

Pass v Garden Court Hous. Dev. Fund Corp.

2019 NY Slip Op 31210(U)

May 2, 2019

Supreme Court, New York County

Docket Number: 157479/2016

Judge: Barbara Jaffe

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. BARBARA JAFFE PART IAS MOTION 12EFM

Justice

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NATHANIEL PASS,

Plaintiff,

- v -

GARDEN COURT HOUSING DEVELOPMENT
FUND CORPORATION, HSC MANAGEMENT
CORPORATION, and BOARD OF DIRECTORS OF
GARDEN COURT HOUSING DEVELOPMENT
FUND CORPORATION,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 66, 74, 76
were read on this motion for _____ stay and consolidate _____.

By order to show cause, plaintiff moves for an order staying a nonpayment proceeding
filed against him in housing court (*Garden Court HDFC v Pass*, Index No. LT-053780-19/NY),
and consolidating that action with this one. Defendants oppose.

I. BACKGROUND

In the instant action, plaintiff sues defendants for failing to process his application and
requests to sell and/or transfer the apartment in which he owns shares at defendants' premises.
He seeks: (1) an injunction directing defendants to comply with their obligations relating to the
sale/transfer of the premises; (2) damages relating to defendants' failure to permit him to
sell/transfer the premises, including the monthly maintenance fees which he became obligated to
pay as a result of defendants' failures, which "defendants would not otherwise have been entitled
to receive from" him; (3) an injunction declaring defendants' December 15, 2015 notice of
termination to be invalid, unenforceable, and improperly issued; (4) an injunction directing

DECISION AND ORDER

defendants to comply with their obligations related to the premises; and (5) a declaration that defendant Board was improperly elected and directing defendants to hold a proper election of the Board. (NYSCEF 1).

In defendants' answer, as one of their counterclaims, they allege that plaintiff owes them monthly maintenance fees from 2015 to the present. (NYSCEF 3).

Since 2017, the parties have engaged in discovery, and in November 2018, plaintiff's counsel withdrew from representing him. (NYSCEF 53). Plaintiff now represents himself. (NYSCEF 63).

In January 2019, defendant Garden Court HDFC filed a nonpayment petition against plaintiff in the New York City housing Part, seeking unpaid monthly maintenance fees from December 2015 through January 2019. (NYSCEF 67). In his answer to the petition, plaintiff alleges, as pertinent here, that he attempted to pay his maintenance fees to Garden Court but they refused to accept them given the ongoing Supreme Court litigation between them. Plaintiff thus alleges that the fees are unpaid due to Garden Court's actions and that the nonpayment proceeding should be stayed until the instant action is resolved. (NYSCEF 69).

II. CONTENTIONS

Plaintiff contends that at issue in both actions is his obligation to pay his maintenance fees, which will be determined in this action depending on the outcome of his other claims. He also asserts that defendants created the grounds for the nonpayment proceeding as a result of their failure and refusal to accept his fees based on the pendency of this action. (NYSCEF 66).

While defendants' opposition to the order to show cause may be untimely, they claim that the instant action is distinct from the nonpayment proceeding as plaintiff does not show that he had any right to cease paying his monthly maintenance while this action pends. They also

observe that the housing part is the preferred venue for resolving landlord-tenant disputes, and that consolidation of the nonpayment proceeding with this one will delay resolution of it. (NYSCEF 76).

III. ANALYSIS

Consolidation of two actions may be granted where they involve common questions of law or fact. (CPLR 602[a]). Moreover, the supreme court may remove to itself an action pending in another court and consolidate it. (CPLR 602[b]). A motion to consolidate is addressed to the sound discretion of the court. (*Velarde v City of New York*, 149 AD3d 457 [1st Dept 2017]).

Whether plaintiff is obligated to pay maintenance fees to defendants is at issue in both actions, with plaintiff having first raised it in the instant action in support of his claim that defendants' refusal to permit him to sell/transfer his unit has resulted in his having incurred the fees unlawfully and unfairly. Defendants have also raised the issue in their counterclaim here against plaintiff. (*See Robinson v 47 Thames Realty, LLC*, 158 AD3d 780 [2d Dept 2018] [court providently exercised discretion in removing and consolidating holdover proceeding with supreme court action, as evidence and testimony in both actions would involve same facts and transactions between parties, and would require determination of common issues]; *Wang v Wang*, 96 AD3d 1005 [2d Dept 2012] [consolidation should have been granted as plaintiff's claim for breach of contract involved issues of fact and law in common with those in holdover proceeding and parties were same]; *43rd St. Deli v Paramount Leasehold, L.P.*, 89 AD3d 573 [1st Dept 2011] [removal and consolidation should have been granted in interest of judicial economy as actions involved same parties, and essentially same questions of law and fact, and defendant failed to demonstrate prejudice]).

