

Jaysons Holding Co. v White House Owners Corp.

2009 NY Slip Op 32747(U)

November 17, 2009

Supreme Court, Nassau County

Docket Number: 18188/09

Judge: Stephen A. Bucaria

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

JAYSONS HOLDING COMPANY,

Plaintiff,

TRIAL/IAS, PART 3
NASSAU COUNTY

INDEX No. 18188/09

MOTION DATE: Sept. 29, 2009
Motion Sequence # 001

-against-

WHITE HOUSE OWNERS CORPORATION,
MICHAEL SCHNEIDER, individually, and as
a MEMBER OF THE BOARD OF DIRECTORS
OF WHITE HOUSE OWNERS CORPORATION,
PRECISION ASSET MANAGEMENT, and THE
BOARD OF DIRECTORS OF WHITE HOUSE
OWNERS CORPORATION, COMPRISED OF
MICHAEL SCHNEIDER, LAURA METZ,
ROSE FEINGOLD, DEBORAH STEINHORN,
HILLARY STORCH, JEAN BOBICK and
LEAH LUCKMAN,

Defendants.

The following papers read on this motion:

- Order to Show Cause..... X
- Affirmation in Opposition..... X
- Supplemental Affirmation in Support..... X
- Memorandum of Law..... X

Relief Requested:

The plaintiff, Jaysons Holding Company, moves, pursuant to CPLR 6301 and 6311, for [1] a preliminary injunction restraining the defendants from withholding the closing documents necessary to convey units which the plaintiff, Jaysons Holding Company, seeks to convey and consenting to the assignment of the Proprietary Leases and issuance of stock certificates for such conveyance without further restriction or impediment; [2] ordering the defendants to issue to the plaintiff the stock certificates and proprietary leases appurtenant to 14 White House Owners Corporation cooperative apartments owned by the plaintiff; [3] for a determination that the plaintiff is a "holder of unsold shares" which is permitted, in its sole discretion and without restriction, and without requiring the consent or permission of either (a) the White House Owners Corporation; (b) the White House Owners Corporation Board of Directors; (c) the White House Owners Corporation shareholders; (d) the defendant, Precision Asset Management, or any managing agent of the White House Owners Corporation; (e) or anyone else, to sell, assign, or sublet its White House Owners Corporation cooperative apartments and the proprietary leases and shares appurtenant thereto; and [4] directing the defendants to produce the original White House Owners Corporation stock certificates ledger identifying the transfer of ownership of the 80 units of the White House Owners Corporation cooperative from the date of the cooperative conversion to present; and [5] for an order granting the imposition of costs and sanctions against Michael Schneider, individually, and the White House Owners Corporation Board of Directors.

Factual Background:

The plaintiff, Jaysons Holding Company, is a New York Partnership and the Sponsor of a two story cooperative apartment located at 547-557 Central Avenue, Cedarhurst, New York. On January 14, 1986, the plaintiff transferred title of the building to the White House Owner Corporation in accordance with a cooperative conversion. At the time of the transfer, the building was comprised of 77 residential units and 3 commercial units and out of the totality thereof, the plaintiff retained 53 units. Since the time of the transfer, the plaintiff has sold 39 of the units and owns and sublets the 14 which remain.

Approximately two years ago, the plaintiff elected to market two of the units and recently entered into contracts of sale with respect to units 31A (the proposed sale thereof will be governed by the terms as are recited in the Stipulation executed on October 21, 2009, by and between counsel for Jaysons Holding Company and White House Owners Corporation) and 39B. The plaintiff posits that the Board of Directors of the White House Owners Corporation, through its President and named defendant, Michael Schnieder, has refused to issue new shares or consider any transfer of same in connection with the sale of the subject units, without the purchasers first obtaining approval of the Board. Such prior approval allegedly consists of requiring prospective renters and purchasers to provide financial documentation and to undergo an interview with the Board of Directors. The plaintiff alleges that the actions of the Board of Directors are illegal and in contravention of the documents governing the relationship between itself and the cooperative, and accordingly, the within application seeking injunctive and declaratory relief ensued.

PLAINTIFF'S CONTENTIONS

The plaintiff argues that, pursuant to the Offering Plan, the amendments thereto and the Proprietary Lease, it is a holder of unsold shares and as such is entitled to sell the units it owns without any prior approval of either the Board of Directors of White House Owners Corporation, the White House Owners Corporation, any individual shareholder thereof or Precision Asset Management.

With particular regard to the injunctive relief, the plaintiff asserts that, if the injunctive relief herein requested is not granted, it will suffer irreparable harm as it will be precluded from honoring its obligations under the contract of sale for unit 39B and thus be vulnerable to a breach of contract action by the purchaser. The plaintiff asserts that, if the Board of Directors of White House Owners Corporation is not enjoined from imposing the illegal and burdensome approval process upon new purchasers and renters, knowledge thereof will spread throughout the cooperative in particular and the local community in general, the effects of which will severely prejudice its right to freely sell the units it owns, as well as the market value of such units.

DEFENDANTS' CONTENTIONS

The White House Owners Corporation [hereinafter WHOC] argues that the Court does not have personal jurisdiction over WHOC and, accordingly, the motion must be

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denied (Lacking a motion with respect to dismissal of the within complaint based upon lack of personal jurisdiction over White House Owners Corporation, the Court will not address those matters [CPLR §2215]); that while service was effected upon defendant, Michael Schneider, it was done so only in his individual capacity and not as President of the Board of Directors of WHOC. WHOC further contends that, while the Law Firm of Rosenfeld & Maidenbaum, LLP, was also served with process, the firm is not an agent authorized to accept service on behalf of WHOC. WHOC also argues that the plaintiff is not entitled to injunctive relief as it has an adequate remedy at law in the form of monetary damages. WHOC further asserts that injunctive relief is inappropriate as the plaintiff is not a holder of unsold shares and thus has not demonstrated a likelihood of success on the merits. In support of the latter contention, WHOC relies upon a provision as is contained at page 38 the Offering Plan and which provides the following:

“The Sponsor has agreed that, if by the closing date, all of the shares allocated to all apartments have not been sold and fully paid for, the Sponsor will produce on the closing date a financially responsible person or persons resident in the State of New York (hereinafter referred to as the “holder of unsold shares”) to whom all of the unsold shares will be issued and who will enter into a proprietary lease for the apartments to which such shares are allocated.”

WHOC argues that as the plaintiff did not designate, at the time of closing, a qualified financially responsible person, it therefore did not bestow upon any of its partners the status of a holder of unsold shares.

Finally, WHOC avers that, even if the plaintiff held the status of a holder of unsold shares it would still be required to obtain permission from WHOC’s managing agent, Precision Asset Management, Inc., to sell or sublet it’s units. WHOC makes particular reference to ¶38 of the Proprietary Lease which states the following:

“As a privilege of the original issuance and sale of the Lessor’s shares, a lessee who is an original purchaser (but not his successors or assigns) or the Sponsor-Seller or an immediate assignee of the Sponsor-Seller may assign this lease and sublet the apartment

without the consent of the Directors or shareholders as provided in paragraphs 15 and 16 but with the consent only of the Lessor's then Managing Agent which may not be unreasonably withheld. If the then Managing Agent refuses To consent for any reason whatsoever, such Lessee may apply for consent to the Directors or to the shareholders in paragraph 15 and 16 hereof."

DECISION

When moving for a preliminary injunction pursuant to CPLR 6301, it is incumbent upon the moving party to demonstrate a likelihood of success on the merits, irreparable injury absent the granting of the injunctive relief, and a balancing of the equities which favor the issuance of the injunction (*Doe v Axelrod*, 73 NY2d 748, 1988; *Grant Co. v Srogi*, 52 NY2d 596, 1981). The moving party must demonstrate that the irreparable harm is "imminent, not remote or speculative" (*Golden v Steam Heat*, 216 AD2d 440, 2d Dept., 1995). "An injunction is an equitable remedy, and it is well settled that, where adequate relief can be obtained by a money judgment, there is no need for equitable relief; the money judgment suffices" (*People ex rel. Spitzer v Frink America Inc.*, 2 AD3d 1379, 4th Dept 2003).

Moreover, here the plaintiff is requesting that the Court "restrain the defendants from withholding the closing documents." Clearly, "restraining" the defendants from withholding a document is analogous to ordering them to produce it. The plaintiff additionally seeks relief "ordering" the defendants to issue stock certificates and proprietary leases relative to the 14 units it owns, as well as to produce the original White House Owners Corporation stock certificate ledger, which identifies the transfer of ownership at the time of the cooperative conversion. Such relief requested seeks the production of documents that are, in essence, the plaintiff's own; and documentary disclosure that the plaintiff is entitled to, under these circumstances.

Integral to this Court's disposition of the matters herein raised is a determination as to whether the plaintiff, Jaysons Holding Company, is a holder of unsold shares. It is well settled that whether a party is a holder of unsold shares is a determination that should be predicated "sole by applying ordinary contract principles to interpret the terms of the documents defining their contractual relationship with the cooperative corporation"

(*Kralik v 239 E. 79th St. Owners Corp.*, 5 NY3d 54, 2005). Such documents would include the Offering Plan, the relevant amendments thereto and the proprietary lease (*Yatter v Continental Owners Corp.*, 22 AD3d 573, 2d Dept., 2005).

In the matter *sub judice*, having reviewed the relevant documents defining the relationship between the plaintiff and the cooperative corporation, the Court finds the plaintiff to be a holder of unsold shares (*Kralik v 239 E. 79th St. Owners Corp.*, 5 NY3d 54, 2005, *supra*; *Yatter v Continental Owners Corp.*, 22 AD3d 573, 2d Dept., 2005, *supra*). Here, the sale of the subject cooperative was expressly subject to “The terms and provisions of this Offering Plan.” (*see* Offering Plan at p. 41). Included in the Offering Plan at page 38 is the following language:

“Any unsold shares and leases acquired by a holder of unsold shares, may be sold or assigned by him subsequent to closing of sale on the property, or his apartment may be sublet by him subsequent to the closing of title on the property. Such sale or subletting by the “holder of unsold shares” shall be at and in his sole discretion and specifically shall not be subject to approval of the Apartment Corporation or individual shareholders therein, but may be transferred by the holder of the unsold shares without requiring the consent or permission of the Apartment Corporation, the Board of Directors or the shareholders.”

Further, the specific language of the Tenth Amendment to the Offering Plan provides that subsequent to the closing, which occurred on January 14, 1986, the “Sponsor holds 6,836 unsold shares representing 53 apartments.”

As to WHOC’s contention that the plaintiff is not a holder of unsold shares as a result of its failure to designate a financially responsible person or persons at the time of closing, the Court finds said argument unavailing. A careful reading of the Seventh Amendment to the Offering Plan, filed approximately six months prior to the closing and which modified the terms thereof, reveals that said amendment expressly provides “with respect to any shares which remain unsold at the closing, the Sponsor will acquire the shares, or will produce an individual or individuals who will purchase such shares and enter into Proprietary Leases for the units to which such shares are attributable.” Thus,

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contrary to the defendant's contentions, the plaintiff was not required to produce a financially responsible person to purchase any unsold shares which remained at the time of closing and in fact had the option of acquiring any unsold shares in accordance with the plain language of the amendment (*Kralik v 239 E. 79th St. Owners Corp.*, 5 NY3d 54, 2005, *supra*; *Yatter v Continental Owners Corp.*, 22 AD3d 573, 2d Dept., 2005, *supra*).

Finally, the Court finds equally unavailing WHOC's argument that even in the event that the plaintiff is a holder of unsold shares, it still must procure approval from Precision Asset Management Inc. to sell or sublet the units it owns. A reading of paragraph 38 of the lease, as cited hereinabove and upon which WHOC relies for this argument, indicates that the language therein contained deals with Sponsors having to obtain consent of the managing agent but *not* holders of unsold shares. In this Court's view, and as the relevant documents demonstrate, the plaintiff is a holder of unsold shares and, accordingly, this section of the lease is inapplicable to Jaysons Holdings (*id.*).

Based upon the foregoing determination that the plaintiff is a holder of unsold shares, injunctive relief is appropriate. While the plaintiff's cause of action for tortious interference with the contracts of sale relative to units 31A and 39B seeks monetary damages, this Court finds that such judgment, based upon the facts and circumstances herein, is not necessarily an adequate remedy, because the true object of the action is the establishment of the plaintiff's ability to free transactions of the units that it owns. (Siegel, New York Practice, 4th Edition, §327, p.522; *SHS Baisley, LLC v Res Land, Inc.*, 18 AD3d 727, 2nd Dept., 2005). Finally, a balancing of the equities herein clearly favors the plaintiff, who seeks to establish his de jure right of ownership and all rights attendant thereto.

Based upon the foregoing, it is hereby

ORDERED, ADJUDGED and DECLARED that Jaysons Holdings Company is a holder of unsold shares and accordingly may sell, assign or sublet the apartments it owns within the cooperative without the prior consent or approval of the White House Owners Corporation, the White House Owners Corporation Board of Directors, the White House Owners Corporation Shareholders, or Precision Asset Management, Inc.; and the application for a preliminary injunction is granted as set forth herein.

This constitutes the Decision and Order of the Court.


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Any applications not specifically addressed herein are **DENIED**.

A Preliminary Conference has been scheduled for January 14, 2010 at 9:30 a.m. in Chambers of the undersigned. Please be advised that counsel appearing for the Preliminary Conference **shall** be fully versed in the factual background and their client's schedule for the purpose of setting **firm** deposition dates.

Dated NOV 17 2009


J.S.C.

ENTERED

NOV 18 2009
NASSAU COUNTY
COUNTY CLERK'S OFFICE