

**Rendon v Chino**

2020 NY Slip Op 30237(U)

January 23, 2020

Supreme Court, Kings County

Docket Number: 514209/2019

Judge: Loren Baily-Schiffman

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At an IAS Part 65 of the Supreme Court of the State of New York, County of Kings at a Courthouse Located at 360 Adams Street, Brooklyn, New York on the 23 day of January, 2020.

PRESENT: HON. LOREN BAILY-SCHIFFMAN  
JUSTICE

EMITERIO RENDON,  
Plaintiff,  
- against -  
ANTONIO CHINO and ANGEL ONEISMO CHINO  
PANTELEON,  
Defendants.

Index No.:514209/2019  
Motion Seq. # 1  
DECISION & ORDER

As required by CPLR 2219(a), the following papers were considered in the review of this motion:

	<u>PAPERS NUMBERED</u>
Notice of Motion, Affidavits, Affirmation & Exhibits	1
Affirmation in Opposition & Exhibits	2

Upon the foregoing papers Defendants, ANTONIO CHINO and ANGEL ONEISMO CHINO PANTELEON (collectively "Movants"), move this Court for an Order to enjoin, stay and restrain the Civil Court of the City of New York, Kings County from proceeding with a holdover action with an identical caption as the case at bar under Index # 73721/2019 and another action under Index # 76685/2019. The latter case involves the Plaintiff herein, EMITERIO RENDON, herein and seven defendants completely unrelated to the instant action or to movants.

Background

On or about October 27, 2008 Mr. Pantaleon and Mr. Chino, father and son, respectively, entered into an agreement with Plaintiff, EMITERIO RENDON, for the purchase of the property known as 89 Harman Street in Brooklyn, New York, 11212 for \$450,000. The

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agreement set forth that the first \$100,000 should be paid in five installments from November 20, 2008 through August 31, 2009. The agreement also provided that Defendants would take possession of the house on November 1, 2008, collect the rents<sup>1</sup>, make the mortgage payments and pay all of the other expenses related to the subject property. However, according to Movants, sometime after December 31, 2009, Plaintiff demanded that 1) Defendants pay an additional \$500 per month to maintain the agreement and, 2) required that the Tenants begin making their rent payments directly to him and not to Defendants after August 2018.

Plaintiff commenced a prior action against Defendants on or about June 24, 2014 under Index # 701/2014 for breach of contract. Issue was joined when Defendants interposed their answer on or about July 11, 2014. The jury trial in the 2014 action was held February 6, 2019 through February 8, 2019. At that time the jury returned a verdict finding that Defendants did not breach the agreement that is the subject of the instant action. On or about June 6, 2019, less than six months after the above referenced jury verdict, Plaintiff commenced the instant action again alleging breach of contract. Two months later on August 6, 2019, Plaintiff commenced two holdover proceedings in Landlord-Tenant Court against Defendants and the tenants residing at 89 Harman Street in Brooklyn.

In the motion currently before this Court, Defendants seek an Order staying the holdover proceedings pending in Landlord-Tenant court until the instant action is resolved. Plaintiff maintains that Defendants have not been making payments as per the agreement and are not entitled to a stay of the holdover proceedings. The parties appeared for oral argument

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<sup>1</sup> 89 Harman Street is a two-family dwelling.

on October 31, 2019 on the instant motion and at that time this Court issued a stay of the proceedings pending in Landlord-Tenant Court until the instant motion is decided.

#### Discussion

It is well settled that “a court has broad discretion to grant a stay in order to avoid the risk of inconsistent adjudications, application of proof and potential waste of judicial resources.” *Chaplin v Natl. Grid*, 171 AD3d 691, 692 (2d Dept 2019). While there is no “bright-line standard” for determining when the issuance of a stay is appropriate, a Court must consider and balance all of the relevant factors. Where two actions or proceedings exist that involve overlapping issues and similarity of parties, “the imposition of a stay . . . avoids the risk of inconsistent adjudications, duplication of proof, and the potential waste of judicial resources.” *El Greco Inc. v Cohn*, 139 AD2d 615, 617 (2d Dept 1988). Where the determination in one action would dispose of or limit the issues in the other, a stay is proper. *McCarthy v Kerrigan*, 59 Misc 3d 872, 885 (Sup Ct NY County 2018), citing *SSA Holdings LLC v Kaplan*, 120 AD3d 1111, 1111 (1st Dept 2014). Additionally, “...complete identity of [the] parties and claims” is not required for a stay if the failure to grant a stay may cause “duplication of effort, waste of judicial resources, and possibility of inconsistent rulings.” *Uptown Healthcare Mgt., Inc. v Rivkin Radler LLP*, 116 AD3d 631, 631 (1st Dept 2014).

According to Defendants, the parties’ intention was to continue the arrangement as set forth in the agreement until such time as Movants could refinance the underlying mortgage. Additionally, Defendants contend that Plaintiff is motivated by the subject property’s tremendous increase in value since the agreement was executed in 2008. Defendants further

allege that Plaintiff's actions have caused them much hardship and as a result they admit that they missed some payments.

