

<b>Board of Mgrs. of the Residential Section of Galleria Condominium v Hong</b>
2022 NY Slip Op 31139(U)
April 7, 2022
Supreme Court, New York County
Docket Number: Index No. 157493/2021
Judge: Alexander Tisch
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ALEXANDER TISCH PART 18

Justice

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THE BOARD OF MANAGERS OF THE RESIDENTIAL SECTION OF GALLERIA CONDOMINIUM,

Plaintiff,

- v -

ANNA HONG, JOHN DOE, JANE DOE

Defendant.

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INDEX NO. 157493/2021

MOTION DATE N/A, 01/10/2022

MOTION SEQ. NO. 003 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 33, 34, 36, 37, 38, 39, 40, 41, 42, 46

were read on this motion to/for EXTEND - TIME

The following e-filed documents, listed by NYSCEF document number (Motion 004) 35, 43, 44, 45, 47

were read on this motion to/for RELEASE RECORDS

Upon the foregoing documents,1 plaintiff moves for an extension of time to answer or respond to the complaint (motion sequence no. 3 and 4); directing plaintiff to serve papers upon defendant in hard-copy format; redacting certain information (motion sequence no. 3); and compelling discovery (motion sequence no. 4) (see NYSCEF Doc Nos. 34, 35). Plaintiff cross moves for an order "requiring defendant Anna Hong to seek and obtain prior consent of the Court prior to making any further pre-answer motions in this action" (NYSEF Doc Nos. 37, 43).

Discovery & Extension of Time to Respond

Plaintiff moves by notice of motion for an order:

"(1) pursuant to New York Business Corporation Law §727 and CPLR 3124 and/or 3102(c), compelling production of reports required to be issued by the plaintiff by NYBCL §727 for the time period of December 12, 2018 to December 31, 2021 to defendants and all unit owners of the

1 The Court notes that those portions of the defendant's affidavits that describe "discrepancies" or otherwise discuss the merits of the liens (or late fees or homeowner's insurance, etc.) are entirely improper to be raised in these pre-answer motions and will be disregarded by the Court.

Galleria Condominium, and the filing on NYSCEF of an affidavit or other proof of service confirming service thereof;

(2) pursuant to CPLR 2004 and 3012(d), extending the time of the defendants to plead, answer, move, or otherwise respond to the Summons and Complaint until one (1) month after the plaintiff produces all documents requested in this motion, or such other length of time to be determined by the Court” (NYSCEF Doc No. 35).

A few days earlier, plaintiff moved by order to show cause “pursuant to CPLR 2004 and 3012(d), extending the time of defendants to plead, answer, move, or otherwise respond to the Summons and Complaint until February 1, 2022” (see NYSCEF Doc No. 34).

Initially, the Court notes that reliance on CPLR 3102 (c) is unavailing as that concerns pre-action discovery. This is an action that was commenced by the filing of the summons and complaint on 8/10/2021. The defendant cites no authority for seeking “*pre-action*” discovery for the purpose of providing a mere response to the complaint (see Matter of Johnson v Union Bank of Switzerland, AG, 150 AD3d 436 [1st Dept 2017]). Indeed, the statute is not supposed to be used for a movant to obtain discovery for the purpose of determining whether they have a meritorious cause of action or, here, defense (see *id.*; see also Matter of Uddin v New York City Tr. Auth., 27 AD3d 265, 265-66 [1st Dept 2006] [“The only purpose of [the requested discovery] at this point would be to explore alternative theories of liability, which is not a proper basis for invoking CPLR 3102 (c)”]). The Court also notes that there does not appear to be any reason why discovery is needed at this juncture for a pre-answer motion to dismiss, given the applicable grounds for moving to dismiss and the timeframes set forth in CPLR 3211 (e) for each type.

In any event, the requested report under BCL 727 appears to be irrelevant. The statute requires a condominium to give an annual report to the shareholders of the transactions entered

into by the board. This action concerns the nonpayment of common charges.<sup>2</sup> Therefore, that branch of the application is denied without prejudice.

As for the related application for an extension of time to respond to the complaint, it should be noted that the Court previously granted defendant an extension of time to respond by order dated 11/8/2021 (NYSCEF Doc No. 29). The only basis for further extension and the sole reason for defendant's alleged inability to comply with the prior order is because "the holidays [were] approaching" and she wanted more time to "research and draft possible pre-answer motion(s) and a response" (NYSCEF Doc No. 33, affidavit of defendant). It is now April of the following year, i.e., at least 4 months have now passed since the application was made, and over seven (7) months since defendant was served with process in August of 2021. The Court sees no reason why an answer or pre-answer motion to dismiss cannot now be made. Accordingly, the Court grants one final extension as set forth below.

#### Hard Copy Service of Papers

The Court previously granted defendant's request to serve papers in hard copy. Defendant's claim that her internet service is spotty or unreliable is (1) entirely unsupported and (2) belied by the record indicating numerous e-mails between her and plaintiff's counsel, including service of letters (see NYSCEF Doc No. 39-40). Defendant cannot seriously suggest that it is permissible for her to e-mail plaintiff's counsel but demand that counsel respond in hard copy. However, given that pro se litigants are automatically opted-out of participating in e-filing, and defendant is proceeding pro se, plaintiff must serve defendant in hard-copy format of anything that plaintiff files to NYSCEF in the manner described in the Court's prior order (see

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<sup>2</sup> Defendant's feigned attempt to bring this statute into this matter, at least at this juncture, is also indicated by the details of the request, to wit that plaintiff serve a copy of the report(s) upon all shareholders, and not just herself — the only defendant in this case.

NYSCEF Doc No. 29). The Court will not interfere with the parties' communications had via e-mail if they do not concern papers filed for the Court's official record on NYSCEF.

#### Request for Sealing/Redaction

Part of defendant's motion (sequence no. 3), requests an order "permitting the filing of documents with personally identifiable information - such as telephone numbers, email addresses, cell phone numbers, billing account numbers, ID codes, and computer QR (square) codes - with redactions of such information, to prevent their inadvertent or unauthorized use or disclosure" (NYSCEF Doc No. 34). The alleged reason is to "preserve privacy interests" (*id.*).

The removal of confidential personal information is already codified in the Uniform Rules for Trial Courts (22 NYCRR) § 202.5 (e). The parties should familiarize themselves with the rule and proceeding accordingly. Any request for redactions of personal information that are not specifically identified or addressed within the rule is denied for failing to show good cause (*see* 22 NYCRR § 216.1; *see generally*, Danco Labs. v Chemical Works of Gedeon Richter, 274 AD2d 1, 7-8 [1st Dept 2000]).

#### Plaintiff's Cross-Motion

The Court grants the cross-motion prohibiting defendant making further motions without leave of the Court. This is the fourth motion prior to serving an answer or responding to the complaint. Indeed, the two instant motions request duplicative relief, namely a further extension of time to respond to the complaint, though the relief could have easily been requested in a single motion.<sup>3</sup> Finally, the Court denies defendant's request to find that plaintiff's counsel engaged in frivolous conduct — plaintiff's counsel's conduct falls woefully short of "frivolous."

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<sup>3</sup> Although the Court acknowledges that defendant is proceeding pro se, she is admittedly a licensed attorney.

Accordingly, it is hereby ORDERED that plaintiff's motion to compel discovery and extend time to answer based on said discovery (motion sequence no. 4) is denied in its entirety; and it is further

ORDERED that the branch of defendant's motion for service of papers in hardcopy is granted to the extent that plaintiff must serve all papers that are filed on NYSCEF upon the defendant in hard-copy format; and it is further

ORDERED that the branch of defendant's motion for an extension of time to respond to the complaint is granted solely to the extent that defendant must respond to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that plaintiff serve a copy of this order with notice of entry upon defendant within 20 days of its entry; and it is further

ORDERED that the balance of defendant's motion (motion sequence no. 3) is denied; and it is further

ORDERED that plaintiff's cross-motions (motion sequence nos. 3 and 4) is granted to the extent that defendant must seek leave of the Court to file any pre-answer motion by letter application to the Court.<sup>4</sup>

This constitutes the decision and order of the Court.



4/7/2022  
DATE

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ALEXANDER TISCH, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

<sup>4</sup> The Court points out that discovery-related motions (such as motion sequence no. 4) must not only comply with 22 NYCRR § 202.7, but also § 202.20-f and/or leave of the Court following a conference regarding the dispute.