

West v 332 E. 84th St.
2008 NY Slip Op 33691(U)
July 22, 2008
Supreme Court, New York County
Docket Number: 107708/06
Judge: Edward H. Lehner
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 19

-----X
KEVIN WEST and COLLEEN GORDON WEST,

Plaintiffs,

- against -

332 EAST 84TH STREET,

Defendant.

-----X
EDWARD H. LEHNER, J.;

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Before the court are motions for summary judgment by both parties.

Plaintiffs contend: that they own shares in the cooperative corporation and are the proprietary lessees of apartment 6A (the "Apartment") in the building located at 332 East 84th Street (the "Building") (complaint ¶ 3); that paragraph 21(a) of the proprietary lease provides that "the Lessee shall not, without first obtaining the written consent of Lessor, which consent shall not be unreasonably withheld or delayed, make in the Apartment or Building ... any alternation, enclosure or addition or any alteration of or addition to the water, gas or steam risers or pipes, or heating, electrical conduits, wiring or outlets, plumbing fixtures, intercommunication or alarm system, or any other installation or facility in the Apartment or Building" (the "No Alterations Clause"); that on November 21, 2005, plaintiffs requested permission to perform alterations (the "Alterations") to construct a second bathroom (Kevin West

affidavit ¶ 4); that defendant refused consent by letter dated February 21, 2006, objecting "to the proposed movement of building waste lines and so-called 'wet over dry' construction" (Id. ¶ 10); that plaintiffs' architect submitted a letter stating that "(n)o movement of building waste lines is proposed (and that plaintiffs would) completely waterproof the new bathroom floor" (Id. ¶ 11, Exhibit F); that defendant has subsequently refused to consent to the proposed alteration and this refusal is unreasonable (tr. pp. 6-7); and that therefore they are entitled to an order compelling defendant to consent to the Alterations (complaint ¶ 10).

Defendant contends: that the Building is a six-story building erected in the 1920s consisting of forty-eight residential units (Rosemary Shmavonian affidavit ¶ 6); that in 2003 the cooperative corporation retained Rand Engineering & Architecture, P.D. ("Rand") to perform a physical condition survey of the Building (Id. ¶ 8); that Rand's report indicated the Building still has the original hot and cold water supply lines (Id. ¶ 10); that the copper tubing and brass piping were delicate, prone to the effects of aging, and, if stressed, subject to breakage resulting in water leaks (Id. ¶ 11); that the Board reviewed plaintiff's application in the context of persistent water leaks already happening (Id. ¶ 15); that the Board was concerned that plaintiff's proposed new plumbing network would create additional stress on the Building's plumbing system (Id. ¶¶ 15, 16); that the proposal created a precedent for

other residents to add new plumbing systems (Id. ¶¶ 19, 20); that, since plaintiff's proposed second bathroom would be over living space in the apartments below, any water leak would risk property damage to the other apartments (Id. ¶ 17; Ivan Mrakovac affidavit ¶¶ 7,8, 10); that the Board adopted a policy that forbade a bathroom over living space (Exhibit C); and therefore the Board's decision to refuse its consent to the Alterations is reasonable.

Both parties agree that, in light of the aforesaid lease provision, the business judgment rule is not applicable and that the test is whether the Board's refusal was reasonable (tr. pp. 18-19). In determining "whether the board's pre-conditions were in fact reasonable (the court must consider whether they were) legitimately related to the welfare of the co-operative" [Rosenthal v. One Hudson Park, Inc. 269 AD2d 144, 145 (1st Dept. 2000)]. See also, Seven Park Avenue Corp. v. Green, 277 AD2d 123 (1st Dept. 2000) ("plaintiff board's denial of permission to complete the half bath was reasonable, based on concern for a possible adverse impact on the building's plumbing, infrastructure, longstanding board policy and a reluctance to set a precedent for similar applications"). Put another way, "under a standard of reasonableness, ... (the cooperative's rule must be upheld if it) has a reasonable basis" [Braun v. 941 Park Ave., Inc., 32 AD3d 21, 24-25 (1st Dept. 2006)]. See also, Rosenberg v. 926 Park Avenue Corp., 254 AD2d 224 (1st Dept. 1998).

Under this analysis, defendant has shown a reasonable basis for its policy not to permit wet over dry construction due to the risk of water leaks causing property damage and the potential additional stress to the original 80-year-old pipes in the Building. Plaintiffs have not presented a material issue of fact disputing that the defendant had a reasonable basis for its decision to refuse consent for the Alterations.

Therefore, plaintiffs' motion is denied and defendant's cross-motion for summary judgment dismissing the complaint is granted, and the Clerk shall enter judgment accordingly.

Dated: July 22, 2008



J.S.C.

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