

188-190 Hous. Dev. Fund v Viola

2019 NY Slip Op 33564(U)

December 4, 2019

Supreme Court, New York County

Docket Number: 651313/2014

Judge: Manuel J. Mendez

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: MANUEL J. MENDEZ
Justice

PART 13

188-190 HOUSING DEVELOPMENT FUND,
CORPORATION,

INDEX NO. 651313/2014
MOTION DATE 11/6/2019
MOTION SEQ. NO. 007
MOTION CAL. NO. _____

Plaintiffs,

-against-

JOSEPH VIOLA, EXECUTOR OF THE ESTATE
OF ALICE VIOLA,

Defendant.

The following papers, numbered 1 to 7 were read on this motion to sever the present action pursuant to JUD § 753(A)(3):

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

1 - 4

Answering Affidavits — Exhibits _____

5 - 7

Replying Affidavits _____

CROSS-MOTION YES NO

Upon a reading of the foregoing cited papers, it is Ordered that Defendant's motion pursuant to New York Judiciary Law §753(A)(3), to hold Plaintiff in Contempt, is granted.

Plaintiff is a Housing Development Fund Corporation ("Board"), located at 188-90 Eighth Avenue, New York, New York (hereinafter the "Building"). Defendant is the Executor of the Estate of Alice Viola, a resident shareholder in the Building. This is a declaratory judgment action by Plaintiff to enforce the Building's re-sale policy on Defendant's attempt to sell their resident shares in Unit 2N.

The re-sale policy states that the Board has a right of first refusal to purchase Apartment 2N for \$27,500. Defendant filed an answer with counterclaims alleging that the re-sale policy alleged in the complaint was not properly voted on, approved, or enacted. Plaintiff did not serve an answer to Defendant's counterclaims in a timely fashion. Defendant moved under Motion Sequence No. 001, filed in 2014, for a default judgment on the counterclaims due to the lack of a timely response from the Plaintiff. The Plaintiff did not appear for oral argument on Motion Sequence No. 001 and judgment was granted on default in favor of Defendant. The Court permanently enjoined the Plaintiff from enforcing its re-sale policy as against Defendant, declared the re-sale policy not properly implemented

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

and void as against the Defendant, and ordered that the Board provide an accounting of its financial books and records to the Defendant within 30 days of a written request.

Plaintiff then moved under Motion Sequence No. 002 to vacate the default judgment. Plaintiff did not appear for oral argument on Motion Sequence No. 002, and the motion was denied for the movant's failure to appear. Plaintiff again moved under Motion Sequence No. 003 to vacate its default. Plaintiff and Defendant stipulated to withdraw Motion Sequence No. 003, in order to discuss settlement of the case. Settlement efforts were futile, and Defendant moved under Motion Sequence No. 004 to hold Plaintiff in Contempt of Court for not complying with this Court's decision, dated October 16, 2014, under Motion Sequence No. 001. Plaintiff and Defendant stipulated to withdraw Motion Sequence No. 004 on condition that Plaintiff obtain an accounting firm and share with all shareholders of the Building and Defendant the accounting for the Building and Board, as well as the Building and Board's bank statements. Defendant agreed to send a bill for his attorney fees to the Board for reimbursement.

Shortly after Motion Sequence No. 004's stipulation, Plaintiff moved under Motion Sequence No. 005 seeking to vacate this Court's October 16, 2014 decision and for leave to renew Motion Sequence No. 002. Motion Sequence No. 005 was denied for failure of movant to appear for oral argument. The decision stated "this court will not entertain any further motions to vacate the judgment entered on default on the counterclaim for Plaintiff's counsel repeated failure to appear at oral arguments on the motion." Plaintiff attempted to file Motion Sequence No. 006, by order to show cause seeking to vacate the default judgment and to renew Motion Sequence No. 002. This Court declined to sign the order to show cause because it would not entertain any further motions to vacate the default judgment or for leave to renew.

Defendant now moves for an Order to: (1) hold the Board in contempt of court for its failure to obey the order and judgment of this court, dated October 16, 2014, (2) compel the Board to approve, within 14 days of an order or directive of the court, Defendant's sale of the shares and proprietary lease, and Executors entire interest in Unit 2N of the Building, and compelling the board to take reasonable steps required and/or incident to closing such sale, and (3) imposing sanctions against the Board, including but not limited to reasonable attorneys fees incurred in connection with this contempt motion and the enforcement of the October 16, 2014 Judgment.

Plaintiff in opposition argues that the Board has not received any proposed applicant's, application, or notice of any contract of sale prior to this Order to Show Cause on July 24, 2019 and is requesting that the Court vacate the October 16, 2014 default judgment.

New York Judiciary law 753(A)(3) states “a court of record has power to punish, by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced, in... for any other disobedience to a lawful mandate of the court..”

A finding of civil contempt requires the Court expressly find the actions involved were, “calculated to or actually did defeat, impair, impede or prejudice the rights or remedies of a party to a civil proceeding” (Clinton Corner H.D.F.C. v. Lavergne, 279 A.D.2d 339, 719 N.Y.S.2d 77 [1st dept. 2001] citing Oppenheimer v. Oscar Shoes, Inc., 111 A.D.2d 28, 488 N.Y.S. 2d 693 [1st dept. 1985]). Civil contempt is to vindicate a party’s right to the benefits of a judicial mandate or to compensate that party for the interference by the party in contempt. (McCormick v. Axelrod, 59 N.Y.2d 574, 453 N.E.2d 508, 466 N.Y.S.2d 279 [1983]). “Contempt is a drastic remedy which should not issue absent a clear right to such relief.” (Coronet Capital Co. v. Spodek, 202 A.D.2d 20, 615 N.Y.S.2d 351 [1st dept. 1994]).

The Court order on October 16, 2014 enjoined the Board from enforcing the re-sale policy against Defendant, determined the re-sale policy was not properly implemented and is void, and ordered the Board to provide an accounting of its financial books and records, 30 days from written request. Plaintiff did not provide Defendant with an accounting of its financial books and records and continued to enforce the void re-sale policy against the Defendant. The Board had knowledge of the Court order on October 16, 2014 as they filed Motion Sequence No. 002 to vacate the default judgment. Defendant has made multiple attempts to settle with the Plaintiff, which can be seen through the case history, Plaintiff’s continued failure to appear for oral arguments, and its lack of compliance with the October 16, 2014 Court order, defeated, impaired, and prejudiced the Defendant.

Plaintiff has not shown any willingness to comply with the October 16, 2014 Order. Plaintiff has continued to file motions to vacate the October 16, 2014 order, and then failed to appear for oral argument, prompting this court to state, as it did in its decision dated January 13, 2016, that it will not entertain any further motions to vacate the judgment entered on default on the counterclaim for Plaintiff’s counsel repeated failure to appear at oral arguments on the motion. Plaintiff denied the Defendant’s previous request for application materials in 2016, and therefore, Defendant could not submit a full application of the interested buyers on the contract of sale. Plaintiff, now having the contract of sale, has not sent application materials to the Defendant. Thus, Plaintiff has not complied with this Court’s orders, has failed to appear for multiple oral arguments, and is in contempt.

Accordingly, it is ORDERED that Defendant’s motion for an Order finding the Plaintiff in civil contempt for failure to comply with the Decision and Order of this Court dated October 16, 2014, is granted, and it is further,

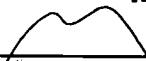
ORDERED that Plaintiff, 188-190 Housing Development Fund Corporation, is in Civil Contempt of Court pursuant to New York Judiciary Law 753(A)(3), and it is further,

ORDERED that Plaintiff may purge its contempt by the approval, within 14 days of service on Plaintiff's attorney of a copy of this order with notice of entry, Defendant's Executor's sale of the shares and proprietary lease appurtenant to, and Executors entire interest in Unit 2N in the Building, and is further,

ORDERED that upon approval the Board is compelled to take the reasonable steps required and/or incident to closing such sale, and it is further,

ORDERED that upon failure of Plaintiff to purge its contempt, they will be liable to the Defendant for all reasonable attorney fees and costs incurred in connection with this proceeding, which shall be determined at a hearing before a judicial referee.

**ENTER: MANUEL J. MENDEZ
J.S.C.**



**MANUEL J. MENDEZ
J.S.C.**

Dated: December 4, 2019

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE