

**Department of Env'tl. Protection of the City of N.Y. v  
Board of Mgrs. of the Kaybern Ct. Condominium**

2022 NY Slip Op 31775(U)

June 2, 2022

Supreme Court, New York County

Docket Number: Index No. 452707/2021

Judge: Laurence Love

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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. LAURENCE LOVE PART 63M**

*Justice*

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DEPARTMENT OF ENVIRONMENTAL PROTECTION OF  
THE CITY OF NEW YORK, THE NEW YORK CITY WATER  
BOARD,

Plaintiff,

- v -

BOARD OF MANAGERS OF THE KAYBERN COURT  
CONDOMINIUM, LING LIN, SAYED IMAN, UMMA SAIMA,  
NANCY HUANG, RANDI CHEUNG, MEDEL LUZONG,  
THUNDERBOLT REALTY LLC, FRANKLIN MACHUCA,  
MAGALIA GARCIA, ANTHONY GOLEMBIEWSKI, KAMRAN  
KHAN, HAIYAN ZHENG, ANNA ROZMUS, SZCZEPAN  
GOGOLEWSKI, NORMA ROQUE-ABDALA, INDIRA  
SINGH, PARVIN ISLAM, XIU CHEN, MU'TAZZ BEY, MD  
BASITH, OSWALDO GARAY, SHARIFA BEGUM, HABIBA  
BEGUM, AHMED SARWARY, PRANANAND RAMNAUTH,  
LACHMI RAMNAUTH, SYLVIA BONE, RATAN DAS,  
MOONIRAM RAMJIT, MILOS KOZANAK, MAGDALENA  
ALGARIN-KRYSCIAK, SUMENA BEGUM, SIU POON,  
GANG ZHU, FRANKY NERESTIL, SHARON GOORAHOO,  
WILLIAM CORRADINI, ELZBIETA KOPEC, MARIA  
MURATURE, 74-13 101ST AVENUE REALTY CORP,  
HASAN AHMED, MD AHMED, URMIL ARYA, JOSEPH  
LODICO,

Defendants.

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BOARD OF MANAGERS OF THE KAYBERN COURT  
CONDOMINIUM, SYLVIA BONE

Plaintiffs,

-against-

RVP MANAGEMENT CORP., THUNDERBOLT REALTY LLC,  
RICARDO VON PUTTKAMMER

Defendants.

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**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595869/2021

The following e-filed documents, listed by NYSCEF document number (Motion 001) 55, 56, 57, 58, 59,  
60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 75, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 91,  
92, 93, 94, 95, 96, 97

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The following read on Defendants’/Third – Party Plaintiffs,’ BOARD OF MANAGERS OF THE KAYBERN COURT CONDOMINIUM and SYLVIA BONE’S Order to Show Cause (see NYSCEF Doc. No. 72) to:

- i) appoint a Temporary Receiver, per CPLR Article 64, “for the interim management of the Board’s day-to-day affairs, with the express authorization to take and hold the Board’s real and personal property, to sue for, collect, and sell debts or claims upon such conditions and for such purposes as this Court shall direct, as well as the power to employ legal and accounting professionals, and property managers, and to bring the Condo’s affairs into regulatory compliance insofar as securing a permanent certificate of occupancy for the Condo;”
- ii) to Preliminary Enjoin and Temporarily Restrain, per CPLR Article 63, Third – Party Defendant RVP MANAGEMENT CORP., “from continued day-to-day management of the Board’s affairs, as well as preliminarily enjoining and temporarily restraining RVP MANAGEMENT CORP. from exercising continued authority over the Board’s fiscal matters, including from transferring, diverting, conveying, pledging, encumbering, mortgaging, disposing, dissipating, and/or wasting the Condo’s assets, and from interfering with the Board’s access to all Condo administrative accounts, and compelling the delivery of all documents, log-in information, administrative access, and compelling cooperation with two-factor authentication;” and
- iii) to grant pre-judgment Attachment, per CPLR Article 62, “to the real property at the Condo held by Third – Party Defendant THUNDERBOLT REALTY LLC upon a continued intent to defraud judgment creditors and/or frustrate judgment enforcement by selling, transferring, disposing, and/or encumbering such real property.”

A Virtual Microsoft Teams Appearance was held on May 11, 2022 where both sides appeared, and a Court Reporter was present.

A Verified Complaint from the DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE CITY OF NEW YORK and THE NEW YORK CITY WATER BOARD has a first cause of action i) “[c]ommencing with an invoice from ... February 27, 1995 and continuing through an invoice dated July 8, 2021, the Plaintiffs administratively determined that Defendants, jointly and severally, incurred water, sewage and late payment charges. Intermittent payments were made by the Defendants. That now due and owing is the sum of \$432,047.76 ... through July 8, 2021;” and a second cause of action for ii) “[t]he reasonable value and rate of the water and sewage services rendered ... at least \$432,047.76, plus an water and sewage charges incurred after July 8, 2021, plus any statutory late payment charges.”

Plaintiffs provide an account summary with a balance of \$432,047.76 due and owing, with an address of 97-52 75th Street, Jamaica, NY 11416 (see NYSCEF Doc. No. 2).

Defendants SYLIVA BONE and BOARD OF MANAGERS OF THE KAYBERN COURT CONDOMINIUM submit a Verified Answer (see NYSCEF Doc. No. 38) and a Third – Party Complaint with cross-claims with causes of action for: i) Conversion against RVP Management Corp., ii) Breach of Fiduciary Duty against RVP Management Corp., iii) Accounting against RVP Management Corp., iv) Breach of Covenant of Good Faith and Fair Dealing against RVP Management Corp., v) “Money had and received” against RVP Management Corp., vi) Unjust enrichment against RVP Management Corp., vii) Waste against RVP Management Corp., viii) Fraud against RVP Management Corp., ix) Receivership against the Condominium Board, x) Permanent Injunction against RVP Management Corp., xi) Piercing

the Corporate Veil of RVP Management Corp. and Thunderbolt Realty LLC, and xii) Indemnification and Contribution against all third – party defendants (NYSCEF Doc. No. 39).

Third – party Defendants RVP MANAGEMENT, INC., THUNDERBOLT REALTY LLC, and RICARDO VON PUTTKAMMER submit a Third Party Verified Answer with Counterclaims. Counterclaims include i) “RVP is entitled to be defended, indemnified and reimbursed under the terms of the Management Agreement in an amount to be determined at trial but not less than \$25,000;” and ii) “legal expenditures defending the present action in an amount to be determined at trial but not less than \$25,000” (see NYSCEF Doc. No. 76).

Per Defendant/Third – Party Plaintiff’s Affirmation in Support of the Order to Show Cause,

“Third-party defendant THUNDERBOLT REALTY LLC became the successor sponsor of the Condo on or around August 1, 2012. Under [RVP Management Corp.]’s eighteen (18) year stewardship of the Condo, no permanent certificate of occupancy has ever been issued. [RVP Management Corp.] has been misrepresenting amendments and annual filing by categorizing the Condo’s water liability to the City as contingent. [RVP Management Corp.]’s. With knowledge of the Condo’s poor financial condition by virtue of [RVP Management Corp.]’s conversion, misappropriation, and embezzlement of common charges, third-party defendant THUNDERBOLT REALTY LLC has been transferring units to other third-parties from time-to-time, with intent to defraud creditors or frustrate the enforcement of a judgment” (see NYSCEF Doc. No. 56 Pars. 10 – 13).

Named Third – Party Defendant, Ricard von Puttkammer, submits an affidavit.

“I am the President of Defendant RVP Management, Inc. Additionally, I am a principal of Thunderbolt Realty, LLC. There has been no defalcation of monies from the Condominium. The Court is respectfully referred to the December 2021 arrears run. This statement shows that there are presently over \$430,000 in unpaid arrears from the unit owners over a considerable time period. A comparison of financial statements for the years 2017 through 2019 prepared by the Condominium’s independent accountants ... also show increasing arrears during this time period. The financial

statements also clearly show the water and sewer arrears. Recovering from defaulting condominium unit owners is difficult. This is so because the unit owners' lenders have lien priority over the condominium. This means that any condominium foreclosure where there is a lender for that unit owner is likely to result in a non-recovery for the condominium because the lender's own foreclosure action extinguishes the Condominium's lien for unpaid common charges. To mitigate its losses the Condominium's Board of Managers retained separate counsel to recover the unpaid common charged from the non-paying unit owners. However, since the inception of the eviction and foreclosure moratoriums which were governmentally imposed approximately eighteen months ago, there has been little success in recovering mounting open arrears while the Condominiums expenses remained the same or escalated. There is simply no basis to appoint a receiver because the Third Party Plaintiff's unfounded claim that monies were stolen by RVP and Puttrkammer is false. Appointment of a receiver is not only legally unmerited but would be detrimental to the Condominium because an additional expense would be added to the ledger to pay the receiver. There is no legal basis for attachment of Thunderbolt's assets which are unsold units held by an altogether separate legal entity. Moreover, this legal entity has no involvement in the management of the Condominium, that being the sole realm of RVP. As far as the Certificate of Occupancy is concerned, a copy of the current ones for the Condominium are annexed" (see NYSCEF Doc. No. 79 Pars. 1-2, 4-8, 10-12, 14).

Third – Party Defendants submit a Rent Roll Activity with arrears (see NYSCEF Doc. No. 80), Independent Auditors Reports from 2017 to 2020 (see NYSCEF Doc. Nos. 81 – 84), attorney actions (see NYSCEF Doc. No. 85), and a NYC Buildings Certificates of Occupancy for premises 74-15 101 Avenue Queens (see NYSCEF Doc. No. 87).

Third – Party Defendants submit an affirmation, "every material claim advanced by the Third – Party Plaintiff in her papers is made by a person without any personal knowledge of the facts, i.e., Bone's attorney, and should be accorded little or no probative value in the first place. For this reason, it is unsurprising that these material claims are simply false" (see NYSCEF Doc. No. 78 Par. 4).

“Temporary receivership, authorized by Article 64, is a provisional remedy by which a court, through a receiver, conserves and manages property which is the subject of an action pending the outcome of litigation. Since the appointment of a receiver involves a drastic intrusion into a defendant’s right to control the property, it is available only if compelling reasons are shown” (see *Civil Litigation in New York*, 6th ed. Chase and Barker, p. 525).

To be entitled to a preliminary injunction, Article 63, “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]).

The grounds for Attachment per CPLR 6201(3) states:

An order of attachment may be granted in any action ... where the plaintiff has demanded and would be entitled, in whole or in part, or in the alternative, to a money judgment against one or more defendants when ... the defendant, with intent to defraud his creditors or frustrate the enforcement of a judgment that might be rendered in plaintiff’s favor, has assigned, disposed of, encumbered or secreted property, or removed it from the state or is about to do any of these acts.

“Fraud is not lightly inferred, and the moving papers must contain evidentiary facts – as opposed to conclusions – proving the fraud” (see *McLaughlin Practice Commentaries*, McKinney’s Cons Laws of NY, Book 7B).

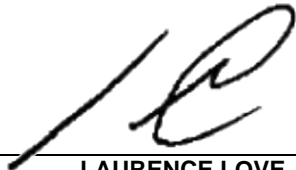
As Third – Party Plaintiffs do not submit an affidavit with someone with knowledge of the facts, this court cannot substantiate their claims. Third – Party Defendants submit an affidavit along with multiple proofs and documents defending their position. As provisional remedies are a drastic remedy, Third – Party Plaintiff’s have not shown that provisional relief is warranted.

ORDERED that Third – Party Plaintiffs’ application to appoint a Temporary Receiver, per CPLR Article 64, “for the interim management of the Board’s day-to-day affairs, with the express authorization to take and hold the Board’s real and personal property, to sue for, collect, and sell debts or claims upon such conditions and for such purposes as this Court shall direct, as well as the power to employ legal and accounting professionals, and property managers, and to bring the Condo’s affairs into regulatory compliance insofar as securing a permanent certificate of occupancy for the Condo” is DENIED; and it is further

ORDERED that Third – Party Plaintiffs’ application to appoint a Temporary Receiver, per CPLR Article 63, “for the interim management of the Board’s day-to-day affairs, with the express authorization to take and hold the Board’s real and personal property, to sue for, collect, and sell debts or claims upon such conditions and for such purposes as this Court shall direct, as well as the power to employ legal and accounting professionals, and property managers, and to bring the Condo’s affairs into regulatory compliance insofar as securing a permanent certificate of occupancy for the Condo” is DENIED; and it is further

ORDERED that Third – Party Plaintiffs’ application to grant pre-judgment Attachment, per CPLR Article 62, “to the real property at the Condo held by Third – Party Defendant THUNDERBOLT REALTY LLC upon a continued intent to defraud judgment creditors and/or frustrate judgment enforcement by selling, transferring, disposing, and/or encumbering such real property” is DENIED.

6/2/2022  
DATE

  
LAURENCE LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input 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