

**Board of Mgrs. of 41 N. Moore St. Condominium v
Violet Purch. Corp.**

2014 NY Slip Op 33718(U)

April 10, 2014

Supreme Court, New York County

Docket Number: 157291/2013

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: KERN CYNTHIA S. KERN J.S.C. Justice

PART 55

BOARD OF MANAGERS OF 41 NORTH MOORE ST. CONDOMINIUM

INDEX NO. 157291/13

MOTION DATE

MOTION SEQ. NO. 001

VIOLET PURCHASING CORP., et al.

The following papers, numbered 1 to , were read on this motion to/for

Notice of Motion/Order to Show Cause - Affidavits - Exhibits No(s).
Answering Affidavits - Exhibits No(s).
Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the annexed decision.

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

Dated: 4/10/14

CYNTHIA S. KERN J.S.C.

- 1. CHECK ONE: CASE DISPOSED
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

CYNTHIA S. KERN
J.S.C.

BOARD OF MANAGERS OF 41 NORTH MOORE
STREET CONDOMINIUM,

Plaintiff,

Index No.157291/2013

-against-

DECISION/ORDER

VIOLET PURCHASING CORP. and
LIZA LASEROW, et al.,

Defendants.

HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

| Papers | Numbered |
|--|-----------|
| Notice of Motion and Affidavits Annexed..... | <u>1.</u> |
| Answering Affidavits | <u>2.</u> |
| Replying Affidavits..... | <u>3.</u> |
| Exhibits..... | <u>4.</u> |

Plaintiff commenced the instant action to foreclose on its lien against defendant Violet Purchasing Corp.'s unit in the condominium building located at 41 North Moore Street, New York, NY. Plaintiff now moves for an order pursuant to Real Property Law ("RPL") § 339-aa, appointing a temporary receiver to collect rent for the unit to pay common charges during the pendency of this litigation. For the reasons set forth below, plaintiff's motion is denied.

The relevant facts are as follows. Defendant Violet Purchasing Corp. ("Violet") acquired a building containing five residential units and one commercial unit located at 41 North Moore

street (the “Building”) in 1993. Violet converted the Building from a rental building to a condominium pursuant to an offering plan (the “Offering Plan”) on or about October 4, 2001.

Violet remains the owner of two residential units and the commercial unit in the Building. As owner of said units, Violet is required to pay, *inter alia*, common charges to plaintiff pursuant to the Building’s By-Laws. Violet has allegedly defaulted under the By-Laws by failing to pay the common charges when they became due. On or about June 12, 2012, plaintiff filed a Notice of Lien with the Register’s Office (the “Lien”), for the outstanding common charges on the commercial unit (the “Unit”). As Violet has allegedly failed to pay the outstanding common charges to satisfy the Lien, which according to plaintiff’s moving papers now amounts to \$49,612.85, plaintiff commenced this action to foreclose on the Lien. Plaintiff now seeks an order pursuant to RPL § 339-aa, granting a temporary receiver to collect rent from Violet for the Unit so such funds can be disbursed to plaintiff to pay the monthly common charges during the pendency of this litigation. According to plaintiff, a temporary receiver is needed to avoid the extreme hardship to plaintiff and the other unit owners in the building in having to shoulder the significant cash flow crunch arising from the non-payment of Violet’s obligations.


Pursuant to RPL § 339-aa, in a lien foreclosure action, “the unit owner shall be required to pay a reasonable rental for the unit for any period prior to the sale pursuant to judgment of foreclosure and sale, *if so provided in the by-laws*, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same.” (Emphasis added). In the present case, it is undisputed that the Building’s By-Laws do not provide that a unit owner pay a reasonable rent during the pendency of a foreclosure action. Accordingly, absent proof that the Building’s By-Laws permit collection of rent, plaintiff’s motion for a temporary receiver

pursuant to RPL § 339-aa, must be denied.

Additionally, to the extent plaintiff argues it is entitled to a receiver under the more general standard for appointment of a temporary receiver, such contention is without merit as it fails to present any authority to support such contention. It is true that some courts discuss appointment of a receiver in a condominium lien foreclosure action under CPLR § 6401, i.e. “a temporary receiver of the property may be appointed . . . where this is danger that the property will be removed from the state, or lost, material injured or destroyed.” See *U.S. Bank Nat. Ass’n v. Sacher*, 2013 WL 1930262 (N.Y. Sup. 2013); *Societe Generale v. Charles & Co. Acquisition*, 157 Misc.2d 643 (N.Y. Sup. 1993). Here, however, plaintiff has failed to present any authority where a temporary receiver was appointed pursuant to CPLR § 6401 when the collection of rent was not already authorized in the applicable By-Laws in the first instance, and, in any event, plaintiff has failed to make the heightened evidentiary showing required under CPLR § 6401.

Accordingly, plaintiff’s motion is denied. This constitutes the decision and order of the court.

Dated: 4/10/14



J.S.C.

CYNTHIA S. KERN
J.S.C.