

Brodie v Board of Mgrs. of the Aldyn

2022 NY Slip Op 31982(U)

June 24, 2022

Supreme Court, New York County

Docket Number: Index No. 652081/2022

Judge: Louis L. Nock

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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. LOUIS L. NOCK **PART** **38M**

Justice

-----X

STEFAN BRODIE and IRINA DENISOVA,

Plaintiffs,

INDEX NO. 652081/2022

MOTION DATE 05/04/2022

MOTION SEQ. NO. 001

- v -

BOARD OF MANAGERS OF THE ALDYN, ALLIED
PARTNERS, and JOHN DOES #1 THROUGH #10,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6 through 25
were read on this motion for PRELIMINARY INJUNCTION.

LOUIS L. NOCK, J.

Plaintiffs’ motion for a preliminary injunction is granted to the extent set forth
hereinbelow.

Summary of this Matter:

This matter involves a dispute between plaintiffs (condominium unit owners) and the
condominium board of managers (defendant board) relating to the duration of renovations on the
unit by plaintiffs which started in 2019 and have been ongoing through and until the spring of
this year. The gravamen of the action lies in a “Stop Work Notice” issued by the board April 29
of this year predicated on the board’s understanding that the renovations have lingered far longer
than what was anticipated in an “Alteration Agreement” executed by the parties February 15,
2019 (*see*, NYSCEF Doc. No. 2). The Alteration Agreement assesses a \$500-per-day charge for
each day that plaintiffs’ renovation continues beyond a “Required Completion Date” that was

supposed to be set forth in that agreement (*see, id.*, § 5 [d] [“Required Completion Date”]).¹ The board also assessed fines against plaintiffs and, per the board’s Stop Work Notice, seized plaintiffs’ security deposit for application to such fines (*see, Verified Complaint* ¶ 25).

The verified complaint in this action asserts a cause of action for breach of contract (i.e., the Alteration Agreement) by defendant board, directed at the accumulation of fines assessed by the board, alleged to be unauthorized.² The verified complaint also asserts a cause of action for a permanent injunction nullifying the effect of the board’s Stop Work Order so that the renovation can continue till absolute completion.

Plaintiffs now move for a preliminary injunction to restrain the defendant board from continuing to enforce its Stop Work Order during the pendency of the action.

Discussion:

CPLR 6301 provides that “[a] preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff’s rights respecting the subject of the action, and tending to render the judgment ineffectual” (CPLR 6301.) The purpose of the relief contemplated by CPLR 6301 is to maintain the *status quo* until the merits of the action can be decided (*Pamela Equities Corp. v 270 Park Ave. Café Corp.*, 62 AD3d 620 [1st Dept 2009]). To obtain preliminary injunctive relief, a party must generally make a showing of (i) irreparable harm absent the injunction, (ii) a likelihood of success on the merits, and (iii) that a balancing of the equities tips in favor of the moving party (*Aetna Ins. Co. v Capasso*, 75 NY2d 860 [1990]).

¹ Oddly enough, though, the board never filled in the blank space within that section, which was to fix the “Required Completion Date.” This contractual defect is to blame for the instant controversy. Had the board avoided ambiguity by filling in that blank space with a mutually stipulated deadline for renovation completion, we would not be called upon to adjudicate whether or not plaintiffs’ ongoing renovation project breaches the agreement’s “Required Completion Date.”

² A related cause of action for a declaration against the validity of the fines is also asserted.

However, the party seeking injunctive relief needs only to make a *prima facie* showing of a right to relief; the movant does not have to prove its case (*see, Four Times Square Associates LLC v Cigna Investments, Inc.*, 306 AD2d 4 [1st Dept 2003]). To demonstrate a likelihood of success on the merits, the movant need only demonstrate “a *prima facie* showing of a right to relief,” while “actual proof of the case should be left to further court proceedings” (*Terrell v Terrell*, 279 AD2d 301, 303 [1st Dept 2001]).

The Alteration Agreement, which bears the defendant’s letterhead (“The Aldyn, 60 Riverside Boulevard, New York, NY 10069”), does not fix a date for renovation completion. While it is true that plaintiffs’ contractor prepared a project schedule anticipating a September 2020 completion time (*see, NYSCEF Doc. No. 18*), one must be mindful in this procedurally equitable context of the fact that intervening COVID-19 outbreaks, lockdowns, and closures gave rise to unavoidable and unanticipated delays, not of plaintiffs’ doing (*see, Affidavit of Erich Schoenherr* [NYSCEF Doc. No. 8], *passim*). Although defendant points to a 45-day *force majeure* limitation clause in the “Required Completion Date” provision of the Alteration Agreement (*see, NYSCEF Doc. No. 2* § 5 [d]), that really accomplishes nothing if the most critical piece of information – the actual deadline for the “Required Completion Date” – was left blank by the drafter of the agreement – the defendant board – whose interest in defining that term was its alone. It did not; instead, allowing the renovation work to go on despite the lack of clarity on when the renovation was supposed to end. It could have insisted on such clarity; but didn’t. It is the defendant board which ought to bear the consequence of that ambiguity; not the plaintiffs (*see also, e.g., 327 Realty, LLC v Nextel of N.Y., Inc.*, 150 AD3d 581, 582 [1st Dept 2017] [contractual ambiguities are construed “against the drafter”]).

In addition, in the absence of some level of injunctive relief (not necessarily to the full extent of plaintiffs' preference), plaintiffs will suffer irreparable harm. Plaintiffs have already spent over \$15 million on the acquisition and renovation of their condominium unit (Verified Complaint ¶ 3). They ought to be afforded some additional time to complete the project. As for the condominium building itself, the exercise of some more patience on its part does not constitute, in this court's view, an unbearable sacrifice, especially if this court supplies the missing deadline term as it is empowered to do (*see, e.g., Haines v City of N.Y.*, 41 NY2d 769 [1977]; *Atco Canton Corp. v Costanzi*, 133 AD2d 949 [3d Dept 1987]).

The foregoing observations also relate to the balancing of equities prong of the injunctive relief analysis, which "requires the court to look to the relative prejudice to each party accruing from a grant or a denial of the requested relief" (*Sau Thi Ma v Xaun T. Lien*, 198 AD2d 186, 186-87 [1st Dept 1993], *appeal dismissed* 83 NY2d 847 [1994]). As noted, the grant of additional time to complete the renovation, which involves "products, materials, and tradespeople coming from Europe" (Verified Complaint ¶ 17), balanced against the building's continued inconvenience, militates in favor of a grant, to some extent, of the application for a preliminary injunction to allow the work to continue toward hoped-for completion. Given the foregoing logistical difficulties, involving overseas participants in the renovation work, taken in tandem with the unavoidable halt in progress occasioned by unfortunate pandemic-related obstacles, and recognizing defendant's failure to specify any end date, this court hereby supplies what it perceives as a final, necessary, deadline for completion: November 30, 2022. The fixing of this deadline will, in the court's view, provide ample time for completion of the project, without causing an unbearable burden on the condominium building to endure limitless construction activity within its confines.

Accordingly, it is

ORDERED that the plaintiffs' motion for a preliminary injunction is granted to the extent that the Stop Work Notice issued by defendant Board of Managers to the plaintiffs herein is preliminarily nullified until November 30, 2022; but no later.

This will constitute the decision and order of the court.

ENTER:



<u>6/24/2022</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE