

**Chen v Board of Mgrs. of the Bridgeview Tower
Condominium**

2020 NY Slip Op 33100(U)

September 22, 2020

Supreme Court, New York County

Docket Number: 154285/2020

Judge: Kathryn E. Freed

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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: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

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INDEX NO. 154285/2020

MOTION SEQ. NO. 001

ANN CHEN, TE CHEN, NICOLE CROOKS, KAMILIA
KHAVASOVA, GLORIA LEE, NATURI NAUGHTON,
CATHY TONG and MIKE TONG,

Petitioners,

- v -

**DECISION, ORDER and
JUDGMENT**

BOARD OF MANAGERS OF THE BRIDGEVIEW TOWER
CONDOMINIUM,

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 10, 11, 12,
14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

In this special proceeding, petitioners Mike Tong ("Tong"), Cathy Tong, Ann Chen, Te Chen, Nicole Crooks, Kamila Khavasova, Naturi Naughton and Gloria Lee ("petitioners") move, by order to show cause ("OSC"), for a declaratory judgment and a temporary/permanent restraining order, pursuant to CPLR 3001 and 6301, precluding respondent Board of Managers of the Bridgeview Tower Condominium ("respondent") from continuing with repairs and renovations relating to New York City Local Law 11 of 1998, New York City Administrative Code § 28-302.1 ("Local Law 11") (Docs. 1, 5).¹ Respondent opposes the motion (Docs. 14-33). After oral argument and a review of the relevant statutes and case law, the application is decided as follows.

¹ Local Law 11 provides that "[a] building's exterior walls and appurtenances thereof shall be maintained in a safe condition. All buildings greater than six stories shall comply with the maintenance requirement of this article"

FACTUAL AND PROCEDURAL BACKGROUND:

Petitioners, as alleged owners of condominium units in a building managed by respondent and located at 189 Bridge Street in Brooklyn ("the condominium" or "the premises"), commenced this proceeding as against respondent to enjoin it from performing certain renovation work at the premises to satisfy Local Law 11, totaling approximately \$1 million dollars ("the project") (Doc. 3 ¶ 12-14). In their petition, petitioners seek an order entering "[d]eclaratory [j]udgment and a [t]emporary [r]estraining [o]rder pending the [d]ecision of this Court, in favor of [p]etitioners and preventing [r]espondent from continuing with its announced plan to undergo repair and renovation activity in accordance with Local Law 11, at the announced inflated costs/expenses during an unreasonable time of the COVID-19 economic crisis" (Doc. 1). The OSC tracks the language of the petition (Doc. 10).

In an affidavit submitted in support of their OSC, Tong, a former president of respondent, affirms, *inter alia*, that respondent announced in April 2020 that it planned to perform renovation pursuant to satisfy Local Law 11 and that, after Zoom meetings about the proposed work, several unit owners suggested that other bids for said repairs be obtained and that the work be postponed in light of the Covid-19 pandemic (Doc. 3 ¶ 12, 16). Moreover, Tong claims that, although respondent, through its management company, CRM Management Services, LLC ("CRM"), provided the unit owners with meeting minutes and documentation relating to the project, they did not include "minutes from the actual vote; minutes discussing the need to seek financing and approving a \$500,000 loan for [the] same; [and] meeting minutes related to steps involved in the process from beginning to end" (*id.* ¶ 17). Tong also maintains that some of the proposed work is unnecessary and that, while he was president of respondent, he was able to have the same work

performed at a substantially lower price (*id.* ¶ 22). Therefore, asserts Tong, respondent breached its fiduciary duty to the condominium and its owners (*id.* ¶ 29).

In opposition, respondent submits, *inter alia*, the affidavit of Crystal Lia ("Lia"), a property manager employed with CRM, who affirms that this proceeding is the latest in a series of attempts by Tong and his wife, Cathy Tong (collectively "the Tongs"), to harass respondent in retaliation for the fact that they are no longer in control of the condominium (Doc. 14 ¶ 5). The Tongs are the principals of Bridge View Tower LLC ("BVT"), the former developer/sponsor of the condominium, and Lia asserts that the Tongs controlled and mismanaged the condominium from 2008 until 2012 (*id.* ¶ 7, 9). Lia further asserts that, contrary to petitioners' contention, the Tongs are not owners of a unit in the condominium and that there are "additional discrepancies concerning some of the named petitioners and their alleged interest in the [c]ondominium" (*id.* ¶ 11, 11 n 2). According to Lia, the facade of the building is visibly deteriorated, resulting in water leaks in the units, and the subject repair work is mandated by Local Law 11 and authorized by the by-laws (*id.* ¶ 3, 6, 35). She affirms that the unit owners were apprised of all of the aspects of the renovations during the 2018 and 2019 annual meetings, as well as during subsequent Zoom meetings, and that, as supported by respondents' exhibits, it acted in good faith, with transparency, and in an exercise of its honest judgment in the lawful and legitimate furtherance of the condominium's best interest (*id.* ¶ 18- 49, 56).

In a memorandum of law in opposition, respondent urges this Court to dismiss the petition arguing, *inter alia*, that it is procedurally defective (Doc. 33 at 7-10). Specifically, respondent argues that the petition fails to set forth the legal basis pursuant to which petitioners are authorized to commence this matter as a special proceeding; the petition is not "verified," as it purports to be, and fails to comply with CPLR 402 and 3013, which require that the petition set forth cognizable

causes of action (*id.*). Respondent also contends that five of the eight named petitioners are not unit owners and therefore lack standing to bring this proceeding (*id.* at 9-10). Moreover, asserts respondent, Real Property Law § 339-dd does not allow a unit owner to maintain this proceeding, on behalf of other unit owners, against respondent (*id.* at 10).

Respondent also argues that the OSC should be denied and the petition dismissed because petitioners fail to establish any entitlement to injunctive relief since respondent's actions are shielded from judicial review by the business judgment rule and, thus, petitioners are unable to establish a likelihood of success on the merits (*id.* at 11-14). Additionally, respondent argues that petitioners have failed to establish irreparable harm or that the equities weigh in their favor (*id.* at 14-16). Respondents further request that this Court award it costs and fees, including reasonably attorneys' fees, incurred in opposing petitioners' application (*id.* at 7, 17).

LEGAL CONCLUSIONS:

It is well-settled that "[a] temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had" (*Wilder v Fresenius Med. Care Holdings, Inc.*, 175 AD3d 406, 408-409 [1st Dept 2019], quoting CPLR 6301; see *Doe v Axelrod*, 73 NY2d 748, 750 [1988]). To establish his or her entitlement to an injunction, a movant "must show a likelihood of success on the merits, the possibility of irreparable harm in the absence of a preliminary injunction, and that the balance of the equities favors the movant" (see *Doe v Axelrod*, 73 NY2d at 750).

The business judgment rule applies to directors of a condominium, such as respondent herein (see *Pomerance v McGarth*, 124 AD3d 481, 483 [1st Dept 2015]; *Perlbinder v Bd. of Mgrs.*

of 411 E. 53rd St. Condominium, 65 AD3d 985, 989 [1st Dept 2009]). "Under that rule, a court's inquiry is limited to whether the board acted within the scope of its authority under the [by-laws] (a necessary threshold inquiry) and whether the action was taken in good faith to further a legitimate interest of the condominium" (*Perlbinder v Bd. of Mgrs. of 411 E. 53rd St. Condominium*, 65 AD3d at 989 [internal quotation marks and citations omitted]). "[A]bsent a showing of discrimination, self-dealing or misconduct by board members, corporate directors are presumed to be acting in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate purposes" (*Jones v Surrey Coop. Apt.*, 263 AD2d 33, 36 [1st Dept 1999], quoting *Auerbach v Bennet*, 47 NY2d 619, 629 [1979]).

Here, not only does the Court find that the petition is procedurally defective since it is unverified and fails to set forth, *inter alia*, the basis for the relief sought, as well as the rights or other legal relations upon which the declaratory judgment is sought (*see* CPLR 402, 3013; *Mobility Impaired Artists v City of New York Dept. of Parks & Rec.*, 2004 NY Misc LEXIS 3147, *4 [Sup Ct, NY County 2004]), but the OSC must be denied and the petition dismissed because respondents' decision to proceed with the repairs in compliance with Local Law 11 is protected by the "the business judgment rule[, which] protects a condominium board from being held liable for decisions, such as those concerning the manner and extent of repairs, that were within the scope of their authority" (*100 Colfax Assoc. v Bd. of Mgrs. of Grant Terrace Condominium*, 2012 NY Slip Op 30760[U], 2012 NY Misc LEXIS 1381, *10-11 [Sup Ct, Queens County 2012]; *see* 40-50 Brighton First Rd. Apts. Corp. v Kosolapov, 39 Misc 3d 27, 29-30 [2d Dept, App Term 2013]; 345 E. 50th St. LLC v Bd. of Mgrs. of M at Beekman Condominium, 166 AD3d 546, 546 [1st Dept 2018]; *Berenger v 261 W. LLC*, 93 AD3d 175, 184-185 [1st Dept 2012]). Although Tong makes conclusory allegations regarding the inflated cost of the repairs and respondent's lack of

transparency, they are belied by respondents' proof in opposition, and petitioners fail to show that respondent acted wrongfully or outside the scope of its authority so as to warrant judicial scrutiny. Thus, petitioners have failed to show a likelihood of success on the merits for injunctive relief, warranting denial of the OSC and dismissal of the petition.

The remaining arguments are either without merit or need not be addressed given the findings above.

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that petitioners' order to show cause, seeking an order pursuant to CPLR 3001 and 6301, for declaratory and injunctive relief is denied; and it is further

ORDERED and **ADJUDGED** that the petition is dismissed with costs and disbursements to respondents as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

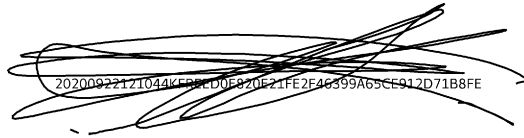
ORDERED that, within 20 days of entry of this order, respondent shall serve a copy of this order, with notice of entry, upon petitioners, as well as on the Clerk of the Court (60 Centre Street, Room 141 B), who is directed to enter judgment accordingly; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supetmanh); and it is further

ORDERED that this constitutes the decision and order of this Court.

9/22/2020

DATE



KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE