

<b>64-11 Owners Corp. v Metropolitan Pac. Props., Inc.</b>
2011 NY Slip Op 31051(U)
March 28, 2011
Supreme Court, Queens County
Docket Number: 32012/2010
Judge: Robert J. McDonald
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK  
CIVIL TERM - IAS PART 34 - QUEENS COUNTY  
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD  
Justice

- - - - - x

64-11 OWNERS CORP.,

Index No.: 32012/2010

Plaintiff,

Motion Date: 03/24/2011

- against -

Motion No.: 35

METROPOLITAN PACIFIC PROPERTIES, INC.,  
And STEVEN H. OSMAN,

Motion Seq.: 1

Defendants.

- - - - - x

The following papers numbered 1 to 9 were read on this motion by the plaintiff for an order pursuant to CPLR 6301 for a preliminary injunction preventing and enjoining the defendants from failing to deliver the plaintiff/Co-op's books and records and to account for monies had and received:

	Papers
Order to Show Cause-Affirmation-Exhibits-Service.....	1 - 3
Plaintiff's Supplemental Affirmation in Support.....	4 - 6
Affirmation in Opposition-Exhibits.....	7 - 9

This is an action commenced by the plaintiff, 64-11 Owners Corp. (the Co-op), a cooperative apartment corporation whose shareholders own the apartment building located at 64-11 99<sup>th</sup> Street, Rego Park, New York. Pursuant to a written management agreement the defendant, Metro Pacific, was retained by the Co-op to perform certain management services for the Co-op. The five

year management agreement was not renewed by the Co-op when it expired on December 31, 2010. On November 30, 2010, pursuant to paragraph 2(m) of the agreement, the Co-op requested that the defendants deliver all items and documents in its possession belonging to the Co-op to the new managing agent. The plaintiff alleges that despite its demand the defendants have failed to release the Co-op's books and records.

In its complaint dated January 7, 2011, the plaintiff asserts four causes of action, (1) for an order directing the return of its books and records, (2) for an order permanently enjoining the defendants from interfering in the management or affairs of the co-op, (3) for an order directing the defendants to account to the Co-op for all monies in its possession which belong to the Co-op and, (4) for money damages in the amount of \$125,000.

In the instant Order to Show Cause the plaintiff moves for an order directing the immediate delivery of its documents on the ground that "it is impossible for the Co-op to manage its own Building without the books and records...vital services could be cut off, and elderly and infirm residents could be at risk."

On February 22, 2011, plaintiff's counsel submitted a supplemental affirmation stating that the defendants made a partial delivery of various Co-op documents and files but that they failed to turn over additional documents which were

specified by counsel in his affirmation.

In opposition to the motion for a preliminary injunction, defendant Steven H. Osman, the owner of Metro Pacific, submits an affirmation, stating that on January 24, 2011 he transferred 13 boxes which included "all books, records, and documents that were in Metropolitan's possession." Osman states that Metropolitan does not have any of the missing documents specified by plaintiff's counsel, but that if any documents have been misplaced or unintentionally overlooked they will be delivered.

With respect to plaintiff's request for a preliminary injunction, CPLR 6301 states that:

"A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff."

A party moving for a preliminary injunction "must demonstrate by clear and convincing evidence (1) a likelihood of ultimate success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) that a balancing of equities favors the movant's position" (see Family-Friendly Media, Inc. v Recorder Tel. Network, 74 AD3d 738 [2d Dept. 2010]; EdCia Corp. v McCormack, 44 AD3d 991 [2d Dept. 2007]; Apa Sec., Inc. v Apa, 37 AD3d 502, 503 [2d Dept. 2007]). The movant must

show that the irreparable harm is "imminent, not remote or speculative" (Golden v Steam Heat, 216 AD2d 440 [2d Dept. 1995]). Further, "a party seeking the drastic remedy of a preliminary injunction must establish a clear right to that relief under the law and the undisputed facts" (Board of Mgrs. of Wharfside Condominium v Nehrich, 73 AD3d 822 [2d Dept. 2010]; Omakaze Sushi Rest., Inc. v Ngan Kam Lee, 57 AD3d 497 [2d Dept. 2008]). The decision to grant or deny a preliminary injunction lies within the sound discretion of the Supreme Court (see Glorious Temple Church of God in Christ v Dean Holding Corp., 35 AD3d 806 [2d Dept. 2006]).

Upon review and consideration of the plaintiff's motion and the defendant's reply thereto, this court finds that the plaintiff's motion for a preliminary injunction is denied. Firstly, the defendant claims that it has turned over all of the books and records in its possession which belong to the Co-op and secondly, the conclusory and speculative assertions by the plaintiff that it is impossible for the Co-op to manage its building without the books and records and that vital services for elderly and infirm tenants are in jeopardy, is insufficient to constitute imminent irreparable injury for which a preliminary injunction is warranted (see Family-Friendly Media, Inc. v Recorder Tel. Network, 74 A.D.3d 738 [2d Dept. 2010]; White v F.F. Thompson Health Sys., Inc., 75 AD3d 1075 [2d Dept. 2010];

Dana Distribs., Inc. v Crown Imports, LLC, 48 AD3d 613 [2d Dept. 2008]; Golden v Steam Heat, 216 AD2d 440 [2d Dept. 1995]).

Dated: March 28, 2011  
Long Island City, N.Y.

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**ROBERT J. MCDONALD**  
**J.S.C.**