

Calderoni v 260 Park Ave. S. Condominium
2022 NY Slip Op 32851(U)
August 24, 2022
Supreme Court, New York County
Docket Number: Index No. 152050/2022
Judge: William Perry
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. WILLIAM PERRY PART 23

Justice

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ERIN CALDERONI, STEVEN KRAUS, NANCI KRAUS,
ANNA SCHWARTZ, SARAH SCHWARTZ

Plaintiff,

INDEX NO. 152050/2022

MOTION DATE 05/20/2022

MOTION SEQ. NO. 001

- v -

260 PARK AVENUE SOUTH CONDOMINIUM, THE BOARD
OF MANAGERS OF THE 260 PARK AVENUE SOUTH
CONDOMINIUM, MAXWELL-KATES, INC.,

Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 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, 49, 50, 51, 52, 53, 54, 55, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 85, 86, 87, 100, 101, 103, 104, 106, 107, 108, 109, 110, 111, 112, 113

were read on this motion to/for PROVISIONAL REMEDY.

Plaintiffs Erin P. Calderoni, owner of Unit 12G of the 260 Park Avenue South Condominium, Steven Kraus and Nanci Kraus, owners of Unit 12H of said Condominium, and Anna Schwartz and Sarah Schwartz, owners of Unit 11G of said Condominium, having moved by Order to Show Cause, pursuant to CPLR § 6401, for appointment of a Temporary Receiver, or, in the alternative, for an affirmative injunction, and defendants the 260 Park Avenue South Condominium (the "Condominium"), the Board of Managers of the 260 Park Avenue South Condominium (the "Board of Managers"), and Maxwell-Kates, Inc. ("Maxwell-Kates"), having filed papers opposing plaintiffs' motion, and the aforesaid parties having appeared by their respective counsel at the show-cause hearing conducted remotely by this Court on July 14, 2022; NOW, on the aforesaid motion of the aforesaid plaintiffs, it is hereby

ORDERED that plaintiffs' application for appointment of a Temporary Receiver is granted to the extent set forth below; and it is further

ORDERED that Douglas Rosenberg, BPC Management Corporation, with an address at 80 Livingston Street, Brooklyn, NY 11201, telephone number 718-852-1616, ext 450, be and hereby is appointed Temporary Receiver of the Condominium, known as the 260 Park Avenue South Condominium and having a street address at 260 Park Avenue South, New York, New York 10010, lying in Section 3, Block 849, specifically only with respect to the common elements appurtenant to Lots 1201-1313, on the Tax Map of the Borough of Manhattan, New York County, New York City, to the extent and with the authority as follows:

(i) To undertake promptly to repair and restore the Condominium's rooftop, drainage system, and other common elements as necessary to cure and abate permanently the water infiltration which plaintiffs allege has caused and/or contributed to damages to the plaintiffs' respective Condominium units, specifically Units 12G, 12H, and 11G of the Condominium (the "Units") by overseeing and ensuring the successful completion of the ongoing roof restoration project at the Condominium;

(ii) To raise and collect the funds required to carry out the aforesaid repairs, restoration, and payments, including, but not limited to, by levying and collecting assessments against the Condominium's unit owners, pursuing and accessing available insurance coverage, and/or obtaining loan(s);

(iii) To use and direct Maxwell-Kates, as the managing agent for the Condominium, as his/her agent to act in any manner within the scope of the Temporary Receiver's authority as set forth herein; and

(iv) To exercise all powers and authority granted to the Condominium's Board of Managers as are or may be reasonably necessary to carry out the foregoing, including those powers and authority granted under the Condominium's Declaration and By-Laws and/or under New York

law, including, but not limited to, the Condominium Act, New York Real Property Law, Article 9-B, Chapter 50;

And it is further

ORDERED that the Condominium's Board of Managers, and Maxwell-Kates as managing agent for the Condominium, shall cooperate with, aid, and facilitate the Temporary Receiver in his/her function as same and exercise of his/her authority as set forth above, including, but not limited to, providing full access to all financial and other records of the Condominium and Board of Managers as required or requested by the Temporary Receiver, sending notices and invoices to the Condominium's unit owners and exercising the Board of Managers' authority to access maintain, repair, and replace common elements of the Condominium and to collect assessments from the unit owners, providing other information and/or advice as requested by the Temporary Receiver, and undertaking any further acts that may reasonably be required for the Temporary Receiver's prompt, efficient function and exercise of his/her aforesaid authority; and it is further

ORDERED, that all powers and authority of the Condominium's Board of Managers with respect to matters and affairs that are outside the scope of the Temporary Receiver's authority as set forth above shall remain with the Condominium's Board of Managers, including managing the general affairs of the Condominium;


ORDERED, that the Temporary Receiver is authorized to forthwith exercise his/her aforesaid power and authority with respect to the Condominium; and it is further

ORDERED, that before entering upon his/her duties, the Temporary Receiver shall be sworn to faithfully discharge the duties committed to him/her and shall execute to the People of the State of New York and file with the Clerk of this Court an oath an undertaking in the sum of

\$10,000.00 conditioned for the faithful discharge of his/her duties as Temporary Receiver; and it is further

ORDERED, that the Temporary Receiver appointed herein is subject to the requirements of Rule 36.2(c) of the Chief Judge, and if the Temporary Receiver is disqualified from receiving appointments pursuant to that Rule, the he/she shall notify the Appointing Judge forthwith; and it is further

ORDERED, that by accepting this appointment the Temporary Receiver certifies that he/she is in compliance with 22 NYCRR Part 36, including, but not limited to section 36.2(c) (“Disqualification from Appointment”), and section 36.2(d) (“Limitations on Appointments based upon Compensation”).

<u>08/24/2022</u> DATE		 WILLIAM PERRY, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE