

Borini v Sixty Sutton Corp.

2019 NY Slip Op 32489(U)

August 22, 2019

Supreme Court, New York County

Docket Number: 655375/2018

Judge: Debra A. James

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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**

PRESENT: HON. DEBRA A. JAMES

PART IAS MOTION 59EFM

Justice

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INDEX NO. 655375/2018

JOANNE BORINI and JOSEPH BORINI,

MOTION DATE 08/22/2019

Plaintiffs,

MOTION SEQ. NO. 001

- v -

SIXTY SUTTON CORP., HELENE BLANK, STEVE GOLD,
STEPHEN ZELMAN, MONICA STAUBER, IGOR
MURAVCHIK, DONOVAN SPAMER, MADELEINE
FELDMAN, FRANK ALWILL, BERNADETTE KRIFTCHEK,
CAROL LEHTI, and JOSEPH FUREY,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 54, 72

were read on this motion to/for PRELIMINARY INJUNCTION

ORDER

Upon the foregoing documents, it is

ORDERED that the Order to Show Cause dated October 31, 2018 to the extent that plaintiffs seek permission to conduct limited, expedited discovery of defendant Sixty Sutton Corp.; non-party Brown Harris Stevens Management, LLC; and non-party architect concerning plaintiffs' claims that defendant Sixty Sutton Corp. breached the plaintiffs' proprietary lease and written alteration agreement and that the board of directors of defendant Sixty Sutton Corp. acted in bad faith and in breach of the fiduciary duty it owed plaintiffs is denied; and it is further

ORDERED that the Order to Show Cause dated October 31, 2018 to the extent that plaintiffs seek a preliminary injunction against defendants enjoining defendants Sixty Sutton Corp., its board of directors and agents from interfering with plaintiffs' rights and efforts to complete the renovation of their cooperative apartment known as Unit 14C/D North (the Apartment), located at 60 Sutton Place South, New York, New York is granted; and further

It appearing to this Court that a cause of action exists in favor of the plaintiffs and against the defendants and that the plaintiffs are entitled to a preliminary injunction on the ground that affirmative action by the defendants is necessary to preserve the status of the parties the absence of which would tend to render the judgment ineffectual, as set forth in the aforesaid decision; and the plaintiffs have demanded and would be entitled to a judgment restraining the defendants from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiffs, as set forth in the aforesaid decision, it is

ORDERED that the undertaking is fixed in the sum of \$ _____ to be determined at a hearing on a date to be set by this court, conditioned that the plaintiffs, if it is finally determined that they were not entitled to an injunction,

will pay to the defendants all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that for ninety (90) days from posting of the undertaking by plaintiffs, defendants, their agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of defendants, are enjoined and restrained, during the pendency of this action, from doing or suffering to be done, directly or through any attorney, agent, servant, employee or other person under the supervision or control of defendant or otherwise, any of the following acts: interfering with plaintiffs' rights and efforts to complete the renovation of their cooperative apartment known as Unit 14C/D North (the Apartment), located at 60 Sutton Place South, New York, New York, on condition that plaintiffs cause their contractor to use carpet insulation and sound boards on floors where work is being done; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 331, 60 Centre Street, New York, New York, on October 29, 2019, at 9:30 AM.

DECISION

While courts are generally "reluctant" to grant mandatory preliminary injunctions (Jameson v Hartford Fire Ins. Co., 14 App Div 380, 391 [1897, Barrett, J., concurring]), and such relief will be granted only where "the right [thereto] is clearly established" (id.; see also Rosa Hair Stylists, 218 AD2d at 794 [the movant must show "a clear right to mandatory injunctive relief"]), cases do

arise where a provisional remedy of this nature is appropriate (see Chrysler Corp. v Fedders Corp., 63 AD2d 567 [1978] [granting mandatory preliminary injunction directing defendant to secure funds for payment of dividends sought by plaintiff in the action pending determination thereof]; cf. McCain v Koch, 70 NY2d 109, 116 [1987] ["in a proper case Supreme Court has power as a court of equity to grant a temporary injunction which mandates specific conduct by municipal agencies"]). As the Court of Appeals observed more than a century ago: "[W]here the complainant presents a case showing or tending to show that affirmative action by the defendant, of a temporary character, is necessary to preserve the status of the parties, then a mandatory injunction may be granted" (Bachman v Harrington, 184 NY at 464).

Second on Second Café, Inc. v Hing Sing Trading, Inc., 66 AD3d 255, 265 (1st Dept. 2009).

The parties in this action are at a complete impasse, with the partial renovation of the Apartment, which has been plaintiffs' home for more than one decade, the Apartment sitting vacant and unused, the temporary alternative living arrangements of plaintiffs and their child, the undermining of the value of the entirety of 60 Sutton Place South, with no end in sight and anticipated very protracted litigation. Though the grant of this provisional remedy provides plaintiffs with significant ultimate relief that they request in their complaint, this court finds that the above-described impasse constitutes an extraordinary circumstance. Defendants do not challenge plaintiffs' evidence that defendants' own architect found approximately ninety (90) days to complete the renovation to be "valid and reasonable".

The remaining issues in this action are not at all narrow, and thus expedited discovery is unwarranted. Compare Congel v Malfitano, 84 AD3d 1145 (2d Dept. 2011).

8/22/2019
DATE

Debra A. James
DEBRA A. JAMES, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE