

<b>Pagan v Four Thirty Realty LLC</b>
2007 NY Slip Op 32461(U)
July 31, 2007
Supreme Court, New York County
Docket Number: 0112222/2006
Judge: Emily Jane Goodman
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: GOODMAN  
Justice

PART 17

WILLIAM PAGAN  
- v -

FOUR THIRTY REALTY LLC

INDEX NO. 112222/06  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 2  
MOTION CAL. NO. \_\_\_\_\_

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

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion is denied and  
affirmed

**FILED**  
AUG 07 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 7/31/07

[Signature]  
**EMILY JANE GOODMAN**

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: I.A.S. PART 17

-----X  
WILLIAM PAGAN, TANIA M. PAGAN and  
CERVANTES PAGAN, an infant, by his parents  
and natural guardians WILLIAM PAGAN and  
TANIA M. PAGAN

Plaintiff(s),

Index No. 112222/06

-against-

FOUR THIRTY REALTY LLC aks 430 REALTY  
INC., aks 430 REALTY CO., EDWARD STEINMAN,  
JOSEPH ALPERT, CHARLES ALPERT and J.C. DWIGHT  
INC.,

Defendants.

-----X  
EMILY JANE GOODMAN, J.S.C.:

**FILED**  
AUG 07 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Upon the foregoing papers, it is ordered that Plaintiffs' Order to Show Cause to remove and consolidate this action seeking damages for unlawful and retaliatory eviction, housing discrimination and personal injuries with a holdover proceeding commenced in Civil Court, New York County, is granted.

Plaintiffs argue that the motion should be granted pursuant to CPLR 602 (b) because (1) the cases involve common questions of law and fact, (2) this action was commenced first, (3) the Housing Court cannot hear Plaintiffs' claim for damages as a result of discrimination, and (4) the potential for inconsistent rulings given that Plaintiffs' affirmative defenses to the holdover include defenses of retaliation and discrimination.

Defendants claim that the holdover proceeding was brought based on the natural expiration of Plaintiffs' lease and deny any wrongdoing. Defendants devote most of their

opposition to their position that the Court already determined in its Decision and Order, dated March 12, 2007 (the Prior Decision) that there were no common issues of fact or law in the two cases. Defendants also oppose the motion on the basis that Housing Court is the preferred forum for landlord-tenant matters.

Contrary to Defendants' contention, the Court never determined that the cases had no common issues of fact or law. In the Prior Decision, now being appealed by Plaintiffs, the Court denied Plaintiffs' motion for a default judgment and allowed Defendants to serve a late Answer; denied Defendants' request for leave to serve a pre-answer motion to dismiss; and denied Defendants' request to stay this action because of the pendency of the holdover proceeding. Defendants' request for leave to file a pre-answer motion was unusual considering Defendants' posture in the litigation. The Court found that Defendants' request for a stay of this action, "is in any event inappropriate as the affirmative defenses relate only to the issue of dismissal of the holdover or payment of use and occupancy and the Supreme Court is the appropriate Court for Plaintiff's action for damages." Not only was the Court not presented with the issue of whether the holdover proceeding should be removed and consolidated with this action, but the Court merely explained that a stay was inappropriate because even if Plaintiffs prevailed in Housing Court on its discrimination defense, that would result only in dismissal of the holdover petition, as opposed to any finding on damages. This action and the holdover proceeding do in fact involve common issues of fact and law, and there is a risk of

inconsistent rulings in the absence of consolidation. Although the Housing Court is the preferred forum to litigate landlord-tenant matters, the allegations here go beyond typical landlord-tenant matters. Accordingly, pursuant to CPLR 602 (b), removal and consolidation is appropriate.<sup>1</sup>

It is hereby

ORDERED that Plaintiffs' motion is granted; and it is further

ORDERED that the Clerk of the Civil Court, New York County is directed to transfer the papers on file in the holdover proceeding entitled 430 Realty Co. v Pagan, Index 90037-06 to the Clerk of this Court upon service of a copy of this Decision and Order with notice of entry; and it is further

ORDERED that upon removal, the Clerk of this Court is directed to consolidate the holdover proceeding with this action, upon service of a copy of this Decision and Order with notice of entry; and it is further

ORDERED that the pleadings in the actions shall stand as the pleadings in the consolidated action; and it is further

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<sup>1</sup>Defendants have not demonstrated that they would lose a substantial right if this Court granted removal and consolidation. Defendants point to the fact that 430 Realty Co. already made a motion for summary judgment in the Housing Court, seeking dismissal of Plaintiffs' affirmative defenses, including the Eighth and Ninth Affirmative Defenses for violation of federal and state discrimination laws. Defendants claim that they would be deprived of a speedy resolution to the holdover proceeding, based on the assumption that the motion would be granted. Defendants attach a copy of the summary judgment motion, but not Plaintiffs' opposition. Defendants have not demonstrated that the corporate landlord would in fact prevail on the motion, based on the conclusory statements that no discrimination occurred.

ORDERED that Plaintiffs submit a proposed order amending the caption to reflect the consolidation, which order shall provide for service on the Clerk of the Court and the Clerk of the Trial Support Office (Room 158).

**This constitutes the Decision and Order of the Court.**

Dated: July 31, 2007

ENTER:

  
\_\_\_\_\_  
J.S.C.  
**EMILY JANE GOODMAN**

**FILED**  
AUG 07 2007  
NEW YORK  
COUNTY CLERK'S OFFICE