

Church St. Apt. Corp. v Liebert

2024 NY Slip Op 33997(U)

November 7, 2024

Supreme Court, New York County

Docket Number: Index No. 653439/2024

Judge: Lyle E. Frank

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

CHURCH STREET APARTMENT CORP., Plaintiff, - v - LISA LIEBERT, ERIC LIEBERT, FRANCESCA MONARI, JACK JANGANA, JOYCE REISS JANGANA, 257 GROUP, LLC, MING LU, URSULA POHL Defendant. INDEX NO. 653439/2024 MOTION DATE 10/16/2024 MOTION SEQ. NO. 001 002 003 004 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 54, 55, 57, 58, 59, 60, 61, 62, 63, 65, 66

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 93, 94, 95, 96, 97, 107

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 67, 68, 69, 70, 98, 99, 100, 101, 102, 105, 106

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 108, 109, 110

were read on this motion to/for CONTEMPT.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 108, 109, 110

were read on this motion to/for CONTEMPT.

Upon the foregoing documents, defendants' motion to dismiss is granted.

The underlying case, as well as a parallel case Francesca Monari et al v. Ming Lu et al, arises out of an acrimonious dispute over a purported shareholder election. On May 11, 2023, a purported special shareholder meeting was held for the cooperative corporation that manages the

residential building located at 257 Church Street in Manhattan. At this meeting, which Nominal Defendants Ming Lu and Ursula Pohl did not attend out of a belief that the meeting had not been validly called, the Nominal Defendants were purportedly removed as directors and a new board of directors were voted in. The Nominal Defendants, operating under the name of the corporation, originally filed a suit on October 6, 2023, which was dismissed. They then filed the present suit on July 8, 2024, asking for the May 11 special meeting and the purported shareholder election held at that meeting to be declared invalid. Two groups of defendants have moved to dismiss the complaint, both arguing among other reasons that the suit is time-barred. For the reasons that follow that motion is granted.

Under CPLR § 217(1), proceedings against a body of officers must be commenced within four months. This statute of limitations applies to challenges to corporate elections. *See, e.g., Valyrakis v. 346 W. 48th St. Hous. Dev. Fund Corp.*, 161 A.D.3d 404, 406 (1st Dept. 2018). It is not disputed that the first action challenging the purported special shareholder's meeting and election on May 11 was brought more than four months after the meeting. Plaintiff argues that the § 217 statute of limitations does not apply to the present suit, on the grounds that it does not challenge the election of shareholders, but rather seeks to have the validity of the notice that led to the special meeting declared invalid, thus invalidating the purported election that removed Nominal Defendants. Generally, when determining whether a statute of limitations is applicable, courts look to "the substance of that action to identify the relationship out of which the claim arises and the relief sought." *Solnick v. Whalen*, 49 N.Y.2d 224, 229 (1980). Here, it is clear that Plaintiff is challenging the purported election that took place on May 11, on the grounds that the meeting was not validly held. The relief they seek is to declare the purported corporate action that took place on May 11 void on those grounds.

This is a clear challenge to the validity of the purported shareholder's election that took place on May 11, brought more than four months after that event took place. The relief requested of the Court is a declaratory judgment stating that the May 11 meeting was null and void for lack of proper notice, and that therefore the election that took place was null and void. Courts have repeatedly held that actions seeking to declare a corporate election invalid or void for failure to comply with various corporate formalities are subject to the four-month statute of limitations. *See, e.g., De Vita v. Reab (In re Uranian Phalanstery 1st N.Y. Gnostic Lyceum Temple)*, 155 A.D.2d 302 (1st Dept. 1989); *see also Buttitta v. Greenwich House Coop. Apts., Inc.*, 11 A.D.3d 250 (1st Dept. 2004). The statute of limitations for challenging a purported corporate election, even if the grounds are that the election should be set aside as void, is four months from when the Plaintiff knew or should have known that the purported election took place. *See Valyrakis*, at 405. Therefore, motion sequences 002 and 003 to dismiss the complaint as time-barred are granted, and Plaintiff's motion sequence 001 asking for a preliminary injunction is mooted.

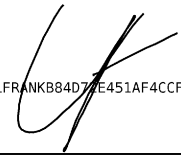
Defendants have moved for costs, arguing that bringing the underlying motion past the statute of limitations was frivolous. The Court denies this request.

Plaintiff has also moved for contempt, arguing that the Defendants failed to comply with a September 5th order to restore sole and complete access to the Co-op's bank accounts. The Court declines to issue an order of contempt in this matter, especially as this matter is being dismissed and therefore motion sequence 004 is denied. Accordingly, it is hereby

ORDERED that this matter is dismissed, and the Clerk of the Court shall enter judgment of dismissal accordingly; and it is further

ADJUDGED that the motion for a preliminary injunction and the motion for sanctions are denied.

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11/7/2024

DATE

LYLE E. FRANK, 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