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| Omansky v 160 Chambers St. Owners Inc. |
| 2018 NY Slip Op 32525(U) |
| October 3, 2018 |
| Supreme Court, New York County |
| Docket Number: 603738/08 |
| Judge: Barbara Jaffe |
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BARBARA JAFFE
Justice

PART 12

-----X

LAWRENCE A. OMANSKY,
Plaintiff,

INDEX NO. 603738/08

MOTION DATE _____

- v -

MOTION SEQ. NO. 15

160 CHAMBERS STREET OWNERSS INC., *et al.*,
Defendants.

DECISION AND ORDER

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By notice of motion, plaintiff moves for a declaratory judgment to set aside a stipulation of settlement dated January 17, 2018, between defendant 160 Chambers St. Owners Inc. and Commerce Court 160 Chambers Inc. (Commerce Court), filed in the related action under index number 156116/16, and to consolidate all of the actions pending between the parties and related parties. Defendants do not oppose the motion to consolidate and move, by notice of cross motion, for an order dismissing the claims against the individual defendants. Plaintiff opposes the cross motion.

I. MOTION TO CONSOLIDATE

In 2016, plaintiff commenced a proceeding against 160 Chambers in this court under index number 155090/16, seeking to challenge a special assessment of \$35,000 issued against him in 2016. (NYSCEF 352). That action and plaintiff's motion to amend his complaint pends before a different justice.

In 2016, 160 Chambers commenced an action against plaintiff and others in this court under index number 156116/16, seeking to recover rent paid to plaintiff by his commercial subtenant. (NYSCEF 362). That action pends before me, and on January 17, 2018, 160 Chambers and Commerce Court settled the action between them. (NYSCEF 341).

Again in 2016, plaintiff commenced an action against defendants in this court under index number 654367/2016. That action pends before me, and by decision and order dated December 18, 2017, I declined to sign plaintiff's proposed order to show cause seeking certain relief, including his request for the removal of defendants' attorneys due to an alleged conflict of interest. (NYSCEF 353).

In 2017, plaintiff commenced an action against defendants in the New York City Civil Court, under index number 12871/17, seeking damages allegedly resulting from a burglary of his apartment. (NYSCEF 351).

Two of the other three actions pending in this court are assigned to me. Given the history of litigation between the parties, the many and varied claims by and between them, and the procedural posture of the actions and various stages of discovery and motion practice, including that this action is disposed while the others are active, I find that judicial economy is not served by consolidating all of these actions. Rather, where the parties are variously plaintiff in one action and defendant in another, and where some of the actions relate to the commercial unit, whereas others relate to plaintiff's residential unit, consolidation would engender confusion at the expense of judicial economy. Moreover, the action pending in this court before another justice concerns the unique issue of a specific assessment that is not raised in the other actions; the Civil Court action also relates to a unique issue. (*See e.g., Hershfeld v JM Woodworth Risk Retention Group, Inc.*, AD3d , 2018 NY Slip Op 06229 [2d Dept 2018] [trial court has broad

discretion in determining whether to grant consolidation]; *see also* 172 *Van Duzer Realty Corp. v 878 Educ., LLC*, AD3d , 2018 NY Slip Op 06218 [1st Dept 2018] [court providently exercised discretion in denying consolidation as individual issues predominated even though actions shared some common facts]).

II. MOTION TO SET ASIDE

Plaintiff's motion to set aside a settlement entered into in another action is denied as such relief must be addressed in that action or in a plenary action based on the settlement. (*See e.g., Teitelbaum Holdings, Ltd. v Gold*, 48 NY2d 51 [1979] [unless settlement actually terminates action, court retains supervisory power over it and may relieve parties from consequences of settlement, which relief may be sought by motion in underlying action or plenary action grounded upon stipulation]). Moreover, the settlement agreement and any claims related thereto are not part of any claims raised here in plaintiff's complaint, and plaintiff has not moved to amend it.

In any event, plaintiff's allegations that the settlement was improperly reached have no merit, as the cooperative's by-laws did not require his approval to the settlement as the other cooperative unit owners agreed to it. (NYSCEF 356, 364, 365). Plaintiff's assertion that he is entitled to a set-off by the settlement against the judgment of arrears and attorney fees entered against him in favor of 160 Chambers has no legal basis.

Plaintiff's motion to disqualify defendants' counsel, advanced in one of the other actions, was denied, and plaintiff raises no new ground in support of it here. His request to reopen the hearing on attorney fees is denied. (*See Omansky v 160 Chambers St. Owners, Inc.*, 158 AD3d 566 [1st Dept 2018] [award of attorney fees in connection with holdover proceeding proper]).

III. CROSS MOTION TO DISMISS

Based on the rationale set forth in my decision and order dated August 22, 2017, issued under index number 654367/2016 (NYSCEF 372), and as plaintiff advances the same claims and legal theories against the individual defendants here as there, the motion to dismiss is granted.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that plaintiff's motion is denied in its entirety; and it is further

ORDERED, that defendants' motion to dismiss is granted, and the complaint is severed and dismissed as against the individual defendants, and the clerk is directed to enter judgment accordingly.

10/3/2018

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

REFERENCE

BARBARA JAFFE, J.S.C.
HON. BARBARA JAFFE