

**Parc 56 LLC v Board of Mgrs. of the Parc Vendome  
Condominium**

2022 NY Slip Op 30549(U)

February 16, 2022

Supreme Court, New York County

Docket Number: Index No. 653550/2021

Judge: Andrew Borrok

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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. ANDREW BORROK

PART 53

*Justice*

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PARC 56 LLC,

INDEX NO. 653550/2021

Plaintiff,

- v -

BOARD OF MANAGERS OF THE PARC VENDOME  
CONDOMINIUM, BRADFORD WINSTON

**INTERIM ORDER**

Defendant.

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Pursuant to the discussion held on the record (2.15.22), on the record before the court, it appears that the Board has acted in bad faith in failing to exercise or waive the Right of First Refusal (the **ROFR**) and essentially pocket the Lease because, among other things discussed on the record, 15 months have gone by since the Board received the proposed lease, and the Board has neither waived the ROFR or exercised it. Instead the Board has indicated that the use of the Commercial Condominium is not acceptable and that it will not sign the necessary forms to amend the Certificate of Occupancy. This is more than puzzling because this very use was approved for this Commercial Condominium for a prior owner (i.e., the Board waived the ROFR) and the Board previously signed all necessary forms (i.e., the same forms) for that prior owner to effectuate this very amendment to the Certificate of Occupancy (the **CO**) for such use and refuses to do so for this owner. Significantly, the Board is not requesting any additional information with respect to this proposed tenancy (e.g., financial or other information of the proposed tenant). For completeness, nothing has happened (e.g., no noise complaints, etc.) with such prior approved use which would form a legitimate basis for concern over this prior approved use.

**OTHER ORDER – NON-MOTION**

Significantly, the Board has not said that it is waiving the ROFR subject to (1) the owner of the Commercial Condominium agreeing to modify the Lease solely to make clear in Section 5.1 that notwithstanding anything contained in the Lease to the contrary, except as otherwise specifically provided in the condominium documents, the Settlement Agreement, any agreement with any prior owner which this owner is subject to, the condominium has no obligations to the Commercial Condominium, (2) confirmation by the owner of the Commercial Condominium that the owner agrees to abide by the terms and covenants of the condominium documents, the Settlement Agreement, all laws and all recorded property rights and easements that affect the Commercial Condominium, and (3) agreement by the owner of the Commercial Condominium to absorb any costs associated with its particular desired use (including any costs necessitated by a change in the CO) whether occasioned in the Commercial Condominium or in the common elements of the condominium which costs would not be occasioned by the condominium if the Commercial Condominium were operated in accordance with its current CO (i.e., as a health club). This would obviously not violate the condominium documents or the owner of the Commercial Condominium' rights.

It is not clear whether the costs that the Board is now demanding the owner of the Commercial Condominium absorb for upgrades to spaces outside of the Commercial Condominium are necessitated by the particular use and because the CO is to be amended or whether the owner of the Commercial Condominium is being held-up unless it incurs costs having nothing to do with its Commercial Condominium or its desired use and the change in the CO. It is also not clear whether there has been acceptance of the original alteration agreement that was sent out by the

Board's managing agent and whether they may have waived the requirements of any inconsistent obligations in any other documents by virtue of their conduct.

To wit, (i) there is a discrepancy in the record before the court as to the status of the check submitted by the owner of the Commercial Condominium, (ii) the record is bereft of adequate information as to whether the costs that the Board are trying to have the owner of the Commercial Condominium absorb are necessitated by this particular use of the Commercial Condominium (*i.e.*, and would not be necessary if the Commercial Condominium were operated for other purposes and if there were no change to the CO), (iii) the basis for the condominium attorney's position that the condominium does not need to sign the same paperwork that it signed for the prior owner and (iv) the basis for the condominium's contention that it neither has to exercise the ROFR or waive it as the condominium does not appear to be requesting any additional information and over 15 months have gone by since it received the proposed lease.

Thus, it is hereby

ORDERED that the Defendants shall upload the following documents to NYSCEF no later than Friday, February 18, 2022 unless the Board exercises or waives its ROFR by such date:

1. An affidavit from the Board's managing agent and an affidavit from the Board's attorney certifying whether a check for the owner of the Commercial Condominium's Alteration fee in the sum of \$10,000 sent by the owner of the Commercial Condominium and which check he said could be applied was ever received, deposited or held in escrow on Plaintiff's behalf, the date such check was received (if in fact it was received), the date

- upon which such check was deposited (if it was deposited) and if it was received and not deposited, the date it was returned (if returned) or its current location and status; and
2. A supplemental affidavit from the condominium's attorney explaining (a) why her letter of April 28, 2021 to Mr. Davis indicated that the Board would not approve the use of Plaintiff's unit for child care when that specific use had previously been approved by the Board for a prior owner; (b) on what basis the condominium can refuse to sign Plaintiff's PW-1 or amend the CO pursuant to her letter of April 28, 2021 as it did for the prior owner for this particular use; (c) on what basis the Board believes (e.g., an engineer's report, etc.) the owner of the Commercial Condominium's proposed use will require building-wide upgrades to safety systems that are occasioned by its particular use that would not be occasioned were the commercial condominium unit to be operated as a health club as is permitted under the current CO; (d) the basis upon which the board reviewed the plans and specifications and the extent of the same while at the same time contesting the validity of the alterations agreement provided by their agent; and finally, (e) why the board has not waived its ROFR subject to (1) the owner of the Commercial Condominium agreeing to modify the Lease solely to make clear in Section 5.1 that notwithstanding anything contained in the Lease to the contrary, except as otherwise specifically provided in the condominium documents, the Settlement Agreement, any agreement with any prior owner which this owner is subject to, the condominium has no obligations to the Commercial Condominium, (2) confirmation by the owner of the Commercial Condominium that the owner agrees to abide by the terms and covenants of the condominium documents, all laws and all recorded property rights and easements that affect the Commercial Condominium, and (3) agreement by the owner of the Commercial

Condominium to absorb any costs associated with its particular desired use and the amendment to the CO whether occasioned in the Commercial Condominium or in the common elements of the condominium and which costs would not be occasioned by the condominium if the Commercial Condominium were operated as a health club; and it is further

ORDERED that oral argument on Motion Sequence No. 2 is adjourned until Wednesday, **February 23, 2022 at 3:30 p.m.**



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DATE: 2/16/2022

ANDREW BORROK, JSC

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify \_\_\_\_\_ )