

**Board of Mgrs. of Oceanview Condominium v
Riccardi**

2020 NY Slip Op 30462(U)

January 24, 2020

Supreme Court, Richmond County

Docket Number: 151484/2016

Judge: Jr., Orlando Marrazzo

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This opinion is uncorrected and not selected for official publication.

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND
BOARD OF MANAGERS OF OCEANVIEW
CONDOMINIUM,**

DECISION/ORDER

IAS PART 21

HON. ORLANDO MARRAZZO, JR.

Index No.: 151484/2016

Plaintiff(s),

-against-

**JOSEPH RICCARDI a/k/a JOSEPH RICCIARDI and
PETER BELLANTONI, SR.,**

Defendant(s)

This action was commenced by the Condominium against its former Board President Joseph Riccardi (hereinafter “Riccardi”) who is the current owner and occupant of the Penthouse Condominium Unit located on the top floor of the building known as 31 Hylan Boulevard, Staten Island, New York (hereinafter “PH Unit”). All claims against the co-Defendant Peter Bellantoni, Sr. (hereinafter “Bellantoni”) were dismissed by the Court at the conclusion of the trial.

The action was commenced on or about November 3, 2016 upon the filing of a Summons and Verified Complaint which contains six (6) causes of action against Riccardi based upon the unlawful enlargement of the PH Unit and its current encroachment upon the Limited Common Elements of the Condominium’s roof and roof terrace (Second and Third Causes of Action). The Complaint also seeks damages against Riccardi for misappropriation and/or waste of Condominium funds

for overpayment of wages paid to co-Defendant Bellantoni that were expressly authorized by Riccardi for the years 2013, 2014, and 2015; for misappropriation and waste of Condominium funds for the concealed overpayment of legal fees paid to the Board's prior attorney Howard Bernstein, Esq.; for the rental value of a storage bin not allocated for Riccardi's use; for fines owed by Riccardi for his violation of certain Condominium Rules and Regulations; for unpaid basic undisputed common charges; for additional common charges assessed for the illegal expansion of the PH Unit; and for reasonable attorney's fees and expenses.

Issue was joined by Riccardi pursuant to a Verified Answer filed with the Court on December 2, 2016 wherein Defendants admitted that the Plaintiff/Board is a Condominium Association organized and existing under the Condominium Laws of the State of New York and was created by virtue of a Declaration of Condominium duly recorded in the Office of the Clerk of Richmond County. The Verified Answer also admitted that the Declaration and By-Laws (Plaintiffs Exhibits 1 and 2) are in full force and effect and obligate all unit owners to pay common charges and special assessments issued by the Board of Managers who have the authority to: "determine the amount and establish the means and methods of payment of, and to collect the common charges and special assessments from unit owners, to adopt and amend the rules and regulations, and to levy and collect fines against unit owners for violations of rules and regulations...and to bring proceedings against all unit owners in

violation of the terms, covenants, and conditions of the Declaration and By-Laws and all other measures to carry out any other duties imposed upon the Board pursuant to the Declaration and By- Laws". (See Complaint, Par. 5 and By-Laws Article 6).

Defendants' Answer also admits Par. 6 of the Complaint that alleged that Section 5.8 of the By-Laws mandates that the Common Elements of the Condominium not be obstructed or used to keep or maintain any "furniture, packages, or objects of any kind...including but not limited to the Roof Common Elements". Also admitted in Defendant's Answer is Par. 7 of the Complaint that alleges that "no unit owner in the Condominium may change the configuration or size of his or her Unit or to raise or incorporate in his or her Unit a wall, space or other area contained in the Common Elements without obtaining the consent of all unit owners and the Board of Managers". (See also Article 12 of Declaration PI. Exhibit 1). Finally, Defendants admit to Par. 8 of the Complaint which alleges that "included in the Common Elements of the Condominium are the lobby, vestibule, public halls, stairways, roof, and roof terrace". (Emphasis added). At no time during this action was Defendants' Verified Answer amended in any manner. Finally, Plaintiffs Complaint also seeks recovery of Plaintiff's reasonable attorney's fees and expenses pursuant to By-Law Sections 6.4(B) and 9.4. (See PI. Exhibit. 2)

The trial of this action commenced on October 10, 2019 and continued through October 17, 2019. The Court heard testimony from Plaintiffs witnesses,

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Board Members Chris Ragucci, Murray Berman, and Helaina Ciaramella, former Board Member Mary Power, New York City Building Department Inspector Thomas Mascialino, the Department of Finance Tax Assessor, Island Condo Management CEO Martin Filler, and an expert engineer Vito Fossella. Defendants ‘witnesses including Defendants Joseph Riccardi and Peter Bellantoni, Sr., and an expert architect David Businelli.

At the conclusion of the trial, the Court dismissed Plaintiffs claims as against Defendant Peter Bellantoni, Sr. and dismissed Defendants’ Sixth Counterclaim for intentional interference with contract and/or business relations. Prior thereto, Defendants withdrew their Second, Third, and Fourth Counterclaims for intentional infliction of emotional distress, slander, and libel. Although counsel for the parties jointly moved, and the Court granted the application to conform all pleadings to the proof, there was no evidence or testimony submitted by Defendants, or permitted by the Court, regarding the Defendants’ contention that the current Board lacked legal standing to bring this action.

FACTS

The evidence demonstrated that Riccardi initially bought Unit 12D at 31 Hylan Boulevard in or about 1998 and thereafter moved to the PH Unit when he acquired it on May 15, 2006. In or about 2004, Riccardi was elected to the Board

and thereafter became its President in or about 2005 and continued in that capacity until August 2016 when he was removed, for cause, by a majority vote of the Board. The PH Unit is described in Exhibit B of the recorded Declaration of Condominium (Exhibit 1) "as consisting of approximately 2,102 square feet as computed from center line of interior partitions to outside of exterior walls" and is allocated a .02973% interest in the Common Elements based on its original floor area. Prior to Riccardi taking title to the PH Unit, an extension had been added to the PH Unit creating two (2) new rooms totaling approximately 1,200 additional square feet including that portion which extended onto the Limited Common Elements assigned to the PH Unit. The additional living space, together with certain improvements added to the roof terrace Limited Common Elements consisting of new floor tiles, doubled the size of Riccardi's PH Unit, as further demonstrated by two (2) "for sale" advertisements of the PH Unit that Riccardi caused to be published and which described his Unit as containing 2,100 square feet of indoor space and 2,100 square feet of outdoor space. (Plaintiffs Exhibit 11).

Riccardi conceded that at least one (1) of those two (2) rooms was not habitable before he took title in 2006 and that he had to add electric and water service to make that room habitable. He also acknowledged furnishing the glass enclosed illegal extension with a pool table, two (2) motorcycles, seven (7) theatre chairs, a 110 - 120-inch television screen, popcorn machine, video games and dart board, as

well as two (2) barbecues on either side of the roof terrace. At no time did Riccardi's predecessor ever obtain Building Department permits for the construction of the extension nor did Riccardi take any action to legalize the extension. There was no credible evidence submitted by Riccardi that any written permission was ever granted by any Board for the alteration and expansion of the Unit as required under Article 12 of the Declaration. Not only did Riccardi fail, either during his 12-year Presidency of the Board or thereafter, to obtain any formal written permission of the Board to maintain the illegal extension to his PH Unit that also encroaches upon the Limited Common Elements of the Condominium, he also failed to take any measures to correct two (2) NYC Building Department violations issued in 2016 and 2017 that required either a work permit for the extension, or to restore the Unit to its prior legal condition. (PI. Exhibits 29 and 30). Although those violations named the Board and its then Managing Agent as Respondents, both violations state that the PH Unit contains an extension that was erected "without a permit and enlarged by approximately 1,200 square feet of floor area toward the east now being used as a sports room and theatre room". The remedies required under the violations were to either obtain a permit or restore the premises to its prior legal condition.

Based upon the competent and credible testimony of Plaintiffs expert engineer Vito Fossella, under current zoning law, it would be impossible to obtain a permit to legalize the extension since the floor area would exceed current zoning restrictions.

Thus, the only available remedy is to remove the extension and restore the Unit to its prior legal condition as depicted in the approved Building Department Plans. (PL Exhibit 9). Those approved Plans required direct access to the roof and roof terrace from the 15th floor hallway through a hallway door that was removed when the extension was constructed. Currently, the only access to the roof and roof terrace is through Riccardi's Unit.

Although the first Building Department Summons dated October 28, 2016 was dismissed as against the named Respondents "Oceanview Condominium and Dawning Real Estate" following an OATH hearing, the violations remain on record. (PL Exhibit 6). Defendants' expert David Businelli ("Businelli") did not controvert the credible testimony of Plaintiff's expert Vito Fossella.

Given that the Building Department records do not evidence any applications to amend the approved Building Department Plans, nor any work Permits for the extension, said extension clearly deviates from the approved Building Department Plans and is an ongoing violation that adversely impacts upon the entire Building. In that regard, the Tax Assessor from the Department of Finance corroborated the testimony of Mary Power that the extension of the PH Unit has caused a reassessment of the entire Building resulting in the real estate taxes for each of the 60-unit owners to be increased by an average of \$150 to \$185 per unit, per year. (PL Exhibits 15, 28). This totals approximately \$9,000 a year more than all 60-unit

owners have been compelled to pay annually since 2017 by virtue of the PH Unit's illegal extension that only benefits Riccardi.

In view of the illegal expansion of Riccardi's Unit which has now doubled the size thereof, the Board, exercised its authority under Section 6.1 of the By-Laws to "at its sole discretion... increase or decrease the amount of common charges allocated to the units and payable by the unit owners. When Riccardi failed and refused to remove the illegal extension and/or take any measures to remedy the two (2) New York City Department of Building violations, the Board, exercising its fiduciary duties, elected to assess Riccardi an additional sum of \$10,956 per year for common charges due to the doubling of his allocable interest in the common areas from .02973% to .05946 %. Beginning from 2011 and not exceeding six (6) years prior to the commencement date of this action, through the conclusion of the trial in October 2019, Mary Power calculated the increased common charges due the Board at \$121,445.24 inclusive of interest at the rate of 4%. (PI. Exhibit 13). Not only did Riccardi fail and refuse to pay the additional common charges assessed based on the illegal expansion of his Unit, but for a long period while this action was pending, he also failed to pay his basic undisputed common charges resulting in the Board instituting a Civil Court, Richmond County suit against him. That action was resolved by Stipulation (PI. Exhibit 14) wherein Riccardi was required to make monthly payments to satisfy the balance of his basic common charge arrears. Upon

his failure to do so, and after written Notice to Cure (PI. Exhibit 16), a Judgment was entered against him on July 15, 2019 in the amount of \$7,700.42. (PI. Exhibit 17). It was only shortly prior to the commencement of this trial that Riccardi paid the sum of \$7,660.00, but he has still failed to pay the interest that accrued on the Judgment in the amount of \$72.00, Marshal fees totaling \$380.00, and legal fees in the amount of \$850.00 that the Board incurred for collection measures taken to execute against Riccardi's bank accounts, motor vehicles, and to subpoena him for a supplementary examination. (PL Exhibit 18). These additional charges that remain due total \$1,302.00 which, together with the sum of \$4,719.43 that Martin Filler testified was still due for basic undisputed common charges through October 2019, now totals \$6,021.43. In addition, Mary Power testified that there are fines due and owing from Riccardi totaling \$7,025.00 for his various violations of the Rules and Regulations, including his conceded maintenance of two (2) motorcycles inside his Unit in violation of Rules 15, 16, and 17; his illegal maintenance of a surveillance camera in his hallway in violation of Rule 39 as well as Section 5.8(A) of the By-Laws which prohibits any objects to be placed or installed within the hallways and lobby areas of the Building; his attempt to have Richmond Elevator perform certain elevator work without legal permits that would benefit him alone while impersonating himself as the then President of the Board in violation of Rule 16; and for otherwise harassing and disparaging other unit owners and members of the Board

despite a Court Order directing him to stop disparaging the Board. (PI. Exhibit 14).
By Order of this Court dated April 19, 2017, the Board ceased assessing further fines against Riccardi.

The Board is also seeking to recover from Riccardi the overpayment of wages paid to Defendant Bellantoni for calendar years 2013, 2014, and 2015 totaling \$4,323.00, which were expressly authorized and approved by Riccardi pursuant to his email instructions to the Board's then Managing Agent Dawning Realty, as evidenced by PI. Exhibit 20. Even though Riccardi was provided by the Super with weekly timesheets showing the number of hours worked by Bellantoni, he nevertheless disregarded those timesheets and instead authorized payments for many additional hours of work not reflected on the timesheets during calendar years 2013, 2014, and 2015. (PL Exhibits 19 and 21). The Board further seeks to recover from Riccardi the sum of \$3,000 for the rental value of an additional storage bin that Riccardi used or rented out and which was not allocated for his exclusive use under the terms of Page 20 of the Offering Plan. (PI. Exhibit 25). Specifically, the evidence showed that beginning in November 2010, and continuing until Riccardi was removed

as President of the Board in August 2016, Riccardi unilaterally took sole use of a second storage bin contained in the basement of the Building, which he then rented out for a portion of time to Chris Ragucci at the rate of \$50 per month. (PL

Exhibit 27). Page 20 of the Offering Plan expressly provides that only one (1) storage bin is allocated to each unit owner and thus Riccardi's conversion of a second storage bin during the period that he was President of the Board was expressly prohibited under the Offering Plan.

Based on the rental value of the second storage bin that Riccardi utilized without legal authority and in violation of the Offering Plan for a period of at least six (6) years prior to the commencement of this action, the Board is entitled to damages in the sum of \$3,000 for rental fees that it could have earned but for Riccardi's illegal retention of the second storage bin. The Board is also seeking recovery of \$15,000 in additional attorney's fees that Riccardi approved to Howard Bernstein, Esq. ("Bernstein") that was not awarded by the Court in the Pally and Lee suits, which only awarded attorney's fees of \$3,500 each. As demonstrated by Riccardi's email to Bernstein (PI. Exhibit 24), Riccardi and Bernstein conspired to conceal from the Board and unit owners the amount of legal fees awarded by the Court as against the amounts actually paid for legal fees so as not to arouse the membership and/or damage Riccardi's personal relationship with Bernstein. The evidence showed that Bernstein personally represented Riccardi on numerous real estate transactions, had use of his luxury motor vehicles, and otherwise had a long standing social and business relationship with him. The Board is also seeking recovery from Riccardi of \$24,000 representing fines that the Board was compelled

to pay to the City for Local Law 11 violations that accrued in 2011 while Riccardi was President. (PI. Exhibit 32). Based on the credible testimony of Ragucci and Power, these fines were assessed due to Riccardi's failure to engage an engineer and/or contractor to perform the necessary facade work to the Building and/or to provide the requisite reports to the City. His negligence in that regard caused the Condominium to sustain unnecessary fines, which Plaintiff mitigated down from approximately \$50,000 to \$24,000.

Finally, Plaintiff is seeking recovery of the reasonable attorney's fees and expenses incurred in this action for which a separate Affirmation of Services is being submitted. Such attorney's fees and disbursements are expressly authorized under the Condominium By-Laws, specifically Sections 6.4(B) and 9.4. Based on the annexed Affirmation of Services, those fees and expenses, through the preparation of this Memorandum total \$76,909.69.

Based upon the trial testimony and the evidence before the court as a matter of law the court determines that plaintiff is entitled to the following monetary relief sought this law suit.

Plaintiff is entitled to all attorney fees accrued through January 24, 2020, the date of this decision in the amount of \$50,000 and to all unpaid common charges due to the extension and the increase in defendant's interest in the common area in

the amount of \$70,000 that are currently due through January 31, 2020 as set forth in plaintiff's complaint and to the basic undisputed common charges.

Plaintiff has further established that defendant occupies an illegal extension without obtaining the requisite permits from the relevant governmental agencies that would permit such extension.

Accordingly, defendant is hereby ordered and directed to correct the unconfirming use by either legalizing said alteration, additions and construction or in the alternative legally restoring the unit in question to be in conformity with the relevant building and construction codes within the next 90 days at his sole cost and expense. Defendant shall also give unlimited access to the roof area to the Board for repairs and to access the work that defendant is undertaking to either legalize or remove the structure. All other causes of action are dismissed. All counterclaims are dismissed.

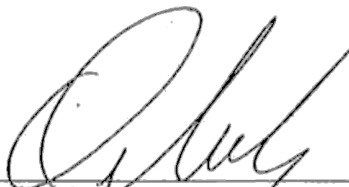
In the event defendant fails to attempt to legalize the extension, plaintiff may restore this matter for appropriate relief. Defendant shall also remain current with all common charges.

If there are any derogatory comments included but not limited to by email, text or otherwise by any party against, the court, the attorneys or litigants, this may result in a contempt proceeding against the offending party.

The court compliments the attorneys on both sides for handling themselves on the highest level of professionals in all their interaction before the court and throughout a difficult trial.

This constitutes the decision and order of the court.

Dated: January 24, 2020
Staten Island, New York



Orlando Marrazzo, Jr.,
Justice, Supreme Court