In particular, if plaintiff prevails in this action and obtains a declaration that defendants

improperly thwarted his attempts to sell/transfer his unit, then his obligation to pay the fees may be nullified, thereby also vacating the basis for the nonpayment proceeding. (*See e.g., Moore v Chase Manhattan Bank, N.A.*, 217 AD2d 419 [1st Dept 1995] [court properly granted removal and consolidation in supreme court of summary holdover proceeding, as there were common issues of law and fact and tenant's claim for damages for landlord's breach of lease could provide equitable defense to holdover]).

Moreover, the declaration plaintiff here seeks cannot be obtained in the housing part. (*See Faith in Action Deliverance E Ministries v 3231 Assocs., LLC*, 168 AD3d 502, 503 [1st Dept 2019] [lower court lacked authority to grant equitable relief sought by plaintiff in form of declaratory judgment and specific performance; as it could not grant plaintiff complete relief, supreme court "erred in invoking the general rule that Civil Court is the preferred forum for resolution of landlord-tenant disputes"]; *43rd St. Deli*, 89 AD3d at 573 [housing court could not provide complete relief sought by plaintiff in supreme court action, where plaintiff sought declaration that it was not in default of lease]).

Additionally, plaintiff's allegation that defendants created his indebtedness by refusing to accept his fees given the pendency of this action is not disputed, and thus, to the extent that defendants have caused their own damages, they provide an additional reason for consolidation. Moreover, defendants' objection to delay of the nonpayment proceeding is particularly baseless as plaintiff allegedly failed to pay his fees since 2015 and defendants did not commence the nonpayment proceeding until 2019. And, as discovery has been ongoing since 2017 in this action, a resolution of the nonpayment issue will not be unduly delayed by the pendency of this action, and defendants otherwise allege no prejudice resulting from the consolidation. Plaintiff thus establishes that common questions of fact and law exist in both actions, and that

consolidation is warranted.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that plaintiff's motion for a stay and consolidation of the action of *Garden Court HDFC v Nathaniel Pass*, L&T Index No. 53780/19, pending in the Civil Court of the City of New York, County of New York: Housing Part, with this action is granted to the extent of removing that action to this court and consolidating it for joint discovery and trial; it is further

ORDERED, that within 30 days of entry of this order, plaintiff shall serve a certified copy of this order upon the Clerk of the Civil Court, New York County, and shall contact the Clerk to arrange for the effectuation of this transfer in an efficient manner; it is further

ORDERED, that service upon the Clerk of the Civil Court, New York County shall be made in accordance with any applicable protocol or other procedures of said county; it is further

ORDERED, that the Clerk of the Civil Court, New York County, shall transfer to the Clerk of the Supreme Court, New York County, all of the papers on file in the action *Garden Court HDFC v Nathaniel Pass*, L&T Index No. 53780/19, Civil Court, New York County; it is further

ORDERED, that the Clerk of the Civil Court, New York County and the Clerk of this court shall coordinate the transfer of the documents being transferred so as to ensure an efficient transfer and to minimize insofar as practical the reproduction of documents, including with regard to any documents that may be in digital format; it is further

ORDERED, that within 30 days of entry of this order, plaintiff shall serve a copy of this order with notice of entry upon the Clerk of the Supreme Court, New York County (60 Centre Street, Room 141B); it is further

ORDERED, that such service upon the Clerk of the court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); it is further

ORDERED, that upon receipt of the case file from the Clerk of the Civil Court, New York County, the Clerk of this Court shall, without further fee, assign a New York County index number to the matter transferred pursuant to this order and shall file under this number the documents transferred; it is further

ORDERED, that as applicable and insofar as is practical, the Clerk of this Court shall file the documents transferred to this court pursuant to this order under the New York County index number assigned to the transferred matter in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the transferred documents; it is further

ORDERED, that within 30 days of entry of this order, plaintiff shall serve a copy of this order with notice of entry upon the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), together with a Request for Judicial Intervention (“RJI”) in the action that is transferred to this county pursuant to this order, or if an RJI had already been filed in that action, with a copy of that RJI (in which event, no further fee shall be imposed); it is further

ORDERED, that the Clerk of the General Clerk’s Office shall assign the transferred action to the undersigned; it is further

ORDERED, that, upon payment of the appropriate calendar fees and the filing of notes of issue and certificates of readiness in each of the above actions, to each of which the filer shall annex a copy of this order with notice of entry, the Clerk of the General Clerk’s Office shall

place the aforesaid actions upon the trial calendar for a joint trial of both matters before the undersigned or another Justice of this court; it is further

ORDERED, that service upon the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the aforesaid *Protocol*; it is further

ORDERED, that the housing court action is hereby stayed pending removal to this court; and it is further

ORDERED, that the parties in the consolidated actions are directed to appear for the previously-scheduled compliance conference on May 15, 2019, at 2:15 pm, at 60 Centre Street, Room 341, New York, New York, where they are expected to set firm deposition dates and address any other outstanding discovery

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BARBARA JAFFE, J.S.C.

5/2/2019
DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED
<input type="checkbox"/>	SETTLE ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: