

Pettus v Board of Directors
2015 NY Slip Op 31147(U)
June 11, 2015
Supreme Court, Bronx County
Docket Number: 250113/15
Judge: Wilma Guzman
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SUPREME COURT OF THE STATE OF NEW YORK

Index No. **250113/15**
251433/14
251413/14

COUNTY OF BRONX

Motion Calendar No.
Motion Date: 5/18/15

JAMES PETTUS, Husband of, Representative of
Husband of Representative of, CHARLENE THOMPSON,
BEHALF OF PETITIONER(S),

Plaintiff,

-against-

DECISION/ ORDER
Present:
Hon. Wilma Guzman
Justice Supreme Court

BOARD OF DIRECTOR(S) 800 GRAND CONCOURSE
CO-OP AS AN ENTITY, CHALES H. GREENTHAL
AS AGENT[MGMT]

Defendants.

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

<u>Papers</u>	<u>Numbered</u>
Notice of Motion by Plaintiff, Affirmation in Support,	
Exhibits Thereto.....	
Affirmation in Opposition	
Reply Affirmation	

*Upon the foregoing papers and after due deliberation, and following oral argument, the
Decision/Order on this motion is as follows:*

- Petitioner filed a petition seeking a judgment ordering respondents to
- (1) Release the original By-Laws and Proprietary Lease plus House rules that were distributed when the building first converted, as well as any amendments;
 - (2) the name of the bank where money is being "held," for 800 Grand Concourse, Owners;
 - (3) The account number of where the money is being held.
 - (4) the amount of each shareholders maintenance for all 250 apartments at 800 Grand Concourse, Apartments/Units;
 - (5) the total amount each month after maintenance is paid by each shareholder that would all include 250 Shareholder at 800 Grand Concourse, Bronx, NY 10451
 - (6) The total amount for the year after each shareholder has paid their maintenance for the year, that would include all 250 shareholders;

Respondent cross-moves for an Order dismissing the petition on the grounds that the petition fails to state a cause of action. Respondent alleges that the petitioner, Charlene Thompson was credited the tax abatement and New York State School Tax Relief (“STAR”) to her maintenance account and that the Board of Directors is authorized to assess the Co-Op’s shareholders pursuant to the governing documents, including the By-Laws and Proprietary Lease.

At the outset, this Court notes that James Pettus has no standing to bring this Petition. A review of the records indicates that Charlene Thompson is the shareholder of record, pursuant to the the Proprietary Lease in effect August 1, 1990 through September 30, 2072. This Court further notes that Petitioner has filed approximately 3 Orders to Show Cause seeking the same relief as well as several subpoena duces tecum seeking the documents as detailed on the petition as well as motions to inspect the buildings insurance policy and charging the Board with misconduct pursuant to BCL Section 720. Respondent has countered with multiple motions to dismiss as well as motion to quash the subpoena duces tecum. Notwithstanding the aforementioned procedural errors, this Court consolidates all motions and cross-motion as follows:

A motion to dismiss pursuant to C.P.L.R. § 3211(a) can be made by a party seeking to dismiss one or more causes of action against him on the ground that:

1. a defense is founded upon documentary evidence;
7. the pleading fails to state a cause of action.

A motion to dismiss pursuant to C.P.L.R. § 3211(a)(1) should be granted only where the documentary evidence submitted absolutely resolves all factual allegations made in the plaintiff’s complaint. Leon v. Martinez, 84 N.Y.2d 83. A motion to dismiss pursuant to C.P.L.R. § 3211(a)(7) requires that the Court favorably view the pleadings to determine whether a valid cause of action exists. Leon v. Martinez, 84 N.Y.2d 83 (1994). On a motion to dismiss pursuant to CPLR § 3211(a)(7) for failure to state a cause of action, the pleading is to be afforded a liberal construction (*see* CPLR § 3026). The court must accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.(See, Leon v. Martinez, 84 N.Y.2d 83, 87-88, 614 N.Y.2d 972 [1994]; Sokoloff v. Harriman Estates Dev. Corp., 96 N.Y.2d 409, 729 N.Y.S.2d 425, 754 N.E.2d 184 [2001]). A CPLR 3211 motion should be granted only where “the essential facts

have been negated beyond substantial question by the affidavits and evidentiary matter submitted.” Biondi v. Beekman Hill House Apartment Corp., 257 A.D.2d 76 (1st Dept. 1999). Factual claims either inherently incredible or flatly contradicted by documentary evidence are not presumed to be true or accorded favorable inference. Biondi v. Beekman Hill House Apartment Corp., supra, citing Kliebert v. McKoan, 228 A.D.2d 232, lv denied, 89 N.Y.2d 802. However, unless it has been shown that a claimed material fact as pleaded is not a fact at all and there exists no significant dispute regarding it, dismissal is not warranted. Guggenheimer v. Ginzburg, 43 N.Y.2d 268 (1977).

Real Property Tax Law 425(k)(iii)(B) states as follows:

Every co-operative apartment corporation, upon receiving an exemption pursuant to this section, shall credit the full amount of the STAR exemption to each eligible tenant-stockholder in *one of the following ways*: (emphasis added)

- (I) A full credit against the fees and charges of any single month within the current assessment cycle with any balance to be so credited in full for the following month or months until exhausted;
- (II) A proportional credit over six months during the current assessment cycle;
- (III) A proportional credit over the twelve months during the current assessment cycle;
- (IV) A payment of the total savings to the tenant-stockholder as an up-front, lump sum payment.

A review of the documents submitted by the Respondent, indicates that, Charlene Thompson’s account for Unit L-N was credited a STAR Rebate by deducting \$295.76 from the maintenance. That the Petitioner would rather receive the STAR exemption rebate as a “lump-sum” as opposed to a credit on the assessment is of no consequence. As indicated above, the statute allows for four different delivery methods to comply with Real Property Tax Law §425(2)(k)(iii)(B). Petitioner has failed to put forth competent proof that the respondents have not complied with the statute. See generally, Talubas v. 2555 East 12 Street Owners Corp., 39 Misc 3d 44 (App. Term 2013). This Court finds the remaining cross-motions brought by the Petitioner unavailing and without merit.

Accordingly, it is

ORDERED that Respondent’s motion to dismiss brought pursuant to C.P.L.R. 3211(a)(1)

and (a)(7) on February 5, 2015 is hereby granted in its entirety. It is further

ORDERED that Respondent's motion to dismiss brought pursuant to C.P.L.R. 3211(a)(1) and (a)(7) on February 25, 2015 is hereby granted in its entirety. It is further

ORDERED that Respondent's motion to dismiss brought pursuant to C.P.L.R. §§3211(a)(1) and (a)(7) on March 3, 2015 is hereby granted in its entirety. It is further ORDERED that the motion to quash the subpoena duces tecum filed on April 29, 2015 is denied as moot.

ORDERED that Petitioner's Cross-motions filed February 17, 2015 is denied as moot. It is further,

ORDERED that Petitioner's Cross-motions filed March 3, 2015 is denied as moot. It is further

ORDERED that Petitioner's Cross-motions filed March 4, 2015 is denied as moot. It is further

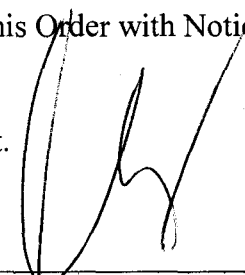
ORDERED that Petitioner's motion for the disclosure of the Buildings Insurance Policy and charging the Board with misconduct is denied. It is further

ORDERED that the Petition is dismissed under Index Numbers 250113/2015, Index No 251413/2014, 251433/2014 and the Clerk of the Court shall mark the Court files accordingly. It is further

ORDERED that Respondent shall serve a copy of this Order with Notice of Entry upon all parties within thirty (30) days of entry of the Order.

This constitutes the decision and order of this Court.

DATE **JUN 11 2015.**



HON. WILMA GUZMAN, JSC.