Ruiz v Shinnecock Bay Club, Inc.

2007 NY Slip Op 31909(U)

June 26, 2007

Supreme Court, Suffolk County

Docket Number: 0000238/2007

Judge: Joseph Farneti

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SHORT FORM ORDER

INDEX NO. 238/2007

SUPREME COURT - STATE OF NEW YORK

I.A.S. TERM, PART 37 - SUFFOLK COUNTY

PRESENT:

HON. JOSEPH FARNETI
Acting Justice Supreme Court

ENEIDA RUIZ and CARLOS PIOVANETTI,

Plaintiffs,

-against-

SHINNECOCK BAY CLUB, INC.,

Defendant.

ORIG. RETURN DATE: JANUARY 23, 2007
FINAL SUBMISSION DATE: FEBRUARY 8, 2007
MTN. SEQ. #: 001
MOTION: MD

PLTF'S/PET'S ATTORNEY:
MIRTA DEL RIO, ESQ.
321 BROADWAY, 3RD FLOOR
TRIBECA, NEW YORK 10007
646-251-6904

DEFT'S/RESP ATTORNEY:
EDWARD M. TAYLOR, ESQ.
366 VETERANS MEMORIAL HIGHWAY
COMMACK, NEW YORK 11725
631-864-7200

Upon the following papers numbered 1 to 9 read on this motion FOR A PRELIMINARY INJUNCTION. Order to Show Cause and supporting papers 1-3; Memorandum of Law in Support 4; Answering Affidavits and supporting papers 5, 6; Memorandum of Law in Support 7; Replying Affidavits and supporting papers 8, 9; it is,

ORDERED that this motion by plaintiffs for an Order, pursuant to CPLR 6301, granting a preliminary injunction preventing the defendant from further converting "Common Elements" belonging to all unit owners into "Limited Common Elements" which belong to individual unit owners, and from self-dealing by the individuals comprising the Board of Managers, is hereby **DENIED**.

Plaintiffs are the owners of a condominium identified as Unit #419 at Shinnecock Bay Club, in Hampton Bays, New York, which they purchased on or about February 13, 2005. Plaintiffs have filed this action to permanently enjoin the three members of the Board of Managers of defendant SHINNECOCK BAY CLUB CONDOMINIUM, INC. ("SBC") from taking land presently held and owned as an undivided common element by all unit owners of SBC, and converting it

into limited common elements, alleging that such a taking is being done without permission and/or ratification of one hundred (100%) percent of the unit owners of SBC as required by the Bylaws of the Condominium and the Condominium Act of the State of New York (Real Property Law § 339-i[2] and [3]). In addition, plaintiffs seek a declaratory judgment that any patios expanded after the date that the Sponsor relinquished control of the condominium complex were done in violation of the Condominium Bylaws and must be returned to their original dimensions.

This action was commenced by Order to Show Cause and complaint, which was granted on January 9, 2007 (Bivona, J.). However, Justice Bivona struck the proposed temporary restraining order contained therein which would have enjoined and restrained the defendant, its Board of Managers, agents, employees, servants and all persons acting in concert with them, from transferring or converting lands designated as "Common Elements" in the Condominium Declaration and Bylaws, into "Limited Common Elements."

Plaintiffs argue that the common charges of all unit owners are determined by adding the dimensions of the unit owned, including limited common elements (i.e. patios), and the undivided interest in the common elements. As such, plaintiff submits that when a taking occurs that either creates or expands a limited common element from lands designated as undivided common elements, the ratio or percentage of plaintiffs' monthly common charges must be adjusted downward.

Plaintiffs allege that several unit owners, including the three members of the Board of Managers, have already expanded their patios by as much as one hundred (100%) percent, at the "expense" of plaintiffs' interest in the common elements. As such, plaintiffs allege that they, along with other unit owners, are subsidizing those owners' monthly common charges. Plaintiffs have therefore filed the instant application seeking a preliminary injunction preventing defendant from converting additional common elements into limited common elements and from further self-dealing during the pendency of this action.

In opposition, defendant argues that such expansions of the patios are permitted by the Condominium Declaration and Bylaws and New York's Real Property Law. Defendant further argues in opposition that if the expansions are ultimately found to be improper, then the patios can be returned to their original configurations. Defendant alleges that the Sponsor of the condominium complex,

HAMPTON MIST, L.C., had agreed to expand or install several brick patios during the process of selling the units, and based upon this conduct, the Board of Managers granted requests from seven other unit owners seeking to enlarge their patios. Notably, defendant submits that contrary to the contention of plaintiffs, the patios have no bearing on the percentage of common elements assigned to each unit, and therefore no bearing on a unit owner's monthly common charges. Moreover, defendant submits that plaintiffs will not suffer irreparable harm in the absence of a preliminary injunction, as all of the patios are at ground level; the expansions to date have only been between ten to thirty square feet; and the expansions have cost between $500.00 and $750.00 to install. As such, defendant argues that it would be an "easy and relatively inexpensive task" to return the patios to their original state if the expansions are found to be improper.

In reply, plaintiffs counter that pursuant to footnote number 2 to Schedule A of the Condominium Declaration, patio sizes are relevant to the computation of common interest, as in addition to floor space, factors such as relative value to other space in the condominium, the uniqueness of the unit, and the availability of common elements for exclusive or shared use are considered when assessing common charges.

Since a preliminary injunction prevents litigants from taking actions that they would otherwise be legally entitled to take in advance of an adjudication on the merits, it is considered a drastic remedy which should be issued cautiously (*see Uniformed Firefighters Assn. of Greater N.Y. v City of New York*, 79 NY2d 236 [1992]; *Gagnon Bus Co., Inc. v Vallo Transp., Ltd.*, 13 AD3d 334 [2004]; *Bonnieview Holdings v Allinger*, 263 AD2d 933 [1999]). Thus, in order to obtain a preliminary injunction pursuant to CPLR 6301, a moving party must demonstrate: (1) a likelihood of success on the merits; (2) an irreparable injury absent the injunction; and (3) a balancing of the equities in its favor (*see Aetna Ins. Co. v Capasso*, 75 NY2d 860 [1990]; *Iron Mtn. Info. Mgt., Inc. v Pullman*, 2007 NY Slip Op 5469 [2d Dept]; *Gerstner v Katz*, 38 AD3d 835 [2007]). To sustain its burden of demonstrating a likelihood of success on the merits, the movant must demonstrate a clear right to relief which is plain from the undisputed facts (*see Gagnon Bus Co., Inc. v Vallo Transp., Ltd.*, 13 AD3d 334, *supra*; *Dental Health Assoc. v Zangeneh*, 267 AD2d 421 [1999]; *Blueberries Gourmet v Aris Realty Corp.*, 255 AD2d 348 [1998]). Where the facts are in sharp dispute, a temporary injunction will not be granted (*see Blueberries Gourmet v Aris Realty Corp.*, 255 AD2d 348, *supra*).

Here, plaintiffs argue that the preliminary injunction sought would only maintain the status quo. Plaintiffs submit that the initial dimensions of the patios are unknown so that the expanded patios cannot be returned to the original dimensions. Plaintiffs allege that if the preliminary injunction is not granted, unit owners will continue to expand their patios making it difficult to determine the original dimensions, and further making it difficult to calculate financial loss. Plaintiffs contend that this Court must delay defendant's "expansion program" during the pendency of the instant action. Plaintiffs posit that if a preliminary injunction is not granted, as many as seventeen unit owners would potentially be affected by the instant litigation, as opposed to eight or nine if the injunction is granted.

The Court has weighed the elements necessary for the granting of a preliminary injunction, and finds that plaintiffs have not sustained their burden. The parties' submissions demonstrate that the underlying facts are in sharp dispute as to whether the Board of Managers had the authority to allow a limited expansion of certain patios in the complex. In addition, the Court finds that plaintiffs have not demonstrated an irreparable injury to plaintiffs in the absence of an injunction, as the patios could potentially be restored to their original dimensions if the Board's actions are ultimately found improper, or in the alternative, plaintiffs could be granted money damages and/or a reduction of their monthly common charges. Further, in balancing of the equities, the Court finds that the scale tips in favor of not issuing the injunction, as an injunction would affect the rights of the owners of all twenty-nine units in the complex during the pendency of this action, not merely the parties herein. Accordingly, this application for a preliminary injunction is denied.

The foregoing constitutes the decision and Order of the Court.

Dated: June 26, 2007

HON. JOSEPH FARNETI
Acting Justice Supreme Court