

Sunside Realty LLC v Croydon Manor Apt. Corp.

2019 NY Slip Op 31536(U)

April 10, 2019

Supreme Court, Queens County

Docket Number: 701046/18

Judge: Allan B. Weiss

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE ALLAN B. WEISS IAS PART 2
Justice

SUNSIDE REALTY LLC and ISRAEL SPIRA,

Index No.: 701046/18

Plaintiffs,

Motion Date: 10/10/18

-against-

Motion Seq. No.: 4

CROYDON MANOR APT. CORP. and SECKER
MANAGEMENT COMPANY INC. d/b/a
NEW CITY REALTY COMPANY,

Defendants.

FILED
APR 19 2019
COUNTY CLERK
QUEENS COUNTY

X

The following papers read on this motion by plaintiffs Sunside Realty LLC (Sunside Realty) and Israel Spira for an order enjoining the Co-op's Board from conducting any Co-op business outside of formal board meetings with proper notice to all board members; directing the Co-op's board to comply with the April 17, 2018 stipulation, and provide plaintiff Israel Spira with all requested documentation therein, as well as all documents that refer or relate to corporate actions taken without his knowledge or participation; and awarding costs and attorney's fees incurred in connection with this motion in accordance with the terms of the proprietary lease.

Papers
Numbered

Order to Show Cause-Affidavit-Exhibits-Memorandum of Law	EF 60-78
Opposing Affirmation-Exhibits-Memorandum of Law.....	EF 81-96
Reply Affidavit-Exhibits-Memorandum of Law.....	EF 100-105

Upon the foregoing papers the motion is determined as follows:

Sunside Realty Corp. was the owner of a residential rental apartment building located at 43-08 41st Street, Sunny side, New York, and was the sponsor of a non-eviction offering plan to convert said rental building to cooperative ownership. Defendant Croydon Manor Apt. Corp. (Croydon) is the present owner of said property, and plaintiff Sunside Realty is

the successor to the sponsor. Sunside Realty owns 62% of the unsold shares, representing 32 apartments. There are 20 cooperative apartments owned by the tenant/shareholders.

Plaintiff Sunside Realty and Israel Spira commenced the within action on January 22, 2018, against Croydon and Secker Management Company, Inc., d/ba/ New City Realty Company. Mr. Spira is alleged to be Sunside Realty's representative, with a right to vote as the proxy of Sunside Realty, and as a member of Croydon's Board of Directors.

The verified complaint's first cause of action seeks the inspection of Croydon's books and records, which are alleged to be kept by Croydon's agent, defendant Secker Management Company Inc. d/b/a New City Realty Company. The second cause of action seeks to recover attorney's fees, pursuant to the terms of the lease and Real Property Law §234. The third cause of action for declaratory judgment seeks a declaration "enjoining Defendants from depriving Sunside [Realty] and Spira of their full voting rights as a shareholder and director of Croydon, respectively". In the fourth cause of action for declaring judgment, plaintiffs "request that, together with a declaratory judgment enjoining Defendants from depriving Plaintiffs of their full voting rights, this Court order Croydon to hold an immediate meeting of the shareholders, pursuant to the By-Laws, at which Plaintiffs may exercise their voting rights".

The verified complaint's wherefore clause, with respect to the third and fourth causes of action seek "[a]n order declaring that Plaintiffs have full voting rights in accordance with the By-Laws, including that Sunside may vote for all members of the Board, including the three resident Board members" and "[a]n Order requiring Croydon to hold an immediate meeting of Croydon's shareholders pursuant to the By-Laws".

Defendants served a verified answer and interposed affirmative defenses and a counter claim for legal fees pursuant to the terms of the proprietary lease between Sunrise Realty and Croydon. Plaintiffs served a verified reply to the counterclaim, and interposed affirmative defenses.

This court in an order dated February 13, 2019 (motion sequence number 3) granted plaintiffs' motion for partial summary judgment and with respect to the third cause of action declared that Sunside Realty is entitled to vote all of its shares for candidates for the Board of Directors, provided that no candidate shall be part of a slate prepared by Sunside Realty or receives a salary or other remuneration from Sunside Realty; granted summary judgment on the fourth cause of action and enjoined defendants from depriving Sunside Realty of its voting rights as a shareholder of Croydon; and directed the cooperative corporation to hold an annual meeting of the shareholders for the purpose of electing the Board of Directors in accordance with the bylaws; and denied the defendants' cross motion to turn over certain documents, and to consolidate the action with another pending action. The court's records

reveal that said order was e-filed on February 21, 2109 and notice of entry was e-filed February 25, 2019.

While motion sequence number 3 was sub judice, plaintiffs' served the within order to show cause, dated January 23, 2019, seeking a preliminary injunction against the cooperative's Board of Directors, and an award of costs and attorney's fees.

The "purpose of a preliminary injunction is to preserve the status quo pending a trial" and "the remedy is considered a drastic one, which should be used sparingly" (*Trump on the Ocean, LLC v Ash*, 81 AD3d 713 [2nd Dept 2011]). "As a general rule, the decision to grant or deny a preliminary injunction lies within the sound discretion of the Supreme Court." (*Id.*; *Doe v Axelrod*, 73 NY2d 748 [1988]). "In exercising that discretion, the Supreme Court must determine if the moving party has established: (1) a likelihood of success on the merits, (2) irreparable harm in the absence of an injunction, and (3) a balance of the equities in favor of the injunction." (*Trump on the Ocean, LLC v Ash*, 81 AD3d 713, 715 [2nd Dept 2011]; *Aetna Ins. Co. v Capasso*, 75 NY2d 860 [1990]; *W. T. Grant Co. v Srogi*, 52 NY2d 496[1981]).

Plaintiffs two remaining causes of action seek to review, inspect and copy Croydon's books and records which are allegedly maintained by its managing agent, and to recover attorney's fees, costs and disbursements, pursuant to the terms of the lease and Real Property Law § 234. Croydon's Board of Directors is not a party to the within action, and the complaint does not allege a cause of action against the Board of Directors, or its individual members.

Plaintiffs, in an Order to Show Cause returnable April 17, 2018, requested that this Court direct the defendants to make available certain books and records of the defendant corporation. Said motion was resolved by the parties, pursuant to a stipulation of settlement, that was e-filed on April 17, 2018, in which the defendants agreed to provide certain documents as enumerated therein, by April 20, 2018, agreed to provide access for the inspection of all files for transfers since January 2008, and to provide copies of materials of a non-personal nature, upon request. The cooperative's Board of Directors was not a party to the April 2018 stipulation.

That branch of the motion which seeks to enjoin the Board of Directors from conducting any Co-op business outside of a formal Board meeting with proper notice to all Board members, is denied. Plaintiffs cannot establish the likelihood of success on the merits, as Croydon's Board of Directors is not a party to this action, and the complaint does not allege any claims against the Board of Directors. To the extent that Mr. Spira complains that he has been improperly excluded, as member of the Board, from engaging in corporate decisions and being privy to various matters of the cooperative, these claims have not asserted in the within complaint, and may not be litigated under the guise of an injunction.

That branch of the motion which seeks to compel the Board of Directors to comply

with the April 2018 stipulation is denied, as the Board of Directors was not party to said stipulation.

To the extent that Mr. Spira seeks to compel defendants to provide him with certain documents pertaining to the sale of Apartment 3E, said request is now moot, he concedes in his reply affidavit that said documents have been provided, in compliance with the temporary restraining order contained in the within Order to Show Cause.

That branch of the motion which seeks to compel the Board of Directors to provide Spira with copies of a schedule of fees in connection with the refinancing of the cooperative's mortgage and a schedule of fees charged by defendants' counsel, demanded in emails dated December 19, 2018, and December 28, 2018, is denied as the Board of Directors is not a party to this action. To the extent that said emails were also sent to the defendant management company, and were not responded to, that branch of the motion directing defendant Secker Management Company to furnish plaintiffs with said documents is granted.

Accordingly, the plaintiffs' motion for injunctive relief with respect to the Board of Directors is denied. That branch of the motion which seeks to compel defendant Secker Management Company to furnish plaintiffs with copies of the schedules of fees set forth in the email demands of December 19, 2018 and December 28, 2018 is granted, and defendant is directed to provide copies of said documents to plaintiffs within 20 days of the service of this order, together with notice of entry. That branch of the motion which seeks to recover attorney's fees in connection with this motion is denied.

Dated: April / 9 2019

.....
J.S.C.

FILED
APR 19 2019
COUNTY CLERK
QUEENS COUNTY