

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

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REAL ESTATE HOLDINGS GROUP, LDC, :

Plaintiff, :

-against- :

BOARD OF MANAGERS OF SPENCER
CONDOMINIUM, HALSTEAD MANAGEMENT
COMPANY, LLC, BERNARD FRIEDMAN,
NANCY CALIFANO, MITOFSKY SHAPIRO,
NEVILLE & HAZEN, LLP, SCOTT MACKOFF,
JOAN RIVERS, JOHN DOES 1-10, AND JANE
DOES 1-10, :

Defendants. :

Index No.: 159254/13
Justice Anil C. Singh

NOTICE OF ENTRY

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PLEASE TAKE NOTICE that attached hereto is a true and correct copy of the Decision and Order of the Supreme Court of the State of New York, New York County (Singh, J.), dated November 8, 2013, duly entered in the New York County Clerk's Office on November 8, 2013.

Dated: New York, New York
November 8, 2013

STROOCK & STROOCK & LAVAN, LLP

By: 

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*Attorneys for Defendants,
Board of Managers of Spencer
Condominium, Halstead Management Co.,
LLC, Bernard Friedman, Nancy Califano and
Joan Rivers (as President of the Board)*

TO: Darius Marzec, Esq.
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT:

~~HON. ANIL C. SINGH~~
~~SUPREME COURT JUSTICE~~
Justice

PART

61

REAL ESTATE HOLDINGS GROUP, LLC

INDEX NO.

159254/13

MOTION DATE

- v -
BOARD OF MANAGERS OF SPALDEN
CONDOMINIUM, ET AL

MOTION SEQ. NO.

02

MOTION CAL. NO.

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum opinion.

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

Dated:

11/8/13

HON. ANIL C. SINGH

J.S.C.

~~SUPREME COURT JUSTICE~~Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITIONCheck if appropriate: ☐ DO NOT POST☐ REFERENCEMOTION/CASE-IS-RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----X
REAL ESTATE HOLDINGS GROUP, LDC,

Plaintiff,

-against-

BOARD OF MANAGERS OF SPENCER
CONDOMINIUM, et al.,

Defendants.
-----X

DECISION AND
ORDER

Index No.
159254/13

HON. ANIL C. SINGH, J.:

Defendant the Board of Managers of Spencer Condominium (the "Board") moves for a preliminary injunction barring plaintiff Real Estate Holdings Group LDC ("REHG") and Elizabeth Hazan from accessing, using, and occupying Unit 1A at 1 East 62nd Street located in the Spencer Condominium (the "unit"). Defendants further seek sanctions against plaintiff's attorney, Darius Marzec, pursuant to 22 NYCRR section 130-1.1 in an amount equal to the attorneys' fees incurred by the Board in defending plaintiff's motion for access. Plaintiff opposes the motion.

It is alleged in a related foreclosure proceeding pending before Justice

Rakower that Ms. Hazan was the owner of the unit until 2011.¹ In August 2011, Ms. Hazan transferred the unit to Raymond Houle. Subsequently, Mr. Houle transferred the unit to 9221-0228 Quebec Inc. ("Quebec"). On July 22, 2013, Quebec transferred the unit to plaintiff, allegedly without consideration. It is undisputed that these transfers were done without the knowledge or permission of defendant.² Further, it is undisputed that REHG has failed to pay any common charges from July 2013 to the present.

There is an additional action pending before Justice James that was commenced against Ms. Hazan by the Board in 2009, for unpaid common charges. A Special Referee found that Ms. Hazan owed the sum of \$28,261.80. The referee's report has apparently not yet been converted into a judgment.

REHG commenced the instant action alleging that the defendants are blocking plaintiff's managing member, S. Neil Meehan, and his guest Elizabeth Hazan, access to the unit; that defendants failed to hold an annual meeting; and that defendants failed to seek plaintiff's and other unit owners' authorizations before acting on their behalf.

