

Platt v Windsor Owners Corp.
2020 NY Slip Op 33111(U)
September 22, 2020
Supreme Court, New York County
Docket Number: 650553/2020
Judge: Arlene P. Bluth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14

Justice

-----X

ELAINE PLATT

Plaintiff,

- v -

WINDSOR OWNERS CORP,

Defendant.

-----X

INDEX NO. 650553/2020
MOTION DATE 09/17/2020
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34

were read on this motion to/for dismiss and cross-motion for summary judgment .

Defendant's motion to dismiss is granted and the plaintiff's cross-motion for summary judgment is denied.

Background

Plaintiff, a former member of defendant's Board of Directors, brings this case seeking indemnification for attorneys' fees based on a previous litigation with defendant in which plaintiff says she prevailed. She demands at least \$500,000 in legal fees.

Defendant moves to dismiss on the ground it obtained a judgment against plaintiff in the previous case that permanently enjoined her from disclosing the defendant's privileged communications. It claims that plaintiff disclosed this information in an effort to win re-election to the Board of Directors. Defendant argues that plaintiff violated this order and was later held in contempt. Defendant insists that plaintiff failed to seek legal fees in the previous case and she did not incur any legal fees because she represented herself (plaintiff is an attorney).

Defendant maintains that indemnification is only available for officers and directors who are carrying out their official duties and not for individuals engaged in conduct for a personal benefit. It also argues that indemnification is not available where the officer or director has been found liable to the corporation.

In opposition and in support of her cross-motion for summary judgment, plaintiff argues that the injunction was entered against her with her consent. She also points out that defendant's claim for breach of her fiduciary duty was dismissed as well as its claim for sanctions. Plaintiff insists that she was never found to have breached her duty to the corporation. She argues she is entitled to indemnification under defendant's bylaws and demands that defendant must be bound to its promise to provide indemnification. Plaintiff complains that her self-representation does not bar her from recovering attorneys' fees. She claims her professional time was diverted from working on other matters and insists the only reason the other litigation was commenced against her was because of her position as director.

In opposition to the cross-motion, defendant argues that plaintiff has not set forth a reasonable cause for failing to apply for indemnification in the prior action. It argues that, contrary to plaintiff's assertions, the Business Corporation Law's procedure applies and plaintiff must state a reason why she failed to raise the indemnification issue in the previous case.

Discussion

A Court considering a motion to dismiss for failure to state a cause of action "must give the pleadings a liberal construction, accept the allegations as true and accord the plaintiffs every possible favorable inference. We may also consider affidavits submitted by plaintiffs to remedy any defects in the complaint" (*Chanko v American Broadcasting Companies Inc.*, 27 NY3d 46, 52, 29 NYS3d 879 [2016]).

The Court grants the motion to dismiss because the Court finds that the indemnification provision of defendant's bylaws does not apply to a situation where plaintiff was found to have divulged privileged information. The bylaws state that a director can receive indemnification in actions "by or in the right of the corporation" where "any person made a party to an action by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he, his testator or intestate, is or was a director or officer of the corporation" (NYSCEF Doc. No. 21 at 12).

As detailed by Justice Moulton, the previous litigation arose out of plaintiff's re-election campaign for the board and her dissemination of privileged information to the nearly 800 owners of the cooperative (NYSCEF Doc. No. 10 at 2). That act—disclosing privileged information—led to the litigation and did not arise out of her duties as a director. The Court is unable to find that a director should be entitled to indemnification where she was sued by the cooperative for disclosing privileged information to help her re-election. There is no question that is not the type of situation contemplated by the bylaws in which a director could receive legal fees.

The bylaws also provide for indemnification for a director in other actions or proceedings "if such director or officer acted in good faith, for a purpose which he reasonably believed to be in the best interest of the corporation" (*id.*). Plaintiff's disclosure of privileged information as part of her effort to win re-election was not in the best interest of defendant; it furthered her goal of getting re-elected.

The Court also finds that plaintiff is not entitled to indemnification because judgments were entered against her in the previous litigation. Justice Moulton "ORDERED, ADJUDGED AND DECREED that Defendant Elaine Platt . . . has, without authority of Plaintiff Board of Directors of Windsor Owners Corp. violated the attorney client privilege of Windsor Owners

Corp. . . . by disclosing to third parties confidential attorney client communications by attorneys for Windsor” and granted a permanent injunction against plaintiff (NYSCEF Doc. No. 15). Although plaintiff is correct that defendant was not successful on all of its claims against her, the fact is that the Court granted a permanent injunction against plaintiff and found that plaintiff violated attorney client privilege. Plus, defendant later obtained a money judgment against plaintiff in relation to defendant’s successful application for contempt against plaintiff (NYSCEF Doc. No. 19).

The Court is unable to conceive of a situation in which plaintiff could receive indemnification based on a previous litigation where a judgment was entered against plaintiff and where defendant was awarded a money judgment based on her disobedience of that judgment. The Court recognizes that plaintiff tried to downplay the contempt order and argued that her violation was minor. But this is not the forum to relitigate prior decisions in a previous case. The Court can only review the submissions on this motion and plaintiff cannot state a cognizable cause of action for indemnification. And Business Corporation Law § 722(c) clearly prohibits indemnification where a director “shall have been adjudged liable to the corporation.” That is exactly what happened here.

Summary


While the parties in this action have a long history of litigation, this Court has no interest in rehashing their history of grievances. The fact is that defendant cited multiple bases upon which the motion should be granted and the cross-motion should be denied. For instance, defendant pointed out that plaintiff did not adequately explain why she didn’t seek indemnification in the previous lawsuit as required under Business Corporation Law § 724.

But at its core, this motion and cross-motion are a straightforward interpretation of the bylaws and their applicability to the previous litigation. This Court finds that acts taken in furtherance of a re-election campaign do not implicate the bylaws' indemnification provision and, even if it did, the cooperative won a judgment against plaintiff. She is not entitled to recover attorneys' fees for a previous litigation where she lost.

Accordingly, it is hereby

ORDERED that the motion to dismiss by defendant is granted, the cross-motion is denied and the Clerk is directed to enter judgment when practicable in favor of defendant along with costs and disbursements after presentation of proper papers therefor.

9/22/2020
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED
<input type="checkbox"/>	SETTLE ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: