

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D21402
C/hu

_____AD3d_____

Argued - November 17, 2008

STEVEN W. FISHER, J.P.
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
ARIEL E. BELEN, JJ.

2007-07412
2008-01106
2008-02963

DECISION & ORDER

Martin Levine, etc., appellant, v Richard J. Greene,
et al., respondents.

(Index No. 17163/06)

Michael A. Haskel, Mineola, N.Y. (Brandon M. Zlotnick, Susan Haskel, Miranda W. Turner, and Leonard Gekhman of counsel), for appellant.

Braverman & Associates, P.C., New York, N.Y. (Andreas E. Theodosiou and Scott S. Greenspun of counsel), for respondents.

In an action, inter alia, for a judgment declaring that the 2006 budget passed by the Board of Directors of the defendant Harbor View at Port Washington Home Owners Association, Inc., is invalid, the plaintiff appeals (1) from an order of the Supreme Court, Nassau County (Murphy, J.), entered July 13, 2007, which granted the defendants' motion for summary judgment dismissing the complaint, and (2), as limited by his brief, from so much of an order of the same court dated December 19, 2007, as, upon renewal and reargument, adhered to so much of the original determination as granted those branches of the defendants' motion which were for summary judgment dismissing the first, second, third, and fourth causes of action, and (3) from so much of an order of the same court entered February 27, 2008, as, in effect, upon reconsideration of the motion for leave to renew and reargue, and the vacating of the order dated December 19, 2007, adhered to the original determination in the order entered July 13, 2007, granting the defendants' motion for summary judgment dismissing the complaint.

December 9, 2008

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ORDERED that the appeal from the order dated December 19, 2007, is dismissed as academic, as that order was vacated by the order entered February 27, 2008; and it is further,

ORDERED that the appeal from the order entered July 13, 2007, is dismissed, as that order was superseded by the order entered February 27, 2008, in effect, upon reconsideration of the motion for leave to renew and reargue; and it is further,

ORDERED that the order entered February 27, 2008, is affirmed insofar as appealed from, and the matter is remitted to the Supreme Court, Nassau County, for entry of a judgment declaring that the 2006 budget passed by the Board of Directors of the defendant Harbor View At Port Washington Home Owners Association, Inc., is valid; and it is further,

ORDERED that one bill of costs is awarded to the defendants.

The plaintiff is the President of the Board of Managers of Harbor View at Port Washington Condominium (hereinafter the Condominium). The apartment owners within the Condominium are Class B Members of the defendant Harbor View at Port Washington Home Owners Association, Inc. (hereinafter the Association). The plaintiff commenced this action, inter alia, for a judgment declaring that the 2006 budget passed by the Association's board of directors (hereinafter the Board) is invalid. The Association owns all of the common elements within the Harbor View community. The defendants, consisting of the Association and the member of the Board who voted in favor of the budget, moved for summary judgment dismissing the complaint. The Supreme Court granted the motion. Upon renewal and reargument, the Supreme Court adhered to its original determination.

In reviewing the reasonableness of the Association's exercise of its authority, "absent claims of fraud, self-dealing, unconscionability, or other misconduct, the court should apply the business judgment rule and should limit its inquiry to whether the action was authorized and whether it was taken in good faith and in furtherance of the legitimate interests of the corporation" (*Gillman v Pebble Cove Home Owners Assn.*, 154 AD2d 508, 508-509 [internal quotation marks omitted]; see *Matter of Levandusky v One Fifth Ave. Apt. Corp.*, 75 NY2d 530; *Captain's Walk Homeowners Assn. v Penney*, 17 AD3d 617, 618). In support of their motion for summary judgment, the defendants made a prima facie showing that the Board's adoption of the 2006 budget was authorized, made in good faith, and in furtherance of the Association's legitimate interests (see *40 W. 67th St. v Pullman*, 100 NY2d 147; *Matter of Levandusky v One Fifth Ave. Apt. Corp.*, 75 NY2d 530; *Captain's Walk Homeowners Assn. v Penney*, 17 AD3d at 618; *LoRusso v Brookside Homeowner's Assn., Inc.*, 17 AD3d 323; *Schoninger v Yardarm Beach Homeowner's Assn.*, 134 AD2d 1, 10). In opposition, the plaintiff failed to raise a triable issue of fact regarding the reasonableness of the Board's exercise of authority, or his claims of fraud, self-dealing, or other misconduct by the individual defendants which would trigger further judicial inquiry (see *40 W. 67th St. v Pullman*, 100 NY2d 147; *Walden Woods Homeowners' Assn. v Friedman*, 36 AD3d 691; *Martino v Board of Mgrs. of Heron Pointe on Beach Condominium*, 6 AD3d 505). Accordingly, summary judgment was properly granted to the defendants. Moreover, upon renewal and reargument, the Supreme Court properly adhered to its original determination.

Since this is, in part, a declaratory judgment action, the matter must be remitted to the Supreme Court, Nassau County, for the entry of a judgment declaring that the 2006 budget passed by the Board is valid (*see Lanza v Wagner*, 11 NY2d 317, 334, *appeal dismissed* 371 US 74, *cert denied* 371 US 901).

FISHER, J.P., ANGIOLILLO, DICKERSON and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court