

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: DEBRA A. JAMES  
*Justice*

PART 59

BORN TO BUILD, LLC,

Plaintiff,

Index No.: 652288/2011

- v -

Motion Date: 08/06/12

1141 REALTY LLC,

Defendant.

Motion Seq. No.: 01

Motion Cal. No.: OSC

The following papers, numbered 1 to 3 were read on this motion to vacate notice of pendency.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits \_\_\_\_\_

Answering Affidavits - Exhibits \_\_\_\_\_

PAPERS NUMBERED	
	1, 2
	3

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that defendant's show cause order shall be granted.

Defendant moves to vacate plaintiff's notice of pendency.

CPLR 6501 provides that "a notice of pendency may be filed in any action in a court of the state or of the United States in which judgment demanded would affect the title to, or ownership claims on the premises, or on Unit 1C. Plaintiff's cause of action for a reverse piercing does not implicate any interest in defendant's property, and therefore the court finds that the filing of the notice of pendency was improper and that it shall be cancelled. McManus v Weinstein, 108 AD 301 (1<sup>st</sup> Dept 1905).

Furthermore, given the order dated February 15, 2013 (Billings, J.) in the plaintiff's previous action for dissolution

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check One:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE

captioned Born to Build LLC v 1141 Realty LLC, Index Number 108128/2011, which denied plaintiff's motion to file a notice of pendency for the reasons stated, the court agrees with defendant that an award of costs and expenses for the filing of a notice of pendency by plaintiff in this action is warranted and plaintiff shall be directed to pay costs and expenses pursuant to CPLR 6514( c).

Accordingly, it is

ORDERED that defendant's motion to vacate the notice of pendency dated June 27, 2013 filed in the office of the County Clerk of New York County is hereby cancelled and vacated; and it is further

ORDERED that the Clerk of the County of New York shall cancel of record the Notice of Pendency in this action indexed against Block 828, Lot 25 on the land map of the Borough of Manhattan filed on June 27, 2013; and it is further

ORDERED that plaintiff shall pay the costs and expense that defendant incurred arising from the filing and cancellation of the notice of pendency, and the hearing to assess such costs and expenses shall be held upon the trial or other disposition of this action.

This is the decision and order of the court.

Dated: August 9, 2013

ENTER:

  
**DEBRA A. JAMES** J.S.C.