

Meredith v BRG Celtic, LLC

2017 NY Slip Op 30525(U)

February 15, 2017

Supreme Court, Queens County

Docket Number: 711641/16

Judge: Carmen R. Velasquez

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE CARMEN R. VELASQUEZ IAS PART 38
Justice

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DANIEL MEREDITH AND DONNA MEREDITH, Index No. 711641/16
Plaintiffs, Motion
Date: November 3, 2016
-against- M# 1

BRG CELTIC, LLC, AND CELTIC PARK
OWNERS, INC.,

Defendants.

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The following papers numbered EF 31 - EF 36 read on this Order to Show Cause by the plaintiffs for an order enjoining the defendants from selling, contracting to sell or transferring the shares of stock of defendants allocated to Unit 7C in the subject premises and from taking any action to terminate the plaintiffs' tenancy for the subject premises.

	<u>PAPERS</u> <u>NUMBERED</u>
Order to Show Cause - Affidavits - Exhibits.....	EF 20-23
Affirmation in Opposition - Exhibits.....	EF 24-30
Replying Affirmation.....	EF 31-36

Upon the foregoing papers it is ordered that this Order to Show Cause by the plaintiffs for an order enjoining the defendants from selling, contracting to sell or transferring the shares of stock of defendants allocated to Unit 7C in the subject premises and from taking any action to terminate the plaintiffs' tenancy for the subject premises is decided as follows:

Pursuant to a lease dated February 15, 2016, plaintiffs, as tenants, leased Unit 7C in premises located at 48-17 42nd Street, Sunnyside, New York, a cooperative building, from the defendants. The term of the lease was from March 15, 2016 until March 31, 2017. A rider to the lease, signed by the parties on February 29, 2016, gave the plaintiffs the option to purchase the apartment for the price of \$475,000. The rider provided that if

the closing did not occur by September 15, 2016, "this option shall expire and the lease shall continue as if the option were never offered."

According to the plaintiffs, on March 22, 2016, they notified the defendants that they were exercising their rights under the option to purchase the subject premises. Plaintiffs contend that they executed a contract to purchase the unit, but as a result of the defendants' willful delay in signing the contract and providing the coop's Articles of Organization, they were unable to close by September 15, 2016, as required under the option. Defendants argue that the option expired by its own terms on September 15, 2016. Defendants deny that they deliberately delayed the closing and further state that the Articles of Organization are public documents that plaintiffs ultimately obtained from the New York Secretary of State. Plaintiffs now bring the instant Order to Show Cause seeking injunctive relief.

The decision to grant a preliminary injunction is a matter ordinarily committed to sound discretion of the court hearing the motion. (*Dixon v Malouf*, 61 AD3d 630, 630 [2d Dept 2009]; *Automated Waste Disposal, Inc. v Mid-Hudson Waste, Inc.*, 50 AD3d 1072, 1073 [2d Dept 2008].) In order to demonstrate entitlement to a preliminary injunction, the movant must establish (1) a probability of success on the merits, (2) the danger of irreparable injury in the absence of injunctive relief and (3) a balancing of the equities in favor of the movant. (*Aetna Ins. Co. v Capasso*, 75 NY2d 860, 862 [1990]; *Doe v Axelrod*, 73 NY2d 748, 750 [1988]; *Mangar v Deosaran*, 121 AD3d 650, 650 [2d Dept 2014].) The purpose of a preliminary injunction is to maintain the status quo and prevent the dissipation of property that could render a judgment ineffectual. (*1650 Realty Assocs., LLC v Golden Touch Mgt., Inc.*, 101 AD3d 1016, 1018 [2d Dept 2012]; *Ying Fung Moy v Hoho Umeki*, 10 AD3d 604, 604 [2d Dept 2004].) This is true even in situations where a factual dispute exists. (*Melvin v Union Coll.*, 195 AD2d 447, 448 [2d Dept 1993].)

In the case at bar, the court finds that the plaintiffs have satisfied the requirements for a preliminary injunction. The court finds that plaintiffs, the tenants of the subject unit, will be irreparably harmed if an injunction is not granted. Indeed, without an injunction, they will be in danger of losing their apartment where they have resided for almost a year.

In addition, there is a likelihood of plaintiffs' success on the merits. Plaintiffs signed and returned the contract to the defendants on June 22, 2016, but defendants did not sign and

return it to the plaintiffs until August 2, 2016. Under the contract, plaintiffs had 30 days to obtain a loan commitment letter after the defendants signed the contract and returned it to plaintiffs' attorney. The plaintiffs received the loan commitment on August 31, 2016, only two weeks before the closing date. Thereafter, plaintiffs were notified that the bank required a copy of the coop's Articles of Organization, and their attorney requested a copy from the defendants on September 14, 2016. Thus, it is certainly conceivable that had the defendants returned the contract to the plaintiffs in a more expeditious manner, plaintiffs would have known about the bank's need for the Articles of Organization sooner, and the delay in closing could have been avoided.

In any event, the court finds that the defendants led the plaintiffs to believe that they would allow the extra time to close. After plaintiffs' counsel sent an email on September 15, 2016 to the defendant regarding the need for the Articles of Organization, on the same day defendant replied that "we will look into this." On September 19, 2016, defendant sent another email to the plaintiffs' counsel stating that they were "looking" for the Articles of Organization. He suggested that "perhaps the title co can get it from sec of state." A few hours later on the same date, defendant informed plaintiffs' counsel that he was "having difficulty. Please ask your title company to get them from the Secretary of State." On September 21, 2016, defendant asked plaintiffs' counsel in an email "Did the title company get what you needed"? Thus, clearly on both September 19, 2016 and September 21, 2016, after the closing date had passed, defendant, at a minimum, implied that it would be willing to extend the date of the closing. These emails certainly do not indicate that the defendant was going to cancel the contract. It was not until September 22, 2016, a week after the closing date, that the defendant returned the down payment to the plaintiffs and sought to cancel the contract.

Finally, the court finds that the equities in this case favor the plaintiffs, who will potentially lose their apartment in the absence of an injunction.

Accordingly, this Order to Show Cause by the plaintiffs is granted, and defendants, their officers, directors, agents, employees, servants, predecessors, successors, assigns or persons under the dominion and control of any of the foregoing, are enjoined and restrained from selling, contracting to sell or transferring the shares of stock of defendants allocated to Unit 7C in the premises located at 48-17 42nd Street, Sunnyside, New York 11104 during the pendency of this action and are further

enjoined from taking any action to terminate the plaintiffs' tenancy for the premises located at 48-17 42nd Street, Sunnyside, New York 11104, Unit 7C during the pendency of this action.

The foregoing is conditioned upon the filing of an undertaking by the plaintiffs in accordance with CPLR 6312, in the amount of \$20,000.

Date: February 15, 2017


CARMEN R. VELASQUEZ, J.S.C.

FILED
FEB 22 2017
COUNTY CLERK
QUEENS COUNTY