

**Rosario v Shorehaven Homeowners Assn., Inc.**

2019 NY Slip Op 32061(U)

May 10, 2019

Supreme Court, Bronx County

Docket Number: 23244/2019E

Judge: Julia I. Rodriguez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF THE BRONX

-----X **Index No. 23244/2019E**

Haydee Rosario,  
  
Plaintiff,  
  
-against-

**DECISION and ORDER  
DENYING ORDER TO  
CAUSE**

Shorehaven Homeowners Association, Inc.,  
  
Defendant.

Present: Hon. Julia I. Rodriguez  
Supreme Court Justice

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Recitation, as required by CPLR 2219(a), of the papers considered in review of plaintiff's order to show cause for a preliminary injunction.

<u>Papers Submitted</u>	<u>Numbered</u>
OSC, Affirmation & Exhibits	1
Affirmation in Opposition & Exhibits	2
Reply Affidavit & Exhibits	3

In the verified complaint, plaintiff asserts two causes of action titled Declaratory Judgment/Injunction and Preliminary Injunction, respectively. In her first cause of action, plaintiff seeks: (1) a declaratory judgment that defendant Shorehaven Homeowners Association, Inc. ("SHOA") is in violation of its by-laws by refusing to call a special meeting for the purpose of holding elections as demanded by plaintiff; and (2) an injunction compelling SHOA to call a special meeting for the purpose of holding said elections. In her second cause of action, plaintiff seeks a preliminary injunction (1) compelling SHOA to notice and hold a special meeting for the sole purpose of electing nine new directors to the board; and (2) enjoining SHOA from entering into any contracts and agreements, commencing or prosecuting lawsuits, or making expenditures of SHOA funds in excess of \$500 until a special meeting and election is held.

Plaintiff now moves by order to show cause for a preliminary injunction: (1) compelling SHOA to call a special meeting for the sole purpose of removing all current SHOA Directors of the Board and holding elections for nine new SHOA Directors of the Board; and (2) enjoining SHOA from entering contracts and agreements, commencing or

prosecuting lawsuits, or making expenditures of SHOA funds in excess of \$500 until a special meeting and election is held.<sup>1</sup>

At the outset, the Court notes that plaintiff seeks by OSC the same preliminary injunctive relief that she seeks in her verified complaint. Whereas the purpose of a preliminary injunction is to *maintain* the status quo until the underlying litigation is resolved, here, the underlying litigation is, in part, to obtain a preliminary injunction. In effect, the OSC is seeking the ultimate relief sought in the complaint absent the prerequisite litigation process.

In any event, for the reasons set forth below, the Court finds that plaintiff is not entitled to the relief requested in the OSC.

Plaintiff is a resident of the Shorehaven Condominium Development (“the Development”) and a former SHOA board member. There are 897 members of the SHOA. Due to a dispute regarding the 2019 Budget approved by the SHOA board, plaintiff resigned from the board effective January 1, 2019. On or about January 23, 2019, plaintiff made a demand for a “special meeting” for the purpose of removing all current board members and electing nine new board members by serving a petition, signed by 366 SHOA members (40.8% of the SHOA membership), upon the Secretary of the SHOA Board. The petition was rejected by the Board on the ground that “the purpose for which the meeting is sought is one which violates the Declaration and the Bylaws of the SHOA,” and this lawsuit ensued.

The pertinent sections of the By-Laws:

Article 2, Section 2.1-2 of the SHOA By-Laws states that “[e]ach member of the Board . . . except as otherwise provided herein . . . shall be elected at the annual meeting of

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<sup>1</sup>Plaintiff also moved for a temporary restraining order which was struck from the OSC by the Hon. James W. Hubert, who signed the OSC.

the Members and shall serve until the next annual meeting thereof and until successors have been elected and qualified.”

Article 2, Section 2.5 states that “[a]ny Board member may be removed, with or without cause, by a majority vote of Members present in person or by proxy at a regular or special meeting of Members at which a quorum is present. Any Board member whose removal has been proposed shall be given an opportunity to be heard at the meeting . . .”

Article 2, Section 2.6 states that “any vacancy on the Board for whatever reason shall be filled by members of the Board then in office . . . [and that individual] shall be a member of the Board until the next annual meeting of the Members. . .”

Article 3, Section 3.1 states that “annual meetings of Members shall be held within approximately thirty (30) days of each anniversary of the filing of the Declaration. At such meetings, the members shall elect the nine member Board.”

Article 3, Section 3.3, states that “[t]he President of the Board shall call a special meeting of Members, if so directed by resolution of the Board or upon a petition signed and presented to the Secretary of the Board by not less that 25% of the Members.”

The annual Membership meeting is currently held in June.

Plaintiff contends that Section 2.5 authorizes the removal of all nine board members and election of nine new board members simultaneously at a special meeting by majority vote of the SHOA membership. Relying upon Sections 2.1-2, 2.6 and 3.1, defendant contends that membership may only vote in members of the Board of Directors at annual meetings. Defendant also contends that, since the next annual meeting will be held in June, it would not be cost-effective to conduct two elections less than two months apart.

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To prevail on a motion for a preliminary injunction, the moving party must establish: (1) the likelihood of success on the merits; (2) irreparable injury if a preliminary injunction is withheld; and (3) that a balance of the equities favor the moving party’s position. *Nobu*

*Next Door LLC v. Fine Arts Housing, Inc.*, 4 N.Y.3d 839, 800 N.Y.S.2d 48 (2005); *Doe v. Axelrod*, 73 N.Y.2d 748, 532 N.E.2d 1272 (1988). Here, plaintiff has failed to meet any of these criteria. Plaintiff has failed to establish a likelihood of success on the merits. There is no provision which expressly authorizes the removal of the entire board and election of a new board at a special meeting. On the other hand, Section 3.1 *requires* SHOA membership to elect all nine members of the Board at the annual meetings. Also, Section 2.6 requires that any Board vacancies be “filled” by the remaining members of the Board, not by vote of SHOA membership. Based upon those provisions, it seems clear that the By-Laws do not contemplate the removal of the entire Board and election of a new Board at a special meeting. Therefore, plaintiff failed to establish a likelihood success on the merits. Also, plaintiff has not demonstrated irreparable injury in the absence of an injunction. Plaintiff’s primary complaint involves increased costs and the distribution of costs among SHOA membership reflected in the 2019 budget. In this regard, the Court notes that a new Board will be elected in less than two months and the new Board may elect to modify the budget. Plaintiff can also seek to be compensated with money damages. Nor do the equities militate in plaintiff’s favor. As defendant notes, the Board has real estate taxes, water bills and other monthly expenses well in excess of the \$500 limit sought by plaintiff. Indeed, if defendants are prevented from paying the Development’s operating expenses, the property may fall into disrepair and all SHOA membership may experience diminished services and property values.

Based upon the foregoing, plaintiff’s order to show cause is **denied in its entirety**.

Dated: Bronx, New York  
May 10, 2019

  
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Hon. Julia I. Rodriguez, J.S.C.