

**Turekian v 9201 Shore Tenants Corp.**

2023 NY Slip Op 30089(U)

January 11, 2023

Supreme Court, Kings County

Docket Number: Index No. 520132/2018

Judge: Wayne P. Saitta

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 29 of the Supreme Court of the State of New York, held in and for the County of Kings, at 360 Adams Street, Brooklyn, New York, on the 11th day of January, 2023.

P R E S E N T:

Hon. Wayne P. Saitta, Justice.

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RONALD TUREKIAN,

Plaintiff,

Index No. 520132/2018

-against-

9201 SHORE TENANTS CORP., and the BOARD OF DIRECTORS of 9201 SHORE TENANTS CORP.,

DECISION AND ORDER  
MS #2

Defendants,

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The following papers numbered on this motion:

NYSCEF Doc Numbers

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	46-49, 55
Answering Affidavit (Affirmation) _____	57, 72
Reply Affidavit (Affirmation) _____	74-75
Supplemental Affidavit (Affirmation) _____	
Pleadings – Exhibits _____	50-54, 59-71
Stipulations – Minutes _____	
Filed Papers _____	

This action was commenced by Plaintiff, against Defendants 9201 SHORE TENANTS CORP., and the BOARD OF DIRECTORS of 9201 SHORE TENANTS CORP. (collectively Defendant BOARD) for breach of contract and breach of fiduciary duties by Defendant BOARD.

Plaintiff is the owner of Units C704 and C707 in the cooperative building located at 9201 Shore Road (the Co-op) and claims that Defendant BOARD wrongfully refused to let him participate on an equal basis with other shareholders in obtaining parking privileges in the garage of the Co-op. Plaintiff commenced this action for money damages for breach of contract, for specific performance to compel the Co-op Board to lease him the next available parking space in the subject Co-op, and for monetary damages for breach of fiduciary duty.

Defendants move for an Order dismissing Plaintiffs' Complaint and argue that they exercised the Business Judgment Rule and lawfully enacted House Rules consistent with the Co-op By-Laws to insure fairness to all Shareholders for the equitable distribution of available parking spaces.

Plaintiff claims that the decision constitutes unlawful discrimination and is not protected by the Business Judgment Rule as Defendant BOARD acted to deny him, solely, parking lottery privileges when he purchased a second unit in 2015.

On June 11, 2007, Plaintiff purchased shares in the Co-op for unit C707 and received a parking space associated with his ownership of shares for unit C707 in 2014.

On November 12, 2015, Plaintiff purchased shares for a second unit, unit C704, in the Co-op and received a proprietary lease. Pursuant to the House Rules as of that date and attached to the proprietary lease, Rule 9 addressed parking spaces and stated:

The garage and the parking spaces therein, are the sole property of the Apartment Cooperation, Empty spaces are awarded to tenant shareholders on an alternating lottery/seniority basis. Spaces that will be temporarily vacant are not subject to private deals but will be handled by the Garage Committee and the Board of Directors who will hold additional lotteries as they deem necessary.

In June of 2016, the House Rules were amended. However, there was no change to Rule 9.

On July 25, 2017, Defendant BOARD denied Plaintiff's request to be added to the parking waiting list for unit C704, stating:

As the parking rules state that parking spaces are only assigned to shareholders that use their apartments as their primary residence, the Board cannot allow you an additional parking space.

On August 3, 2017, Defendants' counsel wrote to Plaintiff reiterating the denial and quoted Paragraph 9.h. of Plaintiff's Parking Agreement for unit C707 which states:

The OCCUPANT must maintain a primary residence at 9201 Shore Road so long as parking privileges are received. Parking privileges will be terminated if this condition is not satisfied.

In the context of cooperative dwellings, the business judgment rule provides that a court should defer to a cooperative board's determination "[s]o long as the board acts for the purposes of the cooperative, within the scope of its authority and in good faith" (*40 West 67th Street Corp. v Pullman*, 100 NY2d 147, 153 [2013], quoting *Levandusky v. One Fifth Avenue. Apartment Corp.*, 75 NY2d 530, 538 [1990]).

It is not contested that the proprietary lease is subject to the House Rules and that pursuant to the By-Laws the BOARD can amend the House Rules.

Plaintiff submitted a copy of the parking agreement for his parking space from 2014. Section 9.h. of the Parking Agreement only requires that 9201 Shore Road be his primary residence. It does not state that any specific apartment at 9201 Shore Road had to be his primary residence. Nothing else in the agreement prohibits a resident from having more than one space.

Further, Defendants have not presented evidence that at the time of Plaintiff's 2017 parking request, the House Rules then in effect restricted the allocation of parking spaces

to shareholders that use any specific apartment as their primary residence, or that a resident can have only one space. The fact that the House Rules may have been validly amended after Plaintiff's request does not provide a valid basis for the denial.

Therefore, there remain questions of fact whether Defendants breached the terms of Plaintiff's proprietary lease.

WHEREFORE it is hereby ORDERED Defendant's motion is denied in its entirety.

This constitutes the Decision and Order of the Court.

ENTER,



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J.S.C.