

Luzzi v Bridge Tower Place Condominium
2007 NY Slip Op 31324(U)
May 16, 2007
Supreme Court, New York County
Docket Number: 0107881/2006
Judge: Leland G. DeGrasse
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LELAND DEGRASSE
Justice

PART 25

Index Number : 107881/2006
LUZZI, ROBERT J.
vs
BRIDGE TOWER PLACE
Sequence Number : 002
COMPEL

INDEX NO. 107881/06
MOTION DATE 2/22/07
MOTION SEQ. NO. 002
MOTION CAL. NO. 62

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

*Motion is decided in accordance with
accompanying Memorandum Decision.*

FILED
MAY 24 2007
NEW YORK
COUNTY CLERK'S OFFICE

MAY 16 2007

Dated: _____

J.S.C.

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

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

SUPREME COURT : STATE OF NEW YORK
COUNTY OF NEW YORK : I.A.S. PART 25

-----X
ROBERT J. LUZZI, :

Plaintiff, :

-against- :

BRIDGE TOWER PLACE CONDOMINIUM
(401 East 60th Street), :

Defendant. :

-----X
DeGRASSE, J.:

Index No.: 107881/06
Cal. No.: 62 of 2/22/07

FILED
MAY 24 2007
NEW YORK
COUNTY CLERK'S OFFICE

Defendant moves, pursuant to CPLR 2104, for an order enforcing the parties' written stipulation of settlement and for attorneys' fees. Plaintiff cross-moves for an order awarding attorneys' fees pursuant to the stipulation.

Defendant is a multi-story condominium building containing 218 residential units. Plaintiff is the owner of the penthouse unit located at the subject premises. By summons with notice filed on June 7, 2006, plaintiff sought a declaration that he was not required to provide defendant with access to his penthouse unit, including the unit's wrap-around terrace for the purpose of performing exterior window washing work. Plaintiff also sought a permanent injunction to prevent defendant from utilizing or accessing his premises for purposes of erecting scaffolding to perform such work.

On June 23, 2006, the action was resolved by a stipulation of settlement which was “so ordered” by this court. The stipulation provides in pertinent part as follows:

- “1. Defendant appears herein by its undersigned counsel.
2. Defendant acknowledges that, pursuant to the current condominium declaration and by-laws of the [p]remises, plaintiff is not and shall not be required to provide access in and through his [u]nit, including in and through the terrace surrounding his [u]nit, to permit scaffolding to be erected or any other form of access to the [p]remises to perform exterior window washing in and about the [p]remises.
3. Defendant acknowledges and agrees that pursuant to the current condominium declaration and by-laws of the [p]remises, any exterior window washing in or about the [p]remises is required to be performed by each individual [u]nit owner at his/her/its own expense.
4. Defendant is permanently enjoined from erecting scaffolding or any other form of access to the [p]remises utilizing, obstructing or interfering with plaintiff’s [u]nit, including the terrace surrounding plaintiff’s [u]nit, for purposes of exterior window washing in or about the [p]remises.
5. The parties acknowledge that scaffolding is currently erected in an[d] about the [p]remises and plaintiff’s [u]nit. It is agreed that said scaffolding shall be used to perform inspection and repair work relating to possible clogged weepholes and caulking issues (causing water leaks) with respect to Units 24D, 14B, 6A, 35A, 27A, 35C and 36C within the [p]remises. Defendant agrees that such inspection and repair work shall be performed as expeditiously as possible, at the conclusion of which defendant, at its sole cost and expense, shall immediately arrange for such scaffolding to be removed.
6. Defendant, at its sole cost and expense, shall immediately arrange for the railings in and about the terrace surrounding plaintiff’s [u]nit (which were taken down when scaffolding was erected) to be replaced and restored to their condition prior to the scaffolding being erected in and about the [p]remises.

7. No exterior window washing shall be performed by the defendant in or about the [p]remises while the work mentioned in paragraph 5 above is being performed. However, nothing contained herein shall prohibit the individual owners of units within the [p]remises from washing the exteriors of their own windows at their own expense and without scaffolding or access in or about plaintiff's [u]nit.
8. Nothing contained in this stipulation is intended or shall be construed to limit or impair the parties' rights or obligations under the condominium's declaration and by-laws including, but not limited to, the defendant's rights and obligations set forth in Article 12 of the declaration including, but not limited to, Section 12.2(c)(c-4)."

Defendant asserts that plaintiff has violated the terms of the stipulation by refusing to allow defendant access to his penthouse unit and surrounding terrace to perform exterior window washing work. According to defendant, the Condominium Board agreed to refrain from seeking access to plaintiff's premises "so long as the current [bylaws] remain[ed] the controlling regime." Defendant further asserts that "on or about October 14, 2006, 80% of the residential unit owners voted and approved an amendment ... to the Condominium's [b]ylaws giving the Condominium Board the right to gain access to individual units specifically for the purpose of cleaning exterior surfaces of building windows." In support of this contention, defendant submits a copy of a proposed amendment to Article 5, Section 5.13 (a) of the Condominium's bylaws which provides, *inter alia*, that "[i]n addition to all other easements set forth in the Declaration, the Condominium Board ... shall have an easement in and through the [r]esidential [s]pace for the purpose of accessing, servicing and facilitating window washing." As such, defendant argues that since paragraph 8 of the stipulation of settlement provides that plaintiff may not "'limit or impair the parties' rights or obligations under the declaration and [bylaws], (including the right to amend them)," and since the bylaws have been amended to allow defendant access to plaintiff's premises to perform exterior

window washing work, plaintiff is in violation of the settlement agreement as he has refused to allow such access to defendant.

In his affidavit in opposition, plaintiff asserts that the proposed amendment to the bylaws is insufficient to prove that such an amendment was passed by the Board in that he has never received any notification from the building's managing agent or its Board of Managers regarding such an amendment. Plaintiff further asserts that since he is "the only unit owner affected by the hanging of scaffolding on the [p]remises, it was his intent to permanently stop the Board from using [his] terrace for exterior window cleaning access." In further opposition, plaintiff's counsel states that the language in the stipulation of settlement is clear and unambiguous and "at no time during the negotiation of the [s]tipulation was it ever suggested by the attorney negotiating the [s]tipulation on defendant's behalf that the injunction would not be permanent or that its duration would be tied somehow to defendant's [bylaws]." Counsel further states that while the stipulation of settlement does not contain language governing defendant's right to amend its bylaws, "nothing in the [s]tipulation suggests that any amendment to the [bylaws] would govern or supercede the [c]ourt-ordered injunction described unambiguously as permanent." Counsel further states that paragraphs 2 and 3 of the stipulation of settlement were not intended to provide for an injunction that is subject to defendant's bylaws. Rather, counsel claims that said paragraphs "were intended by [him], as the [s]tipulation's draftsman, to express a circumscription of defendant's rights and a description of [the] unit members' obligations."

By reply affirmation, defendant submits copies of (1) the Amendment to the By-Laws, (2) the Vote Count for Amendment of By-Laws to Permit Window Washing, and (3) a notice, dated January 30, 2007, addressed to "All Unit Owners" from the Board of Managers, which states, *inter*

alia, that the Board had received more than the required 66 2/3% votes it needed to amend the bylaws to permit the cleaning of the exterior windows of each condominium unit. Defendant asserts that “[t]he permanent injunction granted to plaintiff in the [s]tipulation was, by its very nature, limited to the by-laws as then existing, so that the [c]ondominium was barred from access to the [u]nit for the purpose of performing exterior window washing for so long as the by-laws prohibited it.”

It is well settled that “[s]tipulations of settlement are essentially contracts and will be construed in accordance with contract principles and the parties’ intent” (*Serna v Pergament Distribs.*, 182 AD2d 985, 986 [1992], *lv dismissed* 80 NY2d 893 [1992]; *see also Sharp v Stavisky*, 221 AD2d 216 [1995], *lv dismissed* 91 NY2d 956 [1998]). Thus, as in a matter where parties seek enforcement of a contract, the court has the responsibility of effectuating the true intent of the parties, and where the terms are unambiguous, this intent must be gleaned from the plain meaning of the words used by the parties (*see Matter of Wallace v 600 Partners Co.*, 86 NY2d 543, 548 [1995]; *W.W.W Assocs., Inc. v Giancontieri*, 77 NY2d 157, 162 [1990]; *Rainbow v Swisher*, 72 NY2d 106, 109 [1988]). Moreover, when an agreement between the parties is clear and unambiguous on its face, it will be enforced according to its terms and without resort to extrinsic evidence (*see W.W.W Assocs., Inc.*, 77 NY2d at 163). Accordingly, “[a] court should not, under the guise of contract interpretation, ‘imply a term which the parties themselves failed to insert’ or otherwise rewrite the contract” (*Lui v Park Ridge at Terryville Assn.*, 196 AD2d 579, 581 [1993], quoting *Mitchell v Mitchell*, 82 AD2d 849 [1981]).

The court finds unpersuasive defendant's contention that the settlement agreement afforded defendant the right to amend its bylaws to afford defendant access rights to plaintiff's premises to perform exterior window washing work. The principal purpose of the agreement was to settle the parties' dispute. In that litigation, plaintiff sought declaratory and injunctive relief to prevent defendant from gaining access to his premises.

Defendant's argument that the word "[p]ermanent" in this context clearly means permanent unless the [bylaws] were amended, as they were here, to permit exterior window washing" is without merit. Here, the stipulation of settlement also provided that defendant would complete the inspection and repair work being performed at plaintiff's premises "as expeditiously as possible," and upon completion of such work, defendant would "immediately arrange for" (1) the removal of the scaffolding that was erected in and about plaintiff's premises, and (2) the replacement and restoration of the railings surrounding plaintiff's terrace which were taken down when the scaffolding was erected. Given the detailed manner in which defendant agreed to be bound, it would be illogical to conclude, as defendant states, that the parties intended that the settlement agreement would not "limit or impair" defendant's right to amend the condominium's bylaws to allow defendant access rights to plaintiff's premises for the purpose of cleaning the building's exterior windows. The stipulation, itself, did not impose upon plaintiff a duty to comply with the amended bylaws by giving defendant access to his premises for purposes of window washing. Therefore, the stipulation affords no remedy for any breach of the amended bylaws on plaintiff's part. For the foregoing reasons defendant's motion is denied.

Plaintiff's cross motion is granted to the extent that pursuant to the stipulation plaintiff is awarded costs and expenses, including reasonable attorneys' fees, incurred in connection with defendant's motion. This matter is referred to the Special Referee Clerk in the IAS Motion Support Office for assignment to a special referee to hear and determine the amount of such costs to which plaintiff is entitled (CPLR 4317). As a condition of the reference, plaintiff shall file a copy of this order with the Special Referee Clerk within 20 days after entry.

This constitutes the decision and order of the court.

DATED:

MAY 16 2007

J.S.C.
HON. LELAND DeGRASSE

FILED
MAY 24 2007
NEW YORK
COUNTY CLERK'S OFFICE