

Maun v Edgemont at Tarrytown Condominium Assn.
2014 NY Slip Op 33952(U)
February 3, 2014
Supreme Court, Westchester County
Docket Number: 51584/11
Judge: Joan B. Lefkowitz
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FILED: WESTCHESTER COUNTY CLERK INDEX NO. 58/2011
02/04/2014

NYSCEF DOC. NO. 55

RECEIVED NYSCEF: 02/04/2014

To commence the statutory time period for
appeals as of right [CPLR 5513(a)], you
are advised to serve a copy of this order,
with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER - COMPLIANCE PART

-----X
MARY ELLEN MAUN,

Plaintiff,

-against-

EDGEMONT AT TARRYTOWN
CONDOMINIUM ASSOCIATION, EDGEMONT
AT TARRYTOWN CONDOMINIUM BOARD
OF MANAGERS, SANDRA PETERSON,
Individually and as current President of Board
of Managers, ROBERT KIMMEL, Individually
and as a Member of the Board of Managers,
RICH KOMITA, Individually and as a Member
of the Board of Managers, HARRIET KLUGMAN,
Individually and as a Member of the Board of Managers,
STEVE GOSSETT, Individually and as a Member of the
Board of Managers, MARILYN LeLONG, Individually
and as a Member of the Board of Managers,
MOREY STORCK, Individually and as a Member of
the Board of Managers, ANATOLY TCHADLIEV,
Individually and as a Member of the Board of Managers,
SALLY KELLOCK, Individually and as a Member of the
Board of Managers, TONY LAWNER, Individually
and as a Member of the Board of Managers,
ROBERT MARKS, Individually and as Member of
the Board of Managers, PAULA SHERMAN, Individually
and as a Member of the Board of Managers, JOHN MALERI,
Individually and as a Member of the Board of Managers,
JASON BRAUN, Individually and as a Property Manager
for Edgemont at Tarrytown Condominiums.

Defendants.
-----X

LEFKOWITZ, J.

DECISION & ORDER

Index No. 51584/11
Motion Date: Feb. 3, 2014

Seq. No. 2

The following papers were read on this motion by plaintiff for an order directing
defendant Edgemont at Tarrytown Condominium (hereinafter "defendant condominium") to
produce copies of property record files of all condominium units which are maintained by the
management office of defendant condominium.

Order to Show Cause - Affirmation - Exhibit A
Affirmation in Opposition

Upon the foregoing papers, the motion is decided as follows¹:

Plaintiff commenced this action seeking, inter alia, damages under federal and state civil rights law based upon defendants' alleged discrimination against plaintiff based upon her gender, sexual orientation or perceived sexual orientation. Plaintiff specifically alleges violations of the following: New York Executive Law, Article 15, entitled Human Rights Law; Title VIII of the Civil Rights Act of 1968, entitled Fair Housing Act (42 USC 3601 *et seq*); Westchester County Administrative Code, Article 2; and New York State Real Property Law § 236 *et seq*. Plaintiff claims, inter alia, that she was discriminated against with respect to her requests for repairs to her condominium unit and safety measures. She contends her requests for repairs were consistently and repeatedly refused while other unit owners received repairs to their units. Plaintiff further claims she was subjected to an intrusive interview when she first purchased her unit to which other unit owners were not subjected. Plaintiff also claims that she was not allowed to contact board members directly and was required to submit correspondence, which was kept in her property file, while other unit owners were allowed to contact board members directly. Further, plaintiff claims she was ordered to remove a security camera inside her unit, while other unit owners were not required to remove the security cameras. Plaintiff also claims that her request for motion sensing lights outside of her unit was refused and other unit owners who requested such lighting had the lighting installed. Additionally, plaintiff claims that her request for a privacy fence near her back patio was denied despite the facts that her adjoining neighbor was menacing her and other unit owners have privacy fences. Finally, plaintiff claims that defendants failed to enforce the condominium bylaws in instances involving plaintiff, but enforced the bylaws on behalf of other unit owners.

Plaintiff now seeks to compel the disclosure of the property files of the other unit owners (hereinafter "unit files"). Plaintiff asserts that a demand for the files was timely made in a Notice to Take Examination Before Trial, but defendants have refused to produce the files on the ground the disclosure would constitute an invasion of privacy. Plaintiff contends that to the extent that the files contain any confidential information, the files can be redacted. Plaintiff contends that she is entitled to disclosure of the other unit files since the files will contain work orders filed by unit owners and information as to the disposition of the work orders. Plaintiff contends that the work orders of other unit owners will demonstrate that other unit owner's work orders were treated more favorably than plaintiff's work orders and that plaintiff, unlike other unit owners, was forced to make repeated requests for reasonable work on her unit. Plaintiff also claims that the disclosure is warranted since plaintiff has learned that defendants intend to claim that plaintiff's requests for work were denied because she made an inordinately numerous amount of requests. Finally, plaintiff contends that the other unit owners' files will contain information with respect to: the initial interview of unit owners; whether other unit owners were required to send correspondence to the board, instead of communicating directly with a board member, as

¹ The parties waived their appearances at oral argument.

required of plaintiff; whether other unit owners were allowed to maintain security cameras while plaintiff was ordered to remove the security camera in her unit; and whether other unit owners' requests for privacy fences and motion sensing lighting was granted, while plaintiff's requests were denied; whether other unit owners were fined for knocking on the door of another unit owner; and whether the condominium bylaws were enforced against other unit owners as they were enforced against plaintiff.

