

**Sharonarn Assocs., Inc. v One Beekman Owner,  
LLC**

2019 NY Slip Op 32750(U)

September 16, 2019

Supreme Court, New York County

Docket Number: 655257/2019

Judge: Andrew Borrok

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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. ANDREW BORROK PART IAS MOTION 53EFM

Justice

-----X

SHARONARN ASSOCIATES, INC.
Plaintiff,

- v -

ONE BEEKMAN OWNER, LLC,
Defendant.

-----X

INDEX NO. 655257/2019
MOTION DATE N/A
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Sharonarn Associates, Inc. (Sharonarn) moves for a preliminary injunction against One Beekman Owner, LLC (One Beekman) both with respect to (I) the marketing of the property located at 33 and 34 Park Row, New York, New York as anything other than the "The Pearl of the Park", and (II) the sale of unit 6B in the condominium located at 33 and 34 Park Row, New York, New York. For the reasons set forth on the record (09/16/2019) and as otherwise set forth below, the first branch of the motion is withdrawn without prejudice and the second branch of the motion is denied.

A preliminary injunction will only be granted where the movant demonstrates (i) a likelihood of ultimate success on the merits, (ii) a danger of irreparable injury, and (iii) a balance of the equities in its favor (1234 Broadway LLV v West Side SRO Law Project, 86 AD3d 18, 23 [1st Dept 2011]). A preliminary injunction serves to "maintain the status quo [pending a hearing on the merits] and prevent the dissipation of property that could render a judgment ineffectual"

[*Ruiz v Meloney*, 26 AD3d 485, 486 [2d Dept 2006]]. Because “[a] preliminary injunction substantially limits a defendant’s rights,” it is considered “an extraordinary provisional remedy requiring a special showing” (*id.*, citing *Margolies v Encounter, Inc.*, 42 NY2d 475, 479 [1977]).

Reference is made to a certain Agreement of Purchase and Sale (the **PSA**), dated August 26, 2014, by and between Sharonarn and Urban Muse, LLC (**Urban Muse**) (NYSCEF Doc. No. 7), as such Original PSA was assigned from Urban Muse to One Beekman pursuant to a certain Assignment and Assumption of Agreement of Purchase and Sale (the **Assignment**), dated October 22, 2014, by and between Urban Muse and One Beekman (NYSCEF Doc. No. 8), as amended by a First Amendment to Agreement of Purchase and Sale (the **First Amendment**), dated November 19, 2014, by and between Sharonarn and One Beekman as successor-in-interest to Urban Muse (NYSCEF Doc. No. 9), as further amended by a Second Amendment to Agreement of Purchase and Sale (the **Second Amendment**; the Original PSA as assigned by the Assignment, together with the First Amendment and Second Amendment, hereinafter, the **Agreement**), dated July 31, 2016, by and between Sharonarn and One Beekman (NYSCEF Doc. No. 10).

I. Marketing of the Redeveloped Property (as such term is defined in the Agreement)

Paragraph 28 of the Agreement provides, in relevant part:

Purchaser hereby acknowledges and agrees that any condominium that Purchaser creates with respect to the Redeveloped Property will be named, marketed and commercially known as, “The Pearl on the Park” (NYSCEF Doc. No. 7 ¶ 28).

It is undisputed that some of the marketing materials used to market the Redeveloped Property market the Redeveloped Property as the Pearl in the Park. Sharonarn's complaint however is that the marketing website and some of the other marketing materials do not also refer to the Redeveloped Property as the Pearl on the Park. That is, according to Sharonarn, One Beekman's obligation is to market the Redeveloped Property solely as the Pearl in the Park. In opposition, One Beekman argues, *inter alia*, that the express language of Section 28 of the Agreement does require the Redeveloped Property to be marketed *exclusively* or *solely* as the Pearl on the Park, and not by way of example, by its address also. In any event, following oral argument, the parties agreed to resolve this portion of Sharonarn's request for injunctive relief by stipulation pursuant to which One Beekman agreed to add the Pearl on the Park to its marketing website and to cause its marketing agent to do the same. Accordingly, the first branch of motion is withdrawn without prejudice.

## II. Unit 6B of the Redeveloped Property

The Agreement provides a purchase option for residential units and also for a retail unit. The residential option is set forth in Section 29, the retail option is set forth in Section 31.

Section 29 of the Agreement Residential Option to Purchase provides:

29.1 Seller shall have the option to purchase up to two (2) Residential Units (hereinafter defined) in the Redeveloped Property, if and only if Purchaser elects to offer Residential Units for sale to the public (whether pursuant to a condo plan or a co-op plan), exercisable only at any time within ninety (90) days after the date Purchaser has delivered to seller (a) notice that the initial offering plan relating to the sale of Residential Units has been accepted for filing by the New York State Attorney General and (b) a copy of the accepted offering plan (the "Offering Plan") or within fifteen (15) years following the date of the Closing, whichever first occurs. For purposes of clarification, if Purchaser elects not to offer Residential

Units for sale to the Public, the Residential Option described herein shall not apply and this Section 29 and all related provisions throughout this Agreement shall be deemed omitted from this Agreement. If the Residential Option applies, and Seller elects to purchase a Residential Unit or Units, ***Seller shall do so by executing and delivering the standard contract of purchase in accordance with such Offering Plan***, with a contract deposit of no more than 20% and no additional sums due thereunder until Closing and subject to completion of construction of each such purchased unit and reasonable access thereto and issuance of a TCO (NYSCEF Doc. No. 7 ¶ 29.1 [emphasis added]).

It is undisputed that the original time set forth in Section 29 of the Agreement to exercise the residential purchase option expired on August 29, 2018 without One Beekman exercising the purchase option. Sharonarn, however, argues that One Beekman extended the time to exercise the residential purchase option and that it exercised the Residential Option by sending in an executed redlined marked agreement with appropriate checks (NYSCEF Doc. No. 26). In support of their argument, Sharonarn proffers certain emails attached to their moving papers which they argue extended the time to exercise the Residential Option (NYSCEF Doc. No. 7). Based on the emails, Sharonarn argues that it can demonstrate likelihood of success on the merits in support of the injunctive relief that it seeks. The argument is unpersuasive. As an initial matter, it is not clear from the emails whether there was an extension of the time to exercise the Residential Option or if the extension referred to in the emails only applied to the Retail Option. To wit, the Retail Option was scheduled to expire on June 8, 2018 (the Residential Unit, on August 29, 2018) and the extension set forth in the June 7, 2018 email extended the time for exercise until July 6, 2018 (*id.*, at 10). Clearly this extension could not have referred to the Residential Option as an extension to July would actually have cut short the time that Sharonarn otherwise had to exercise the Residential Option. Moreover, a letter agreement attached to first email in the June 7, 2018 email chain expressly refers to the retail option only.

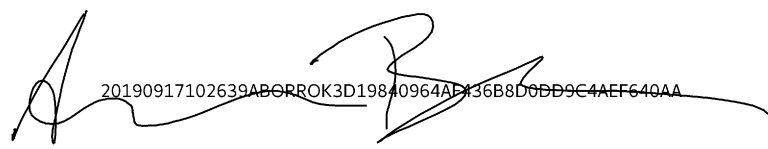
In addition, and equally important, Sharonarn never exercised the Residential Option in the manner required by Section 29 of the Agreement. It never sent in the standard contract of purchase attached to the Offering Plan as required by Section 29 of the Agreement. It sent a different version of the contract and after the period required for exercise by the terms of the Agreement had expired. In other words, it is equally plausible that the One Beekman may very well have, as the Sharonarn argues, continued to negotiate with the Sharonarn for the purchase of Unit 6B in good faith but without obligation to do so as the Residential Option had expired – *i.e.*, if a deal other than the deal set forth in the standard form of purchase and sale could be reached, One Beekman may very well have been willing to sell Unit 6B to Sharonarn. Accordingly, Sharonarn has not demonstrated a likelihood of ultimate success on the merits, and the motion for a preliminary injunction is denied.

Therefore, it is

ORDERED that that first branch of Sharonarn’s motion for a preliminary injunction is withdrawn and the second branch of Sharonarn’s motion is denied; and it is further

ORDERED that the defendant shall file an answer within 20 days and the parties shall appear for a preliminary conference on November 18, 2019 at 11:30 AM (60 Centre Street, Room 238).

9/16/2019  
DATE



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ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED       NON-FINAL DISPOSITION  
 GRANTED               DENIED               GRANTED IN PART       OTHER

APPLICATION:

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE