

Friedman v 190 Riverside Dr., LLC

2007 NY Slip Op 32460(U)

August 2, 2007

Supreme Court, New York County

Docket Number: 0110522/2005

Judge: Jane S. Solomon

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

PRESENT: JANE S. SOLOMON
Justice

PART 55

Index Number : 110522/2005

FRIEDMAN, PHILIP

VS
190 RIVERSIDE DRIVE, LLC

Sequence Number : 003

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE 4/30/07

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

MS003
E 8-8-07

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1-3

4-6

7

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *is decided in accordance with the annexed memorandum decision and order.*

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

FILED

AUG 09 2007

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 8/2/07

JANE S. SOLOMON
JANE S. SOLOMON *J.S.* S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, PART 55

-----X

PHILIP FRIEDMAN,
Plaintiff,

DECISION AND ORDER

-against-

190 RIVERSIDE DRIVE, LLC, EENIMON CORP., and
WSC RIVERSIDE OWNERS, LLC,

Defendants.

Index No.: 110522/05

FILED

AUG 09 2007

NEW YORK
COUNTY CLERK'S OFFICE

-----X
SOLOMON, J.:

This action arises from a dispute regarding whether, by filing an amendment years after an initial offering, defendants 190 Riverside Drive, LLC, Eenimon Corp., and WSC Riverside Owners, LLC, made a new offer which they breached when they refused to sell to Plaintiff Philip Friedman the rent-stabilized apartment he originally declined to purchase. Defendants Eenimon Corp. (Eenimon) and WSC Riverside Owners, LLC (WSC) (collectively, the WSC defendants) move, pursuant to CPLR 3212, for summary judgment and, pursuant to CPLR 6514, for cancellation of the notice of pendency. They contend that they are not required to sell the apartment to Plaintiff .

Plaintiff cross-moves for summary judgment. He argues that the fourteenth amendment to the offering plan issued on May 10, 2004 renewed and extended the offering plan and extended his right to purchase his apartment at \$565,000, the price stated in an earlier amendment, and that the defendants never rejected his alleged acceptance of their offer to sell.

FACTUAL ALLEGATIONS

Plaintiff is a tenant of a rent-stabilized apartment at 190 Riverside Drive in New York, New York. In August of 1999, the sponsor, 190 Riverside Drive, LLC, (sponsor) submitted an offering plan to the Department of Law of the State of New York for a non-eviction conversion of the building to condominium ownership (the Offering Plan).

Under the Offering Plan the existing tenants of the building had an exclusive period to purchase their own apartments for a discounted purchase price. That right had to be exercised within ninety days from the date which the Offering Plan was presented to them. If a tenant submitted a signed purchase agreement and tendered a down payment during the exclusive time period, he/she would be granted a right to receive a fully executed counterpart of the purchase agreement from the sponsor. The exclusive purchase period commenced on August 18, 1999 and ended on November 17, 1999.

The Offering Plan provides that upon the expiration of the exclusive period, the sponsor has the right to reject tenants' offers for the apartments. Specifically, the Offering Plan states:

[i]f the Purchase Agreement does not pertain to the Tenant Purchaser's Residential Unit or is submitted after the expiration of a Tenant Purchaser's exclusive right to purchase . . . such Tenant-Purchaser and Non-Tenant Purchaser will be notified within thirty (30) days after submission whether the Purchase Agreement has been accepted or rejected. If the Purchase Agreement is accepted, a fully executed counterpart will be returned to the purchaser by the Selling Agent. If such purchaser receives no response within the 30-day period, his Purchase Agreement will be deemed rejected and canceled and all monies paid thereunder shall be refunded within fifteen (15) days thereafter.

(Horowitz Affirm., ex. A, at 66).

By contract dated October 17, 2003, the sponsor agreed to sell to Eenimon the unsold condominium units. Eenimon assigned those rights to WSC. On January 21, 2004, the sponsor

transferred and conveyed title to the unsold apartment units to WSC, including plaintiff's. Following that sale, the Fifteenth Amendment to the Offering Plan was filed in August of 2004. The Fifteenth Amendment reflects that WSC is the holder of the unsold units and provides that the purchase price for plaintiff's apartment was increased to \$1,746,000.

On June 16, 2004, Plaintiff sent an unsigned certified letter to WSC, Eenimon, and the sponsor offering to purchase his apartment for \$565,000, the price which, he contended, was that in the most recent price schedule for apartments in the building as set forth in the Twelfth Amendment dated December 28, 2000, as amended and extended by the Thirteenth Amendment dated October 16, 2003 and the Fourteenth Amendment dated May 10, 2004. On June 18, 2004, Lisa R. Radetsky, counsel for WSC, responded by letter and stated that the apartment was not offered for sale, as the Fifteenth Amendment to the Offering Plan had not been accepted by the Attorney General for filing, and as such, WSC was not legally permitted to offer the units for sale.

On August 16, 2004, Plaintiff sent another letter to Ms. Radetsky and stated that the Fifteenth Amendment to the Offering Plan was accepted for filing on August 3, 2004, and that he was again exercising his right to purchase his apartment for \$565,000. On August 23, 2004, Ms. Radetsky responded and explained that in accordance with the General Business Law, WSC was not permitted to offer the apartments for sale prior to the acceptance date of the Fifteenth Amendment. She further explained that the Fifteenth Amendment included a price increase, and that WSC has no obligation to offer the apartment at the price formerly set in the Offering Plan.

