

**Wolfus v Board of Mgrs. of Cent. Park Place  
Condominium**

2007 NY Slip Op 32395(U)

July 30, 2007

Supreme Court, New York County

Docket Number: 0104580/2007

Judge: Walter Tolub

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: \_\_\_\_\_

PART 15

Justice

Daniel Wolfos, ET AL.

INDEX NO.

104580/07

Central Park Place  
Condominium, ET AL.

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 1

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:      Yes      No

Upon the foregoing papers, it is ordered that this motion

**IS DECIDED**

**IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION**

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

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 11B)

Dated: 7/30/07

WALTER B. TOLUB J.S.C.

Check one:

FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: IAS PART 15

-----x  
 DANIEL WOLFUS, individually and  
 derivatively, on behalf of the  
 Unit Owners of Central Park Place  
 Condominium,

**Index No.** 104580/07

Petitioner,

**Mtn Seq.**

-against-

Board of Managers of the Central Park  
 Place Condominium, Gabriella Garzoni,  
 Walter Goldstein, Kosaku Horiwaki,  
 Jens Winther (a/k/a Jorgenson),  
 Hooman Mehran, Chandranath Sen,  
 Monya Singh.

Defendants.

-----x

**WALTER B. TOLUB, J.:**

Petitioner owns a residential unit in the Central Park Place Condominium (the "Condominium"), located at 301 West 57<sup>th</sup> Street in Manhattan. This proceeding seeks to vacate the results of the December 11, 2006 election of the Board of Managers of the Central Park Place Condominium (the "Board of Managers") and to compel the Board of Managers to hold a new election. By this application, petitioner seeks an order pursuant to CPLR 6301 and 6313 prohibiting respondents, individually and/or collectively, from performing any duties as a board member of The Board of Managers of the Central Park Place Condominium other than (1) ensuring the collection of common charges; (2) paying the regularly recurring bills of the Condominium and (3) addressing any emergency situations which pose an immediate threat to the

property. Respondents Board of Managers, Gabriella Garzoni, Walter Goldstein, Kosaku Horiwaki, Jens Winther (a/k/a Jorgenson), Hooman Mehran, Chandranath Sen, and Moyna Singh cross-move for an order (1) dismissing the petition pursuant to CPLR 3211 for both lack of jurisdiction and failure to state a cause of action; (2) dismissing the petition as to the individually named members of the Board; (3) disqualifying the firm of Braverman Associates as counsel for petitioner; and (4) dismissing petitioner's claim for attorneys fees.

#### Background

In November, 2006, Halstead Property Management ("Halstead"), the managing agent for the Condominium, mailed and delivered a notice of the 2006 Annual Meeting (the "notice"). The notice announced that the annual meeting of the residential unit owners of the Condominium and election of members of the Board of Managers would take place on December 11, 2006 (Notice of Petition, Exhibit 3). The Notice of the Annual Meeting advised the unit owners to attend in person, but provided a proxy printed on gold-colored paper (the "gold proxy") to be completed and returned in the event that an owner could not attend. With respect to the gold proxy, the Notice included the following language:

You are urged to attend the meeting in person. However, if you cannot attend, please complete the enclosed form of the gold proxy and leave it with the Condominium's concierge or

mail to the managing agent. If you do not insert a name in the blank space, appointing someone as your proxy, it will be deemed given to the Secretary to cast as a majority of the Board directs. If you complete a proxy but attend the meeting and wish to vote, your proxy will be canceled and returned to you  
(Petition Exhibit 3).

The gold proxy form, however, reads as follows:

KNOW ALL PERSONS BY THESE PRESENTS: I (we) hereby appoint **CPP Board Secretary Dr. Chandranath Sen** with full power of substitution to represent me (us) at the Annual Meeting of Residential Unit Owners of the Central Park Place Condominium on December 11, 2006 or at any adjournments thereof and to vote my (our) percentage of interest in his absolute discretion with respect to the election of the Residential Board of Managers, and upon such other matters as may come before the meeting. I (we) hereby revoke any and all previous proxies, and ratify and confirm all the said attorney, agent and proxy of his (her) substitutions may do by virtue thereof.  
(Petition Exhibit 3).

On November 8, 2006, Condominium Owner Rosemary Bodner advised Halstead in writing that she was seeking election to the Board of Managers with six other candidates, Sean Fitch, Walter Goldstein, Deborah Hoffman, Kosaku Horiwaki, Norman Steele and Daniel Wolfus (the "Green Slate"). The Green Slate of candidates printed its proxies on green-colored paper (the "green proxy"), giving voting power to Ms. Bodner and directing her to vote solely for the Green Slate candidates. The Gold Slate candidates (denoted because the proxy supporting this slate was printed on gold colored paper) was comprised of Board of Manager incumbents

Jens Wither (a/k/a Jens Jorgenson), Hooman Mehran, Geoffrey Schwartz, Chandranath Sen, and Monya Singh, as well as non-incumbents Moti Bashan and Gabriella Garzoni (the "Gold Slate Candidates").

On December 11, 2006, the Board held its Annual Meeting and Election. On December 13, 2006, the ballots and proxies were reviewed and counted. Petitioner claims that challenges were raised as to the validity of certain Election documents. These documents were separated from the rest of the documents and the objections were noted by the Condominium's accountants. Petitioner further claims that the challenged Election documents and objections were to have been reviewed by the Condominium's attorney, David Fingerhut, prior to certification of the election results (Order to Show Cause, p. 10; Affidavit of Helen Anne Rella, ¶¶ 12-16). Petitioner claims that the Election results were certified without Mr. Fingerhut's review of the challenged documents and objections, and the new Board of Managers was announced on December 15, 2006.<sup>3</sup>

Petitioner, by order to show cause dated April 3, 2007, commenced this Article 78 special proceeding claiming that the December election was tainted by (1) improper intervention and

---

<sup>3</sup> The new Board of Managers was comprised of Gold Slate Members, Gabriella Garzoni, Jens Wither (a/k/a Jens Jorgenson), Hooman Mehran, Chandranath Sen, Monya Singh, and Green Slate Members Walter Goldstein and Kosaku Horiwaki.

involvement by Halstead at the cost of the Condominium unit owners; (2) lack of controls during the election to ensure a fair and accurate voting result; and (3) the counting of fraudulent proxies which petitioner argues would have changed the result of the election.

#### Discussion

As a preliminary matter this court first addresses the jurisdictional challenge maintained by respondents, as if found valid, would obviate the need for inquiry into the balance of the application.

This application, brought by order to show cause, seeks a preliminary injunction pursuant to 6301 and 6313 preventing the Board of Managers from doing anything other than collecting common charges, paying bills, and addressing emergency situations which may arise. There is nothing in the Order to Show Cause which indicates that petitioner was seeking leave to commence an Article 78 proceeding in lieu of service of a Notice of Petition. Therefore, in order to commence the Article 78 proceeding, petitioner was required to file and serve the Notice of Petition and Petition in "the same manner as a summons in an action" (CPLR 4030)), i.e. by personal service.

Petitioner never independently served respondents with the Notice of Petition and Petition prior to service of the Order to Show Cause. Rather, respondents were first presented with the

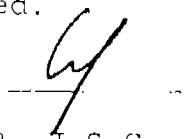
Notice of Petition and Petition with the service of the Order to Show Cause. However, while service of the Order to Show Cause was made in accordance with this court's directive,<sup>2</sup> it did not obviate the service requirement for commencement of a Special Proceeding under Article 4, and more particularly, Article 3, of the CPLR (see, CPLR 308, 311; see generally, Barr, Altman Lipshic and Gerstman, New York Civil Practice Before Trial, §42:82 [James Publishing 2007]). Service of the Notice of Petition and Petition was therefore defective as to all of the respondents. Inasmuch as this court lacks jurisdiction over these parties, it needs not address the balance of the issues raised in either the application or the Petition.

Accordingly, it is

ADJUDGED that petitioner's application is denied; and it is further

ADJUDGED that this matter is dismissed.

Dated: 7/20/07



HON. WALTER B. TOLUB, J.S.C.

<sup>2</sup> The Order to Show Cause for this application, in pertinent part, reads as follows:

ORDERED that service that [sic] a copy of this Order and the papers upon which it is based, together with service of the Notice of Petition and Petition be made on or before the 9<sup>th</sup> day of April, 2007 by: (i) hand delivering them to the offices of Richman & Fingerhut, General Counsel to the Central Park Place Condominium; and (ii) with respect to the individual respondents in addition to the hand delivery upon Richman & Fingerhut, by overnight mail to their last known addresses, and that such service be deemed sufficient.

**UNFILED JUDGMENT**  
 This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 418)