Lyras v Yoo
2020 NY Slip Op 33932(U)
December 2, 2020
City Court of Rye, Westchester County
Docket Number: SC19-124
Judge: Joseph L. Latwin
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[* 1]

CITY COURT : CITY OF RYE
WESTCHESTER COUNTY

ALEXANDRA LYRAS, SC19-124

Plaintiff,

-against- DECISION AND ORDER

ANGELA YOO,

Defendant.

ALEXANDRA LYRAS, SC19-125

Plaintiff,

-against- DECISION AND ORDER

ANGELA YOO & HOULIHAN LAWRENCE,

Defendant.

Appearances:
Plaintiff *Pro Se*
Defendant Yoo by *Samuel K. Rogers*, Rye, NY
Defendant Houlihan Lawrence by *Colleen Collazo*, Esq., Jones, LLP, Scarsdale, NY

When you have a claim in excess of the jurisdictional limit of the Court, can you file two claims that are each less than the jurisdictional limit but total in excess of the jurisdictional limit? If the combined claims total more than the jurisdictional limit for small claims and neither party has a nexus to the city, does the Court lose small claims jurisdiction? If one of the claims is asserted

against the defendant in the first claim and defendant and another in the second claim, can you settle the claim against the other without allowing it to be offset against the co-defendant?

On December 6, 2019 at 10:52 a.m., plaintiff filed a small claims application against defendant Yoo ("Yoo") seeking return of a $4,200 security deposit plaintiff made for the rental of a dwelling. (Case 19-124). At the same date and time, plaintiff filed a second small claims application against Yoo and Houlihan Lawrence ("HL") seeking a rent abatement for breach of the warranty of habitability due to a failure to provide heat and for misrepresentation concerning the ability to provide heat. (Case 19-125). The cases were heard together. At trial, plaintiff told the Court the claim against HL in the second action was settled but declined to state the amount of the settlement.

The Court must determine the effect of filing two separate actions, the combined demand of which exceeds the City Court's small claims jurisdictional limit. It must also determine if the combined claim exceeds the small claims jurisdictional limit and no party has no nexus to the city, can the Court retain small claims jurisdiction, if and how much in damages plaintiff has proved, and what, if any, effect the settlement with defendant Houlihan Lawrence has on the amount plaintiff may recover from defendant Yoo.

At trial the plaintiff and Yoo[1] stipulated that plaintiff paid a security deposit to Yoo upon the commencement of the lease term in April 2018 in the amount of $4,200 and that security deposit was not returned when the plaintiff moved out in June 2019. It was also stipulated that when plaintiff moved out, she had not paid the $4,200 rent for the month of June.

City Courts are Constitutional courts of limited jurisdiction. The New York Constitution grants City Courts subject matter jurisdiction as "prescribed the legislature but not in any respect greater than the jurisdiction of the district court . . ." New York Constitution article VI, § 17(a). The Legislature has proscribed the City Courts jurisdiction in small claims actions. Uniform City Court Act § 1801 defines "small claims" to mean and include any cause of action for money only not in excess of five thousand dollars exclusive of interest and costs. *K. Reilly*, Commentaries to UCCA 1801. Can multiple claims, each below the $5,000 monetary cap, be joined and the Court retain small claims jurisdiction even if the aggregate exceeds $5,000? This requires a distinction between valid, independent claims that otherwise could be individually sued on, and improper

[1] HL did not appear at the trial.

splitting of a single claim that would exceed the $5,000 monetary cap in order to squeeze the case into small claims court limit.

For instance, in *Bay Crest Ass'n v Paar*, 47 Misc 3d 9, 4 NYS3d 812 [App Term 9th & 10th Jud Dists 2015], the complaint purported to state three separate causes of action: one for an annual assessment in the sum of $7,169.25; one for another annual assessment in the sum of $7,169.25; and one for plaintiff's reasonable attorney's fees and expenses. While a judgment of the Court may exceed the court's jurisdictional limit where the judgment is based upon multiple separate and distinct causes of action, each of which would be within the monetary jurisdiction of the court if sued upon separately (*see* UCCA § 211), that was not such a case. Plaintiff's claims for the assessments, both of which had accrued at the time plaintiff commenced the action, were part of a single cause of action, and plaintiff's claim for attorney's fees was part of the same, single, cause of action. Accordingly, the judgment was reduced to come within the Court's plenary civil jurisdiction limit of $15,000. UCCA § 202.

Plaintiff's claim that UCCA § 211 would allow joinder in excess of the small claim limit is belied by: (1) UCCA referring to Article 2 plenary actions, not small claims, & (2) that if the joinder was permitted to proceed under Article 2, the Court would not have jurisdiction over the case under UCCA § 213, as neither party has an apparent nexus to the City of Rye. Once the amount claimed exceeded the $5,000 small claims limit under UCCA § 1801, the Court would only have jurisdiction over money claims above $5,000 and up to $15,000 under UCCA §202. In an action under UCCA § 202, either party must have a nexus to the city for the Court to have personal jurisdiction. Under UCCA § 213, a City Court may exercise jurisdiction when either a plaintiff or a defendant
must:

1. be a resident of the city . . .; or
2. have a regular employment within the city; or
3. have a place for the regular transaction of business within the city.

Here, there is no nexus to Rye. The plaintiff resides in Harrison. Yoo resides in Mamaroneck. HL's place for the regular transaction of business and office is in Larchmont. There is no indication anyone was regularly employed in Rye. Thus, under UCCA § 213 the Rye City Court would have no jurisdiction over this action for an amount in excess of $5,000.

Plaintiff's two claims, for return of the security deposit and breach of warranty of habitability both arise out of a claimed breach of the same lease and same landlord-tenant relationship with Yoo. A claim of breach of warranty of habitability arises out of the lease. Real Property Law § 235-b says "1. **In every written or oral lease or rental agreement** for residential premises the landlord or lessor **shall be deemed to covenant and warrant** that the premises so leased or rented and all areas used in connection therewith in common with other tenants or residents are fit for human habitation . . .. Thus, the warranty of habitability is an implied contractual part of every lease of residential property. It is not a separate obligation from the lease contract.

Here, both claims accrued at or before plaintiff moved out in June of 2019, some six months before the claims were filed.

In a "modern procedural system"— which "permits the presentation in [one] action of all material relevant to the transaction"—"[t]he *transaction* is the basis of the litigative unit or entity which may not be split," irrespective of the variant legal theories available (Restatement [Second] of Judgments § 24, Comment *a* [emphasis added]). Under this approach, the law of claim preclusion reflects the expectation that "parties who are given the capacity to present their 'entire controversies' shall in fact do so". *Paramount Pictures Corporation v. Allianz Risk Transfer AG,* 31 NY3d 64, 73 NYS3d 472 [2018].

Although a party may generally join two or more causes of action in one complaint, he or she may not split a single cause of action and maintain successive actions for different parts of it, such rule being intended to prevent expensive, vexatious, and oppressive litigation. In its broadest sense, the rule forbidding the splitting of a cause of action has been said to require a plaintiff to combine all legal theories arising out of a transaction or series of connected transactions where the several theories are dependent on the same evidence. 1 NY Jur 2d Actions § 45. Only one action can be brought for the total breach of an entire contract. All claims arising out of the same breach of the same agreement and existing at the time the action is brought constitute an entire and indivisible cause of action. 1 NY Jur 2d Actions § 51. If part of the same contract, the claim splitting doctrine requires a plaintiff to join all installments due under a single contract at the time suit is commenced. *Rocco v Badalamente*, 20 Misc 3d 130(A), 867 NYS2d 20 [App Term 9th & 10th Jud Dists 2008].

A single cause of action may not be split and made into two lawsuits. *Century Factors, Inc. v. New Plan Realty Corp*., 41 NY2d 1040, 396 NYS2d 179 [1977]. One may not split a single cause of action in one complaint into two or more causes by alleging separate items of damage. Rather, a party is required to bring all its claims arising out of a transaction in a single complaint. *AmBase Corp. v Davis Polk & Wardwell*, 8 NY3d 428, 436, 834 N.Y.S.2d 705 [2007]. A party may not escape the effects of res judicata by splitting his or her claim into various suits, based on different legal theories, since it is the facts surrounding the transaction or occurrence which operate to constitute the cause of action for res judicata purposes, not the legal theory upon which a litigant relies.

If Plaintiff has a money claim against Defendant and sues for only part of what is presently due, Plaintiff forfeits the rest under the splitting rule. An action like that splits the claim and forfeits the part due but not joined at the time of suit. *Siegel*, NY Prac. § 220 (6th ed.). Where plaintiff in initiating four separate Commercial Claims that in aggregate exceed the monetary jurisdiction of the Small Claims Court, it has split its causes of action for the very purpose of circumventing the Court's monetary jurisdiction, and therefore, the plaintiff ought to forfeit those claims in excess of the Small Claims monetary jurisdiction, and consequently, the Court ought to dismiss the excess claims. *A & J Enter. Sols., Inc. v Bus. Applications Outsourcing Tech., Inc.*, 11 Misc 3d 173, 176, 812 NYS2d 226 [Nassau County Dist Ct 2005]. Since litigating in a City Court may prove to be more beneficial as well as economically frugal than a Supreme Court action, plaintiffs may be tempted to split up what realistically is a single claim into multiple different-sounding claims, each ostensibly under the $15,000 [plenary] monetary cap, which, on closer inspection, are not independent claims. In that event, joinder in the City Court is impermissible and the claim will be dismissed, often without prejudice to commencement in Supreme Court. *K. Reilly*, Commentaries to UCCA 211.

The monetary jurisdictional limit of the court cannot be circumvented in this manner. "A single cause of action may not be divided merely for the convenience of the plaintiff in seeking a forum" (2B Carmody–Wait 2d § 16:3; *see Dusenbury v. Habisreitinger,* 72 Misc 61, 129 NYS 2 [App. Term 1911]). Since plaintiff's cause of action is in fact an indivisible claim in excess of the monetary limit, it exceeds the jurisdictional limit of the court, and the actions should have been dismissed. *Swiss Hamlet Homeowners Assoc., Inc. v Souza*, 13 Misc 3d 87, 88, 827 NYS2d 432 [App Term 9th & 10th Jud Dists 2006].

To permit multiple actions, each below the jurisdictional limit of the Court but excess of it when aggregated would run contrary to the Legislative

design to limit the size of small claims and civil plenary jurisdiction. It would encourage the litigation equivalent of "smurfing" - a form of money laundering formerly popular in the illegal drug trade, where the drug seller breaks up large chunks of cash into multiple small deposits, often spreading them over different accounts, to avoid banking transaction reporting limits. A litigant might be tempted to file multiple less than $5,000 actions in one or several City courts.[2] A proper plaintiff would not be left without a forum. A claim in excess of the $5,000 small claims limit could be brought either in Supreme Court or, if there was a nexus to a City, in a plenary action in a City Court up to $15,000.

Accordingly, the second action (Case 19-125) must be dismissed as it has been forfeited by not joining it with the first action and it would exceed the Court's small claims jurisdiction if they were joined.

With respect to the first action, it was undisputed that while defendant did not return the security deposit, plaintiff had not paid the last month's rent. These amounts offset. The Court will award amount of the security deposit to plaintiff but offset it against the rent due Yoo for the final month's rent.

Even if the Court was to hear the second case, it could not render a proper judgment. Plaintiff made a claim against both defendants and settled the claim against HL. Plaintiff would not disclose the amount of the settlement. This raises the possibility of plaintiff recovering more than her loss. The basic principle of damages is to leave the injured party in as good a position as he or she would have been if the contract had been fully performed, *Brushton-Moira Cent. School Dist. v Fred H. Thomas Associates, P.C.*, 91 NY2d 256, 669 NYS2d 520 [1998]. The injured party should not recover more from the breach than she would have gained had the contract been fully performed. *Freund v Washington Sq. Press, Inc.*, 34 NY2d 379, 382, 357 NYS2d 857 [1974]. A party aggrieved by a contractual breach is entitled to recover only its actual loss and the breaching party need not pay the aggrieved any amounts that were compensated through other sources. Plaintiff's claim against Yoo is for breach of the warranty of habitability caused by the lack of adequate heat. The claim against defendant HL is for fraud - for misrepresenting that the heating system was fully operational. The harm from

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[2] Since City Courts have county wide small claims jurisdiction, in for instance, Westchester, a plaintiff may file two $4,000 claims in each Rye, New Rochelle, White Plains, Mount Vernon, Yonkers and Peekskill City Courts resulting in $48,000 in claims. This would not only exceed the small claims limits but also exceed the Constitutional civil damage limit of the City Courts if filed in any one court. NY State Const. Art. VI, § 17. A and UCCA 202.

each is the same – lack of heat. The damages for each would seem to be concentric. The loss for lack of heat would be the same for a misrepresentation concerning the inadequacy of the heat and the failure to provide heat. The measure of damages for the breach of warranty and the fraud would be exactly the same. A recovery on both claims could be duplicative and lead to overcompensation of any loss.[3] Without knowing how much plaintiff recovered from defendant HL, the Court cannot determine if the settlement with HL would result in a recovery in excess of plaintiff's actual losses. If the plaintiff's damages for the lack of heat was $5,000 and defendant HL settled the claim for $1,000, plaintiff's uncompensated damages would only be $4,000. A claim for $5,000 would yield a windfall. When asked by the Court, plaintiff failed to specify the amount of the settlement. Plaintiff failed to provide proof of the settlement amount which is plaintiff's burden.

Additionally, plaintiff's proof of damages is inadequate. Part of the premises was heated by electric heat that plaintiff was responsible for paying under the lease. Plaintiff offered a Con Edison bill that purported to show electric usage at other properties as a point of measurement of damages – how much more she paid to heat the premises.[4] There was no proof of what other properties were measured by Con Ed or whether they were similar in size, exposure, insulation, used electricity for heating purposes, or any other factor that would allow a reasonable comparison of electric usage. Plaintiff also claimed the loss of use of the property due to inadequate heating and used a percentage of the property as her basis for measuring damages. She failed to offer square footage comparisons of the portion of which she claims she was denied use to the whole of the property rented. There was no proof as to what the uses of the areas she claims she was denied use were. A bedroom does not necessarily have the same value as a living room, a bath does not have the same value as a kitchen, etc. While a partial floor plan was admitted into evidence, but it did not show the whole of the house, nor did it contain calculated square foot measurements. Lastly, while the claim is inadequacy of heat, plaintiff provided no proof of what the outside temperatures were for each day during the period of claimed inadequate heat, nor any recording of what the interior temperatures were during those periods.

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[3] Contrary to plaintiff's assertion, this is not a case of joint tortfeasors implicating either CPLR Article 14 or GOL 15-108. It simply is that a party may not recover more than their damages.

[4] The Court recognized that the plaintiff's Con Ed bill contained hearsay about the "other" properties' electric usage, but, given the rules of the small claims part, accepted the bill in evidence and cautioned the Court would give it appropriate weight. Given the lack of basis for comparing the other properties usage, the Court gives the bill's comparisons little weight.

Plaintiff bears the burden of proof of the defendant's liability and its own damages. Even in the relatively relaxed and informal atmosphere of a small claims action, the plaintiff bears the burden of establishing its case by a preponderance of the evidence. *De Meo v Consolidated Edison Co. of N.Y., Inc*., 32 Misc3d 131(A), 934 NYS2d 33 [App.Term 2nd, 11th & 13th Jud Dists 2011]; *Rodriguez v Mitch's Transmission*, 32 Misc3d 126(A), 932 NYS2d 762 [App.Term 9th & 10th Jud Dist 2011] *& Naclerio v. Adjunct Faculty Assn.,* 1 Misc3d 135[A], NYS2d 625 [App. Term, 9th & 10th Jud Dists 2003]. The plaintiff bears the burden of proving the extent of damages and the court cannot guess as to the extent of damages. *See, Murphy v. Lichtenberg-Robbins Buick*, 102 Misc2d 358, 424 NYS2d 809 [App. Term, 2nd & 11th Jud Dists 1978]. Here, the plaintiff has not sustained that burden with respect to the damages. The Court cannot guess how much was recovered from defendant Houlihan Lawrence, how much plaintiff paid, or how many square feet were in the components of the premises.

