

**510 E. 84th St. Corp. v Genitrini**

2009 NY Slip Op 32082(U)

September 8, 2009

Supreme Court, New York County

Docket Number: 114565/08

Judge: Emily Jane Goodman

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SCANNED ON 9/14/2009  
SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: EMILY JANE GOODMAN  
*Justice*

PART 17

510 E. 84<sup>TH</sup> Street Corp.

INDEX NO. 114565/08

CHRISTIAN BENITRINI  
ET AL.

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 003

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 is decided for

attached

**FILED**

SEP 14 2009

COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 9/8/09

[Signature]  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

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

SUPREME COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: PART 17

-----x  
510 EAST 84<sup>TH</sup> STREET CORP.,

Plaintiff,

Index No.: 114465/08

-against-

CHRISTIAN GENITRINI and  
ELIZABETH GRILL,

Defendants.

-----x  
EMILY JANE GOODMAN, J.S.C.:

**FILED**  
SEP 14 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

**BACKGROUND**

Plaintiff cooperative corporation moves, pursuant to CPLR 6311, to compel defendants, unit owners, to provide immediate access to Apartment 3C/D in the building known as 510 East 84<sup>th</sup> Street, New York, New York, for the purpose of designing and installing a permanent support structure for the wood framing system of the 4<sup>th</sup>, 5<sup>th</sup> and roof levels of the subject building.

Defendants do not oppose the motion, with the proviso that, should such access be granted, the designing include a thorough evaluation of the structural integrity of the entire "C" line of apartments of the building. Opp., ¶ 4. Defendants further state that, in compliance with the proprietary lease, they will permit access to their unit, but that they will not allow inspection of their "D" line because plaintiff is not alleging any defects on that side of the apartment. Opp., ¶ 6.

This action arises out of alterations that defendants performed in their unit, by joining together two apartments, the "C" and "D" lines, into one apartment. Plaintiff alleges that these alterations have damaged the structural integrity of the building.

Previously, this court ordered defendants to provide access to plaintiff for the purpose of installing a temporary support structure, which has taken place. Plaintiff now asserts that the temporary support structure needs to be replaced to avoid additional damage.

In their opposition argument, defendants cite to engineering reports from Lane Engineering Consulting, P.C., dated December 20, 2006; RAND Engineering & Architecture, PC, dated December 6, 2007; Dubinsky Consulting Engineers, PC, dated February 29, 2008; Abbas A. Shah, P.E., R.A., dated November 10, 2008; and an affidavit from engineer Martin J. Fradua. Opp., ¶¶ 7, 8, 9, 10 and 11. All of these professionals indicate that remedial repair work needs to be done for the support of the 4<sup>th</sup>, 5<sup>th</sup> and roof levels of the "C" line, which defendants do not dispute. Defendants argue, however, that all of these reports indicate problems beyond any that may have been caused by their renovations, which is why they are seeking to have the court order more extensive structural evaluations than those sought by the instant motion. Opp., ¶ 15. The thrust of defendants'

argument is that the structural problems with the building are not due to their renovations, and, therefore, that they are not liable for the repairs.

#### DISCUSSION

A preliminary injunction is a drastic remedy which should only be granted where the movant has demonstrated a clear legal right to the relief demanded based upon the undisputed facts. *Scotto v Mei*, 219 AD2d 181 (1<sup>st</sup> Dept 1996). To be entitled to a preliminary injunction, the movant must show a probability of success, the danger of irreparable injury in the absence of an injunction, and a balance of the equities in its favor. *Aetna Ins. Co. v Capasso*, 75 NY2d 860 (1990).

Movant meets the first test to be entitled to a preliminary injunction, that of demonstrating a probability of success. Defendants themselves do not dispute that structural repairs are necessary.

"Irreparable injury," the second requirement that must be proved to allow for a preliminary injunction, is defined as "a continuing harm resulting in substantial prejudice caused by the acts sought to be restrained if permitted to continue *pendente lite*. ... [W]here injunctive relief is granted, it is to be molded to fit the circumstances so as to preserve the *status quo* to the extent possible [internal citation omitted]." *Societe Anonyme Belge D'Exploitation de la Navigation Aerienne (Sabena) v*

*Feller*, 112 AD2d 837, 840 (1<sup>st</sup> Dept 1985).

In the instant case, based on the reports of the engineers, without making structural repairs, there is a possibility that the building, or a portion thereof, may collapse. The deteriorating condition of the building alone would be sufficient to warrant a preliminary injunction to provide access to make repairs. *Grinnell Housing Development Fund Corp. v McClain-James*, 240 AD2d 203 (1<sup>st</sup> Dept 1997).

The final requirement to granting a preliminary injunction is the balancing of the equities between the parties. *Barash v Pennsylvania Terminal Real Estate Corp.*, 26 NY2d 77 (1970). In the instant case, neither side refutes the need for the repairs, simply the nature and extent of the repairs that must take place.

Defendants' argument rests on the proposition that they have the right and ability to have the court direct the manner and method by which plaintiff makes the repairs, repairs which they concede are needed. However, defendants have cited no law that permits a unit owner to dictate the nature of the repairs that a cooperative board undertakes. Furthermore, defendants' statement that they would provide access to the "C" line portion of their unit, but not to the "D" line portion, is impracticable in light of the fact that the cause of the problem may be the manner in which the "C" and "D" lines were unified in their apartment.

Defendants' argument against the requested injunctive relief

is premised on the fact that they do not want to be held responsible for causing the structural problems to the building, and their concern that plaintiff may be overlooking the actual problem. However, the allocation of blame and resultant financial liability are left for later determination. *78<sup>th</sup> & Park Corp. v Hochfelder*, 262 AD2d 204 (1<sup>st</sup> Dept 1999) (severing causes of action for damages and attorney's fees from a motion seeking injunctive relief). As to defendants concern that a thorough evaluation of the structural integrity of the entire "C" line of apartments of the building been conducted, given the safety issues raised, the court directs defendants to consider that request, or, submit an affidavit to the court explaining why such a request is not in the best interests of the cooperative.

Defendants have argued that, should the court grant the preliminary injunction, the court should also determine that the cooperative board and/or its members will not be shielded from liability based on the business judgment rule. However, as previously stated, such determination is beyond the scope of the issue immediately before the court.

**CONCLUSION**

Based on the foregoing, it is hereby  
 ORDERED that, absent further written order of the court, defendants Christian Genitrini and Elizabeth Grill, their agents, servants, employees and all other persons acting under the

jurisdiction, supervision and/or direction of defendants, are enjoined and restrained, during the pendency of this action, from doing or suffering to be done, directly or through any attorney, agent, servant, employee or other person under the supervision or control of defendants or otherwise, any of the following acts:

Denying access to Apartment 3C/D in the building known as, and located at, 510 East 84<sup>th</sup> Street, New York, New York, for the purpose of permitting plaintiff and/or its contractors to design and install a permanent support structure for the wood framing system of the 4<sup>th</sup>, 5<sup>th</sup> and roof levels of said building; and it is further

ORDERED that plaintiff is to provide defendants with notice, no less than 10 business days before the repair work is to start, that describes and details the work that will be done, an estimate of how long it will take to complete the work, and whether defendants will be able to reside in the apartment while the work is being performed; and it is further

ORDERED that within 30 days of receipt of this decision and order, given the safety issues raised, plaintiff is directed to consider making a thorough evaluation of the structural integrity of the entire "C" line of apartments of the building, or, submit an affidavit to the court explaining why that evaluation is not in the best interests of the cooperative; and it is further

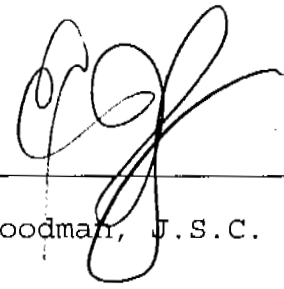
ORDERED that the undertaking is fixed in the sum of

\$50,000, to be given prior to entering defendants' apartment, conditioned that plaintiff, if it is finally determined that it was not entitled to an injunction, will pay to defendants Christian Genitrini and Elizabeth Grill all damages and costs which may be sustained by reason of this injunction.

This Constitutes the Decision and Order of the Court.

Dated: September 8, 2009

ENTER:



\_\_\_\_\_  
Emily Jane Goodman, J.S.C.

**FILED**  
SEP 14 2009  
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