

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

2023 NY Slip Op 31175(U)

April 12, 2023

Supreme Court, New York County

Docket Number: Index No. 452707/2021

Judge: Laurence L. 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 L. 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 H IMAN, UMMA
SAIMA, NANCY HUANG, RANDI CHEUNG, MEDEL D
LUZONG, THUNDERBOLT REALTY LLC,FRANKLIN
MACHUCA, MAGALIA GARCIA, ANTHONY J
GOLEMBIEWSKI, KAMRAN KHAN, HAIYAN ZHENG,
ANNA ROZMUS, SZCZEPAN GOGOLEWSKI, NORMA E
ROQUE-ABDALA, INDIRA SINGH, PARVIN ISLAM, XIU
QUIN CHEN, MU'TAZZ RAID BEY, MD A BASITH,
OSWALDO GARAY, SHARIFA BEGUM, HABIBA BEGUM,
AHMED S SARWARY, PRANANAND RAMNAUTH,
LACHMI D RAMNAUTH, SYLVIA BONE, RATAN C DAS,
MOONIRAM P RAMJIT, MILOS KOZANAK, MAGDALENA J
ALGARIN-KRYSCIAK, SUMENA BEGUM, SIU YUK POON,
GANG SHUAI ZHU, FRANKY NERESTIL, SHARON
GOORAHOO, WILLIAM CORRADINI, ELZBIETA KOPEC,
MARIA MURATURE, 74-13 101ST AVENUE REALTY
CORP, HASAN AHMED, MD SIBBIR AHMED, URMIL
ARYA, JOSEPH LODICO,

Defendant.

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BOARD OF MANAGERS OF THE KAYBERN COURT
CONDOMINIUM, SYLVIA BONE

Plaintiff,

-against-

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

Defendant.

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INDEX NO. 452707/2021
MOTION DATE 12/12/2022
MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595869/2021

The following e-filed documents, listed by NYSCEF document number (Motion 004) 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182

were read on this motion to/for

APPOINT - FIDUCIARY

Upon the foregoing documents, defendant/third-party plaintiff, Sylvia Bone's motion seeking an Order preliminarily enjoining RVP from continued day-to-day management of the Board's affairs, appointing a temporary receiver with the statutory powers accorded thereto for day-to-day management of the Board's affairs, and granting pre-judgment attachment to the real property at the Condo held by third-party defendant THUNDERBOLT REALTY LLC is decided as follows:

Plaintiff, The Department of Environmental Protection of the City of New York & The New York City Water Board ("DEP") commenced the instant action by filing of a summons and complaint on August 5, 2021, seeking to recover from defendants, The Board of Managers of the Kaybern Court Condominium, and the owners of the condominium units comprising the Kaybern Court Condominium ("Kaybern"), located at 97-52 75th Street, Ozone Park, NY 11416, a total of \$432,047.76, as of the date of the filing of the complaint, representing unpaid water charges, together with attorney's fees pursuant to Public Authorities Law Section 1045-(j)(5). On September 22, 2021, defendant, Sylvia Bone, individually and on behalf of the Board of Managers of the Kaybern Court Condominium, interposed an Answer and third-party complaint adding RVP Management Corp ("RVP"), Thunderbolt Realty, LLC ("Thunderbolt") and Ricardo Von Puttkamer ("Puttkamer") as third-party defendants. As described in the Third-Party complaint, RVP is the managing gent of Kaybern and Thunderbolt is the owner of several condominium units, itself owned by Puttkamer. Arising from Kaybern's alleged failure to pay its water bills, Third-Party plaintiffs assert causes of action against RVP for Conversion, Breach of Fiduciary Duty, Accounting, and related causes of action, further seeking a receivership and permanent injunction, together with Indemnification and Contribution from Thunderbolt and Puttkamer. Said third-party

complaint was answered on January 18, 2022. This Court previously denied two motions for the relief sought herein in an attempt to resolve this matter. This action having not been resolved, Third-Party plaintiffs now move again for said relief.

Pursuant to CPLR 6401, “Upon motion of a person having an apparent interest in property which is the subject of an action in the supreme or a county court, a temporary receiver of the property may be appointed, before or after service of summons and at any time prior to judgment, or during the pendency of an appeal, where there is danger that the property will be removed from the state, or lost, materially injured or destroyed...The court appointing a receiver may authorize him to take and hold real and personal property, and sue for, collect and sell debts or claims, upon such conditions and for such purposes as the court shall direct...”

In support of the instant motion, movant submits the affidavit of Sylvia Bone, together with supporting documentation, which alleges as follows: Movant is the owner of unit B24 at Kaybern Court. Kaybern Court does not currently have a Board of Directors, and RVP has been acting as Managing Agent on behalf of the Board of Directors for approximately eighteen years. Among RVP’s responsibilities is the collection of common charges and the payment of invoices, including those that are the subject of this action. Upon receipt of service of the instant action, movant contacted RVP by contacting Puttkamer, requesting that they engage counsel on behalf of Kaybern Court to defend the instant action. Third-Party defendants have failed to respond to said request.

In opposition to the prior motion to appoint a temporary receiver, third-party defendants submitted the affidavit of Puttkamer, who identified himself as the President of RVP and a principal of Thunderbolt, together with supporting documentation, which establishes as follows: As of December 2021, there was over \$430,000.00 in unpaid arrears from individual unit owners, which increased over the period from 2017 through 2020. RVP has engaged outside counsel to

pursue unpaid common charges from the non-paying unit owners. The open water and sewer charges are disclosed in the Kaybern Court's financial statements. Third-Party defendants further argue that the appointment of a receiver will further erode the funds available to settle this case. However, utterly missing from that opposition and the opposition to the instant motion is any indication that RVP has made any attempt to remedy the outstanding water and sewer charges.

A temporary receiver should be appointed for the preservation of the assets where there is danger of, *inter alia*, material injury, irreparable loss, or that assets are being diverted or wasted. See *Matter of Eugene*, 160 AD3d 506 (1st Dep't 2018). Further, Sylvia Bone has standing to seek such a remedy as a condominium owner has standing to "assert a claim derivatively on behalf of an unincorporated condominium... when the management of the entity fails to act to protect that interest". See, *Bd. of Mgrs. of 28 Cliff St. Condo. v. Maguire*, 191 AD3d 25 (1st Dep't 2020). As it is clear that RVP has abdicated its responsibilities to defend this action, Sylvia Bone clearly has standing to maintain the instant action.

The court having considered the arguments of the parties, and having determined that the movant has an interest in the property that is the subject of this action and, further, that there is a danger that the property will be materially injured during the pendency of this action, it is now hereby

ORDERED that the Motion for the appointment of a temporary receiver of the Board is granted to the extent set forth herein; and it is further

ORDERED that Alexander B. Litt, Esq. Fiduciary ID 106480 with offices located at 1407 Broadway, Suite 3900, New York, New York 10018 be and hereby is appointed Temporary Receiver of the Board during the pendency of this action ("Temporary Receiver"); and it is further

ORDERED that the Temporary Receiver is authorized to forthwith take charge of, manage and direct the Board and has authority to enter, manage, and operate KCC and the Property as necessary; and it is further

ORDERED that the Temporary Receiver is authorized to demand, collect, and receive from the unit owners or tenants of KCC/Property all common charges, maintenance fees, assessments, rents, license fees, and other charges (collectively referred to herein as “Arrears”) due and unpaid, and hereafter to become due; and it is further

ORDERED that pursuant to General Obligations Law § 7-105, anybody including, but not limited to, Third-Party Defendants RVP Management Corp., Thunderbolt Realty LLC, Ricardo Von Puttkammer and their members, managers, agents, attorneys, servants, employees, agents or assigns (collectively “Third Party Defendants”), holding any deposits or advances of rental as security under any lease or license agreement affecting space in the Property shall turn same over to the Temporary Receiver within five (5) days after the Temporary Receiver shall have qualified; and thereupon the Temporary Receiver shall hold such security subject to such disposition thereof as shall be provided in an Order of this Court to be made and entered in this action; and it is further

ORDERED that the unit owners, tenants, licensees, property managers or other persons in possession of any property or assets of KCC shall attorn to the Temporary Receiver and pay over to him all common charges, assessments, rents, license fees, and other charges of KCC/Property now due and unpaid, or that may hereafter become due; and that Third-Party Defendants be enjoined and restrained from collecting the common charges, assessments, rents, license fees, and other charges of KCC and from interfering in any manner with the operation and management of KCC except as may be specifically directed or authorized by the Temporary Receiver; and from transferring, removing or in any way disturbing any of the occupants or employees; and that all

owner, tenants, occupants, employees and licensees of KCC/Property and other persons liable for monies be and are hereby enjoined and restrained from paying any common charges, assessments, rents, license fees, and other charges of KCC/Property to the Third-Party Defendants; and it is further

ORDERED that Third Party Defendants shall, within fourteen (14) days of service of this Order, begin to deliver to the Temporary Receiver on a rolling basis any and all papers and other things affecting the operation and management of KCC or any part or parts thereof which it, its agents or assigns, has in their possession, custody or control or which are in the possession of its members, managers, agents, servants or employees, including but not limited to, the following: (a) copies of all keys, access cards, or codes to entrance doors, storage and boiler rooms, etc., of the Property; (b) all leases or amendments thereto in effect for the tenants and equipment at KCC/Property; (c) copies of all current rent rolls and tenancy or unit owner lists relating to the KCC/Property; (d) a reconciliation of all security deposits and accounts, and a list setting forth each account number and the name of the depository wherein each account is maintained; (e) copies of all current financial statements, including, but not limited to, all documentation concerning delinquent tenants or unit owners at the KCC/Property; (f) all documents containing references to all utility accounts including, but not limited to, electricity, gas, heat, water and telephone service; (g) the names and account numbers of all utility companies servicing the KCC/Property; (h) copies of all insurance policies in effect for the KCC/Property and any part thereof; (i) copies of all contracts relating in any way to the KCC/Property including, but not limited to, contracts with vendors or other service personnel; (j) a list of suppliers and copies of all contracts currently in force, including service and vendor contracts; (k) an employee roster and payroll information; (l) a list of any proceedings in any court regarding or relating to leases on the

KCC/Property; (m) copies of any court stipulations for payment for rent or arrearages; (n) an equipment and inventory list; (o) the taxpayer identification number for KCC; (p) offering plan of KCC and all amendments thereto; (q) all board meeting minutes; (r) identify all KCC bank account numbers, deposit institutions where such accounts are located, and the signatories to those accounts; and (s) such other items, records, or documents that the Temporary Receiver may reasonably require to lease, manage and maintain KCC/Property; and it is further

ORDERED that should Third-Party Defendants fail to deliver any of the foregoing, the Temporary Receiver is authorized to terminate RVP Management Corp. as KCC's property manager and apply to this Court to appoint a property manager as a secondary appointee pursuant to Rule 36.2 of the Rules of the Chief Judge (22 NYCRR Part 36) from the appropriate list of applicants established by the Chief Administrator of the Courts, consistent with the provision of this Order, unless the Court finds good cause to appoint a person not on the appropriate list of applicants; and it is further

ORDERED that the Temporary Receiver is authorized, but not obligated to (i) institute and carry on all legal proceedings necessary for the protection of KCC and the Property; and (ii) to institute and prosecute, suits for the collection of all common charges, assessments, rents, license fees, and other charges now due or hereafter become due, to foreclose any liens on any units, and summary proceedings for the removal of any tenant or tenants or other persons therefrom; subject to subsequent application to this Court for the appointment of a Secondary Appointee upon the ability to make appropriate financial accommodations for such undertakings; and it is further

ORDERED that for the avoidance of doubt the Temporary Receiver is not being empowered to undertake and is not authorized to retain or appoint counsel for the Board, to defend the direct matter brought by Plaintiffs Department of Environmental Protection of The City Of

New York and The New York City Water Board (“Plaintiffs”) or pursue claims brought by Movants in the underlying action; and it is further

ORDERED that the Temporary Receiver shall forthwith deposit all monies received by him at the time he receives the same in his own name as the Temporary Receiver in a bank account or trust at T.D. Bank, and such account shall show the name of this action, and the Temporary Receiver shall not be permitted to make withdrawals therefrom except as directed by the Court herein or on a check signed by the Temporary Receiver and the Temporary Receiver shall send, on a monthly basis, a copy of the monthly statements of deposits and withdrawals for said account to counsel for all parties in this Action (“Receivership Account”); and it is further

ORDERED that the Temporary Receiver be and is hereby authorized to make any reasonable and necessary ordinary repairs to the Property not to exceed \$5,000.00 provided such funds exist in the Receivership Account; and it is further

ORDERED that the powers granted hereby to the Temporary Receiver may not be extended except on further order of the Court; and it is further

ORDERED that the temporary receivership hereby authorized shall continue only up to the entry of final judgment herein unless hereafter directed otherwise by this Court upon motion; and it is further

ORDERED that the Temporary Receiver, before entering upon his duties, shall be sworn faithfully and fairly to discharge the trust committed to him unless the oath is waived upon consent of all parties and that the oath may be administered by any person authorized by the Real Property Law to take acknowledgments of deeds; and it is further

ORDERED that before entering upon the duties of such receivership, the Temporary Receiver shall execute to the People of the State of New York and file in the Office of the Clerk

of the County of New York a bond in the sum of \$25,000 (the “Bond”) conditioned for the faithful performance of such Receiver’s duties and Movants shall pay the costs of the Bond directly.

ORDERED that pursuant to CPLR 8004 the Temporary Receiver is entitled to commissions, in the amount of five per cent of the sums received and disbursed by him; and it is further

ORDERED that the Movants commit to an undertaking in the amount of \$10,000 to ensure the Temporary Receiver can be compensated in the event the Arrears are insufficient to adequately compensate the Temporary Receiver in the performance of his anticipated duties as contemplated herein (“Movants’ Undertaking”); which shall be in the event there are insufficient funds in the Receivership Account to compensate the Temporary Receiver for fees accrued as set forth in C.P.L.R. § 8004(a); and it is further

ORDERED that the Temporary Receiver shall keep written accounts as provided in CPLR 6404; and it is further

ORDERED that, pursuant to Section 36.1 of Part 36 of the Rules of the Chief Judge, the temporary receivership shall be subject to said Part 36; and it is further

ORDERED that, by accepting this appointment, the Temporary Receiver certifies that he is in compliance with Part 36, including Section 36.2 (d) (“Limitations on appointments based upon compensation”), but if he is disqualified from receiving such appointment pursuant to the provisions of Part 36, he shall notify this court forthwith; and it is further

ORDERED that, by accepting this appointment, the Temporary Receiver certifies that he is familiar with the duties and responsibilities of a Temporary Receiver, has experience in such area, and is fully capable of assuming, and prepared to assume, those duties and responsibilities, which are commensurate with his/her abilities; and it is further

ORDERED that attorneys or support staff in the appointee's office may perform tasks under the appointee's direct supervision unless otherwise directed by the court, but all substantive appearances and reports must be made, performed, and created by the appointee; and it is further

ORDERED that, upon receipt of this order and UCS Form 872 (Notice of Appointment and Certification of Compliance), the Temporary Receiver shall complete, execute, and return the Form 872 to the Fiduciary Clerk; and it is further

ORDERED that, pursuant to Section 36.1(a) (10) of Part 36 of the Rules of the Chief Judge, the Temporary Receiver is not authorized to hire counsel, an accountant, auctioneer, appraiser, property manager, or real estate broker ("Secondary Appointee(s)") without further order of this court, and the Temporary Receiver is not authorized to pay fees to any secondary appointee without further order of this court; and it is further

ORDERED that compensation for every Secondary Appointee, including for a property manager, is subject to prior court approval upon submission of an affirmation showing experience/expertise, services rendered, time expended, prevailing rate in the community, rate charged, and challenges presented and results achieved; and it is further


ORDERED that, pursuant to Section 36.2 (c) (8), no Temporary Receiver shall be appointed as his or her own counsel and no person associated with a law firm of that receiver shall be appointed as counsel to that receiver unless there is a compelling reason to do so; and it is further

ORDERED that counsel for the Movants shall, within 15 days from the date of this order, file a copy hereof with notice of entry with the Fiduciary Clerk; and it is further

ORDERED that such filing with the Fiduciary Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures*

For Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website).

ORDERED that the branch of Third-Party Plaintiff’s motion seeking to attach property held by Thunderbolt Realty, LLC is DENIED at this time.

<p><u>4/12/2023</u> DATE</p>			 <hr/> <p>LAURENCE L. LOVE, J.S.C.</p>	
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"/>	REFERENCE