

**Honto 88 Condominiums, Inc. v Red Apple Child
Dev. Ctr.**

2008 NY Slip Op 32259(U)

July 31, 2008

Supreme Court, New York County

Docket Number: 0110827/2007

Judge: Walter B. Tolub

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

PRESENT: _____
Justice

PART 15

Horto 88 Condominiums,
Inc.

INDEX NO.

110827107

MOTION DATE

Reo Apple Chip
Development Center, E.H.I.

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

FILED

AUG 01 2008

COUNTY CLERK'S OFFICE
NEW YORK

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

Dated: 7/31/08

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

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HONTO 88 CONDOMINIUMS, INC.,

Plaintiff,

Index No. 110827/07
Mtn Seq.001

-against-

RED APPLE CHILD DEVELOPMENT CENTER,
A CHINESE SCHOOL, BANK OF CHINA, NEW
YORK BRANCH, XIAOPING FAN PRESIDENT OF
RED APPLE CHILD DEVELOPMENT CENTER, A
CHINESE SCHOOL AND INDIVIDUALLY, ZIMING
SHEN AS TRUSTEE OF RED APPLE CHILD
DEVELOPMENT, A CHINESE SCHOOL, AND
INDIVIDUALLY,

Defendant.

FILED
AUG 01 2008
COUNTY CLERK'S OFFICE
NEW YORK

-----x
WALTER B. TOLUB, J.:

This is a motion made by the Plaintiff to enjoin the Defendants from; (1) withholding common charges; (2) renovating any common areas; (3) selling any of the units; and (4) causing any hazardous conditions. Defendants cross-move for summary judgment dismissing the Complaint pursuant to CPLR 3212.

Facts

Defendant, Red Apple Child Development Center, A Chinese School ("Red Apple"), is the owner of twenty two condominium units in the building known as Honto 88 Condominiums (the "Building") and operates a day care center for children. Plaintiff claims that in retaliation for not being elected to the board of the Building, Defendants have decided to punish the Plaintiff by withholding common charges and assessments made by

the Board of Managers of the Building ("Board of Managers") in the amount of \$331,000.

Plaintiff also claims that Red Apple has created dangerous and hazardous conditions in the Building and has violated the Certificate of Occupancy for the commercial units it owns.

In its Complaint, Plaintiff Honto 88 Condominiums, Inc., seeks a judgment foreclosing on the Notices of Lien filed by the Board of Managers against the alleged owner of these units, identified as "Red Apple Child Development Center, Inc."

Defendant argues that the Complaint must be dismissed because the Plaintiff lacks standing to assert any claims.

Discussion

"Actions may be brought or proceedings instituted by the board of managers in its discretion, on behalf of two or more of the unit owners, as their respective interests may appear, with respect to any cause of action relating to the common elements or more than one unit." (RPL §339-dd). Real Property Law §339-z provides that "[t]he board of managers, on behalf of the unit owners, shall have a lien on each unit for the unpaid common charges thereof. . ." (RPL §339-z). It follows that the legal authority to create, file, perfect and foreclose on a lien for common charges rests exclusively with a condominium's board of managers.

Therefore, Plaintiff here, Honto 88 Condominiums Inc., lacks

[* 4]

the requisite standing to commence the instant action. It is the Board of Managers of the Building who must commence an action for the relief requested.

Furthermore, each of the twenty two notices of lien for unpaid common charges, upon which this action is based, is defective as a matter of law because it fails to set forth the correct name of the record owner of the commercial condominium units. (RPL §339-aa) The Deed to the commercial units, dated December 23, 1998, states that the record owner of the commercial units is "Red Apple Child Development Center, A Chinese School". However, the name of the record owner of the notices of lien is a different, non-existent entity, "Red Apple Child Development Center, Inc."

Accordingly it is


ORDERED that Plaintiff's motion to enjoin the Defendants from withholding common charges, renovating any common areas, selling any of the units and causing any hazardous conditions is denied; and it is further

ORDERED that Defendants cross-motion to dismiss the Complaint is granted and the Complaint is dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 7/31/08



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

FILED
AUG 01 2008
COUNTY CLERK'S OFFICE
NEW YORK