

Shu Bo Jiao v Worldwide Direct Membership, LLC
2017 NY Slip Op 31685(U)
July 6, 2017
Supreme Court, New York County
Docket Number: 101703/2013
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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SHU BO JIAO,

Index No. 101703/2013

Plaintiff

- against -

DECISION AND ORDER

WORLDWIDE DIRECT MEMBERSHIP, LLC, and
MICHAEL EISENBERG,

Defendants

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LUCY BILLINGS, J.S.C.:

I. BACKGROUND

In this action and in a New York City Civil Court action in New York County, plaintiff owner of a building at 180 East 108th Street, New York County, sues the same defendant former tenants for nonpayment of rent beginning in October 2013, when defendants claim the building lacked heat and hot water. Defendants claim this condition continued into November 2013 and forced them to vacate their leased units in November 2013.

This action for breach of contract seeks rent for October through December 2013, water and electricity charges, and a painting fee upon defendants' vacatur, under a lease for three of the five units. The Civil Court action sought similar relief under a lease for one or more of the remaining units that defendants rented from plaintiff. In both actions defendants raise the same affirmative defenses and counterclaims, including plaintiff's breaches of the leases, the leases' covenants of quiet enjoyment, and the warranty of habitability.

Both actions thus involve similar theories of liability, grounds for plaintiff's damages and for defendants' defenses and counterclaims, and core questions of law and fact. As the court forecast in its decision dated July 7, 2015, denying defendants' motion for consolidation, which plaintiff opposed, because this action involves issues in common with the Civil Court action, the determination of those issues upon the trial of that action September 30, 2015, involving the same parties, may determine the same issues here under principles of preclusion. Matter of Hunter, 4 N.Y.3d 260, 269 (2005); Gellman v. Henkel, 112 A.D.3d 463, 464 (1st Dep't 2013); PJA Assoc. Inc. v. India House, Inc., 99 A.D.3d 623, 624 (1st Dep't 2012); UBS Sec. LLC v. Highland Capital Mgt., L.P., 86 A.D.3d 469, 474 (1st Dep't 2011).

II. THE CURRENT MOTIONS

Although plaintiff seeks to expand this action beyond the scope of the Civil Court action, by moving to amend his complaint to claim rent after December 2013, the court must deny his motion because it is unsupported by a proposed amended complaint.

C.P.L.R. § 3025(b); McBride v. KPMG Intl., 135 A.D.3d 576, 580 (1st Dep't 2016). As for plaintiff's claims for prior rent and other charges or fees under the parties' leases, even if for other units in plaintiff's same building, defendants cross-move for summary judgment dismissing those claims based on the preclusive effect of the Civil Court action. C.P.L.R. §§ 3211(a)(5), 3212(b); Shu Bo Jiao v. Worldwide Direct Membership, LLC, and Michael Eisenberg, Index No. CV-028751-13/NY (Civ. Ct.

N.Y. Co.).

In the Civil Court action raising the same claims for defendants' breach of their leases and seeking the same type of damages as in this action, albeit in different amounts for different units, the court determined that plaintiff was not entitled to any of the amounts sought for rental or use of the building's units due to its lack of a Certificate of Occupancy (CO). Because the Civil Court determined that issue, which is equally determinative of the claims in this action, Pinnacle Consultants v. Leucadia Natl. Corp., 94 N.Y.2d 426, 432-33 (2000); Parker v. Blauvelt Volunteer Fire Co., 93 N.Y.2d 343, 349 (1999); Simmons-Grant v. Quinn Emanuel Urquhart & Sullivan, LLP, 116 A.D.3d 134, 139-40 (1st Dep't 2014); Sanders v. Grenadier Realty, Inc., 102 A.D.3d 460, 461 (1st Dep't 2013), the doctrine of res judicata bars any further determination of the duplicate claims in this action. Matter of Hunter, 4 N.Y.3d at 269; Bevilacqua v. CPR/Extell Parcel I, L.P., 126 A.D.3d 429, 429 (1st Dep't 2015); Andrade v. New York City Police Dept., 106 A.D.3d 520, 521 (1st Dep't 2013); Pitcock v. Kasowitz, Benson, Torres & Friedman, LLP, 80 A.D.3d 453, 454 (1st Dep't 2011). See Landau, P.C. v. LaRossa, Mitchell & Ross, 11 N.Y.3d 8, 13 (2008).

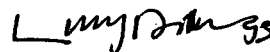
Even if plaintiff did not in the Civil Court action present the evidence he presents here, showing that his building was constructed before 1938 and that the New York City Department of Buildings does not object to the absence of a CO for the building, res judicata bars not only the claims he actually

litigated in the Civil Court. Res judicata also bars any claims that arose from the same occurrences and that he might have litigated by presenting that evidence there. Matter of Hunter, 4 N.Y.3d at 269; Bevilacqua v. CPR/Extell Parcel I, L.P., 126 A.D.3d at 429; Pitcock v. Kasowitz, Benson, Torres & Friedman, LLP, 80 A.D.3d at 454. The Civil Court trial was plaintiff's opportunity to present a CO, a substitute for a CO, or evidence explaining why his building was exempt from the requirement for a CO, which he failed to do.

III. CONCLUSION

Consequently, the court denies plaintiff's motion to amend his complaint, C.P.L.R. § 3025(b), and grants defendants' cross-motion for summary judgment dismissing the complaint based on the Civil Court action's preclusive effect. C.P.L.R. §§ 3211(a)(5), 3212(b). The court also grants defendants' cross-motion for summary judgment on their counterclaim for the return of their \$8,550.00 security deposit held by plaintiff, without opposition. C.P.L.R. § 3212(b) and (e). In a stipulation dated April 21, 2016, defendants discontinued their remaining counterclaims except their counterclaim for attorneys' fees, leaving it now as the single remaining claim in this action. The court severs defendants' counterclaim for attorneys' fees, so that defendants may enter a judgment in their favor and against plaintiff for the \$8,550.00 security deposit. This decision constitutes the court's order.

DATED: July 6, 2017



LUCY BILLINGS, J.S.C.

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