

Gleckel v 49 W. 12 Tenants Corp.

2007 NY Slip Op 33740(U)

November 13, 2007

Supreme Court, Nassau County

Docket Number: 3709-06/

Judge: James P. McCormack

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Short Form Order

**SUPREME COURT - STATE OF NEW YORK
TRIAL/IAS TERM, PART 51 NASSAU COUNTY**

PRESENT:

**Honorable James P. McCormack
Acting Justice of the Supreme Court**

_____x

**LOUIS W. GLECKEL and JOHN MAROSCIA, as
Executors of the Estate of S. Robert Rosen, and
LAWRENCE GLECKEL,**

Index No. 003709/06

Plaintiff(s),

-against-

**Motion Seq. No.: 002 +003
Motion Submitted: 9/20/07**

**49 WEST 12 TENANTS CORP., and ALLEN LIVERA,
ARTHUR BIJUR, PORTIA BOHN, LEAH CAMPBELL,
ELIZABETH GARDNER, DAFNA SARNOFF, and L.K.
TAN, individually and as directors of 49 WEST 12
TENANTS CORP.,**

Defendant(s).

_____x

The following papers read on this motion:

- Notice of Motion/Supporting Exhibits.....X
- Affirmation in Opposition.....X
- Reply Affirmation.....X

Motion by plaintiffs for partial summary judgment on the issue of liability is denied.

Cross-motion by defendants for summary judgment dismissing the complaint is denied as to liability and compensatory damages generally, but granted as to punitive damages.

Plaintiffs are the executors of the estate of a deceased tenant/shareholder of a residential cooperative apartment and the former proposed transferee of the proprietary lease and shares of the deceased. They have commenced this action against the cooperative corporation, and its present and former officers and members of its board of directors, based upon the failure of the board to approve the proposed transfer.

The former proposed transferee is Lawrence Gleckel, the nephew of the deceased tenant/shareholder Robert Rosen, who passed away on September 10, 2002. The two executors, plaintiffs Louis Gleckel and John Marcossia, obtained letters testamentary, and proposed to assign the proprietary lease and transfer the shares to Lawrence Gleckel on February 4, 2003.

Lawrence Gleckel was instructed to fill out an application on forms given to him(Exhibit 7). After the application was submitted additional information was requested and submitted (Exhibit 8). The board did not request an interview. The board refused to consent to the transfer and assignment. Thereafter the Rosen apartment was sold to Valerie Abrahamson in July, 2004 for \$956,100.

The parties agree that the proposed transfer is governed by the following language in the proprietary lease:

If the Lessee shall die, consent shall not be unreasonably withheld to an assignment of the lease and shares to a financially responsible member of the Lessee's family . . .

Proprietary Lease at paragraph 16(b). The questions presented on the motion and cross-motion is whether Lawrence Gleckel demonstrated in his application that he was “financially responsible” and whether the board’s consent was “unreasonably withheld.”

Plaintiffs argue that in 2002 Lawrence Gleckel’s personal net worth was more than \$4,800,000, and that his credit rating was exemplary. Income tax returns showed gross income for 2000 was \$105,760 and for 2001 was \$125,641. Lawrence Gleckel states that his employment reference was his Accountant Letter of Self Employment, and that he managed and had unlimited access to the family businesses owned jointly with his two siblings.

Defendants argue that both the original application and the second submission by Lawrence Gleckel were disorganized and riddled with inconsistencies. According to defendants the board could not decipher Mr. Gleckel’s occupation or his employer, and could not determine whether reported assets were held individually by Mr. Gleckel, jointly with others, or in the name of businesses he allegedly was operating. His tax returns included no salaries or wages and he provided no copies of any W2 forms. The only assets in Lawrence Gleckel’s name were a relatively small IRA account and a checking account. The bank statements did not explain Mr. Gleckel’s relationship with Sunny Blue and North Jersey Leasing. The board noted that Lawrence Gleckel’s mother was to give the \$200,000 downpayment, and that the uncle’s estate would take back a \$500,000 purchase money mortgage.

Summary judgment is the procedural equivalent of a trial [*SJ Capelin Associates, Inc. v Globe Mfg. Corp.*, 34 NY2d 338, 341 (1974)]. On a summary judgment motion the court should refrain from making credibility determinations [*Ferrante v American Lung Assn.*, 90 NY2d 623, 631 (1997); *SJ Capelin Associates, Inc.*]. and must view the evidence in the light most favorable to the non-moving party [*Branham v Loews Orpheum Cinemas, Inc.*, 8 NY3d 931 (2007)].

A proprietary lease is a valid contract which must be enforced according to its terms [*Brickman v Brickman Estate at the Point, Inc.*, 6 AD3d 474 (2nd Dept. 2004)], and the plain meaning of the words and phrases used therein should be given effect [*Haberman v 257 Central Park West, Inc.*, 299 AD2d 299 (1st Dept. 2002)]. A “financially responsible” person has been defined as “one whose past actions show an acceptable pattern of meeting obligations when they arise in a prompt and fair manner and whose present financial position and future earnings and expectations indicate that such person will be able to meet reasonably expected future obligations in the same manner” [*Chapman v 2 King Street Apartments Corp.*, 8 Misc 3d 1026(A)(Sup Ct., NYCty, 2005)]. Where a board’s consent may not be “unreasonably withheld,” the standard for review is whether the board’s action was in fact “reasonable”, that is “legitimately related to the welfare of the cooperative” [*The Seven Park Avenue Corp. v Green*, 277 AD2d 123 (1st Dept. 2000), lv app dsmd, 96 NY2d 853 (2001)].

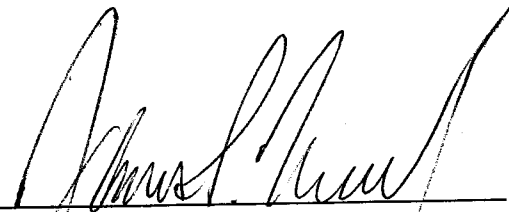
On this record, the questions of whether Lawrence Gleckel established that he was “financially responsible” and whether the board’s consent was “unreasonably

withheld" present triable issues of fact [see *Stowe v 19 East 88th Street, Inc.*, 257 AD2d 355 (1st Dept. 1999); cf. *Wiener v 150 West End Owners Corp.*, 298 AD2d 385 (2nd Dept. 2002)]. For this reason, both plaintiffs' motion for partial summary judgment on liability, and defendants' cross-motion for summary judgment dismissing the complaint in its entirety, must both be denied.

However, plaintiffs seek punitive damages in addition to compensatory damages. Punitive damages may be recovered when the defendant's wrongdoing is not simply intentional but "evinces a high degree of moral turpitude and demonstrates such wanton dishonesty as to imply a criminal indifference to civil obligations;" the misconduct must be exceptional [*Ross v Louise Wise Services, Inc.*, 8 NY3d 478, 489 (2007), quoting *Walker v Sheldon*, 10 NY2d 401, 405 (1961)]. On this record, assuming the truth of plaintiffs' allegations, defendants' conduct clearly does not rise to the level of supporting a claim for punitive damages. Accordingly, defendants are entitled to summary judgment dismissing plaintiffs' claim for punitive damages.

This constitutes the Decision and Order of the Court.

Dated: November 13, 2007
Mineola, N.Y.



Hon. James P. McCormack, A. J. S. C.

ENTERED

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