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Judge Dismisses Action, Finds Developer Sought to Curb Comment

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A state judge has thrown out what he described as "a classic SLAPP suit" brought by a Manhattan condominium developer against a neighboring cooperative, finding the \$10 million action did not have "a sufficient basis in fact or law."

Invoking a state law adopted in 1992 to curb suits that deter the exercise of free speech - known as Strategic Lawsuits Against Public Participation (SLAPP) - Supreme Court Justice Herman Cahn ([See Profile](#)) dismissed allegations by the developer in [311 West Broadway LLC v. Jacob Cram Cooperative](#), 104408/07, that it had sustained damages when the cooperative filed a complaint against the project with the New York Department of Buildings.

The Manhattan Supreme Court decision will be published Friday.

Judge Cahn also ruled that the defendants were entitled to attorney's fees and referred the matter to a referee.

Developer 311 West Broadway LLC contended in March 2007 that the Jacob Cram Cooperative at 307-309 West Broadway had signed a contract with the developer in May 2006. The contract outlined rules and procedures for the construction of the new condominium to prevent damage to the cooperative.

The cooperative, a seven-unit artists' loft built in 1915, filed a complaint with the Department of Buildings in January 2007, saying the developer's contractor had excavated in a protected berm, allegedly violating two provisions of the agreement.

The cooperative claimed to the Department of Buildings that the excavation of the berm had caused the Jacob Cram building to shift, and requested that the developer cease construction in the berm. The cooperative cited reports by two engineering firms, Mueser Rutledge Consulting Engineers and Rand Engineering and Architecture, attesting to the shift.

As a result of the complaint, the city agency issued a stop-work order on March 16, 2007; it was lifted two weeks later.

The condo project is nearing completion on what was an open-air parking lot. Dubbed SoHo Mews, the property includes two buildings with 68 units. Ten remaining units are priced at \$2.3 million and higher. The development also includes a storefront art gallery operated by the nonprofit group Art Production fund, according to the SoHo Mews Web site.

The developer's suit alleged breach of contract and tortious interference by the cooperative, as well as against the engineering firms, both of which the developer claimed knew about the contract. The suit sought in excess of \$10 million against each defendant.

Citing Civil Rights Law §§70-a, 76-a, which says a plaintiff in a SLAPP suit must meet a heightened burden of proof to avoid summary judgment dismissing the action, the judge noted a plaintiff must demonstrate that its action "has a substantial basis in fact or law or is supported by a substantial argument for an extension, modification or reversal of existing law."

Here, Justice Cahn agreed with the cooperative that the developer's action was "devoid of details" about the alleged breach of contract or the developers' damages.

"The complaint merely alleges that the co-op 'breached the agreement by failing to comply with the dispute resolution procedures set forth therein.' This is insufficient," Justice Cahn wrote.

The 1992 anti-SLAPP provision provides "protections for defendants who face litigation that arises from their participation in matters involving a public petition, such as the permits applied for by the developer in this case," he wrote, citing *Duane Reade Inc. v. Clark*, 2004 WL 690191.

In that case, Duane Reade Inc. sued Patrick Clark, an artist who complained about a billboard the drug store chain planned to construct near the artist's project. Justice Donna Mills dismissed that suit on anti-SLAPP grounds.

Sari Gabay-Rafiy, who represented Mr. Clark alongside attorneys for the New York Civil Liberties Union, said she believed decisions in SLAPP cases are "relatively rare" in New York. Ms. Gabay-Rafiy, now of Gabay-Rafiy & Bowler, was not involved in the 311 West Broadway case.

David Rosenberg of Marcus Rosenberg & Diamond, the attorney for the Jacob Cram Cooperative, said he was "not surprised" by the decision, adding that he believed the case was a rare, "clear example" of SLAPP abuse.

Pamela D. Evans of Marcus Rosenberg & Diamond also represented the cooperative.

Steven R. Goldstein of Lake Success, N.Y., represented defendant Rand Engineering & Architecture.

Robert J. Gogick, a partner at Gogick, Byrne & O'Neill, served as counsel for defendant Mueser Rutledge Consulting Engineers.

Frederick Cohen and James Lotito, formerly of Thelen Reid Brown Raysman & Steiner and now with Duane Morris, served as counsel for the developer. He declined to comment on the decision, pending notification of his client.

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