SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

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GABRIEL HAIMOVICI

Plaintiff,

- v -

CASTLE VILLAGE OWNERS CORP.,

Defendant.

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INDEX NO. 156094/2022

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48

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

The motion by plaintiff for *inter alia* preliminary injunction is denied.

Background

Plaintiff seeks to stop defendant from terminating his proprietary lease. He claims that he lives in the building and that defendant (the co-op) sent him a notice of termination pursuant to a resolution on July 14, 2022 (NYSCEF Doc. No. 5). The notice referenced a June 27, 2022 special meeting of the board of directors for defendant at which plaintiff's purported conduct was considered.

The notice cited numerous instances in which plaintiff engaged in what defendant considered to be objectionable conduct under the terms of the proprietary lease (*id*. at 5). This included purportedly rude comments made to fellow residents, "shouting profanities" in the proximity of young children, allegedly "harassing and screaming at a pregnant woman" who was

a guest of a resident and yelling at another resident (*id*.). Also included was an allegation that plaintiff "used his cell phone to take pictures of [a] 3 year old boy when his pants were down" (*id*.).

The notice also insisted that plaintiff filed repeatedly baseless complaints about another apartment, including one where he insisted that one of these residents spit on plaintiff's child; however, security footage revealed that the person accused of doing the spitting was wearing a face covering over her mouth the entire time (*id*.). Plaintiff was also accused of harassing building staff, including calling the property manager 30 times about a mannequin in the window of a neighbor's apartment (*id*. at 6). And defendant maintained that plaintiff called certain staff members "lazy and dishonest" (*id*.).

Plaintiff denies all of the allegations and insists that this issues with his neighbors stem from the fact that they purportedly smoke marijuana and it harms one of his children who suffers from autism. He argues that defendant is retaliating against him because he wants to inspect the co-op's books and records and the purported objectionable conduct all arose after he made this demand. Plaintiff explains that he made the request after the board increased the monthly maintenance fees.

In opposition, defendant submits the affidavit of the president of the co-op, Andrew Ditton. Mr. Ditton details that there is a long history of plaintiff's disregard for his obligations as a proprietary lessee and the impact of his conduct on other shareholders, co-op employees and the managing agent. He insists that plaintiff has threatened and aggressively confronted co-op residents and guests. Mr. Ditton points to an April 30, 2021 meeting between two members of the co-op's management and plaintiff about plaintiff's conduct where plaintiff allegedly said he

showed restraint "not to break their heads and paint the walls red of Castle Village" (NYSCEF Doc. No. 47).

Defendant argues that the business judgment rule protects its decision to terminate plaintiff's proprietary lease and that defendant followed the rules and procedures in the proprietary lease. It emphasizes it held the required special meeting at which a vote of the board was held and this decision was made in good faith.

Discussion

"A preliminary injunction substantially limits a defendant's rights and is thus an extraordinary provisional remedy requiring a special showing. Accordingly, a preliminary injunction will only be granted when the party seeking such relief demonstrates a likelihood of ultimate success on the merits, irreparable injury if the preliminary injunction is withheld, and a balance of equities tipping in favor of the moving party" (*1234 Broadway LLC v W. Side SRO Law Project*), 86 AD3d 18, 23, 924 NYS2d 35 [1st Dept 2011] [citation omitted])

"In the context of cooperative dwellings, the business judgment rule provides that a court should defer to a cooperative board's determination so long as the board acts for the purposes of the cooperative, within the scope of its authority and in good faith. In adopting this rule, we recognized that a cooperative board's broad powers could lead to abuse through arbitrary or malicious decisionmaking, unlawful discrimination or the like. However, we also aimed to avoid impairing the purposes for which the residential community and its governing structure were formed: protection of the interest of the entire community of residents in an environment managed by the board for the common benefit" (*40 W. 67th St. Corp. v Pullman*, 100 NY2d 147, 153-54, 760 NYS2d 745 [2003] [internal quotations and citations omitted]).

Here, the Court denies plaintiff's motion. He did not meet his burden to show a likelihood of success on the merits. As stated in the *Pullman* case cited above, the business judgment rule prevents this Court from second guessing a co-op board's decision simply because it might disagree with it. This Court can only get involved if the acts of the co-op were done in bad faith or did not comport with the proper procedures as set forth in the proprietary lease. There is no dispute that defendant did what it was supposed to do- it convened a special meeting to consider termination of plaintiff's proprietary lease and held the required vote. Plaintiff was provided with ample opportunity to present his case (and he apparently did) but the board found his history of objectionable conduct to justify terminating his proprietary lease. The Court cannot issue a preliminary injunction under such circumstances.

This is not a situation where a co-op seeks to terminate a proprietary lease after a single incident. Rather, defendant relied upon a documented history of purported misconduct. Included in the record is a letter from defendant to plaintiff in June 2020 warning him about his misconduct and noting that if his behavior did not change it might result in the termination of his proprietary lease (NYSCEF Doc. No. 34). That was followed up by an April 2021 meeting about his continued inappropriate conduct. In other words, the Court is satisfied that plaintiff was afforded ample opportunity to change his behavior and, according to defendant, he did not do so.

Nor did plaintiff show that the equities are in his favor. Defendant detailed a long series of incidents in which plaintiff was extraordinarily aggressive and nasty towards fellow residents, co-op employees and management. A co-op is certainly entitled to seek the removal of a leaseholder where it contends that there is a documented history of misconduct spanning multiple years.

As the Appellate Division, First Department explained in a similar situation "defendants were given detailed written notice of what actions were deemed objectionable and undesirable, and the cooperative's interpretation was reasonable. Defendants' attempt to involve the court in judicial second-guessing is precisely why the business judgment rule applies to cooperative determinations" (*1050 Tenants Corp. v Lapidus*, 39 AD3d 379, 384, 835 NYS2d 68 [1st Dept 2007] [citation omitted] [granting a co-op's ejectment action where the board concluded defendants engaged in objectionable conduct]).

Summary

The situation before this Court is simply whether it should get involved in the defendant's attempt to terminate plaintiff's proprietary lease. Plaintiff's attempt to "change the subject" and ascribe a different motive to the co-op's action does not compel the Court to grant his motion. Whether or not the board is unhappy with plaintiff's request to access the books and records, the fact is that the evidence presented shows a well-documented process whereby defendant informed plaintiff about his objectionable conduct over the last few years, gave him a chance to shape up and ultimately decided to take action when he did not. There is no basis for the extreme remedy of injunctive relief under these circumstances.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for declaratory and injunctive relief concerning the notice of termination issued by defendant is denied in its entirety and the temporary restraining order issued by this Court (NYSCEF Doc. No. 24) is hereby vacated.

The Court will schedule a control date for a conference on November 10, 2022 at 10:30 a.m. (the Court recognizes that this case was commenced by a summons with notice and that

defendant recently filed a demand for a complaint). By November 3, 2022, the parties must submit 1) a fully executed discovery stipulation, 2) a stipulation of partial agreement about discovery or 3) letters explaining why a discovery agreement could not be reached. The failure to upload something by November 3, 2022 will result in an adjournment of the conference.

8/23/2022
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:		**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[X] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**