

Trump Plaza Owners, Inc. v Weitzner

2008 NY Slip Op 32163(U)

July 30, 2008

Supreme Court, New York County

Docket Number: 0110351/2003

Judge: Barbara R. Kapnick

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

PRESENT: Hon. **BARBARA R. KAPNICK**

PART 12

Justice

TRUMP PLAZA OWNERS

INDEX NO.

110351/03

- v -

Weitzner, Doloff

MOTION DATE

MOTION SEQ. NO.

007

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 and cross-motion are decided in accordance with the accompanying memorandum decision. Settle order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE DATED: J.S.C.

Dated: 7/30/08

BARBARA R. KAPNICK
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IA PART 12

-----X

TRUMP PLAZA OWNERS, INC.,
Plaintiff,

DECISION/ORDER
Index No. 110351/03
Motion Seq. No. 007

- against -

DOROTHEA M. WEITZNER,
Defendant.

-----X

BARBARA R. KAPNICK, J.:

Defendant Dorothea M. Weitzner, a shareholder in plaintiff's building located at 167 East 61st Street in Manhattan, previously moved under motion sequence number 002 for summary judgment dismissing plaintiff Trump Plaza Owner, Inc.'s Complaint against her and reimbursing her for legal fees pursuant to the proprietary lease and Real Property Law § 234, on the grounds that plaintiff failed to follow the terms of the proprietary lease in its efforts to terminate defendant's tenancy, and plaintiff, in any event, reinstated defendant's tenancy by serving a notice to cure subsequent to the purported termination of her tenancy.

Plaintiff opposed the motion and cross-moved for an order, inter alia, (i) permitting plaintiff to amend the Complaint to correct a misstatement in paragraph 18 -- i.e., to allege that a meeting of the Board of Directors held on April 8, 2003 at which the Board voted in favor of terminating defendant's tenancy based on complaints received from her neighbors, Mr. and Mrs. Chuck

Barris, regarding objectionable conduct, was a 'special meeting' (and not a 'regular meeting' as was initially alleged); and (ii) permitting plaintiff to supplement the Complaint to include events that occurred after this action was commenced.

By Decision/Orders dated June 22, 2007 on motion sequence numbers 002 and 003 this Court granted plaintiff a preliminary injunction barring certain objectionable conduct by defendant and granted defendant's motion for summary judgment to the extent of dismissing, without prejudice, plaintiff's first, second and third causes of action for termination of lease, ejection, and declaration that the cooperative could sell defendant's shares at auction on the ground that said claims were brought prior to proper service of the required predicate notice.

That portion of the plaintiff's cross-motion seeking to amend the Complaint to correct a misstatement in paragraph 18 was denied as moot, and that portion seeking permission to supplement the Complaint to include events that occurred after this action was commenced was granted.

The Appellate Division affirmed, as modified, holding that

in voting to terminate the tenant's lease, the cooperative board acted for the purposes of the cooperative, within the scope of its authority, and in

good faith (see *Matter of Levandusky v One Fifth Ave. Apt. Corp.*, 75 NY2d 530, 537-538 [1990]; see also *40 W. 67th St. v Pullman*, 100 NY2d 147, 154-155 [2003]), and that, for purposes of the preliminary injunction, the cooperative amply demonstrated the likelihood of succeeding on the merits, irreparable injury due to the tenant's refusal to cease her objectionable conduct, and the balance of equities tipping in the cooperative's favor (citation omitted). (47 AD3d 525).¹

The Appellate Division further remanded the matter to this Court "with direction to specifically set forth in the injunction the proscribed conduct and to order the cooperative to file an undertaking to be fixed by the court."²

In addition, the Appellate Division held that the dismissal of plaintiff's causes of action

on the ground that it failed to provide the tenant with notice at the address provided in the lease, was unwarranted. The record demonstrates that notice was sent to the tenant at her post office box, that she actually received the notice, and that the cooperative attempted to cure, after the action was commenced, by sending several letters to the tenant at both addresses. (citation omitted).

Defendant now moves again for summary judgment against the plaintiff, and setting this matter down for a hearing on

¹ A motion by defendant for reargument and/or leave to appeal to the Court of Appeals was denied by the Appellate Division on April 10, 2008.

² This Court subsequently issued an Order dated May 8, 2008, setting forth the proscribed conduct in the injunction and fixing an undertaking.

reimbursing defendant for legal fees pursuant to the proprietary lease and Real Property Law § 234, on the grounds that the Board lacked authority to terminate the defendant's tenancy since it did not hold a "special meeting" as defendant contends is required under section 31(f) of the lease,³ and the plaintiff revived the purported lease termination by service of a subsequent notice to cure and notice of termination.

Plaintiff opposes the motion and cross-moves for an order:

- (1) granting summary judgment against the defendant;
- (2) striking defendant's amended answer and counterclaims;
- (3) setting the matter down for a hearing on reimbursing plaintiff for legal fees pursuant to the proprietary lease; and
- (4) scheduling a hearing to compute financial loss incurred by plaintiff and to assess compensatory and punitive damages against defendant.

³ Section 31 does not specifically use the term "special meeting", but rather provides, in relevant part, as follows:

The Lessee's Objectionable Conduct

(f) If, at any time, the Lessor shall determine, upon the affirmative vote of two-thirds (2/3rds) of its then Board of Directors, at a meeting duly called for that purpose [emphasis supplied], that because of objectionable conduct on the part of the Lessee, . . . , repeated after written notice from the Lessor, the tenancy of the Lessee is undesirable...

Plaintiff contends that defendant's arguments in support of her motion are 'stale, previously raised, and rejected', since the Appellate Division has already determined that the cooperative board acted for the purposes of the cooperative, within the scope of its authority, and in good faith in voting to terminate the tenant's lease.

Plaintiff further contends that it is entitled to summary judgment based on the decision of the Appellate Division and on the ground that there are no factual issues which merit adjudication at trial.

Defendant, however, argues that neither this Court nor the Appellate Division has ruled on the issue of whether or not her shares were terminated at a 'special' meeting. (She further contends that she rarely "see[s] Mr. or Mrs. Barris and have not had a word with either of them in more than a year" and that "any allegations of objectionable conduct has long since been cured)."

However, the minutes from a meeting of the Board of Directors held on March 11, 2003 provide, in relevant part, as follows:

The Board discussed the letter received from Mr. Barris documenting his various complaints about his neighbor, Dorothea Weitzner. A motion was made to hold a special meeting of the Board of Directors on Tuesday, March 18, 2003 at 6:00 p.m. to specifically vote on proceeding with the termination of the stock and proprietary lease of Ms.

Weitzner. In addition, prior to the special Board meeting, the Board will invite Ms. Weitzner and her counsel and Mr. Barris and his counsel to meet separately with a sub-committee of the Board and the co-op's attorney to address each of their complaints.

The Board's counsel then sent a letter dated March 12, 2003 to defendant's counsel, Kenneth J. Glassman, Esq., "requesting a meeting between the Board and Ms. Weitzner as soon as possible to give her an opportunity to respond to Mr. Barris' complaints".

By letter dated March 19, 2003, Mr. Glassman responded, "I do not think a meeting with the Board would be fruitful at this time. Ms. Weitzner's response to Mr. Barris' allegations are outlined in my prior correspondence."

Bellmarc Property Management then sent a notice dated April 4, 2003 to all members of the Board stating, in relevant part, as follows:

Please be advised that in addition to the regularly scheduled Board of Directors meeting to be held on Tuesday, April 8, 2003 at 6:30 p.m. in Apartment 17E at 167 East 61st Street, New York, there will be a portion of the meeting called specifically "to vote (i) whether the conduct of Ms. Dorothea Weitzner towards her neighbors, Mr. and Mrs. Chuck Barris, is objectionable and therefore her tenancy is undesirable, and (ii) whether to terminate her proprietary lease under Paragraph 31(f) of the proprietary lease for such objectionable conduct."

The 'Approved Minutes of the Board of Directors' Special Meeting, dated April 8, 2003' provide, in relevant part, as follows:

2. Weitzner/Barris.

The Board discussed the Weitzner/Barris matter and the Board unanimously adopted the following resolutions: Resolved, that the Board has determined that the conduct of Ms. Dorothea Weitzner, tenant-shareholder of Penthouse 39D towards her neighbor Chuck Barris, tenant-shareholder of Penthouse 39E, and his wife is objectionable. Resolved, that because of such objectionable conduct on the part of Ms. Dorothea Weitzner, repeated after written notice from the Board of Directors, the tenancy of Ms. Weitzner is undesirable. Resolved, that the proprietary lease of Dorothea Weitzner for Penthouse 39D should expire effective as soon as may be determined by the Corporation's counsel to be legally permissible and by the officers of the Corporation as appropriate.

Defendant was notified of the Board's action at this meeting by letter dated April 21, 2003.

Thus, the Board did, in fact, hold a meeting "duly called" for the purpose of addressing defendant's continued objectionable conduct and to vote on the termination of her tenancy, as required by section 31(f) of the proprietary lease.⁴

⁴ Defendant has not cited to any authority that such a meeting could not be held on the same evening as a regularly scheduled meeting of the Board of Directors.

In addition, plaintiff opposes defendant's argument that it revived the lease by service of a subsequent notice to cure and notice of termination, since the October 21, 2004 notice to cure specifically stated, "this notice supplements and is not intended to be in derogation of the previous notices sent to you by the Corporation including, but not limited to, those notices dated October 29, 2002 and April 21, 2003."

Likewise, the notice of termination dated March 9, 2005 stated, "[t]his notice supplements and is not intended to be in derogation of any notices previously sent to you by the Apartment Corporation, including, but not limited to the notices, dated October 29, 2002, April 21, 2003 and October 21, 2004."

Accordingly, based on the papers submitted and the oral argument held on the record on May 7, 2008, defendant's motion is denied and plaintiff's cross-motion is granted in all respects.

Settle Order.

Dated: July 20, 2008



BARBARA R. KAPNICK
J.S.C.

**BARBARA R. KAPNICK
J.S.C.**