

Healy v Settle

2021 NY Slip Op 34054(U)

May 25, 2021

Supreme Court, New York County

Docket Number: Index No. 160265/2018

Judge: James Edward d'Auguste

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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. JAMES EDWARD D'AUGUSTE PART IAS MOTION 55EFM

Justice

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JOHN A. HEALY AND VALERIA CALAFIORE HEALY,
INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE
CARRIAGE HOUSE CONDOMINIUM,

Plaintiff,

- v -

MATTHEW SETTLE, DAVID SOARES, TINA SOARES,
DOES 1-10, THE CARRIAGE HOUSE CONDOMINIUM

Defendant.

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INDEX NO. 160265/2018

MOTION DATE 02/27/2019

MOTION SEQ. NO. 001

**DECISION + ORDER
ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 88, 89, 90, 91, 92, 93

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

Plaintiffs John A. Healy and Valeria Calafiore Healy (collectively, “the Healys”) seek an order essentially enjoining the defendants in this action, Matthew Settle, David Soares, Tina Soares, and The Carriage House Condominium (“Carriage House”), from prosecuting a separate action commenced in this Court under Index No. 150491/2019 (the “Carriage House Action”), and directing them to withdraw certain claims in that action against the Healys related to a special assessment levied by Carriage House, which is allegedly payable by all unit owners, including the Healys.

As background, Carriage House is comprised of two adjoining buildings located at 211 and 213 East 2nd Street in Manhattan. The Healys are the owners of Unit 8 in the building located at 213 East 2nd Street (the “building”). Outside of and appurtenant to Unit 8 exists a roof deck wherein the HVAC condensers for six of the seven units for 213 East 2nd Street are located. In 2014, the Healys commenced an action against the sponsor(s) of the Carriage House

Condominium and its principals (*John A. Healy, et al. v. Carriage House LLC, et al.*, Index No. 150133/2014, “Healy Action I”) for breach of an offering plan and a purchase agreement, breach of express warranty, breach of limited warranty, negligence, violation of New York General Business Law Section 349 and 350, and piercing the corporate veil, based on the sponsor defendants alleged failure to repair leaks and the defective and inadequate air conditioning system in the Healys’ condominium unit. This action remains pending before this Court.

On November 5, 2018, John Healy filed a summons and notice in the instant action, 160265/2018 (the “Healy Action II”), against Mathew Settle, the owner of another unit located within Carriage House. On December 26, 2018, Matthew Settle filed a demand for complaint. On January 18, 2019, John Healy filed an amended summons with notice on his own behalf, and also derivatively on behalf of Carriage House as a shareholder, in which he added two additional condominium owners as defendants, Tina Soares and David Soares (collectively, with Mathew Settle, the “defendants”), as well as Carriage House as a “nominal defendant.” On February 15, 2019, after defendants filed a second demand for complaint, the Healys filed a second amended summons with notice, this time adding Valeria Calafiore Healy as a plaintiff. The Healys filed their complaint that same day, which was followed by an amended complaint on February 19, 2019.


In the meantime, on January 17, 2019, prior to the Healys filing their complaint and amended complaint in Healy Action II, Carriage House initiated the Carriage House Action against the Healys alleging, *inter alia*, that the Healys had failed to pay certain assessments required of all unit owners, and also that the Healys were wrongfully denying access through their unit to the roof deck containing the HVAC condensers for the purpose of maintenance and repair as allegedly required under Carriage House’s by laws and a related easement. On May 7, 2019, Carriage House filed an order to show cause seeking a temporary restraining order and

preliminary injunction relating to the Healys' denying access to the aforementioned HVAC condensers. After this Court granted the Carriage House a TRO, the Healys cross-moved for an order vacating the TRO. On May 9, 2020, this Court granted Carriage House's motion for a preliminary injunction requiring the Healys to permit immediate and continued access to the roof deck through their unit with one days' notice as necessary for HVAC maintenance and repairs, and denied the Healy's cross-motion to vacate the TRO. The Healys appealed this Court's decision, which was affirmed by the Appellate Division, First Department on January 19, 2021. *Board of Managers of Carriage House Condominium v. Healy*, 190 A.D.3d 546 (2021). The Healys' motion seeking reargument of the First Department's opinion or, in the alternative, leave to seek review by the Court of Appeals was denied. 2021 NY Slip Op 62839(U) (Mar. 11, 2021).

Regarding the instant action (Healy Action II), the Healys, in their 106-page complaint, assert twelve direct claims and three derivative claims alleging, *inter alia*, interference with Carriage House's alleged obligation to repair the leaks into the Healys' unit, interference with the Healys' alleged right to access Carriage House's books and records, misrepresentation of authority by certain defendants to act for and in respect of Carriage House, causing Carriage House to lose valuable claims against the Sponsors and to incur substantial debt, bad faith and self-interested conduct in the form of allegedly using Carriage House common funds for personal expenses and expenses not in the best interest of Carriage House, and, as particularly relevant to the instant motion, bad faith by defendants in the form of seeking to enforce certain debts the Healys claim not to owe Carriage House, which allegedly includes the filing of the Carriage House Action. The instant motion in this action seeks to enjoin Carriage House, and persons acting on behalf of Carriage House, from prosecuting the Carriage House Action. This motion is denied for several reasons.

First, neither Settle nor the Soareses are parties to the Carriage House Action, which is being prosecuted by Carriage House to enforce its alleged legal rights. The arguments advanced by plaintiffs in this action against such enforcement by Carriage House should be asserted in the Carriage House Action. Second, plaintiffs already unsuccessfully raised similar procedural arguments in opposition to a preliminary injunction application in the Carriage House Action. These arguments were again unsuccessfully raised on appeal to the appellate division. Third, plaintiffs have failed to demonstrate a likelihood of success on the merits, irreparable harm, or a balancing of the equities. Plaintiffs have not shown that they are likely to prevail on their argument that the special assessments and liens were improper. Nor have plaintiffs articulated any harm incurred due to the pendency of the foreclosure cause of action asserted in the Carriage House Action beyond the general potential harm many litigants face when funds allegedly due a condominium or cooperative remain unpaid. Finally, the equities favor defendants as they are being forced to incur additional legal fees by plaintiffs' proliferation of litigation, rather than simply challenge in the Carriage House Action the merits of the claims asserted in that litigation. Accordingly, the motion seeking a preliminary injunction is denied.

This constitutes the decision and order of this Court.

<u>5/25/2021</u> DATE			 JAMES EDWARD D'AUGUSTE, J.S.C.	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT