

Edouard v 32083 Owners Corp.
2022 NY Slip Op 30743(U)
March 31, 2022
Supreme Court, New York County
Docket Number: Index No. 101154/2020
Judge: Laurence Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE LOVE **PART** **63M**

Justice

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ALPHONSE EDOUARD,

Plaintiff,

- v -

32083 OWNERS CORP., ERIC SCHMUTTER, DAWN
ANDERSON, PEARL SCHMUTTER, PEARL S.
SCHMUTTER TRUST, ANNA GIULIANO, JOSEPH PIAZZA,
MARTYN PIAZZA, LAUREN PERSICHETTI, CATHLEEN
TOBIN, MARK ANDERSON,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 45, 46, 47, 48, 49, 50, 51, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64

were read on this motion to/for

MISCELLANEOUS

The following reads on an Order to Show Cause (NYSCEF Doc. No. 38) by Emil A. Samman, to preliminarily enjoin named Defendant – 32083 Owners Corp., its board, officers, directors, agents, and employees, CPLR Article 63; and to appoint a temporary receiver, CPLR 6401, to hold and preserve the real property located at 320 East 83rd Street, New York, New York; and pro – se plaintiff appears to make a cross – motion “in support of emergency application for appointment of temporary receiver” (see NYSCEF Doc. No. 45).

Attorney Emil A. Samman, Esq., attorney for Defendant – 32083 Owners Corp., affirms, “[t]o the limited extent of handling and making unbiased decisions as they relate to this lawsuit to protect all of Defendant Corporation’s shareholders, the newly retained general counsel has indicated that they are unable or unwilling to do so” (see NYSCEF Doc. No. 54 Par. 8).

Affirmation in Opposition have been submitted by Junhua Qin, Director on the Board of Directors of 32083 Owners Corp. (see NYSCEF Doc. No. 56), Stella Cashman, Director on the

Board of Directors of 32083 Owners Corp. (see NYSCEF Doc. No. 57), Ronald A. Sher, Esq., general corporate counsel for 32083 Owners Corp. (see NYSCEF Doc. No. 60), Carl L. Finger, Esq., “attorney for 32083 Owners Corp. ... retained as special litigation counsel to advise the Board” (see NYSCEF Doc. No. 61), and Tina Thiakodemitris, property manager of 320 East 83rd Street, NY, NY (see NYSCEF Doc. No. 62).

The affirmation of Carl L. Finger, Esq., affirms, “I reviewed the minutes of a number of board meetings. These minutes, indicate that the Board is fully and completely functioning. It is readily apparent that the Cooperative is being efficiently and professionally run by the Board and the managing agent” (see NYSCEF Doc. No. 61 Pars. 22).

To be entitled to a preliminary injunction, the moving party must demonstrate 1) a likelihood of success on the merits, 2) irreparable injury if provisional relief is not granted and 3) that the equities are in his favor (see *J.A. Preston Corp. v. Fabrication Enterprises, Inc.*, 68 N.Y.2d 397 [1986]).

“Preliminary injunctive relief is a drastic remedy and will only be granted if the movant establishes a clear right to it under the law and the undisputed facts in the moving papers” (see *Koultukis v. Phillips*, 285 A.D.2d 433, 435 [1st Dept. 2001]).

“The appointment of a temporary receiver is an extreme remedy resulting in the taking and withholding of possession of property from a party without an adjudication (see *Suissa v. Baron*, 107 A.D.3d 689 [2013]).

The affidavit of Dawn Anderson (see NYSCEF Doc. No. 17) and Eric Schmutter (see NYSCEF Doc. No. 18) highlight only “the dysfunction of the Board.”

The affidavit of Junhua Qin (see NYSCEF Doc. No. 56) affirms, “Mr. Schmutter and Mrs. Anderson’s blanket statements of ‘damage’ are not supported with the specific facts, nor do

they adequately explain how these concerns would be remedied by the appointment of a receiver. To be clear the building is running well and in the past year the court should note that the Board has hired new management, passed a budget, operated within the budget, approved the audited financial statement, renewed insurance at significant savings, completed the ‘Spectrum’ project at a savings of \$80,000.00, paid all invoices, met regularly, approved minutes of meetings, scheduled the annual meeting, and in general run the building with high level of efficiency and success” (see NYSCEF Doc. No. 56 Pars. 8, 20).

The Court also notes that the Pro-se Plaintiff filed papers objecting to the appointment of a temporary receiver although in Oral argument before the court appeared to back track on that position. The Court further notes that Pro-se Plaintiff filed a “cross-motion” but a review of same illustrates that same was not properly filed and did not seek proper relief. Same is being viewed by the court simply as additional opposition to defendants motion.

Preliminary injunctive relief is a “drastic remedy,” and the appointment of a temporary receiver is an “extreme remedy.” “Board dysfunction” and a blanket statement of “damages” does not warrant the relief request in this Order to Show Cause. Obviously there are unique and complicated issues in this matter, where to an extent two distinct law firms appear to be representing the interests of the defendants with different opinions. However, to date there is insufficient information provided that warrants the real property needing to be protected. Individual board members may differ on strategy, which is an insufficient rationale to appoint a receiver and simply highlights the need for the board itself to reach a consensus.

ORDERED that the Order to Show Cause to preliminarily enjoin named Defendant – 32083 Owners Corp., its board, officers, directors, agents, and employees, CPLR Article 63; and

to appoint a temporary receiver, CPLR 6401, to hold and preserve the real property located at 320 East 83rd Street, New York, New York is DENIED; and it is further

ORDERED that pro – se plaintiff’s attempt to make a cross – motion “in support of emergency application for appointment of temporary receiver,” is DENIED.

3/31/2022

DATE



LAURENCE LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE