, costs, disbursements, and statutory and contractual interest as applicable.

BACKGROUND AND PROCEDURAL HISTORY

This action concerns Unit 5 in the condominium located at 5 East 17th Street, New York, New York. The building is a small condominium consisting of commercial and residential units. Defendant owned Unit 5, a full-floor residential unit. The evidence established that the building is an older structure requiring significant capital work, including elevator work and roof repair or replacement.

Plaintiff commenced this action in 2019 to recover unpaid common charges, assessments, late charges, interest, and related amounts allegedly owed by defendant under the condominium bylaws. Defendant answered and asserted affirmative defenses and counterclaims, principally challenging plaintiff's accounting, the validity of certain assessments, and the Board's conduct.

Before trial, the court limited the temporal scope of the recoverable charges to those through July 2024, the period during which defendant remained responsible for the unit. The parties thereafter tried the matter before the court. Plaintiff presented testimony from Board president Keith Goggin and the condominium's managing agent, Michael Khakshouri, among other evidence, including the governing documents, notices, correspondence, ledgers, and account statements. Defendant testified and presented testimony from Andrew Ross, a forensic accountant. The court also addressed several evidentiary issues during trial, including the permissible scope of Mr. Ross's expert testimony. The court permitted Mr. Ross to offer accounting testimony but did not permit expert opinion on the ultimate legal question whether the Board's assessments were valid under the governing documents or protected by the business judgment rule.

OVERVIEW OF THE TRIAL PROCEEDINGS

This matter was tried before the undersigned without a jury over multiple trial days in June 2026. The trial proceeded in open court in Part 65 of the Supreme Court, New York County. Throughout the proceeding, the court had the opportunity not only to assess the substance of the witnesses' testimony but also to observe their demeanor, responsiveness, manner of answering questions, and reactions during both direct and cross-examination. Those observations informed the court's credibility determinations.

The parties presented both fact and expert testimony. Plaintiff called Keith Goggin, the President of the Board of Managers of the 5 East 17th Street Condominium, and Michael Khakshouri, the condominium's managing agent. Plaintiff also introduced extensive documentary evidence, including the condominium's declaration and bylaws, board resolutions, meeting minutes, correspondence, account statements, payment histories, ledgers, assessment notices, management records, and other business records maintained in the ordinary course of condominium operations.

Mr. Goggin testified extensively regarding the history of the condominium, the governance structure of the building, the Board's decision-making process, the condition of the building and its infrastructure, the circumstances surrounding the challenged assessments, the rationale underlying the elevator and roof projects, the operation of the condominium's governing documents, and defendant's longstanding failure to satisfy his financial obligations to the

condominium. His testimony spanned substantial portions of the trial and was subjected to vigorous cross-examination.

Plaintiff's managing-agent witness testified concerning the maintenance and accuracy of the condominium's books and records, the preparation and maintenance of account ledgers, notices sent to defendant, credits applied to defendant's account, payment histories, and the methodology used to calculate outstanding balances, interest, late fees, and other charges reflected in the condominium's records.

Defendant testified on his own behalf. Defendant's testimony focused principally on his objections to the challenged assessments, his view that portions of the roof and elevator projects disproportionately benefited the owners of the eighth-floor unit, his communications with the Board and management, his contention that he lacked sufficient information regarding certain charges, and his challenge to the amounts reflected on the condominium's ledgers. Defendant was examined at length by his own counsel and was subjected to extensive cross-examination concerning the history of his nonpayment, his use of the unit, his communications with the Board, his understanding of the condominium's governing documents, and his conduct during the period in which the disputed charges accrued.

Defendant also called Andrew Ross, a forensic accountant. Mr. Ross offered expert testimony concerning accounting methodology and the potential financial consequences that would follow if certain assessments or charges were excluded from defendant's account. Mr. Ross did not offer, and was not permitted to offer, legal opinions concerning the validity of the Board's actions or the applicability of the business judgment rule. Rather, his testimony was limited to accounting issues and the mathematical effects of various assumptions advanced by defendant.

The court also received numerous exhibits admitted into evidence by both parties. Those exhibits included decades of condominium records, communications among unit owners and management, financial statements, accounting records, expert analyses, condominium governance documents, and prior filings made in connection with this litigation.

At the conclusion of the evidence, both parties made detailed summations addressing the legal and factual issues presented. The court has carefully reviewed the entirety of the trial record, including the testimony, documentary evidence, exhibits, and summations. Having had the opportunity to observe the witnesses over the course of the trial and to evaluate their testimony in light of the documentary evidence, the court now makes the following findings of fact and conclusions of law.

CREDIBILITY DETERMINATIONS

The court finds Keith Goggin credible. His testimony was direct, detailed, internally consistent, and corroborated by the documentary record. Mr. Goggin testified that he purchased Unit 7 in 2000, lives in the building with his family, and serves as Board president without compensation. He explained the building's structure, the residential and commercial configuration, the ownership interests, the Board's governance practices, and the need for capital work.

Most significantly, Mr. Goggin credibly explained that the roof was not merely an amenity for the eighth-floor unit but a structural component of the building that covers and protects the entire building. He testified that the roof “keeps us warm and dry,” and the court credits that testimony. He further explained that while certain rooftop amenities, including pavers, grill areas, wet bars, pools, lighting, and decking, were installed above the roof, those amenities were not paid for through the roof-replacement assessment charged to defendant. Rather, the eighth-floor unit paid for those amenities separately. Mr. Goggin also testified that the eighth-floor unit bore a larger percentage of the roof-related cost than its ordinary allocation because of the work associated with skylights and an atrium. The court finds that testimony credible and supported by the record.

Mr. Goggin also testified credibly regarding the elevator project. The old elevator was in disrepair and required substantial work. The Board’s decision to replace and modernize the elevator, and to extend it to the roof level, was made after a lengthy process involving professionals, planning, approvals, and building needs. Mr. Goggin explained that roof access served maintenance purposes and that the Board had contemplated a future arrangement by which residential unit owners might obtain broader roof access. The court credits his testimony that the elevator work was undertaken for legitimate condominium purposes and not as a disguised subsidy for a private investment.

The court also credits plaintiff’s managing-agent proof. The managing agent testified regarding the records received and maintained by management, the unit ledger, the notices and communications sent to defendant, and defendant’s failure to make required payments. The court received plaintiff’s ledgers and related exhibits as business records. Those records demonstrated a long-running delinquency and reflected the charges, credits, payments, and balances maintained in the ordinary course of condominium management.

The court finds defendant Ian Peck’s testimony largely incredible. That finding is not based on demeanor alone, although demeanor was considered. It is based on multiple objective contradictions between his testimony and the documentary record, his inability or unwillingness to acknowledge basic facts, and his pattern of offering evasive answers on matters within his personal knowledge.

First, defendant’s claim that he was not provided information concerning assessments was materially undermined by the written communications in evidence. During cross-examination, defendant was confronted with a November 27, 2017 email from management responding to him and offering to discuss the matter. He acknowledged receiving the email. The record also showed that management responded to defendant and that defendant did not meaningfully follow through in the manner his trial position suggested. His assertion that “nothing was provided” was therefore overstated and not credible.

Second, defendant’s professed ignorance of the governing documents was not persuasive. He claimed not to have read the bylaws in their entirety and, at points, not to have read them at all. Yet he simultaneously resisted charges imposed under those bylaws, transferred interests connected to the unit, encumbered the unit, and sought to rely on selective provisions of the governing documents when useful to his defense. The court does not credit defendant’s attempt to

use professed unfamiliarity with the bylaws as a shield against obligations that run with condominium ownership.

Third, defendant's testimony regarding short-term rentals damaged his credibility. Defendant admitted that the apartment was listed on Airbnb and rented numerous times, and that substantial revenue was received. He acknowledged that the Board was not notified. The court finds that defendant derived substantial economic benefit from the unit while refusing to pay the common charges and assessments necessary to operate and maintain the building. That conduct was inconsistent with defendant's portrayal of himself as a unit owner merely seeking good-faith clarification before paying.

Fourth, defendant's testimony concerning the elevator and roof was not credible. Defendant sought to minimize the need for the elevator work by stating that he did not recall being stuck in the elevator or hearing of others being stuck, and he admitted that he did not read the engineer's report. The court credits the Board's proof concerning the elevator's condition and rejects defendant's unsupported personal recollection as a basis to invalidate a building-wide capital decision.

Fifth, defendant's handling of the disputed charges was inconsistent with good-faith nonpayment. Defendant did not place disputed sums in escrow. He did not pay undisputed common charges while reserving rights as to disputed assessments. Instead, the proof showed a years-long refusal to pay common charges, assessments, interest, late charges, and related amounts while continuing to occupy, rent, finance, and transfer interests connected to the unit. The court finds that pattern probative of defendant's lack of credibility and lack of good faith.

Finally, defendant's conduct during trial further informed the court's assessment of credibility. The court accommodated defendant's virtual appearance based on medical representations, but the record established that defendant did not comply with the court's directive that he appear virtually from Manhattan. The court directed defendant to return to New York County and warned that noncompliance could result in an unfavorable inference. This episode, while not the sole basis for the court's credibility determination, reinforced the court's conclusion that defendant's testimony and litigation posture were marked by evasion and selective compliance.

The court gives limited weight to Andrew Ross's testimony. Mr. Ross was qualified to address accounting methodology, but his analysis depended on assumptions that the court rejects, including the premise that certain assessments should be removed or materially altered. Once the court finds that the challenged assessments were validly imposed, Mr. Ross's recalculation has little probative value. Moreover, Mr. Ross's testimony did not establish that plaintiff's ledger was mathematically unreliable if the assessments and charges were legally proper. His opinions therefore do not defeat plaintiff's prima facie proof.

LEGAL DISCUSSION

A. Governing Legal Principles

A condominium's relationship with its unit owners is governed by the Real Property Law, the declaration, bylaws, and rules adopted pursuant to those governing documents. Unit owners are obligated to pay common charges and assessments imposed in accordance with the condominium documents. Real Property Law § 339-z expressly recognizes a board's lien for unpaid common charges together with interest. Real Property Law § 339-aa further authorizes enforcement of such liens in the manner provided by law.

The Board's challenged decisions are also evaluated under the business judgment rule. Under New York law, courts defer to the good-faith decisions of cooperative and condominium boards when the board acts within the scope of its authority, for the purposes of the building or condominium, and in good faith (*Matter of Levandusky v One Fifth Ave. Apt. Corp.*, 75 NY2d 530, 537-538 [1990]; *40 W. 67th St. v Pullman*, 100 NY2d 147, 153-155 [2003]). The Appellate Division, First Department, applies that rule to condominium boards (*Perlbinder v Bd. of Mgrs. of 411 E. 53rd St. Condominium*, 65 AD3d 985, 989 [1st Dept 2009]).

The business judgment rule is not a license for self-dealing, bad faith, or action outside the governing documents. Courts may intervene where a board acts outside its authority, in bad faith, for discriminatory or improper purposes, or in a manner that lacks a legitimate relationship to the welfare of the condominium (*Matter of Levandusky*, 75 NY2d at 538; *Pullman*, 100 NY2d at 155; *Pelton v 77 Park Ave. Condominium*, 38 AD3d 1, 9 [1st Dept 2006]). But disagreement with the wisdom, cost, or aesthetics of a board decision is not enough. Where the board's action is authorized, undertaken in good faith, and related to legitimate building purposes, the court may not substitute its judgment for that of the board (*Matter of Levandusky*, 75 NY2d at 538).

B. Plaintiff Established Defendant's Obligation to Pay Common Charges, Assessments, Late Charges, Interest, and Related Amounts

Plaintiff established that defendant was the responsible unit owner for Unit 5 during the relevant period and that the bylaws required him to pay common charges and assessments. Plaintiff further established the amounts due through the admitted ledgers and testimony of its witnesses.

The court credits plaintiff's proof that defendant failed to pay ordinary common charges for an extended period. Defendant's objections focused primarily on assessments and alleged accounting consequences flowing from those assessments. But defendant did not persuasively rebut plaintiff's proof that ordinary common charges accrued and were unpaid. Nor did he establish any legal basis to withhold all charges while contesting selected components of the account.

