Brown v Saccijetti
2008 NY Slip Op 32786(U)
October 6, 2008
Supreme Court, New York County
Docket Number: 102726/06
Judge: Joan A. Madden
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SCANNED ON 10/10/2008

[* 1]

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

PRESENT: Madden PART 11

Justice

Brown, Charles

- v -

Sacchetti, Vito

INDEX NO. 102726/06

MOTION DATE 5/1/08

MOTION SEQ. NO. 03

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for Reargue decision

	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 + order

FILED
OCT 10 2008
COUNTY CLERK'S OFFICE
NEW YORK

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

Dated: October 6, 2008

J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

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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FILED
OCT 10 2008
COUNTY CLERK'S OFFICE
NEW YORK

JOAN A. MADDEN, J.:

In this action seeking a declaration of rights under a lease agreement known as the Master Lease, plaintiffs move for an order granting reargument of this court's decision and order dated October 18, 2007 ("the original decision") to the extent that it found that defendants are not barred by the doctrine of res judicata from asserting that the Master Lease does not govern certain apartment units, and included certain factual misstatements and, upon reargument, granting them partial summary judgment. Defendants oppose the motion. For the reasons below, reargument is granted and, upon reargument, the court adheres to its original decision.

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, there are three renewal agreements related to this apartment.[2] 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,

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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]Although not pointed out by either party, the court notes that in Sacchetti v. World City America, Inc., et al; Index No. 106883/03, discussed below, Sacchetti alleged that pursuant to a Supplemental Rider #5, the Master Lease was amended to include apartment 203 (See, Plaintiffs' Appendix B, Exh. B, ¶ 14). To the extent this allegation is accurate, it would obviously support plaintiffs' assertion that this apartment is subject to the Master Lease.

the majority of the apartments have been found to be subject to the rent stabilization laws.[3]

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,[4] 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

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[3]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 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).

[4]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.

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 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 like the earlier one before Justice Beeler, sought to invalidate the Master Lease, and for failure 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. The only remaining claims in that action is for breach of contract based on the Master Lease.[5]

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

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[5] In its decision and order dated July 12, 2006, 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.

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 Beeler 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. 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

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

stabilization laws and not the Master Lease. At present, the status of these motions is unclear.

Before any discovery was taken in this action, plaintiffs moved 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. Sacchetti opposed the motion, arguing, inter alia, 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.[7]

In the original decision the court denied the summary judgment motion finding that there were triable issues of fact as to whether the apartments were governed by the Master Lease, and that the Sacchetti was not barred by res judicata, collateral estoppel or judicial estoppel from asserting that these apartments were not subject to the Master Lease.

With respect to its finding that res judicata and the related doctrine of collateral estoppel did not apply to bar Sacchetti from litigating the issues raised by the complaint in this action, the court explained that: "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

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[7]Sacchetti also cross moved for partial summary judgment, and the cross motion was 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. Plaintiff did not oppose this aspect of the cross motion and conceded that since these apartments were already leased pursuant to the express terms of the Master Lease, they were not subject to the option clause.

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" (original decision, at 13).

Plaintiffs now move for reargument of the original decision, asserting that in denying them relief based on the doctrine of res judicata, the court overlooked essential facts related to Supreme Court actions and in particular, that verified complaints in both actions related to "each and every apartment" at issue in this action, either by enumeration or by referring to "the rent stabilized units" which plaintiffs assert has been held to apply to every apartment at issue. Moreover, plaintiffs contend that Sacchetti "had an opportunity to litigate the applicability of the Master Lease to any one of the apartments in the context of the prior proceedings but failed to do so," and thus under the transactional approach to res judicata adopted by New York courts, Sacchetti should have raised the argument that the Master Lease did not apply to certain units at the time that he brought the Supreme Court actions. Plaintiffs also assert that while certain issues raised in this action were not ripe at the time that the Supreme Court actions were commenced, the factual circumstances surrounding the right to renew the leases for Apartments 201 and 203, which are central to the instant action, have not changed.

Plaintiffs also move for reargument on the ground that the original decision contains certain factual statements which plaintiffs contend are inaccurate.

Sacchetti opposes the motion, asserting that plaintiffs have failed to demonstrate that the court either overlooked the facts or misapprehended the law, and that the facts and issues raised in this action were not actually litigated, addressed or decided.

Discussion

A motion for reargument is addressed to the discretion of the court, and is intended to give a party an opportunity to demonstrate that the court overlooked or misapprehended the relevant facts, or misapplied a controlling principle of law. See, Foley v Roche, 68 AD2d 558, 567 (1st Dept 1979). However, "[r]eargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided." William P. Pahl Equipment Corp. v. Kassis, 182 AD2d 22, appeal denied in part dismissed in part 80 NY2d 1005 (1992) .

Under this standard, the court grants reargument to more specifically consider plaintiffs' assertion that the two Supreme actions involved the same apartments as the instant action, and that Sacchetti should have raised the issue of the applicability of the Master Lease in these prior actions. However, upon reargument, the court adheres to its original decision.

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 Compere, 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, "if applied too rigidly, res judicata has the potential to work considerable injustice." Landau, P.C. v. LaRossa, Mitchell & Ross, 11 NY3d 8, 14 (2008)

Mindful of this fact, it has been noted that "[i]n properly seeking to deny a litigant two days in court, courts must be careful not to deprive him of one." Id., quoting Matter of Reilly v Reid, 45 NY2d at 28 (internal quotation omitted). Thus, the application of res judicata has "been tempered by the recognition that two or more different and distinct claims or causes of action may arise out of the same course of dealing between the same parties...." Matter of Reilly v Reid, 45 NY2d at 28-29. Accordingly, courts have held that a judgment does not operate as res judicata when the factual foundation and the relief sought in the second action are distinct from that in the first action in which the judgment was rendered. Matter of Reilly v Reid, 45 NY2d at 30; Energycresent, Inc. v. Creative Modules Enterprises, Inc., 183 AD2d 804 (2d Dept), lv dismissed, 80 NY2d 925 (1992). On the other hand, where "the two causes of action have such a measure of identity that a different judgment in the second would destroy or impair the rights or interest established in the first," res judicata has been found to preclude the second cause of action. Ionescu v. Brancoveanu, 246 AD2d 414, 416 (1st Dept 1998).

Applying the above-stated principles, the court finds that the judgments in the two Supreme Court actions do not preclude Sacchetti from defending the instant action.[8] Whereas the two Supreme Court actions sought to invalidate the Master Lease, the instant action concerns the extent to which the Master Lease governs certain apartments. Notably, the determination of the issues in this action would in no way destroy or impair the plaintiffs' rights established in the Supreme Court actions finding that the Master Lease was valid and enforceable.

Moreover, even assuming that the two Supreme Court actions concerned the apartments

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[8]While the cases analyzing the doctrine of res judicata are generally addressed to the issue of whether the assertion of a second claim is barred by a judgment in prior action, the doctrine applies not only to claims but defenses. See O'Connell v. Corcoran, 1 NY3d 179, 184 (2003).

at issue here, the factual and legal issues raised in this action as to the applicability of the Master Lease to those apartment are distinct from those litigated and necessarily decided in the prior actions seeking to invalidate the Master Lease. See e.g. Energycresent, Inc. V. Creative Modules Enterprises, Inc., 183 AD2d at 805 (prior litigation between parties involving unsuccessful attempted to invalidate option agreement did not bar action for specific performance of an option to purchase real property); Fusco v. Kraumplap Realty Corp., 1 AD3d 189 (1st Dept. 2003)(Housing Court's denial of tenant's restoration claim for rent did not have res judicata affect on wrongful eviction claim seeking damages); Hancock v. Arts4 All Ltd., 50 AD3d 390 (1st Dept 2008)(res judicata did not bar shareholder's petition seeking production of corporation's books and records, where some of the relief sought did not mirror that sought in the shareholder's counterclaims in prior action).

Finally, even assuming that the factual circumstances surrounding apartments 201 and 203 have not changed since the judgments rendered in the two Supreme Court actions, as certain facts were not known at the time of the prior litigation, res judicata should not apply. See e.g., Sage Realty Corp. v. Proskauer Rose, LLP, 251 AD2d 35, 39 (1st Dept 1998)(res judicata did not bar plaintiffs from bringing action for breach of fiduciary duty against law firm where certain facts regarding law firm's conflict of interest were not known at the time that a prior proceeding was brought).

The remaining matter concerns plaintiffs' contention that certain factual issues were overlooked or misapprehended in connection with the court's determination that plaintiffs were not entitled to summary judgment on the issue of whether the apartments were governed by the Master Lease. In particular, plaintiffs assert that the original decision erroneously stated that

"defendants' provided 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." Although plaintiffs are correct that certain rent increases could be consistent with both the Master Lease and the rent stabilization law, the lease renewal provisions under the rent stabilization law are distinct and the evidence produced by Sacchetti suggests a course of dealing arguably consistent with the rent stabilization laws. Notably, the court did not find that the amount of the rent increases or the course of dealing regarding the lease renewals meant that the Master Lease did not apply to the apartments, but only that there was an issue of fact in this regard. In any event, as indicated in the original decision, since plaintiffs did not make a prima facie showing entitling them to summary judgment, even if defendants had not produced any evidence, summary judgment would not have been granted in plaintiffs' favor.

Next, while the court erred in stating in one part of the original decision that the Master Lease permitted annual increases of 5% instead of annual increases of up to 5%, this error was not material to the court's determination and, in fact, in the background section the court specifically stated that the Master Lease permitted rent increases to be agreed upon by the parties but in no case greater than 5%.

Plaintiffs also assert that the court overlooked their explanation as to why the Master Lease was not amended to reflect that 201 and 203 were leased in accordance with its terms, even though it was amended when they leased Apartment 105. Specifically, plaintiffs explained that the amendment was needed for apartment 105 since it was not referenced in the original option clause and as the tenants wanted the right to assign apartment 105, which was not a right provided under the Master Lease. Even assuming arguendo that the court did not take into

account this explanation, based on the record before the court, there was no adequate basis for granting summary judgment in plaintiffs favor. Accordingly, the court adheres to its original decision.

Conclusion

In view of the above, it is

ORDERED that plaintiffs' motion to reargue is granted and, upon reargument, the court adheres to its original decision denying plaintiffs' motion for summary judgment; and it is further

ORDERED that a status conference shall be held in Part 11, room 351, 60 Centre Street,, New York , on November 17, 2008 at 9:30 am.

DATED: October 6, 2008

J.S.C.

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