

Board of Mgrs. of Asti Condominium v Petratos

2018 NY Slip Op 33855(U)

March 2, 2018

Supreme Court, Queens County

Docket Number: 700596/18

Judge: Leonard Livote

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: Honorable Leonard Livote IAS TERM, PART 33
Acting Supreme Court Justice

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Board of Managers of Asti Condominium,
On Behalf of All Its Unit Owners Index No:700596/18
Plaintiff(s),
-- against -- Motion Date:01/30/18
Vasilios Petratos, Seq. No: 1
Defendant(s).
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The following papers numbered 1 to 4 were read on this motion by defendant why an Order and/or Judgement should not be made and entered herein as follows:

a) directing defendant to turn over any and all funds, records and documents maintained by said defendant on behalf of the plaintiff;

b) directing defendant to safeguard all funds, records and documents maintained by said defendant on behalf of the plaintiff from theft, loss and/or manipulation pending a final determination of this action on the merits; and

c) enjoining defendant from acting as an officer of the plaintiff.

Table with 2 columns: Description and PAPERS NUMBERED. Rows include Notice of Motion, Affirmation, Affidavits and Exhibits (1-4) and Late Opposition and Exhibits (5-6).

Upon the foregoing papers, the motion is granted.

Plaintiff avers that Plaintiff was and is a five (5) member Board of Managers representing the interests of all unit owners of a residential condominium located at 10/14 31st Avenue, Astoria, New York 11106. The Defendant was and is a non-resident owner of Unit 4B and 6M and a member of the Board of Managers. Plaintiff alleges that prior to November 28, 2017, Defendant, acting as President of the Board, without the authority or consent of the remaining board members: (1) unilaterally terminated the Condominium's superintendent and replaced him with

unqualified personal friends; (2) opened and maintained separate bank accounts allegedly on behalf of the Condominium for which only Defendant received bank statements and correspondence; and, (3) refused to provide access to the books and the records of the Condominium to the other members of the board of managers and its managing agent. On November 16, 2017, as a result of Defendant's actions, the Board demanded that the Secretary of the Board call a Special Meeting on November 28, 2017, calling for, among other things, the removal of the Defendant as President of the Board and upon removal, electing a successor as President of the Board.

On November 28, 2017, approximately 3 hours before the scheduled Special Meeting, the Defendant without the knowledge, consent, or authorization of the remaining board members, withdrew four bank checks in the total sum of \$95,000.00 from the bank account(s) of the Plaintiff Condominium. A resolution of the Board required two signatures (President and Treasurer) for the withdrawal of funds from the accounts, but the Treasurer did not sign the withdrawals. On the same date, a quorum of board members appeared at the Special Meeting and held a vote in favor of Defendant's removal.

On December 28, 2017, upon discovering the unauthorized withdrawal of the funds the Plaintiff Board served the Defendant with a written demand for return of the withdrawn funds within seven days. On January 8, 2018, Defendant requested additional time to return the withdrawn funds and to explain his position. In that letter, the Defendant admits, among other things, that he unilaterally withdrew the funds belonging to the Condominium to allegedly "protect and keep said funds from unauthorized and undocumented spending." The Defendant has failed and/or refused to turn over the funds demanded by the Plaintiff.

Defendant responded with a late opposition to the court. The Defendant's late opposition offers no legal basis for withdrawing and keeping the funds of the Condominium.

Plaintiff now moves for a preliminary injunction as stated above.

CPLR 6301 provides the grounds for preliminary injunction: "[a] preliminary injunction may be granted . . . in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff." Furthermore, it is held that "[t]o prevail on an application for preliminary injunctive relief, the moving party

must demonstrate (1) a likelihood of ultimate success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) that a balancing of the equities favors the movant's position" (*Zanghi v State*, 204 AD2d 313, 313-14 [2d Dept 1994]).

Plaintiff has shown that it has a likelihood of success on the merits of the case against the Defendant for breach of fiduciary duty, for conversion of the withdrawn funds, and for unjust enrichment. First, Plaintiff contends that the Defendant breached his fiduciary relationship by self-dealing in his withdrawal of funds. Second, Plaintiff argues that the acts of withdrawal of funds without the knowledge, authority, and/or consent of the Board is a conversion of funds belonging to the Plaintiff. Third, Defendant's retention of those funds to the detriment of the Plaintiff requires restitution as a matter of equity.

Plaintiff has demonstrated an irreparable injury absent the granting of the preliminary injunction. The funds belong to all the Unit Owners and are necessary for the payment of day to day expenses of the Condominium, maintenance and repair of the premises, and payment of the creditors. Furthermore, the Plaintiff requires the records and documentation to properly and adequately manage and operate the Condominium and the Premises as required by the Condominium Act and its bylaws.

The equities balance in the Plaintiff's favor. The Defendant would suffer no prejudice in returning the funds, records, and documentation that belong to the Condominium. Defendant since he is no longer an officer of the Board has no legal or possessory rights to said funds, records and documents.

Accordingly, the motion is granted, and it is


ORDERED that defendant is directed to turn over any and all funds, records and documents maintained by said defendant on behalf of the plaintiff;

ORDERED that defendant is directed to safeguard all funds, records and documents maintained by said defendant on behalf of the plaintiff from theft, loss and/or manipulation pending a final determination of this action on the merits; and

ORDERED that defendant is enjoined from acting as an officer of the plaintiff.

This constitutes the Order of the Court.

Dated: March 2, 2018


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Leonard Livote, A.J.S.C.

FILED
MAR 29 2018
COUNTY CLERK
QUEENS COUNTY