Walsh v 0cwen Loan Servicing LLC
2020 NY Slip Op 31644(U)
May 22, 2020
Supreme Court, Kings County
Docket Number: 520846/19
Judge: Dawn M. Jimenez-Salta
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At an IAS Term, Part 88 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 22nd day of May, 2020.

PRESENT:

HON. DAWN JIMENEZ-SALTA,
Justice

- -X

ELAINE B. WALSH and KELLY B. WALSH,

Plaintiffs,

- against -

Index No. 520846/19

OCWEN LOAN SERVICING LLC, NEW PENN FINANCIAL LLC, YISROEL SPIRA, also known as ISRAEL SPIRA, 415 OCEAN OWNERS, INC., "XYZ CORP" I, "XYZ CORP" II "JOHN DOE NO. 1-5" and "JANE DOE NO. 1-5,"

Defendants.

- -X

The following e-filed papers read on this motion:	NYCEF Doc. Nos.
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	2-34
Opposing Affidavits (Affirmations)	37-44, 50-55
Reply Affidavits (Affirmations)	58-75

Upon the foregoing papers in this action for a declaratory judgment, plaintiffs Elaine B. Walsh and Kelly B. Walsh (plaintiffs) move (in motion sequence [mot. seq.] one), by order to show cause, for an order: (1) granting a preliminary injunction enjoining any further transfer, sale, or marketing of the shares of stock and associated proprietary lease in cooperative apartment unit 1J at 415 Ocean Parkway in Brooklyn (Cooperative Unit 1J),

and (2) staying the eviction proceeding commenced by defendant Yisroel Spira a/k/a Israel Spira (Spira) against plaintiffs in Kings County Civil Court, Landlord Tenant Part J, under index No. 72507/19 (Eviction Proceeding).[1]

Background

On September 23, 2019, plaintiffs commenced this action by filing a summons and a verified complaint. According to the complaint, in or about October 1996, plaintiff Elaine B. Walsh purchased shares and began residing in Cooperative Unit 1J (complaint at ¶ 11). In March 2005, Elaine Walsh transferred a partial ownership interest in Cooperative Unit 1J to her husband, defendant Kelly B. Walsh, who had been residing in Cooperative Unit 1J with Elaine since January 2003 (*id.* at ¶¶ 12-13).

On August 8, 2006 plaintiffs allegedly refinanced their home loan by borrowing $128,998.00 from Washington Mutual Bank (Wamu), pursuant to which they executed a promissory note in favor of Wamu and "delivered the original certificate representing the Stock [for Cooperative Unit 1J], and the Plaintiffs' co-ownership therein, as security . . ." to Wamu (*id.* at ¶ 14). On October 1, 2006, Wamu filed a UCC-1 financing statement for the stock in Cooperative Unit 1J with the New York City Department of Finance Office of the City Register (*id.* at ¶ 15).

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[1] Spira's opposition papers, which were submitted to the court on the January 29, 2020 return date, but not e-filed (and thus, are not listed above), were considered by the court.

Apparently, Wamu subsequently assigned plaintiffs' loan, since defendants Ocwen Loan Servicing LLC (Ocwen) and New Penn Financial LLC (New Penn) are referred to in the complaint as Wamu's alleged "successors and assigns" (*id.* at ¶¶ 18 and 20).

The complaint alleges that in connection with the refinance, plaintiffs and Wamu entered into an escrow account notification and agreement, which "did not require Plaintiffs, as borrowers, to establish an escrow account for payment of taxes, fire/hazard insurance, mortgage insurance, flood insurance, etc." (*id.* at ¶¶ 16-17). Although it allegedly permitted defendants Ocwen and New Penn "as successors or assigns" to Wamu "to establish an escrow account in the future . . ." it was "limited to amounts actually assessed and required to be paid for [Cooperative Unit 1J] . . ." (*id.* at ¶ 18). In addition, the escrow agreement allegedly required defendants Ocwen and New Penn, as successors or assigns to Wamu, "to ascertain the amount, due date, and the place of payment of all taxes, assessments, and insurance listed as obligations or which are otherwise escrowed . . ." and to accurately estimate the amounts required to be escrowed (*id.* at ¶¶ 19-20). Importantly, the escrow agreement allegedly permitted plaintiffs to terminate the escrow account upon written notice (*id.* at ¶ 21).

Ocwen and New Penn allegedly failed to provide plaintiffs with accurate estimates of the amounts needed to be escrowed and proper notices in accordance with the 2006 promissory note, the security agreement and the escrow agreement (*id.* at ¶¶ 22-23 and 26). In addition, Ocwen and New Penn allegedly "required Plaintiffs to fund an escrow account for payment of taxes, fire/hazard insurance, mortgage insurance, flood insurance etc. when no such payment was legally required" (*id.* at ¶ 24). Specifically, Ocwen and New Penn

allegedly required plaintiffs to fund an escrow account to pay amounts assessed *for the entire cooperative building*, rather than for Cooperative Unit 1J (*id.* at ¶ 25). In addition, Ocwen and New Penn allegedly failed to terminate the escrow account, despite plaintiffs' repeated requests (*id.* at ¶ 27).

Plaintiffs allegedly continued to reside in Cooperative Unit 1J and "were under the understanding that the loan payments were being made timely and that there were no delinquencies" (*id.* at ¶ 28). However, plaintiffs allegedly received conflicting letters from Ocwen regarding the status of plaintiffs' loan and alleged escrow deficiencies (*id.* at ¶¶ 29-32). Ocwen, based upon an allegedly improper escrow deficit of $35,643.12, threatened to terminate plaintiffs' lease in Cooperative Unit 1J and to proceed with a foreclosure sale (*id.* at ¶ 33). By an August 6, 2015 letter, Ocwen's counsel allegedly advised plaintiffs that they were required to remit payments or a foreclosure auction would proceed on September 10, 2015 (*id.* at ¶ 34). In response, plaintiffs allegedly sought a loan modification from Ocwen, and was granted a modification which, unbeknownst to plaintiffs, included the improper escrow deficit of $35,643.12 (*id.* at ¶¶ 35-40).

On June 30, 2016, about one month after plaintiffs executed the loan modification, Ocwen allegedly issued a new delinquency notice seeking an additional $28,563.92, and threatened to foreclose (*id.* at ¶ 41). However, by an August 9, 2016 letter, Ocwen allegedly issued a loan reinstatement quote of $7,294.36 (*id.* at ¶ 42). On August 5, 2016, in response to Ocwen's reinstatement quote, plaintiffs allegedly reinstated their loan by issuing a $7,381.11 bank check to Ocwen, "despite their belief that the requested payment of 'escrow balance' and interest was improper . . ." (*id.* at ¶¶ 43-44).

Despite their reinstatement of the loan, plaintiffs allegedly continued to receive inaccurate correspondence from Ocwen regarding their escrow account and the status of their loan, in addition to a January 1, 2017 delinquency notice (*id.* at ¶¶ 45-53). The following month, Ocwen allegedly issued a February 9, 2017 loan reinstatement quote, demanding $47,635.49 to reinstate the loan, of which $43,638.11 was comprised of escrow payments (*id.* at ¶ 54). Plaintiffs allegedly sought, once again, to clarify in writing that Ocwen should not be paying real estate taxes, homeowners' association (HOA) dues nor demanding and collecting escrow from them (*id.* at ¶ 55).

Ocwen allegedly responded in a December 6, 2017 letter that "[o]ur records indicate that the loan is not escrowed for taxes and insurance . . ." and explained that "[w]e checked and determined that the property type was incorrectly updated as Condo unit instead of Co-operative. Therefore, we contacted the concerned department and processed the necessary correction. Further we have updated our record not to disburse funds towards tax payments" (*id.* at ¶¶ 57-58). Ocwen's December 6, 2017 letter further advised that:

> "The escrow amount of $111,342.19 reflecting on the loan was incorrectly updated for County tax payments. We apologize for any inconvenience this may have caused.
>
> "On 11/28/2017, a new escrow analysis was performed and was determined that the first monthly payment beginning with the payment due on 02/01/2018, will be $560.00 of which $559.99 will be for principal and interest and $0.01 will go into the escrow account.
>
> "The analysis generated an escrow surplus of $15,059.24. We are unable to send you the surplus amount as the lien is not contractually current" (*id.* at ¶ 59).

Ocwen, however, one week later, allegedly sent plaintiffs a December 13, 2017 letter inconsistently demanding payment of $21,274.10, which consisted of $11,042.52 in escrow payments (*id.* at ¶ 60).

In December 2018, Shellpoint took over servicing plaintiffs' loan in place of Ocwen, yet Shellpoint allegedly continued to send plaintiffs improper demands for escrow payments and a January 15, 2019 delinquency notice (*id.* at ¶¶ 62-65).

Soon thereafter, unbeknownst to plaintiffs, Ocwen proceeded with a non-judicial foreclosure auction of the stock for Cooperative Unit 1J on January 29, 2019, and defendant Spira emerged as the successfully bidder. The complaint alleges that plaintiffs received no notice of the January 2019 foreclosure auction, and that the only notice of sale they ever received was the August 6, 2015 notice from Ocwen's counsel (*id.* at ¶¶ 66 and 74).

The complaint further alleges, upon information and belief, that "Defendants' foreclosure, sale, and transfer of Plaintiffs' stock were solely based upon [their] improper and unauthorized escrow account, and illegal demand for payment to fund such an escrow account" and that "Defendants received payments f[rom] Plaintiffs and wrongfully allocated these payments to the escrow account, rather than to principal and interest" (*id.* at ¶¶ 69-70). The complaint also alleges that the auctioneer failed to give adequate notice of the foreclosure auction (*id.* at ¶¶ 71-72).

The complaint alleges that "Plaintiffs learned of the putative sale and transfer only when Defendant Spira recently knocked on the door of the Subject Premises and announced that he was the new owner . . ." (*id.* at ¶ 83). Spira seeks plaintiffs eviction from Cooperative Unit 1J in the pending Eviction Proceeding.

The complaint herein seeks a judgment declaring that the January 2019 auction and Ocwen's sale of the stock in Cooperative Unit 1J to Spira is invalid, null and void on the grounds that Ocwen failed to serve plaintiffs with the pre-sale notices that are required by UCC §§ 9-611, 9-612 and 9-613, and that the auction was not conducted in a commercially reasonable manner. The complaint also asserts causes of action against defendants for violation of New York State General Business Law (GBL) § 349 for deceptive business practices, fraud and breach of the implied covenants of good faith and fair dealing.

On September 24, 2019, one day after commencing this action, plaintiffs filed the instant motion, by order to show cause, seeking a preliminary injunction enjoining any further transfer, sale, or marketing of the shares of stock and associated proprietary lease in Cooperative Unit 1J and staying Spira's Eviction Proceeding.

Plaintiffs, in support of their motion for an injunction and stay, argue that Cooperative Unit 1J was improperly foreclosed on, and therefore, the foreclosure should be set aside. Plaintiffs claim that the non-judicial foreclosure was improper because they were not in default under the terms of the promissory note and they were not served with any pre-sale auction notices. Plaintiffs further contend that Ocwen issued a defective notice of sale and failed to conduct the sale in a commercially reasonable manner.

Kelly B. Walsh submits an affidavit in support of plaintiffs' motion, which disputes that there was any default under the terms of the promissory note and details plaintiffs' numerous attempts to reconcile with Ocwen the excessive and unsubstantiated escrow charges against plaintiffs' loan account. Walsh attests that plaintiffs never received any of the required notices before the 2019 non-judicial foreclosure and sale and that he only

became aware of the foreclosure auction on or about August 8, 2019, when he received notice of Spira's Eviction Proceeding. In addition to Walsh's affidavit testimony, plaintiffs submit the numerous letters from Ocwen that are detailed in plaintiffs' complaint. Plaintiffs also submit the petition in the Eviction Proceeding, which alleges that Spira was the successful bidder at an extrajudicial foreclosure sale of Cooperative Unit 1J that took place on January 29, 2019. Spira's petition in the Eviction Proceeding alleges that Spira was entitled to possession of the cooperative unit as the shares of stock and the proprietary lease were transferred to him on or about July 18, 2019.

Ocwen, in opposition to plaintiffs' motion, claims that plaintiffs were served with a proper notice of default and a 90-day notice. Defense counsel submits two notices of default: (1) a November 30, 2016 notice addressed to plaintiffs, and (2) counsel's January 29, 2019 letter indicating that the firm was retained to commence a foreclosure and enclosing a notice of default entitled "Help for Homeowners at Risk of Foreclosure." The January 29, 2019 letter contains a notation indicating that it was sent to plaintiffs at the property address via first class mail and registered mail return receipt requested. Notably, however, Ocwen fails to submit an affidavit of service or registered mail tracking number or receipt. Defense counsel also provides a copy of a 90-day notice dated January 17, 2017, which contains an affidavit of mailing and certified mail receipt dated January 29, 2018. Ocwen's opposition fails to address plaintiffs' claims regarding its allegedly improper servicing of the loan, its alleged failure to serve notices of sale, its alleged failure to serve a notice of disposition of the stock and the alleged failure to conduct the foreclosure auction in a commercially reasonable manner.

415 Ocean Owners, Inc. (415 Ocean), in opposition, claims that it received a notice of sale of Cooperative Unit 1J on or about January 10, 2019. Subsequently, 415 Ocean was served with the certificate of sale, memoranda of sale, and terms of sale, all of which indicated that Spira had purchased the shares appurtenant to the Cooperative Unit 1J at public auction. Upon acceptance of Spira's purchase application and, in accordance with its business judgment, 415 Ocean transferred the shares of stock and proprietary lease appurtenant to Cooperative Unit 1J in accordance with the terms of the proprietary lease. 415 Ocean contends that it acted in good faith, and that any reversal of the transfer would cause it financial harm.

Spira, in opposition, argues that "plaintiffs are not entitled to set aside the results of the auction and sale . . . regardless of whether the allegations regarding improper notice are true" because "[u]nwinding a non-judicial public auction held pursuant to Article 9 of the [UCC] after the sale has closed . . ." is not an available remedy, as a matter of law. Spira contends that "even if [plaintiffs] claims regarding Ocwen and New Penn turn out to be true[,]" their sole remedy is money damages. Spira asserts that "[w]here, as here, there is a final disposition of collateral to a good-faith transferee, debtors are limited to money damages and cannot unwind a fully closed transaction[,]" pursuant to UCC § 9-617 (b). In addition, Spira argues that plaintiffs actually seek a permanent injunction, rather than a preliminary injunction, because plaintiffs seek "the ultimate relief" of unwinding the auction.

Discussion

In order to determine whether a stay is appropriate, the court must be satisfied that there is merit in the underlying action. In New York, [a] preliminary injunction may only be granted . . .” where it appears that the defendant threatens or is about to do . . . an act in violation of the plaintiff's rights” with regard to the subject matter of the action, and which would render the judgment ineffectual (*see* CPLR 6301). The movant must show entitlement to injunctive relief by demonstrating with clear and convincing evidence (1) the probability of success on the merits; (2) irreparable harm absent the injunction; and (3) the balance of the equities favoring the relief sought (*Zoller v HSBC Mortgage Corporation*, 135 AD3d 932, 932 [2016]; *Matter of Armanida Realty Corp. v Town of Oyster Bay*, 126 AD3d 894, 894 [2015]; *Mangar v Deosaran*, 121 AD3d 650, 650 [2014]). “The purpose of a preliminary injunction is to maintain the status quo and prevent the dissipation of property that could render a judgment ineffectual” (*Ying Fung Moy v Hohi Umeki*, 10 AD3d 604, 604 [2004]).

Here, the complaint seeks, in part, a judgment declaring that the January 2019 auction and Ocwen's sale of the stock in Cooperative Unit 1J to Spira is invalid, null and void on the grounds that: (1) plaintiffs were not in default; (2) Ocwen failed to serve plaintiffs with pre-sale notices, pursuant to UCC §§ 9-611, 9-612 and 9-613; and (3) the auction was not conducted in a commercially reasonable manner. Plaintiffs' instant order to show cause seeks a preliminary injunction staying the transfer of Cooperative Unit 1J and the Eviction Proceeding pending the resolution of this action. Such equitable relief is

only available if plaintiffs have demonstrated a likelihood of success on the merits of their underlying claim for a declaratory judgment.

A cooperative apartment, consisting of shares of stock and a lease, is considered personal property and foreclosure can be sought without court intervention. After the mortgage is finalized, the lender takes possession of the stock certificate and proprietary lease and files a UCC-1 statement. Once recorded, the UCC-1 statement protects a lender's security interest by acting as public notice of a lien against the cooperative unit to secure a borrower's indebtedness. Hence, a lender's actions regarding foreclosure of the cooperative unit are governed by Article 9 of the Uniform Commercial Code. However, the UCC does not define default. Thus, determining whether there was a default under plaintiffs' loan requires an examination of the note, security agreement and the related documents.

Paragraph 7 (B) of the promissory note executed by plaintiffs states: "[i]f I do not pay the full amount of each monthly payment when it is due, I will be in default." Further, paragraph III (1) of the loan security agreement defines a default due to failure to pay as follows: "[d]ebtor fails to make any payment required under the Note within thirty (30) days after the date the payment becomes due." As to amounts included in the monthly payment, paragraph 4 of the disclosure notice provides that:

> "With each regularly scheduled payment under your loan you would be required to pay to the Lender one-twelfth of the estimated real estate taxes, assessments, premiums on hazard insurance covering the property, mortgage insurance premiums, and any other charges or fees expected to become due on your home loan each year. The purpose of requiring these payments in advance is to assure the Lender that these

> escrow items would be paid when due. The payments for such taxes, insurance, and other assessments are called 'escrow payments.' The funds represented by these escrow payments would be held by the Lender until the taxes, insurance premiums or other assessments were due, at which time the Lender would pay them on your behalf. The Lender would not pay interest on the escrow funds held by the Lender unless the law requires the Lender to do so. You would be required to make the necessary escrow payments through the terms of the loan. From time to time, the Lender would estimate your yearly taxes, assessments and insurance premiums using reasonable estimates of future assessments and bills and your escrow payments would be increased or decreased accordingly. Any insufficiency or shortage of escrow funds would have to be paid by you in one or more payments as Lender would require. You will have the right to have any escrow funds refunded to you upon request."

Paragraph 5 of the escrow account notification and agreement further provides:

> "If an escrow account is established [t]he lender shall make a reasonable effort to accurately make these initial estimates and from time to time, if necessary, to make estimates. If Borrower at any time determines that a significant deficiency or overage in the amount collected is going to occur, it is the duty of the borrower to notify the Lender of the estimation error so that any significant error may be corrected."

Ocwen's estimated initial monthly payment disclosure indicates that the first payment on plaintiffs' loan in the amount of $739.05, representing only the principal and interest on the loan, was due on October 1, 2006. It stated:

> "[a]n escrow analysis will be performed and you will be sent an Initial Escrow Statement within forty-five (45) days of settlement. This statement will disclose what is estimated to be received and disbursed from your escrow account within the next 12 months. As a result of performing the escrow analysis, your monthly mortgage payment may be adjusted, and perhaps increased. If a new payment is required, it will be reflected on the Initial Escrow Account Statement and on your monthly statement."

The escrow account and notification agreement signed by plaintiffs stated: "[n]o escrow account is established at this time." There is no indication that plaintiffs ever received the initial escrow account statement within the 45-day timeframe.

The record reflects, and Ocwen does not dispute, that continuous overcharges and misapplication of payments beginning in 2015 left plaintiffs' account in a constant state of default. The record also reflects that Ocwen failed to maintain accurate account statements and repeatedly provided conflicting mortgage and escrow statements with insufficiently vague explanations as to the accumulation of escrow shortages and the application of plaintiffs' payments. Given the circumstances, this court questions whether plaintiffs were actually in default of the promissory note and security agreement, especially since the date of default alleged is September 1, 2016, less than 30 days after plaintiffs tendered a bank check to Ocwen to reinstate the loan.

Plaintiffs further allege that the sale should be set aside because Ocwen failed to serve them with a 90-day notice. Under UCC § 9-611 (f) (1), a secured party whose collateral is a residential cooperative and who seeks to dispose of such collateral after a default, shall send to the debtor, not less than 90 days prior to the date of the disposition of the cooperative interest, an additional pre-disposition notice, designed to protect the homeowner by informing them of the default and warning that they could be in danger of losing their home. This statutory notice must adhere to certain typeface requirements and contain specific information regarding the resources available to assist the debtor in working with the lender towards curing the default.

Judicial foreclosures under the RPAPL require a substantially similar 90-day notice (*see* RPAPL § 1304), which is a condition precedent to the commencement of a judicial foreclosure action (*see Deutsche Bank Natl. Trust Co. v Spanos*, 102 AD3d 909, 910 [2013]; *Aurora Loan Servs., LLC v Weisblum*, 85 AD3d 95, 98 [2011]). As "[s]imilar statutes enacted for the purpose of avoiding similar evils and affording similar remedies should have uniformity of application and of construction" (*Matthews v Matthews*, 240 NY 28, 35 [1925]), compliance with the 90-day notice requirement of UCC § 9-611 (f) is a condition precedent to a non-judicial foreclosure of a cooperative apartment (*see Waithe v Citigroup, Inc.*, 42 Misc 3d 1205 (A) [Sup Ct, Kings County 2013]; *Millien v Citigroup, Inc.*, 37 Misc 3d 1229 (A) [Sup Ct, Kings County 2012]).

Plaintiffs claim that Ocwen failed to comply with the notice requirements of UCC § 9-611 and, therefore, the non-judicial foreclosure and sale of the apartment is invalid. Ocwen, in opposition, submits a copy of a 90-day notice containing the required language and typeface dated January 1, 2017 (more than two years prior to the January 2019 auction), with an affidavit of mailing and certified mail receipt dated January 29, 2018. Ocwen's proof is insufficient to demonstrate compliance with the timing requirements of the statute.

As described above, plaintiffs have sufficiently demonstrated a likelihood of success on their arguments that they were not in default and were not provided with statutory notice of the non-judicial foreclosure auction. However, Spira argues that, even assuming plaintiffs did not default and/or receive the statutory notice prior to the auction, their remedy is limited to money damages, pursuant to UCC § 9-625 (b), based on the First Department's holding in *Atlas MF Mezzanine Borrower v Macquarie Texas Loan Holder*

LLC, (174 AD3d 150, 162-163 [2019]). The decision in *Atlas*, however, is factually inapplicable because it did not involve a lender's failure to comply with the pre-foreclosure notice requirement of UCC § 9-611 (f). In *Millien v Citigroup Inc.*, a factually analogous case where the petitioner/borrower similarly sought to annul a non-judicial sale of a cooperative unit because she did not receive a pre-foreclosure notice in accordance with UCC § 9-611 (f), the court denied defendants' dismissal motion, and held that the petitioner/borrower's complaint stated a cognizable cause of action (37 Misc 3d at *4).

Accordingly, plaintiffs have demonstrated a likelihood of success on the merit of their claim that the sale of Cooperative Unit 1J was invalid because they did not receive a pre-foreclosure notice, as required by UCC § 9-611 (f) (1). As plaintiffs have demonstrated that Ocwen failed to comply with a condition precedent to the non-judicial foreclosure and sale, the court need not address plaintiffs' argument that the foreclosure auction was not commercially reasonable.

Plaintiffs have further demonstrated that they would suffer irreparable injury if a preliminary injunction is not granted. Plaintiffs have resided in Cooperative Unit 1J for nearly 14 years, and still reside there. The court recognizes the State's strong public policy against the termination of leases with the enactment of the Housing Stability and Tenant Protection Act of 2019. Furthermore, any dispossession of plaintiffs from Cooperative Unit 1J would render ineffectual any judgment that they would obtain in this action. While the court recognizes that 415 Ocean may suffer a temporary loss in revenue from its inability to collect monthly HOA fees from Cooperative Unit 1J, that loss does not outweigh the harm plaintiffs would suffer from losing their home.

Additionally, plaintiffs have demonstrated that the equities lie in their favor. The proof submitted indicates that plaintiffs may not have defaulted on their loan. The loan history indicates that plaintiffs have been repeatedly charged thousands of dollars in escrow fees purportedly for real estate taxes for Cooperative Unit 1J. There is no indication that Ocwen ever provided an explanation of the application of any mortgage payments made at the time the escrow charges accrued and whether that resulted in additional fees and costs on the account. In the absence of an injunction, the Eviction Proceeding wherein Spira seeks to obtain possession of Cooperative Unit 1J, would continue and plaintiffs could lose their home. Thus, an injunction is warranted, under these circumstances, to maintain the status quo. Accordingly, it is

ORDERED that plaintiffs' motion (in mot. seq. one) for a preliminary injunction is granted and, pending final determination of this action: (1) the Eviction Proceeding is hereby stayed, and (2) any transfer, sale or marketing of the shares of stock and the proprietary lease associated with Cooperative Unit 1J is hereby enjoined.

This constitutes the decision and order of the court.

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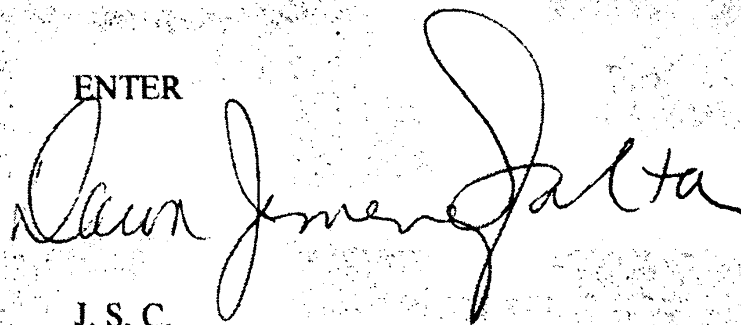

J. S. C.

Hon. Dawn Jimenez-Salta
Justice of the Supreme Court