

Conforti v Carlton Regency Corp.

2010 NY Slip Op 33921(U)

December 1, 2010

Supreme Court, New York County

Docket Number: 600288/2010

Judge: Marcy S. Friedman

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

PRESENT: MARCY S. FRIEDMAN
Justice

PART 57

Conforti, James

INDEX NO. 600 288/2010

-v-

MOTION DATE _____

Carlton Regency Corp.

MOTION SEQ. NO. 601

MOTION CAL. NO. _____

The following papers, numbered 1 to 3 + m-3 were read on this motion to Dismiss

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... 1

Answering Affidavits — Exhibits _____ 2

Replying Affidavits _____ 3
and m-m 3

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION/ORDER.**

FILED

DEC 10 2010

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 12-1-10



MARCY S. FRIEDMAN 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 – PART 57

PRESENT: Hon. Marcy S. Friedman, JSC

JAMES CONFORTI,

Plaintiff(s),

- against -

THE CARLTON REGENCY CORP., and
COOPER SQUARE REALTY, INC.,

Defendant(s).

Index No.: 600288/2010

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In this action, defendants Carlton Regency Corp. and Cooper Square Realty, Inc. (collectively Carlton) move, pursuant to CPLR 3211(a) (4) and (7), to dismiss plaintiff's sixth and seventh causes of action, on the ground, among others, that the claims are duplicative of plaintiff's defenses in three underlying non-payment proceedings pending in Civil Court, New York County, entitled The Carlton Regency Corp. v James Conforti, Index Nos. L&T 054526/10, 054527/10 and 054528/10. Plaintiff cross-moves to remove and consolidate the Civil Court proceedings with the instant action, on the ground that plaintiff cannot obtain full relief in the Civil Court actions.

With respect to the branch of defendant's motion seeking dismissal under CPLR 3211(a)(4), the court finds that the Civil Court proceedings are not prior actions pending, as the petitions were served after commencement of the Supreme Court action. Nevertheless, a stay is appropriate as to plaintiff's claims in this action that duplicate his defenses in the Civil Court proceedings. (Sec 952 Assocs., LLC v Palmer, 52 AD3d 236 [1st Dept 2008].)

In the instant action, plaintiff contends that the special assessment imposed by defendant

Carlton has a “disproportionate impact” on him (sixth cause of action), and seeks damages as a result of the assessment (seventh cause of action.) In Civil Court, respondent Conforti alleges as his fourth defense that the annual assessment results in a disproportionate impact on him. (See e.g. Conforti’s Answer [Index No. L&T 054527/10] ¶ 14.) Moreover, Carlton has a pending motion in the Civil Court proceedings to strike Conforti’s defenses, including his defense that the assessment is unlawful. (See Joseph Aff. In Support Of Cross-Motion ¶ 28.)

It is well settled that the Civil Court is the preferred forum for resolving landlord tenant disputes. (See Brecker v 295 Central Park W., Inc., 71 AD3d 564 [1st Dept 2010]; 44-46 West 65th Apt. Corp. v Stvan, 3 AD3d 440 [1st Dept 2004].) RPAPL 743 provides that “[t]he answer may contain any legal or equitable defense, or counterclaim.” Thus, all of the issues regarding the legality of the assessment can be heard as a defense to Carlton’s non-payment proceedings.

The only relief that plaintiff Conforti cannot obtain in Civil Court is a declaratory judgment declaring the assessment void. In the event that plaintiff requires a declaratory judgment, he may return to Supreme Court, after the Civil Court determination is made, to obtain such judgment. (See 220V Electrical Dealer Supply, Inc. v Rondat, Inc., 111 Misc2d 100 [Sup Ct NY County 1981].)

It is accordingly hereby ORDERED that defendant Carlton’s motion is granted to the extent of staying plaintiff’s prosecution of his sixth and seventh causes of action pending determination of the Civil Court proceedings; and it is further


ORDERED that plaintiff’s Conforti’s cross-motion is denied; and it is further

ORDERED that the parties are directed to appear in Part 57 on Thursday, January 13, 2011, at 11:00 a.m. for a preliminary conference on plaintiff’s first through fifth causes of action.

[* 4]

This constitutes the decision and order of the court.

Dated: New York, New York
December 1, 2010


MARCY FRIEDMAN, J.S.C.

FILED

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