In providing the parties with substantial justice according to the rules and principles of substantive law (UCCA 1804, 1807; *see Cosme v Bauer*, 27 Misc3d 130(A), 910 NYS2d 404 [App Term, 9th & 10th Jud Dists 2010]*; Ross v Friedman*, 269 AD2d 584, 707 NYS2d 114 [2nd Dept 2000]; & *Williams v Roper*, 269 AD2d 125 [1st Dept 2000]) and under a fair interpretation of the evidence (*see WRG Acquisition XIII, LLC v. Strasser*, 55 Misc3d 129(A), 55 NYS3d 695 [App Term, 9th & 10th Jud Dists 2020] with this Court having had the opportunity to observe and evaluate the testimony and demeanor of the witnesses and to evaluate the credibility of the witnesses, (*Trimble v Hughes*, 67 Misc3d 143(A) [App Term, 9th & 10th Jud Dists 2020]; *Gupta v Janiesch*, 67 Misc3d 135(A) [App Term, 9th & 10th Jud Dists 2020] (*see also, Vizzari v. State of New York,* 184 AD2d 564 [2nd Dept 1992]; *Kincade v. Kincade,* 178 AD2d 510, 511 [2nd Dept 1991]; & *Rotem v. Hochberg,* 28 Misc3d 127(A), 957 NYS2d 639 [App Term, 9th & 10th Jud Dists, 2010]), the Court finds that plaintiff has proven her claim for return of the security deposit but that amount should be offset by the $4,200 rent due for the month of June 2019 and that the second claim must be dismissed for splitting a cause of action.

Accordingly, it is,

ORDERED and ADJUDGED that the plaintiff Alexandra Lyras have judgment against the defendant Angela Yoo for $4,200, and that defendant Yoo have judgment against plaintiff for $4,200 for rent for the month of June 2019, and that each judgment be offset against the other, and it is further

ORDERED and ADJUDGED that the plaintiff's claim against defendant Yoo in SC19-125 be, and the same hereby is dismissed.

October 29, 2020

____
JOSEPH L. LATWIN
Rye City Court Judge

ENTERED

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Clerk

<u>Appeals</u>

--An appeal shall be taken by serving on the adverse party a notice of appeal and filing three copies of: (1) the Notice of Appeal with the order or judgment being appealed; (2) the Affidavit of Service; and (3) a Request for Appellate Term Action ("RATA") with the Rye City Court Clerk. The Notice of Appeal shall designate the party taking the appeal, the judgment or order or specific part of the judgment or order appealed from and the court to which the appeal is taken. CPLR § 5515.

--Pursuant to UCCA § 1701 "Appeals in civil causes shall be taken to the appellate term of the supreme court, 9th Judicial District.

-- An appeal as of right from a judgment entered in a small claim or a commercial claim must be taken within thirty days of the following, whichever first occurs:

1. service by the court of a copy of the judgment appealed from upon the appellant.

2. service by a party of a copy of the judgment appealed from upon the appellant.

3. service by the appellant of a copy of the judgment appealed from upon a party. Where service as provided in paragraphs one through three of this subdivision is by mail, five days shall be added to the thirty-day period prescribed in this section. UCCA § 1703(b).

-- The party taking an appeal shall promptly arrange with the Clerk to engage a service to have the record transcribed. The cost of transcription shall be borne by the appellant.

-- Pursuant to the Rules of the Appellate Term (Part 732), the Record must be perfected within 90 days of the filing of the Notice of Appeal with the Appellate Term.

Exhibits

Exhibits will be held for 30 days by the Clerk. After that time, they may be destroyed, if not picked up or arrangements for their return are not made.