

Corona Realty Holdings, LLC v 28 Stirrup Lane, LLC
2009 NY Slip Op 31543(U)
July 7, 2009
Supreme Court, New York County
Docket Number: 20972/06
Judge: Edward W. McCarty
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. EDWARD W. MC CARTY, III

Justice

TRIAL/IAS, PART 2
NASSAU COUNTY

CORONA REALTY HOLDINGS, LLC,

Plaintiff,

-against-

INDEX No.20972/06
Action No. 1

28 STIRRUP LANE LLC, et al.,

Defendant(s).

BURTON ROSLYN, et al.,

Defendants-Counterclaim Plaintiffs,

-against-

CORONA REALTY HOLDINGS LLC,

Counterclaim Defendant

-and-

MANOUCHEHR MALEKAN,

MOTION DATE: 4/30/09
MOTION SEQ. #011

Additional Counterclaim Defendant(s).

-----X
CORONA REALTY HOLDINGS LLC,
Plaintiff,

-against-

INDEX No. 003344/07
Action No. 2

ABRISHAMIAN KAMRAN, et al.,

Defendants.
-----X

-----X
 ANDREW ROTHSTEIN, et al.,

Defendants-Counterclaim Plaintiffs,

-against-

CORONA REALTY HOLDINGS LLC,

Counterclaim Defendant,

-and-

MANOUCHEHR MALEKAN,

Additional Counterclaim Defendant

The following papers read on this motion:

Notice of Motion/Order to Show Cause	x
Cross-Motion	
Answering Affidavit	x
Replying Affidavits	x

Motion by order to show cause by defendants for an order: (1) pursuant to CPLR 1001(a) and 3025(b), amending defendants' answers and counterclaims to add JEM Caterers of Roslyn, Ltd. and JEM Caterers of Roslyn, LLC (hereinafter, "JEM Caterers") as necessary parties and additional counterclaim defendants and adding additional counterclaims against plaintiff Corona Realty Holdings LLC (hereinafter, "Corona Realty") and JEM Caterers; (2) granting a preliminary injunction compelling Corona Realty to open the Roslyn Country Club (hereinafter, "the Club") for the 2009 summer season, commencing with Memorial Day Weekend, May 23, 2009 for the benefit of movants and all other homeowners in the community known as the Roslyn Country Club, and opening the tennis courts at the Club within three (3) business days of the date of this order, in accordance with the easements granted to the homeowners by court decisions dating to 1999, and pursuant to the permanent injunction put in place by the judgment entered in 1959 in the action *Civic Association at Roslyn Country Club, Inc. v Levitt and Sons, Inc.*, Supreme Court, Nassau County, Index No. 655/56; (3) compelling Corona Realty to make such repairs and renovations necessary to insure that the Club when open has clean, safe, attractive and hygienic facilities in accordance with the intent of the easements, and

requiring Corona Realty to properly staff and maintain the Club and its facilities during the season so that it is in a condition consistent with the intent of the easements; (4) directing that defendants shall have the right to report to the Court as to Corona Realty's compliance with the foregoing obligations, and providing that in the event there is not material compliance, a temporary receiver will be appointed to operate the Club at plaintiff's expense; or, in the alternative to the relief sought in paragraphs (1) through (4); (5) granting an injunction requiring that JEM Caterers immediately cease operations at the clubhouse facility or otherwise at the Club because such operations are impermissible under the injunction in place protecting the defendants' easements while the Club is not open to the homeowners; (6) pursuant to CPLR 3124 requiring Corona Realty to provide discovery with respect to the catering operation at the Club, including the production of any lease, license or similar agreement pursuant to which JEM Caterers occupies and operates at the Club's clubhouse, and financial information relating to such operations; and (7) granting defendants such other and further relief as is just, proper and equitable, is denied.

As this Court is well aware, this case represents the latest in a series of disputes between the various owners of the Club and the homeowners of the community known as Roslyn Country Club, which have resulted in numerous visits to the Courts.

In 1960, the New York Court of Appeals held that the homeowners had easements for the use of the Club property for recreational purposes. However, the Court of Appeals specifically noted that: "No issue is raised concerning defendants' [the owner and operator of the Club] obligation to continue to operate this facility for any particular period of time, nor the extent of plaintiffs' [homeowners] rights in event that operation is discontinued." (See, *Civic Association at Roslyn Country Club, Inc. v Levitt and Sons Inc.*, 7 NY2d 894, 896.)

The Court also permitted the owner and operator of the Club to conduct catered affairs at the clubhouse for non-members "to such extent as does not impair the individual plaintiffs' [homeowners] easements." (See, *Civic Association at Roslyn Country Club, Inc. v Levitt and Sons Inc.*, 7 AD2d 992, 993, *aff'd* 7 NY2d 894.) However, the Appellate Division, Second Department later held that the homeowners' easement for the use of the Club's facilities exists separate and apart from the operation of the catering business. (See, *Civic Association at Roslyn Country Club, Inc. v Levitt and Sons Inc.*, 192 AD2d 500.)

Defendants seek to amend their answers and counterclaims to add JEM Caterers, which operate the catering facility at the Club, as necessary parties and additional counterclaim defendants, and to add additional counterclaims against plaintiff Corona Realty and JEM Caterers. Defendants also seek discovery with respect to JEM Caterer's catering operation at the Club, as well as an injunction requiring JEM Caterers to immediately cease operations at the clubhouse facility.

While CPLR 3025(b) provides that leave to amend shall be freely given, such leave shall not be granted when the proposed amendment is palpably improper or insufficient as a matter of law. (See, *D'Angelo v State Insurance Fund*, 48 AD3d 400.)

Defendants assert that JEM Caterers are necessary parties because by refusing to open the Club while at the same time allowing a catering operation at the Club, plaintiff Corona Realty has undermined and interfered with defendant homeowners' easements. However, defendants have failed to make even a threshold showing that JEM Caterers' operations interfere with such easements.

As noted by the Appellate Division, Second Department, the defendant homeowners' easement for the use of the Club's facilities exists separate and apart from the operation of the catering business. (See, *Civic Association at Roslyn Country Club, Inc. v Levitt and Sons Inc.*, 192 AD2d 500.) There is no indication that JEM Caterers' operations impair defendant homeowners' easement rights to any other parts of the Club's facilities. There is no indication that JEM Caterers is responsible in any way whatsoever for plaintiff Corona Realty's failure to open the Club.

Moreover, the affidavit of Todd Zarin submitted in support of defendants' motion admits that access to the Clubhouse where JEM Caterers operates is in fact available to defendant homeowners upon a month's notice and payment of expenses. While these conditions may be somewhat more onerous than former conditions placed upon use of the clubhouse in the past, there is nothing in any prior Court order or judgment which prevents the imposition of reasonable, limited conditions upon the use of the clubhouse by any of defendant homeowners who choose to use that facility. Also, there is no indication that JEM Caterers imposed such conditions itself.

With no basis in law or in fact for any claims against JEM Caterers for impairment of defendants' easements, so much of defendants' motion as seeks to amend to add JEM Caterers as parties and to add additional counterclaims against Corona Realty and JEM Caterers is denied. Likewise, so much of defendants' motion as seeks discovery with respect to JEM Caterers' catering operations at the Club is also denied.

Moreover, even if this Court had agreed to allow JEM Caterers to be added as parties herein, the Court would have, in any event, denied so much of defendants' motion as seeks an injunction requiring JEM Caterers to immediately cease operations at the clubhouse facility.

It is well settled that to establish entitlement to a preliminary injunction, a movant must demonstrate a probability of success on the merits, the danger of irreparable harm in the absence of an injunction, and a balance of the equities in favor of granting the injunction (See, CPLR 6301; *Olabi v Mayfield*, 8 AD3d 459.)

Defendants herein have failed to satisfy any of the three prongs of this test in seeking injunctive relief shutting down JEM Caterers' operations at the Club. If anything, the balancing of the equities tips rather strongly in favor of JEM Caterers and its numerous customers who have booked catered events at the clubhouse.

Therefore, so much of defendants' motion as seeks an injunction requiring JEM Caterers to cease operations at the clubhouse is denied.

A similar analysis applies to the remainder of the relief sought by defendants' motion: for a preliminary injunction compelling plaintiff Corona Realty to open the Club for the 2009 summer season, to make repairs and renovations and allowing defendants to report any non-compliance by plaintiff.

In light of the Court of Appeals' decision which noted that no issue had been raised concerning the obligation to continue to operate the Club (See, *Civic Association at Roslyn Country Club, Inc. v Levitt and Sons Inc.*, 7 NY2d 894, 896.), it cannot be said that defendants have demonstrated a likelihood of success on the merits on their claim that their easements entitle them to the immediate opening of the Club.

Moreover, any harm which defendants claim they are suffering or will suffer as a result of plaintiff Corona Realty's failure to open the Club this season, or any other season, has not been demonstrated to be irreparable, as any of the damages defendants might claim for either loss of use of the Club's facilities or a diminution in the value of their homes, may certainly be compensable with monetary damages, if proven. (See, *EdCia Corp. v McCormack*, 44 AD3d 991, 994.)

As far as a balancing of the equities is concerned, given that this motion was submitted in April and given the depth and breadth of the repairs and renovations defendants claim are necessary to render the Club operational and safe, there would appear to be no way that the Club could be ready to open anytime this summer even if ordered to do so.

Motion denied.

Date 7/7/09

EDWARD W. McCARTY III

ENTERED
JUL 09 2009

NASSAU COUNTY
COUNTY CLERK'S OFFICE