Board of Mgrs. of Downtown Club Condominium v Sun
2018 NY Slip Op 31604(U)
March 2, 2018
Supreme Court, New York County
Docket Number: 157963/2014
Judge: Nancy M. Bannon

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY – PART 42

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BOARD OF MANAGERS OF DOWNTOWN CLUB CONDOMINIUM,

Plaintiff,

DECISION, ORDER and JUDGMENT AFTER INQUEST

-against-

Index No. 157963/2014

JUDY SUN,

Defendant.

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NANCY M. BANNON, J.

INTRODUCTION

By order dated July 6, 2016, this court granted the plaintiff's motion pursuant to CPLR 3215 for leave to enter a default judgment against the defendant, and directed an inquest "to determine the issue of the appropriate relief to be awarded to plaintiff," including any equitable relief that it requested and the amounts of condominium fines it may collect and attorneys' fees to which it is entitled.

The court conducted the inquest on November 2, 2016, and now awards the plaintiff a permanent injunction prohibiting the defendant from leasing out her condominium unit for periods of less than 30 days on the first cause of action, and the sums of $2,000.00 for condominium fines and $4,542.50 for costs and attorneys' fees on the second cause of action.

PROCEDURAL HISTORY

The plaintiff, Board of Managers of The Downtown Club Condominium, is the governing body of a residential condominium building located at 20 West Street in Manhattan. The defendant, Judy Sun, owns apartment PHA in that building. On August 12, 2014, the plaintiff commenced this action against Sun, and sought a permanent injunction prohibiting her from leasing out her apartment for less than 30 consecutive days, or permitting any legal lessee from

subletting out the apartment for less than 30 consecutive days (first cause of action), and an award of condominium fines and costs and attorneys' fees under the provisions of the plaintiff's by-laws (second cause of action). The plaintiff served process upon Sun by delivering a copy of the summons and complaint to a person of suitable age and discretion at Sun's residence in Douglaston, Queens, and mailing a second copy thereof to Sun at that address. Sun neither answered the complaint nor otherwise appeared in the action. By order dated July 6, 2016, the court granted the plaintiff's motion for leave to enter a default judgment against Sun, concluding that the plaintiff had submitted proper proof of service of the summons and complaint upon Sun and had established proof of the facts constituting its claim that Sun was violating the condominium's by-laws, Multiple Dwelling Law § 4(8)(a), and Administrative Code of City of New York (Ad Code) § 27-2004(a)(8) by permitting the subject condominium unit to be let or sublet out for periods less than 30 consecutive days.

At the inquest, the plaintiff adduced testimony from Frank Yurasits, an employee of First Service Residential, which manages the subject building on the plaintiff's behalf, and Jonathan J. Fink, the plaintiff's attorney. The court admitted into evidence the plaintiff's declaration and by-laws, its written policy as to short-term rentals dated March 10, 2015, and copies of screen shots posted in October and November 2015 on the internet web sites of Vacation Rental By Owner (VRBO) and Homeaway.com (Homeaway) advertising Sun's unit for short-term rentals. The court also admitted into evidence a running account statement of common charges, late charges, utility charges, and other charges that the plaintiff billed to Sun between November 2011, and October 2016, and the payments received from her during that time. In addition, the court admitted into evidence detailed time records, billing statements, and invoices generated by Fink's law firm, Samson, Fink & Dubow, LLP (SFD), from November 17, 2014, through December 4, 2015, in connection with legal services it rendered to the plaintiff in this action.

The court credits the testimony of the witnesses and the documentary evidence to the extent indicated in the following findings of fact.

FINDINGS OF FACT

On August 8, 2011, Sun purchased Unit PHA at 20 West Street, New York, New York, also known as The Downtown Club Condominium. On numerous occasions between

September 24, 2014, and October 22, 2015, Sun, or Sun's partner, Terry Chan, who is apparently Sun's long-term lessee, let or sublet out Unit PHA for period for periods of less than 30 days to VRBO and Homeaway customers.

Article 9, section 9.1, of the plaintiff's condominium declaration and article 7, section 7.1, of the plaintiff's by-laws limit occupancy of Unit PHA to minimum periods of not less than 30 days. Article 2, section 2.4 of the by-laws permits the plaintiff to impose additional fees or fines upon a unit owner when it determines that the owner is violating the provisions of the by-laws. Article 7, section 7.11 of the by-laws provides that all attorneys' fees and litigation costs incurred by the plaintiff with regard to an owner's violation of any other provision of Article 7 shall be borne by a unit owner as an additional common charge.

The plaintiff twice imposed fines of $1,000.00 upon Sun for violating the provision of the by-laws prohibiting the leasing or subleasing of a unit for a period of less than 30 days, for a total of $2,000.00 in fines, but Sun has yet to pay that amount.

SFD expended 11.05 hours in litigating this action between November 24, 2014, and November 2, 2015, which involved researching advertisements posted for short-term rentals of unit PHA, researching the Multiple Dwelling Law and Ad Code, reviewing the affidavits of services, and drafting and filing the papers constituting the motion for leave to enter a default judgment. The invoices for attorneys' fees were premised upon the billing records of the attorneys at SFD. Fink, who was the only attorney at SFD who worked on this action, billed at an hourly rate of $450.00. During the relevant period of time, the plaintiff thus incurred legal fees in the sum of $4,972.50, of which Sun paid $900.00, leaving a balance of $4,072.50 as of the date of the inquest. In addition, SFD incurred the sum of $470.00 in disbursements for filing fees and the use of attorneys' filing services. Thus, the plaintiff incurred a total of $4,542.50 in attorneys' fees and disbursements.

CONCLUSIONS OF LAW

I. Evidentiary Standards of Proof

A defaulting defendant admits all traversable allegations in the complaint, including the basic issue of liability. See Amusement Bus. Underwriters v American Intl. Group, 66 NY2d

878 (1985); Cole-Hatchard v Eggers, 132 AD3d 718 (2nd Dept. 2015); Gonzalez v Wu, 131 AD3d 1205 (2nd Dept. 2015). The defendant is, however, "entitled to present testimony and evidence and cross-examine the plaintiff's witnesses at the inquest on damages." Minicozzi v Gerbino, 301 AD2d 580, 581 (2nd Dept. 2003) (internal quotation marks omitted); see Rudra v Friedman, 123 AD3d 1104 (2nd Dept. 2014); Toure v Harrison, 6 AD3d 270 (1st Dept. 2004). Sun elected not to present such testimony, but she did cross-examine the witnesses at the inquest here.

II. Permanent Injunction (First Cause of Action)

"To sufficiently plead a cause of action for a permanent injunction, a plaintiff must allege that there was a violation of a right presently occurring, or threatened and imminent, that he or she has no adequate remedy at law, that serious and irreparable harm will result absent the injunction, and that the equities are balanced in his or her favor." Swartz v Swartz, 145 AD3d 818, 828 (2nd Dept. 2016) (citations and internal quotation marks omitted); see 204 Columbia Hgts., LLC v Manheim, 148 AD3d 59 (1st Dept. 2017); Mini Mint Inc. v Citigroup, Inc., 83 AD3d 596 (1st Dept. 2011).

The plaintiff has established its entitlement to a permanent injunction barring Sun or any long-term lessee from leasing or subleasing Unit PHA for periods of less than 30 days, since it demonstrated that (1) these short-term rentals violate article 9, section 9.1, of the plaintiff's condominium declaration, article 7, section 7.1, of the plaintiff's by-laws, Multiple Dwelling Law § 4(8)(a), and Ad Code § 27-2004(a)(8), (2) the violation of these contractual and statutory provisions caused or will cause harm to the plaintiff because the violation divests it of control over who is residing in the building, (3) the plaintiff has no adequate remedy at law to prevent the continued violation of these contractual and statutory provisions, and (4) all of the equities, including those inherent in the public policy underlying the statutory scheme, weigh in the plaintiff's favor. Moreover, the plaintiff established that the grant of equitable relief permanently enjoining future violations of the by-laws is warranted (see Board of Mgrs. of Vil. House v Frazier, 81 AD2d 760 [1st Dept. 1981]), and that an injunction preventing future violations of Multiple Dwelling Law § 4(8)(a) and Ad Code § 27-2004(a)(8) is necessary to give adequate protection to the interest claimed to be invaded. See People v Romero, 91 NY2d 750 (1998).

III. Fines and Attorneys' Fees (Second Cause of Action)

Where a condominium's declaration or by-laws authorizes its governing board to impose fines upon a unit owner for his or her violation of the by-laws, the board's determination to impose those fines is within its inherent power and protected by the business judgment rule, as long as the determination was made in good faith and the amount of the fine is not confiscatory. See Minkin v Board of Directors of the Cortlandt Ridge Homeowners Assn., Inc., 149 AD3d 723 (2nd Dept. 2017); Gabriel v Board of Mgrs. of the Gallery House Condominium, 130 AD3d 482 (1st Dept. 2015); Board of Mgrs. of Plymouth Vil. Condominium v Mahaney, 272 AD2d 283 (2nd Dept. 2000); see also Real Property Law § 339-j. Here, the two $1,000.00 fines for illegal use of Unit PHA as a transient hotel over a period of more than one year is reasonable and not confiscatory.

Where a contract such as the by-laws of a condominium (see Big Four LLC v Bond St. Lofts Condominium, 94 AD3d 401 [1st Dept. 2012]) provides, in a clear and unmistakable fashion, that the prevailing party in an action or proceeding to abate a violation of the by-laws is entitled to an award of reasonable attorneys' fees and costs, that provision is enforceable. See JMD Holding Corp. v Congress Fin. Corp., 4 NY3d 373 (2005). A demand for attorneys' fees may be asserted as an independent cause of action. See Medical Arts-Huntington Realty, LLC v Meltzer Rosenberg Devel., LLC, 149 AD3d 824 (2nd Dept. 2017); Heywood Condominium v Wozencraft, 148 AD3d 38 (1st Dept. 2017). Article 7, section 7.11 of the by-laws constitutes such a clear and unmistakable provision.

To be considered a prevailing party, the party need only "be able to point to a resolution of the dispute which changes the legal relationship between" himself or herself and the defendants. Texas State Teachers Assoc. v Garland Ind. Sch. Dist., 489 US 782, 792 (1989). The plaintiff is clearly the prevailing party here. See Cardoza v City of New York, 139 AD3d 151 (1st Dept. 2016). The plaintiff need not succeed on all of its claims to be entitled to a complete recovery of an attorney's fee. See Leblanc-Sternberg v Fletcher, 143 F3d 748 (2nd Cir. 1998). While "[n]o fees should be awarded for time spent pursuing a failed claim if it was 'unrelated' to the plaintiff's successful claims," a fee award is warranted when a plaintiff achieves "substantial relief," and should be based upon counsel's time spent on all claims involving a common core of facts and related legal theories. Id. at 762, quoting Hensley v Eckerhart, 461 US 424, 434-435 (1983). Where, as here, the claims involve the same common

core of facts and related legal theories, and the plaintiff obtained a substantial recovery on its claims, it is entitled to an award for all of its attorneys' time that was reasonably expended in prosecuting the entire action. See Cardoza v City of New York, supra.

"'The relevant factors in the determination of the value of legal services are the nature and extent of the services, the actual time spent, the necessity therefor, the nature of the issues involved, the professional standing of counsel, and the results achieved.'" 542 E. 14th St., LLC v Lee, 66 AD3d 18, 24 (1st Dept. 2009), quoting Jordan v Freeman, 40 AD2d 656, 656 (1st Dept. 1972); see Matter of Freeman, 34 NY2d 1 (1974).

The hourly billing rate of $450.00 per hour requested by the plaintiff's attorney reasonably reflects his training, experience, and ability in the field of landlord-tenant, real estate, and condominium litigation, and is within the range of rates that are typically charged by such attorneys in the New York City metropolitan area. See Matter of Thomas B. v Lydia D., 120 AD3d 446 (1st Dept. 2014); 542 E. 14th St., LLC v Lee, supra; Lawrence v Miller, 48 AD3d 1 (1st Dept. 2007); see generally Arbor Hill Concerned Citizens Neighborhood Assoc. v County of Albany, 522 F3d 182 (2nd Cir. 2008). Upon a review of the number of hours expended by Fink in litigating this action, the court concludes that all of the 11.05 hours of work set forth in SDF's invoices were reasonably incurred over a one-year period of time.

Thus, the plaintiff is entitled to an award of attorneys' fees in the sum of $4,072.50 and reimbursement of litigation costs in the sum of $470.00, for a total of $4,542.50

IV. Interest

The plaintiff is entitled to an award of statutory prejudgment interest on the recovery of condominium fines pursuant to CPLR 5001(a) and (b). The court concludes that April 1, 2015, is a "reasonable intermediate date" (CPLR 5001[b]) from which to compute interest on that award, inasmuch as the damages arising from imposition of fines upon Sun were incurred "at various times" (id.) between September 2014, and October 2015. See Lager Assoc. v City of New York, 304 AD2d 718, 723 (2nd Dept. 2003); Delulio v 320-57 Corp., 99 AD2d 253, 255 (1st Dept. 1984). Accordingly, prejudgment interest on the amount recovered for fines on the second cause of action is to be awarded to the plaintiff at nine per cent per annum (see CPLR 5004) from April 1, 2015, to the date of entry of this order and judgment.

CONCLUSION

In light of the foregoing, it is

ADJUDGED that the defendant, Judy Sun, be and hereby is permanently enjoined from leasing out Unit PHA at 20 West Street, New York, New York, for a period of less than 30 days in violation of article 9, section 9.1, of the condominium declaration of the Downtown Club Condominium, article 7, section 7.1, of the by-laws of the Downtown Club Condominium, Multiple Dwelling Law § 4(8)(a), and Administrative Code of City of New York § 27-2004(a)(8), or permitting or suffering any legal lessee or occupant thereof to sublet out Unit PHA at 20 West Street, New York, New York, for a period of less than 30 days in violation of article 9, section 9.1, of the condominium declaration of the Downtown Club Condominium, article 7, section 7.1, of the by-laws of the Downtown Club Condominium, Multiple Dwelling Law § 4(8)(a), and Administrative Code of City of New York § 27-2004(a)(8), and it is,

ORDERED that the Clerk of the court shall enter a money judgment in favor of the plaintiff, Board of Managers of The Downtown Club Condominium, and against the defendant, Judy Sun, in, the sum of $2,000.00 on the second cause of action, plus interest thereon at the statutory rate of nine per cent per annum from April 1, 2015, along with the sum of $4,542.50 as and for an award of attorneys' fees and costs; and it is,

ORDERED that the plaintiff shall serve a copy of this Decision, Order, and Judgment with notice of entry upon Judy Sun and her attorneys, by regular first class mail, within 20 days of its entry.

This constitutes the Decision, Order, and Judgment After Inquest of the court.

Dated: March 2, 2018

NANCY M. BANNON, JSC

HON. NANCY M. BANNON