

Fujiko Sasaki v Wu

2017 NY Slip Op 30519(U)

February 28, 2017

Supreme Court, New York County

Docket Number: 651871/2016

Judge: Lucy Billings

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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FUJIKO SASAKI a/k/a FUJIKO DALY,
PETER DALY, and FUJIKO SASAKI,
Shareholder and Suing in the Right of
THE SOUNDINGS (A CONDOMINIUM
ASSOCIATION),

Index No. 651871/2016

Plaintiffs

- against -

DECISION AND ORDER

WILLIAM WU, KATTY LAU, COLLEEN MORAN,
THE SOUNDINGS BOARD OF MANAGERS, and
THE SOUNDINGS (A CONDOMINIUM
ASSOCIATION),

Defendants

-----X
LUCY BILLINGS, J.S.C.:

Plaintiffs have moved to hold defendant Soundings Board of Managers in contempt of the court's order dated May 10, 2016, N.Y. Jud. Law § 753(A)(3), which granted plaintiffs' motion for injunctive relief against the Board to the following limited extent. The court required the Board, upon plaintiffs' demand, to determine promptly whether to (1) grant any further extension to defendants Wu and Lau beyond May 8, 2016, to complete all construction, renovation, improvement, restoration, and repair work on their condominium units and (2) fine Wu and Lau for further days when such work is in progress. N.Y. Bus. Corp. Law § 626(c). Plaintiffs claimed that the work by Wu and Lau in their condominium units directly below plaintiffs' condominium unit had generated such noise as to render plaintiffs' unit uninhabitable.

In written correspondence dated May 10, 2016, plaintiffs demanded that the Board set a final date for the completion of all construction by Wu and Lau and impose penalties on them of \$100 per day for their continuing construction, as authorized by their Alteration Agreement with the Board. Plaintiffs pointed out that the construction by Wu and Lau had begun over 340 days before, when the Alteration Agreement originally required them to complete construction within 120 days. Plaintiffs also requested that the Board convene a meeting to discuss these issues, at which plaintiffs would be allowed to present their position to the Board.

In written correspondence dated May 27, 2016, the Board responded through its attorney that, because the construction by Wu and Lau was substantially completed, the Board had decided not to collect the \$100 per day authorized by their Alteration Agreement. The correspondence further responded that the Board would not be convening a meeting to address plaintiffs' demands and denied plaintiffs' request to present their position in person to the Board at such a meeting.

Plaintiffs claim that the Board has provided an inadequate reason for the decision not to collect the \$100 per day. Their attorney also claims that plaintiffs continue to live in an uninhabitable environment, but this claim is not on personal knowledge and is further unsupported by any allegation that the construction is continuing so as to generate any noise affecting plaintiffs' living environment. Finally, plaintiffs question

whether in fact a quorum of the Board convened, and a majority of that quorum arrived at the decision reflected in the attorney's response dated May 27, 2016.

Defendant Board has complied with the order dated May 10, 2016. Although the order did not expressly require the Board to explain its determination regarding any further extension to complete the construction or its determination not to fine Wu and Lau for further days when their work was in progress, the Board did not grant any further extension, a determination that plaintiffs do not challenge, and did explain its determination against a fine. Since no construction was continuing, and Wu and Lau had made no request to continue their construction, the Board adhered to its previous determination not to impose a fine, as it would serve no purpose in compelling completion of the construction. Since the \$100 per day was actually liquidated damages under the Alteration Agreement, the Board previously had determined that the building had not incurred any damages from the construction warranting compensation.

Nor did the order require the Board to respond to any demand by plaintiffs to meet with the Board, yet it responded to this demand and explained its denial of this demand as well. Since the issues regarding any further extension to complete the construction and the imposition of a fine were resolved, the Board determined that a meeting with plaintiffs was unnecessary. Moreover, they had thoroughly presented their position through both their correspondence dated May 10, 2016, and their prior

written communications to the Board.

The order neither required the Board to meet with plaintiffs, nor required the Board to meet at all to respond to plaintiffs' demand that the Board set a final date for the completion of construction by Wu and Lau and impose penalties on them of \$100 per day for their continuing construction. A quorum of the Board had held several meetings before May 10, 2016, when the majority present had determined not to impose a monetary penalty on Wu and Lau for their continuing construction up to May 8, 2016, but reserved the right to impose a penalty if construction continued beyond that date. Since none was continuing, and Wu and Lau had made no request to continue their construction, plaintiffs' demand dated May 10, 2016, presented no reason for the Board to meet further regarding the same issues previously determined. Similarly, since plaintiffs at least twice previously had asked to meet with the Board regarding those issues, and the Board had denied such a meeting, absent continuing construction or a request to continue the construction, plaintiffs' demand dated May 10, 2016, presented no further reason for the Board to meet with plaintiffs. The Board's previous determinations enabled its attorney to respond fully to plaintiffs' demand by conveying those positions already taken by the Board.

As set forth above, defendant Soundings Board of Managers has not neglected or violated any duty mandated by the court's order dated May 10, 2016, nor defeated, impeded, impaired, or

prejudiced plaintiffs' rights or remedies pursuant to that order. Karg v. Kern, 125 A.D.3d 527, 528-29 (1st Dep't 2015); Nimkoff v. Nimkoff, 39 A.D.3d 292, 292-93 (1st Dep't 2007); Attonito v. Maldonado, 3 A.D.3d 415, 418 (1st Dep't 2004); Clinton Corner H.D.F.C. v. Lavergne, 279 A.D.2d 339, 341 (1st Dep't 2001). See El-Dehdan v. El-Dehdan, 26 N.Y.3d 19, 28-29 (2015); Department of Env'tl. Protection of City of N.Y. v. Department of Env'tl. Conservation of State of N.Y., 70 N.Y.2d 233, 239-40 (1987); Burn v. Burn, 101 A.D.3d 488, 490 (1st Dep't 2012); Gryphon Dom. VI, LLC v. APP Intl. Fin. Co., 58 A.D.3d 498, 499 (1st Dep't 2009). Therefore the court denies plaintiffs' motion to hold defendant Soundings Board of Managers in contempt of the court's order dated May 10, 2016. N.Y. Jud. Law § 753(A)(3). Nothing in this decision, however, impairs plaintiffs' claim for damages against Wu or Lau for any past annoyance to plaintiffs or interference with their peaceful possession and use of their unit that Wu or Lau has caused plaintiffs or for any past bad faith or willful misconduct by Wu or Lau that otherwise has injured plaintiffs, as their condominium's by-laws provide.

DATED: February 28, 2017



LUCY BILLINGS, J.S.C.

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