

Castle Vil. Owners Corp. v Girardi

2025 NY Slip Op 30890(U)

March 13, 2025

Supreme Court, New York County

Docket Number: Index No. 654284/2023

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**

<p>PRESENT: <u>HON. LYLE E. FRANK</u></p> <p align="center"><i>Justice</i></p> <p>-----X</p> <p>CASTLE VILLAGE OWNERS CORP.,</p> <p align="center">Plaintiff,</p> <p align="center">- v -</p> <p>GUILLERMINA GIRARDI,</p> <p align="center">Defendant.</p> <p>-----X</p>	<p>PART 11M</p> <p>INDEX NO. <u>654284/2023</u></p> <p>MOTION DATE <u>12/23/2024, 01/15/2025, 02/05/2025</u></p> <p>MOTION SEQ. NO. <u>005 006 007</u></p> <p align="center">DECISION + ORDER ON MOTION</p>
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The following e-filed documents, listed by NYSCEF document number (Motion 005) 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 216, 217, 218

were read on this motion to/for CONTEMPT.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 211, 212, 213, 214, 219, 220, 221, 222, 223, 224, 225, 226, 227, 229, 230, 231, 232, 233

were read on this motion to/for STAY.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, the motions for contempt and for a stay are denied. The motion to vacate the order dated October 03, 2023, is granted in part.

Background

The underlying action was brought by co-op building owner Castle Village Owners Corp. (“Plaintiff”) in September of 2023, seeking a preliminary and permanent injunction regarding an apartment owned by Guillermina Girardi (“Defendant”). The original relief sought concerned access to Defendant’s apartment for two reasons: 1) to install a gas-line and 2) to remedy an alleged shower pan leak. Plaintiff shortly thereafter moved by order to show cause for a preliminary injunction seeking access to the unit. In granting the preliminary injunction (the

“October Order”), this Court addressed the preliminary injunction test for the gas-line installation, found it weighed in favor of Plaintiff, and noted that “[a]s there has been no opposition to plaintiff being able to remedy a leak in the plaintiff’s bathroom, the order in this case will include this relief.”

Defendant has complied with the October Order as it pertains to the gas-line installation. But in the time since the October Order, the shower pan has become a point of contention between the parties. In short, Defendant (now acting *pro se*) initially allowed Plaintiff access to her bathroom to investigate the source of the alleged leak but now refuses to admit Plaintiff in order to replace the shower pan. Defendant maintains that there has been no proof of an actual leak in her shower pan nor that there is water leaking into the apartment downstairs, and therefore the October Order should be vacated as relates to the shower. Plaintiff maintains that there has been reports of water leakage in the apartment below Defendant’s, that the business judgment rule protects their decision to replace the shower pan, and that access is necessary to Defendant’s unit in order to do so. In the present motion seq. 005, Plaintiff is moving to hold Defendant in contempt for violating the October Order. In motion seq. 006, Defendant moves to stay enforcement of the October Order pending an appeal of the October Order, and in motion seq. 007 Defendant moves to vacate the October Order.

Standard of Review

A court may hold a party in civil contempt for misconduct. Judiciary Law § 753-A. The elements of civil contempt are 1) a lawful order of the court clearly expressing an unequivocal mandate was in effect; 2) the order was disobeyed; 3) the party to be held in contempt had knowledge of the order; and 4) prejudice to the right of a party to the litigation must be demonstrated. *El-Dehdan v. El-Dehdan*, 26 N.Y.3d 19, 29 (2015). This power is discretionary,

and “is to be exercised in the light of the facts and circumstances in each particular case.” *In re Hildreth*, 28 A.D.2d 290, 292 (1st Dept. 1967).

The granting of a preliminary injunction lies in the court’s discretion, and it is “an extraordinary provisional remedy which will only issue where the proponent demonstrates (1) a likelihood of success on the merits; (2) irreparable injury absent a preliminary injunction, and (3) a balance of equities tipping in its favor.” *Harris v. Patients Med., P.C.*, 169 A.D.3d 433, 434 (1st Dept. 2019). The party who is enjoined by a preliminary injunction may move at any time to modify or vacated the preliminary injunction. CPLR § 6314. A “motion to vacate a preliminary injunction is addressed to the sound discretion of the court and may be granted either upon compelling or changed circumstances that render continuation of the injunction inequitable.” *Wellbilt Equip. Corp. v. Red Eye Grill, L.P.*, 308 A.D.2d 411, 411 (1st Dept. 2003).

