

829 Southern Blvd Hous. Dev. Fund Corp. v Amendolare
2020 NY Slip Op 31612(U)
April 15, 2020
Supreme Court, Bronx County
Docket Number: 29107/2018E
Judge: Robert T. Johnson
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 12**

**829 SOUTHERN BLVD HOUSING DEVELOPMENT
FUND CORPORATION,**

Petitioner,

Decision and Order

Index No. 29107/2018E

-against-

**ANGGELUZ AMENDOLARE, MARTINA DE LOS
SANTOS, SANTOS ECHEVARRIA, CARMEN VEGA,
MARIA SAAVEDRA,**

Respondents.

**ANGELUZ AMENDOLARE, MARTINA DE LOS
SANTOS, SANTOS ECHEVARRIA, CARMEN
VEGA, MARIA SAAVEDRA, all as Newly Elected Board
Of Directors, and as Shareholders of 829 SOUTHERN
BLVD HOUSING DEVELOPMENT FUND
CORPORATION, and on behalf of the Newly Elected
Board of Directors of 829 SOUTHERN BLVD
HOUSING DEVELOPMENT AND CORPORATION,
On behalf of themselves and all other shareholders of
829 SOUTHERN BLVD HOUSING DEVELOPMENT
FUND CORPORATION, and all other similarly
Situated shareholders, and in the rights of 829
SOUTHERN BLVD HOUSING DEVELOPMENT
FUND CORPORATION,**

Plaintiffs,

Index No. 28890/2018E

-against-

**829 SOUTHERN BLVD HOUSING DEVELOPMENT
FUND CORPORATION AND WASHINGTON
CHASJUAN, PRESIDENT AS PRESIDENT AND
INDIVIDUALLY, AND MAUREEN MARTINEZ,
INDIVIDUALLY, JOSE VAQUERO, and
KATHERINE BERMUDEZ, and PEDRO MARTINEZ
And JOHN DOE and JANE DOE,**

Defendants.

The following papers, were considered on these Orders to Show Cause:

PAPERS

NUMBERED

Index No. 28890/2018E

Order to Show Cause, Affidavits and Exhibits.....1
Affirmation in Opposition and Exhibits.....2

Order to Show Cause, Affidavits and Exhibits.....1
Affidavits in Opposition.....2

Index No. 29107/2018E

Order to Show Cause, Affidavits and Memorandum of Law.....1
Affirmation in Opposition, Exhibits, Verified Answer.....2

Order to Show Cause, Affidavits and Exhibits.....1

The motions pursuant to the Action under Index No. 28890/18E and the motions pursuant to the Petition under Index No. 29107/18E are hereby consolidated for the purpose of disposition only:

The action and petition stem from a dispute between elected boards for a residential cooperative located at 829 Southern Boulevard in Bronx County (“HDFC”). The HDFC is organized, pursuant to Article XI of the Private Housing Finance Law and administered by the New York State Division of Housing and Community Renewal (“DHCR”), as a cooperative corporation whose objectives include providing affordable housing to persons of low income. The Neighborhood Housing Services of New York City and the Urban Homesteading Assistance Board (“UHAB”) are non-profit organizations that are approved by New York City Housing Preservation and Development (“HPD”) to provide technical assistance training and cooperative support to HDFCs in the City of New York.

Plaintiffs/respondents are the officers of the board of directors and shareholders of the HDFC allegedly elected pursuant to an election held on June 29, 2018 (“June election”). Prior to June 29, 2018, the board of directors of the HDFC was comprised of defendants Washington Chasjuan as president, Maureen Martinez as building manager, Katherine Bermudez as vice president, Pedro Martinez as secretary, and plaintiff/respondent Santos Echevarria as treasurer. It is undisputed that there had been no election of the board of directors since 2014. It is further undisputed that on June 29, 2018, an election was held resulting in plaintiffs/respondents being elected to the board: Angeluz Amendolare as president, Martina De Los Santos as vice president, Santos Echevarria as treasurer, and Maria Saavedra as building manager. On July 2, 2018, the program coordinator of

NHS, Jasmine Downes, issued an Election Certification Letter after claiming that she attended the June election (“July 2, 2018 letter”). On July 3, 2018, NHS by Ms. Downes, issued a second letter claiming that she had certified the June election based upon documentation she received and that she neither attended nor supervised the June election and had certified the June election in error (“Abolishment Letter”). By agreement dated March 29, 2017, UHAB was retained by the HDFC to assist with compliance monitoring and cooperative organization, including attendance at and certification of annual elections (“UHAB Agreement”). In a letter dated July 6, 2018 issued by Ann Henderson on behalf of UHAB to petitioner’s counsel, Ms. Henderson claimed that the June election “has now been declared invalid.”

On January 29, 2019, pursuant to a special meeting, another election was held resulting to the election of Washington Chasjuan, Jose Lopez, Jose Vaquero, Rosa Saavedra, and Emma Serano (January election).

Petition under Index No. 29107/18E

By order to show cause dated August 10, 2018, electronically filed on August 6, 2018, (“August 10 OSC”), petitioner moved, pursuant to BCL §619, for an order to: 1) enforce the Abolishment of Election Certification; 2) restrain respondents from collecting rent; 3) restraining respondents from renewing expired proprietary leases; 4) restrain respondents from conducting business; and 5) stay respondents from making decisions regarding the HDFC.

By order to show cause dated August 21, 2018, electronically filed on August 17, 2018, petitioners moved for essentially the same relief as requested in the August 10 OSC with the additional relief for an order to: 1) vacate the stay dated August 10, 2018; 2) restrain respondents’ access to the managing office located at 829 Southern Blvd.; 3) stay the respondents from removing any documents from the managing office; and 4) direct a certified accounting of all income from June 27, 2018 to the present with punitive and exemplary damages.

In opposition, respondents contend that the UHAB is a private corporate entity and does not have the authority to supervise or confirm or abolish Board of Directors elections.

It is well established that in order to prevail upon a motion for a preliminary injunction, the movant has the burden of demonstrating by clear and convincing evidence that 1) the moving party will succeed on the merits of the action, 2) the moving party will suffer irreparable injury absent the issuance of a preliminary injunction, and 3) a balancing of equities favors the movant's position (*see* CPLR 6301; *Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839 [2005]). The decision to grant or deny a preliminary injunction rests in the sound discretion of the Supreme Court (*Soundview Cinemas, Inc. v AC I Soundview, LLC*, 149 AD3d 1121, 1123 [2d Dept 2017]). Injunctive relief will be afforded only in those extraordinary situations where the plaintiff has no adequate remedy at law and such relief is necessary to avoid irreparable injury (*Chicago Research and Trading v NY Futures Exchange*, 84 AD2d 413, 416 [1st Dept. 1982]). Viewed within this framework, petitioner's request for a preliminary injunction is denied.

The court finds that petitioner has established that it will suffer irreparable harm unless a preliminary injunction is issued. In the matter at bar, petitioner asserts that respondent Amendolare issued a letter to withdraw holdover eviction proceedings in Housing Court without the authority to do so. "Irreparable injury, for purposes of equity, has been held to mean any injury for which money damages are insufficient" (*L & M 353 Franklyn Ave., LLC v S. Land Dev., LLC*, 98 AD3d 721, 722 [2d Dept 2012] [citation and internal quotation marks omitted]). Therefore, petitioner has established that it would not have an adequate remedy at law if it is able to demonstrate that respondents violated its rights.

However, petitioner has not demonstrated a likelihood of succeeding on the merits of the case. In order to meet that burden, petitioner must demonstrate that the right on which it seeks to ultimately prevail "is plain from the undisputed facts [and] [if] the right depends upon an issue which can only be decided upon a trial, the injunction cannot be granted" (*Zurich Depository Corporation v Gilenson*, 121 AD2d 443, 444 [2nd Dept 1986] quoting *Family Affair Haircutters, Inc. v. Detling*, 110 AD2d 745, 747 [2d Dept. 1985]). Petitioner merely asserts that "[a] reading of the relevant document, Abolishment of Election Certification" demonstrates a likelihood of success on the merits (petitioner's memorandum of law at p. 12). There was no showing that the By Laws require a certification of the election. The court notes that not only are the By Laws silent as to any

requirement for certification of elections, they appear incomplete since the specific date for the annual meeting or the number of officers on the board have been left surprisingly blank. Furthermore, petitioner's own evidence does not "plainly" demonstrate its likelihood of success. The evidence before the court include, *inter alia*, two letters by Ms. Downes – in the July 2, 2018 letter, Ms. Downes indicated that she attended and supervised the June election, and then in the July 3, 2018 letter, Ms. Downes claimed that she merely certified the June election based upon the provided documentation of the shareholders and that she neither attended nor supervised the June election ("Abolishment Letter"). Beyond these assertions, Ms. Downes also claimed that she is the NHS program coordinator who worked with the HDFC temporarily, and "moving forward" UHAB would be assisting the HDFC and that NHS will no longer service the building as of the date of this letter. The Abolishment Letter conflicts with the fact that UHAB was retained to work with the HDFC pursuant to the UHAB Agreement. As no explanation was provided as to why NHS temporarily worked with the HDFC, at best, the Abolishment Letter is confusing and does not warrant a declaratory judgment that it should be enforced. Insofar as it is not clear from the facts that petitioner would ultimately prevail, petitioner fails to satisfy this prong.

Finally, petitioner has also failed to demonstrate that the equities balance in petitioner's favor. "In balancing the equities, the court should consider various factors, including the interests of the general public as well as the interests of the parties (*De Pina v Educ. Testing Serv.*, 31 AD2d 744 [2d Dept 1969]). In balancing the equities, the court must weigh the harm suffered by the petitioner if the injunction were denied against the harm suffered by the respondents if the injunction were granted (*Edgeworth Food Corp. v Stephenson*, 53 AD2d 588 [1st Dept 1976]).

Petitioner has not established that it will suffer greater harm if an injunction is not issued. Although petitioner has shown that it will suffer irreparable harm unless a preliminary injunction is granted, nevertheless, petitioner has failed to demonstrate with clear and convincing evidence that it has satisfied the other two prongs necessary for granting a preliminary injunction. Accordingly, the injunctive relief requested by petitioner, in its two orders to show cause, must be denied.

Plaintiffs/respondents moved by order to show cause dated August 10, 2018 for an order: 1) to declare that the election held on June 29, 2018 pursuant to CPLR §3001; 2) to direct defendants to vacate the corporate office and to restore the elected directors to the corporate offices; 3) to direct a certified accounting of all income and expenses for 2014, 2015, 2017 and 2018; and 4) for attorney's fees.

By order to show cause dated February 4, 2019, plaintiffs/respondents moved for an order: 1) for declaratory judgment declaring the January election invalid; and 2) for sanctions pursuant to Judiciary Law §487 and further attorney's fees.

To date, no answer has been filed. Since issue has not yet been joined, plaintiffs' motion seeking declaratory judgment is premature (see *McHugh v Weissman*, 46 AD3d 369 [1st Dept 2007][even if defendant's request for declaratory relief was proper, he improperly moved for relief prior to joinder of issue]). Accordingly, the motions are denied in their entirety.

By order to show cause dated March 25, 2019, plaintiffs' counsel Samuel Viruet Esq., moved for an order granting permission to withdraw as counsel. All plaintiffs were served and on the return date, only plaintiff Amendolare appeared. Pursuant to the decision and order dated May 13, 2019 ("May 2019 Order"), the application of plaintiffs' former counsel, Samuel Viruet Esq., to be withdraw as counsel was granted. The May 2019 Order with notice of entry was served on defendants' counsel as well as all plaintiffs (NYSCEF # 89). However, the May 2019 Order did not specifically direct plaintiffs Martina De Los Santos, Santos Echevarria, and Maria Saavedra to retain new counsel or appear pro se. Therefore, the action shall be stayed for these plaintiffs to retain new counsel or appear pro se.

Accordingly, it is ORDERED, that the petitioner's motions under Index No. 29107/208E are denied in their entirety; and it is further

ORDERED, that the petition is denied and the proceeding is dismissed; and it is further

ORDERED, that plaintiffs' motions under Index No. 28890/2018E are denied in their entirety, and it is

further

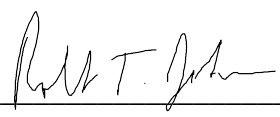
ORDERED, that the action under Index No. 28890/2018E is hereby stayed for sixty (60) days for plaintiffs Martina De Los Santos, Santos Echevarria, and Maria Saavedra to retain new counsel or appear pro se; and it is further

ORDERED, that the claims of plaintiffs Martina De Los Santos, Santos Echevarria, and Maria Saavedra may be dismissed unless plaintiffs Martina De Los Santos, Santos Echevarria, and Maria Saavedra appear by either new counsel or pro se on June 29, 2020 at 9:30 am in Pt. 12, Rm 414, at the Bronx Supreme Court located at 851 Grand Concourse, Bronx, New York; and it is further

In light of the current COVID-19 public health emergency, counsel for petitioners should provide a copy of this decision and order by electronic mail and/or fax on all parties and service will be effectuated at a later date when notified by the Court.

This constitutes the decision and order of this Court.

Dated: April 15, 2020



Robert T. Johnson, J.S.C.