

2022 WL 1038074
Supreme Court, Appellate Division, First
Department, New York.

EMFT, LLC, et al., Plaintiffs–Respondents,
373–375 Broadway, LLC,
Plaintiff–Respondent–Appellant,

v.

The NEW YORK CITY DEPARTMENT OF
TRANSPORTATION et al., Defendants,
Broadway 371, LLC, et al.,
Defendants–Appellants–Respondents.

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Index No. 158695/17

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Case No. 2020–02385

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ENTERED April 7, 2022

Attorneys and Law Firms

Rivkin Radler LLP, Uniondale (Evan H. Krimick of counsel), for appellants-respondents.

Wilk Auslander LLP, New York (Michael T. Contos of counsel), for respondent-appellant.

Bornstein Turkel, P.C., New York (Avram Turkel of Counsel), for EMFT, LLC, respondent.

Stern Tannenbaum & Bell LLP, New York (Karen S. Frieman of counsel), for 70 Franklin Place LLC, respondent.

Borah, Goldstein, Altschuler, Nahins & Goidel, P.C., New York (Paul N. Gruber of counsel), for 377 Broadway Condominium, respondent.

Manzanet–Daniels, J.P., Kern, Gesmer, Oing, Rodriguez, JJ.

Opinion

*1 Order, Supreme Court, New York County (Shlomo S. Hagler, J.), entered on or about November 12, 2019, which, to the extent appealed from as limited by the briefs, denied the motion for partial summary judgment by defendants Broadway 371, LLC and El Ad U.S. Holding, Inc. (together, the sponsor defendants) on their

counterclaim for a declaratory judgment, denied the sponsor defendants' motion to dismiss plaintiffs' claim that a change of grade in the cobblestones on the alleyway at Franklin Place violated their easement rights, and dismissed plaintiffs' demand for punitive damages against the sponsor defendants, unanimously affirmed, with costs.

The sponsor defendants failed to establish their prima facie entitlement to summary judgment, as the record presents factual issues regarding whether they owned parking spaces at the garage on Franklin Place, and whether that ownership, even if it existed, would confer standing to bring a counterclaim with respect to the easement. On appeal, the sponsor defendants contend that they have "something truly at stake in a genuine controversy" (*Saratoga County Chamber of Commerce, Inc. v. Pataki*, 100 N.Y.2d 801, 812, 766 N.Y.S.2d 654, 798 N.E.2d 1047 [2003], *cert denied* 540 U.S. 1017, 124 S.Ct. 570, 157 L.Ed.2d 430 [2003]) because they represented to prospective purchasers of the condo units that there would be unobstructed easement rights. However, the truth or falsity of the sponsor defendants' representations is irrelevant to the issue of standing, as a party generally must assert its own legal rights and interests and cannot rest its claim to relief on the legal rights or interests of third parties (*see Warth v. Seldin*, 422 U.S. 490, 499, 95 S.Ct. 2197, 45 L.Ed.2d 343 [1975]). Indeed, the sponsor defendants provide no support for their contention. Similarly, the record presents factual issues as to whether the sponsor defendants' counterclaim is justiciable, as it is not clear that there is an actual controversy regarding interference with the easement (*see Matter of Hearst Corp. v. Clyne*, 50 N.Y.2d 707, 713, 431 N.Y.S.2d 400, 409 N.E.2d 876 [1980]; *Saratoga County Chamber of Commerce, Inc.*, 100 N.Y.2d at 810–811, 766 N.Y.S.2d 654, 798 N.E.2d 1047 [2003]).

There are also factual issues surrounding the scope of the easement and whether any of the parties' rights to the easement have been compromised, as the language of the easement, which is more than 200 years old, is not "certain and unambiguous" (*Gilliland v. Acquafredda Enters., LLC*, 92 A.D.3d 19, 26, 936 N.Y.S.2d 125 [1st Dept. 2011]). The question of whether the parties' rights to the easement have been unreasonably obstructed presents another disputed issue of fact that cannot be resolved on this record (*see Grafton v. Moir*, 130 N.Y. 465, 471, 29 N.E. 974 [1892]).

*2 As to plaintiffs' claim that the sponsor defendants' regrading of the cobblestones along Franklin Place

interfered with their easement rights, the sponsor defendants do not dispute that they changed the grade of the cobblestones, nor do they offer any evidence showing that the change in grade has not impeded plaintiffs' easement rights. The sponsor defendants simply assert in conclusory terms that the change could not possibly have interfered with the easement, and this assertion is insufficient to eliminate material issues relating to the claim before discovery.

Finally, while plaintiff 373–375 Broadway cross-appeals for a reinstatement of its punitive damages demand, its allegations do not rise to “spite or malice, or fraudulent or evil motive on the part of the defendant, or such a

conscious and deliberate disregard of the interests of others that the conduct may be called willful or wanton” (*Marinaccio v. Town of Clarence*, 20 N.Y.3d 506, 511, 964 N.Y.S.2d 69, 986 N.E.2d 903 [2013], quoting *Dupree v. Giugliano*, 20 N.Y.3d 921, 924, 958 N.Y.S.2d 312, 982 N.E.2d 74 [2012]), as required.

All Citations

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