

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

**PRESENT: MON. MILTON A. TINGLING  
J.S.C. Justice**

**PART 44**

— Index Number : 115951/2008  
HOLMAN, THOMAS S.  
vs.  
RIVERWEST CONDOMINIUM  
SEQUENCE NUMBER : 002  
SUMMARY JUDGMENT

INDEX NO. 115951/0  
MOTION DATE 7/29/13  
MOTION SEQ. NO. 2

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ No(s) \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ No(s) \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ No(s) \_\_\_\_\_

FILED

Upon the foregoing papers, it is ordered that this motion is

AUG 22 2013

COUNTY CLERK'S OFFICE  
NEW YORK

The defendants Riverwest Condominium Association ("Riverwest"), Erich Winkler ("Winkler") and Andrews Building Corporation ("Andrews") move for summary judgment dismissing the complaint against them. The defendants Nicola Mejer and Federico Mejer (Collectively "Mejer") cross-move for summary judgment dismissing the complaint against them. The plaintiff cross-moves to strike the expert of the defendants Nicola Mejer and Federico Mejer and for summary judgment on his private nuisance and trespass causes of action. The respective parties oppose the respective motions.

This is an action wherein Plaintiff seeks injunctive relief as well as damages on allegations of property damage against his condominium association (Riverwest), its president (Winkler), its building manager (Andrews) and his downstairs neighbors (Mejer) on allegations of hot air entering his unit through his dryer when his downstairs neighbors used their dryer.

The movant on a summary judgment motion must establish his case as a matter of law. *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851, 853 (1985). A motion for summary judgment must be denied if a triable issue of fact exists. C.P.L.R. Section 3212; *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980). The proponent of a summary judgment motion has the initial burden of coming forward with evidentiary proof in an admissible form demonstrating that it entitled to summary judgment. *Zuckerman, supra*. In the instant case the defendants Riverwest, Winkler and Andrews allege entitlement to summary judgment on the

Dated: 8/13/13 \_\_\_\_\_, J.S.C.

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

1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

