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

PRESENT: **Kornreich, Shirley Werner, J.** PART 54
Justice

SATWANT K. DHAMOON

- v -

230 PARK SOUTH APARTMENTS, INC.

INDEX NO. 111782/05
MOTION DATE 2/02/06
MOTION SEQ. NO. 1
MOTION CAL. NO.

The following papers, numbered 1 to 16 were read on this motion to prelim. inj.
Cross-motion to dismiss and for prelim. inj.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits...	1-2
Answering Affidavits — Exhibits	3-9
Replying Affidavits	10-16

Cross-Motion: ☒ Yes ☐ No

Upon the foregoing papers, the motion and cross-motion are decided in accordance with the annexed Decision and Order.

FILED
MAY 16 2006
COUNTY CLERK'S OFFICE
NEW YORK

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

Dated: May 4, 2006

SHIRLEY WERNER KORNREICH J.S.C.
J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION
Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF YORK
COUNTY OF NEW YORK
----------X
SATWANT K. DHAMOON,

Plaintiff,

-against-

230 PARK SOUTH APARTMENTS, INC.,

Defendant.
----------X

DECISION and ORDER

Index No.: 111782/05

KORNREICH, SHIRLEY WERNER, J.

Plaintiff is a doctor who holds a proprietary lease and shares of stock appurtenant to Apartments 1F, 1G, 2F and 2G, professional space in the defendant real estate cooperative corporation ("Co-op"). Plaintiff moves for a preliminary injunction enjoining the Co-op from enforcing House Rules 6 and 2, which, respectively, prohibit plaintiff from posting signs on and having her patients, guests and vendors use the lobby entrance to her office.

The Co-op cross-moves to dismiss the complaint and for a preliminary injunction allowing it to enforce House Rule 2 and requiring plaintiff to terminate the leases of all of her subtenants.

The complaint seeks injunctive and declaratory relief, declaring that the Co-op may not enforce the two House Rules and enjoining the Co-op from enforcing them.

The Co-op has counterclaimed for injunctive relief permitting it to enforce House Rule 2 and requiring plaintiff to evict all her subtenants.

The Co-op is located at 230 Central Park South, New York, NY ("Building"). The Building has professional space on the first and second floors. The rest of the eighteen-story

building is occupied by residential tenant-shareholders.

The House Rules in question provide, in pertinent part, as follows:

> 2. No patient, visitor, vendor or invitee, or anyone accompanying such persons, of any doctor, dentist, or medical practitioner who has offices or facilities in the Building,...shall be permitted to enter, traverse, sit, wait in or use the lobby area, public halls, elevator, hallways, or lobby doorway of the Building for access to such office or for any other reason whatsoever....
>
> 6. No signage, notice, or advertisement shall be inscribed or exposed on the Building, or on or at any window or door...without prior written approval by the Board....

Plaintiff claims that there is no other door to her office other than the one in the lobby of the Building. Plaintiff admits that there is an entrance on Central Park South, through Apartments 1D and 1E in the front of the building ("street entrance"), through which plaintiff's alleged office can be reached via interior hallways and stairways. However, plaintiff alleges in her moving papers that the street entrance is the door to a fertility clinic known as I.V.F. New York ("IVFNY"), which is managed by Central Park Medical Services ("CPMS"), a business operated by her husband, Rajinder Dhamoon. Plaintiff claims that her gynecological and obstetrical practice is located in apartments 1F, 1G, 2F and 2G, which are accessible only through the lobby of the Building and that she will be irreparably injured without a lobby sign and entrance for her business.

Plaintiff's claims relating to the location of her practice and its connection to CPMS and IVFNY are contradicted by prior judicial admissions made in affirmations submitted by plaintiff and her attorney, Laura R. Shapiro, in a case in this Court entitled *Fasano v. Nash*, Index No. 107068/99 ("*Fasano*"). Plaintiff swore to the following statement in her affirmation in *Fasano*:

> 2. I am and was the sole shareholder of Central Park Medical Services, P.C.

(CPMS), which owns certain medical facilities located at 230 Central Park South.

3. The facilities of Central Park Medical Services consists of my office, treatment rooms for my patients, other physician offices and treatment rooms which are rented out to independent physicians. ***On the second floor are the facilities of IVFNY***. My husband, Rajinder Dhamoon is and was the Office Manager of CPMS. (emphasis supplied)

The quoted affirmation was submitted in support of plaintiff's motion to dismiss in *Fasano*, which was granted by the Hon. Diane A. Lebedeff, J., on April 2, 2001.

The reply affidavit of Rhajinder Dhamoon in this case, stating that he owns two apartments in the Building while Dr. Dhamoon owns four, is belied by Mr. Dhamoon's previous sworn statements. In paragraph two of a petition verified on May 22, 2000, filed in this Court in a case entitled *Matter of Dhamoon v. Reisner*, Mr. Dhamoon swore under oath that he owned the shares appurtenant to all six apartments. Reply Affidavit of Rhajinder Dhamoon, sworn to on December 9, 2005, paras.. 4, 24 and Exhibit T. It is uncontradicted that Mr. Dhamoon obtained a temporary restraining order in *Matter of Dhamoon v. Reisner*.

Finally, it appears from the record that plaintiff and IVFNY are alter-egos. The Co-op has submitted brochures for IVFNY, which contain plaintiff's photograph, under which her medical credentials are listed. See Reply Affidavit of Elizabeth Brody, sworn to on Jan. 13, 2006, Exh. A. In addition, in an action in this Court, entitled *Lee v. Central Park Medical Services*, Index No. 105546, defendants admitted that Central Park Medical Services is also known as IVFNY and that Rajinder Dhamoon is its Executive Director. See Reply Affidavit of Craig Avedisian, sworn to on Jan. 6, 2006, Exh. 3.

Having successfully exploited prior inconsistent judicial statements, plaintiff is estopped from claiming in this action that she is not the principal of IVFNY and that the office of IVFNY is

on the first floor by the Central Park South private entrance to the Building. *Manhattan Ave. Development Corp. v. Meit*, 224 A.D.2d 191 (First Dept. 1996), app. den.. 88 N.Y.2d 803; *Karasik v. Bird*, 104 AD2d 758, 758-759 (1st Dept. 1984)("It is a well-settled principle of law in this State that a party who assumes a certain position in a legal proceeding may not thereafter, simply because his interests have changed, assume a contrary position....Invocation of the doctrine of estoppel is required in such circumstances lest a mockery be made of the search for truth.").

Moreover, the photographic evidence and plans submitted on this motion make it crystal clear that the six apartments owned by plaintiff and her husband are integrated office space accessible from the street entrance on Central Park South without going through the lobby.

The Co-op contends that it has legitimate, business reasons for enforcing the House Rules. The Co-op alleges that there have been crimes in the Building and that persons entering the lobby have access to the elevators to the upper residential floors, which cannot be eliminated due to fire laws. The Co-op claims that it is enforcing the contested House Rules for security reasons and to lessen the burden on its doormen. Plaintiff, in response, protests that there is insufficient support in the record, due to the absence of police reports demonstrating that the recent crimes in the Building were committed by her patients or invitees.

It is well settled that the business judgment rule governs the decisions of cooperative boards of directors. *Levandusky v. One Fifth Ave. Apt. Corp.*, 75 N.Y.2d 530 (1990); *40 West 67th St. v. Pullman*, 100 N.Y.2d 147 (2003). Under the rule, Courts will not interfere with board decisions, so long as the board is not acting in bad faith or outside the scope of its authority. *Id.* Safety and security clearly are legitimate concern of cooperative boards. *Jacobs v. 200 East 36th Street Owners Corp.*, 281 A.D.2d 281 (1st Dept. 2001). This Court may not disturb the Co-op's judgment that

limited public access to the lobby will increase security and lessen the burden on its doormen. Even if persons unrelated to plaintiff's operations committed the crimes, the rules adopted to protect the Co-op's residents and their property are a reasonable exercise of business judgment. The Court notes that there is another professional tenant in the building that must abide by the same rules.

Plaintiff's assertion that the House Rule regarding her signs has not been enforced for years is unavailing pursuant to the terms of the proprietary lease. In paragraph 13, plaintiff agreed to be bound by the House Rules. In addition, Paragraph 26 provides that the failure of the Co-op to insist upon strict performance of any provision of the lease shall not be construed as a waiver.

The newly adopted rule prohibiting patients, vendors and invitees of the professional tenants from using the lobby is authorized by the proprietary lease, paragraph 13, which provides that the directors may alter, amend or repeal the House Rules and adopt new ones.

Finally, plaintiff's claim that the Co-op's enforcement of the House Rules is motivated by impermissible racial animus is not supported by the record on this motion. Although the complaint does not contain a cause of action for discrimination, the complaint does allege that the Co-op is enforcing the House Rules because plaintiff is a Sikh of Indian descent and many of her patients are members of minority groups. Plaintiff has submitted evidence of a single incident in which Gerald Chase, the husband of a member of the Co-op board, said to patients congregating in the lobby: "You are illegal people. Where do you come from? Get out of this lobby."

Even if this single event established a prima facie case of discrimination, the Co-op rebutted the presumption of discrimination by clearly setting forth, through the introduction of admissible evidence, legitimate, independent, and non-discriminatory reasons to support its decision, i.e. security in the building and the use of the doormen. *See, Miller Brewing Co. v. State Div. of Human Rights*,

66 N.Y.2d 937, 938-939 (1985). The burden then shifted to plaintiff to prove by a preponderance of the evidence that the legitimate reasons offered by the Co-op were not its true reasons, but were a pretext for discrimination. *Id.* Plaintiff failed to offer any proof that the Co-op's reasons were pretextual.

In order to prevail upon a motion for a preliminary injunction, a party must show a likelihood of ultimate success on the merits; that irreparable injury would result in the absence of preliminary injunctive relief; and that a balancing of the equities to effect substantial justice and to preserve the status quo warrants the grant of extraordinary relief. *Pilgreen v. 91 Fifth Ave. Corp.*, 91 A.D.2d 565, 567 (1st Dept.1982), app. dismissed 58 N.Y.2d 1113 (1983).

Plaintiff's motion for a preliminary injunction is denied because she has not shown likelihood of success or that the equities or substantial justice are in her favor. Moreover, she will not be irreparably injured by enforcement of the House Rules, as the office is accessible from the street entrance.

The Co-op's cross-motion for dismissal of the complaint is granted. The Co-op has established, as a matter of law, legitimate business reasons for enforcement of the House Rules.

The Co-op's cross-motion for a preliminary injunction compelling plaintiff to terminate her subleasees is denied. It is sharply disputed on this record whether plaintiff has subtenants, and if so, whether they have legal rights of occupancy. *See, Newmann v. Mapama Corp.*, 96 A.D.2d 793 (First Dept. 1983).

Accordingly, it is

ORDERED that plaintiff's motion for a preliminary injunction is denied; and it is further

ORDERED that defendant's cross-motion for a preliminary injunction is denied; and it is

further

ORDERED that defendant's cross-motion to dismiss the complaint is granted and the complaint is dismissed with prejudice, and defendant's counterclaim is severed and shall continue as a separate action; and it is further

ORDERED that the caption herein is hereby amended as follows:

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230 PARK SOUTH APARTMENTS, INC.,

Plaintiff,

-against-

SATWANT K. DHAMOON,

Defendant.

----------X

and it is further

ORDERED that the defendant Satwant K. Dhamoon shall serve her answer to the counterclaim, if she has not done so already, within twenty (20) days of service upon her attorneys of a copy of this order with notice of entry; and it is further

ORDERED that plaintiff 230 Park South Apartments, Inc., shall serve a copy of this order with notice of entry upon both the Trial Support Office (Room 158) and the County Clerk so that their records may be altered to reflect the changes in the caption; and it is further

ORDERED that all parties shall appear before the Court for a compliance conference at 9:30 a.m. on June 1, 2006 at 111 Centre Street, Room 1227, New York, N.Y. 10013, and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: May 4, 2006

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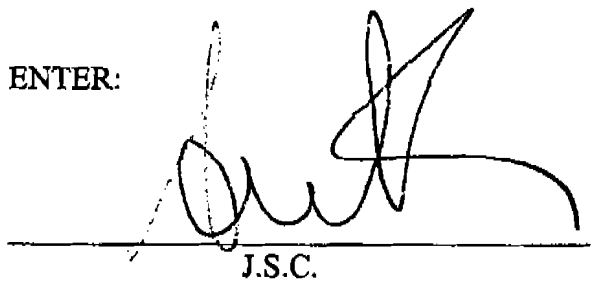

J.S.C.