

**25A Place 57, LLC v Board of Mgrs. of Place 57
Condominium**

2009 NY Slip Op 33277(U)

June 9, 2009

Supreme Court, New York County

Docket Number: 600897/09

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: G. SCHE
Justice

PART 10

25 A PLAC 57

BOARD OF AREAS OF PLAC 57
CONDO

INDEX NO. 600897/09

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED
JUN 11 2009
COUNTY CLERK'S OFFICE
NEW YORK

Motion denied in accordance

w/ accompanying memorandum

decision/order. PC scheduled

for 6/25/09 @ 9:30 in Part 10.

Dated: 6/9/09

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

25A PLACE 57, LLC and EQUITY ESTATES
FUND 1, LLC,

Plaintiffs,

-against-

THE BOARD OF MANAGERS OF PLACE 57
CONDOMINIUM and CARAN MANAGEMENT
A/K/A CARAN PROPERTIES, INC.,

Defendants

Decision/Order

Index No.: 600897/09
Seq. No.: 001

Present:
Hon. Judith J. Gische
J.S.C.

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this
(these) motion(s):

Papers		
Ptiff's OSC [PI] LAS affirm, , PM affid, exhs	.....	1
TDW affid, exhs	.....	2
Def's exhs	.....	3
PM reply affid, exhs	.....	4
DN affid in further opp, exhs	.....	5
MK affid	.....	6

FILED numbered
JUN 11 2009
COUNTY CLERK'S OFFICE
NEW YORK

Upon the foregoing papers, the decision and order of the court is as follows:

Plaintiffs 25A Place 57, LLC ("25A") and Equity Estates Fund 1, LLC ("Fund 1")
have moved by order to show cause for an order preliminarily enjoining the defendants,
their guests, servants and employees from barring and preventing the members of
plaintiffs, their families and their guests from using the residential condominium unit 25A at
207 East 57th Street, New York, New York (the "Unit"). 25A is the owner of the Unit and
Fund 1 is the sole manager and member of 25A.

[* 3]

Defendants are the Board of Managers of Place 57 Condominium (the "Board") and Caran Management, the managing agent of the condominium. By stipulation dated April 2, 2009, both defendants accepted service of the Order to Show Cause, and the defendants have submitted opposition to the application.

In bringing this application, plaintiffs sought a temporary restraining order consistent with the preliminary injunction sought. On March 24, 2009, the court granted the TRO to the extent that the defendants, their guests, servant and employees were enjoined and restrained from barring and preventing members of plaintiffs from using the Unit. The court has extended the TRO pending the determination of the underlying application. The court's decision follows.

Plaintiffs¹ state that their business is "the acquisition of high end residential real estate located in various places throughout the world, ownership of those properties for the use and enjoyment of plaintiffs' members, their families and their guests and, ultimately, the sales of those properties for profit to be distributed to plaintiffs' members" in 2021. On December 27, 2006, 25A purchased the Unit for the sum of \$2,350,000. Plaintiffs maintain that their members use the premises solely for residential purposes. However, it is clear based on this record that 25A's sole member is Fund 1, and it is unclear whether Fund 1 has any individual members or is solely comprised of one or more additional business entities.

¹ Part of the complexity of this motion is the fact that plaintiffs have failed to identify the specific LLC to which their numerous arguments apply. It appears that some of these arguments may in fact apply to LLCs, and their respective members, which are not parties to this action. Moreover, plaintiffs' corporate structure has not been explained to the court, since plaintiffs have failed to provide copies of their respective operating agreements or any other detailed information based on actual knowledge.

Defendants argue, however, that the plaintiffs use the Unit for business purposes as a "timeshare", "vacation club" and/or "hotel", and that such use, not being residential use, violates condominium's by-laws. Section 6.14.1 of the by-laws provides as follows:

In order to provide for congenial occupancy of the Property and for the protection of the values of the Units, each Residential Unit shall be used for residential purposes only, except as otherwise herein expressly provided. A Residential Unit may be owned by an individual, corporation, partnership, limited liability company, fiduciary, limited liability company or any other entity... A Residential Unit may only be occupied by ... (ii) an officer, director, stockholder or employee of such corporation (or members of such Unit Owner's family, guests or domestic employees), (iii) a partner or employee of such partnership (or members of such Unit Owner's family guests or domestic employees)...

Defendants have provided to the court several "Authorizations to Provide Access to Apartment" forms which indicate that during March 2009, the Unit was occupied by 7 different individuals and/or families. Defendants argue that plaintiffs' use raises safety concerns and renders many of the Condominium's by-laws, such as the requirement of personal character reference letters for potential owners, ineffectual. Defendants have provided the affidavit of Marek Kec, superintendent of the Condominium until April 7, 2009. In support of the claim that plaintiffs' use compromises the security of the Condominium, Mr. Kec states that the people who occupied the Unit during his employment were "constant 'strangers' ", would store their luggage in the lobby, and that "constant cleaning services... entered the Condominium before, during and after the 'stays' within [the Unit]."

In the complaint, plaintiffs seek a permanent Injunction consistent with the preliminary relief sought herein, as well as a declaration that plaintiffs' use of the Unit is lawful, proper and in accord with the provisions of the condominium's declaration, by-laws and other operating documents.

Discussion

On a motion for a preliminary injunction, the movant must prove the likelihood of ultimate success on the merits, that it will suffer irreparable harm unless the relief is granted, and a balance of the equities in its favor. Palne v. Chriscott v. Blair House Associates, 70 A.D.2d 571 (1st Dept. 1979); Aetna Insur. Co. v. Capasso, 75 N.Y.2d 860 (1990). The purpose of a preliminary injunction is to maintain the *status quo* and prevent the dissipation of property that could render a judgment ineffectual. Moy v. Umeki, 10 AD3d 604 (2nd dept. 2004). "Likelihood of success" need only be shown from the evidence presented; conclusive proof is not required. Id. The granting of any preliminary injunction requires the posting of security. CPLR § 6312 (b).

The instant motion must be denied because plaintiffs have failed to meet their burden. The likelihood of success on the merits is a disputed question of fact on the record presented. Defendants maintain that the plaintiffs' use of the Unit does not comport with the by-laws, insofar as such use is for business purposes. Plaintiffs argue that their individual members are solely resided at the Unit for short periods of time, and that no business is conducted therein. This argument fails for at least two reasons. First, 25A has no individual members. Second, on this record, it does not appear that Fund 1 has any individual members, either. At best, the individual members utilizing the apartment are two business organizations removed from the 25A, the owner, and may or may not have any actual ownership interest in the Unit. Plaintiffs have chosen to purchase and hold title to the Unit through a relatively complex business structure. The court will not disregard the corporate structure, which clearly contradicts plaintiffs' argument that the

owner LLC's individual members are using the Unit for residential purposes only.²

Therefore, the court does not conclude that plaintiffs have demonstrated a likelihood of success on their cause of action for a declaration that their use of the Unit is consistent with the condominium's by-laws.

In addition, plaintiffs have failed to establish that they will be irreparably injured absent the relief sought herein. Essential to a showing of irreparable harm is a showing that the movant party could not be adequately compensated by money damages.

Coinmatch Corp. v. Fordham Hill Owners Corp., 3 AD3d 312. Plaintiffs have not even argued that money damages would not make them whole, if they do ultimately succeed on the merits of their claims.

Accordingly, plaintiff's motion is denied in its entirety and the temporary restraining order in effect is hereby vacated forthwith.

Conclusion

In accordance herewith, it is hereby:

ORDERED that plaintiffs' motion for a preliminary injunction is hereby denied in its

² Defendants have provided to the court a copy of an unsigned letter dated November 10, 2006 addressed to 25A from the Board. Defendants state that this letter was "prepared" by 25A. In that letter, the board "confirms that, pursuant to the By-Laws, if and when [25A] purchases [the Unit], the Unit can be utilized as a company apartment by the individuals comprising the various member LLC's of [25A] which is [Fund 1] by Equity Estates, LLC, as Manger, officers, directors, employees, including the family members of same, business associates and guests of the [25A], with no one specific occupant designated, and with the understanding that the Building Staff will be notified in advance of who would be staying in the Unit at any given time." It is unclear to the court whether this letter constitutes an agreement between the parties. Moreover, since none of the parties have provided a copy of the purchase agreement for the Unit to the court, it is not clear whether this "letter agreement", if ever executed, was incorporated into the purchase agreement and thereby preserved for the duration of 25A's ownership of the Unit. The court, therefore, cannot determine what effect, if any, this potential "letter agreement" may have on the various claims and arguments raised in the context of this application.

entirety; and it is further

ORDERED that the temporary restraining order previously in effect is hereby vacated forthwith; and it is further


ORDERED that the court hereby schedules a status conference in this matter to be held on June 25, 2009 at 9:30 a.m. at Part 10. All parties are directed to appear at that time.

Any requested relief not expressly addressed herein has nonetheless considered by the court and is denied.

This shall constitute the decision and order of the Court.

Dated: New York, New York
June 9, 2009

So Ordered:



HON. JUDITH J. GISCHE, J.S.C.

FILED
JUN 11 2009
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NEW YORK