SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8
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CHRISTOPHER WATSON,

Plaintiff, Decision and order

- against - Index No. 504011/2024

JANE HINTON and JORGE PARDO, THE BOARD OF MANAGERS OF 129 CLINTON CONDOS,

Defendants, December 30, 2024
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PRESENT: HON. LEON RUCHELSMAN Motion Seq. #2 & #4

The defendant has moved pursuant to 22 NYCRR 130-1.1 seeking sanctions against the plaintiff for filing a frivolous motion. The plaintiff has moved seeking to amend the complaint. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

The condominium in this case consists of three owners, Watrson, Hinto and Pardo. Essentially, the parties dispute the manner in which the condominium is managed. The motion seeking sanctions has been filed alleging the plaintiff filed a frivolous motion as a means to delay the litigation and increase defendant's attorneys fees. Further, a motion seeking to amend the complaint has been filed as well. As noted, the motions are opposed.

Conclusions of Law

22 NYCRR 130-1.1 states that a state court may award costs including reasonable attorney's fees when a party engages in

"frivolous conduct" (id). Conduct is frivolous if "(1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) it asserts material factual statements that are false" (id). Indeed, Rule 11 of the Federal Rules of Civil Procedure has been interpreted to impose sanctions for similar grounds as NYCRR 130-1.1(c)(1). Thus, in Morley v. Ciba-Geigy Corp., 66 F3d 21 [2d Cir 1995] the court explained that a frivolous pleading or legal position is one where considering an "objective standard of reasonableness, it is clear...that there is no chance of success and no reasonable argument to extend, modify or reverse the law as it stands" (id). The trial court maintains broad discretion determining whether a sanction is appropriate (see, Notaro v. Performance Team, 161 AD3d 1092, 78 NYS3d 349 [2d Dept., 2018]). In order to avoid sanctions the conduct must have a good faith basis (Marx v. Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc., 148 AD3d 696, 49 NYS3d 475 [2d Dept., 2017]).

In this case, the defendant's have failed to establish the plaintiff's conduct was so frivolous as to warrant sanction. Thus, the motion seeking sanctions is denied.

Turning to the motion to amend the complaint, it is well

settled that a request to amend a pleading shall be freely given unless the proposed amendment would unfairly prejudice or surprise the opposing party, or is palpably insufficient or patently devoid of merit (Adduci v. 1829 Park Place LLC, 176 AD3d 658, 107 NYS3d 690 [2d Dept., 2019]). The decision whether to grant such leave is within the court's sound discretion and such determination will not lightly be set aside (Ravnikar v. Skyline Credit-Ride Inc., 79 AD3d 1118, 913 NYS2d 339 [2d Dept., 2010]). Therefore, when exercising that discretion the court should consider whether the party seeking the amendment was aware of the facts upon which the request is based and whether a reasonable excuse for any delay has been presented and whether any prejudice will result (Cohen v. Ho, 38 AD3d 705, 833 NYS2d 542 [2d Dept., 2007]).

The proposed amended complaint adds further background information and one cause of action, namely for defalcation of condominium funds. Specifically, the new cause of action of the proposed second amended complaint alleges roof repairs were undertaken without a proper vote of the board if directors. In opposition, the defendants argue the amendment has no merit because a duly authorized vote of the board of directors approved the repairs. However, the proposed amended complaint asserts that a 66% was required to repair the troof and the members who voted for the repairs lacked that super-majority (see, Proposed

Second Amended Complaint, ¶¶77,78 [NYSCEF Doc. No. 103]).

Thus, at this stage of the litigation, the amendment may have merit. The continuation of the case and further discovery will surely narrow these issues and will determine the strength of these claims. However, at this early stage, the amendment may have merit.

Consequently, the motion seeking to amend the complaint is granted.

So ordered.

ENTER:

DATED: December 30, 2024
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC