

**Board of Manages of Port Regalle Condominium,
Inc. v Lara**

2007 NY Slip Op 32262(U)

July 12, 2007

Supreme Court, Richmond County

Docket Number: 0080417/2006

Judge: Joseph J. Maltese

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND PART DCM 3**

**Index No.:80417/2006
Motion No.:1**

**BOARD OF MANAGES OF PORT REGALLE
CONDOMINIUM, INC.,**

Plaintiff
against

**DECISION & ORDER
HON. JOSEPH J. MALTESE**

LEOPOLD LARA,

Defendants

The following items were considered in the review of this motion pursuant to Real Property Law § 339-j

<u>Papers</u>	<u>Numbered</u>
Orders to Show Cause and Affidavits Annexed	1, 3
Answering Affidavits	2
Replying Papers	4
Exhibits	Attached to Papers
Memorandum of Law	

Upon the foregoing cited papers, the Decision and Order on this Motion is as follows:

The plaintiff moves this court by order to show cause for an order pursuant to Real Property Law § 339-j directing the defendant to remove structures including, but not limited to, raised patios, retaining walls, tiles, and a fountain from the exterior common area behind 68 Harbour Court; restoring the exterior common area behind 68 Harbour Court to its original condition; pay fines imposed by the plaintiff; and reimburse the plaintiff for the legal costs incurred in enforcing the rules and regulations of the condominium association. The defendant opposes this motion.

The plaintiff is the Board of Manages of the Port Regalle Condominium, Inc. Port Regalle is a condominium association organized and existing under the law of the State of New York with a valid Declaration of Condominium on file in the Richmond County Clerks Office in Liber 1488, Page 155. The Condominium consists of 60 units with the ground level units having a common area in the back of each unit that may be used by the owner of that unit. As originally constructed, each of the ground floor units had a concrete patio just outside the rear entrance at ground level.

According to the affirmation of the president of the Board, in years past, owners of ground floor units have sought permission from the Board to repair, renovate, or replace the concrete patios in the common areas. The By-Laws and Condominium rules require owners to seek the written approval of the Board before making any alterations to the exterior of any unit or any part of the common areas. In years past, the Board has granted requests to alter, replace or enlarge the patios in the common areas behind the units requiring that any alterations remain at ground level and no elevated structures be installed. Furthermore, there has been a requirement that any alterations be of the same concrete composition as the original patios, or, if a unit owner wished to use tiles or paves, that the tiles be the same as that used on the walled patios of the upper units which are four inch by four inch terra cotta perma frost tiles and that the pavers be of a red brick color similar to the pavers used in the front of each unit, so as to maintain the uniformed look of Port Regalle.

In March or April 2005, the defendant requested permission from the Board to resurface the existing concrete patio in the common area with a “perma-crete system” in an approved color. He also requested to be allowed to replace soil along the hedge line and to trim some tree roots. The Board approved the requests and granted him permission to perform the work he requested in letters dated June 24, 2005 and May 8, 2006.

In May or June 2006, the defendant caused work to be done on the common area that was entirely different than what was approved by the board. Specifically, the defendant had installed two elevated tile patios which used 16 inch by 16 inch tiles in a peach color. He also had installed a concrete block retaining wall as well as a concrete fountain. Upon learning of the unauthorized construction, the Board summoned and the defendant appeared before the board. Mr. Lara stated that he was aware of the requirement to seek permission before making alteration, and requested that the Board grant him permission retroactively. The Board inspected the work and denied the permission for the structures. In letter dated September 12, 2006, the board directed that the illegal structures be removed. The defendant has not, which has forced the board to take the instant legal action.

In opposition, the defendant argues that the Board is exercising bad faith in enforcing the by-

laws and condominium rule in that it is *ultra vires* of their authority. More specifically, the defendant argues that the matter at bar is not the exercise of business judgment, but rather an “exercise of bad faith, maliciousness and disparate.” Furthermore, the defendant argues that he should be allowed to maintain the alterations performed in as he has “spent considerable funds in improving the backyard and that what really exists in the “Board” is a “runaway board” exercising gestapo like judgment.”

When the defendant took ownership of the unit, he agreed to be bound by the rules and by-laws of the Condominium. Article 6 of the rules provides that “No Owner or Tenant shall make any alterations to the exterior or structural interior of a unit of any part of the common elements without the prior written approval from the Board of Managers.” Here, the defendant sought to make alterations, proposed them to the board, and they were approved. However, he then had installed alterations entirely different than what was proposed. The Board, ultimately did not approve the alterations, *nunc pro tunc*, and undertook this action to maintain the uniformity of appearance of Port Regalle.

Accordingly, it is hereby:

ORDERED, that the plaintiff’s motion is granted to the extent that the defendant shall remove the structures not approved by the board of managers and restore the exterior common area behind 68 Harbor Court to its original condition, or such condition that the Board of Managers may approve; and it is further

ORDERED, that the part of plaintiff’s motion seeking payment of the \$500 fine is denied as moot as the defendant has submitted proof of payment; and it is further

ORDERED, that the part of plaintiffs motion seeking legal costs is denied.

ENTER,

DATED: July 12, 2007

Joseph J. Maltese
Justice of the Supreme Court