

McMahon v Cobblestone Lofts Condominium

2017 NY Slip Op 32118(U)

October 10, 2017

Supreme Court, New York County

Docket Number: 151136/2014

Judge: Erika M. Edwards

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This opinion is uncorrected and not selected for official publication.

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

SHANE McMAHON and MARISSA McMAHON,
Individually and as Parents and Natural Guardians
of their Minor Children, AM, BM, and CM,

Index No.: 151136/2014

DECISION/ORDER

Plaintiffs,

Motion Seq. 017

-against-

THE COBBLESTONE LOFTS CONDOMINIUM,
THE ANDREWS ORGANIZATION f/k/a
ANDREWS BUILDING CORPORATION, NOVA
RESTORATION OF NY INC., NOVA
RESTORATION LLC, WALTER B. MELVIN,
ARCHITECTS, LLC and JOHN DOES 1 and 2,

Defendants.

7 VESTRY LLC, PACT REALTY, LLC, PAUL
JACOBSON, AVRA JAIN, CHRISTOPHER SMITH,
CMS ARCHITECTURE AND DESIGN, ROBERT
SHAPIRO, OESTREICHER LAIGHT PARTNERS,
LLC and OESTREICHER CONSTRUCTION CORP.,

Cross-Claim Defendants.

THE COBBLESTONE LOFTS CONDOMINIUM,
THE ANDREWS ORGANIZATION f/k/a ANDREWS
BUILDING CORPORATION,

Third-Party Plaintiffs,

-against-

NOVA RESTORATION OF NY INC., NOVA
RESTORATION LLC and WALTER B. MELVIN,
ARCHITECTS, LLC,

Third-Party Defendants.

THE COBBLESTONE LOFTS CONDOMINIUM and
THE ANDREWS ORGANIZATION f/k/a ANDREWS
BUILDING CORPORATION,

Second Third-Party Plaintiffs,

-against-

OLMSTED ENVIRONMENTAL SERVICES, INC.
and TOTAL ENVIRONMENTAL RESTORATION
SOLUTIONS,

Second Third-Party Defendants.

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

Papers	Numbered
Notice of Motion and Affidavits/Affirmations/ Memos of Law annexed	1
Opposition Affidavits/Affirmations and Memos of Law annexed	2
Reply Affidavits/Affirmations/Memos of Law annexed	3

ERIKA M. EDWARDS, J.:

In their second amended complaint, Plaintiffs Shane McMahon and Marissa McMahon, Individually and as Parents and Natural Guardians of their Minor Children, AM, BM, and CM (collectively "Plaintiffs") (unit owners) brought this action against Defendants The Cobblestone Lofts Condominium ("Cobblestone") (condominium association) and others seeking to recover money for property damage and personal injuries caused by the infiltration of water into Plaintiffs' rooftop penthouse condominium unit which resulted in mold infestation since 2011 and for injunctive and declaratory relief. Plaintiffs alleged improper maintenance and negligent design and construction defects to the unit and surrounding areas, which resulted in breaches causing water and moisture to enter Plaintiffs' units.

Plaintiffs now move by Order to Show Cause for a preliminary injunction requiring Cobblestone to immediately take steps necessary to repair the exterior of Cobblestone's building so that water does not continue to intrude into Plaintiffs' penthouse apartment. Upon review of the admissible evidence, the court grants Plaintiffs' request for a preliminary injunction and requires Cobblestone to make all necessary repairs, without any financial contribution from Plaintiffs, to the exterior of the building to stop water from infiltrating Plaintiffs' apartment.

In its decision to motion sequence 014, entered April 25, 2017, the court stated in substance that the leaks responsible for the mold in Plaintiffs' apartment began in a common area of the building outside of Plaintiffs' units which are not easily accessible and, according to the condominium's rules, Cobblestone was responsible for this area. Therefore, it has already been determined that Cobblestone is responsible for maintenance and repairs of the area causing the leaks to Plaintiffs' apartment.

Additionally, Plaintiffs have established their entitlement to the preliminary injunction, pursuant to CPLR 6301, as Plaintiffs have demonstrated a likelihood of success on the merits, irreparable harm if the court denies the order to show cause and that the balance of equities tip in Plaintiffs' favor. Therefore, the court grants Plaintiffs' order to show cause for a preliminary injunction requiring Cobblestone to make necessary repairs to the exterior of the building to stop and prevent further water infiltration into Plaintiffs' apartment.

Due deliberation having been had, and it appearing to this court that a cause of action exists on this issue in favor of Plaintiffs against Defendant Cobblestone and that Plaintiffs are entitled to a preliminary injunction on the ground that Defendant Cobblestone threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of Plaintiffs'

rights respecting the subject of the action and tending to render the judgment ineffectual, as set forth in the aforesaid decision, it is hereby

ORDERED that the undertaking is fixed in the sum of \$2,500.00 conditioned that the Plaintiffs, if it is finally determined that they are not entitled to an injunction, will pay to Defendant The Cobblestone Lofts Condominium all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that the court grants Plaintiffs Shane McMahon's and Marissa McMahon's order to show cause for a preliminary injunction requiring Defendant The Cobblestone Lofts Condominium to immediately take steps necessary to repair the exterior of the building so that water does not continue to intrude into Plaintiffs' apartment; and it is further

ORDERED that Defendant The Cobblestone Lofts Condominium is directed to make all necessary repairs to the exterior of the building to stop and prevent the further infiltration of water into Plaintiffs Shane McMahon's and Marissa McMahon's apartment, at no cost to Plaintiffs besides the above-mentioned undertaking; and it is further

ORDERED that the parties are directed to appear for a settlement conference on October 18, 2017, at 9:30 a.m., in Part 47, located at 80 Centre Street, New York, New York.

Date: October 10, 2017


HON. ERIKA M. EDWARDS