

<b>SMCB Assoc., LLC v Grant</b>
2017 NY Slip Op 32714(U)
December 20, 2017
Supreme Court, New York County
Docket Number: 157419/2015
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED

PART 2

*Justice*

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SMCB ASSOCIATES, LLC,

INDEX NO. 157419/2015

Plaintiff,

MOTION DATE \_\_\_\_\_

- v -

STEPHEN GRANT and MALINDA BEHRINS

MOTION SEQ. NO. 003

Defendant.

**DECISION AND ORDER**

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The following e-filed documents, listed by NYSCEF document number 47, 48, 49, 50, 51, 52, 53, 54, 55

were read on this motion to/for STAY

Upon the foregoing documents, it is ordered that the motion is **denied**.

In this ejectment action, Stephen Grant and Malinda Behrens (collectively “defendants”) move to stay construction of a partition wall and entrance door by plaintiff SMCB Associates, LLC (“SMCB”) until the Loft Board of the City of New York (“the Loft Board”) renders a decision regarding whether it will direct SMCB to install the door in an area other than where it currently intends to install it. SMCB opposes the motion. After oral argument, and after a review of the parties’ papers and the relevant statutes and case law, the motion is **denied**.

The factual and procedural history of this matter are set forth in detail in the orders of this Court dated August 9, 2016 (Doc. 31) and July 26, 2017 (Doc. 43).<sup>1</sup> Defendants occupy a loft on the fourth floor at 329 Greenwich Street in Manhattan, a building owned by SMCB. By order dated June 20, 2013, the Loft Board determined that the fourth floor of the building was divided into two separate units from 1979 until 2002, when Grant created a single unit on the fourth floor without SMCB's consent. Doc. 11. The Loft Board reasoned that Grant failed to object to plaintiff's 1994 plan for legalizing the configuration of the fourth floor, which reflected that the said floor was comprised of two independent units "with the entrance to each unit from an area inside another door that separated the entrance doors to the residential spaces from the public hallway." *Id.* The Loft Board further determined that, since Grant failed to raise any claims related to the vestibule in his August 12 and 24, 2009 letters to the Loft Board, any claims he had regarding the vestibule were untimely. *Id.*

SMCB commenced the captioned ejectment action against defendants in 2015 and eventually obtained a default judgment against them by order dated July 22, 2017. Doc. 43. In granting the default motion, this Court held, *inter alia*, that SMCB was entitled to possession of the rear portion of the premises ("Unit 4R"), as reflected by the floor plan depicted in Doc. 16, and directed SMCB to erect a permanent

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<sup>1</sup> Unless otherwise noted, all references are to the documents filed with NYSCEF in this matter.

barrier wall between the front portion of the floor (“Unit 4F”) and Unit 4R, as also depicted in Doc. 16.

Defendants moved to stay the eviction and, by so-ordered stipulation (Jaffe, J.) dated August 22, 2017, the parties agreed, among other things, to stay the eviction until September 6, 2017. Doc. 50. The stipulation further provided that, “[a]t the time of the eviction [SMCB] will install a new wall and door as indicated in the approved plans [Doc. 16].” Doc. 50.

Defendants now move, by order to show cause, for an order “to stay construction under the Loft Board approved plans until the Loft Board renders a decision on whether or not to direct [SMCB] to install the entrance door in another area.” Doc. 43.<sup>2</sup> Specifically, defendants submitted a reconsideration application to the Loft Board on or about September 15, 2017 challenging the location of the door to Unit 4R. SMCB opposes the motion.

Initially, the motion is denied as moot. By correspondence dated October 16, 2017, the Loft Board advised counsel for defendants that their application for reconsideration was rejected as untimely since it was filed more than three years after the June 20, 2013 determination by the Loft Board which stated, inter alia, that Grant failed to raise a claim regarding the vestibule space leading to the entrance

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<sup>2</sup> Although the order to show to show cause was not signed by this Court, the parties appeared for oral argument on the issues raised by the application and submitted all necessary exhibits for this Court’s consideration. Therefore, this Court may rule on the application. See generally CPLR 2001.

doors for Units 4R and 4F. The Loft Board also denied the application for reconsideration as incomplete since defendants failed to include with the application the order which allegedly aggrieved them. While not annexed as an exhibit to the motion papers, the October 16, 2017 correspondence was provided to this Court at oral argument. Given the rejection of defendants' application for reconsideration, there is now nothing for the Loft Board to reconsider, and the instant motion is thus moot.

Even if this Court were to address the merits of defendants' motion, it is undisputed that Grant participated in a narrative statement conference with the Loft Board in 1994, during which time he reviewed plans showing two units on the fourth floor "with the entrance to each unit from an area inside another door that separated the entrance doors to the residential spaces from the public hallway." Ex. A to Doc. 55. While Grant raised some unspecified objections to the plan, he did not challenge the plan to legalize the fourth floor as two units. *Id.* Nor did he raise any issues regarding the vestibule in letters to the Loft Board dated August 12 and 24, 2009 as part of an alternate plan application. *Id.* The Loft Board thus found that Grant's "claims related to the vestibule [were] untimely and [could] not be considered." Ex. A to Doc. 55.

Further, defendants' attorney agreed in the August 22, 2017 stipulation with SMCB that, "[a]t the time of the eviction [SMCB] will install a new wall and door


as indicated in the approved plans [Doc. 16].” Doc. 50. Since this clearly evinced defendants’ consent to construction of the door in the position depicted in the approved plans (Doc. 16), defendants cannot now be heard to argue that the said plans did not portray the position in which the door was to be constructed.

Therefore, in light of the foregoing, it is hereby:

ORDERED that the application by defendants Stephen Grant and Malinda Behrens seeking a stay is denied; and it is further

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

12/20/2017  
DATE

  
KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  
SETTLE ORDER  
DO NOT POST

DENIED

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: