

**Kelley v Stahl Assoc. LLC**

2021 NY Slip Op 30164(U)

January 22, 2021

Supreme Court, New York County

Docket Number: 151089/2020

Judge: Barbara Jaffe

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. BARBARA JAFFE PART IAS MOTION 12

*Justice*

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ARDEN KELLEY,

Plaintiff,

- v -

STAHL ASSOCIATES LLC D/B/A,

Defendant.

-----X

INDEX NO. 151089/2020  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 46-75 were read on this motion for summary judgment.

By notice of motion, plaintiff moves pursuant to CPLR 3212 for partial summary judgment on the first cause of action in the complaint, whereby she seeks a judgment declaring that a notice to quit issued to her by defendant is null and void, and upon such declaration, dismissing defendant’s counterclaims. Defendant opposes the motion.

I. PROCEDURAL BACKGROUND

A. Complaint (NYSCEF 1)

Plaintiff seeks possession of her late grandfather’s apartment pursuant to 9 NYCRR § 2204.6(d), which provides that a family member who resides with the tenant of a rent-controlled apartment may not be evicted from the residence if she meets the regulation’s requirement for length of residence prior to the tenant’s permanent vacatur. Plaintiff thus seeks a permanent injunction prohibiting defendants from evicting her from the apartment.

When plaintiff moved in with her 96-year old maternal grandfather on or about August 1, 2016, he was the tenant of 405 East 54th Street, apartment 4-M, in Manhattan, and had resided

there for approximately 59 years. Pursuant to 9 NYCRR § 2204.6(d)(3)(ii), he is a senior citizen and plaintiff is his family member. Plaintiff resided in the premises as her primary residence with her grandfather from August 1, 2016, until his death on November 27, 2018, and has resided there ever since.

While defendant asserts that it is the owner and/or landlord of the premises, plaintiff contends that the records of the New York City Department of Finance Automated City Register Information System reflect that the record holder of the deed to the building is a different corporation, 405 East 54th Street Corporation (405), and that New York State Department of State records show that 405 was dissolved in 2011. Plaintiff thus maintains that defendant is not the lawful owner and/or landlord of the premises.

On or about January 9, 2020, defendant delivered to plaintiff a notice to quit, which advises, *inter alia*, that defendant is the owner and landlord of the premises, and that based on the grandfather's death, it intends to commence a summary removal proceeding and evict plaintiff's mother and any other person, including plaintiff, occupying the premises if they do not quit and surrender the premises by January 31, 2020.

As her first cause of action, plaintiff seeks a judgment declaring that she is protected from eviction and that as defendant is not the actual owner of the premises, its notice to quit should be declared null and void.

In her second cause of action, plaintiff seeks a preliminary and permanent injunction preventing defendant from evicting her or taking any action to terminate her tenancy.

## 2. Second amended answer and counterclaims (NYSCEF 21)

As pertinent here, defendant alleges in its answer that the premises are no longer subject to rent control as the rent-controlled tenant, the grandfather, died. It denies that it is not the

lawful owner of the premises, alleging that:

the deed, dated January 12, 2004, fraudulently signed by Abraham Hirschfeld (“Hirschfeld”) as managing partner of Stahl Associates Co., purporting to transfer the subject building from Stahl Associates Co. to 405 East 54th Street Corporation, was in direct contravention of an order of this Court, entered on May 2, 2001 in an action captioned *Hirschfeld v Czaja and Wolpertt, et. al.*, Index No.: 32380/92, which mandated, among other things, “...any further attempt by Abraham Hirschfeld to interfere with or act in the name of Stahl Associates without prior order of this Court, is null and void and without force and effect”, and Hirschfeld never obtained an order permitting it to act in the name of Stahl Associates. Accordingly, the purported transfer to 405 East 54th Street Corporation, a fictitious and dissolved entity, was fraudulent, and 405 East 54th Street Corporation has never had any ownership interest in the Premises, and was never the lawful landlord thereof.

As its first counterclaim, defendant asserts that it is the owner and landlord of the premises, which were leased to plaintiff’s grandfather until his death in November 2018, and that plaintiff intruded onto the premises as a squatter without defendant’s permission, and/or she was her grandfather’s licensee whose license expired on his death. As such, defendant claims that it is entitled to evict plaintiff from the premises.

In its second counterclaim, defendant maintains that plaintiff has failed and refused to pay fair market value for her use and occupancy of the premises, and as a third counterclaim, defendant demands that plaintiff pay its reasonable attorney fees pursuant to the lease and Real Property Law § 234.

Defendant thus seeks a judgment on its counterclaims ejecting plaintiff from the premises and granting it a money judgment for use and occupancy from December 1, 2018, as well as reasonable attorney fees.

## II. OTHER PERTINENT ACTIONS

### A. Partnership action

In 1992, Hirschfeld sued, among others, the Estate of Stanley Stahl, related to their partnership in Stahl Associates, in *Hirschfeld v Czaja and Wolpertt, et. al.*, Index No. 32380/92

(Supreme Court, New York County) (partnership action). By decision and order filed on May 2, 2001, it was ordered, as pertinent here, that:

Any further attempt by Abraham Hirschfeld to interfere with or act in the name of Stahl Associates, without prior order of this Court, is null and void and without force or effect.

(NYSCEF 53).

#### B. Queens Supreme Court case

In an action that currently pends in Queens Supreme Court, *Castellano v 405 East 54<sup>th</sup> St. Corp.*, Index No. 714778/2019, the plaintiff, a tenant of the building at issue here, sued 405, defendant here, and another defendant, alleging that they were negligent in their maintenance of the building, causing the plaintiff's personal injuries (Index 714778/19, NYSCEF 1).

In October 2020, defendant filed a motion for an order granting it summary judgment on its cross-claim against 405, on the ground that 405 has no valid and legal interest in the property, having filed fraudulent and unauthorized business and property records in derogation of the order in the partnership action (NYSCEF 30).

In December 2020, the court granted the motion, as follows:

Defendant Stahl Associates LLC i/s/h/a Stahl Associates Co., moves for an order, pursuant to CPLR 3212, granting summary judgment on its cross-claim for a declaratory judgment against co-defendant 405 East 54th Street Corporation. Specifically, movant seeks a Judgment declaring that: (1) the subject Deed is null and void and without force or effect; (2) Stahl Associates LLC is, and has, at all relevant times, been, the owner of the subject property; and (3) 405 East 54<sup>th</sup> Street Corporation has no interest in the subject property. This motion is granted without opposition.

(NYSCEF 69).

#### III. MOTION FOR SUMMARY JUDGMENT

The issue of whether defendant is the lawful owner and landlord of the premises at issue has been resolved in each of the two prior actions, implicitly in the partnership action, and

explicitly in the Queens action. Those decisions are binding here.

Even without such prior orders, defendant submits proof that although the building's deed had been held in defendant's name since 1977, in 2004 Hirschfeld filed a new deed, transferring the building's ownership from defendant to 405. (NYSCEF 55). Absent any proof by plaintiff, or otherwise, that Hirschfeld was granted permission by a court to act in defendant's name in this manner, he did so in violation of the court's May 2001 order in the partnership action, and the 2004 deed is thus, pursuant to that order, null and void and of no legal effect.

Other than the fraudulent deed filed by Hirschfeld, plaintiff offers no proof that defendant is not the lawful owner and landlord of the building. That counsel for defendant appeared, temporarily and accidentally, in the Queens action, on 405's behalf does not change the result here, and plaintiff cites no authority for her argument that the representation estops defendant from denying 405's ownership of the building. Moreover, while counsel was permitted to withdraw from representing 405 in that action and did do before the summary judgment motion was submitted, 405 failed to appear by new counsel or oppose the motion. Thus, while on default, the decision in the Queens action is nevertheless binding as it resolves the identical issue presented here. (*See e.g.*, NY Jur 2d, Judgments § 421 [2020] [judgment rendered on default conclusive and binding as to issues that were, or could have been, litigated in that proceeding]).

Plaintiff thus fails to establish, *prima facie*, that defendant had no authority to issue the notice to quit, or that, therefore, the notice is null and void and of no lawful effect.

#### IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that plaintiff's motion for partial summary judgment on her first cause of action is denied; it is further

ORDERED, that upon searching the record (CPLR 3212[b]), the first cause of action is severed and dismissed; and it is further

ORDERED, that the parties are directed to either enter into a stipulation encompassing their preliminary discovery conference on or March 10, 2021, or appear for the conference in room 341, 60 Centre Street, New York, New York, on March 10, 2021 at 2:15 pm or virtually if necessary. The NOI is due by March 17, 2021.

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BARBARA JAFFE, J.S.C.

1/22/2021  
DATE

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| CHECK ONE:            | <input type="checkbox"/> | CASE DISPOSED              | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION | <input type="checkbox"/> | OTHER     |
|                       | <input type="checkbox"/> | GRANTED                    | <input checked="" type="checkbox"/> | GRANTED IN PART       | <input type="checkbox"/> |           |
| APPLICATION:          | <input type="checkbox"/> | SETTLE ORDER               |                                     | SUBMIT ORDER          | <input type="checkbox"/> | REFERENCE |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN |                                     | FIDUCIARY APPOINTMENT | <input type="checkbox"/> |           |