

<b>Mani v Elite Mgt., Inc.</b>
2019 NY Slip Op 31165(U)
March 19, 2019
Supreme Court, Queens County
Docket Number: 711684/2018
Judge: Cheree A. Buggs
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Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS**  
**Justice**

IAS PART 30

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SHRESHTH MANI,

Index No.: 711684/2018

Plaintiff,

Motion

Date: March 6, 2019

-against-

Motion Cal. No.: 29

Motion Sequence No.: 2

ELITE MANAGEMENT, INC.,

Defendant.

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The following efile papers numbered 13, 27-33, 40-42 submitted and considered on this Order to Show Cause by plaintiff Shreshth Mani seeking an Order directing defendants to allow plaintiff to rent the apartment located at 7A at Bayside Plaza Condominium 213-02 42<sup>nd</sup> Avenue, Bayside, New York 11361, and related relief.

	<u>Papers Numbered</u>
Order to Show Cause -Affidavits-Exhibits.....	EF 27-33
Affirmation in Opposition.....	EF 40-42
Correspondence to Justice Buggs.....	EF 13

**FILED**  
MAR 26 2019  
COUNTY CLERK  
QUEENS COUNTY

Plaintiff Shreshth Mani (hereinafter "Mani") has filed the instant Order to Show Cause seeking an Order directing defendant Elite Management, Inc. (hereinafter "Elite") to, among other things, allow him to rent the apartment located at 7A at Bayside Plaza Condominium located at 213-02 42<sup>nd</sup> Avenue, Bayside, New York 11361. Mani claimed that he is the owner of the apartment which he purchased in 2004. Due to financial difficulties, in April 2016 he filed a Chapter 7 Bankruptcy petition in the United States Bankruptcy Court for the Eastern District of New York which was granted by the United States Bankruptcy Court for the Eastern District of New York on September 14, 2016. Despite his discharge in bankruptcy, on or about December 22, 2015, the United States of America commenced an action against him for the recovery of a Small Business Administration loan, which was in default. The action was settled for the sum of \$135,000.00 which was to be paid from the rental income of the subject apartment. Mani has since left the United States and has temporarily and moved to India.

He stated that the defendant has alleged that he has an outstanding amount of \$55,294.51 due for building common charges and/or carrying charges, which includes an assessment of charges which he has disputed. He stated that he has requested an annual financial statement and related documents from the defendant, and maintained that defendant is seeking monies which accrued prior to his bankruptcy filing. He has served the management company with several notices to correct the arrears, which have not been responded to. He has made a reasonable attempt to resolve the matter, including making a reasonable offer towards the payment of post-bankruptcy maintenance charges, including payment of surplus from the rent after paying the United States Government. Defendant has refused to allow any broker or agents from entering the apartment for the purposes of renting it. Mani seeks a Court Order allowing him to rent the subject apartment, directing defendants to provide access to brokers, visitors, agents and potential tenants for the apartment, to render complete and correct accounts and financials of the condominium and to appoint a Certified Public Account to audit and review the financials of the condominium. As a result of the failure of Elite to allow him to rent the subject apartment he alleged that he has lost potential revenues of approximately \$75,000.00 despite several notices sent to it by his attorney. Also, defendant's counsel, Fullerton & Beck LLP sent correspondence to the Court that they did not represent the defendant when plaintiff filed his prior Order to Show Cause which sought similar relief, which is disingenuous since he has numerous emails from defendant advising him to communicate with attorney Katrine Beck, Esq. from that firm.

The Court notes that Katrine Beck, Esq. of Fullerton & Beck LLP has opposed the Order to Show Cause on behalf of Elite. In opposition, Elite alleged that the Court did not have jurisdiction over this matter because in accordance with the Condominium's Bylaws and Rules, plaintiff is suing the property manager and not the Board of Managers, which operates the condominium. An affidavit of Joanne Kim (hereinafter "Kim") the President of the Board of Managers was annexed to the opposition papers. According to Kim, Mani filed for Bankruptcy protection on May 20, 2016. At that time he owed \$29,767.78 in unpaid common charges, assessments and fees. The amount now due and owing is \$35,731.79. Kim attested that Elite is the manager of the condominium, and a copy of the By-Laws and Rules was annexed to her affidavit. A copy of the account ledger had been obtained and annexed to the opposition papers as well, which it was explained was already provided to plaintiff and his counsel. Moreover, Elite maintained that plaintiff needed to submit a lease application to the Board of Managers for review and approval, however, according to the applicable By-Laws, unit owners cannot lease their apartments unless all unpaid common charges assessed against the unit are paid. Katrine Beck, Esq. did not make any arguments as to why she previously advised the Court that she did not represent defendant in relation to plaintiff's prior Order to Show Cause but was now representing Elite.

### **Law and Application**

"The condominium form of ownership is based on a bipartite scheme whereby participants own space purchased by them, as well as an undivided interest in the land, structures, and facilities held in common with all other owners in fee. Each individually owned space is designated as a "unit". Usually there is an agreement among the unit owners regulating the administration and maintenance of the property." (*See Frisch v Bellmarc Mgmt., Inc.*, 190 AD2d 383 [2d Dept 1993].)

“The basic agreement among the unit owners as to the manner in which the condominium shall be administered and maintained is set forth in the condominiums by-laws. Under the Condominium Act, there are a number of mandatory items which the by-laws of a condominium must contain, including provisions for the nomination and election of a board of managers to serve as the principal agents of the condominium and a statement of the powers and duties of that board.” (*see Schoninger v Yardarm Beach Homeowners Assn., Inc.*, 134 AD2d 1 [2d Dept 1987]; *see also* Real Property Law §339-v[1][a]).

Section 339-j of the Real Property Law titled Compliance with by-laws and rules and regulations states the following:

“Each unit owner shall comply strictly with the by-laws and with rules, regulations, resolutions and decisions adopted pursuant thereto. Failure to comply with any of the same shall be ground for an action to recover sums due, for damages or injunctive relief, or both maintainable by the board of managers on behalf of the unit owners, or in a proper case, by an aggrieved unit owner...”

According to Real Property Law section 339-u, titled By-laws.

“The operation of the property shall be governed by by-laws, a true copy of which shall be annexed to the declaration. No modification of or amendment to the by-laws shall be valid unless set forth in an amendment to the declaration and such amendment is duly recorded.”

It is clear that the subject apartment is a condominium. The condominium is operated by a Board of Managers, not Elite Management, Inc. in accordance with the Condominium’s Bylaws and Rules, as stated in the affidavit of Joanne Kim, the President of the Board of Managers. Therefore plaintiff has commenced this action against the wrong party. Defendant should be suing the Board of Managers of the Condominium, not Elite Management Inc., which is the property manager (*see* New York Condominium Act, Article 9-B, Real Property Law §339-j and §339-u.) Thus, the Court is without any jurisdiction to address the plaintiff’s requested relief until the correct party is brought into the case.

Therefore, based upon the foregoing it is

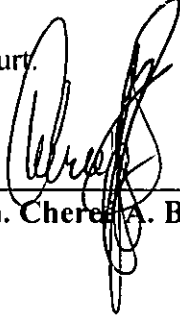
**ORDERED**, that the plaintiff’s Order to Show Cause is denied; and it is further

**ORDERED**, that plaintiff is granted leave to file and serve an amended summons and verified complaint within sixty (60) days from the date of this Order served with Notice of Entry; and it is further

**ORDERED**, that the law firm of Fullerton & Beck LLP is directed to pay plaintiff's attorney's fees and costs associated with this Order to Show Cause.

This constitutes the decision and Order of the Court.

Dated: March 19, 2019

  
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Hon. Chere A. Buggs, JSC

**FILED**  
MAR 26 2019  
COUNTY CLERK  
QUEENS COUNTY