

EXHIBIT 10

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORKALEXANDER CONDOMINIUM, BY ITS
BOARD OF MANAGERS,

Plaintiff,

-against-

AB FUNDING CORPORATION, CFC
SPECIALTY PROGRAM MANAGERS, LLC,
BIG APPLE FIRE SPRINKLER CO., INC.,
NEW YORK STATE DEPARTMENT OF
TAXATION & FINANCE, NEW YORK CITY
DEPARTMENT OF FINANCE, ALEXANDER
GUREVICH, ELLA GUREVICH, MITCHELL
GUREVICH, "John Doe" and "Jane Doe," the
true names of said defendants being unknown to
plaintiff, the parties intended to be the persons or
entities having or claiming an interest in the
premises described in the complaint by virtue of
being a tenant or occupant in all or part of said
premises,

Defendants.

Index No. 150479/2016

**AFFIDAVIT IN FURTHER
SUPPORT OF PLAINTIFF'S
MOTION FOR THE APPOINTMENT
OF A TEMPORARY RECEIVER AND
IN OPPOSITION TO CROSS-MOTION**STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

KATHRYN M. QUIGLEY, being duly sworn deposes and says:

1. I am the president of plaintiff Alexander Condominium, By its Board of Managers and I have served as president since March 2015. I have also served as a member of the Board of Managers since January 2014. I am personally familiar with the facts and circumstances set forth below.

2. I respectfully submit this affidavit in further support of the Board's motion for the appointment of a temporary receiver for unit 25PHC (the "Unit") and in opposition to the motion of defendant AB Funding Corporation ("AB Funding") for an Order dismissing this action for

/805370

failure to join 250 East Borrower, LLC (the "Sponsor") as a necessary party, or, in the alternative, for an Order granting leave to add the Sponsor as a defendant to this action.

A TEMPORARY RECEIVER SHOULD BE APPOINTED

3. As discussed in the accompanying affirmation of Maria I. Beltrani, an Order appointing a temporary receiver is appropriate because Real Property Law ("RPL") § 339-aa unequivocally entitles the Board to a receiver when the Condominium's bylaws likewise provide for the appointment of a temporary receiver in a lien foreclosure action, which is the case here.

4. Contrary to the representations made in the affirmation of Ryan Kaupelis, dated April 15, 2016 (the "Kaupelis Affirmation") and the affidavit of Gene Kiselman on behalf of defendant AB Funding, sworn to April 15, 2016 (the "Kiselman Affidavit"), under RPL 339-aa, the appointment of a receiver is appropriate regardless of the amount of equity the owner has in the unit and regardless of whether the condominium can demonstrate irreparable loss and the need to conserve the property and to protect the parties' interests, as may be required under CPLR § 6401.

5. But even if the Court were to apply the heightened standard set forth in CPLR § 6401, the Board meets that standard because, for one thing, contrary to the representations in paragraph 36 of the Kaupelis Affirmation, AB Funding is not paying the real estate taxes on the unit, which has resulted in a tax lien foreclosure action entitled, *NYCTL 2015-A Trust and The Bank of New York Mellon, as Collateral Agent and Custodian v. AB Funding Corporation, et. al.*, which is pending in this Court under index no. 152816/2016 (the "Tax Lien Foreclosure Action"). Under RPL § 339-z, the tax lien that is being foreclosed in the Tax Lien Foreclosure Action has a statutory priority over the Condominium's lien for unpaid common charges, which

/805370

means that the Condominium's lien is in danger of being extinguished. In order for the Condominium to protect its lien, it must satisfy the tax lien. Thus, a receiver must be appointed to rent the unit, generate rental proceeds and pay off the tax lien in order to avoid irreparable loss to the Condominium and to conserve the property.

6. Furthermore, contrary to the representations set forth in paragraph 36 of the Kaupelis Affirmation, AB Funding's failure to pay common charges does detrimentally affect the Condominium's finances in that coupled with the substantial common charge arrears owed on unit 24PHAB, which currently owes in excess of \$467,000, the Condominium has experienced very real cash flow problems which has left the Board with no alternative but to assess all unit owners. More specifically, three assessments have been levied on unit owners to cover revenue shortfalls and expenses of the Condominium: \$590,000 in November 2013, \$625,000 in September 2014 and \$1,250,000 in April 2016. To date, AB Funding has not paid any of the assessments it owes for the Unit. Thus, a receiver is most certainly needed in order to protect the Condominium's interests and to preserve its limited resources. Simply put, the non-defaulting unit owners in the Condominium should not have to shoulder the burden of AB Funding's non-payment, particularly when a receiver can be appointed to rent the unit and pay the outstanding common charges.

7. It is completely untrue that the Board has refused to permit AB Funding to pay current common charges. See Kaupelis Affirmation at ¶ 37 and Kiselman Affidavit at ¶ 7. What the Board has said is that it will not permit AB Funding to dictate how its payments will be credited and all payments received will be applied to the oldest debt in accordance with sound accounting principles.

/805370

8. It is also untrue that the Sponsor paid \$140,000 in common charges that has not been credited. See Kiselman Affidavit at ¶ 7 and the Kaupelis Affirmation at ¶ 11. All of the Sponsor's payments for the Unit have been credited and are reflected in Exhibit "B" to the Condominium's motion.

9. Likewise, it is untrue that the common charges on the Unit were current when AB Funding acquired it in July 2013. See Kiselman Affidavit at ¶¶ 3-6. AB Funding would have the Court believe that common charges were current in July 2013 due to credits given to Sponsor for advances allegedly made by the Sponsor and that after AB Funding acquired the Unit the Board denied the credits to the Sponsor and back-charged the Unit for the unpaid common charges. These are specious allegations.

10. As reflected in the account history (Exhibit "B") maintained by Taube Management ("Taube"), the managing agent hired by the Sponsor and which the Sponsor controlled, the credits the Sponsor is now claiming have never been substantiated as confirmed in the accompanying affidavit of Carl Cesarano (the "Cesarano Affidavit"), the Condominium's auditor, and were never applied to the Unit or any other unit owned by the Sponsor. As reflected in Exhibit "B", in July 2013, when the Unit was transferred to AB Funding from the Sponsor, there was a balance on the account in the amount of \$9,977.48 in unpaid common charges. That amount should have been considerably more given the late fees and interest to which the Condominium was entitled, but Taube failed for years to record the late fees and interest due from the Sponsor.

11. As is also reflected in Taube's account history, after AB Funding acquired the Unit in July 2013, it, too, failed to pay common charges without justification. Thus when the

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.