

**Langotsky v 537 Greenwich LLC**

2007 NY Slip Op 31197(U)

May 9, 2007

Supreme Court, New York County

Docket Number: 0116873/2006

Judge: Herman Cahn

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

PRESENT: Cahn  
Justice

PART 49m

Alon Langotsky et al

INDEX NO. 116873/06

MOTION DATE 3/20/07

MOTION SEQ. NO. 001

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

- v -

537 Greenwich LLC, et al

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 \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No [ **FILED** ]

Upon the foregoing papers, it is ordered that this motion

MAY 15 2007

COUNTY CLERK'S OFFICE  
NEW YORK

MOTION IS DECIDED IN ACCORDANCE  
WITH ACCOMPANYING MEMORANDUM  
DECISION IN MOTION SEQUENCE .....

Dated: 5/9/07

[Signature]  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : IAS PART 49

-----X  
ALON LANGOTSKY, DAPHNA DOR, CHISTA  
INC., and JAY DOR,

Plaintiffs,

-against-

Index No. 116873/06

537 GREENWICH LLC, MINTON BROTHERS  
B. TRUST, and STUART MINTON, JR.,  
individually and As Trustee of the MINTON  
BROS. B. TRUST, and as Managing Partner  
of 537 GREENWICH LLC,

Defendants.

-----X  
**Herman Cahn, J.:**

Plaintiff moves by Order to Show Cause for an order, pursuant to CPLR 602, 325, and 326, removing and consolidating to this court a proceeding entitled 537 Greenwich LLC v Chista, Inc., et al., Index No. L&T 07N060683, pending in the Housing Court of the City of New York, County of New York: Commercial Part 52 (the Civil Court Action).

Plaintiff tenants commenced this action against defendant owners of the commercial building at 537-545 Greenwich Street (the Building) for breach of the parties' lease, breach of an alleged joint venture agreement regarding the parties' joint development of the Building, misrepresentation and unjust enrichment. They seek money damages, a declaratory judgment regarding their alleged renewal of the lease and an order estopping and enjoining defendants from terminating plaintiffs' leasehold. Plaintiffs claim that four months after bringing this action, the defendant landlords commenced a summary holdover proceeding in the Housing Court proceeding, seeking possession of the premises. Plaintiffs seek removal and transfer of

that proceeding to this court.

Plaintiff Chista, Inc. (Chista) is a design company owned by plaintiffs Alon Langotsky and his wife Daphne Dor. It sells high-end art and furniture (Forstadt Aff, March 19, 2007, ¶ 2). Chista has a place of business at the Building, and it occupies almost one third of the Building (*id.*, ¶ 3). The Building is currently owned by defendant 537 Greenwich LLC (*id.*, ¶ 4). Defendant Stuart Minton has served as the owner's representative, the managing partner and/or member of 537 Greenwich LLC and the trustee of the defendant Minton Brothers B. Trust, throughout the tenancy (*id.*).

Plaintiff Alon Langotsky signed a lease for a portion of the Building's third floor on October 9, 1995 with a term expiring on March 31, 2000 (Compl, ¶¶ 4-8). Plaintiff Chista, Inc was incorporated on January 8, 1997, and plaintiffs Alon Langotsky and Daphne Dor are its sole shareholders (*id.*, ¶ 11).

On July 1, 2002, a new lease was signed with plaintiff Chista substituted as the named tenant on the leases to the third and sixth floors. Chista leased a portion of the second floor as well (the 2002 Lease) (*id.*, ¶¶ 10, 12). The 2002 Lease incorporated two documents, both denominated as First Amendment of Lease, one of which amended the 2002 Lease with regard to the second and third floors of the Building (Order to Show Cause, Ex B), and the second of which amended the 2002 Lease with regard to the second and sixth floors of the Building (Order to Show Cause, Ex C). These amendments provided that Chista had the right to exercise lease renewal options in five-year increments until the year 2022, provided it gave written notice to the landlord of its intention to do so by June 30 of the last year of a given five-year term Order to Show Cause, Ex B at 2-5; Ex C at 2-5). Plaintiffs claim that, during the term of the 2002 Lease,

Chista spent substantial sums improving the Building, including the space that it and other tenants occupied, and maintaining the Building (Compl, ¶¶ 16-17).

