

**Haberman v Singer**

2002 NY Slip Op 30124(U)

July 8, 2002

Supreme Court, New York County

Docket Number: 110443/98

Judge: Louise Gruner Gans

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

PRESENT: HON. LOUISE GRUNER GANS  
Justice

PART 61

Simon U. Haberman

INDEX NO. 110443/98

- v -

David S. Singer  
Shelley R. Singer

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 002

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERSNUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is decided per annexed decision and order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE \_\_\_\_\_

Dated: 7/8/02

[Signature]  
J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION  
HON. LOUISE GRUNER GANS

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 61

-----X

SIMON V. HABERMAN d/b/a  
ORWELL MANAGEMENT,

Plaintiff,

: Index No. 110443/98

-against-

DAVID S. SINGER and SHELLEY R. SINGER,

Defendants.

-----X

251 CPW HOUSING LLC,

Plaintiff,

:

: Index No. 116605/00

-against-

DAVID S. SINGER and SHELLEY R. SINGER,

Defendants.

-----X

GANS, LOUISE GRUNER, J.:

Defendant David S. Singer ("tenant") moves, pursuant to CPLR § 3212, for summary judgment dismissing the complaints in the above-referenced actions. Defendant Shelley R. Singer ("former tenant") cross-moves, pursuant to CPLR § 3212, for summary judgment dismissing the 1998 complaint. Plaintiff Simon V. Haberman d/b/a Orwell Management ("landlord"), cross-moves, pursuant to CPLR § 602, seeking consolidation of the 1998 action with the related action commenced in 2000 and, pursuant to CPLR § 3212, for summary judgment on the complaint 1998.

For purposes of judicial economy, this court will first address that branch of the cross-motion seeking consolidation.

Landlord cross-moves to consolidate the 1998 action, in which he seeks back rent from 1991-1996, with the 2000 action, entitled, 251 CPW Housing LLC vs. David S. Singer and Shelley R. Singer, in which plaintiff corporation, of which he is a managing member, seeks back rent from 1983-1991. Landlord contends the two actions involve the same parties, in that he is the predecessor-in-interest to the named plaintiff in the 2000 action, and involve common questions of law and fact (*CPLR* § 602; *Raboy v McCrory Corp*, 210 AD2d 145, 147 (1st Dept 1994)). However, since plaintiff 251 CPW Housing LLC does not allege it has assumed the obligations of its predecessor in interest, this court finds it more appropriate, in the exercise of discretion, to consider the matters jointly without consolidation (*CPLR* § 602(a)). Accordingly, the branch of the cross-motion seeking consolidation of these two actions is denied, and in the court's discretion the 1998 action will be considered jointly with the 2000 action.

These actions arise from a one-year rent stabilized lease executed by the parties on July 28, 1982 for apartment 12E at 1 West 85<sup>th</sup> Street, New York, New York ("the apartment"), with occupancy to begin September 1, 1982 at a rent of \$2,200 each month. Tenants appealed to the Conciliation and Appeals Board ("CAB"), which issued three opinions. The two issued in 1983 declared the legal rent to be \$853.62 and directed landlord to

tender a two-year renewal lease to tenants (*see* 9 NYCRR § 2523.5). The one issued in 1984 directed landlord to refund rental overpayments dating from September 1982 through June 1983, totaling \$13,463.80 (*see* 9 NYCRR § 2505.4).

Landlord "failed to comply with the [renewal] order until 1996" and failed to accept duly tendered rent from tenants after the expiration of the lease. *Haberman v David S. Singer*, 273 AD2d 177 (1st Dept 2000). Instead, he commenced two summary proceedings in Civil Court, City of New York, seeking to evict tenants for alleged non-payment of rent. On November 2, 1995, Judge Dankberg dismissed the first proceeding for landlord's failure to comply with CAB's orders and to return a security deposit of \$3,401.33 that was "greatly in excess of the amount permitted by the Rent Stabilization Law and Code." On January 16, 1997, Judge Payne dismissed without prejudice that portion of the second proceeding seeking rent arrears from April 1995 through February 1996, since landlord's petition was based on a lease commencing March 1996. The balance of that proceeding was settled. Although landlord has since returned the excess security deposit to tenants, he has failed to comply with the CAB's order to return the 1982-1983 \$13,463.80 rental overpayment or to credit such overpayment to future rent.

Tenants contend that landlord's willful failure for 13

years to offer the mandated renewal lease renders him eligible solely for "prospective rent" tendered pursuant to the 1996 renewal lease (*Sommer v NY Conciliation and Appeals Board*, 116 AD2d 457, 459 (1st Dept 1986)). Landlord's conduct since 1983 demonstrates long term and ongoing efforts to violate the CAB directives and evade the Rent Stabilization Law and Rules. Thus, the lengthy "hiatus between leases was largely brought about by [landlord's] desire to circumvent the regulations and evict the tenants.'" *Briar Hill Apartments, Inc v Conciliation and Appeals Board*, 44 AD2d 816 (1st Dept 1973). In 1984, landlord brought a holdover proceeding against tenants, which was dismissed by order dated August 15, 1984 as unauthorized by existing statutes. In 1995, landlord brought the holdover proceeding Judge Dankberg dismissed on the grounds that landlord was in violation of the Rent Stabilization Law. Since the Rent Stabilization Law was "'designed to provide safeguards against unreasonably high rent increases and, in general, to protect tenants and the public interest' (Adm. Code § YY51-6.0[c])" (*Festa v Leshen*, 145 AD2d 49, 53 (1st Dept 1989), it would be against public policy to reward landlord for his longstanding wrongful conduct toward these tenants. "The ancient equitable adage that 'one may not benefit from his own wrong' still survives and will be applied to achieve the ends of justice." *1202 Realty Association v*

Evans, 126 Misc 2d 99, 101 (Civ Ct, NY County 1984).

. Balancing the equities, the court finds that under these circumstances landlord is not entitled to the equitable remedies of quantum meruit or unjust enrichment. With regard to quantum meruit, although ordinarily tenants should not live rent free, that is not the circumstance in this case. Landlord has had the use of tenants' rent overcharge, \$13,463.80, since 1983. If kept in a savings account and accruing interest, such sum would have a present value of approximately \$51,000. With regard to unjust enrichment, while there may have been some enrichment to tenants, it has not been unjust. Landlord has subjected tenants to endless and, at least in some cases frivolous, litigation and related legal expenses. The legal proceedings and expenses would not have occurred if landlord had simply complied with the law: issued tenants a renewal lease, returned their excess security deposit and refunded their rent overcharge. In that landlord wilfully did not provide tenants with the legally-mandated renewal lease for 13 years or the excess security deposit prior to Judge Dankberg's November 2, 1995 decision and order and has yet to refund their rent overcharge despite a CAB order, any equitable award to landlord would be a mockery of the legal process. Consequently, tenant's motion for summary judgment dismissing the complaints in the jointly considered

actions is granted.

Accordingly, it is

ORDERED that the branch of plaintiff Simon V. Haberman d/b/a Orwell Management's cross-motion for consolidation is denied and in the court's discretion the above-captioned 1998 action is being considered jointly with 251 CPW Housing LLC vs. David S. Singer and Shelley R. Singer, Index No. 116605/00; and it is further

ORDERED that defendant David S. Singer's motion for summary judgment dismissing the complaints in the jointly considered actions is granted, and the complaints are hereby severed from the counterclaims and dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

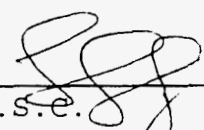
ORDERED that the counterclaims in the above-referenced actions are removed to Civil Court, County of New York, pursuant to CPLR § 325(d), and the Clerk of Court is directed to transfer the papers on file in these actions to the Clerk of the Civil Court, County of New York, upon service of a copy of this order with notice of entry; and it is further

ORDERED that defendant Shelley R. Singer's cross-motion for summary judgment dismissing the 1998 complaint is denied as moot; and it is further

ORDERED that the branch of plaintiff Simon V. Haberman d/b/a Orwell Management's cross-motion for summary judgment is denied as without merit.

This constitutes the decision and order of the court.

DATED: 7/8/02

ENTER:   
J.s.e.

**HON. LOUISE GRUNER GANS**