

****INTERIM DECISION****

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: GEOFFREY D.S. WRIGHT
Justice

PART 47

ANTONIOS GABRIEL, SANDRA MONA SABLE,
RAM YARIV, ALEXANDRA MULLER,
Plaintiff/Petitioner(s)
- v -

INDEX NO. 151715/14

MOTION DATE ____

THE BOARD OF MANAGERS OF THE GALLERY HOUSE
CONDOMINIUM,
Defendants

MOTION SEQ. NO. 001

The following papers, numbered 1 to 3 were read on this motion to/for grant summary judgment to the Plaintiffs; cross-motion to dismiss the complaint

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...	1
Answering Affidavits – Exhibits _____	2
Replying Affidavits _____	3
Other _____	

Cross-Motion: X Yes No

Upon the foregoing papers, it is ordered that this motion/petition by the Plaintiff summary judgments; cross-motion be the Defendants to dismiss the complaint is granted, a/p/o. to hold the Defendants in default is denied, except on the issue of the amount of the fines imposed for subletting contrary to the new rules, as to which both sides are to submit supplemental memoranda on the limits of the fines, if any, a/p/o. The parties have until August 14, 2014, to submit memoranda on the issue of the fines in question.

Dated: Jul 24, 2014



J.S.C.
GEOFFREY D. WRIGHT

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 47

-----X
ANTONIOS GABRIEL, SANDRA MONA SABLE, Index #151715/14
RAM YARIV, ALEXANDRA MULLER,

Plaintiff-Petitioner(s),

-against-

THE BOARD OF MANAGER OF THE
GALLERY HOUSE CONDOMINIUM,

Defendants.

Motion Cal. #
Motion Seq. #
DECISION/ORDER
Pursuant To Present:
Hon. Geoffrey Wright
Judge, Supreme Court

-----X

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Motion to: grant summary judgment to the Plaintiff; cross-motion to dismiss the complaint

PAPERS	NUMBERED
Notice of Petition/Motion, Affidavits & Exhibits Annexed	1
Order to Show Cause, Affidavits & Exhibits	
Answering Affidavits & Exhibits Annex	2
Replying Affidavits & Exhibits Annexed	3
Other (Cross-motion) & Exhibits Annexed	
Supporting Affirmation	

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

The Plaintiffs, members of the Defendant condominium, bring this action to declare their unfettered right to lease their apartments. Both side, citing to various sections of the bylaws of the condominium, move for summary judgment.

The Plaintiffs seek a determination that recent amendments to the rules of the condominium that effect the leases of apartments by nonresident owners, and the occupancy of apartments by those who are not members of the owner's family are not authorized under the bylaw and declaration of condominium, and an injunction prohibiting their enforcement.

The following April 2013rules changes are at issue: (1) the limitation of time that a guest may stay in an apartment when the owner is not also in the apartment to thirty (30)

days; (2) limiting to thirty (30) days, that a tenant of an owner may have a non-relative stay in the apartment; (3) prohibiting subletting by the tenant of an owner; (4) any lease to the tenant of an owner must for one year only. No lesser or greater term is permitted; (5) a fine of \$500.00 per day for subletting an apartment contrary to the new rules. Both side move for summary judgment. In addition to the occupancy rules passed by the board in April 2013, there was an additional rule passed in November 2013, that established an absolute bar to tenants of owners allowing guests to use an apartment when the tenant was not at home.

The complaint is based on the proposition that the amendments to the house rules of 2013, amounted to an improper amendment of the bylaw, which requires a vote of 66% of the membership. In addition, the Plaintiffs cite Art. XI (1), of the bylaw, which provides that a bylaw amendment requires the concession of 100% of those affected by the proposed change if the change involves use of apartments.

Although the Plaintiffs argue for the proposition that the denial of the opportunity to rent their apartments may not be unreasonably withheld, they cite no case that stands for the proposition. Even if such cases existed, the Defendants have given reasons that at least on their faces, are reasonable, to wit, certain members of the condominium are using their apartments for other than their personal residences. The declaration of condominium and the bylaw share that requirement. The new house rules do no more than refine this condition, they do not add new ones. Indeed, the rules that are the focus of the complaint are an update of similar rules that were put into effect in 2007, apparently without complaint. The restrictions of Art. V, Section 12, of the bylaw already cover much of the ground of the new rules, to wit, section 12(a), directs that apartments be used as residences only, and only for the member and his/her family, except with the written consent of the Board. Section 12(e), specifically prohibits transient tenancy. The practices addressed by the new house rules, and complained of in the complaint, were already prohibited by the bylaw. The new rules do no more than given further definition to the term transient.

To restate what should be obvious, the board has determined that a number of members are leasing their apartments with such frequency and/or for such great lengths, that these apartments have ceased to be the residences of the members and their families as required by the declaration of condominium and the bylaw. The basic restrictions complained of are already in place by virtue of the wording of the declaration and the bylaw, the new rules do no more than fine tune what is already in place, after all, the bylaw accord to the board a very broad, and apparently unfettered authority with respect to subletting [see Art. II, sec. 2(e), of the bylaw, together with Art. I, sec., 2 and Art. V, section 17, of by-laws cited by the Defendants]. In sum, the Board has not acted “*ultra vires*, its current actions are amply supported by the bylaw. Therefore, the Plaintiffs’ motion for summary judgment is denied, and the cross-motion to dismiss the complaint is granted. There is on exception.

The fines imposed by the Board appear to be confiscatory. Neither side has cited any section of bylaw which permit the imposition of a fine, particularly a hefty fine. [the cases relied upon by the movants, *SWEETMAN v. BOARD OF MANAGERS OF PLYMOUTH VILLAGE*

CONDOMINIUM, Not Reported in N.Y.S.2d, 1998 WL 1112655 (N.Y.Sup.App.Term); *FOREST HILLS GARDENS CORP. v. WEST SIDE TENNIS CLUB*. 23 A.D.3d 338, 806 N.Y.S.2d 591, 2005 N.Y. Slip Op. 08276, involve modest administrative charges of small fines of \$25.00. The Defendants have submitted no authority for the imposition of fines that reach \$3,750.00, per week, and could, over the course of a year or more, equal the value of the apartment. My ruling in the imposition and amount of the fines is held in abeyance until August 14, to allow both sides to submit additional memoranda on the issue of the authority to impose fines, and what limits, if any, are imposed as a matter of law.

This constitutes the decision and order of the court.


GEOFFREY D. WRIGHT

AISC

Dated: July 24, 2014