Plaintiffs allege that in late 2005/early 2006, they and defendants, together with MacArthur Holdings LLC, formed a joint venture to develop the Building by using the air rights belonging to the Building, and attempting to acquire the air rights of neighboring properties (Compl, ¶ 21). They assert that they retained architects and engineers to conduct the surveys required to expand the Building (Compl, ¶ 25; Forstadt Aff, ¶ 22). They claim that defendants were aware of Chista's desire to remain in the building for the long term based on the joint venture plan, and plaintiffs' conduct in executing that plan (Compl, ¶ 23). On March 27, 2006, a written plan for the redevelopment of the Building was circulated among the members of the joint venture, including defendants. Plaintiffs allege that, through this written plan, which provided that Chista would continue to operate the premises for the long term or, alternatively, the joint venture would buy out Chista's long-term lease if the Building could be better used, defendants were put on notice of Chista's intention to exercise its option to renew (*id.*, ¶ 22).

Plaintiffs allege that in September 2006, defendants breached the Lease, and the joint venture agreement, by claiming to terminate Chista's tenancy as of December 31, 2006 (*id.*, ¶ 30). On September 27, 2006, plaintiff Chista sent a letter to defendants informing them that it intended to exercise its 2002 Lease renewal option through June 30, 2012 (*id.*, ¶ 38). On October 2, 2006, defendants informed plaintiffs that Chista's 2002 Lease for the second, third and sixth floors of the Building would terminate as of December 31, 2006 (*id.*, ¶ 39).

On or about November 2, 2006, plaintiffs commenced this action asserting thirteen causes of action. These include claims that defendants breached their fiduciary duty as joint venturers

and breached the joint venture agreement, in unilaterally withdrawing from the venture and pursuing a sale of the Building; breached the 2002 Lease by continuing to maintain that Chista failed to exercise its renewal option and by failing to renew the 2002 Lease; acted in bad faith in obtaining the benefits of plaintiffs' improvements to the Building, assuring plaintiffs of a long-term tenancy and then taking advantage of plaintiffs' alleged late notice of renewal; misled and deceived plaintiffs into thinking that Chista's tenancy was secured and had been extended; and were unjustly enriched by plaintiffs' improvements to the Building. Some of the claims, such as those for breach of the joint venture agreement and of the 2002 Lease, unjust enrichment and misrepresentation, seek money damages. Other claims seek declarations that the 2002 Lease has been renewed, and seek judgments estopping defendants from selling the Building and from denying Chista the option to extend the 2002 Lease and compelling defendants to extend the lease.

Plaintiffs now seek removal of the Civil Court proceeding to this court, pursuant to CPLR 325, and consolidation of that summary proceeding with the instant action, pursuant to CPLR 602. They contend that this action and the Civil Court proceeding have common questions of law and fact, that is, whether the lease has been terminated or whether plaintiffs properly exercised the option to renew or whether any defaults in exercising that option were waived by the defendant landlords. They contend that it is appropriate to consolidate the matters, and have them heard in this court where the complaint was first brought.

In opposition, defendants contend that removal of the Civil Court proceeding is not appropriate. They argue that Housing Court is the preferred forum to hear landlord-tenant disputes such as this and that plaintiffs can assert their claims for declarations that they validly

exercised the lease renewal option as equitable defenses in the summary holdover proceeding. Defendants also urge that the claims for damages can be asserted as counterclaims in the Housing Court proceeding. They further argue that there are no common questions of law and fact, because the facts regarding the parties' alleged joint venture agreement are separate from defendants' right as landlord to immediate possession of the premises based on the expired lease.

### DISCUSSION

The motion to remove and consolidate is denied. The temporary stay entered pending the hearing and determination of this application is vacated.

There is a “strong rule against staying a summary proceeding, or removing it, such as for purposes of consolidation . . . with some proceeding in the supreme court” (Scheff v 230 East 73<sup>rd</sup> Owners Corp., 203 AD2d 151, 152 [1<sup>st</sup> Dept 1994], quoting Siegel, NY Prac § 577, at 909 [2d ed]; see Cohen v Goldfein, 100 AD2d 795, 797 [1<sup>st</sup> Dept 1984]; Lun Far Co. v Aylesbury Assocs., 40 AD2d 794, 794 [1<sup>st</sup> Dept 1972]). The Housing Court is the appropriate and preferred forum for speedy adjudication of landlord-tenant disputes involving who has the right to possession of the premises (see 44-46 West 65<sup>th</sup> Apt. Corp. v Stvan, 3 AD3d 440, 441 [1<sup>st</sup> Dept 2004] [no removal or consolidation, because Civil Court is the preferred forum for landlord-tenant disputes]; Waterside Plaza LLC v Yasinskaya, 306 AD2d 138, 139 [1<sup>st</sup> Dept 2003] [while plaintiff nominally sought declaration, primary relief sought was repossession, so action transferred to Civil Court]; Lun Far Co., 40 AD2d at 794). In order for plaintiffs to obtain removal and consolidation of the summary proceeding, they must clearly demonstrate that the Civil Court does not have the authority to grant the relief sought (44-46 West 65<sup>th</sup> Apt. Corp., 3

AD3d at 441-42 [where Civil Court is capable of deciding summary holdover proceeding, there is no showing that consolidation is necessary]; Scheff, 203 AD2d at 152 [consolidation of tort action in Supreme Court with summary proceeding pending in Civil Court denied; Civil Court had authority to grant relief so no necessity to consolidate]).

Subkoff v Broadway-13th Assocs. (139 Misc 2d 176 [Sup Ct, NY County 1988] [Stecher, J.]), is on point. In that action, as in the instant case, the defendant landlord rejected the plaintiff tenant's attempt to exercise a lease renewal option. The plaintiff tenant commenced a declaratory action in Supreme Court, seeking a declaration that he properly exercised his option to renew or, alternatively, based on the court's power in equity to relieve against forfeitures of valuable leaseholds, a declaration that his belated exercise of the option did not bar him from further occupancy and possession (id. at 177). Shortly thereafter, the defendant landlord commenced a summary holdover proceeding in Civil Court. The Court determined that the Civil Court could grant the parties full relief even though it may not issue a declaratory judgment (id.). It based this finding on the Civil Court's authority to hear the tenant's claims as equitable defenses (id., citing Civil Court Act § 905). It found that the Civil Court had the power to relieve the tenant of its failure to timely exercise the option (id. at 178). It reasoned that all of the issues to be heard in the declaratory judgment would be resolved in the summary proceedings and, if the tenant still wanted a declaration it would be available, by motion, after resolution of the summary proceeding, as a matter of issue preclusion (id.). This would further the policy of the courts to preserve the landlord and tenant jurisdiction of the Civil Court. Therefore, the court denied consolidation and removal, staying the action before it (id.).

Applying these principles to the instant case, plaintiffs have failed to show a basis to

consolidate and transfer the summary holdover proceeding commenced in the Housing Court to this Court. To grant consolidation under these circumstances would deprive the party pursuing the summary holdover proceeding, defendants here, the appropriate forum for such proceedings (44-46 West 65<sup>th</sup> Apt. Corp., 3 AD3d at 442). The primary dispute is whether plaintiffs have the right to stay in possession and have renewed the 2002 Lease. The Civil Court has the authority to decide that issue. To the extent that plaintiffs seek declarations with regard to their exercise of the renewal option, they may assert these claims as equitable defenses in the Civil Court. Plaintiffs' claims for money damages may also be pursued as counterclaims in the Civil Court Action, which counterclaims are not subject to the same jurisdictional limit of \$25,000 as defendants' claims would be (see McKinney's NY City Civ Ct Act § 208 [b]; cf. McKinney's NY City Civ Ct Act § 201 [court has jurisdictional limit of \$25,000]). If there are additional claims, which are not resolved in the Civil Court Action as defenses or counterclaims, plaintiffs then may proceed in this action for such further relief (see Subkoff, 139 Misc2d at 176; Glen Briar Co. v Silberman, 129 Misc 2d 439, 442 [Sup Ct, NY County 1985] [Housing Part of Civil Court is designed for resolution of landlord-tenant disputes, and issues not resolved by Housing Court in the summary proceeding then can be pursued in the Supreme Court action]). Contrary to plaintiffs' contention, the fact that this action may have preceded the summary proceeding is not a basis for removal and consolidation (see Schiff, 203 AD2d at 152).

Accordingly, it is

ORDERED that the motion to remove and consolidate is denied, and the temporary stay issued pending decision of this motion is vacated; and it is further

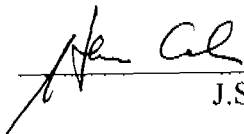
ORDERED that all further proceedings in this action are stayed, pending resolution of the

summary proceeding in the New York City Civil Court: Commercial Part 52, entitled 537

Greenwich LLC v Chista, Inc., Index No. L&T 07N060683.

Dated: May 9, 2007

ENTER:

  
\_\_\_\_\_  
J.S.C.

**FILED**

MAY 15 2007

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