Discussion

These motions center around the determination by Plaintiff that Defendant’s shower pan is leaking and causing water damage to the apartment below. They are seeking to have the shower pan replaced at Defendant’s expense, as per the co-op terms for plumbing repairs. Plaintiff has supported their contention that there is a leak necessitating the replacement of Defendant’s shower pan by the affidavit of their building manager. The manager states that Plaintiff’s building contractor determined that the shower pan in question should be replaced by a professional plumber. She submits a scope of work quote for a bathroom renovation from the contractor, which states that the contractor is not a plumber and there is no plumbing work contained in the quote. The building manager also states that the residents of the apartment below Defendant’s unit have complained of a leak coming from their ceiling. Defendant has submitted various HPD reports, which investigated reports of the leak several times and closed

without issuing any violations except one for peeling plaster and paint. Defendant has also submitted various videos of HPD employees stating that there is no leak in the unit below Defendant. Defendant alleges that Plaintiff's insistence of the existence of a leak is part of a series of targeted harassment and retaliation from Plaintiff.

The questions of fact surrounding the existence of a leak or water damage in the apartment below Defendant's unit go to the likelihood of success on the merits prong of the preliminary injunction test. Plaintiff argues that even if there turns out to be no leak and no water damage, their decision to make the repairs in question are shielded by the business judgment rule. A co-op's decisions regarding the manner and extent of repairs and renovations generally fall under the business judgment rule. *Konrad v. 136 E. 64th St. Corp.*, 678 N.Y.S.2d 629, 630 (1st Dept. 1998). This rule protects board members from being held liable for repair decisions made within the scope of their authority. *Berenger v. 261 W. LLC*, 93 A.D.3d 175, 184 (1st Dept. 2012). But the business judgment rule does not prevent review of decisions when a party demonstrates that an individual has been deliberately singled out for harmful treatment. *Pokoik v. Pokoik*, 115 A.D.3d 428, 430 (1st Dept. 2014). The business judgment rule would generally protect a co-op's decisions to, for example, replace a shower pan that ultimately did not turn out to be the source of the leak and water damage. It would not however prevent judicial review of, for example, a deliberate decision to falsify the existence of a leak as part of the harassment of an individual, as Defendant alleges here.

Ultimately, as relating solely to the repair of the shower pan and leak issue, Plaintiff has not at this time met their burden on the likelihood of success on the merits. The only evidence of a leak and that the source of the leak is Defendant's shower pan comes from the affidavit of Plaintiff's building manager. They have not submitted any reports from plumbers or others

attesting to the either leak or the source, nor are there any nor have there been any affidavits from the downstairs neighbors as to the leak. The October Order will therefore be modified solely as relates to the shower and leak issue, but Plaintiff is free to move again for a preliminary injunction with further evidence of such leak and its origins. While the October Order will be modified to remove the requirement that Defendant allow Plaintiff access to conduct repairs, the requirement to allow Plaintiff access to inspect the bathroom for damages will remain in force at this time. The Court also, at this time, declines to hold Defendant in contempt. Accordingly, it is hereby

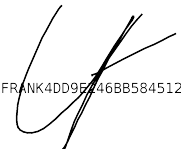
ADJUDGED that the plaintiff's motion for contempt is denied; and it is further

ADJUDGED that the defendant's motion to stay the Order dated October 3, 2023, is denied; and it is further

ADJUDGED that the defendant's motion to vacate the Order dated October 3, 2023, is granted in part to the extent discussed below; and it is further

ORDERED that the Order dated October 3, 2023, is hereby modified to remove the language stating that "Defendant is preliminarily enjoined from prohibiting, conditioning, restricting or otherwise interfering with Plaintiff's and its agents' access to the Apartment in order to inspect and repair the plumbing servicing the Apartment's bathroom in connection with a leak emanating from the bathroom and infiltrating and causing damage to the apartment directly below, Apartment 67" and replace it with language stating that "Defendant is preliminarily enjoined from prohibiting, conditioning, restricting or otherwise interfering with Plaintiff's and its agents' access to the Apartment in order to inspect the plumbing servicing the Apartment's bathroom in connection with a leak emanating from the bathroom and infiltrating and causing damage to the apartment directly below, Apartment 67."

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3/13/2025
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: