

Crawford v Renaissance Hous. Dev. Fund Corp.

2008 NY Slip Op 31029(U)

April 7, 2008

Supreme Court, New York County

Docket Number: 0108787/2006

Judge: Louis B. York

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

LOUIS B. YORK
J.S.C.

PRESENT: _____

PART 2

Justice

Estate of Crawford

INDEX NO. 108787/06

Renaissance Housing Development Fund

MOTION DATE _____

MOTION SEQ. NO. 02

MOTION CAL. NO. _____

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED

APR 09 2008

COUNTY CLERK'S OFFICE
NEW YORK

WITH ACCOMPANYING MEMORANDUM DECISION.

Dated: 4/7/08

Loy
J.S.C.

Check one: FINAL DISPOSITION

LOUIS B. YORK
 NON-FINAL DISPOSITION
J.S.C.

Check if appropriate: DO NOT POST

REFERENCE

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

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2**

-----X
**ESTATE of EDSON EVIN CRAWFORD and
COZETTA HAZEL CRAWFORD**

Plaintiffs,

Index No. 108787/06

-against-

**RENAISSANCE HOUSING DEVELOPMENT
FUND CORPORATION,**

Defendant.
-----X

FILED

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**COUNTY CLERK'S OFFICE
NEW YORK**

I. BACKGROUND

Plaintiff, Cozetta Crawford, both individually and as executor of her father's estate, commenced this action in connection with the transfer of a government subsidized cooperative apartment bequeathed to her by her father's will. The defendant cooperative board has refused to approve the transfer of the proprietary lease and shares of the apartment to Ms. Crawford, since her father's death on February 23, 2005. Defendant acknowledges that the bequest is valid as to the monetary interest in the shares, but disputes the right of Crawford to occupy the apartment without their prior approval. On March 4, 2005, defendant sent plaintiffs a letter informing them that this approval was required before anyone, including Crawford, could reside in the apartment. The letter explained that the procedure for occupancy additionally required completing necessary paperwork and obtaining further approval from the NYC Housing Development Corporation (HDC) and NYC Housing Preservation and Development (HPD). Crawford never contacted the HDC or HPD for information relating to their

income requirements or approval.

In April 2005, after preliminary letters testamentary were issued, Crawford put the apartment up for sale. The apartment stayed on the market for approximately six months. On September 7, 2006, the final letters testamentary were issued, which authorized Crawford to act as executor of her father's estate.

On January 11, 2006, defendant sent a letter to Crawford acknowledging that she "may have some interest in the estate" and requested a copy of her father's death certificate, her birth certificate and other information regarding the administration of her father's estate. In either December 2005 or January 2006, the board asked Crawford to complete a "Purchase Application." Crawford completed the application, and on February 3, 2006 management delivered it to the board, along with a letter stating, "all required documentation" has been submitted by applicant. Four days later, Crawford received a letter of rejection from the board.

II. PROCEDURAL HISTORY

Crawford continued to remain in possession of the apartment after receiving the board's rejection. On or about May 18, 2006, defendant issued a ten-day notice to cure by June 5, 2006, alleging the estate was in violation of its lease by permitting an illegal sub-tenant, Crawford, to occupy the apartment. The notice to cure was followed by a five-day termination notice, which was to take effect June 27, 2006. On June 23, 2006, plaintiffs commenced this action by filing a verified complaint seeking declaratory relief to establish the rights of the parties and filed an order to show cause seeking a permanent and preliminary injunction, to stay eviction. On September 10, 2006, this Court ordered that defendant be preliminarily enjoined from bringing a proceeding to

remove plaintiff from possession, but denied the request for a permanent injunction as premature. After the order, Randel Stubbs, acting as president of the board, invited shareholders to a "Town Meeting." At the meeting, Stubbs disclosed information in Crawford's Purchase Application, including her financial background and criminal record.

Defendant now moves, by an order to show cause, (1) to modify the Court's September 10, 2006 order to allow defendant to bring eviction proceedings against plaintiff based upon plaintiffs' failure to pay required maintenance, and (2) to compel plaintiffs to provide discovery responses, and specifically to provide documents requested of plaintiff during discovery. Plaintiffs oppose defendant's motion and cross-move for an order pursuant to CPLR 3103(a), precluding further discovery. In addition, plaintiffs cross-move for a judgment declaring the rights and duties of the parties under the lease, and for an order granting plaintiffs leave to amend and supplement the complaint to assert causes of action against the additional defendants, Randel Stubbs and Lynn Ventura.

III. ORDER TO SHOW CAUSE

The first portion of Defendant's motion to modify the court's prior order is moot, because defendant agrees that all maintenance payments are current and fully paid.

Defendant additionally requests the court to compel plaintiffs to provide:

- i. Bank statements and personal account statements of Mr. Crawford that are in possession of Ms. Crawford.
- ii. Copies of documents indicating payments by Mr. Crawford to 223 Renaissance Apartments

- iii. Copies of documents indicating that a debt owed to American Express had been satisfied
- iv. Documentation regarding plaintiff's account with Capital One, Presidio, WFNNB, and The Avenue and the efforts to satisfy these debts
- v. An authorization for plaintiff's personnel records from the City of New York, showing whether Crawford's wages continue to be garnished
- vi. An authorization for Iris House regarding transitional housing for Ms. Crawford, verifying whether plaintiff resided in the apartment while her father was still alive

First, defendant argues that this additional information is necessary to resolve whether the board properly denied plaintiff's Purchase Application. However, the board also claims that after reviewing the application, it determined Crawford was ineligible to occupy the apartment based on her salary, credit and criminal history – information it already possesses. Because defendant based its decision on the application, and Crawford provided everything that was required, the Court rejects this argument. Further, defendant's own papers annex the letter from the property manager to the board conceding that "all required documentation" had been submitted by applicant at the time of review (Defendant's Affidavit in Support, Exhibit "E"). Moreover, because the issue of unpaid maintenance is moot, the Court rejects defendant's argument that discovery is necessary to verify plaintiff's current financial status.

Second, defendant argues that discovery is necessary to test the veracity of statements made by plaintiff in her deposition. However, it is improper for defendants to request further information from Crawford, when the appropriateness of the board's

initial inquiry is in dispute.

Third, defendant requests item (vi) to verify when Crawford began residing in the apartment. Defendant argues that this information is relevant to whether plaintiff is entitled to remain in possession. However, defendant has not demonstrated a causal connection between this information and the present cause of action.

Therefore, because the documents requested by defendant are not required to resolve any of the issues presented in this action, the Court denies the motion. For the same reasons, the portion of plaintiffs' cross motion seeking a protection order pursuant to CPLR 3103(a) is granted.

IV. CROSS-MOTION FOR DECLARATORY JUDGMENT

Plaintiffs' cross-motion also seeks declaratory judgment to determine the rights and obligations of the parties under the lease. Plaintiffs allege that the board refuses to comply with paragraph 16(h) of the lease, which governs the transfer of an apartment through testamentary disposition. In response, the board counters that the corporate documents, when read together, arguably give the board the authority to condition this transfer upon their approval.

A. The Scope of the Cooperative's Authority

The extent of the board's authority is determined by reading all the governing corporate documents together (*Fe Bland v. Two Trees Mgt. Co.*, 66 N.Y.2d 556, 563, 498 N.Y.S.2d 336, 340 (1985)). The parties presently dispute the extent of the board's authority under the lease, the HDC and HPD regulatory agreements, and the stock certificate.

First, plaintiffs argue the board acted outside the scope of its authority under the

lease by refusing to comply with paragraph 16(h). Paragraph 16(h), the "Exceptions" provision, clearly exempts legatees from the standard requirements and procedures applicable to prospective purchasers. These requirements include the obligation to obtain board approval, complete a Purchase Application, and satisfy income requirements pursuant to the HDC and HPD regulatory agreements. Paragraph 16(h) states:

Notwithstanding anything in this paragraph 16 to the contrary... (ii) an assignment of this lease and transfer of shares through testamentary disposition, intestacy... or otherwise by operation of law, shall not, during the HDC restriction period and HPD restriction period, constitute a transfer of shares requiring compliance with the procedures outlined above [Emphasis added].

In addition, 16(h) is clear that the requirements normally imposed on prospective purchasers, only apply to legatees, upon the subsequent resale of the unit.

However, the individual or entity... acquiring the shares in such a manner shall be deemed to be the Lessee for purposes of this lease and the HDC Regulatory agreement, and shall be subject, during the HDC and HPD periods to the terms and conditions of paragraph 16 (a) of this lease in connection with such party's sale of the Shares and assignment of this lease...

The Court rejects defendant's argument that this paragraph of the lease is ambiguous. The board does not have any authority to restrict the transfer to Crawford under 16(h).

However, in determining the full scope of authority, the corporate documents should not be read in isolation (*Fe Bland*, at 563, 498 N.Y.S.2d at 340 (1985); *Barbour v. Knecht*, 296 A.D.2d 218, 743 N.Y.S.2d 483 (1st Dept., 2002)). In opposing the cross-motion, defendant raises an issue as to whether paragraph 31(b)(v) of the lease required plaintiff to complete a transfer of the shares and lease to an assignee within eight months of her father's death. Unless otherwise extended by the board, failure to

complete the transfer may result in a termination of the lease.

It is not disputed that Crawford's Purchase Application was submitted for approval on February 3, 2006, almost one year after her father's death. However, according to the facts alleged in Crawford's complaint, she made several attempts to advance the transfer of the unit within the required 8-month period. The record raises issues of fact including why the transfer was delayed, and whether the board impliedly waived the requirement by accepting the late application. Therefore, it is premature to decide whether the board acted outside the scope of its authority under the lease. Further, the Court refrains from declaring the parties' obligations under the other corporate documents because it would have no immediate effect (*Fossella v. Dinkins*, 114 A.D.2d 340, 342, 493 N.Y.S.2d 859, 862 (2nd Dept. 1985)) and would serve no practical end in quieting or stabilizing this matter (*Bartley v. Walentas*, 78 A.D.2d 310, 312, 434 N.Y.S.2d 379, 382 (1st Dept. 1980)).

B. Bad Faith and Furthering of the Corporate Purpose

Plaintiffs also allege that, by exceeding its authority under the lease, defendant acted in bad faith and breached its fiduciary duty to further the collective interest of the shareholders. Until the scope of the board's authority can be defined, the Court will not address these claims.

In evaluating the decisions made by a cooperative board, the proper standard of review is the business judgment rule and not a court's independent assessment of the reasonableness of the decision (*40 West 67th Street v. Pullman*, 100 N.Y.2d 147, 760 N.Y.S.2d 745 (2003); *Levandusky v. One Fifth Ave. Apt. Corp.*, 75 N.Y.2d 530, 554 N.Y.S.2d 807 (1990); *Barbour v. Knecht*, 296 A.D.2d 218, 743 N.Y.S.2d 483 (1st Dept.,

2002)). Under the rule, a court must give deference to a board's determination if it was within the scope of the board's authority, made in good faith, and in furtherance of the corporate purpose (*Levandusky*, at 538, 554 N.Y.S.2d at 812; *Auerbach v. Bennett*, 47 N.Y.2d 619, 629, 419 N.Y.S.2d 920, 926 (1979)). While in some instances, a board's actions may be presumed to be taken in good-faith and for a legitimate purpose (*Jones v. Surrey Co-op. Apartments, Inc.*, 263 A.D.2d 33, 36, 700 N.Y.S.2d 118, 121 (1st Dept., 1999)), the standard "should not serve as a rubberstamp for cooperative boards" (*Pullman*, 100 N.Y.2d 147, 157, 760 N.Y.S.2d 745, 753 (2003)).

If it cannot be concluded from the record whether the board acted within the scope of its authority, triable issues of fact exist (*Park Royal Owners, Inc. v. Glasgow*, 19 A.D.3d 246, 247, 797 N.Y.S.2d 458, 460 (1st Dept., 2005)). Although the presence of disputed issues of fact does not preclude an action for declaratory judgment, the Court will not declare the rights and obligations of the parties until these issues are settled (See *Rockland Light & Power Co. v. City of New York*, 289 N.Y. 45, 50, 42 N.E.2d 803 (1945); affirming, *Rockland Light & Power Co. v. City of New York*, 263 A.D. 284, 33 N.Y.S.2d 258 (3rd Dept., 1942)). The Court has considered all contrary arguments by the parties and finds them unpersuasive.

V. CROSS-MOTION TO AMEND COMPLAINT

Plaintiffs' cross-motion seeks leave to amend and supplement the complaint. The proposed amended complaint seeks to add two past board members as individual defendants and particularizes the causes of action for compensatory and punitive damages and the claim for attorney's fees and expenses. Because there is no persuasive objection before the court, the motion to amend the complaint is granted.

This Court notes, however, that defendant suggests that no cause of action has been properly raised in the proposed complaint against Lynn Ventura.

Accordingly, it is **ORDERED** that defendant's motion to modify this Court's September 10, 2006 order is denied; and it is further

ORDERED that the portion of plaintiffs' cross-motion for declaratory judgment is denied; and it is further

ORDERED that plaintiffs' motion granting a protective order precluding discovery is granted; and it is further

ORDERED, that plaintiffs' motion for leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry; and it is further

FILED

APR 09 2008

**COUNTY CLERK'S OFFICE
NEW YORK**

ORDERED that defendant shall serve an answer to the amended complaint within 20 days from the date of said service.

Dated: April 7, 2008

ENTER:



Louis B. York, J.S.C.

**LOUIS B. YORK
J.S.C.**