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

PRESENT: HON Joan A. Madden PART 11

Index Number : 102726/2006

BROWN, CHARLES D.

vs

SACCHETTI, VITO

Sequence Number : 001

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

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 decided in accordance with the annexed Memorandum Decision and Order.

FILED
OCT 26 2007
NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: October 18, 2007

J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

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CHARLES D. BROWN, in his capacity as Personal Representative of the ESTATE OF JOHN ROGERS, decedent, and WORLD CITY FOUNDATION, INC.,

INDEX NO. 102726/06

Plaintiffs,

-against-

VITO SACCHETTI and PASQUALINI SACCHETTI,

Defendants

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JOAN A. MADDEN, J.:

In this action seeking a declaration of rights under a lease agreement, plaintiffs move for summary judgment on their first and second causes of action. Defendants oppose the motion and cross move for summary judgment dismissing certain aspects of the complaint and for declaratory relief. For the reasons set forth below, the motion is denied, and the cross motion is granted only to the extent of dismissing certain parts of the first and second causes of action.

BACKGROUND

This action is the latest in a series of lawsuits brought in this court and in the Housing part of the Civil Court of the City of New York arising out of the landlord tenant relationship between the parties.

Defendant Vito Sacchetti and his wife Pasqualina Sacchetti (together "the Sacchetti") own the building located at 330 East 43rd Street, New York, NY ("the building"). Plaintiff World City Foundation ("World City") is a not-for-profit organization. Decedent John Rogers ("Rogers") was the Chief Executive Officer of World City. Rogers, who was an attorney

practicing maritime law, founded World City and related entities for the purpose of promoting the creation of a American cruise ship industry.

In May 1987, a Master Lease was executed by Sacchetti's predecessor-in-interest and Rogers for apartments 102, 204, and 205 for a one-year term. Paragraph 12 of the "Supplemental Rider #2," to the Master Lease, provided for future renewals upon the expiration of the Master Lease term, "at a renewal rate to be agreed upon but in no case shall the rent increase more than 5% per annum" (hereinafter "the renewal option"). Paragraph 2 of the Supplemental Rider #2 provided for options for additional apartments in the building as they became available ("the options clause").

The options clause provides that:

> Landlord hereby agrees that Tenant shall have the first refusal to rent the following apartment units, on the same terms and rent per square foot as set forth in this lease, at any time they become available for rental during the term of this lease or any renewal thereof: (a) the other ground floor apartment on the front (north) of the building; (b) the second floor apartment above 102, (c) and apartments 201 and 206. Tenant shall have the right to exercise such option notwithstanding that tenant did not exercise it in respect of a prior occasion when the apartment previously became available.

On February 28, 1989, Rogers and Sacchetti's predecessor-in-interest entered into "Supplemental Rider 3" to the Master Lease which provides that as of March 1, 1989, apartment 105 is to be included in the Master Lease. On that date, the same parties entered into a letter agreement providing that the apartments under the Master Lease could be used for residential and

non-residential purposes,[1] and amending the term tenant so that it "be deemed to be in the plural and to apply jointly and severally to World City Foundation and to John S. Rogers...[and] [i]f this lease should for any reason whatever be deemed invalid as to one tenant, or if either World City Foundation or John S. Rogers should elect to discontinue the lease as to one such tenant, the lease shall remain in full force and effect with respect to the other tenant therein named."

In or about July 1993, the building was purchased by Sacchetti. The documentary evidence submitted to the court indicates that at the time of July 1993 purchase, World City and Rogers (together "the World City plaintiffs") possessed Apartments 102, 204, 205, and 105 under the express terms of the Master Lease, as well as Apartments 206 and 201 for which there were separate lease agreements dated March 1, 1991 and September 1, 1991, respectively. The record further indicates that World City plaintiffs came to occupy Apartment 203 sometime in 1993, although there was no specific lease agreement for this apartment. By lease agreements dated November 1, 1997, and May 1, 1998, the World City plaintiffs leased apartments 101 and 202. At this point, the World City plaintiffs had leased nine apartments in the building. With the exception of Apartment 201, which was used as Roger's personal residence, it appears that the apartments primarily served as offices for World City. Although mostly used for non-residential purposes, the majority of the apartments have been found to be subject to the rent stabilization laws.[2]

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[1]Originally, the parties contemplated that the apartments leased pursuant to the terms of the Master Lease would be used for non-residential purposes only.

