

Mendez v 21 W. 86 LLC
2018 NY Slip Op 32642(U)
October 15, 2018
Supreme Court, New York County
Docket Number: 157759/2014
Judge: Gerald Lebovits
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**NEW YORK STATE SUPREME COURT
NEW YORK COUNTY: PART 7**

JOAN H. MENDEZ AND AARON ROSENBLATT,
ON BEHALF OF THE RENT REGULATED TENANTS
ASSOCIATION OF 21 WEST 86 STREET,

Plaintiffs,

Index No.: 157759/2014
DECISION/ORDER
Motion Seq. No. 04

-against-

21 WEST 86 LLC, ADELLCO MANAGEMENT LLC,
AND NATIONWIDE LIFE INSURANCE COMPANY,

Defendants.

Recitation, as required by CPLR 2219 (a), of the papers considered in reviewing defendants' motion to award the attorneys' fees and plaintiffs' countermotion for summary judgment.

Papers	Numbered
Defendants' Notice of Motion	100
Affidavit by Carol A. Herlihy	101
Amended Complaint	102
Answer and Counterclaim.....	103
J. Wooten Order	104
J. Lebovits Order.....	105
Appellate Division Order	106
Tenants' Affidavits	107
E. Rosenblatt EBT Excerpts	108
Leases.....	109
Fee Printout	110
Fee Printout Appeal	111
Affidavit in Support of the Motion	114
Notice of Cross-Motion by Howard S. Koh	115
Memorandum in Opposition to the Motion by Howard S. Koh	116
Affirmation in Opposition to the Motion by Howard S. Koh.....	117
Amended Complaint	118
Leases.....	119
Plaintiffs' Answer	120
Reply to Counterclaims.....	121
Leases.....	122
Leases.....	123
Leases.....	124
Affirmation of Aaron Rosenblatt.....	125
Carol A. Herlihy's Affidavit of Affirmation in Reply.....	127

Carol A. Herlihy's Reply Affidavit128

Meister Seelig & Fein LLP (*Howard S. Koh* of counsel), for plaintiffs.
Kellner Herlihy Getty & Friedman, LLP (*Carol Anne Herlihy* of counsel), for defendants 21
West 86 LLC and Adellco Management LLC.

Gerald Lebovits, J.

Plaintiffs assert five causes of action against defendants arising from defendants' performance of construction work at the building located at 21 West 86 Street, New York, New York, where 19 individual tenants who signed the affidavits authorizing the action reside. These tenants are Mara Altschuler, Howard Anderson, Dana Bisagna, Yanka Cherub, Aaron Rosenblatt, Jean Dane, Taaj Jaharah, Marcia Johnson, Joan H. Mendez, Sharon Brooks, Hibren Salazar, Glen Neilsen, Natalya Pushkina, Nolan Sheehan, and Suzanne Urich.

Plaintiffs sought injunctive and declaratory relief, money damages, and legal fees, but eventually all their claims were denied or dismissed.

Defendants, 21 West 86 LLC and Adellco Management LLC, as the prevailing parties, now argue that the tenants are responsible for defendants' attorney fees because the tenants association, which is formally a party to this action, is unincorporated and has no formal name. Alternatively, defendants claim that they can recover the attorney fees from the association without prejudice to defendants' claim against the named members.

Defendants move to award them the reasonable attorney fees of \$159,186.50 and costs of \$11,870.70, plus a reasonable sum for the pursuit of those fees against the 19 named members of the plaintiff tenants association, or in the alternative against the plaintiff tenants association without prejudice to defendants' claim against the named members.

In their opposition, plaintiffs argue that neither the association nor the tenants are liable for the attorney fees. They cross-move for summary judgment to dismiss the defendants' claim.

I. Defendants' Motion to Award Them the Reasonable Attorney Fees

Defendants' motion to award them the reasonable attorney fees is granted.

Responsibility of Unincorporated Associations

The responsibility for the actions of an unincorporated association that acts through its officers in their representative capacities is on the association's members who authorized the actions. "A voluntary, unincorporated membership association is neither a partnership nor a corporation. It is not an artificial person, and has no existence independent of its members." (*Martin v Curran*, 303 NY 276, 280 [1951].) The association's officer, Aaron Rosenblatt, confirmed that the association, which named as plaintiff, is not incorporated in any form, has no bank account, and all the payments to the plaintiffs' lawyer who represented the association before the court were made by the individual tenants directly, not by the association.

Moreover, the association has no formal name and the name that plaintiffs use varies throughout the complaint. Specifically, in the caption, plaintiffs are called “The Rent Regulated Tenants Association of 21 West 86 Street,” while further in the body of the complaint – “Association of Rent Stabilized Tenants at 21 West 86 Street.” In the affidavits, plaintiffs are named “Brewster Rent Regulated Tenants Association.” Therefore, the association is not a legal entity and cannot act independently from its members.

“[T]he liability which may be imposed in any action in which the association’s officers are named in their representative capacities ... is still that of the members as individuals.” (*Coleman v Pokodner*, 6 Misc 2d 955, 958 [Sup Ct, Kings County 1957].) Aaron Rosenblatt and Joan H. Mendez, being officers of the association, act in their representative capacities in this case.

Another fact to consider is whether the members of the organization knew about its actions. “A part of the members of a voluntary organization cannot bind the others without their consent before the act which it is claimed binds them is done, or they, with full knowledge of the facts, ratify and adopt it.” (*Sizer v Daniels*, 66 Barb 426, 432.) Not only did the tenants know about the action, they explicitly consented to it in the affidavits authorizing the association to represent them in this action (Exhibits F). When Joan H. Mendez and Aaron Rosenblatt commenced this action, they bound all the tenants who authorized it and made them liable for the attorney fees.

In their opposition, plaintiffs argue that the court lacks jurisdiction to enter any ruling or judgment against the tenants individually because the caption does not name the individual tenants and because they are not identified anywhere in the amended complaint. The court disagrees.

“A court has no power to grant relief against an individual or entity not named as a party and not properly summoned before the court.” (*Hartloff v Hartloff*, 296 AD2d 849, 850 [4th Dept 2002].) However, the 19 individual tenants are named as parties. It does not matter that their names are not mentioned in the caption. Each of them is named in the affidavits they signed, authorizing Joan H. Mendez, Aaron Rosenblatt, and their attorney, Barry J. Yellen, to represent them before court in this action against defendants. In addition, all the claims made in the complaint concern the individual tenants and not the association. Plaintiffs themselves confirm it, saying that the association claims that the tenants sustained damages as a result of defendants’ actions, as they were excluded from improvements made to the building, were denied the rights to a roof garden pursuant to a prior court order, and were denied some building services because they were rentstabilized tenants. The claims do not relate to any rights of the association. The nineteen individual tenants are implied plaintiffs in this action, and the association, acting through its officers, Mendez and Rosenblatt, acts on the tenants’ behalf.

Plaintiffs also argue that General Associations Law § 16 precludes any action against members of an unincorporated association until a judgment has been rendered against the association. “General Associations Law § 16 is only applicable where the liability of individual counterclaim defendants arises solely as a result of membership in the association.” (*R.Y.M. Int'l*

v A.R.I. Sales, Ltd., 268 AD2d 255, 255 [1st Dept 2000].) Here, the liability of the individual tenants has nothing to do with their membership in the association. It arises from their individual leases and the commencement of this action against defendants. Therefore, the liability for the attorney fees is on the tenants who authorized the action.

Contractual Grounds to Recover Attorney Fees

In their opposition, plaintiffs correctly argue that “the prevailing party may not collect [attorney’s fees] from the loser unless an award is authorized by agreement between the parties or by statute or court rule.” (*A. G. Ship Maint. Corp. v Lezak*, 69 NY2d 1, 5 [1986].) The question before this court, therefore, is whether the individual tenants have agreements that allow the recovery of the attorney fees from them.

Out of the nineteen individual tenants, three do not have such agreements. Specifically, Sharon Brooks and Hibren Salazar have lease agreements that limit recovery of legal fees from them. Aaron Rosenblatt’s lease agreement was not provided to this court. At this point, the court may not hold Aaron Rosenblatt liable for the attorney fees.

As for the remaining sixteen tenants, this court finds that their lease agreements allow the recovery of attorney fees from them. The lease agreements of Mara Altschuler, Howard Anderson, Dana Bisagna, Yanka Cherub, Jean Dane, Taaj Jaharah, Marcia Johnson, Joan H. Mendez, Glen Neilsen, Natalya Pushkina, Nolan Sheehan, and Suzanne Ulrich provide that they must “reimburse owner for any ... legal fees or disbursements ... for defending Lawsuits brought against Owner because of [their] actions.” Here plaintiffs argue again that the action was brought by the association, but as stated above, the association acted on the tenants’ behalf. This action was brought against defendants because these individual tenants authorized it in their affidavits. Therefore, they are liable for the attorney fees.

Another four tenants, Heidy Bush, Edgar Littlefield, Mark Rodgers, and Noga Garrison, have a clause in their lease agreement providing that tenants must pay for damages suffered and reasonable expenses of the landlord relating to any claim arising from any act or neglect of the tenant. Plaintiffs claim that this clause refer to claims brought by third parties and does not impose any obligation on the tenants to pay any attorneys’ fees. This interpretation is wrong.

“There is no valid reason to decline to enforce the attorney fees clause in circumstances where a tenant’s own actions in prosecuting a claim cause the landlord to incur legal expenses . . .” (*Rose v Montt Assets, Inc.*, 187 Misc2d 497, 498 [1st Dep 2000].) In this case, the tenants brought this action against defendants. These four individuals are also responsible for the attorney fees.

Reasonableness of Attorney Fees

Plaintiffs raise a question about the reasonableness of the attorneys’ fees. “In order to award attorneys’ fees there should be a hearing to determine whether the request for attorney’s fees is reasonable.” (*Fleet Credit Corp. v Harvey Futter & Co.*, 207 AD2d 380, 381 [2d Dep 1994].)

Defendants, as the prevailing parties in the litigation, are entitled to recover their attorney fees from the 16 individual tenants who authorized the action and whose leases have provisions making them liable for the defendants' expenses. A Special Referee should determine the reasonableness of these fees.

II. Plaintiffs' Motion for Summary Judgment

Inasmuch as the defendants' claim has merit for the reasons set forth above, plaintiffs' cross-motion for summary judgment is denied. (CPLR 3212 [b].)

ACCORDINGLY, it is

ORDERED that the defendants' motion is granted; and it is further .

ORDERED that attorney fees are awarded and must be paid to defendants in equal parts by plaintiffs Mara Altschuler, Howard Anderson, Dana Bisagna, Heidy Bush, Yanka Cherub, Jean Dane, Noga Garrison, Taaj Jaharah, Marcia Johnson, Joan H. Mendez, Glen Neilsen, Natalya Pushkina, Mark Rodgers, Edgar Littlefield, Nolan Sheehan, and Suzanne Urlich; and it is further

ORDERED that this matter is referred to a Special Referee to assess the amount of attorney fees; and it is further

ORDERED that defendants serve the Special Referee Clerk in the General Clerk's Office in Room 119 with a copy of this decision and order, who is directed to schedule this matter for a hearing; and it is further

ORDERED that plaintiffs' motion for summary judgment is denied.

Dated: October 15, 2018

J.S.C. 
HON. GERALD LEBOVITS
J.S.C.