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| <b>Boerum Commercial LLC v Meyers</b>                                                                                                                                                                                          |
| 2018 NY Slip Op 32649(U)                                                                                                                                                                                                       |
| September 13, 2018                                                                                                                                                                                                             |
| Supreme Court, Kings County                                                                                                                                                                                                    |
| Docket Number: 505115/18                                                                                                                                                                                                       |
| Judge: Leon Ruchelsman                                                                                                                                                                                                         |
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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BOERUM COMMERCIAL LLC,

Plaintiff,

Decision and order

- against -

Index No. 505115/18

MICHAEL MEYERS & GREGG REUBEN,

Defendants,

ms HZ

September 13, 2018

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PRESENT: HON. LEON RUCHELSMAN

The defendants have moved seeking to remove a Civil Court action, namely Boerum Commercial LLC v. Atlantic Parking LLC, Index Number 68082/2018 to Supreme Court and to consolidate the two actions pursuant to CPLR §602. The plaintiff oppose the motion and papers were submitted by all parties and arguments held. After reviewing the arguments of all parties this court now makes the following determination.

#### Background

The plaintiff is the owner of a parking garage located at 238 Atlantic Avenue in Kings County. On November 19, 2008 an entity, Atlantic Parking LLC, entered into a lease with plaintiff's predecessor. The lease was personally guaranteed by the defendants herein Michael Meyers and Gregg Reuben. The civil court action was commenced based upon the failure to pay rent. This action was commenced against the defendants the guarantors of the payment of such rent. The defendants now move seeking to consolidate the two

actions on the grounds the two actions essentially involve the same questions of law and fact, namely whether they are responsible for the payment of rent. The plaintiff opposes the motion on the grounds the parties are not the same. While the defendants herein are the guarantors, they are not the same defendant that appears on the civil action.

#### Conclusions of Law

It is well settled that consolidation of two actions is proper when it will save unnecessary duplication, cost and expense and where the issues are interrelated and where judicial economy will be best served (Braun v. Fraydun Realty Corp., 158 AD2d 430, 552 NYS2d 5 [1<sup>st</sup> Dept., 1990]). Moreover, where an action in Civil Court is consolidated with an action in Supreme Court then both consolidated actions are heard in Supreme Court (Henry v. Solomon & Solomon P.C., 203 AD2d 791, 610 NYS2d 679 [3<sup>rd</sup> Dept., 1994]).

In this case, defendant seeks to consolidate this action which asserts that "defendants each individually owe the following to Plaintiff as of the date hereof the sum of \$1,228,750, plus late fees, interest and attorneys' fees" (see, Verified Complaint, ¶ 16) with the Civil Court action which asserts "Respondent tenants have defaulted in the payment thereof, and the total rent in arrears as of the date hereof is

\$1,228,750.00" (see, Petition, ¶ 5). While the actual defendants in both cases are different entities, the defendants in this action are the guarantors of the Civil Court action, thus, essentially, both lawsuits concern the same underlying parties. The case of Kally v. Mount Sinai Hospital, 44 AD3d 1010, 844 NYS2d 415 [2d Dept., 2007] is instructive. In that case the court granted a consolidation of a holdover proceeding in Civil Court with an action to rescind the lease in Supreme Court. The court acknowledged in reversing the lower court that Civil Court is the preferred forum for landlord tenant issues, nevertheless, the court granted consolidation. The court explained that "where common questions of law or fact exist, a motion to consolidate should be granted absent a showing of prejudice to a substantial right by the party opposing the motion. Here, both the holdover proceeding and the action concern the same parties, and both involve common questions of law and fact regarding a lease executed by the defendant with respect to the premises that are the subject of the holdover proceeding. Resolution of the action in the Supreme Court will necessarily decide the issues in the holdover proceeding, and the two should be consolidated in the interest of judicial economy" (*id.*).

Likewise, the two cases concern the same ultimate parties and involve the same questions of law and fact. The plaintiff asserts that "removal of the summary proceeding in Civil Court



would be delayed by months or years if the summary proceeding commenced against Atlantic Ave. Parking LLC and John Doe LLC, who are not parties to this action, was to be removed to this Court" (Affirmation in Opposition, ¶ 28). However, the plaintiff does not provide any basis for such a dire eventuality. The plaintiff alleges the defendants, both in this case and the Civil Court case owe back rent. Those claims will be pursued by the plaintiff and for the sake of judicial economy the claims should be heard in one court.

Therefore, the motion seeking consolidation pursuant to CPLR §602(b) is granted.

So ordered.

ENTER:

DATED: September 13, 2018  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC