

Monari v Ming Lu

2024 NY Slip Op 34038(U)

November 14, 2024

Supreme Court, New York County

Docket Number: Index No. 650705/2024

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

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FRANCESCA MONARI, 257 GROUP LLC, JOYCE REISS-
JANGANA, BRANDO MONARI-BRANDMAN, JACK
JANGANA

Plaintiff,

- v -

MING LU, URSULA POHL, CHURCH STREET
APARTMENT CORP.,

Defendant.

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INDEX NO. 650705/2024
MOTION DATE 10/18/2024
MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 137 were read on this motion to/for APPOINT - FIDUCIARY.

Upon the foregoing documents, plaintiffs’ motion is denied in part and granted in part.

Background

The underlying case here arises out of an acrimonious dispute over the governance of a cooperative corporation that manages the residential building located at 257 Church Street in Manhattan (the “Building”). The Plaintiffs/Petitioners Francesca Monari, 257 Group LLC, Joyce Reiss-Jangana, Brando Monari-Brandman, and Jack Jangana (collectively, “Plaintiffs”) have brought the underlying hybrid suit both as individuals and derivatively on behalf of the Church Street Apartment Corporation (“Church Street”), pleading six causes of action against Defendants/Respondents Ming Lu, Ursula Pohl, and the Church Street Apartment Corp (collectively, “Defendants”). There are several contested issues in this case, but central to the dispute is the validity of a purported shareholders’ meeting in May of 2023 (the “May Meeting”) and the various decisions made at that meeting. Key for the purposes of this motion, the meeting

purported to remove Defendants Ming Lu and Ursula Pohl from the Church Street board of directors. Defendants contest the validity of this meeting on several grounds, but primarily on the ground that the notice for the meeting was not made in accordance with the Church Street bylaws. Both the Plaintiffs and Defendants in this case purport to be the valid board of directors and the representatives of Church Street.

Plaintiffs have moved asking for a preliminary injunction enjoining the Defendants from holding themselves out as Church Street officers, interfering with Plaintiffs' attempts to manage Church Street, and an Order of Seizure for all books and records relating to Church Street. In the alternative, Plaintiffs request that a temporary receiver for Church Street and its assets. For the reasons that follow, the Court declines to grant the preliminary injunction but does grant the request for a temporary receiver.

Plaintiffs Have Not Established Likelihood of Success on the Merits with Their New Affidavit

Crucially, Plaintiffs previously moved for the same preliminary injunction which was denied. They have made a pending appeal of that decision. In justification of bringing a second motion for preliminary injunction, Plaintiffs offer the sworn affidavit of Lewis Kuper, stating that Kuper exchanged emails regarding the May Meeting first with Defendant Lu and then with the building's attorney Mr. George Tzimopoulos. In his affidavit, Mr. Kuper claims that he told Mr. Lu and Mr. Tzimopoulos that the May Meeting was going to be a "formal, binding meeting." In order to succeed on their ultimate petition/complaint, Plaintiffs will need to establish, among other things, that the May Meeting was validly called and that the actions taken there were valid and binding upon the corporation. This affidavit, Plaintiffs posit, constitutes new proof going to the likelihood of success on the merits and thus warrant the granting of the previously denied preliminary injunction.

In opposition to this motion, Defendants point to the entirety of the email thread between the aforementioned parties, in which the building's own attorney Mr. Tzimopoulos states that he believed that the meeting notice was ineffective and "if I am asked in the future whether any meeting is proper, I will be compelled to say it was not duly called." Plaintiffs' proposed new evidence does not firmly establish a likelihood of success on the merits. There are multiple areas of disputed fact that go to the May Meeting and the actions taken there, all of which impact the ultimate relief sought in this case.

Temporary Receiver

Due in part to the ongoing litigation and breakdown between the various Church Street shareholders, there is a potential for damage to the corporation while the present litigation runs its course. Therefore, the Court grants the alternative request for the appointment of a temporary receiver. The court having considered the arguments of the parties, and having determined that the movant has an interest in the property that is the subject of this action and, further, that there is a danger that the property will be materially injured or lost during the pendency of this action, it is now hereby

ADJUDGED that the plaintiffs' motion for a preliminary injunction is denied; and it is further

ORDERED that the motion for the appointment of a temporary receiver of the real property located at 257 Church Street, New York, New York (the "Premises"), and the Church Street Apartment Corporation that operates said real property, which is the subject of this action, is granted; and it is further

ORDERED that Michael R. Lieberman, Esq., having the email address of MLieberman@foxrothschild.com, with the Fiduciary ID of 770454, be and hereby is appointed

temporary receiver of the said real property and corporation during the pendency of this action; and it is further

ORDERED that the temporary receiver hereby appointed shall take and hold and safeguard said real property and corporate books and records and shall collect and, if necessary, sue for, and shall hold and keep secure, all rents due from tenants leasing space in the property; and it is further

ORDERED that all the tenants in possession of the Premises and such other person or persons as may be in possession and/or occupancy thereof and such other person or persons who lease, occupy, use or pay for and/or subsidize any portion of the Premises, are hereby ordered and directed to attorn as such tenant or tenants or occupants to the Receiver, and until the further order of this Court, to pay over to such Receiver all rent of the Premises now due and unpaid, or that may hereafter become due and all other charges and/or subsidies in connection with the Premises; and it is further

ORDERED that the Receiver shall and hereby is authorized to (i) operate, carry, on and manage the Premises; (ii) obtain and keep the Premises insured against loss or damage by liability, fire, earthquake, flood and all other physical damage and to obtain and pay insurance premiums for the same, and; (iii) make repairs to the Premises as may reasonably be necessary to keep and maintain the Premises in repair; (iv) cure any outstanding violation against the Premises; (v) to pay taxes, fuel, assessments, water rates, vault rents, and sewer charges upon the Premises, and any salaries of any employees of the Premises (including doormen and superintendents); and (vi) to properly fulfill the Receiver's duties as such Receiver; and it is further

ORDERED that the powers granted hereby to the temporary receiver may not be extended except on further order of the court; and it is further

ORDERED that the temporary receivership hereby authorized shall continue only up to the entry of final judgment herein unless hereafter directed otherwise by this court upon motion; and it is further

ORDERED that the temporary receiver, before entering upon his duties, shall be sworn faithfully and fairly to discharge the trust committed to him/her unless the oath is waived upon consent of all parties and that the oath may be administered by any person authorized by the Real Property Law to take acknowledgments of deeds; and it is further

ORDERED that the temporary receiver shall give an undertaking in the amount of \$15,000 that he will faithfully discharge his duties in such capacity; and it is further

ORDERED that the Receiver shall deposit, in the Receiver's own name, as Receiver, all monies received by the Receiver in connection with the Premises in an account in any FDIC-insured bank in the State, City, and County of New York, and no withdrawals shall be made therefrom except, as expressly authorized and directed in this Order, or as may be hereafter directed by this Court; and it is further

ORDERED that the Receiver be and hereby is authorized (i) to purchase, procure and obtain such supplies as may be necessary for the operation of the Premises, and (ii) to take from the receipts from the Premises, the necessary operating expenses of the Premises; and it is further

ORDERED that the Receiver, shall be allowed such commissions, not exceeding five percent (5%) of all rents, income, issues, charges, subsidies and profits collected from the Premises by the Receiver, as shall be commensurate with the services rendered by the Receiver and shall be entitled to take from the receipts from the Premises such commissions; and it is further

ORDERED that every person in possession of any of the following is hereby directed and ordered to deliver to the Receiver, within 10 days after said Receiver shall have qualified, (a) all

bank accounts into which any rent, profit, or fee of or for the Premises has been deposited within the last five years, as well as all security deposits for the Premises (to be held by the Receiver subject to such disposition thereof as shall be provided in by order of this Court), (b) all existing leases, rent schedules, rent rolls, and a list of all tenants and occupants of the Premises; (c) all keys, access codes and/or access cards to the Premises, (d) all utility and service contracts for the Premises, including, without limitation, any and all contracts for the electric, gas, cable and telephone services and any other utilities, waste removal, superintendents, porters, management and/or repair and upkeep of the Premises; (e) all contracts for delivery of income and rent with respect to the Premises and/or tenants and/or occupants thereof; (f) copies of all DHCR filings for the Premises for the past five (5) years, as applicable; (g) all insurance policies with respect to the Premises including without limitation insurance policies for liability and property coverage; (h) all other documentation and information necessary to the proper operation and maintenance of the Premises; and/or (i) a written accounting of all rents and receipts collected from the Premises, and any disbursements made therefrom, during the past five (5) years; and it is further

ORDERED that the Receiver, or any party thereto, may at any time, on the proper notice to all parties who have appeared in this action, apply to this Court for further or other instructions and powers as may be or become necessary to enable the Receiver to fulfill the Receiver's duties, or for modification, vacatur, discharge, or suspension of any part of this Order or the appointment pursuant hereto; and it is further

ORDERED that the temporary receiver shall keep written accounts as provided in CPLR 6404; and it is further

ORDERED that, pursuant to Section 36.1 of Part 36 of the Rules of the Chief Judge, the temporary receivership shall be subject to said Part 36; and it is further

ORDERED that, by accepting this appointment, the temporary receiver certifies that he is in compliance with Part 36, including Section 36.2 (d) (“Limitations on appointments based upon compensation”), but if he is disqualified from receiving such appointment pursuant to the provisions of Part 36, he shall notify this court forthwith; and it is further

ORDERED that, by accepting this appointment, the temporary receiver certifies that he is familiar with the duties and responsibilities of a temporary receiver, has experience in such area, and is fully capable of assuming, and prepared to assume, those duties and responsibilities, which are commensurate with his/her abilities; and it is further

ORDERED that attorneys or support staff in the appointee’s office may perform tasks under the appointee’s direct supervision, but all substantive appearances and reports must be made, performed, and created by the appointee; and it is further

ORDERED that, upon receipt of this order and UCS Form 872 (Notice of Appointment and Certification of Compliance), the temporary receiver shall complete, execute, and return the Form 872 to the Fiduciary Clerk; and it is further

ORDERED that, pursuant to Section 36.1(a) (10) of Part 36 of the Rules of the Chief Judge, the temporary receiver is not authorized to hire counsel, an accountant, auctioneer, appraiser, property manager, or real estate broker (secondary appointees) without further order of this court, and that the temporary receiver is not authorized to pay fees to any secondary appointee without further order of this court; and it is further

ORDERED that, pursuant to Section 36.2 (c) (8), no temporary receiver shall be appointed as his or her own counsel and no person associated with a law firm of that receiver shall be appointed as counsel to that receiver unless there is a compelling reason to do so; and it is further

ORDERED that compensation for every secondary appointee is subject to prior court approval upon submission of an affirmation showing experience/expertise, services rendered, time expended, prevailing rate in the community, rate charged, and challenges presented, and results achieved; and it is further

ORDERED that counsel for the movant shall, within 15 days from the date of this order, file a copy hereof with notice of entry with the Fiduciary Clerk; and it is further

ORDERED that such filing with the Fiduciary Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures* (accessible at the "E-Filing" page on the court's website).

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11/14/2024

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: