

Ladines v 426-428 W. 48th St. Assoc. LP

2014 NY Slip Op 33633(U)

December 17, 2014

Supreme Court, New York County

Docket Number: 101701/2013

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

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12/21/14
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. KATHRYN FREED
JUSTICE OF SUPREME COURT

PRESENT: _____
Justice

PART 2

Index Number : 101701/2013
LADINES, FELIX E.
vs
426-428 WEST 48TH STREET
Sequence Number : 001
STAY PROCEEDINGS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 01

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). _____
Answering Affidavits — Exhibits _____	No(s). _____
Replying Affidavits _____	No(s). _____

Upon the foregoing papers, it is ordered that this motion is


**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

FILED
DEC 22 2014
NEW YORK
COUNTY CLERK'S OFFICE

RECEIVED
DEC 22 2014
GENERAL CLERK'S OFFICE
NYS SUPREME COURT - CIVIL

Dated: 12/17/14
DEC 17 2014


HON. KATHRYN FREED J.S.C.
JUSTICE OF SUPREME COURT

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

HON. KATHLEEN M. O'NEILL
OFFICE OF THE ATTORNEY GENERAL

STATE OF CONNECTICUT
OFFICE OF THE ATTORNEY GENERAL

DEED

1999

HON. KATHLEEN M. O'NEILL
OFFICE OF THE ATTORNEY GENERAL

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 2**

FELIX LADINES and JENNIFER LADINES,

Plaintiffs,

-against-

426-428 WEST 48TH STREET ASSOCIATES
LP and MARIN MANAGEMENT CORP.,

Defendants.

DECISION & ORDER
Index No. 101701/2013
Motion Sequence 001

FILED
DEC 22 2014
NEW YORK
COUNTY CLERKS OFFICE

KATHRYN E. FREED, J.S.C.

RECITATION, AS REQUIRED BY CPLR 2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION:

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....	1,2 (Exs. A-I)
NOTICE OF CROSS-MOTION AND AFFIDAVITS ANNEXED.. ...	3,4 (Exs. A-K)
AFFIDAVIT IN OPP. TO CROSS MOTION5 (Exs. A-I)..

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

Plaintiffs seek to obtain succession rights to a rent-stabilized apartment which was previously the residence of decedent Francisca Ladines, the mother of co-plaintiff Felix Ladines. Plaintiffs aver that they have resided in the apartment for the minimum required period of one year in order to care for Mr. Ladines' mother. In addition, they claim that the apartment contains hazardous conditions actionable under Real Property Law 235-b and section 27-2005 of the City's Housing Maintenance Code, that defendants have illegally attempted to coerce them to leave the apartment by cutting off their utilities, and that plaintiff is a disabled person within the meaning of the Rent Stabilization Law. Plaintiffs purchased an index number on December 17, 2013 and filed a request for judicial intervention on February 13, 2014.

On June 2, 2014, defendant 426-428 West 48th Street Associates LP commenced a holdover proceeding against plaintiffs in Housing Court, claiming that plaintiffs moved into the apartment only after Francisca Ladines died and that they have not paid the required rent for the apartment. Therefore, it seeks to evict plaintiffs from the apartment. In the holdover proceeding, in addition to several other defenses and objections, plaintiffs again claimed that the apartment contained hazardous conditions actionable under RPL 235-b and that they had the right to succeed as tenants of the rent-stabilized apartment.

Plaintiffs now move for a stay of the Housing Court proceeding pending the resolution of this action. The basis for this request is that they filed this lawsuit months before the Housing Court proceeding was commenced against them and thus, under First Department precedent, the issues should be decided in this action. Defendants cross-move to stay this action pending the determination of the Housing Court proceeding, asserting that rent succession and eviction matters should be resolved in the Civil Court, where complete relief can be afforded to a tenant.

Plaintiffs rely on *Eckstein v New York Univ.*, 270 AD2d 208 (1st Dept 2000) and on *Shadick v 430 Realty Co.*, 250 AD2d 417 (1st Dept 1998) for the proposition that a Supreme Court action for declaratory relief may proceed when there is no Housing Court matter pending. *Eckstein*, 270 AD2d, *supra* at 208; *Shadick*, 250 AD2d, *supra* at 418.¹

Although both parties raise sound arguments, plaintiffs overstate the importance of resolving matters in the case which was commenced first. Instead, there is overwhelming precedent in favor of resolving matters in Housing Court. *See, e.g., Simens v Darwish*, 105 AD3d 686 (1st Dept 2013); *44-46 West 65th Apartment Corp. v Stvan*, 3 AD3d 440, 441 (1st Dept 2004). Only if the issues

¹Plaintiffs also indicate that a second Housing Court proceeding was brought against them by defendants.

cannot be resolved in Civil Court does this principle not apply. *See Murphy v 317-319 Second Realty LLC*, 95 AD3d 443, 444 (1st Dept 2012); *Stvan*, 3 AD3d, *supra* at 441. In *Brecker v 295 Central Park West, Inc.*, 71 AD3d 564 (1st Dept 2010), the Appellate Division, First Department held that:

When no other action or proceeding is pending in Civil Court, a tenant may commence an action in Supreme Court seeking a declaration of succession rights However, Civil Court is the strongly preferred forum for resolving such landlord-tenant disputes. Once a summary proceeding has been commenced in Civil Court where complete relief can be afforded to the tenant, there is no further basis for invoking the equitable jurisdiction of Supreme Court.

Id., at 565 (*citations omitted*). Therefore, this action should be stayed pending resolution of all matters properly brought in the Civil Court. If any issues remain at that time, the parties may move to lift the stay and proceed. If not, plaintiffs should discontinue this action.

In light of the foregoing, it is hereby:

ORDERED that the motion is denied and the cross-motion is granted to the extent of staying further proceedings in this action, except for an application to vacate or modify said stay or to discontinue the action; and it is further,

ORDERED that either party may make an application by order to show cause to vacate or

modify this stay upon the final determination of the actions/proceedings known as *426-428 West 48th St. Assoc. LP v Felix Ladines, et al*, Index No.: L&T 68398/2014 and *426-428 West 48th St. Assoc., LP v Felix E. Ladines Appointed as Administrator of the Estate of Francisca Ladines, et al*, Index No: L&T 683360/2014; and it is further,

ORDERED that the cross-movant is directed to file a copy of this order with notice of entry on the Trial Support Office (Room 158); and it is further,

ORDERED that this constitutes the decision and order of the court.

DATED: December 17, 2014

ENTER:



**KATHRYN E. FREED, J.S.C.
HON. KATHRYN FREED
JUSTICE OF SUPREME COURT**

FILED

DEC 22 2014

**NEW YORK
COUNTY CLERKS OFFICE**