[2]In connection with consolidated non-payment proceedings brought by Sacchetti against the World City plaintiffs, Judge Cyril K. Bedford held in a decision and order dated July 21, 2004, that the non-residential use of the apartments did not remove them from rent stabilization protection. In connection with these proceedings, Rogers argued that the absence of extant lease

Following Sacchetti's purchase of the building, various disputes arose between the parties, and Sacchetti began a series of summary proceedings in Housing Court to evict the World City plaintiffs from the various apartments. The initial summary proceedings brought by Sacchetti in 2001 and 2002 were unsuccessful. However, in 2003, Sacchetti commenced seven non-payment proceedings concerning apartments 105, 201, 202, 203, 204, 205, and 206, which in July 2004, resulted in a judgment in Sacchetti's favor in the total sum of $234,221.57. Although Rogers paid the judgment, by January of 2005, the World City plaintiffs had surrendered every apartment except for apartments 201 and 203,[3] which are the focus of the instant action and two holdover proceedings now pending in Housing Court.

Sacchetti also brought two actions in the Supreme Court seeking to void the renewal clause the Master Lease (together "the Supreme Court actions") . Both were unsuccessful. The first action sought a declaration that the renewal option in the Master Lease was unenforceable (Sacchetti v. World City America, Inc., et al; Index No. 106883/03). By decision and order dated December 18, 2003, Justice Harold Beeler dismissed the complaint on statute of limitations grounds since the action was commenced more than six years after the lease was renewed for the first time, and also rejected Sacchetti's arguments that the renewal option was too indefinite to

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agreements for certain of the apartments barred Sacchetti from bringing non-payment proceedings "pursuant to the agreement[s] under which the premises are held." RPAPL 711[2]. Roger's argument was rejected by the Housing Court and the Appellate Term on the grounds that the most recent renewal leases covering rent stabilized apartments were automatically renewed under the same terms and conditions and in accordance with the Rent Stabilization Code. See Sacchetti v. Rogers, 12 Misc3d 131(A), 820 NYS2d 845 (App Term 1st Dept 2006).

[3]While Sacchetti claims that the World City plaintiffs surrendered the apartments voluntarily, the World City plaintiffs maintain that they were forced to do so as a result of Sacchetti's campaign of harassment and his wrongful demands for rent increases.

enforce or violated the rule against perpetuities.

The second action, which was commenced on June 21, 2004, contained a cause of action to quiet title under section 15 of Real Property Actions and Proceeding Law, and to void the Master Lease as against public policy since it "runs in perpetuity" and does not require the World City plaintiffs to occupy the premises as their primary residence, or for residential purposes as required the Rent Stabilization Code. (Sacchetti v. Rogers; Index No. 109194/04). By decision and order dated June 14, 2005, this court dismissed the action as barred by res judicata, since the action arose out of the same transaction as the action before Justice Beeler, and also found that the claims asserted failed to state a cause of action.

In the meantime, in 2003, plaintiffs commenced an action under Index No. 114829/03, to recover damages in connection with Sacchetti's alleged campaign of harassment aimed at depriving plaintiffs of their rights under the Master Lease, including his prosecution of the summary proceedings. In October 2002, Rogers was diagnosed with multiple myeloma, and plaintiffs allege that Sacchetti's outrageous conduct caused severe psychological stress and the onset or exacerbation this disease which resulted in Roger's death in October 2005.[4] The remaining claims are for breach of contract based on the Master Lease,[5] and for the intentional

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[4]The court has directed that a hearing be held to determine whether in accordance with the standard established by Frye v. United States, 293 F 1013 (1923), plaintiffs can demonstrate through generally accepted scientific evidence that Rogers' contracted multiple myeloma or that the disease was exacerbated as the result of psychological stress caused by the conduct alleged in the action. The decision following that hearing is *sub judice*.

[5]The court dismissed that part of the breach of contract claim that sought lost profits and other special damages and insofar as it sought relief with respect to Apartment 202 which was found by a Housing Court judge to be not subject to the Master Lease.

infliction of emotional distress.

In February 2006, plaintiffs commenced this action, which seeks a declaration of certain rights under the Master Lease and specific performance with respect to certain apartments leased by plaintiffs from Sacchetti. The first cause of action seeks a declaration that World City is entitled to an entry of judgment declaring its right to annual renewals of the leases for apartments 201 and 203 on the terms set forth in the Master Lease based on the decision of Justice Becker finding that the Master Lease to be valid and enforceable, and declaring that World City has a right to rent apartments covered under the option clause of the lease at any time those apartments become available pursuant to the terms of the Master Lease, including apartments 102, 101, 105, 202, 204, 205 and 206. The second cause of action seeks specific performance of the right of World City to annual renewals for apartments 201 and 203 at a rate not to exceed 5% and specific performance of its option to rent apartments 102, 204, and 206.

In March 2006, Sacchetti commenced two holdover proceedings seeking to recover possession of apartments 201 and 203 based on a theory that when Rogers, who was the prime tenant, died in October 2005, and the tenancy was rent-regulated, the right of the Estate of Rogers or anyone else to remain in possession ended by operation of law. Plaintiffs who, along with others, are respondents in the holdover proceedings,[6] moved to dismiss the petitions on various grounds, including that tenancy rights to the apartments were governed by the Master Lease, under which both World City and Rogers were named tenants, and under which World City's tenancy remained valid after Rogers' death.

[6]Respondents in the holdover proceedings are represented by the same lawyer as plaintiffs in this action.

In opposition, Sacchetti contended that the Master Lease did not govern the parties' relationship. In support of his position, Sacchetti submitted the separate lease agreement for apartment 201 dated September 1, 1991, and evidence that the rent increases for apartments 201 and 203 were consistent with the amounts permitted under the rent stabilization laws and not the Master Lease. The motions were submitted but have been held in abeyance pending a decision on the instant motion.

Plaintiffs now move for summary judgment on the complaint, asserting that, as a matter of law, that the apartments at issue are governed by the Master Lease based on the evidence in the record, and the doctrines of res judicata, collateral estoppel, judicial estoppel and equitable estoppel. In support of their motion, plaintiffs rely on the affidavit of World City's Vice President Stephanie Gallagher ("Gallagher"), various documentary evidence, including the Master Lease, other lease agreements for certain of the apartments, lease renewal forms for various apartments, court decisions, submissions, and pleadings from the Housing Court proceedings, and two Supreme actions relating to this matter.

In her affidavit, Gallagher describes her dealings with the various building owners and managing agents for the buildings, including the negotiations relating the various lease agreements, the history of the various cases related to the instant dispute, and urges that the record demonstrates that apartments 201 and 203 are governed by the Master Lease and that consistent with the options clause of the Master Lease, World City is entitled that right to first refusal for certain apartments in the building.

In opposition to the motion Sacchetti submits his affidavit in which he denies the statements made by Gallagher in her affidavit, including that apartments 201 and 203 were leased

pursuant to the option clause in the Master Lease. He also asserts that the record demonstrates that apartments 201 and 203 are not governed by the Master Lease, and that the World City plaintiffs surrendered their rights under the Master Lease, when they vacated apartments 102, 204, 205 and 105 which were leased under its terms.

With respect to the requests for relief as to World City's purported rights to certain apartments under the options clause, Sacchetti asserts that the apartments at issue were leased by the World City plaintiffs, albeit not under the Master Lease, and voluntarily surrendered by them so that any rights that may have existed are no longer valid. Sacchetti also contends that options clause, which refers to apartments other than those that the World City plaintiffs rented or occupied at the time the Master Lease was executed, does not apply to apartments 102, 204, and 205, which were occupied at the time under the Master Lease.

In reply, plaintiffs concede that apartments 102, 204, and 205 are not subject to the options clause in the Master Lease. Plaintiffs argue, however, that contrary to Sacchetti's position, they did not voluntarily surrender their rights to the various apartment but were forced to so by Sacchetti's conduct and unreasonable rent demands.

DISCUSSION

On a motion for summary judgment, the proponent "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case..." Winegrad v. New York Univ. Med. Center, 64 N.Y.2d 851, 852 (1985). Once the proponent has made this showing, the burden of proof shifts to the party opposing the motion to produce evidentiary proof in admissible form to establish that material issues of fact exist which require a trial. Alvarez v. Prospect Hospital, 68 N.Y.2d 320,

324 (1986).

It is well settled that the interpretation of a lease provision is governed by the same rules of construction applicable to other agreements. Missionary Sisters of the Sacred Heart v. New York State Division of Housing & Community Renewal, 283 AD2d 284, 288 (1st Dept 2001); New York Overnight Partners, L.P. v. Gordon, 217 AD2d 20 (1st Dept 1995), aff'd 88 NY2d 716 (1996). When interpreting a contract, the document must be read as a whole to determine the parties' purpose and intent, giving a practical interpretation to the language employed so that the parties' reasonable expectations are realized (citation omitted)." See, Snug Harbor Square Venture v Never Home Laundry, Inc., 252 AD2d 520, 521 (2d Dept 1998); see, also, Zodiac Enterprises, Inc. v American Broadcasting Companies, Inc., 81 AD2d 337, 339 (1st Dept 1981), aff'd, 56 NY2d 738 (1982).

At the same time, however, "the court may not, under the guise of interpretation, fashion a new contract for the parties by adding or excising terms and conditions which clearly contradict the clearly expressed language of a contract." Republic National Bank of New York v. Olshin Woolen Co, Inc., 304 AD2d 401, 402 (1st Dept 2003). Thus, when the terms of a contract are "clear, unequivocal and unambiguous, the contract is to be interpreted by its own language." R/S Associates v. New York Job Development Authority, 98 NY2d 29, 32 (2002). And, in the absence of ambiguity, "'evidence outside the four corners of the document... is generally inadmissible to add to or vary the writing.'" Id., at 33, quoting, W.W.W. Assoc. Inc. v. Giancontieri, 77 NY2d 157 (1990).

In support of their position that apartments 201 and 203 are governed by the Master Lease, plaintiffs rely on Gallagher's affidavit, and various documentary evidence including the

Master Lease. With respect to apartment 201, Gallagher states in her affidavit that the managing agent offered the World City plaintiffs the apartment pursuant to the option under the Master Lease and that the managing agent offered "a proforma rent stabilized lease form and I accepted it." She also states that in view of the improvements that the World City plaintiffs had made to the second floor and consistent with the Master Lease, it was agreed that there would be no rent increase for the second year. As for apartment 203, she states that the only lease covering the apartment is the Master Lease and that as it was rented from Sacchetti while the parties were still a good terms, it was agreed that it would be covered by the Master Lease and no written agreement was made.

Gallagher's statements, however, are insufficient to make a prima facie showing entitling plaintiffs to summary judgment as the unambiguous terms of the Master Lease and the lease for apartment 201, do not indicate that apartments 201 and 203 were leased pursuant to the options clause of the Master Lease. First, the Master Lease was not amended (as it was when the World City plaintiffs leased apartment 105) to reflect that the World City plaintiffs leased these apartments pursuant to its terms. Furthermore, the "proforma lease" referred to by Gallagher for apartment 201, does not incorporate the Master Lease by reference or otherwise mention the Master Lease. Instead, the lease, dated September 1, 1991, is a separate and distinct agreement governed by the rent stabilization laws, which provides that "you and owner admit and agree that all agreements between you and the owner have been written into this lease . You understand that any agreements made before and after this lease was signed and not written into it are unenforceable."

While there is no lease agreement for apartment 203, there is no documentary evidence

submitted which is sufficient to establish, as a matter of law, that the World City plaintiffs leased this apartment under the Master Lease. Even assuming arguendo that Gallagher's affidavit is sufficient to make a prima facie showing entitling plaintiffs to summary judgment as to their rights with respect to apartment 203, Sacchetti has controverted this showing by submitting, inter alia, evidence that rents charged for the apartments at issue were consistent with the rent stabilization laws and not the 5% annual increases permitted under the Master Lease.

Plaintiffs also have not made a prima facie showing regarding their entitlement to a right of first refusal for apartments 102, 101, 105, 202, 204, 205 and 206 under the options clause of the Master Lease. As a preliminary matter, plaintiffs concede that the option clause does not apply to apartments 102, 204, and 205 since these apartments were leased pursuant to the express terms of the Master Lease, and the options clause pertains to apartments that were not yet subject to the Master Lease.

Moreover, the right of first refusal under the options clause is available only "during the term of the [Master] lease or any renewal thereof" and, from this record, it cannot be established, as a matter of law, that plaintiffs held the lease to any apartment under the Master Lease when such apartment[s] became available. As indicated above, although plaintiffs remain in possession of apartments 201 and 203, they have not submitted sufficient evidence to establish that these apartments were leased pursuant to the options clause of the Master Lease.

With respect to those apartments that plaintiffs allege that the World City plaintiffs "were forced to leave" by Sacchetti's wrongful conduct, even if these apartments were subject to the Master Lease, there are triable issues of fact as to whether any rights that the World City plaintiffs may have had under the Master Lease were extinguished when they vacated the

apartments and Sacchetti re-let them. See NHS Nat. Health Services, Inc. v. Kaufman, 250 AD2d 528 (1st Dept 1998)(holding that the conduct of the parties, including the vacating of the premises by the tenant and the re-letting of it by the landlord establish a surrender of the space by operation of law). In addition, the record raises factual questions as to whether plaintiffs were forced to vacate the apartments as a result of Sacchetti's wrongful conduct, or voluntarily relinquished the apartments due to financial or other reasons.

Plaintiffs also argue that various estoppel doctrines warrant a grant of summary judgment in their favor. First, plaintiffs argue that as Justice Beeler and this court dismissed Sacchetti's Supreme Court actions seeking to invalidate that Master Lease on various grounds, the doctrines of collateral estoppel and res judicata bar any defense to the relief sought in this action.

The doctrine of res judicata or "claim preclusion" provides that "'as to parties in a litigation ... a judgment on the merits by a court of competent jurisdiction is conclusive of the issues of fact and questions of law necessarily decided therein in any subsequent action.'" Singleton Management, Inc. v Comperc, 243 AD2d 213, 215 (1st Dept 1998)(citation omitted). Under the transactional approach to res judicata adopted by New York courts, "'once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy.'" Marinelli Associates v Helmsley-Noyes Co., Inc., 265 AD2d 1, 5 (1st Dept 2000)(quoting, O'Brien v City of Syracuse, 54 NY2d 353, 357 (1981), citing Matter of Reilly v Reid, 45 NY2d 24, 29-30 [1978]). At the same time, however, the Court of Appeals has held that "even when two successive actions arise from an identical course of dealing, the second may not be barred if the requisite elements of proof and evidence necessary to sustain recovery vary materially."

Matter of Reilly v Reid, 45 NY2d at 30.

The related doctrine of collateral estoppel or "issue preclusion" prevents a party from relitigating an identical issue which has previously been decided against it in a prior action in which it had a fair opportunity to fully litigate the issue. See Allied Chemical v Niagara Mohawk Power Corp., 72 NY2d 271 (1988), cert denied, 488 US 1005 (1989).

Under these principles, neither res judicata nor collateral estoppel applies to bar Sacchetti from litigating the issues here, which were not raised or necessarily decided in the Supreme Court actions. Specifically, while the Supreme Court actions determined the validity of the Master Lease, this action essentially concerns whether plaintiffs have any remaining rights under the Master Lease. In fact, when the Supreme Court actions were decided in 2003 and 2004, many of the issues currently before the court had not yet arisen, and the World City plaintiffs had not vacated the majority of the nine apartments they had leased in the building.

Plaintiffs also argue that Sacchetti should be judicially estopped from denying that the Master Lease applies to the apartments at issue in this action as he took inconsistent positions in previous actions and proceedings. This argument is unavailing.

In general, the doctrine of judicial estoppel or estoppel against inconsistent positions "precludes a party who assumed a certain position in a prior legal proceeding and who secured a judgment in his or her favor from assuming a contrary position in another action simply because his or her interests have changed." Gale P. Elson, P.C. v. Dubois, 18 AD3d 301, 303 (1st Dept 2005). And, to the extent judicial estoppel has been applied to court or other rulings that are not denominated judgments, it still must be shown that decisive relief was obtained through taking of the prior inconsistent position. D&L Holdings, LLC v. RGC Goldman, LLC, 287 AD2d 65, 72

(1st Dept 2001), lv denied, 97 NY2d 611 (2002); All Terrain Properties, Inc. v. Hoy, 265 AD2d 87, 93-94 (1st Dept 2000).

Here, to the extent that Sacchetti argued that the Master Lease applied to certain apartments at issue, plaintiffs have not shown that he obtained a judgment or other decisive determination in his favor as a result of this position. Thus, for example, while in the seven non-payment proceedings in which Sacchetti obtained a judgment against the World City plaintiffs, Sacchetti sought attorneys' fees under the Master Lease, the Housing Court held that Sacchetti was estopped from obtaining such fees since he had maintained throughout the non-payment proceedings that the Master Lease did not govern the amount of rent due and owing and, instead, used the rent amount in other expired leases to determine the legal rent. Likewise, by decision and order dated June 7, 2005, this court found that Sacchetti was estopped from relying on a jury waiver provision in the Master Lease based on his position in the non-payment proceedings that the Master Lease did not govern the parties' relationship.

Furthermore, plaintiffs' reliance on an opposition brief submitted to the Appellate Term by Sacchetti is misplaced since although Sacchetti apparently indicates that he took the position that the Master Lease applied to most of the apartments at the time he brought the Supreme Court action before Justice Beeler,[7] it is clear from that brief that Sacchetti maintained in the underlying non-payment proceedings that the majority of the apartments were governed by rent stabilized lease renewals and not the terms of the Master Lease. In any event, the Appellate Term decision in Sacchetti's favor relied on his position that the leases at issue were rent stabilized.. See

[7]As Sacchetti's action before Justice Beeler was dismissed, he did not benefit from his position taken in that action that the Master Lease applied to the apartments.

Sacchetti v. Rogers, 12 Misc3d 131(A), 820 NYS2d 845 (App Term 1st Dept 2006).

Finally, plaintiffs have not shown that equitable estoppel should be applied to prevent Sacchetti from taking the position that the Master Lease does not govern the plaintiffs' rights to the apartments at issue. See Matter of Mendez v Reynolds, 248 AD2d 62, 65 (1st Dept 1998)(citations omitted) (the party asserting estoppel must show "(1) a lack of knowledge as to the true facts; (2) relied upon conduct of the party estopped; and (3) a prejudicial change in position").

Accordingly, as there are triable issues of fact as to plaintiffs' purported rights under the Master Lease with respect to the apartments at issue, their motion for summary judgment must be denied.

Sacchetti's cross motion is also denied, except to the extent of dismissing that part of the first cause of action which seeks a declaration as to the plaintiffs' right to rent apartments 102, 204, and 205 under the option clause of the Master Lease and that part of the second cause of action which seeks specific performance of plaintiffs' right to rent apartments 102, 204, and 205 under the option clause of the Master Lease since, as conceded by plaintiffs, the options clause does not apply to these apartments.

CONCLUSION

In view of the above, it is

ORDERED that plaintiffs' motion for summary judgment is denied; and it is further

ORDERED that Sacchetti's cross motion is also granted to the extent of dismissing and severing that part of the first cause of action which seeks a declaration as to the plaintiffs' right to rent apartments 102, 204, and 205 under the option clause of the Master Lease and that part of

the second cause of action which seeks specific performance of plaintiffs' right to rent apartments 102, 204, and 205 under the option clause of the Master Lease, and is otherwise denied; and it is further

ORDERED that a preliminary conference shall be held on December 6, 2007, at 9:30 am in Part 11, room 351, 60 Centre Street, New York, NY; and it is further

ORDERED that nothing in this decision and order shall prevent the parties from proceeding with the holdover proceedings currently pending in the Housing Court.

DATED: October 18,2007

J.S.C.