Defendants argue that a stay is necessary because they will suffer irreparable harm if forced to leave their home as a result of the holdover proceeding. If the holdover proceeding results in an Order of Eviction, they will not only be forced to leave their family home of twelve years but will have lost all the money they paid toward the purchase of the subject property. Additionally, Defendants claim that the instant breach of contract action will undoubtedly have the same outcome as the 2014 action. In that breach of contract action, the jury found that Plaintiff was unable to prove that Defendants breached the 2008 agreement.

According to Plaintiff, he will be the one to suffer irreparable harm if a stay is granted because Defendants as well as the Tenants have not been making any payments and have been living in the Premises rent free<sup>2</sup>. However, the documents submitted by Plaintiff to establish that Defendants have defaulted on the mortgage payments are illegible. Additionally, Plaintiff claims that he is the lawful owner of the property and has the right to bring the holdover proceedings. Further, since Defendants have no ownership rights, Plaintiff argues that granting a stay would have the effect of permitting a non-owner to interfere with his ownership rights and ability to bring the holdover proceedings.

While a stay of the holdover proceedings pending in Landlord-Tenant court is warranted under the circumstances presented herein, the better course of action would be to order a Joint Trial. Courts have consistently held in cases with facts similar to those in the case at bar,

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<sup>2</sup> ¶ 26 Affirmation in Opposition by Jacob Fleitman, Esq.

that rather than enforce a stay of proceedings in another court, “..in the interests of judicial economy, the wiser course would be to consolidate those proceedings, which are interrelated, and avoid the expense of two-track litigation.” *Braun v Fraydun Realty Co.* 158 AD2d 430, 431 (1<sup>st</sup> Dept 2009); *Goodstein v 695 9<sup>th</sup> Avenue Housing Development Fund Corporation*, 60 Misc3d 1227 (A) (S. Ct., NY County, 2018), citing *Stracham v. Bresnick* 11 Misc3d 1085(A), (Supreme Court, Kings County 2006).

The power to order consolidation rests in the sound discretion of the court and should be granted in the interest of judicial economy where common issues of law or fact exist. *Sun v City of New York*, 99 AD3d 673, 674-75 (2d Dept 2012). Specifically, the New York Constitution art. VI, § 19 (c) provides that, “The Supreme Court may transfer to itself any action or proceeding originated or pending in another court within the judicial department ..... upon a finding that such a transfer will promote the administration of justice”. Consolidation or a joint trial is appropriate “where it will avoid unnecessary duplication of trials, save unnecessary costs and expense, and prevent an injustice which would result from divergent decisions based on the same facts.” *Cusumano v Cusumano*, 114 AD3d 633, 633-34 (2d Dept 2014).

In resolution of this breach of contract action or the holdover proceedings there will have to be a determination of the amount of payments made by Defendants and whether it was for rent or towards Plaintiff’s mortgage. Moreover, whether or not the tenants of 89 Harman Street paid rent to the Defendants in this action or to Plaintiff is a critical issue to both the holdover proceedings as well as the case at bar. Since the Supreme Court is capable of providing all the relief requested, including the equitable relief sought by the Plaintiff in

Landlord-Tenant court, it is proper to remove the holdover proceedings to this Court. **Genovese Drug Stores, Inc. v William Floyd Plaza, LLC, 63 AD3d 1102, 1104 (2d Dept 2009).**

Thus, in the exercise of sound discretion, with the existence of common questions of fact in these cases, it is proper, pursuant to CPLR § 602, to order a joint trial of the instant Supreme Court action with the Housing Court holdover actions. Joint trial, as opposed to consolidation, is the best way to proceed with these related matters. Joint trial offers the same advantages as consolidation, but with less confusion for a jury and also without any need to amend captions. **Stracham v. Bresnick, supra at 1085.** The parties' remaining contentions are without merit. Accordingly, it is

ORDERED, that Defendants' order to show cause is granted to the extent that the holdover proceedings in Kings County, Civil Court, Housing Part, Index No. 73721/2019, Emitterio Rendon v Antonio Chino and Angel Oneismo Chino Pantaleon and Index No. 76885/2019, Emitterio Rendon v Franciso Giovanni Vasquez, Diana Vasquez, Ricky Chino, Leticia Hernandez, Juan Diaz, Ramon Centeno and Ricardo Calleja, are, pursuant to CPLR § 602(b), removed forthwith to Supreme Court, Kings County, Civil Term, Part 65, to be tried jointly with the instant action, Index No. 514209/2019; and it is further

ORDERED, that pending the removal from Kings County, Civil Court, Housing Part, Index No. 73721/2019 and Index No. 76885/2019, to this Court, all stays in the Housing Part actions shall remain in full force and effect. This constitutes the Decision and Order of the Court.

ENTER,



LOREN BAILY-SCHIFFMAN  
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