

Factor v Golf View Condominium I
2018 NY Slip Op 33470(U)
December 18, 2018
Supreme Court, Richmond County
Docket Number: 150256/2018
Judge: Kim Dollard
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND**

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HARLENE FACTOR, JASON TRAZOFF and
HARLENE FACTOR, ON BEHALF OF THE BOARD
OF MANAGERS OF GOLF VIEW CONDOMINIUM 1,

Plaintiffs,

-against-

GOLF VIEW CONDOMINIUM 1, GOLF VIEW
HOMEOWNERS ASSOCIATION, INC., and
JOHN DOE 1-10 and JANE DOE 1-10, said names
being fictitious,

Defendants.

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The following papers numbered 1 to 3 were fully submitted on the 10th day of October, 2018:

	Pages Numbered
Order to Show Cause By Plaintiffs dated February 23, 2018, seeking to enjoin the Golfview Condominium Board from managing Golfview Condominium 1, and other relief.....	1
Notice of Cross-Motion dated June 15, 2018, by defendant, Golfview Condominium 1 to dismiss the First Cause of Action and for a Declaration that the November 1, 2017 meeting was a nullity, with accompanying affidavits and exhibits.....	2
Affirmation in Opposition and in Support of Cross-Motion	
Order to Show Cause on behalf of defendants dated August 10, 2018, to declare the August 4, 2018 meeting a nullity and to restrain members of the Dissident Group from holding themselves out as Golfview 1 Board Members and from taking action on behalf of Golfview 1, and for an order directing that Golfview 1 and the Home Owners Assoc. Hold an annual meeting and election on September 15, 2018 to be administered and supervised by Honest Ballot Association, Inc.,.....	3

This plaintiffs brought action against the defendants by filing a complaint on or about February 1, 2018, asserting two causes of action. The first cause of action alleges breach of

fiduciary duty and the second cause of action seeks a declaration that a meeting and election held on November 1, 2017 was proper.

With the filing of the summons and complaint, the plaintiffs brought an order to show cause to enjoin and/or restrain the defendants from managing Golf View Condominium 1; to enjoin Golf View Condominium 1 from entering into any contracts; to enjoin Golf View Condominium 1 from transferring assets; and to prohibit the Golf View Condominium 1 Board members from representing that they are members of the Board of Managers.

The plaintiffs assert that a special meeting was called and held on November 1, 2017 for the purpose of electing two new members to fill vacancies in the Board of Managers for Golf View Condominium 1, created when the president and vice president resigned. There were five persons present at the special meeting, which resulted in the election of plaintiff, Jason Trazoff as president, and Christine Anagnostos and Harlene Factor as members of the Board of Manager.

The defendants cross-moved to dismiss the first cause of action for breach of fiduciary duty and for a declaration that the meeting held by the plaintiffs on November 1, 2017 was a nullity. In support of its motion for dismissal of the first cause of action, the defendants assert that under New York law, the Condominium does not owe a fiduciary duty to its members or unit owners. The defendants further request a declaration that the November 1, 2017 meeting was a nullity.

The defendants attach affidavits from Lynnette Morello, current president of Golf View Condominium 1, and Lesly Hubert, a member of the current Board of Managers. Both board members attest that the November 1, 2017 special meeting was a nullity because notices were sent to the wrong individuals, notices were sent in the wrong manner and a person not on the Board was permitted to vote. Specifically, defendants established that the notice was sent by e-mail, and not by mail or telegraph pursuant to the bylaws; the e-mail was sent to Board and non-Board members. The notice was sent to Peter Burdzy and Keith Gladitsch, both of whom were no longer Board members. Furthermore, Keith Gladitsch was permitted to vote, though he had resigned from the Board of Managers.

The defendants further request in a separate Order to Show Cause, a declaration that a meeting held on August 4, 2018, be declared a nullity; that the plaintiffs and members of a Dissident Group, be restrained from holding themselves out as members of the Golf View 1 Board of Directors and Home Owners Association; and for a directive that Golf View 1 and the Home Owners Association convene for an annual meeting and for an election administered by and supervised by Honest Ballot Association on September 15, 2018 or a subsequent date directed by the Court.

By affidavits from Lynette Morello and Lydia Nepson, the defendants assert that the parties had agreed to hold an independent election administered by Honest Ballot Association, Inc., for the purpose of filling seats on the Golf View 1 Board and Home Owners Association Board which are vacant or which were held by appointed rather than elected board members. Thereafter, the Dissident Group, which includes the plaintiffs, issued unauthorized notices of a special meeting to be held on August 4, 2018. The notices were not sent to all unit owners and were not authorized by the Board of Managers. Thereafter, Counsel for Golf View 1 and the Home Owners Association posted notices that the Special Meeting was not authorized by the Board of Golf View 1 or the Home Owners Association, and that any meeting was not in conformity with the Bylaws and would be a nullity. The notice also stated that an annual meeting and elections were being scheduled for September 14, 2018 with Honest Ballot Association, Inc. However, the Dissident Group continually tore down the notices. The meeting on August 4, 2018 was nevertheless held, after which members of the Dissident Group held themselves out as members of the Boards of Golf View Condominium 1 and the Homeowners Association. Since the unauthorized August 4, 2018 meeting, Carriage House, the managing agent which had been terminated, refused to accept its termination. Further, it appears that the Dissident Group also threatened vendors and interfered with the pool lifeguard and caused other disruption in the business of Golf View Condominium 1 and the Home Owners Association.

This Court was made aware that an annual meeting and election was going to be held and supervised by Honest Election Association on Saturday, September 14, 2018, which if held, would serve to resolve many, if not all of these issues, as well as the dissension and discord facing this condominium complex.

However, for reasons that are the subject of a separate Order To Show Cause to hold the plaintiffs in contempt, the election did not proceed on September 14, 2018, and the Golf View Condominium 1 and Home Owners Association are still awaiting their annual meeting and election.

To the extent that plaintiffs first cause of action alleges that the Board is liable for breach of fiduciary duty, such claims are dismissed. The Court notes that no opposition was submitted to dismissal of this cause of action. In any event, a corporation does not owe a fiduciary duty to its individual unit owners and shareholders. See *Stalker v Stewart Tenants Corp.*, 93 AD3d 550, 940 NYS2d 600 [1st Dept 2012]; *Hyman v NY Stock Exch., Inc.*, 46 AD3d 335 [1st Dept 2007]; *Peacock v Herald Sq. Loft Corp.*, 67 AD3d 442 [1st Dept 2009].

As to Plaintiffs' second cause of action, the Special Meetings held on November 1, 2017 and on August 4, 2018 are nullities, since they were not held in accordance with the Bylaws.

In the first instance, plaintiff, Trazoff concedes that he was Secretary of the Board when he called the November 1, 2017 meeting. According to the Bylaws (Article 3, Section 8), a Special Meeting can only be called by the President on three days notice, or by the Secretary only upon the written request of three Board members. This provision was not complied with.

Further, the meeting notice was sent by e-mail, which was an unauthorized means to notify of a meeting. Notwithstanding same, it appears that the notice was also sent to two non-members of the Board, and that a non-Board member was permitted to vote.

Accordingly, the November 1, 2017 meeting was a nullity, and anyone elected to either Board or to any Board position as a result of that meeting is a nullity. That being the case, the August 4, 2018 meeting, which was called by Trazoff and persons not properly elected to the Board of Managers, was similarly a nullity.

Mr. Trazoff was not the president of the Board when the August 4, 2018 meeting was called, and may not even have been a Board Member at the time. There is no proof that this meeting was called in accordance with the Bylaws. Board members, Nepson and Morello, whose terms expire in 2019, attest that the Board of Managers never convened or authorized this meeting, and that Nepson, as president of the Board, never called for this Special Meeting.

Additionally, there was no proof that a petition signed by 25% of the unit owners requested the Special Meeting. Therefore, the August 4, 2018 meeting is likewise a nullity.

Lastly, pursuant to the defendants' request, the Court finds that an annual meeting and election of Board Members to Golf View Condominium 1 and to the Home Owners Association is necessary.

In the Bylaws of Golf View Condominium 1, the Court found no provision limiting voting rights to only those unit owner members who are in good standing or who are not in arrears. Therefore, all unit owners are permitted to vote in the Golf View 1 Condominium election.

With respect to the Bylaws of the Home Owners Association, it is stated that "During any period in which a Member shall be in default in the payment of any assessment levied by the Association, the voting rights, if any, of such Member . . . may be suspended by the Board of Directors until such assessment has been paid" (Article VI, §2). Therefore, unless a home or unit owner has been specifically suspended, in writing, for non-payment of assessments by February 28, 2019, and afforded a thirty day period to cure any default, all unit or home owners shall be permitted to vote in elections for the Home Owners Association.

Accordingly, it is

ORDERED, that the plaintiffs' Order to Show Cause is denied in its entirety; and it is further,

ORDERED, that The defendants' Cross-Motion to dismiss the first cause of action for breach of fiduciary duty and for a declaration that the meeting held by the plaintiffs on November 1, 2017 was a nullity, is granted; and it is further,

ORDERED, that he defendants Order to Show Cause, for a declaration that a meeting held on August 4, 2018, be declared a nullity; that the plaintiffs and members of a Dissident Group, be restrained from holding themselves out as members of the Golf View 1 Board of Directors and Home Owners Association; and for a directive from the Court that Golf View 1 and the Home Owners Association convene for an annual meeting and for an election administered by and supervised by Honest Ballot Association, is granted; and it is further,

ORDERED, that a Special Meeting and/ Annual Meeting and election be held on **April 27, 2019**, for purposes of filling vacancies in the Board of Managers of Golf View Condominium 1 and the Home Owners Association, and for replacing any appointed members with newly elected members, and that said meeting and/or election be held pursuant to the Bylaws and that it be supervised by Honest Election Association, Inc., or any other agreed upon election company; and it is further,

ORDERED, that the Order To Show Cause for Contempt, is held in abeyance and the parties are to appear for a status report concerning same on **May 10, 2019**.

ENTER,

Kim Dollard

Hon. Kim Dollard

Acting Supreme Court Justice

DATED: 12/18/18