¹Affidavit of Nancy Califano in support of a TRO and permanent injunction enjoining defendants from transferring ownership of the subject Unit 1A.

²On October 15, 2013, Justice Rakower granted the Board's application for a temporary restraining order enjoining further transfers by the unit owner.

REHG moved before this Court for access to the unit returnable October 23, 2013. On the very day the order to show cause was to be argued in Court, Mr. Meehan and Ms. Hazan went to the condominium. The door staff denied them access. The police were called and intervened to grant Mr. Meehan and Ms. Hazan access to the unit.

This Court was advised of this development prior to the argument. Thereafter, the Court on the record denied plaintiff access based on its undisputed failure to comply with section 7.7 of the by-laws of the Spencer Condominium, which states that

No residential unit owner shall be permitted to convey or lease his unit unless he shall have paid in full to the condominium board all unpaid common charges and special assessments theretofore asserted against such unit and shall have satisfied all unpaid liens, other than that of permitted mortgages, levied against such unit.

The explanation given by REHG for not making payment was that the charges are disputed and are being litigated in the two aforementioned actions.

Mr. Meehan and Ms. Hazan remained in the unit for approximately one week. It is undisputed that Con Ed has turned off electric service to the unit apparently because REHG has failed to pay utility bills. REHG permitted Ms. Hazan to burn candles at night. As of the date of argument on the Board's order to show cause, the unit is unoccupied. According to REHG's counsel, Mr. Meehan

and Ms. Hazan are presently out of town on a business trip but intend to return.

Discussion

"It is well settled that in order to be entitled to a preliminary injunction, a movant must clearly demonstrate (1) a likelihood of success on the merits, (2) irreparable injury absent granting of the preliminary injunction, and (3) a balancing of the equities in the movant's favor" (St. Paul Fire and Marine Ins. Co. v. York Claims Serv., 308 A.D.2d 347, 348 [1st Dept., 2003] (internal quotation marks and citations omitted)).

Irreparable injury is "that which cannot be repaired, restored, or adequately compensated in money or where the compensation cannot be safely measured." Weinstein Korn & Miller, § 6301.15, at p. 42 (other citations omitted). Where there is an adequate remedy at law, usually there is no irreparable injury (Id., at p. 43).

Here, defendants do not have an adequate remedy at law. Money damages will not adequately compensate the Board of Managers. The transfer of the unit on July 22, 2013, was unauthorized as unpaid common charges were not paid. The Board was unable to exercise its right to refuse to allow the transfer without compliance with the by-laws. As a result, the unit was transferred to a Belize shell corporation whose governing documents are not part of this record and who

continues to refuse to pay common charges. The transfer of the unit in July 2013 spawned this litigation as well as additional motion practice before Justice Rakower. Furthermore, the unit – like all real property – is unique (EMF General Contracting Corp. v. Bisbee, 6 A.D.3d 45, 52 [1st Dept., 2004]).

The Board is likely to succeed on their claim that REHG is in breach of the by-laws. Section 7.7 does not permit a conveyance of the unit unless all unpaid common charges and assessments are satisfied. Further, under section 6.2(B), REHG as the alleged subsequent owner remains responsible for all unpaid common charges prior to its acquisition of the unit. Additionally, REHG is in breach of the condominium's governing documents in not paying current common charges since July 2013.

Nor may Ms. Hazan stay in the unit as a guest as REHG is in breach of section 5.7(c) of the by-laws, as amended, which does not allow a guest to occupy a unit without consent of the Board of Managers where a unit owner is in arrears.

Additionally, REHG has not obtained the requisite insurance as required by section 5.4 of the by-laws and the first amendment, Article 27, paragraph 9, which require appropriate insurance in the sum of \$5,000,000.

Finally, plaintiff has not executed the condominium power of attorney, as required by the governing documents of the condominium.

The Board will suffer irreparable injury. The plaintiff's failure to provide insurance puts the condominium and the other unit owners at risk. There is a safety risk in light of Ms. Hazan's use of candles to illuminate the unit instead of electricity.

