

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable DENIS J. BUTLER
Justice

IAS PART 12

ORIGINAL

-----x
CHUN HEUNG CHENG AND YUMEI HAN,

Plaintiff,

-against-

BOARD OF MANAGERS OF MAIN STREET PLAZA
CCNDOMINIUM, TRIBOR MANAGEMENT, INC.,
AND A STONE CONSTRUCTION CORP.,

Defendants.
-----x

Index No.: 11947/12

Motion Date:
August 14, 2012

Cal. No.: 10

Seq. No.: 1

2012 SEP 21 AM 10: 24

QUEENS COUNTY CLERK
FILED

The following papers numbered 1 to 28 read on this application by plaintiff seeking to direct defendants to repair water leaks in plaintiff's condominium unit.

Papers
Numbered

- Order to Show Cause, Affirmation,
- Affidavit, Exhibits 1-8
- Defendant, Board of Managers of Main Street Plaza Condominium & Tribor Management, Inc., Affirmation in Opposition, Affidavit, Exhibits, Memorandum of Law 9-26
- Defendant, A Stone Construction Corp. Affirmation In Opposition 27
- Reply Affirmation 28

Upon the foregoing papers, it is ordered that this order to show cause is determined as follows:

Plaintiffs' application, seeking an order directing the defendants to repair water leaks, is in the nature of a mandatory injunction. A mandatory injunction, used to compel the performance of an act, is an extraordinary remedy and is rarely granted, except in extraordinary circumstances, as movants would receive the ultimate relief requested (see, Village of Westhampton Beach v. Cayea, 38 A.D.3d 760 [2 Dept. 2007]; Matos v

City of New York, 21 A.D.3d 936 [2 Dept. 2005]). In order to prevail on a motion for preliminary injunction, movant must demonstrate, inter alia, a likelihood of success on the merits and irreparable injury absent the granting of the injunction (see, Bailey v. Ossi Sport Club, Inc., 71 A.D.3d 1069 [2 Dept. 2010]; Masjid Usman, Inc. v. Beech 140, LLC, 68 A.D.3d 942 [2 Dept. 2009]; Tatum v. Newell Funding, LLC, 63 A.D.3d 911 [2 Dept. 2009]; Etzion v. Etzion, 62 A.D.3d 646 [2 Dept. 2009]; Automated Waste Disposal, Inc. v. Mid-Hudson Waste, Inc., 50 A.D.3d 1072 [2 Dept. 2008]). Further, the party moving for injunctive relief must establish a clear right to such relief under the law and the undisputed facts (see, Board of Managers of Wharfside Condominium v. Nehrich, 73 A.D.3d 822 [2 Dept. 2010]).

A review of the conflicting affidavits submitted by the parties raises issues of fact concerning the cause of the leakage, where the leakage originated, and whether that area was a "common area" or a part of Unit #PCH. Plaintiffs have failed to proffer any expert testimony with respect to the cause of the leakage in their apartment unit. Further, plaintiffs' request for monetary damages in the underlying action (Ex. A) subverts plaintiffs' claim of irreparable injury (see, Blinds and Carpet Gallery, Inc. v. E.E.M. Realty, Inc., 82 A.D.3d 691 [2 Dept. 2011]; Neos v. Lacey, 291 A.D.2d 424 [2 Dept. 2002]). As a result, plaintiffs have failed to meet the heavy burden of providing a clear and undisputed right to the requested relief (see, Heidari v. First Advance Funding Corp., 55 A.D.3d 669 [2 Dept. 2008]; Ocean Club, Inc. v. Incorporated Vill. Of Atlantic Beach, 6 A.D.3d 593 [2 Dept. 2004]; JDOC Constr., LLC v. Balabanow, 306 A.D.2d 318 [2 Dept. 2003]).

The Court has considered plaintiffs' remaining contentions and arguments, and finds them to be either without merit or unnecessary to address in light of the foregoing determination.

Accordingly, plaintiff's application for, inter alia, a preliminary injunction is hereby denied.

This Constitutes the Decision and Order of the Court.

Dated: September 13, 2012



Denis J. Butler, J.S.C.

2012 SEP 21 10:24 AM

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