

Cuni v 834 Riverside Dr.
2012 NY Slip Op 30707(U)
March 21, 2012
Supreme Court, New York County
Docket Number: 100716/12
Judge: Donna M. Mills
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SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS
Justice

PART 58

PEDRO CUNI,

Plaintiff,

-v-

834 RIVERSIDE DRIVE, HDFC, et al.,

Defendants.

INDEX NO. 100716/12

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL NO. _____

The following papers, numbered 1 to _____ were read on this motion _____.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits....

Answering Affidavits- Exhibits _____

Replying Affidavits _____

CROSS-MOTION: YES NO

FILED
MAR 23 2012
COUNTY CLERK'S OFFICE
NEW YORK

Upon the foregoing papers, it is ordered that this motion is:

DECIDED IN ACCORDANCE WITH ATTACHED MEMORANDUM DECISION.

Dated: 3/21/12

DM
J.S.C.

Check one: FINAL DISPOSITION

DONNA M. MILLS, J.S.C.
NON-FINAL DISPOSITION

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 58**

PEDRO CUNI,

Plaintiff,

- against -

**INDEX NO.
100716/12**

DECISION/ORDER

**834 RIVERSIDE DRIVE, HOUSING
DEVELOPMENT FUND CORPORATION, et al.,
Defendants.**

DONNA MILLS, J.:

Pedro Cuni ("Cuni") brings this motion to consolidate this action with a proceeding pending in the Civil Court City of New York, County of New York, bearing Index No.: 094020/11 captioned 834 Riverside Drive, HDFC v Pedro Cuni (the "Eviction Proceeding") pursuant to CPLR § 602. Co-defendant 834 Riverside Drive, Housing Development Fund Corporation (the "Cooperative") opposes the motion. Co-defendant Ernest Fernandez cross moves for an order dismissing the instant action against him.

On December 19, 2011, the Cooperative filed a residential non-payment petition in the Eviction Proceeding seeking allegedly owed past-due rent from Cuni and possession of his apartment located at 834 Riverside Drive, Apt. 6D in New York County.

On January 13, 2012, Cuni responded to the Eviction Proceeding by serving his Answer and asserting several Counterclaims against the Cooperative. On January 23, 2012, Cuni also commenced this action against the Cooperative and members of the Board of Directors in New York County Supreme Court.

Plaintiff's motion is granted and the two actions are consolidated in this court.

CPLR 602 (b) states, in pertinent part:

"Where an action is pending in the supreme court it may, upon motion, remove to itself an action pending in another court and consolidate it or have it tried together

with that in the supreme court.”

“It is well settled that consolidation is generally favored by the courts in the interest of judicial economy and ease of decision making where there are common questions of law and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right. The mere fact that a case may be somewhat delayed by such consolidation will not suffice to bar it.”

Amtorg Trading Corp. v Broadway & 56th Street Associates, 191 AD2d 212, 213 (1st Dept 1993).

In the case at bar, there is no question that the parties are identical in both actions, with the exception of the individual board members of the Cooperative being named in the instant action, and that the issue in both suits is whether Cuni is obligated to pay the outstanding rent that is allegedly due. Whereas the court would not grant consolidation in instances in which the party opposing the consolidation makes a showing of prejudice to it that would result from consolidation, in the case at bar, no prejudice has been found.

Thus, in my exercise of sound discretion, with the existence of common questions of fact in these cases, it is proper, pursuant to CPLR § 602, to order a joint trial of the instant Supreme Court action with the Civil Court action. This Court will remove the Eviction Proceeding in Civil Court to Supreme Court for consolidation with the instant action.

Co-defendant Ernest Fernandez seeks dismissal of the summons and complaint in this action against him on the grounds of res judicata. There is no dispute that Cuni brought a previous claim in this Court against Fernandez for the same relief that he is now seeking. New York County Supreme Court Justice Milton Tingling, signed an Order dated April 11, 2009 granting Cuni a judgment against Fernandez for the same fifty thousand dollars that he seeks in this action.

The doctrine of collateral estoppel “precludes a party from relitigating in a

subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same" (Ryan v. New York Tel. Co., 62 N.Y.2d 494, 500 [1984]) Pursuant to the doctrine of res judicata, a final judgment precludes reconsideration of all claims which could have or should have been litigated in the prior action or proceeding against the same party (see Parker v. Blauvelt Volunteer Fire Co., 93 N.Y.2d 343, 347 [2000]).

Inasmuch as Plaintiff previously initiated a claim against Defendant Fernandez under Index Number 10725/08, and that action resolved all claims with respect to Defendant Fernandez and the sum of money, and the property ownership interests Plaintiff's claims against said Defendant, the instant action is barred by the doctrine of res judicata and collateral estoppel.

Accordingly it is

ORDERED that the motion seeking to consolidate the above-captioned action in this Court with 834 Riverside Drive, HDFC v Pedro Cuni, index number 094020/11, currently pending in the New York City Civil Court, New York County, is granted and the consolidated action shall bear the following caption:

PEDRO CUNI,	INDEX NO.
	100716/12
Plaintiff,	
- against -	
834 RIVERSIDE DRIVE, HOUSING DEVELOPMENT FUND CORPORATION, IVELISSE HARASME, HUSSEIN DAVIS, RENEE MASON, KYLIN WANG, IRA JONES CIMINI,	
Defendants.	

And it is further

ORDERED that the papers heretofore filed in the said Civil Court action and this action shall stand as the papers in the consolidated action; and it is further

ORDERED that movant is directed to serve a copy of this order with notice of entry on the County Clerk, and upon service, the Clerk shall consolidate the papers in the actions hereby consolidated and shall mark his records to reflect the consolidation, and it is further

ORDERED that a copy of this order with notice of entry shall also be served upon the clerk of the Trial Support Office (Room 158), who is hereby directed to mark the courts records to reflect the consolidation; and it is further

ORDERED that Co-defendant Fernandez's cross-motion to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the parties are to appear for a Preliminary Conference in Part 58, Room 574 at 111 Centre Street, at 10:00 A.M. on May 4, 2012.

Dated: 3/21/12

ENTER:

Donna Mills

J.S.C.

DONNA M. MILLS, J.S.C.

FILED
MAR 23 2012
COUNTY CLERK'S OFFICE
NEW YORK