

Sigmond v Sung

2006 NY Slip Op 30718(U)

August 8, 2006

Supreme Court, New York County

Docket Number: 106345/06

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

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CAROL A. SIGMOND, on behalf of herself
and all other similarly situated owners of
condominium units in The 1411
Condominium,

Decision/Order

Index No.: 106345/06
Seq. No. : 001

Plaintiffs,

-against-

Present:
Hon. Judith J. Gische
J.S.C.

MARGARET SUNG,
NEIL L. ROCK, CLAUDIO MARTIN WEISZ,
PHYLLIS F. BECK, MAE MORIN CHRIS MIN,
and PHILLIPE SEEMAN, individually and as
members of the RESIDENTIAL BOARD OF
MANAGERS of THE 1411 CONDOMINIUM,
and THE 1411 CONDOMINIUM,

Defendants.
-----X

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

Papers	Numbered
Pltfs' OSC#1 [pi] w/CAS affirm in support, exhs	1
Defs' affid in opp (MS) w/exhs	2
Pltf Sigmond reply affirm (CAS)	3

Upon the foregoing papers, the decision and order of the court is as follows:

Plaintiff is an attorney appearing *pro se* in this action. Although the caption is styled as "CAROL A. SIGMOND on behalf of herself and all similarly situated owners of condominium units in The 1411 Condominium", she brings this action only on behalf of herself¹.

¹This representation was made during oral argument of the motion which was transcribed on the record by a court reporter.

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By this motion, plaintiff seeks a preliminary injunction against The 1411 Condominium and individually named board of manager members (collectively "Condo") enjoining them from collecting a fee from her to perform certain work in the apartment owned by her; barring amendment to the by-laws that is not made in accordance with law; barring the Condo from making false statements to induce unit owners to vote for a Transfer Tax and barring the Condo from acting as a cooperative corporation. The motions is opposed.

The Condo was formed by Declaration of Condominium dated September 29, 1994 and duly recorded. Plaintiff owns unit 14C.

By letter dated March 31, 2006 plaintiff contacted the Board of Managers concerning work that she intended to undertake in her unit. She identified the work as follows:

"Remove existing French doors, frame and soffit above. Core walls to remain, as illustrated by the enclosed architecture drawing prepared by Mufson Partnership, replace the existing lavatory and faucet in the powder room. Paint the entire apartment."

The letter further provided:

"Following completion of this work, Abco Mechanical Corporation has been contracted to replace five (5) heating and cooling units with new upgraded McQuay units."

The parties main dispute is whether the proposed alterations are minor or decorative. Plaintiff believes that they are. The Condo, however, believes that the work constitutes alterations that require the plaintiff to sign an alteration agreement and provide a security deposit. The deposit is returnable to the unit owner in the event that the work is performed without any damage to the common elements of the Condo.

One aspect of the preliminary injunction requested by plaintiff is to permit her to go forward with her proposed work without fulfilling the Condo's requirements for unit alteration.

The other aspect of the parties dispute, for which plaintiff seeks a preliminary injunction, is efforts by the board to pass a transfer tax as a means of raising money. As part of the Condos efforts they have represented that many other Luxury Condos in the area have adopted such a measure. Based on this statement plaintiff wants a preliminary injunction against future speech. In addition, plaintiff wants an injunction against the Condo attempting to pass a transfer tax without following the law and Condo by-laws.

For the reasons that follow the motion for a preliminary injunction is denied in its entirety.

Entitlement to a preliminary injunction requires the movant to show: a likelihood of success on the merits; irreparable injury in the absence of an injunction and a balancing of the equities. Wall Street Parking Garage v. New York Stock Exchange, Inc., 10 AD3d 223 (1st dept. 2004). Absent extraordinary circumstances, a preliminary injunction should not be granted to afford movant the ultimate relief she/he may be seeking. SHS Baisley LLC v. Res Land, Inc., 18 AD3d 727 (2nd dept. 2005). Additionally, in seeking a prior restraint on speech, first amendment considerations apply and the fact that something may be false is not itself sufficient to make a showing to a prior restraint. Trojan electric v. Heusinger, 162 AD2d 859 (3rd dept. 1990).

With respect to the preliminary injunction preventing the Condo from requiring plaintiff to comply with their requirements for alterations, the relief must be denied.

Plaintiff has not shown that the work she seeks to do in her apartment is of a kind that should not be considered "alterations" by the Condo. More importantly, any injunction would in effect grant plaintiff the ultimate relief she seeks, because it would allow her to go ahead and do the work that she seeks to do without complying with the Condo's requirements. Finally, there is no harm to plaintiff in denying the interim relief requested. Plaintiff can wait to do the work after a final adjudication is made or she can do the work and comply with the Condo requirements. There appears to be no urgency to have the work done.

With respect to enjoining the Condo from making false statements about the transfer tax situation, this prior restraint on speech has to be denied. Plaintiff has not met her heavy burden in restraining such speech, including proving that the allegedly offending statement was even false.

With respect to preliminarily enjoining the Condo from unlawfully amending their by-laws to provide for a transfer tax, the relief must also be denied. There is no showing that the Condo is proceeding unlawfully. Moreover, plaintiff has a remedy without any such preliminary injunction because any unlawful action by the Condo can be challenged when and if it occurs.

Finally, the court simply does not understand what conduct plaintiff believes is Cooperative like and not Condo like, as the basis for requesting an injunction. It too must be denied.

Conclusion

In view of the foregoing, the motion for a preliminary injunction is denied in all respects. The court sets this matter down for a preliminary conference on **September 21, 2006 at 9:30 a.m. at the New York County Supreme Court, 80 Centre Street, Room 122.**

Any requested relief not expressly granted herein is denied.

This shall constitute the decision and order of the Court.

Dated: New York, New York
August 8, 2006

So Ordered:



HON. JUDITH J. GISCHE, J.S.C.

FILED
AUG 21 2006
NEW YORK
COUNTY CLERK'S OFFICE