

**SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY**  
**PRESENT: Hon. LOUIS B. YORK** **PART 2**  
**Justice**

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**SHARON E. GRUBIN and DEBORAH LANS,**  
Plaintiff,  
-against-

Index No. 115404/10  
Motion Date 07/13/11  
Motion Seq. No. 002  
Motion Cal. No.     

**THE GOTHAM CONDOMINIUM, JEANNE BACK,**  
**MICHAEL BRUCK, THOMAS BURKE, ANDREW**  
**HAHN, BERNARD KURY, JAMES PALADINO,**  
**ALEXANDER RUBIN, MICHAEL SCHWEITZER,**  
**JUSTIN WELLEN AND RICHARD YIEN,** Individually  
and as Members of the Residential Board of Managers of  
The Gotham Condominium, Cooper Square Realty, Inc.,  
**JOHN/JANE DOES 1 through 4,**  
Defendants.

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The following papers, numbered 1 to            were read on this motion for Dismissal

NUMBERED  
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_  
Answering Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_  
**Cross-Motion:**     Yes     No

**FILED**  
**DEC 27 2011**  
NEW YORK  
COUNTY CLERK'S OFFICE

**PAPERS**  
\_\_\_\_\_  
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The plaintiffs move to dismiss condominium board member Andrew Hahn's counterclaims for tortious interference with contract, intentional interference with prospective economic relations, breach of contract, prima facie tort and abuse of process.

Defendant raises these counterclaims, claiming that they arise from his failure to be able to re-finance his mortgage because of the existence of this lawsuit which, incidentally has been dismissed against him as an individual board member.

Tortious interference with contract requires the existence of a contract between plaintiff and a third-party. No such contract has been alleged. Moreover, the gravamen of defendant's counterclaims is based on his inability to obtain a contract. Accordingly, this counterclaim is dismissed.

For intentional interference with contractual relations, plaintiff must have had knowledge of plaintiff's trying to obtain a contract with a third party. To succeed in such a claim, defendant must show that plaintiff had knowledge of the attempt to obtain a contract at the time that she engaged in interference. But it wasn't until plaintiff was asked by defendant to drop the lawsuit against him that plaintiff first became aware of his re-financing attempts. This was after this lawsuit was commenced. Accordingly, this counterclaim is dismissed.

The claim for breach of contract is also dismissed. The "contract" that defendant is relying on is the By-laws. This agreement is between the plaintiffs and the condominium corporation. But there is no privity between plaintiffs and this defendant with respect to the By-laws.

The counterclaim for prima facie tort requires an intent to cause harm. No such intent is pleaded. Nor could it be since at the time this lawsuit was instituted, plaintiffs had no knowledge of defendant's re-financing efforts. Moreover, the complaint fails to allege special damages (*Keskin v State of New York*, 14 Misc3d 537, 825 NYS2d 899 [Ct. Claims 2006]). One of the elements of a cause of action for abuse of process is the intent to cause harm. As previously stated, at the time this lawsuit was commenced, plaintiff was unaware

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of defendants re-financing intentions. Therefore, it couldn't have intended to harm him by preventing him from obtaining a new mortgage. Also the ends sought in an abuse of process claim must be collateral to what the lawsuit is seeking. Plaintiffs are not seeking anything other than what this lawsuit is aimed at, which is the damages resulting from the condo defendants failure to properly repair their apartment.

Accordingly, it is

**ORDERED** that the counterclaims asserted by defendant Andrew Han are dismissed with motion costs of \$100.00.

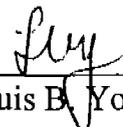
Dated: 12/21/11

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**FILED**

**DEC 27 2011**

NEW YORK  
COUNTY CLERK'S OFFICE



Louis B. York, J.S.C.

**LOUIS B. YORK**  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE