

**Monari v Ming Lu**

2024 NY Slip Op 33148(U)

September 4, 2024

Supreme Court, New York County

Docket Number: Index No. 650705/2024

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M**

*Justice*

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FRANCESCA MONARI, 257 GROUP LLC, JOYCE REISS-  
JANGANA, BRANDO MONARI-BRANDMAN, JACK  
JANGANA

Plaintiff,

INDEX NO. 650705/2024

MOTION DATE 02/09/2024,  
02/09/2024

MOTION SEQ. NO. 001 002

- v -

MING LU, URSULA POHL, CHURCH STREET  
APARTMENT CORP.,

Defendant.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 29, 39, 40, 41, 42, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 72, 78, 80, 82

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 28, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 73, 74, 79, 81

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

Upon the foregoing documents, the application seeking a preliminary injunction is denied and the petition is denied.

Motion Sequence 001

Petitioners/plaintiffs move by order to show cause seeking an order enjoining and restraining defendants, Ming Lu and Ursula Pohl, from (i) acting as, purporting to act as, and/or holding themselves out as directors and/or officers of the Church Street Apartment Corp. (the “Corporation”); (ii) acting as, purporting to act as, and/or themselves out as an authorized agent of or for the Corporation; (iii) interfering with the management and/or operations of the Corporation; and (iv) destroying, deleting, spoliating, secreting, and/or failing or neglecting to preserve any and/or all of the books, records, ledgers, and papers of, concerning, and/or related

to the Corporation and/or concerning or regarding the real property known and located at 257 Church Street, New York, New York.

Respondents/defendants oppose and cross-move to dismiss the petition. For the reasons set forth below, the application for preliminary injunction is denied and the cross-motion is denied.

“A movant's burden of proof on a motion for a preliminary injunction is particularly high” *Council of the City of NY v Giuliani*, 248 AD2d 1, 4 [1st Dept 1998]. A party seeking a preliminary injunction must clearly demonstrate (1) the likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the injunction is not issued; and (3) a balance of the equities in the movant's favor. (*Doe v Axelrod*, 73 NY2d 748 [NY 1988]; *Housing Works, Inc. v City of New York*, 255 AD2d 209 [1st Dept 1998]).

If the movant fails to meet its burden to establish each and every element, the request for injunctive relief must be denied. *See, e.g., Doe v Axelrod*, 73 NY2d 748, 750-51 [1988].

#### Likelihood of Success

The Court finds that petitioners/plaintiffs have failed to establish a likelihood of success on the merits for this injunction to be granted. The movants presume for the sake of this application for an injunction, and this special proceeding, that the underlying special meeting was valid and thus seek a declaration of the petitioners/plaintiffs' respective rights and damages. However, that is not the appropriate posture of this matter. The very basis upon which movants seek this injunction is in dispute, the validity of the May 11, 2023, shareholder meeting.

At this juncture the Court is not persuaded that the shareholder meeting was valid and thus finds that the movants have failed to meet its heavy burden to establish a likelihood of success on the merits.

Further, this Court has previously adjudicated a similar injunction application, *Church Street Apartment Corp. v. Libert et. al.*, index number 654928/2023, and that application was denied based on the specific relief sought there, the prevention of the removal of Ming Lu and Ursula Pohl from their roles as President and Vice President. Although nuanced, the prior action sought relief that the plaintiff ultimately conceded it could not achieve, while here the ultimate issue of the validity of the meeting is in question.

The movants here have similarly not sufficiently established that the underlying shareholder meeting was valid to entitle them to an injunction. As petitioners/plaintiffs have failed to meet their burden to demonstrate a likelihood of success on the merits, the Court need not reach a balancing of the equities and irreparable harm in its denial of the application for a preliminary injunction.

As to the cross-motion seeking dismissal based on the prior action pending, that motion is denied. The prior action has since been disposed and respondents/defendants have not provided any other basis for dismissal.

*Motion Sequence 002*

Petitioners/plaintiffs seek an order, pursuant to CPLR § 409, granting the relief sought in its first, fourth and sixth causes of action. Respondents/defendants oppose the application.

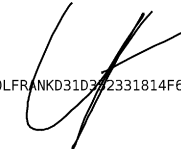
The first cause of action seeks declaratory judgment, the fourth cause of action seeks an accounting, and the sixth cause of action seeks an inspection, as well as injunctive relief.

At this juncture, and as the Court has indicated above, there are issues underlying the shareholders meeting and its validity that prevent a summary determination in petitioners/plaintiffs' favor. The Court is not persuaded that the petitioners/plaintiffs have established entitlement to the relief sought. The record in this action, as well as the multitude of

proceedings, underscore that there are questions of fact that preclude a summary determination, specifically as to whether certain members were shareholders in good standing and whether there was a notice or a demand for a special meeting. Accordingly, it is hereby

ADJUDGED that plaintiff’s motion for a preliminary injunction is denied in its entirety; and it is further

ORDERED that motion sequence 002, seeking a summary determination as to the first, fourth and sixth causes of action is denied.

  
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9/4/2024  
DATE

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LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE