

**Board of Directors of Windsor Owners Corp. v Platt**

2015 NY Slip Op 33009(U)

February 23, 2015

Supreme Court, New York County

Docket Number: Index No. 155985/14

Judge: Peter H. Moulton

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This opinion is uncorrected and not selected for official publication.

Supreme Court of the State of New York  
New York County: Part 57

-----X  
BOARD OF DIRECTORS OF WINDSOR  
OWNERS CORP.

Plaintiff,

-against-

Index No. 155985/14

ELAINE PLATT,

Defendant.

-----X  
Peter H. Moulton, J.S.C.

As discussed in prior decisions and orders of the court in this action, and in a related action, this action concerns disputes among board members concerning governance at a residential cooperative owned by plaintiff. Defendant, who is an attorney proceeding pro se, is a dissident board member.

On September 4, 2014, the court heard oral argument on the parties' respective proposed orders to show cause. The court ultimately declined to sign both orders to show cause for reasons that were spread on the record on that date.

In its order to show cause, plaintiff sought an order holding defendant in contempt of a decision and order of the court dated August 22, 2014, which contained a preliminary injunction barring her from revealing the cooperative's attorney-client communications with its counsel. The court declined to sign plaintiff's order to show cause, finding that the underlying order

insufficiently stated a "clear and unequivocal mandate," which is one of the elements necessary of a finding of contempt. (See Storman v New York City Dep't of Education, 95 AD3d 776, appeal dismissed, 19 NY3d 1023.) The court found that it would be unfair to find defendant in contempt of the August 22<sup>nd</sup> order and issued another order, dated September 9, 2014, that clarified the preliminary injunction. While plaintiff's order to show cause was denied, it was based in fact and a good faith legal argument.

By contrast, defendant's order to show cause was utterly without merit. Defendant's order to show cause sought an order from this court limiting the other board members' rights to speak on matters concerning the cooperative if they were "disparaging of defendant." It also sought to forestall the board from removing defendant from the board by special meeting of the shareholders, and from soliciting proxies for same. She also sought an order directing the board to retract a mailing it had sent to shareholders describing the court's orders in this and a related case involving the parties. At oral argument, the court discussed the infirmities of the defendant's order to show cause and gave defendant the opportunity to submit an affirmation as to why she should not be sanctioned for frivolous behavior pursuant to 22 NYCRR § 130-1.1. Both parties offered submissions on this question. The court now sanctions defendant.

Defendant's order to show cause was frivolous because it

sought to bar action, including calling a special meeting and soliciting proxies for that meeting, that the board is empowered to take under the cooperative's governing documents. It also sought a prior restraint on board speech, and the retraction of a board memo to shareholders that with substantial accuracy described this court's decisions. The board's memo did not come close to defamation, as defendant argues. It is true that the memo did not state that the court gave defendant leave to move to assert counterclaims in the instant action. However, nothing prevents Platt from arguing her side of the story to the shareholders. The proper course for Platt is not to suppress the other board members' communications with shareholders, but rather to provide shareholders with her own version of events.

Throughout this litigation, defendant has attempted to enlist this court's assistance in censoring plaintiff's representations of her actions. That is not how corporate governance works. Defendant and her allies may respond to plaintiff's statements with statements of their own. A court is not an ongoing monitor of coop board discourse.

Defendant's order to show cause was thus frivolous as it was "completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law." (22 NYCRR § 130-1.1(1).) This should have been apparent to defendant, who is an attorney. This lack of reflection

has unfortunately been a hallmark of how defendant has litigated this action and its companion action.

Defendant's frivolous order to show cause caused plaintiff to expend attorneys' fees in opposition. Accordingly, defendant shall pay plaintiff \$800 toward its attorneys fees incurred in opposing defendant's order to show cause. Plaintiff shall make this payment by April 1, 2015.

This constitutes the decision and order of the court.

Dated: February 23, 2015



J.S.C.

**PETER H. MOULTON**  
**J.S.C.**