

Beker v Yaghoubi

2010 NY Slip Op 31933(U)

January 25, 2010

Supreme Court, New York County

Docket Number: 109569/09

Judge: Joan M. Kenney

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

JOAN M. KENNEY

PART _____

Justice

Index Number : 109569/2009

BEKER, SYLVIE

vs.

YAGOUBI, ALI

SEQUENCE NUMBER : # 001

CONSOLIDATION / JOINT TRIAL

INDEX NO. 10956909

MOTION DATE

MOTION SEQ. NO. #001

MOTION CAL. NO. #001

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

FILED

FEB 09 2010

NEW YORK
COUNTY CLERK'S OFFICE

**MOTION IS DECIDED IN ACCORDANCE
WITH THE ATTACHED MEMORANDUM DECISION.**

Dated: January 26, 2010

Joan M. Kenney
JOAN M. KENNEY *J.M.K.*

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 8

-----X
SYLVIE BEKER,

Plaintiff,

Index No.: 109569/09

-against-

ALI YAGHOUBI and YORKVILLE 82, LLC,

Defendant.
-----X

DECISION and ORDER

Motion Seq. Nos: 001 and 002

KENNEY, JOAN, M. J.S.C.:

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Papers considered in review of this motion to remove and cross motion to dismiss

Papers	Numbered
Notice of Motion, Affidavit	1-2
Opposition Papers, Affirmation with Exhibits and Memorandum of Law	3-12
Reply affidavit with Exhibits	13-14
Motion with affirmation and exhibits	15-22
Memorandum of Law in Support of Motion to Dismiss	23
Affidavit in opposition	24
Reply affirmation	25

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In this residential landlord/tenant action, plaintiff moves for an order of removal to this court (motion sequence number 001), and defendants move separately to dismiss the complaint (motion sequence number 002). The motions are consolidated for disposition, and , for the following reasons, are both denied.

BACKGROUND

Plaintiff Sylvie Beker (Beker) is the tenant of apartment 3-C in a building (the building) located at 417 East 82nd Street in the County, City and State of New York. See Grill Affirmation in Opposition to Motion (motion sequence number 001), ¶ 7. Defendant Yorkville 82, LLC

(Yorkville), a New York State limited liability corporation, is the building's owner. See Notice of Motion (motion sequence number 002), Yaghoubi Affidavit, ¶ 4; Exhibits E, F. Co-defendant Ali Yaghoubi (Yaghoubi) is an officer of Yorkville. *Id.*, ¶ 1.

Beker took possession of apartment 3-C pursuant to a residential lease (the lease) whose term commenced on April 1, 2009. See Grill Affirmation in Opposition to Motion (motion sequence number 001), ¶ 7; Exhibit B. On its face, the lease expired on August 31, 2009; however, Beker still resides in the building. *Id.*

Defendants claim that Beker failed to pay rent after taking possession of apartment 3-C, and that they thereafter commenced a summary non payment proceeding against her on June 19, 2009 in the Civil Court of the City of New York (*Yorkville 82, LLC v Beker*, L&T Index Number 73075/09). *Id.*, ¶ 8; Exhibit C. Beker filed an answer in that proceeding on June 29, 2009, in which she asserted that the rental arrears sought had been partly paid, that defendants had taken her money, and that defendants had wrongfully evicted her. *Id.*; Exhibit D. Previously, on June 8, 2009, Beker had also commenced an "HP" proceeding against defendants in the Civil Court of the City of New York to require them to remedy/repair purported Housing Code violations in apartment 3-C (*Beker v Ali Yaghoubi and Yorkville 82, LLC*, Index Number HP 1023/09). See Beker Reply Affidavit (motion sequence number 001), at 7; Exhibits 6, 7, 8. Both of those proceedings appear to be ongoing.

Beker initially filed this action on July 7, 2009, and thereafter filed an amended complaint on July 15, 2009. See Grill Affirmation in Opposition to Motion (motion sequence number 001), Exhibit E (complaint). Her complaint sets forth seven causes of action that she denominates as being for: 1) breach of contract; 2) negligent and intentional misrepresentation; 3) fraud; 4) harassment;

5) wrongful eviction; 6) “violation of the bias related crime”; and 7) “other civil rights violations.”

Id. Beker now seeks leave to remove the summary non payment proceeding that is still pending in the Civil Court of the City of New York to this court (motion sequence number 001). Defendants have not filed an answer, but instead chose to move separately to dismiss Beker’s complaint (motion sequence number 002).

DISCUSSION

Beker’s Motion

CPLR 602 (a) provides that:

When actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all the matters in issue, may order the actions consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

In a line of cases interpreting this statute, the Appellate Division, First Department, adheres to the general rule that: “[t]he Civil Court is the preferred forum for resolving landlord-tenant issues.” *44-46 W. 65th Apt. Corp. v Stvan*, 3 AD3d 440, 441 (1st Dept 2004), citing *Post v 120 E. End Ave. Corp.*, 62 NY2d 19 (1984); *Cohen v Goldfein*, 100 AD2d 795 (1st Dept 1984). Indeed, the Appellate Division, First Department, holds that a trial court should not grant a motion for removal and/or consolidation absent a showing that the Civil Court is incapable of granting the movant complete relief on his or her claims. See *44-46 W. 65th Apt. Corp. v Stvan*, 3 AD3d at 442; *Scheff v 230 E. 73rd Owners Corp.*, 203 AD2d 151 (1st Dept 1994). Here, the court finds that the Civil Court is fully capable of disposing of all of Beker’s causes of action.

Upon careful perusal, it is clear that the first three claims in Beker’s complaint, which are denominated as being for “breach of contract,” “negligent/intentional misrepresentation” and

“fraud,” all merely allege violations of the warranty of habitability provision of the lease. *See* Grill Affirmation in Opposition to Motion (motion sequence number 001), Exhibit E (complaint), at 10-12. There is no question of the Civil Court’s competence to determine such issues, which arise both as defenses to claims of non payment of rent and as claims in “HP” proceedings. Thus, Beker has failed to establish grounds for removing these causes of action to this court.

Beker’s fourth and fifth causes of action, which allege “harassment” and “wrongful eviction,” are also clearly within the Civil Court’s purview. *Id.* at 12-15. It shares concurrent jurisdiction over the former with the New York State Division of Housing and Community Renewal, and has specific statutory jurisdiction over the latter. New York City Civil Court Act § 110. Thus, Beker has failed to establish grounds for removing these causes of action to this court.

Finally, Beker’s sixth and seventh causes of action allege “violation of the bias related crime,” and “other civil rights violations.” *See* Grill Affirmation in Opposition to Motion (motion sequence number 001), Exhibit E (complaint), at 15-17. However, a review of the pleading reveals that the “violations” that Beker complains of, consist solely of defendants’ purported disposal of her personal property during an allegedly unlawful eviction. The court notes that Beker included a claim for \$5000.00 in money damages to compensate for the loss of said property in her original complaint. *Id.* Under these circumstances, the court can apprehend no reason why the Civil Court is not capable of disposing of these claims too. Accordingly, the court finds that Beker’s motion for removal is denied.

Defendants’ Motion

Because the court denied Beker’s motion, and, therefore, will not pass upon Beker’s complaint, the court need not reach defendants’ motion to dismiss that complaint. Accordingly, the

court also denies defendants' motion without prejudice to defendants' right to present that motion in the Civil Court of the City of New York.

DECISION


ACCORDINGLY, for the foregoing reasons it is hereby

ORDERED that the motion, pursuant to CPLR 602 (b), of plaintiff Sylvie Beker (motion sequence number 001) is denied; and it is further

ORDERED that the motion, pursuant to CPLR 3211, of defendants Yorkville 82, LLC and Ali Yaghoubi (motion sequence number 002) is denied.

Dated: January 25, 2010

ENTER:



HON. JOAN M. KENNEY
J.S.C.

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