

<b>Bouindi v 322 Garden LLC</b>
2022 NY Slip Op 33156(U)
September 20, 2022
Supreme Court, New York County
Docket Number: Index No. 451504/2020
Judge: Margaret Chan
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. MARGARET CHAN PART 49M

*Justice*

-----X  
KHALID BOUNDI, MARIA ESCAMILLA, JO-ANN  
D'ALESSIO INDEX NO. 451504/2020  
MOTION DATE 07/29/2022  
MOTION SEQ. NO. 004  
Plaintiffs,

- v -

322 GARDEN LLC, 324 GARDEN LLC,

**DECISION + ORDER ON  
MOTION**

Defendants.  
-----X

The following e-filed documents, listed by NYSCEF document number (Motion 004) 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 83, 84, 85, 86, 87, 88, 89, 90, 91

were read on this motion to/for

DISMISS

In this action arising out of a dispute regarding the rent stabilized status of plaintiffs' apartments, defendants move for an order dismissing the complaint pursuant to CPLR 3211(a)(4) based on the pendency of three summary proceedings in New York City Civil Court's Housing Part (Civil Court). Plaintiffs oppose the motion.

**BACKGROUND**

Plaintiffs Khalid Bouindi (Bouindi), Maria Escamilla, and Jo-Ann D'Alessio (together, Tenants) commenced this action in July 2020 after being served with notices of termination based on the purported expiration of the leases of each their apartments located at 322 East 116th Street in Manhattan (Building) (NYSCEF # 3 – Termination Notices). Defendants 322 Garden LLC and 324 Garden LLC (together, Owners) respectively own the Building and the adjacent building at 324 East 116th Street.

In this action, Tenants allege that the two buildings constitute a horizontal multiple dwelling which is subject to the Rent Stabilization Law (RSL). Specifically, the complaint seeks declaratory relief: (1) stating that Tenants' apartments are rent-stabilized, (2) that Tenants have been charged rental amounts in excess of the legal rent for their apartments, (3) setting forth the correct legal regulated rents for their apartments, (4) finding that Owners are barred from applying for or collecting any rent in excess of the legal regulated rent in effect on the date that their apartments became subject to the registration requirements of the RSL until such time as proper annual registration statements are filed with DHCR, (5) finding that

Owners are precluded from collecting any rent for the subject premises until such time as it complies with the registration requirements of the Multiple Dwelling Law; Tenants also seek injunctive relief – (6) compelling Owners to register their apartments with the New York State Division of Housing and Community Renewal (“DHCR”) pursuant to the RSL, and (7) to offer Tenants conforming rent-stabilized leases; and finally, Tenants seek (8) monetary judgment equal to the amount they have been overcharged in rent, plus interest and treble damages (NYSCEF # 74).

Shortly after commencing this action, Tenants filed a proposed order to show cause (OSC) seeking a temporary restraining order to, *inter alia*, enjoin and restrain the Owners and its agents from commencing a summary proceeding in Civil Court during the pendency of this action (NYSCEF # 3). By order entered on August 5, 2020, the court declined to sign the OSC, writing that this action “did not bar the [O]wners from asserting its claimed rights in Housing Court where [Tenants] will be afforded an opportunity to address the summary proceedings and seek recourses available to them in the Housing Court” (NYSCEF #77).

On August 19, 2020, the Owners commenced a holdover proceeding against each of the Tenants in the Civil Court (NYSCEF # 72-Frosch Aff., ¶19). Based on the Tenants’ failure to answer, Owners moved for default judgments against Tenants (*id.*, ¶ 20). Thereafter, Bouindi and Escamilla each interposed an answer which included, *inter alia*, affirmative defenses that the apartments were rent stabilized, and that the enforcement of a possessory judgment should be stayed pending that outcome of this action (NYSCEF #s 78-Bouindi Answer, ¶¶ 10-19; NYSCEF # 79- Escamilla Answer ¶¶ 10, 11; ¶¶16-24). D’Alessio has not answered and the Owner’s motion for a default judgment is pending as against her (NYSCEF # 72, ¶ 23).

In the meantime, Owners answered the complaint in this action on September 10, 2020, which included an affirmative defense based on the pendency of the three summary proceedings (NYSCEF # 29, ¶¶ 93-97). A preliminary conference order was entered into on October 25, 2021 (NYSCEF # 33). A compliance conference was held on February 15, 2022, which provided for the inspection of the Building; required depositions to be held by May 13, 2022; and that the note of issue be filed by July 15, 2022 (NYSCEF # 35). A status conference was held on March 14, 2022, which again required depositions to be held by May 13, 2022 (NYSCEF # 36). At a further status conference held on May 20, 2022, the date for completion of party depositions was adjourned to July 22, 2022, and the note of issue was to be filed by September 30, 2022 (NYSCEF # 50).

With respect to third-party discovery, on April 4, 2022, the court so-ordered Tenant’s proposed subpoenas for records relevant to the rent stabilized status of the defendants’ buildings in connection with granting Tenants’ motion for leave to serve a subpoena on the New York City Department of Environmental Protection (DEP),



the New York City Department of Finance (DOF), and the New York City Department of Buildings (DOB). Tenants have also subpoenaed Con Edison (ConEd). Tenants maintain that they have not obtained any records from DEP or ConEd and have only obtained some of the records sought from DOB and DOF (NYSCEF # 84-DelGadillo Opp. Aff., ¶ 20).

On July 27, 2022, Owners filed a proposed OSC seeking to dismiss this action based on the Civil Court's primary jurisdiction and staying all discovery pending a decision on the motion to dismiss (NYSCEF # 53-66). Thereafter, the Owners filed an amended OSC also seeking to dismiss on this action in favor of the Civil Court proceedings but adding a request for an interim stay pending a decision on the dismissing motion (NYSCEF # 68). By order dated July 28, 2022, the court declined to sign the proposed amended OSC finding that the Owners' request, which was related to Civil Court proceedings pending since 2020, was "appropriately made by notice of motion, and does not warrant a stay of discovery" (NYSCEF # 70). In a status conference order dated July 28, 2022, the court directed that all party depositions be held on September 30, 2022 and that "there shall be no adjournments of the ... discovery dates without prior court permission" (NYSCEF # 69).

After the court declined to sign the OSC, Owners made this motion by notice of motion seeking dismissal of this action based on the pendency of the holdover summary proceedings, arguing that the Civil Court has primary jurisdiction over the issues in this action in which the main relief sought relates to Tenants' right to possession of their apartments following the expiration of the subject leases, and note that this court had refused to enjoin the commencing of the summary proceedings.

In their opposition, Tenants argue Civil Court does not have authority to grant the injunctive relief sought in the complaint which is not related to possession, rent or use and occupancy, including their request that the Owners register their apartments with the DHCR, and give them leases in conformity with the RSL. In addition, Tenants note that this action was filed before the holdover proceedings and that the circumstances of the present case warrants to application of the "first-in-time rule" under CPLR 3211(a)(4), particularly because this action has been pending for more than two years. Tenants argue that they would be prejudiced if they required to defend three separate proceedings which also may result in conflicting determinations.

In reply, Owners argue that the injunctive and declaratory relief that Tenants assert cannot be decided by the Civil Court. Owners add that this relief is "ancillary" to Tenants' primary claims relating to their asserted right to possession under the RSL, which claims can be determined by the Civil Court. Owners posit that a decision on the RSL claims will render these ancillary claims academic. Moreover, they argue that the first-filed rule is not followed where special

circumstances exist and warrant a deviation from the rule, including when the application of the rule would reward forum shopping.

### DISCUSSION

CPLR 3211(a)(4) provides:

A party may move for judgment dismissing one or more causes of action asserted against him on the ground that: there is another action pending between the same parties for the same cause of action in a court of any state or the United States; the court need not dismiss upon this ground but may make such order as justice requires . . .

To warrant dismissal under this provision, “the two actions must be sufficiently similar and the relief sought must be the same or substantially the same” (*Montalvo v Air Dock Sys.*, 37 AD3d 567, 567 [2d Dept 2007][internal citations and quotations omitted]; see also *Kent Dev. Co. v Liccione*, 37 NY2d 899, 901 [1975]). There must also at least be a “substantial identity of parties ‘which generally is present when at least one plaintiff and one defendant is common in each action’” (*Proietto v Donohue*, 189 AD2d 807 [2d Dept 1993], citing *Morgulus v J. Yudell Realty*, 161 AD2d 211, 213 [1st Dept 1990]). Moreover, the determination of whether to dismiss based on another action pending is subject to the court's broad discretion (*Whitney v Whitney*, 57 NY2d 731, 732 [1982]).

Here, while there is identity of parties and overlap in certain of the relief sought in this action and in the three holdover proceedings pending in Civil Court, the issue remains as to which forum is better suited to address the parties' dispute. In general, “[t]he Civil Court is the preferred forum for resolving landlord-tenant issues” (*44-46 W. 65th Apt. Corp v Stvan*, 3 AD3d 440, 441 [1st Dept 2004], citing *Post v 120 E. End Ave. Corp*, 62 NY2d 19 [1984]; see also *Brecker v 295 Cent. Park W., Inc.*, 71 AD3d 564, 565 [1st Dept 2010] [“Once a summary proceeding has been commenced in Civil Court where complete relief can be afforded to the tenant, there is no further basis for invoking the equitable jurisdiction of Supreme Court”] [internal citations omitted]). And courts have held that when “the primary relief sought is repossession of the premises, the addition of a prayer for declaratory or equitable relief does not negate the presumption that Civil Court is the preferred forum” (*Marbru Assoc. v White*, 114 AD3d 554, 555 [1st Dept 2014][internal citation omitted]).

At the same time, however, where Civil Court cannot grant “complete relief,” Supreme Court has been held to be the appropriate forum for such disputes (*North Waterside Redevelopment Corp., LP v Febbraro*, 256 AD2d 261, 262 [1st Dept 1998], *lv. dismissed* 93 NY2d 888 [1999]); see also *Lex 33 Assoc., L.P. v Grasso*, 306 AD2d 27, 28 [1st Dept 2003] [court erred in transferring action to Civil Court where

primary relief sought was declaratory relief beyond the Civil Court’s limit jurisdiction]). Here, the Civil Court lacks authority to, *inter alia*, grant Tenants’ request for injunctive relief including requiring DHCR to register the apartments and direct the Owners to provide Tenants with rent stabilized leases.

Other circumstances further militate against dismissal of this action, which was filed in this court before the summary proceedings and has been actively pursued and defended for more than two years, and, in fact, is now in the middle of discovery proceedings. And contrary to Owner’s position, that the court did not preclude Owners from commencing the summary proceedings in August 2020 is not dispositive of the issues on this motion. Finally, addressing the parties’ dispute in this action instead of via three separate holdover proceedings avoids the possibility of conflicting determinations.

In view of the above, it is

ORDERED that defendants 322 Garden LLC and 324 Garden LLC’s motion to dismiss is denied; it is further

ORDERED that the discovery order dated July 28, 2022 (NYSCEF # 69) remains in effect, and the parties shall appear by telephone for a status conference on October 3, 2022, at 10:30 am.

9/20/2022  
DATE

  
MARGARET CHAN, J.S.C.

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