Board of Mgrs. of Oceanview Condominium v Riccardi
2024 NY Slip Op 35466(U)
December 12, 2024
Supreme Court, Richmond County
Docket Number: Index No. 151484/2016
Judge: Orlando Marrazzo, Jr.
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

BOARD OF MANAGERS OF OCEANVIEW CONDOMINIUM,

Plaintiff(s),

-against-

JOSEPH RICCARDI a/k/a JOSEPH RICCIARDI and, PETER BELLATONI, SR.

Defendant(s)

DECISION/ORDER

IAS PART 26

HON. ORLANDO MARRAZZO, JR.

Index No.: 151484/2016
Motion No 25, 26

The following numbered 1 to 3 were fully submitted on 11th day of December 2024

	Papers Numbered
Defendant's Order to Show Cause, with Supporting Papers and Exhibits, Dated, October 2, 2024,	1
Plaintiff's Cross-Motion, With Supporting Papers and Exhibits, Dated, December 6, 2024,	2
Affirmation in Opposition, With Supporting Papers and Exhibits, Dated, December 10, 2024	3

Defendant moves (1) to be relieved from numerous Orders of this Court, a Decision of the Appellate Division upholding same, and the consequences of his repeated violation of these Orders over the course of several years, including fines, penalties and incarceration for his Contempt of this Court's Orders; and (2) to compel

Plaintiff to produce "post-judgment" discovery related to various issues that have already been decided by fully litigated in this matter and on subsequent Appeal. As is stated below, defendant's Order to Show Cause is completely devoid of merit. Accordingly, the relief sought is denied.

Plaintiff's Cross-Motion seeks for (1) further Contempt based on Defendant's continued failure to comply with the Orders of this Court; (2) Injunctive Relief enjoining Defendant from engaging in the malicious and harassing behavior detailed in the Affirmation of the Property Manager; (3) an order pursuant to Real Property Law 339-kk directing that the tenant occupying the Penthouse to remit all rent for the premises to Plaintiff in satisfaction of unpaid assessments currently due on the Penthouse unit; (4) an Order directing Defendant to pay Plaintiff's legal fees to which it is entitled under Section 9.4 of the By-Laws, as well as prior Orders of this Court which were incurred in opposing this Order to Show Cause; and (5) for such other relief as the Court deems just and proper in light of Defendant's continued disregard for the Judgment and Orders of this Court.

PROCEDURALHISTORY

This matter was decided against Defendant following a Bench trial on the merits of the underlying claims, Pursuant to a Decision and Order dated January 24, 2020. After Trial, this Court determined, inter alia, that a portion of Defendant's Unit had been illegally constructed without proper permits and impermissibly encroached on the Limited Common Elements of the Condo and directed him to remove or legalize same. A Judgment pursuant to said Order against Defendant Joseph Riccardi was signed and entered on or about March 3, 2020

Both Parties appealed various portions of the Trial Order to the Second Department. In a decision dated July 17, 2024, the Appellate Division upheld parts of this Court's Order, including those portions which ordered and directed Defendant Joseph Riccardi, at his sole expense, to either legalize the illegal extension made to his Penthouse Unit, or to remove it.

It is further noted that in late 2020 when Defendant failed to timely legalize or remove the illegal extension, Plaintiff moved to hold Defendant in Contempt. Defendant was granted an extension, but when he again failed to comply with the extended deadline, the Court, on or about December 14, 2020, issued an Order of Contempt. The Court further Ordered that the Defendant's continued failure to comply would result in imposition of fines against him at a rate of $150.00 per diem for every day that he failed to comply with this Court's prior Orders. Defendant has never complied with any of these Orders as set forth in the Affirmation of Plaintiff's Property Manager. As such, he remains in Contempt as of this date.

It is further undisputed that the Court has issued at least eight (8) judgments against Defendant for the monetary penalties stemming from his Contempt of this Court. The total amount of these judgments is over $135,000.00. The last such Judgment on record was entered in May 2023. On or about October 2, 2024, Plaintiff applied for a judgment for additional the fines that have accrued. Said application is presently stayed pending the determination of Defendant's Order to Show Cause. In addition to the relief requested herein, Plaintiff in their Cross-Motion requests that the stay on entry of this Judgment be lifted forthwith.

DEFENDANT'SAPPLICATIONIS BARRED BY RES JUDICATA

At trial, this Court determined that Defendant is the owner of the Penthouse unit, and that said Unit was expanded without proper permits or authorization from the NYC Department of Buildings, and that this illegal expansion of his Unit encroaches on the Limited Common Elements outside his unit. Defendant does not dispute any of these factual findings in the instant application and he does not claim that any pertinent facts were concealed or not otherwise presented to the Court. Instead, he claims that this Court made a mistake by failing to interpret the By-Laws in a way that favors him. He further admits that neither he nor his three (3) previous attorneys made any of these arguments either at trial or in their ensuing Appeal but does not contend that he was prevented from doing so. The doctrine of Res Judicata operates to preclude the renewal of issues actually litigated and resolved, including claims which should have, or could have, been resolved in the prior proceeding. Valenti v. Clock Tower Plaza Properties Ltd., 118 A.D.3d 776 (2d Dep't 2014).

Defendant has had at least three (3) attorneys in this action before his current counsel and none of them raised these arguments despite being provided a full and fair opportunity to be heard at trial and then on appeal. Defendant does not argue that he was somehow prevented from making these arguments, instead he admits that his previous attorneys simply failed to make them, and merely claims that he was wronged because Plaintiff failed to make the arguments for him. Defendant does not claim he was denied a fair trial. He has not sought leave to appeal to the Court of Appeals, therefore the Decision of the Second Department, which confirmed that he is responsible to remove or otherwise legalize the illegal extension of the Penthouse, remains binding on this Court and on Defendant.

As such, Defendant's arguments herein are clearly barred by the doctrine of Res Judicata insofar as he seeks to re-litigate issues that have been decided after a Trial and an Appeal. Defendant does not even contend, let alone prove that he was denied a full and fair opportunity to be heard in this Action. Likewise, Defendant's attempt to use the doctrine of "mistake" violates core legal principles of appellate jurisdiction insofar as it seeks to have this Court make an Order that would have the effect of reversing those portions of Second Department's Decision and are now binding on this Court.

As noted above, Defendant does not claim that any of the pertinent facts were concealed. Indeed, he admits that the By-Laws which upon which he rests his arguments were in evidence before this Court during the trial. Rather, the "unique circumstances" he claims herein are that the Plaintiff failed to raise these arguments on his behalf. This argument is absurd in our adversarial legal where one litigant has no duty to make legal arguments on behalf of the other and provides no support for the application of the doctrine of mistake in this context. Nor does Defendant's case law support his argument. For example, the court in Deutsche Bank Natl. Trust Co. v. Neuman, 214 A.D.3d 952, 953, upheld the lower court's denial of a Defendant's attempt to vacate its judgment and held that such power should be used in a limited capacity "only to relieve a party from judgments taken through [fraud], mistake, inadvertence, surprise or excusable neglect" Id. At, 953. In addition, an application under this doctrine must be timely made, which it clearly is not, given that it is now over 5 years since the decision was rendered and Defendant has provided no excuse, reasonable or otherwise, for his failure to do so. LaSalle Bank NAv. Delise, 175 AD3d1283.

THE PURPORTED"MISTAKES" BELIED BY THE TEXT OF BY-LAWS 11.

In the instant Order to Show Cause, Defendant identifies three (3) purported "mistakes" made by this Court in its Trial Decision in support of his argument asking this Court to invoke the legal principle of "mistake" to reverse itself. According to the record it appears that none of Defendant's previous attorneys raised the arguments asserted in this Order to Show Cause. Further the Court finds that this argument lacks merit and are not even supported by the sections of the By-Laws cited by Defendant and run afoul of basic legal principles of judicial interpretation.

For example, for "MISTAKE NO. 1," Defendant claims that this Court erroneously failed to interpret Section 5.2(c) of the By-Laws to relieve him from the responsibility to remove the illegal encroachment at issue in this case. However, Defendant's proposed interpretation of this section is clearly at odds with the text of Section 5.2(c). This section merely requires the Board to sign off on permit applications made by Unit Owners. The actual responsibility for the work, and the costs associated with it, is borne by the Unit Owner, as is clear from language that Defendant actually omitted when quoting the provision.

Here is the entire section, including the omitted language that clearly refutes Defendant's erroneous interpretation:

"5.2(c) All alterations, additions, improvements by Unit Owners shall be made in compliance therewith. In connection therewith, the Condominium Board shall execute applications to any departments of the City of New York....." (emphasis added)

There is nothing in the language above that shifts the burden from Defendant to the Board and by omitting the above language with an incomplete citation, Defendant is making a misrepresentation to this Court.

Defendant's interpretation must be rejected since it is at odds with other sections of the By-Laws. It is axiomatic that in interpreting the terms of any Contractual Document, including the By-Laws at issue herein, the Court must adopt an interpretation that avoids rendering any other portion of same meaningless. Excel Graphics Techs., Inc. v. CFG/AGSCB75 Ninth Ave., L.L.C., 1 A.D.3d 65, 69. Rhoda v. Rhoda, 175 A.D.3d 1572, 1573, 110 N.Y.S.3d 35, 36-37 (2019)

Defendant's interpretation of the By-Laws, specifically Section 5.2 would make any work inside the individual Units the Boars responsibility and would make the cost of same a common expense chargeable to the community. This interpretation which would render other sections of the By-Laws meaningless. For example, Section 5.1(i) of the By-Laws clearly states that of "..maintenance, repairs and replacements, whether structural or non-structural, ordinary or extraordinary in or to any unit....shall be performed by the owner of such Unit at such unit owner's cost and expense."

Reading these two sections together and interpreting them in accordance with canons of judicial interpretation, it is clear that the responsibility for any repairs within his unit are Defendant's under Section 5.1 (not the Board's) and that if any permit(s) is required for this work, the Defendant must get the Board's signature on the application for such permit(s) under Section 5.2(c).

Similarly, Defendant's purported "MISTAKE NO. 2" also employs a clearly erroneous interpretation of Section 5.2(D) of the By-Laws. In fact, the very same language from the By Laws cited by Defendant thoroughly demolishes his own assertions that the Court's Decision was mistaken. In addition, this language also further undermines his erroneous interpretation Section 5.2(c) in his arguments regarding "MISTAKE NO. 1" that was discussed above.

The language from the By-Laws quoted by Defendant in support of his argument pertaining to "MISTAKE NO. 2" reads as follows: "Neither the Condominium Board nor any Unit Owner (other than the Unit Owner(s) making any alterations, improvements, additions or repairs, or causing any of the same to be made in or to his Unit(s) and appurtenant Limited Common Elements) shall incur any liability, cost or expense either (I) in connection with the preparation, execution, or submission of the applications referred to in paragraph (c) hereof; (ii) to any contractor, subcontractor, materialman, architect, or engineer on account of any alterations, improvements, additions, or repairs made or caused to be made by any Unit Owner..." (emphasis added)

The clear and unambiguous language of this section merely states that when a homeowner, such as Defendant, makes alterations to his Unit, the Board and the rest of the Homeowners in the Condominium are not responsible for any liability that may arise as a result of the Unit Owner's work, including but not limited to, liability to any contractors, etc. It also specifically insulates the Board from being responsible for any liability for signing off on the Permit Applications under 5.2(c) which directly contradicts Defendant's assertions addressed above. Indeed, this section says almost exactly the opposite of what Defendant argues before this Court regarding Mistake No. 1.

Finally, Defendant raises "MISTAKE NO. 3" which again is based on an erroneous interpretation of the By-Laws and ignores the factual findings made by this Court after trial. Defendant relies on Section 5.3 which states "Except as otherwise provided in the Declaration or these By-Laws, all necessary or desirable alterations, additions or improvements in or to any of the General Common Elements and Limited Common Elements shall be made by the Condominium Board...." First, and most obviously, this matter does not involve "alterations, additions or improvements to the common elements." Rather, this case is about an illegal extension of the Penthouse unit that was built without proper permits or authorization from the New York City Department of Buildings and is an encroachment on the Limited Common Elements. Indeed, the fact that it encroaches on the Limited Common Elements is one of the many reasons why this Court correctly determined that it must be removed.

Also, even if the extension were not an illegal and unauthorized encroachment, any maintenance, and repairs in or to the terraces appurtenant to the Penthouse are unequivocally Defendant's responsibility under the By-Laws and this is not contradicted by Section 5.3 which contains an express carve-out for items that are "except as otherwise provided in the By-Laws." As noted above, maintenance and repairs of the units and their appurtenant limited common elements are expressly the responsibility of Unit Owners, not the Board.

DEFENDANT'S MOTION FOR POST-JUDGMENT DISCOVERY IS DEFECTIVE AND MUST BE DENIED

Defendant is not entitled to post-judgment discovery and utterly fails to demonstrate any claim for entitlement to same. Post-judgment discovery is governed by CPLR Article 52 which on its face is clearly limited to providing a successful plaintiff with the information necessary to enforce judgments against a Judgment Debtor. Defendant advances no argument based on any applicable CPLR provision or relevant case law for why or how he should be entitled to further discovery from Plaintiff. At this point the only issues remaining before this Court are the instant applications, which can and should be decided on the record before the Court.

Moreover, Defendant is not entitled to a "second bite at the apple" because this Action has been resolved after this matter has been resolved after a Trial on the merits and a subsequent appeal. Therefore, this request is similarly barred by the doctrine of res judicata as noted above insofar as these issues have been fully litigated. The Defendant, whose claims and arguments have been rejected by this Court and by the Appellate Court, is merely seeking to engage in a fishing expedition to cause Plaintiff to incur further fees and expenses and as such his application must be denied.

PLAINTIFF'S CROSSMOTION FOR FURTHER CONTEMPT

Defendant has shown repeated contempt for the Decisions and Orders of this Court. Despite being granted an extension of time to comply with the Court's Trial Order, Defendant failed to remove or legalize the illegal extension of the Penthouse. He was found to be in Contempt by this Court by Order dated December 14, 2020, by which he was Ordered to pay monetary penalties for his ongoing non-compliance. As noted above, as of the date of this Application, Judgments have been entered against Defendant for said fines totaling over $135,000.00 and those fines continue to accrue.

Defendant was subsequently incarcerated pursuant to an Order of Hon. Lizette Colon, as further punishment for his ongoing Contempt.

Nevertheless, as set forth in the annexed Affidavit of Plaintiff's Managing Agent, Defendant still has not taken any action to either legalize the illegal extension made to his Penthouse Unit or to restore such Unit in conformity with the Building Code.

Instead, Defendant has not only engaged in the instant application (which borders on frivolous) but is also engaged in an ongoing campaign of malfeasance designed to undermine and discredit the Board as detailed in the annexed Affirmation of its Managing Agent, Donna Maresca. The tactics employed include mass emails containing false and malicious statements against the Board, repeated frivolous filings in Small Claims Court, attempts to interfere with ongoing Local Law 11 repair projects at the Condominium, which are detailed in the Maresca Affirmation and the Exhibits annexed thereto.

As a result, the Plaintiff's other 40-unit owners continue to be prejudiced by Defendant's actions in the form of unnecessary expenditure of attorney's fees, unnecessary construction delays and additional costs associated with ongoing construction projects and in the form of additional real estate tax assessments and other safety issues which the Court is fully familiar with.

Under the circumstances, the Court is concerned that the daily $150 penalty might be an insufficient incentive for Defendant Riccardi to comply with the March 3, 2020, Judgment and is not a deterrent to his malicious behavior.

The Court also wonders that perhaps the monetary penalties are not sufficient compensation for the other damages suffered Homeowners as a result of Defendant's ongoing behavior aimed at disrupting the work of the Board and its Managing Agent and otherwise causing chaos at Ocean View.

Accordingly, this Court is invoking its equitable powers to issue a further Order of Contempt against Defendant for his ongoing conduct and in addition, enjoining him from, sending mass emails of the type annexed hereto as Exhibits. This Court has previously ordered the Parties to cease and desist from sending mass emails to the Ocean View Community. Defendant's conduct as described herein makes it clear that a new Order to the same or similar effect is necessary for as long as this matter is pending. In addition, Defendant is enjoined from making frivolous complaints to NYC DOB and other agencies, further and direct him comply with reasonable access requests or otherwise face additional contempt penalties.

Based on all the foregoing, it now appears that additional contempt findings, including but not limited to, an Order enjoining Defendant from: (1) sending mass emails to the Ocean View Community (2) from placing frivolous calls to 311 or other enforcement agencies, and (3) directing Defendant to comply with his obligations to provide access under the By-Laws, as well as additional monetary penalties, until such time as he either removes or legalizes the illegal extension to his unit, which extension has also caused a reassessment of the building and an increase in every unit owner's real estate taxes.

CROSS-MOTION FOR ORDER RENT ATTACHMENT PURSUAN TO RPL 339-kk 33.

As noted in the annexed Affirmation of Donna Maresca, on or about July 1, 2024, Defendant began renting the Penthouse to a Third Party named Daniel G. Czeto. Defendant alternately claimed that Mr. Czeto was his cousin and/or his guest, neither of which are credible under the circumstances.

Due to the fact that Defendant owes substantial arrears of Common Charges and Assessments, as well as numerous Judgments for Fines and Penalties to the

Plaintiff, Plaintiff is entitled to receive any rent collected pursuant to §339-kk of the Real Property Law.

On or about October 17, 2024, Plaintiff served Defendant and Mr. Czeto with a notice to forward all rent payments for said unit to Plaintiff, until full payment of the assessment arrears due from Defendant is paid, or until Czeto vacates the premises.

Despite this demand, neither Defendant nor Mr. Czeto have turned over to Plaintiff the monthly rents payable to Defendant.

Accordingly, the Court issues an Order pursuant to RPL339-kk directing that all rents paid from Mr. Czeto must be immediately turned over to the Plaintiff and that all ongoing rents to be paid directly by Mr. Czeto to the Plaintiff. The Court further clarifies that this order does not establish any rights of possession or occupancy for Mr. Czeto through the payment of rent and said payment does not prejudice the Plaintiff's right to seek his ejectment or eviction from the premises.

PLAINTIFF IS ENTITLED TO LEGAL FEES

Plaintiff is entitled to recover its legal fees incurred in defending responding to this Application from Defendant in accordance with Section 9.4 of the By-Laws in accordance with this Court's prior Orders as upheld by the Appellate Division. In connection therewith, Plaintiff's application for legal fees is granted. Plaintiff is to submit and Affirmation of Services and an application for a Judgment subject to this Court's review and approval.

Accordingly, Defendant is put on notice, that the Court takes seriously his flagrant disregard and Contempt of its Orders and expects him to abide by all of the Court's orders in this matter. The Court further advises Defendant that if he fails to make payments of all fines and judgements due herein and if he fails to make repairs as directed herein upon proper application from Plaintiff the court will hold Defendant in Contempt which may result in additional fines and incarceration.

This constitutes the decision and order of the Court.

Dated: December 12, 2024

Orlando Marrazzo, Jr.,
Justice, Supreme Court