

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

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM

Justice

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INDEX NO. 654916/2019

IN THE MATTER OF THE APPLICATION OF
JAMES E. CAYNE

MOTION DATE 09/25/2019

Petitioner,

MOTION SEQ. NO. 001

- v -

510 PARK AVENUE CORPORATION,

**DECISION + ORDER ON
MOTION**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion to/for COMPEL.

In this petition commenced by order to show cause pursuant to CPLR 403(d), the petitioner, James E. Cayne, seeks to compel the respondent, 510 Park Avenue Corporation, a residential cooperative, to comply with his demand to inspect the respondent's books and records pursuant to New York Business Corporation Law (BCL) § 624 and the common-law of the State of New York. The respondent opposes the petition. The petition is denied.

The petitioner became a shareholder of the respondent in 1981 when he and his wife purchased the shares associated with Unit 6A of the respondent's cooperative building at 510 Park Avenue in Manhattan, a luxury residential building, and entered into a proprietary lease. Shortly thereafter, the petitioner also began renting a maid's room, a single room, in the building. In 1999, approximately 18 years after the petitioner moved into the building, the respondent's board of directors (the board) decided to auction that and another maid rooms in the building. The board planned to hold the auctions by sealed bid. Claiming that the sealed bid auctions would unfairly prejudice those not on the board, the petitioner filed an emergency petition with the court seeking injunctive relief. Cayne v 510 Park Ave. Corp., Index No. 110067/1999). As a result of the emergency petition, the auctions were ultimately held live. The petitioner and his wife purchased one maid's room for \$75,000, and one member of the board, Lawrence Friedland, similarly paid \$75,000 for the other maid's room. The petitioner alleges that

due to a bidding war between him and Friedland, Friedland paid significantly more than he anticipated. According to the petitioner, Friedland blamed him for the inflated price and thereafter maintained a bias and vendetta toward him. Some 20 years after that sale, the petitioner filed the instant petition alleging that Friedland, now president of the board, is acting on this perceived bias and vendetta and preventing him from selling Unit 6A by causing the entire board to reject the applications of potential purchasers, and also causing the board to refuse permission for him to sublet Unit 6A. Upon those allegations, the petitioner seeks "all books and records" pertaining to: (a) the Apartment; (b) transfer of shares for the Apartment; (c) transfers of shares for other apartments; (d) subleasing of apartments; and (e) market valuations of apartments," based upon these allegations. The petition must be denied for several reasons.

Under New York law, shareholders have a statutory right to a corporation's: (a) minutes of shareholder or board meetings; (b) a shareholder roster; and (c) financial statements. BCL § 624(b) & (e). A corporation may refuse a shareholder access to the foregoing books and records where the request is "desired for a purpose...other than the business of the corporation." Gottdenker v Philadelphia & Reading Corp., 31 AD2d 152, 155 (1st Dept. 1968). "A *bona fide* claim of corporate mismanagement supports shareholder's demand for access to a corporation's books and records." Martin v Columbia Pictures Co., 283 AD 926 (1st Dept. 1954); see Tatko v Tatko Bros. Slate Co., 173 AD2d 917 (3rd Dept. 1991) [assessing a corporation's financial condition, investigating management conduct, and obtaining information in aid of legitimate litigation are proper purposes]. However, there is no right to conduct an overly broad inspection supported only by speculation. See Camhe-Marcille v Sally Lou Fashions Corp., 289 AD2d 162 (1st Dept. 2001).

The petitioner seeks considerably more than the minutes, roster, and financial statements that are authorized to be inspected under BCL § 624. Instead of the limited books and records entitled under BCL § 624 the petitioner is requesting "all books and records" pertaining to: (a) the Apartment; (b) transfer of shares for the Apartment; (c) transfers of shares for other apartments; (d) subleasing of apartments; and (e) market valuations of apartments." As such, the petitioner's demand is overbroad and not supported under BCL § 624.

Moreover, the petitioner's demand is not relevant for a proper purpose under BCL § 624. The petitioner fails to allege that the respondent is being mismanaged. See Martin v Columbia

Pictures Co., *supra*. Contrary to the petitioner's contention, the board's rejection of proposed purchasers does not alone demonstrate a proper purpose justifying the inspection of books and records. It is well settled that a cooperative board's decision to deny approval for a sale of shares is protected by the business judgment rule. *See Woo v Irving Tenants Corp.*, 276 AD3d 380 (1st Dept. 2000); *Silverstein v Westminster House Owners, Inc.*, 50 AD3d 257 (1st Dept. 2008); *see also Levandusky v One Fifth Ave. Apartment Corp.*, 75 NY2d 530 (1990) [the proper inquiry is whether a board action is in furtherance of a legitimate purpose of the cooperative, in which case it will be upheld]. The fact that a cooperative board has denied a shareholder permission to sell their shares does not alone justify a shareholder's attempt to litigate around the sound exercise of the board's business judgment. *See In re Application of Ralph Salatino*, 180 AD2d 434 (1st Dept. 1992).

Consistent with the foregoing, the respondent's governing documents, by which all shareholders are bound, expressly reserve the board's "right to grant or withhold consent, for any reason or for no reason, absent unlawful discrimination" any purchase application. Likewise, the governing documents addressing subleasing state that it is "strongly discouraged," "will only be considered by the [board] under extraordinary circumstances," and approval to sublet may be denied or conditioned at the sole discretion of the board. As such, the petitioner has not established a proper purpose to support his petition to access the respondent's books and records. *See In re Application of Ralph Salatino, supra*.

The reasons proffered by the petitioner for seeking relief herein are speculative and seemingly without factual basis. Indeed, his petition is premised upon his presumption that the entire board of the respondent corporation is acting purely at the behest of Friedland who petitioner believes has, for decades, maintained a bias and vendetta him arising from the 1999 sale of a two maid's quarters, small spaces within the building. In light of the petitioner's allegations that the 1999 auction price of \$75,000 paid by Friedland was inflated due to a bidding war between him and Friedland, logic dictates that the petitioner himself may harbor ill will toward Friedland for inflating the price of the maid's quarters purchased by the petitioner and his wife, for the same price. In any event, petitioner has not established entitlement to relief under BCL§ 624.

The petitioner also seeks a judgment providing for inspection of the respondent's books and records under the common-law. At common law, a shareholder's right of inspection "is

qualified and can only be asserted where the shareholder is acting in good-faith and has established that the inspection is for a proper purpose." Crane Co. v Anaconda Co., 39 NY2d 14 (1976). Unlike a request made pursuant to BCL § 624, under the common law, it is the requesting shareholder's burden to plead and prove that the request is proper. Id. Such a request must also be shown to be made in good faith. See Ochs v Washington Heights Fed. S&L Ass'n, 17 NY2d 82 (1966). The petitioner does not make that showing. Rather, the submissions demonstrate that the nature and extent of the petitioner's requests are not for a proper purpose. Even under the liberal discovery standard, a shareholder may not engage in "an intrusive probe into the confidential financial records" of other shareholders, let alone attempt to delve into a prospective purchaser's finances well beyond the contemplated scope of BCL§ 624. See Combs v Lewis, 159 AD2d 207, 208 (1st Dept. 1990).

Accordingly, it is hereby,

ORDERED that the petition is denied and dismissed in its entirety; and it is further,

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.

5/11/2020

DATE



NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

NANCY M. BANNON, 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