

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS-----X  
**DECISION and ORDER**EDWIN DOMINGUEZ and SYLVIA RAMOS, as directors and  
shareholders of, and on behalf of

901 AVENUE H OWNERS CORP.,

Plaintiffs,

Index No. 510187/2016

-against-

UNITED MANAGEMENT CORP., ARTHUR  
WEINER, MEIR BOUSKILA AND GAIL SCHIFFER,Defendants.  
-----X

HON. DAWN JIMENEZ-SALTA

Recitation, as required by *CPLR* §2219(a), of the papers considered in the review of:

1. Directors and shareholders, Edwin Dominguez and Sylvia Ramos' (Plaintiffs) Notice of Motion for Partial Summary Judgment with attached Statement of Facts dated January 9, 2017;
2. Plaintiff, Edwin Dominguez's Affidavit in support of Motion for Partial Summary Judgment dated January 9, 2017;
3. Plaintiffs' Memorandum of Law in support of Motion for Partial Summary Judgment dated January 9, 2017;
4. United Management Corporation, Arthur Weiner, Meir Bouskila and Gail Schiffer's (Defendants) Notice of Cross Motion for Summary Judgment with attached Statement of Facts dated March 31, 2017;
5. Defendants' Affirmation in Opposition to Plaintiffs' Motion for Summary Judgment and in support of Defendants' Cross Motion for Summary Judgment dated March 28, 2017;
6. Defendant, Gail Schiffer's Affidavit dated March 29, 2017;
7. Defendants' Memorandum of Law in Opposition to Plaintiffs' motion for summary judgment and in support of Defendants' cross-motion for summary judgment dated March 31, 2017;
8. Plaintiff, Edwin Dominguez's Reply Affidavit in support of their motion for partial summary judgment and in opposition to Defendants' cross-motion dated April 18, 2017;
9. Plaintiffs' Reply Memorandum of Law in support of their motion for partial summary judgment and in opposition to Defendants cross motion dated April 18, 2017;
10. Defendant, Gail Schiffer's Reply Affidavit dated April 25, 2017;
11. Defendants' Reply Memorandum of Law in further support of their motion for summary judgment dated April 25, 2017.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Affirmation/Affidavit Annexed .....	Plaintiffs 1 [Exh. 1-10]
	Plaintiffs 2
Memorandum of Law in Support of Motion .....	Plaintiffs 3,
Notice of Cross Motion and Affirmation/Affidavit Annexed.....	Defendants 4 [Exh. A-I]
Opposing Affirmation and Affidavit Annexed.....	Defendants 5, 6
Memorandum of Law in Opposition.....	Defendants 7
Replying Memorandum of Law and Affidavit Annexed.....	Plaintiffs 8, 9
	Defendants 10, 11

Upon consideration of the foregoing papers, the Decision/Order of this Court is as follows: Plaintiffs' motion for partial summary judgment pursuant to CPLR §3212 seeking a declaration that the resolutions dated March 23, 2016 (Resolutions) are valid and enforceable and an order directing Defendants to provide the books, records, and property of the Coop to the new managing agent is DENIED. Defendants' cross-motion for summary judgment pursuant to CPLR §3212 seeking a declaration that the Resolutions are null, void, and unenforceable and a dismissal of Plaintiffs' request for injunctive relief is GRANTED.

#### BACKGROUND AND PROCEDURAL HISTORY

901 Avenue H Owners Corporation (Coop) is the owner of an 84-unit residential apartment building (Building) located at the same address. The Coop is governed by a five-member board of directors (Board). Plaintiffs Edwin Dominguez and Sylvia Ramos are tenant shareholders and serve on the Coop's Board as treasurer and secretary respectively. Defendant Gail Schiffer, also a resident shareholder, serves as the Board's president. Defendants Arthur Weiner and Meir Bouskila (Sponsor Representatives) the Building's sponsor representatives, hold the majority of the Building's unsold shares and sit on the Board's remaining two seats. The duties and powers of the Board and its individual officers are set forth in the Coop's bylaws (Bylaws).

In 2011 the Board arranged for the Coop to refinance its underlying mortgage. The Coop obtained a 10-year loan from Sovereign Bank (Lender) at a fixed 4.46% interest rate. As a condition of the loan, the Lender required the Coop to enter a management agreement with Defendant, United Management Corporation (United Agreement) for the duration of the 10-year loan term.

Defendant United Management Corporation (United) was at all times affiliated with the Sponsor Representatives.<sup>1</sup> This affiliation was known to all Board members.<sup>2</sup> In consideration of their affiliation with United, the Sponsor Representatives abstained from voting on the Coop's decision to enter the United Agreement. The remaining independent Board members, including Plaintiff Dominguez, unanimously voted in favor of the Coop entering the United Agreement. On October 22, 2011, Defendant Schiffer signed the United Agreement on behalf of the Coop.

<sup>1</sup> See Dominguez Affidavit ¶¶6-8.

<sup>2</sup> Defendant Weiner executed the United Agreement on behalf of United Management as its president. See, Defendants 4, Exh. E.

Relevant to this action is the United Agreement's termination clause. Section 8.1(i) provides that the Agreement is subject to early termination only in the event there is:

"a default by agent under this Agreement and such default remains uncured for more than 30 days after written notice thereof; provided, however, that in the case of a default which is susceptible of being cured but not within a period of 30 days notwithstanding due and diligent efforts, such 30 day period shall be extended to such longer period of time as is necessary with such efforts for the curing of such default if such efforts commence during the 30 day period."

The Lender also required the Coop to execute a separate agreement, the Assignment of Management Agreement (Assignment Agreement), wherein the Coop assigned its rights under the United Agreement to the Lender. Also relevant to this action is the Assignment Agreement's prohibition against the Coop from changing management companies or otherwise altering the United Agreement without the Lender's prior written consent:

"3. Borrower hereby covenants with Lender that during the term of this Assignment: (a) Borrower shall not transfer the responsibility for management of the Mortgaged Property from Manager to any other person or entity without the prior written consent of Lender; (b) Borrower shall not terminate or amend any of the terms or provisions of the Management Agreement without prior written consent of Lender; and (c) Borrower shall, give Lender written notice of any notice or information that Borrower receives which indicates that Manager is terminating the Management Agreement or that Manager is otherwise discontinuing its management of the Mortgaged Property."

Plaintiff Dominguez avers in his affidavit that in the following years the tenant-shareholders had become dissatisfied with United's management, that United had been unresponsive to the tenant-shareholders' complaints, and that the Building had become run-down.<sup>3</sup> As a result, Plaintiffs took it upon themselves to solicit proposals from other management companies in order to hire a new managing agent to replace United. Plaintiffs decided to hire the Andrews Organization (Andrews) to be the Coop's new managing agent.

During the final moments of the Board meeting held on March 23, 2016, Plaintiffs introduced and purport to have passed the Resolutions from which the current litigation arises. Within these Resolutions, Plaintiffs resolved to do the following: to terminate the United Agreement and replace United with Andrews as the Coop's new managing agent, to retain the law firm of Samson Fink & Dubow, LLP to represent the Coop, and to authorize all Board members excluding the Sponsor Representatives to execute these contracts on behalf of the Coop. Defendants Schiffer, Bouskila, and Weiner voted against the Resolutions. However, Plaintiffs did not count the votes of the Sponsor Representatives due their "disqualifying conflict of interest" concerning their affiliation with Defendant United.<sup>4</sup>

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<sup>3</sup> See Dominguez Affidavit ¶15.

<sup>4</sup> See Dominguez Affidavit ¶19.

Relevant to the aforementioned facts is Article IV Section 4 of the Coop's Bylaws which provides that "[t]he President...shall sign the name of the corporations on all.... contracts and other instruments which are authorized from time to time by the Board of Directors." Also relevant is Article XII which provides that the By-Laws may only be amended by a vote of the majority of shareholders or by an affirmative vote of two-thirds of the number of directors.

Following this meeting, Plaintiffs delivered letters to the residents informing them of the resolution to fire United and hire Andrews. The following day, March 24, 2016, Defendant Weiner delivered a letter to the residents informing them that the information in Plaintiffs' letter is invalid and a result of their unauthorized conduct. In addition, Defendants' counsel sent letters to both Andrews and Samson Fink & Dubow, LLP informing them that Plaintiffs acted beyond the scope of their powers and had no authority to contract with them on behalf of the Coop.

In the aftermath of these events, Plaintiffs commenced this cause of action on behalf the Coop to enforce Defendants' compliance with the Resolutions.

#### ARGUMENT

In their memorandum of law in support of their motion for partial summary judgment, Plaintiffs defend their decision to disqualify the Sponsor Representatives from voting on the Resolutions. Plaintiffs explain that directors with financial interests on matters considered by a board must be disqualified from voting (Business Corporation Law §713; *Auerbach v. Bennett* 47 NY2d 619 [1979]). Plaintiffs assert that the Sponsor Representatives' financial interest in the outcome of the Board's Resolutions concerning United disqualified them from voting. Plaintiffs argue that the Sponsor Representatives owed the Coop a fiduciary duty to not permit their affiliation with United to conflict with the Coop's best interests. Plaintiffs surmise that as a result of this disqualification, the Resolution to terminate United passed by a majority of the disinterested directors' votes.

Plaintiffs further argue that Defendants are not entitled to the protection of the business judgment rule. Plaintiffs assert that the business judgment rule is intended to protect corporate directors from judicial inquiry for actions taken "in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate purposes" (*Auerbach* 47 NY2d at 629). Plaintiffs state that in the specific context of housing cooperatives, the Court of Appeals has held that the business judgment rule will be upheld so long as the "board acts for the purposes of the cooperative, within the scope of its authority and in good faith..." (*Levandusky v. One Fifth Ave. Apartment Corp.*, 75 NY2d 530 [1979]). However, Plaintiffs contend that Defendants did not act within the scope of their authority and breached their fiduciary duty to the Coop by failing to comply with the Resolutions.

Defendants oppose Plaintiffs' motion and cross-move for an order for summary judgment and dismissal of Plaintiffs' complaint. Defendants assert that Plaintiffs violated corporate procedure by acting unilaterally to replace United with Andrews and retain counsel on behalf of the Coop. Defendants state that a corporation may only act in accordance with its governing documents and actions not authorized by those documents are void (*Bd. of Mgr. of 85 8th Ave.*



*Condo. v. Manhattan Realty LLC*, 102 AD3d 548 [1st Dept. 2013]). Defendants further maintain that a minority of board members may not undertake an action contrary to the authorized directives of the board or exercise its authority in violation of the fiduciary duties owed to the corporation (*Leslie v. Lorillard*, 110 NY 519 [1888]; BCL §§717, 720) as such actions will be deemed invalid and insufficient to bind a corporation (*TJI Realty, Inc. v. Harris*, 250 AD2d 596 [2d Dept. 1998]).

Defendants maintain that Plaintiffs, as treasurer and secretary, lacked the authority to unilaterally investigate, negotiate contracts with, and hire a new management company and counsel on behalf of the Coop. Defendants assert that the Bylaws reserve the authority to sign contracts on behalf of the Coop to the president and vice president. Accordingly, the contracts Plaintiffs purport to have executed are ultra vires and do not bind the Coop. Furthermore, Plaintiffs' attempt to amend the Bylaws to grant themselves the authority to sign contracts on behalf of the Coop through the Resolutions must fail. The Bylaws may only be amended by a vote of two thirds of the directors or a majority of the shareholders.

Defendants further contend that Plaintiffs' conduct during the March 23, 2016 meeting fell well outside the acceptable bounds of corporate formality. Plaintiffs did not notify the Board of their decision to replace United and hire new counsel. Plaintiffs then immediately announced that the Resolutions had passed before Defendants had the opportunity to read or otherwise object to the proposed contracts. Defendants further argue that the Sponsor Representatives had no conflict of interest and Plaintiffs improperly excluded them from voting. Defendants argue that Plaintiffs' justification for this action under BCL §713 is erroneous as BCL §713 applies to decisions taken to enter, not to terminate a contract. Moreover, it permits an interested director to vote on a matter when the interest is disclosed and the vote is in the corporation's best interest.<sup>5</sup> Notwithstanding the vote taken to terminate United and hire Andrews, Defendants assert that Plaintiffs cannot justify excluding the Sponsor Representatives' from voting on the decision to amend the Bylaws and hire new counsel.<sup>6</sup>

Defendants assert that Plaintiffs' ultra vires conduct also exposed the Coop to serious financial and legal liability. Defendants contend that Plaintiffs violated paragraph 8.1(i) of the United Agreement which provides that the Agreement may only be terminated upon notice of default and an opportunity to cure. Similarly, Plaintiffs violated the terms of the Assignment Agreement which require the Coop to provide the Lender with prior written notice if it terminates the United Agreement. Defendants state that it is undisputed that Plaintiffs failed to provide the required notice to both United and the Lender. Therefore, Plaintiffs attempt to terminate the United Agreement constituted a breach of contract which exposed the Coop to

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<sup>5</sup> BCL §713, in relevant part, provides: "(a) No contract or other transaction between a corporation and one or more of its directors, or between a corporation and any other corporation, firm, association or other entity in which one or more of its directors are directors or officers, or have a substantial financial interest, shall be either void or voidable for this reason alone or by reason alone that such director or directors are present at the meeting of the board, or of a committee thereof, which approves such contract or transaction..."

<sup>6</sup> This Court notes that to conclude their motion, Defendants rely on *Gaiamo v. EGA Assocs. Inc.*, 2008 WL 4819592 N.Y.Sup to support their argument the Board properly entered the United Agreement pursuant to BCL §713. However, this Court observes that this case was reversed by the First Department (*Gaiamo v. EGA Assocs. Inc.*, 68 AD3d 523 [1st Dept. 2009]). Notwithstanding this fact, Defendants argument is irrelevant as Plaintiffs do not dispute the validity of the Board's decision to sign the United Agreement.

\$172,000 in damages.<sup>7</sup> Furthermore, terminating the United Agreement without prior written notice to the Lender could cause the Coop to be in default of its \$1,800,000.00 mortgage and expose the Coop to a foreclosure action. Accordingly, Defendants conclude that Plaintiffs' Resolutions must fail as they are ultra vires and are not within the best interest of the Coop.

In their reply memorandum of law, Plaintiffs deny that their actions are ultra vires or that they exposed the Coop to legal and financial liability. Plaintiffs assert that because part of United's duties included the collection of maintenance charges and rents,<sup>8</sup> they acted as "real estate brokers" as defined by Real Property Law (RPL) §440.<sup>9</sup> However, Plaintiffs state that neither United nor Defendant Weiner ever obtained the required real estate broker's license. Consequently, United was forbidden from performing its duties under the Agreement and violated RPL §442-e(1) which provides that it is a misdemeanor to receive compensation for broker's services without a broker's license. Accordingly, Plaintiffs argue that United may neither perform nor enforce the terms of the Agreement. Plaintiffs also surmise that due to the illegality of the United Agreement, the Lender will not take legal action against the Coop pursuant to its rights under the Assignment Agreement.

Plaintiffs further argue that Defendants failed to cite any case law, statute or Bylaw provision to support their claim that Plaintiffs breached procedural protocol. Plaintiffs maintain that they were not prohibited from exploring the prospect of hiring a new management company on their own time or from otherwise introducing the Resolutions at the end of the Board meeting. Plaintiffs assert that the Bylaws explicitly provide that the notice of a Board meeting need not specify the subject of the meeting or the business to be conducted.

Plaintiffs also maintain that its management agreement with Andrews is not ultra vires. Plaintiffs deny that the Bylaws grant Defendant Schiffer, as Board president, the exclusive authority to sign contracts on behalf of the Coop. Plaintiffs cite a general provision in the Bylaws which provides that the business of the Coop and the operation of the Building is to be managed by the Board of Directors.<sup>10</sup> Plaintiffs infer that the power to execute contracts is included within this provision. Therefore, Plaintiffs conclude that the Resolution authorizing Plaintiffs to execute the Andrews agreement was a valid exercise of the Board's authority to manage the Coop and did not require an amendment to the Coop's Bylaws.

In their memorandum of law in further support of their cross motion, Defendants reiterate the arguments made in their memorandum of law in opposition to Plaintiffs' motion and in

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<sup>7</sup> The amount owed to United over the five remaining years of the Agreement.

<sup>8</sup> Plaintiffs refer to ¶2.9 of the United Agreement setting forth the scope of United's duties: "To bill or cause to be billed, tenant-shareholders, tenants and subtenants for maintenance charges, rents and other charges, to use reasonable efforts to collect such maintenance charges, rents and other charges, and, when if directed by Owner, to serve notices upon tenant-shareholders, tenants or subtenants to quit and surrender space occupied by them."

<sup>9</sup> RPL §404 defines real estate broker as "any person, firm, limited liability company or corporation, who, for another and for a fee, commission or other valuable consideration, lists for sale, sells, at auction or otherwise, exchange, purchase or rental of an estate or interest in real estate, or collects or offers or attempts to collect rent for the use of real estate..."

<sup>10</sup> Plaintiffs rely on Article III Section 4 of the Bylaws which states: "The business affairs of the corporation and operation of its apartment building shall be managed by the Board of Directors which may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-laws directed or required to be exercised or done by the shareholders."

support of their cross motion. Defendants maintain that Plaintiffs' Resolutions are null and void and the resulting contracts are ultra vires. Defendants assert that Plaintiffs failed to provide a legal justification for their violation of corporate formalities and their disqualification of the Sponsor Representatives' votes under BCL §713. Defendants further contend that Plaintiffs failed to provide a counter-argument or evidence to oppose the fact that the Bylaws do not grant Plaintiffs as treasurer and secretary the authority to sign contracts on behalf of the Coop.

Defendants further reproach Plaintiffs for devising an erroneous argument concerning United's licensure in order to defend themselves for breaching the United and Assignment Agreements and exposing the Coop to significant liability. Defendants state that RPL §440 is inapplicable where the collection of rents is incidental to a managing agent's duties (*Zedek v. Derfner Mgt., Inc.*, 106 AD3d 465 [1st Dept. 2013]; *Garber v. Stevens*, 94 AD3d 426 [1st Dept. 2012]; *Herson v. Troon Mgmt. Inc.*, 58 AD3d 403 [1st Dept. 2009]). The United Agreement clearly demonstrates that the services provided encompassed far more than the collection of rents. As such United was not obligated to obtain a broker's license pursuant to RPL §440. Moreover, both United's owners and staff include attorneys who are exempt from the licensing requirement pursuant to RPL §442-f. Defendants further contend that this argument should not be considered as Plaintiffs improperly raised it for first time in their reply papers.

Defendants also state that Plaintiffs do not dispute that they failed to adhere to the United Agreement's notice of default and opportunity to cure provisions or that breach of the United Agreement would cause the Coop to breach the Assignment Agreement and be in default of its mortgage. Instead Plaintiffs offered nothing more than their mere speculation that the Lender would ignore the default based on a breach of an "illegal" contract. Defendants assert that such reasoning exemplifies Plaintiffs' careless disregard for the legal and financial repercussions of their actions.

Defendants conclude that they have established that rejection of the Resolutions is fair, reasonable and in the best interests of the Coop and that Plaintiffs have failed to demonstrate the existence of a material issue of fact in opposition. As such, Defendants request that this Court grant their cross motion for summary judgment.

#### RULING

This Court finds that Defendants have established their prima facie entitlement to summary judgment as a matter of law by demonstrating that Plaintiffs acted outside the authority of the Coop's Bylaws in order to pass the Resolutions during the March 23, 2016 Board meeting. In the context of cooperative dwellings, the "board owes its duty of loyalty to the cooperative... So long as the board acts for the purposes of the cooperative, within the scope of its authority, and in good faith, courts will not substitute their judgment for the board's" (*Matter of Levandusky*, 75 NY2d 530 at 538). The business judgment rule "permits review of improper decisions, as when the challenger demonstrates that the board's action... is taken without notice or consideration of the relevant facts, or is beyond the scope of the board's authority" (*Matter of Levandusky*, 75 NY2d 530 at 540 [emphasis added]). Actions not authorized by a cooperative's bylaws will not be protected under the business judgment rule (*Olszewski v. Cannon Point Assn. Inc.*, 148 AD3d 1306 [3d Dept. 2017]). Plaintiffs actions are not protected as they acted outside

their authority to the detriment of the Coop. Plaintiffs' unilateral decision to terminate the United Agreement and sign contracts with a new management company and law firm on behalf of the Coop violated the Coop's Bylaws, the terms of the United Agreement, and the terms of the Coop's Assignment Agreement with its Lender.

Board members may only act in accordance with the cooperative's governing documents (*Olszewski*, 148 AD3d 1306; *TJI Realty*, 250 AD2d 596; *Bd. of Mgrs. of the 85 8th Ave. Condominium*, 102 AD3d 548). The governing documents at issue, the Bylaws, are contracts and must be governed by the well-settled principles of contract interpretation (*Olszewski*, 148 AD3d 1306). Accordingly, the Bylaws "must be read as a whole to determine its purpose and intent, and it should be interpreted in a way that reconciles all its provisions, if possible" (*Olszewski*, 148 AD3d 1306 at 1309 [internal citations omitted]). This Court finds Plaintiffs' contention that "while the by-laws give the president the authority to sign contracts, there is nothing in the bylaws that makes that power exclusive to the president" to have no basis in fact.<sup>11</sup>

Article IV Section 4 of the Bylaws, clearly, unequivocally and explicitly states: "The president...shall sign the name of the corporation on...contracts and other instruments which are authorized from time to time by the Board of Directors." This provision further provides that in the event that the president is unable to act, her authority shall be granted to the vice president and in the event the vice president is unable to act, then the authority is passed to the "vice president next senior in rank." This succession scheme indicates a clear intent to keep the authority to contract limited to certain board members. Furthermore, the authority to sign contracts on behalf of the Coop is not included among the many duties of the treasurer and secretary as enumerated in Article IV of the Bylaws.<sup>12</sup> Reading these Bylaw provisions as a whole, it is clear that Plaintiffs had no authority to sign the contracts with Andrews and Samson Fink & Dubow, LLP on behalf of the Coop.

This Court rejects Plaintiffs' argument that Article III Section 4 of the Bylaws granted them the authority to sign contracts. Article III Section 4 is a general provision granting the Board of Directors the authority to manage the business affairs of the Coop.<sup>13</sup> It does not serve as a source for authority, especially, when that authority is already granted in a separate Bylaw provision (*Olszewski*, 148 AD3d 1306, 1309 [internal citations omitted] "[a] reading of the contract should not render any portion [thereof] meaningless.").

