

**Board of Mgrs. of the 200 Chambers St.
Condominium v Braverman**

2016 NY Slip Op 31888(U)

September 12, 2016

Supreme Court, New York County

Docket Number: 162556/15

Judge: Kathryn E. Freed

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 2

-----X
BOARD OF MANAGERS OF THE 200 CHAMBERS
STREET CONDOMINIUM,

Plaintiff,

-against-

DECISION/ORDER
Index No. 162556/15
Seq. No. 001

ERIC R. BRAVERMAN, DARYA BRAVERMAN,
RAOUL FELDER AND PARTNERS PC, SUSAN
BENDER, AND "JOHN DOE" No. 1 through
"JOHN DOE" No. 15, the true name of said defendants
being unknown to plaintiff, the parties intended to be
those persons having or claiming an interest in the liened
premises described in the complaint by virtue of being
tenants, or occupants, or judgment creditors, or lienors
of any type or nature in all or part of said premises,

Defendants.

-----X
KATHRYN E. FREED, J.S.C.:

RECITATION, AS REQUIRED BY CPLR 2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF
THIS PETITION.

PAPERS	NUMBERED
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED	1-3 (Exs. A-J)
AFFIDAVIT IN OPPOSITION	4 (Exs. A-B)
AFFIRMATION IN OPPOSITION	5 (Exs. A-C)

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE PETITION IS AS FOLLOWS:

Plaintiff Board of Managers of the 200 Chambers Street Condominium moves, by order to show cause, pursuant to Real Property Law § 339-aa and section 6.3.2 of its By-Laws, to appoint a receiver to demand and collect from defendant Eric Braverman, as owner of a condominium unit in the building located at that address, reasonable rental for use and occupancy of the unit during the pendency of this action. After oral argument, and after a review of the parties' papers and the

relevant statutes and case law, the motion is **denied**.

FACTUAL AND PROCEDURAL BACKGROUND :

Pursuant to a deed dated September 19, 2007, defendants Eric Braverman (“Braverman”) and Darya Braverman became owners of a condominium apartment located at 200 Chambers Street, unit 26CD. Ex. A.¹ The building in which the condominium is located was governed by plaintiff Board of Managers of the 200 Chambers Street Condominium. Exs. C, F. Braverman was also owner of a storage unit in the building.

Currently, only Braverman resides at the premises. Basile Aff. In Supp., at par. 5. Braverman and Darya Braverman are separated and are currently litigating a matrimonial action captioned *Darya Braverman v Eric Braverman* before Justice Deborah Kaplan under Supreme Court, New York County Index Number 306221/11. Id., at par. 4. The parties have advised the undersigned that the issues regarding the financial responsibilities of Braverman and Darya Braverman have not been finally adjudicated in the matrimonial action.

In or about January of 2015, Braverman and Darya Braverman defaulted on the payment of monthly common charges owed to plaintiff. Basile Aff., at par. 9. Since payments were made towards arrears in March and April of 2015, no payments have been received by plaintiff. Id., at par. 9; Ex. D. The arrears through April 30, 2016 total \$82, 936.37. Ex. D.

On October 8, 2015, a common charges lien in the amount of \$35,203.69 was entered in favor of plaintiff against Braverman and Darya Braverman. Ex. E. On or about December 9, 2015,

¹Unless otherwise noted, all references are to exhibits annexed to the order to show cause.

plaintiff commenced the captioned action seeking foreclosure of the lien. Ex. G.²

Plaintiff now moves, by order to show cause, pursuant to Real Property Law § 339-aa and section 6.3.2 of its By-Laws (Ex. F), seeking to appoint a receiver to demand and collect from Braverman, as owner of the condominium unit, a reasonable rental for that use and occupancy during the pendency of this action.

POSITIONS OF THE PARTIES :

In support of the motion, plaintiff argues that Real Property Law § 339-aa and section 6.3.2 of the By-Laws of the plaintiff condominium provide that, in an action to foreclose on a lien for unpaid common charges, a unit owner can be required to pay a reasonable rental for the subject unit, and that the plaintiff in such a foreclosure action shall be entitled to the appointment of a receiver to collect the reasonable rental fees.

In opposition, Braverman argues, inter alia, that he does not owe the amount claimed because plaintiff has prevented him from using certain building amenities. He further asserts that Darya Braverman is also responsible for the expenses for the condominium. In addition, he maintains that, since Justice Kaplan has already appointed a receiver to oversee his personal assets, such as personal and business income, in the matrimonial action, there is no need for the appointment of a receiver in this matter.

²Raoul Felder and Partners PC and Susan Bender were also named as defendants insofar as they may have had an interest in the lien premises by virtue of a judgment against Braverman. Ex. G, at pars. 9-10. "John Does" 1-15 were named as defendants to exclude them from any rights they may have in the premises pursuant to any lien or right of occupancy. Ex. G, at par. 12.

LEGAL CONCLUSIONS:

The decision to appoint a receiver is one within the court's discretion. *See United Chelsea Nat'l Bank v Rumican 190 Corp.*, 228 AD2d 279 (1st Dept 1996); *Hahn v Wylie*, 54 AD2d 622 (1st Dept 1976). The appointment of a receiver is a drastic remedy which could potentially, and unnecessarily, increase the cost of litigation. *See S.Z.B. Corp. v Ruth*, 14 AD2d 678 (1st Dept 1961). A court may deny the appointment of a receiver where the property is sufficient security for the debt and the appointment is not necessary to conserve the property and protect the lienor's interests. *See Eastbank v Malneut Realty Corp.*, 180 AD2d 442 (1st Dept 1992). Although "automatic entitlement to a receiver [does not] exist, [a court] shall not deny the appointment of a receiver unless the circumstances require [such denial] as a matter of equity." *F.D.I.C. v Vernon Real Estate Investments, Ltd.*, 798 F Supp 1009, 1012 (SDNY 1992).

This Court determines, in its discretion and as a matter of equity, that it is not necessary to appoint a receiver in this action to collect monies from Braverman.

Initially, by order dated February 20, 2015, Justice Kaplan appointed Simon Miller as receiver "over [Braverman's] personal property" in the matrimonial action between Braverman and Darya Braverman. Ex. B to Braverman's Aff. In Opp. Miller also was given authority to investigate whether any "business entities associated with [Braverman] should be treated as an alter ego." *Id.* By order dated April 18, 2016, Justice Kaplan expanded the receiver's powers to include "control and supervision over the financial affairs of all of [Braverman's] businesses." *Id.* Miller, who initially represented to the undersigned that he has tried, in vain, to have Braverman pay the money he owed to plaintiff, has now informed this Court that he has moved before Justice Kaplan to sequester for sale the condominium so that Braverman's expenses can be paid from the proceeds of

the sale. Thus, the appointment of a receiver in this action would be duplicative of action already taken in the matrimonial proceeding. *See generally Chatham-Phenix Nat'l Bank & Trust Co. v Hotel Park-Central, Inc.*, 146 Misc 208 (Sup Ct New York County 1931) (court found receiver to be unnecessary even where mortgage agreement had a receiver clause). Further, this would, of course, unnecessarily add to the cost of litigation. *See Societe Generale v Charles & Co.*, 157 Misc 2d 643 (Sup Ct New York County 1993).

Additionally, the condominium unit is sufficient security for plaintiff's lien. Counsels do not dispute that the condominium unit is worth at least a few million dollars. Thus, the proceeds of a sale of the unit would be more than ample to pay off the lien, which was \$35,203.69 at the time of the commencement of this proceeding, and which increases by approximately \$3,000 per month. Exs. D, E. *See Societe Generale v Charles & Co.*, 157 Misc 2d, at 649-650.

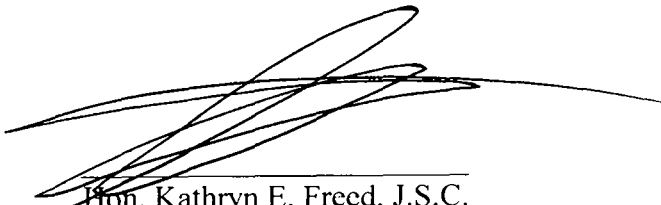
Therefore, in accordance with the foregoing, it is hereby:

ORDERED that plaintiff's motion is denied; and it is further,

ORDERED that this constitutes the decision and order of the Court.

DATED: September 12, 2016

ENTER:



Hon. Kathryn E. Freed, J.S.C.
HON. KATHRYN FREED
JUSTICE OF SUPREME COURT