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Board of Mgrs. of the 48-54 W. 138th St. Condominium v. Burdock

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**Board of Mgrs. of the 48-54 W. 138th St.
Condominium v Burdock**

2023 NY Slip Op 31223(U)

April 18, 2023

Supreme Court, New York County

Docket Number: Index No. 157791/2022

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH **PART** **14**

Justice

-----X

BOARD OF MANAGERS OF THE 48-54 WEST 138TH STREET CONDOMINIUM,

Plaintiff,

INDEX NO. 157791/2022

MOTION DATE 04/17/2023

MOTION SEQ. NO. 001 002

- v -

FLORA BURDOCK, JOHN DOE, JANE DOE,

Defendant.

DECISION + ORDER ON MOTION

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, 36, 37, 38, 39

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 40, 41, 42, 43, 44, 47, 48

were read on this motion to/for DISMISSAL.

Motion Sequence Numbers 001 and 002 are consolidated for disposition. Plaintiff’s motion (MS001) for injunctive relief is granted as described below. Defendant’s motion (MS002) to dismiss is denied.

Background

Plaintiff contends that it has tried, over the last 26 months, to work with defendant to remedy health and fire safety conditions in the unit she owns. Plaintiff claims that there is a severe hoarding condition in the apartment and it has received numerous complaints from other residents in the building. It observes that it recently received a notice from the NYC Department of Health and Mental Hygiene about an odor emanating from defendant’s apartment that, according to plaintiff, could result in fines and penalties if not corrected.

Plaintiff submits the affidavit of Mr. Lago (an employee of the managing agent), who claims he was last permitted to inspect the apartment in March 2022 and took photographs. He insists he was only able to walk 6 feet into the apartment due to the amount of trash and other items blocking any further entry. Plaintiff seeks an order directing defendant to permit access to her apartment for the purpose of cleaning trash and debris to remediate the current fire and safety hazards.

Defendant brings her own motion, which is also styled as an opposition, in which she claims she is working with plaintiff. She insists she has arranged for a plumber to come to the apartment and that the Court need not consider the photos.

Plaintiff emphasizes in reply that limited communications with defendant does not address the larger point—that the conditions in the apartment are hazardous and need to be remediated. It stresses that defendant has not arranged access for plaintiff to clean out the apartment and correct the unsafe conditions.

Defendant offers in reply that she has scheduled a cleaning person to come on April 19, 2023 and that certain items are being removed on April 18, 2023. She emphasizes that the plumbing issue is now resolved and “management” can enter the apartment any time after Wednesday April 19, 2023 at 8 p.m.

Discussion

The Court observes that it appears, at least according to the papers, that defendant has taken some steps to address the issues. Unfortunately, the Court cannot ignore the fact that plaintiff submitted photos (NYSCEF Doc. No. 11) establishing that there are unsafe conditions in the apartment and that defendant did not upload anything to show that these conditions have

been addressed. That defendant has attached a plumbing invoice and cleaning schedule is important but not enough for this Court to deny the motion.

Plaintiff uploaded a letter (NYSCEF Doc. No. 47) in which it claims that if the motion is granted it will not take any action before attempting to inspect the apartment at 10 a.m. on Friday April 21, 2023. Therefore, the Court grants the motion to the extent that defendant must provide access to the apartment at 10 a.m. on Friday April 21, 2023 and thereafter she shall grant access in accordance with Section 13 of the bylaws.

The fact is that defendant must clear the unsafe conditions in the apartment.

The Court is ordering defendant to clear out and clean the apartment, and to allow the plaintiff access. If plaintiff is not satisfied with the condition of the apartment after the April 21, 2023 inspection (or if it is not permitted to do the inspection), then it may make another motion.

Accordingly, it is hereby


ORDERED that plaintiff's motion (MS001) is granted to the extent that defendant is directed to remediate the unsafe conditions in her apartment and that she must grant access to plaintiff so plaintiff may inspect the apartment (and take pictures) on April 21, 2023 at 10 a.m.; and it is further

ORDERED that defendant's motion (MS002) to dismiss is denied.

Control Date: The Court will schedule a future control date of July 25, 2023 at 12 p.m. If the case proceeds to discovery, then this date shall be used as a discovery conference. However,

the parties must update the Court about the status of the case by July 18, 2023 or the Court will adjourn this date.

4/18/2023
DATE


ARLENE P. BLUTH, 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