On August 26, 2004, Theodore J. Marks, counsel for Plaintiff, responded to Ms. Radetsky and explained that the offer to sell at the price set forth in the Twelfth Amendment was

not withdrawn or affected by the Fifteenth Amendment, which until accepted for filing, had no legal impact upon the terms and conditions of the Offering Plan. By letter dated September 14, 2004, Ms. Radetsky responded, contending once again that at the time which the Plaintiff's letter was received, the defendants had submitted an amendment to the Offering Plan which was pending approval by the Attorney General's office, and that WSC is not bound to any price previously offered by the prior owner.

Plaintiff filed his complaint on July 29, 2005 in which he alleges that he has an absolute right to accept the WSC defendants' alleged offer to purchase the subject apartment at the discounted price and that the defendants' refusal is a breach of the Offering Plan. Plaintiff asks the Court to require the defendants to specifically perform under the terms of the Offering Plan and to convey the subject property to Plaintiff at the purchase price of \$565,000, that a judgment be made which declares that defendants are in default of the Offering Plan, and that the Court impose a constructive trust on the subject apartment.

DISCUSSION

The WSC defendants correctly argue that Plaintiff cannot cite to any provision in the Offering Plan in which any defendant remains obligated to sell the apartment to Plaintiff at a discounted price after the expiration of the ninety-day exclusive purchase period. Plaintiff contends that according to the regulations of New York State's Attorney General regarding condominium conversions, his exclusive right to purchase his apartment at the price set forth in the Twelfth Amendment was extended for one year after the Fourteenth Amendment was accepted for filing. He relies on Section 19.5 (c) of Title 13 of the Attorney General's rules and regulations which states:

(c) Extensions of offering plans. Pursuant to section 19.2 (a)(2)(iv) of this Part, the term of the initial offer is 12 months commencing on the date indicated in the letter issued by the Department of Law stating that the plan is filed. Prior to the closing of the first unit, an amendment other than a price change amendment extends the term of the offering for an additional six-month term, unless the term is shorter by the provisions of the amendment. After the closing of the first unit, any subsequent amendment other than a price change amendment extends the term of the offering for an additional 12-month term from the date of filing of the amendment. A price change amendment submitted pursuant to subdivision (d) of this section does not extend the term of the offering. In the absence of any amendments, an extension of the term must be made by amendment before the end of the then current term and must comply with the provisions of this section and the requirements set forth below (emphasis added).

(13 NYCRR 19.5 § [c]). While this provision extends the term of the offering for an additional year, it does not extend or revive the exclusive purchase period granted to existing tenants that is provided in the original offering plan unless the amendment itself so provides. The Fourteenth Amendment to the Offering Plan, which Plaintiff relies upon, does not include an extension of the exclusive purchase period.

Section 23.5(a)(6) of Title 13 of those rules and regulations does cover an extension of tenants' exclusive rights, but obtains only when there is a substantial amendment "prior to the first closing of title to a purchaser", which is not the case here. And even then, there is only a 30 day extension.

Plaintiff's next argument is that a binding contract for the sale of the apartment was created when the sponsor failed to respond to Plaintiff's offer to purchase. *See Russell v Raynes Assoc. Ltd. Partnership*, 166 AD2d 6, 15 (1st Dept 1997). This argument borders on frivolous, because the Offering Plan states that if a potential purchaser receives no response within the 30-day period following the submission of a purchase agreement, the purchase agreement will be deemed rejected and all monies paid would be refunded within fifteen days

(Horowitz Affirm., ex. A, at 66).

Finally, Plaintiff's acceptance of the Offering Plan was flawed. It did not comport with the required conditions set out in the Offering Plan. See *Gram v Mutual Life Ins. Co.*, 300 NY 375, 382 (1950); *Goldman v Beekman Hill House Apt.*, 121 AD2d 908, 910 (1st Dept 1986). The Offering Plan provides that the owner will not be bound to sell an apartment unless the tenant purchaser submits to the selling agent, during the exclusive purchase period, a signed purchase agreement and a down payment in an amount equal to 10% of the purchase price (Horowitz Affirm., ex. A, at 6). Plaintiff did neither of these things. Accordingly, it is hereby

ORDERED that defendants Eenimon Corp. and WSC Riverside Owners LLC's motion for summary judgment dismissing the complaint is granted and the Clerk is directed to enter judgment in favor of said defendants, with costs and disbursements as taxed; and it further is

ORDERED that upon searching the record, summary judgment also is granted dismissing the complaint as against defendant 190 Riverside Drive, LLC, and the Clerk is directed to enter judgment accordingly; and it further is

ORDERED that the notice of pendency of this action filed by the plaintiff herein in the office of the Clerk of the County of New York on July 29, 2005 with respect to Block Number 1251, Lot Number 1038, be and the same hereby is cancelled of record, and the Clerk hereby is directed to make a note to that effect on the margin of the record of said notice of pendency referring to this order; and it further is

ORDERED that Plaintiff Philip Friedman's cross motion is denied.

Dated: August 2, 2007

ENTER:



J.S.C.
JANE S. SOLOMON

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FILED
AUG 09 2007
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