

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

D26526
W/kmg

_____AD3d_____

Argued - February 4, 2010

REINALDO E. RIVERA, J.P.
FRED T. SANTUCCI
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2008-10457

DECISION & ORDER

Board of Managers of Oceana Condominium No. Four,
etc., respondent, v Leonid Akodes, appellant.

(Index No. 40811/04)

David Carlebach, New York, N.Y. (Samuel Diamantstein of counsel), for appellant.

Belkin Burden Wenig & Goldman, LLP, New York, N.Y. (Sherwin Belkin, Robert A. Jacobs, Magda L. Cruz, and Robert T. Holland of counsel), for respondent.

In an action, inter alia, for a judgment declaring that the defendant violated the by-laws of a condominium known as Oceana Condominium No. Four, the defendant appeals from an order of the Supreme Court, Kings County (Ruchelsman, J.), dated September 23, 2008, which denied his motion for summary judgment.

ORDERED that the order is affirmed, with costs.

The defendant owns an apartment in a condominium building known as Oceana Condominium No. Four, which is run by the plaintiff Board of Managers of Oceana Condominium No. Four (hereinafter the Board). The defendant sought approval to install a central air conditioning unit in his apartment. The Board, on the advice of its engineer, denied his request. The defendant nonetheless installed the unit, and the Board commenced this action, inter alia, for a judgment declaring that the defendant violated the by-laws of the condominium. The defendant moved for summary judgment on the ground that the approval for his air conditioning unit had been unreasonably withheld. The Supreme Court denied the defendant's motion.

The proponent of a summary judgment motion must make a prima facie showing of

entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any triable issues of fact from the case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851). The trial court properly denied the defendant's motion for summary judgment since a triable issue of fact exists as to whether the Board reasonably withheld its approval for the defendant's air conditioning unit (*see Minoff v Irvington Estates Owners*, 232 AD2d 616, 617; *Stowe v 19 E. 88th St.*, 257 AD2d 355, 356; *Demas v 325 W. End Ave. Corp.*, 127 Ad2d 476, 478).

RIVERA, J.P., SANTUCCI, ENG and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court