The equities balance in favor of defendants, who have been subjected to over five years of litigation regarding common charges while the unit changed hands on multiple occasions without regard to the Condominium's governing documents. Further, REHG moved before this Court for access, and at the same time Mr. Meehan and Ms. Hazan bypassed the Court proceeding to gain entry by utilizing the NYPD.

The Court recognizes that the injunctive relief granted to the Board of Managers is tantamount to a mandatory injunction. "A mandatory injunction should not be granted, absent extraordinary circumstances, where the status quo would be disturbed and the plaintiff would receive the ultimate relief sought, pendente lite" (St. Paul Fire, supra., at 349). "Where conflicting affidavits raise sharp issues of fact, injunctive relief should not be granted" (Lehey v. Goldburt, 90 A.D.3d 410, 411 [1st Dept., 2011] (internal quotation marks and citation omitted)). However, here the circumstances are extraordinary. The litigation regarding common charges spans over five years and three separate lawsuits. It

appears that there were a series of no-consideration transfers of the unit without any attempt to comply with the Condominium's governing documents.

The papers raise no contested issues of fact that REHG is in breach of the by-laws. While the amount due is being contested in other proceedings, there has been an adjudication before Justice James that the sum of \$28,261.80 is due. The unit was transferred without that sum being paid.

Nor do the by-laws makes an exception that common charges in dispute need not be paid upon a transfer. REHG's counsel argues that the Board waived compliance with section 7.7 of the by-laws because on prior transfers the provision was not invoked. The by-laws contain a no-waiver provision. Therefore, this argument is without merit.

Moreover, the status quo is being maintained as REHG's managing member, Mr. Meehan, and Ms. Hazan, his guest, are not in the unit. Nor is the unit their primary residence. Plaintiff's suggestion that defendants must bring a holdover proceeding to evict the occupants is without merit. The legal relationship between the Board of Managers and the alleged plaintiff unit owner is not a landlord-tenant relationship (Frisch v. Bellmarc Mgt., 190 A.D.2d 383 [1st Dept., 1993]).

In light of the fact that the Court is issuing a preliminary injunction, defendants

are required to post a bond. "The fixing of the amount of an undertaking is a matter within the sound discretion of the court, and will not be disturbed absent an improvident exercise of discretion" (Lelekakis v. Kamamis, 303 A.D.2d 380 [2d Dept., 2003]). The amount of the undertaking must be rationally related to the plaintiff's potential damages if the preliminary injunction later proves to have been unwarranted (Madison/Fifth Associates LLC v. 1841-1843 Ocean Parkway, LLC, 50 A.D.3d 533, 534 [1st Dept., 2008]). "Its sufficiency depends upon the circumstances of the particular case" (67A N.Y.Jur.2d Injunctions 172).

Under the present circumstances, the Court finds that a bond in the amount of \$25,000 is appropriate.

Finally, the Court finds that the conduct of plaintiff's attorney is not frivolous under 22 NYCRR section 130-1.1.

Accordingly, it is

ORDERED that the motion is granted, and REHG, Mr. Meehan, Ms. Hazan and their agents are enjoined from accessing, occupying or using the unit until they comply with the following conditions:

1) REHG deposits the alleged unpaid common charges and fees in the sum of \$200,000 with the Clerk of the Court without prejudice to the right to contest the amount;

2) REHG pays all past common charges from July 22, 2013, and future common charges as they become due;

3) REHG shall cause Con Edison to provide electricity to the unit;

4) REHG shall get appropriate insurance; and


5) REHG shall execute a power of attorney; and it is further

ORDERED that defendants shall post a bond in the amount of \$25,000 within five (5) business days of the date of this order; and it is further

ORDERED that sanctions are denied.

The foregoing constitutes the decision and order of the court.

Date: 11/8/13
New York, New York


Anil C. Singh
HON. ANIL C. SINGH
SUPREME COURT JUSTICE