

Board of Mgrs. of the Alfred Condominium v Wu

2020 NY Slip Op 30678(U)

March 5, 2020

Supreme Court, New York County

Docket Number: 160791/2017

Judge: W. Franc Perry

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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. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

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INDEX NO. 160791/2017

THE BOARD OF MANAGERS OF THE ALFRED
CONDOMINIUM, ON BEHALF OF ALL UNIT OWNERS,

MOTION DATE 09/17/2019

Plaintiff,

MOTION SEQ. NO. 004

- v -

GRACE WU, A/K/A GRACE HUIMEI HUANG WU, A/K/A
GRACE HUMEI HUANG, JOHN DOE NO. 1 THROUGH
JOHN DOE NO. 10, THE NAMES BEING FICTITIOUS AND
UNKNOWN, THE PERSONS OR PARTIES INTENDED
BEING THE TENANTS, OCCUPANTS, PERSONS OR
ENTITIES, IF ANY, HAVING OR CLAIMING ANY
INTEREST IN OR LIEN UPON THE PREMISES
DESCRIBED IN THE COMPLAINT,

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 35, 36, 37, 38, 39,
40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54

were read on this motion to/for CONFIRM/DISAPPROVE REPORT

In motion sequence 004, Plaintiff Board of Managers of the Alfred Condominium (the
"Board") seeks an order pursuant to CPLR 4403 and 22 CCR-NY 202.44 to deny in part and
confirm in part the June 24, 2019 Report of Judicial Hearing Officer Philip S. Straniere.
Specifically, Plaintiff asks that the Court deny his recommendation that Plaintiff is entitled to a
lien in the amount of \$37,648.30 and confirm his recommendation that Plaintiff is entitled to
\$92,562.28 in damages arising from Defendant Grace Wu's breach of contract. Additionally,
Plaintiff seeks an order deeming the instant motion timely nunc pro tunc, as the motion was
brought 14 days after the 15-day time limit provided in CPLR 4403 and 22 CCR-NY 202.44. The
motion has been submitted unopposed.

BACKGROUND

The current motion deals with the interpretation of the term “Common Charges”. Briefly, this court granted Plaintiff’s motion for default judgment and referred the matter to the JHO to hear and report on the amount due to Plaintiff. The JHO concluded that Plaintiff was entitled to a lien on Defendant’s unit in the amount of \$37,648.30 and that Plaintiff was entitled to damages in the amount of \$92,562.28 on its breach of contract claim. (JHO Report at 6, NYSCEF Doc No. 32.) The lien amount of \$37,648.30 was calculated by adding \$34,233.13 of overdue common charges, \$2,575.33 of special assessments, and \$839.84 of capital assessments. The JHO then calculated damages by taking the \$37,648.30 amount and adding \$23,061.82 in attorneys’ fees, \$30,302.16 in cleaning fees, and \$1,550.00 in storage fees.

Plaintiff asks the court to confirm the JHO’s calculation of damages but argues that the court should reject the JHO’s lien calculation. Rather, Plaintiff contends that the lien amount should be \$91,012.28 because the attorneys’ and cleaning fees (the “Other Fees”) also constitute common charges pursuant to provisions of the Condominium Bylaws, and thus are applicable toward the lien amount. (Kelly A. Ringston Affirmation at 6-7, NYSCEF Doc No. 36.)

DISCUSSION

Real Property Law (“RPL”) § 339-z states that the “board of managers [of condominiums], on behalf of the unit owners, shall have a lien on each unit for the unpaid common charges thereof[.]” “Common charges means each unit’s proportionate share of the common expenses in accordance with its common interest.” (RPL § 339-e [2] [internal quotation marks omitted].) And, “[c]ommon expenses means and includes (a) Expenses of operation of the property, and (b) All sums designated common expenses by or pursuant to the provisions of this article, the [condominium] declaration or the by-laws.” (RPL § 339-e [4].)

In disallowing the Other Fees from being included in the lien amount, the JHO primarily relied on the statutory definition of “Common Charges.” First, he stated that the \$23,061.82 in legal fees “are recoverable as damages for breach of the condominium agreement but are not includable to calculate the amount due on the statutory lien for common charges as they are not assessed on a pro rata basis.” (JHO Report at 5.)

In response, Plaintiff cites to the Bylaws. Specifically, Bylaw § 6.2(A) provides that “[t]o the extent permitted by Law, the Condominium Board shall have a lien on each Unit, on behalf of all Unit Owners, for unpaid Common Charges and Special Assessments assessed against such Unit.” Further, if the common charge payments are more than 10 days late, that unit owner “shall be obligated to pay . . . all costs and expenses paid or incurred by the Condominium Board . . . in connection with collecting such unpaid Common charges . . . and/or in foreclosing the aforementioned lien, including, without limitation, reasonable attorneys’ fees and disbursements and court costs.” (Bylaws § 6.4(B), NYSCEF Doc No. 42.) “All such interest, costs and expenses and rentals shall be added to and shall constitute Common Charges payable by such Unit Owner.”

(*Id.*)

The Court finds Plaintiff’s reasoning and citations to the Bylaws persuasive. Specifically, the Court agrees that *Heywood Condominium v Wozencraft*, 148 AD3d 38 [1st Dept 2017] is on point. In that case, the First Department deferred to the plaintiff’s bylaws which specifically stated that attorneys’ fees would be added to delinquent common charges and that “all such fees will constitute a lien on the unit.” (*Id.* at 46.) Accordingly, the Court will add the legal fees to the amount of the lien.

Next, the JHO stated that the \$30,302.16 in cleaning fees are “recoverable as damages as provided for in the [April 17, 2017] stipulation which settled the [prior] access proceeding” but

reasoned that they were also not applicable toward the lien because they were not “assessed on a proportionate basis.” (JHO Report at 5-6.)

Plaintiff cites to Bylaw § 9.4, which states that “all costs and expenses incurred . . . in connection with the abatement, enjoinder, removal, or cure of any violation, breach, or default . . . shall, for all purposes hereunder, constitute Common Charges payable by such Unit Owner.” Further, in the Stipulation that the JHO relied upon, the parties agreed that such cleaning costs would “be deemed additional common charges[.]” (Stipulation, NYSCEF Doc No. 45 at ¶ 9.)

The Court agrees that, pursuant to the Bylaws and the Stipulation, these cleaning charges should be applied toward the lien amount.

Lastly, the Court deems the motion timely filed *nunc pro tunc* as no prejudice resulted to the Defendant as a result of the 14-day delay. (*See Gould v Venus Bridal Gown and Accessories Corp.*, 148 Misc 2d 589 [Sup Ct, NY County 1990].)


Accordingly, while the Court gives great deference to the JHO, Plaintiff’s motion is granted. For the reasons set forth above, it is hereby

ORDERED that the Report of the JHO is confirmed in part and denied in part; and it is further

ORDERED that the Plaintiff shall file a new Notice of Lien as to 161 West 61st Street, Apartment 5C, New York, New York 10022 in the amount of \$91,012.28; and it is further

ORDERED that the Clerk shall enter judgment in favor of the Plaintiff and against the Defendant, Grace Wu, in the principal amount of \$92,562.28, plus statutory interest to accrue from June 25, 2018.

Any requested relief not expressly addressed by the court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

<u>03/05/20</u> DATE					 W. FRANC PERRY, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE