

CLERK'S NOTICE	DOCKET NUMBER 1677CV01266	Trial Court of Massachusetts The Superior Court 
CASE NAME: Board Of Trustees Of The Harborside Condominium Trust vs. Joanne Woodman		Thomas H. Driscoll, Jr., Clerk of Courts
TO: Edmund Arthur Allcock, Esq. Marcus Errico Emmer & Brooks PC 45 Braintree Hill Off Park Braintree, MA 02184		COURT NAME & ADDRESS Essex County Superior Court - Lawrence 43 Appleton Way Lawrence, MA 01841
You are hereby notified that on 05/31/2017 the following entry was made on the above referenced docket: ORDER: ORDER ON DEFENDANT'S MOTION TO DISMISS: For the foregoing reasons, the defendant's motion to dismiss is DENIED. SO ORDERED. Dated 5/31/17 (See "ORDER ON DEFENDANT'S MOTION TO DISMISS" dated 5/31/17 for full text of decision.)		
DATE ISSUED 05/31/2017	ASSOCIATE JUSTICE/ ASSISTANT CLERK Hon. James F Lang	SESSION PHONE# (978)242-1900

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2016-1266-B

BOARD OF TRUSTEES OF THE HARBORSIDE CONDOMINIUM TRUST,
Plaintiff

vs.

JOANNE WOODMAN,
Defendant

MARBLEHEAD SAVINGS BANK,
Party in Interest

ORDER ON DEFENDANT'S MOTION TO DISMISS

After hearing on May 30, 2017, the defendant's motion to dismiss is **DENIED**. The conduct that is attributed in the complaint to the defendant, a condominium unit owner, if credited, is sufficient to state plausible claims against her for negligence and strict liability (Counts II and III). The plaintiff condominium trust alleges the following, in material part: the defendant set her oven on a self-cleaning mode, which heats the oven to 900 degrees for up to three hours; she blocked the oven vent with a rolled up towel to prevent odors and smoke from escaping; she then left her unit to go run errands; in her absence, the towel caught fire and the fire spread; and, the fire caused substantial damage to her unit and four other units, as well as to associated common areas. Those allegations not only state a cognizable claim for negligence, but the defendant's alleged conduct is susceptible of characterization as a use of her land (i.e., her condominium unit) in an ultra-hazardous and extraordinary manner, one that posed a great threat to her neighbors. Accordingly, the strict liability claim survives as well at this juncture. Relatedly, the complaint also states a plausible claim

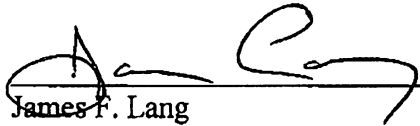
that the defendant engaged in “misconduct,” within the meaning of G.L. c. 183A, s. 6(a)(ii), as that undefined term is understood in its ordinary sense. Consequently, the claim pursuant to that provision for a lien against the plaintiff’s condominium unit is viable as well (Count I).

The real crux of the motion to dismiss is based on the defendant’s contention that, under the unambiguous language of the condominium Declaration of Trust and its incorporated By-Laws, the condominium trustees may not seek to recoup from the defendant the money that the condominium trust expended in repairing the property damage beyond the payout it received on its master commercial general liability insurance policy. The fact that the By-Laws require a waiver of subrogation rights by the condominium trust’s insurer is immaterial. No subrogation action has been brought against the defendant in connection with the \$975,000 that the insurer paid on the condominium trust’s insurance policy. As for the mandate in Article III of the By-Laws that the condominium trust maintain full replacement value insurance coverage, that provision, together with the provision in Article IX of the By-Laws, which provides that the cost of repair beyond insurance proceeds “shall constitute a common expense and the Trustees may assess to all Unit Owners as common charges such deficit,” presents a closer question on the defendant’s entitlement to dismissal. By its terms, the Article IX clause appears to contemplate an assessment of all unit owners for any insurance shortfall for property damage. And the Article III requirement that the condominium trust maintain full loss coverage would seem to reflect an intention to shift the risk of loss to the condominium trust from the individual unit owners. Nevertheless, the interplay between those provisions, on the one hand, and, on the other hand, Article XV of the Declaration of Trust, which imposes responsibility on unit owners for the proper maintenance and repair of their units and states that unit owners are not relieved from liability to reimburse the trustees for the cost of any repairs

or replacement made necessary by their actions, as well as the misconduct provision of c. 183A, s. 6(a)(ii), create an ambiguity regarding whether the condominium trust can seek reimbursement for a shortfall from a culpable unit owner. Certainly, the Declaration of Trust and the By-Laws do not expressly proscribe an action against a unit owner in the circumstances presented here. Consequently, the court cannot rule as a matter of law that the instant action against the defendant is barred by the terms of the governing condominium trust documents.

For the foregoing reasons, the defendant's motion to dismiss is **DENIED**.

SO ORDERED.


James F. Lang
Associate Justice of the Superior Court

May 31, 2017