Plaintiffs attempt to bypass the Bylaws through passage of the Resolutions fails as a matter of law. In order to avail themselves with the authority to sign contracts, Plaintiffs were required to amend the Bylaws. Pursuant to Article XII, the Bylaws may only be amended by a vote of the majority of the shareholders or by an affirmative vote of two-thirds of the number of Directors. The record is clear that Plaintiffs made no such amendment. Furthermore, Plaintiffs cannot justify disqualifying the Sponsor

<sup>11</sup> See Plaintiffs' reply memorandum of law, pg. 9

<sup>12</sup> See Bylaws Article IV Sections 5 and 6.

<sup>13</sup> See fn. 10, *supra*.

Representatives from voting to amend the Bylaws or on the other matters at issue based on their affiliation with United. As such, Plaintiffs had no authority to sign and bind the Coop to contracts with Andrews Management Corporation and Samson Fink & Dubow, LLP. Thus, both Plaintiffs' actions and the resulting contracts are ultra vires.

This Court finds the issue of the Sponsor Representatives disqualification from voting under BCL §713 to be irrelevant to the present dispute. Assuming arguendo that the entire Board including the Sponsor Representatives had unanimously decided to pass a resolution to terminate the United Agreement, such termination would nonetheless constitute a breach of contract. If indeed the Coop residents had become dissatisfied with United "for many years," as Plaintiffs so strongly argued,<sup>14</sup> it was incumbent upon Plaintiffs to provide United with notice of its default and an opportunity to cure.<sup>15</sup> It was not otherwise within the Board's discretion to terminate the United Agreement through a resolution. Furthermore, Plaintiffs' breach of the United Agreement violated the terms of the Assignment Agreement and exposed the Coop to liability under the terms of its mortgage agreement.

Finally, this Court wholly rejects Plaintiffs' untenable argument that the United Agreement is somehow illegal under RPL §440. "[RPL §440] is inapplicable where the collection of rent is incidental to responsibilities which fall outside the scope of brokerage services" (*Herson.*, 58 AD3d 403; *Garber*, 94 AD3d 426; *Zeddeck*, 106 AD3d

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<sup>14</sup> See Dominguez Affidavit ¶15.

<sup>15</sup> See United Agreement Section 8.1(i).



465; see also *Eaton Assocs. v. Highland Broadcasting Corp.*, 81 AD2d 603 [2d Dept. 1981]). Based on a plain reading of the United Agreement, there is no issue of fact that the collection of rent was incidental to the myriad of services provided by United. Accordingly, RPL §440 has no bearing on the United Agreement and it remains a valid enforceable contract.

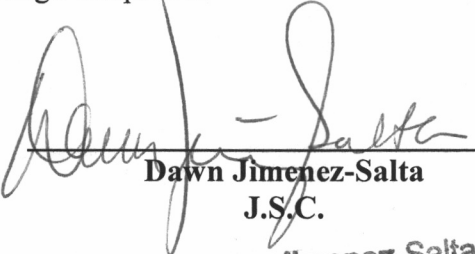
For all of the reasons set forth above, the Decision of this Court is as follows:

ORDERED: Defendants' cross motion for summary judgment seeking a declaration that the Resolutions dated March 23, 2016 are null, void, and unenforceable and a dismissal of Plaintiffs' request for injunctive relief is GRANTED.

ORDERED: Plaintiffs' motion for partial summary judgment seeking a declaration that the Resolutions dated March 23, 2016 are valid and enforceable and an order directing Defendants to provide the books, records, and property of the Coop to the new managing agent is DENIED.

This constitutes the decision of this Court.

Dated August 2, 2017  
Brooklyn, New York  
Dominguez et al v. United Mgt. Corp. et al  
Index No. 510187/2016

  
Dawn Jimenez-Salta  
J.S.C.  
Hon. Dawn Jimenez-Salta

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