A unit owner may not unilaterally refuse to pay common charges because he disputes the Board's decisions. Real Property Law § 339-x provides that no unit owner may exempt himself from liability for common expenses by waiver of the use or enjoyment of common elements or by abandonment of the unit. That principle applies with particular force here. Defendant continued to possess and benefit from the unit, and the record showed that he also generated rental revenue from it. He could not, consistent with the statutory scheme and the condominium documents, enjoy the benefits of ownership while shifting the financial burden of building operations to his neighbors.

C. The 2017 Elevator Assessment Was Valid and Protected by the Business Judgment Rule

Defendant contends that the elevator assessment was tainted by self-dealing because the elevator was extended to the roof and because the eighth-floor unit had an interest in roof access.

The court rejects that argument.

The credible evidence established that the elevator was old, unreliable, and in need of replacement or substantial modernization. The Board considered the issue over time, consulted professionals, pursued approvals, and made a building-related capital decision. Extending the elevator to the roof also served legitimate maintenance purposes by permitting access to the roof and mechanical areas without relying solely on stairs.

That the eighth-floor unit may have received some incidental benefit from roof-level access does not invalidate the assessment. The proper inquiry is not whether any Board member or unit owner received some benefit from a capital improvement. In a condominium, capital work frequently benefits owners differently depending on their location, use, and percentage interest. The question is whether the Board acted within its authority, in good faith, and for a legitimate condominium purpose (*Matter of Levandusky*, 75 NY2d at 537-538; *Perlbinder*, 65 AD3d at 989). On this record, it did.

Defendant did not prove that the elevator assessment was a sham, that required procedures were violated in a material respect, or that the Board acted outside the scope of the bylaws. Nor did defendant prove that the elevator work was undertaken solely or primarily to enrich Mr. Goggin or the eighth-floor unit. The court therefore finds that the elevator assessment was valid.

D. The Roof Assessment Was Valid; Defendant's Limited-Common-Element Argument Fails

Defendant's roof argument rests on a conflation between the structural roof and rooftop amenities. The evidence at trial drew a meaningful distinction between the two.

The court credits Mr. Goggin's testimony that the roof covers the building and protects all units by keeping the structure warm and dry. A roof is a fundamental component of the building envelope. Even where the use of rooftop space may be allocated as a limited common element, the structural roof itself serves the building as a whole. Defendant's position would require the court to treat the building roof as though it were merely a private terrace. The credible evidence does not support that characterization.

The court further credits plaintiff's proof that the amenities installed above the roof, including pools, decking, pavers, grill areas, lighting, and similar improvements, were not charged to defendant through the roof-replacement assessment. The eighth-floor unit paid separately for those amenities, and the eighth-floor unit bore an increased share of the roof-related cost to account for work associated with skylights and an atrium.

Accordingly, defendant failed to prove that he was charged for private rooftop amenities. He was charged for his proportionate share of roof repair or replacement work that benefitted the condominium structure. That charge was authorized, reasonable, and protected by the business judgment rule.

E. Defendant Failed to Prove Self-Dealing or Bad Faith

Defendant's trial theory depended heavily on accusations of self-dealing by Mr. Goggin.

The court does not credit that theory.

Self-dealing must be proven, not merely asserted. It is not enough to show that a Board member owns a unit that may benefit from building-wide work. Nor is it enough to show that Board members disagreed with defendant or rejected his view of the assessments. The record must show that the Board acted outside its authority, in bad faith, or for an improper purpose (*Matter of Levandusky*, 75 NY2d at 538; *Pullman*, 100 NY2d at 155).

Here, the credible evidence showed legitimate building needs. The roof required work. The elevator required work. The Board pursued those projects through a deliberative process. Other unit owners paid. Defendant did not. Plaintiff's witnesses explained the allocation of costs, the distinction between roof structure and roof amenities, and the reasons for the elevator work. Defendant's contrary proof was speculative, selective, and largely dependent on his own incredible testimony.

The court therefore finds that defendant failed to overcome the business judgment rule.

F. Plaintiff's Accounting Was Sufficiently Proven; Defendant's Expert Did Not Rebut It

Plaintiff introduced ledgers and account records maintained in the ordinary course of condominium management. Those records were supported by witness testimony and admitted into evidence. The court finds them reliable.

Defendant's accounting challenge fails because it depends on removing assessments that the court has found valid. Mr. Ross's testimony, at most, showed that if the court were to exclude the 2015 or 2017 assessments, there would be downstream changes to interest and late charges. That proposition is not disputed as a matter of arithmetic. But it does not assist defendant because the predicate legal assumptions underlying the recalculation have been rejected.

Nor did Mr. Ross establish that plaintiff's figures were unreliable under the governing documents if the assessments were valid. He did not persuasively show that plaintiff failed to credit payments, that plaintiff misapplied the governing interest rate, or that plaintiff's ledger was so defective as to defeat recovery. The court therefore credits plaintiff's ledger and rejects defendant's proposed recalculation.

G. Attorneys' Fees

The condominium bylaws authorize plaintiff to recover attorneys' fees incurred in enforcing defendant's payment obligations. Contractual fee-shifting provisions are enforceable where they are clear and apply to the dispute at issue (*Hooper Assoc. v AGS Computers*, 74 NY2d 487, 491-492 [1989]). Where condominium governing documents authorize recovery of fees incurred in collecting unpaid common charges and related amounts, such fees may be awarded to the prevailing board, subject to a reasonableness review.

Plaintiff is the prevailing party. Plaintiff is therefore entitled to recover reasonable attorneys' fees, costs, and disbursements incurred in this action. Because the amount of fees must be reviewed for reasonableness, plaintiff shall submit an affirmation of services, contemporaneous billing records, and any supporting documentation within thirty days of service of this decision and order with notice of entry. Defendant may submit opposition within twenty days thereafter.

The court will determine whether a hearing is necessary.

H. Defendant's Counterclaims and Affirmative Defenses

Defendant's counterclaims and affirmative defenses are dismissed. Defendant failed to prove laches, waiver, estoppel, breach of fiduciary duty, lack of standing, failure of conditions precedent, culpable conduct, or entitlement to setoff.

Plaintiff established its standing as the Board of Managers charged with enforcing the condominium's governing documents. Defendant failed to prove detrimental reliance or prejudice sufficient to support laches or equitable estoppel. He failed to prove waiver because plaintiff consistently sought payment and ultimately commenced this action to enforce the unpaid charges. He failed to prove breach of fiduciary duty because the credible record showed that the Board acted within its authority, in good faith, and for legitimate condominium purposes. He failed to prove any setoff because the assessments he challenged were validly imposed and because his accounting theory rested on assumptions rejected by the court.

The court finds that plaintiff proved its claim by a preponderance of the credible evidence. Plaintiff's witnesses testified credibly and were corroborated by the documentary record. Defendant Ian Peck's testimony was largely incredible, evasive, and contradicted by objective evidence. Defendant enjoyed the benefits of ownership, including use, occupancy, rental income, financing, and transfer-related benefits, while refusing to satisfy the financial obligations imposed on all unit owners under the condominium's governing documents.

Accordingly, it is

ORDERED that plaintiff The Board of Managers of the 5 East 17th Street Condominium is awarded judgment against defendant Ian Peck for unpaid common charges, assessments, late charges, water charges, and interest through July 2024 in the amount established by plaintiff's admitted trial ledger, including the amounts reflected in Plaintiff's Exhibit Y2; and it is further


ORDERED that defendant's affirmative defenses and counterclaims are dismissed with prejudice; and it is further

ORDERED that plaintiff is entitled to recover reasonable attorneys' fees, costs, and disbursements pursuant to the condominium bylaws; and it is further

ORDERED that plaintiff shall submit an affirmation of services and supporting billing records within thirty days after service of this decision and order with notice of entry, and defendant may submit opposition within twenty days thereafter; and it is further

ORDERED that the Clerk shall enter judgment accordingly upon plaintiff's submission of a proposed judgment consistent with this decision and order.

This constitutes the decision and order of the court.



HASA A. KINGO, JSC

DATE: 6/23/2026

Check One: Case Disposed Non-Final Disposition
Check if Appropriate: Other (Specify Decision and Order Following Bench Trial)