In support of the motion, plaintiff submitted the affirmation of plaintiff's counsel and the Notice to Take Examination Before Trial served by plaintiff seeking the deposition of defendant Jason Braun, the property manager of defendant condominium. Plaintiff failed to submit any deposition transcripts in support of the motion or an affidavit of plaintiff or other individual with personal knowledge of the underlying facts in this matter.

Defendants oppose the motion on a number of grounds, including the following: Defendants contend that plaintiff failed to make a prior request for the unit files. Defendants also assert that the demand is an improper invasion into the privacy of hundreds of individuals who are not parties to this action since the unit files contain the identity of the unit residents and their children, automobile registration, email addresses, cellular telephone numbers, emergency contact information and security alarm information. Defendants contend that these individuals should have been given notice of the motion and given the opportunity to oppose the motion. Additionally, defendants contend that the unit files do not contain relevant or material information as to plaintiff's claim of disparate treatment due to her gender and sexual orientation since the unit files would not provide information as to the gender and sexual orientation of the unit residents and some unit residents have unisex names. Defendants assert that in the absence of information as to gender and sexual orientation of unit owners/residents, information as to who obtained a privacy fence, motion sensing lighting or other work at their unit would not be relevant. Defendants further contend that the demand is overbroad as there are 188 units and the files date back 40 years, such that it would be time consuming and an undue burden to review and redact the unit files. Finally, defendants contend that the motion should be denied since plaintiff failed to submit hard evidence in support of this motion, such as deposition transcripts. Therefore, defendants contend that plaintiff's present demand constitutes a fishing expedition.

CPLR 3101(a) requires "full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof." The phrase "material and necessary" is "to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason" (*Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403, 406 [1968]; *Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). The court has broad discretion to supervise discovery and to determine whether information sought is material and necessary in light of the issues in the matter (*Mironer v City of New York*, 79 AD3d 1106, 1108 [2d Dept 2010]; *Auerbach v Klein*, 30 AD3d 451, 452 [2d Dept 2006]).

Initially, the court notes that in the Notice to Take Examination Before Trial served by plaintiff upon defendant Jason Braun, plaintiff requested that Mr. Braun bring all book, records,

writings, notes and/or memoranda in his possession, custody or control, including files maintained by defendant condominium association or its agents, employees or representatives containing information for each condominium unit owned and/or rented by each and every defendant. Accordingly, the demand for documents in the notice is limited only to records regarding the individually named defendants' condominium units.

In any event, plaintiff's demand on this motion for all of the unit files is overbroad and improper. Although this court does not agree with defendants' contention that the unit files held by defendant condominium do not necessarily hold relevant and material information to the claims in this action, plaintiff's demand for all the files unlimited in time and scope is overbroad. As alleged by defendants and not disputed by plaintiff, there are 188 condominium units and the files date back 40 years. Additionally, although certain information in the unit files regarding, inter alia, work orders, repairs, requests for privacy fencing and motion sensing lighting, and the installation or removal of security cameras in the units would be relevant to plaintiff's discrimination claims, the remaining information contained in the unit files, including information such as automobile registration, emergency contacts and security alarm company information would not be relevant to the claims in this action. Moreover, this information should not be disclosed as to the nonparty unit owners or residents since the nonparties have a privacy interest in such information. The fact that a nonparty resides in or owns a specific unit, however, is not entitled to protection from disclosure. Additionally, on the present motion, plaintiff failed to provide this court with evidence either in the form of deposition testimony, plaintiff's own affidavit or documentary evidence to establish the dates when plaintiff made or submitted work orders or requests for repairs or when defendant's alleged discriminatory acts took place. Without these dates, the court is unable to determine the time frame to which discovery of the relevant documents in the unit files should be restricted. Notably, in her complaint, plaintiff alleges that she purchased her condominium unit in 2002. Any records contained in the unit files which pre-date plaintiff's purchase of her condominium unit could not be relevant to plaintiff's claims.

In view of the foregoing, plaintiff's motion to compel the production of the unit files must be denied. Plaintiff, however, may seek discovery of relevant documents contained in the unit files limited in time and scope by service of a written demand upon defendants.

In view of the foregoing, it is

ORDERED that plaintiff's motion for an order compelling defendant condominium to produce copies of property record files of all condominium units which are maintained by the management office of defendant condominium is denied as overbroad and unduly burdensome; and it is further

ORDERED that, within 14 days of entry of this order, plaintiff shall serve a written demand upon defendants seeking documents contained in the property record files of the condominium units restricted in time and scope. Said demand shall set forth a specific time

period and shall not seek any documents pre-dating plaintiff's purchase of her condominium unit. Said demand shall also set forth the specific documents demanded within the property record files of the condominium units, such as "work orders," "documents regarding repairs," and "documents regarding the disposition of work orders;" and it is further

ORDERED that defendants shall serve a response to plaintiff's limited demand within 30 days of service of said demand. Documents provided in response to the demand shall be organized by unit number and identify the resident(s) and owner(s) of the unit on the date the document was created; and it is further

ORDERED that counsel are directed to appear for a conference in the Compliance Part, Courtroom 800, March 19, 2014 at 9:30 A.M.

The foregoing constitutes the decision and order of this court.

Dated: White Plains, New York
February 3, 2014


HON. JOAN B. LEFKOWITZ, J.S.C.

TO:

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cc: Compliance Part Clerk