SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JOEL M. COHEN** **PART** **IAS MOTION 3EFM**

Justice

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MAYRA MAHMOOD, ANTHONY CIMINO, RALPH PORR, C.E. MONDEN, MARK TADROS, MARGOT ROSS, KIMBERLEY GARRETT, P.G. LYNE, J.M. LUMPKIN, LARRY BENNETT, WENDY BENNETT, LUNA ALARCON, ALEXIS BARBER-DAVIS, ALEX DRYDEN, STEPHENIE FUTCH, FILOMENA REYES, MELISSA ABLER, RAMA NDIAYE, ERIC ROCHMAN, SHELLEY OHMES, ERIC FRANKLIN, FRAKSHELL MACHUA, GIOVANNI ANDOLLO, NICOLE AUGSTEIN, CALI HERSH, LEN GUTMAN, KAREN SCHROEDER, DAN DAVENPORT, RUYI JIAO, EMILY HOCHBERG, MICHELLE COURSEY, MATTHEW GALE, WILLIAM GRUBBS, YURIY VASKEVICH, BENJAMIN BROWN, KRISTINA CAPPUCCILLI, SYED RIZVI, EOGHAN MCNULTY, ROISIN MCNULTY, CATHERINE HATTEN, DENISE AQUINO, ALESSANDRA SIMEONE, JILLIAN CHASE, CASSONDRA PULS, NEHA SAVANT, SAMUEL GOODSPEED, JON WILLIAMS, ROBERT CARR, GIOVANNI CASSINELLI, OUSMAN LAAST, ANDREW MARTIN, NARI BOWIE, FADIA QADAR, JOSE VALDEZ, AMANDA WATERMEYER, RACHEL WILLOUGHBY, JORDAN SHIPLEY, YANA ANJUDINOVA, IGOR BORODYANSKY, JASON GALLAGHER, ROBIN MINITER

Plaintiffs,

- v -

MASON MANAGEMENT SERVICES CORP., D/B/A STELLAR MANAGEMENT, LAURENCE GLUCK, XYZ CORPORATIONS 1-99,

Defendants.

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INDEX NO. 153574/2017

MOTION DATE 02/06/2018

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 137, 138

were read on this motion to DISMISS.

This is a putative class action alleging that Defendants Mason Management Co. Inc. d/b/a Stellar Management ("Stellar Management"), Laurence Gluck, and other, unknown "XYZ" entities (collectively, "Defendants"), have been systematically inflating

rents in contravention of the city's rent regulation laws. On this motion to dismiss, Defendants argue, *inter alia*, that they are not the proper parties to this action because they do not own any of the apartment buildings in question.

For the reasons set forth below, Defendants' motion is granted and Plaintiffs' First Amended Class Action Complaint is dismissed.

Factual Background

The Alleged Scheme

Plaintiffs—61 individuals residing in 49 apartment units located in 18 different apartment buildings throughout New York City—allege that "Defendants have pursued (and continue to pursue) a scheme designed to inflate rents over and above the amounts which they are legally permitted to charge." (First Amended Class Action Complaint ("Am. Compl.") ¶2).

The scheme allegedly comprised two distinct tactics for overcharging rent: (1) "misrepresent[ing] and obfuscat[ing] . . . the costs of Individual Apartment Improvements ('IAIs') performed on Plaintiffs' apartments and those of similarly situated tenants" in order to justify inflated rents on those apartments (*id.* ¶4); and (2) failing to treat certain apartments as rent-stabilized as required under the terms of the J-51 tax benefits program (*id.* ¶¶10-12). These actions, Plaintiffs say, violate provisions of the Rent Stabilization Law ("RSL") and the Rent Stabilization Code ("RSC").[1]

The actual owners of the apartment buildings at issue are not named as Defendants in the Amended Complaint. Rather, Plaintiffs bring this action against two

[1] The RSC consists of regulations promulgated in furtherance of the RSL. (*Id.* ¶339; *see* RSC §2520.3).

known Defendants: Stellar Management, "the indirect owner and operator of the buildings that make up the Stellar Portfolio,"[2] (*id.* ¶332), and Laurence Gluck, a co-owner, operator, and principal of Stellar Management (*id.* ¶333). In addition, the Amended Complaint names "Defendants XYZ Corporation 1-99," a placeholder for "numerous legal entities that have done business as Stellar Management" but which are currently "unknown to Plaintiffs." (*Id.* ¶336).[3]

To vindicate their rights as well as those of other similarly-situated tenants, Plaintiffs propose the following class:

> [C]urrent and former tenants of Stellar Portfolio buildings who, between April 18, 2013 and the present date, resided in rent-stabilized or unlawfully deregulated apartments, and who paid rent in excess of the legal limit based on misrepresentations by Defendants, or any predecessor in interest, concerning legal regulated rents and improvements (the 'Class').

(*Id.* ¶386). In addition, Plaintiffs propose "a Sub-Class consisting of all current tenants of Stellar Portfolio buildings, who currently reside in a rent-stabilized apartment or unlawfully deregulated apartment (the 'Sub-Class')." (*Id.* ¶388).

Procedural History

Plaintiffs filed the Amended Complaint on July 28, 2017, alleging six causes of action on behalf of themselves and all others similarly situated: (1) violation of RSL §26-512 (on behalf of the Class); (2) violation of RSL §26-512 (on behalf of the Sub-Class); (3) declaratory relief (on behalf of the Sub-Class) adjudging and determining, *inter alia*, that "the apartments of Plaintiffs and members of the Sub-Class . . . are subject to the

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[2] The "Stellar Portfolio" is defined as "over 80 apartment buildings in the City and State of New York." (*Id.* ¶1).

[3] The "XYZ" Defendants are not alleged to include the direct owners of the subject apartments.

RSL and RSC and any purported deregulation by Defendants was invalid as a matter of law"; (4) violation of General Business Law ("GBL") §349 (on behalf of the Class); (5) illegality and mistake of contract (on behalf of the Class); and (6) illegality and mistake of contract (on behalf of the Sub-Class).

Defendants moved to dismiss the Amended Complaint on February 2, 2018, arguing, among other things, that Plaintiffs' purported class action could not go forward because none of the "actual 'direct' owners of the buildings" at issue had been named in the action. (Defs.' Mem. of Law at 2 ("Plaintiffs have . . . *not* named as defendants the distinct owners and landlords of their different buildings, nor established any relationship between them.")) (NYSCEF Dkt. No. 36) (emphasis in original). Also in that motion, Defendants contended that Plaintiffs' class allegations fail to meet the statutory prerequisites for a class action under CPLR 901(a).[4]

After the briefing on Defendants' motion was completed, the First Department issued its decision in *Maddicks v. Big City Properties, LLC*, 163 A.D.3d 501 (1st Dep't 2018). *Maddicks* held that pre-answer motions to dismiss class allegations—such as Defendants' motion in this case—are "premature," and that "engag[ing] in a detailed analysis of whether the requirements of class certification" was inappropriate prior to the

[4] CPLR 901(a) provides: "One or more members of a class may sue or be sued as representative parties on behalf of all if: (1) the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable; (2) there are questions of law or fact common to the class which predominate over any questions affecting only individual members; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; (4) the representative parties will fairly and adequately protect the interests of the class; and (5) a class action is superior to other available methods for the fair and efficient adjudication of the controversy."

class certification phase. *Id*. at 502. Further, the court noted, "[i]t does not appear conclusively from the complaint that, as a matter of law, there is no basis for class action relief." *Id.* The case is currently pending in the Court of Appeals.[5]

At oral argument on this motion, held shortly after *Maddicks* was decided, Justice Bransten indicated she was dismissing Plaintiffs' fifth and sixth causes of action and dismissing the case as a whole against Gluck. (Tr. at 26-27, 28:12-13) (NYSCEF Dkt. No. 126). Plaintiffs also advised at the hearing that they were withdrawing their fourth cause of action. (*Id.* at 19:3-5). Following the hearing, final disposition of the motion was deferred pending the Court of Appeals' ruling in *Maddicks*. On March 27, 2019, this Court determined that it would proceed with the instant motion based on the law as it currently stands.

At this point, the remaining claims in this case are Plaintiffs' first, second, and third causes of action against Stellar Management. Given that Plaintiffs fail to state any viable claims against Defendants, the Court need not reach the question of whether Defendant's motion to dismiss Plaintiffs' class allegations is foreclosed by *Maddicks*.

Legal Analysis

In assessing a motion to dismiss, the Court must give the complaint a liberal construction, accept its factual allegations as true, and provide the plaintiff with the benefit of every favorable inference. *Nomura Home Equity Loan, Inc. v. Nomura Credit & Capital, Inc.*, 30 N.Y.3d 572, 582 (2017). "Allegations consisting of bare legal conclusions," however, "as well as factual claims that are contradicted by documentary

[5] The Court of Appeals granted the *Maddicks* defendants leave to appeal the First Department's decision on September 27, 2018. (*See* NYSCEF Dkt. No. 139).

evidence, are not entitled to such consideration." *CIBC Bank & Tr. Co. (Cayman) v. Credit Lyonnais*, 270 A.D.2d 138, 138 (1st Dep't 2000).

As a threshold matter, Plaintiffs have not alleged sufficient facts to show that Stellar Management is the proper party against whom the claims here can be brought. *See, e.g.*, *Emerick v. Metro. Transp. Auth.*, 272 A.D.2d 150, 150 (1st Dep't 2000) (granting motion to dismiss where, "[i]nasmuch as [defendant] is not liable for the torts" of another entity, that defendant "is not a proper party in this action"); *Flores v. City of New York*, 62 A.D.3d 506, 506 (1st Dep't 2009) ("Dismissal of the complaint was appropriate since defendant is not a proper party to the action."). The statutory and regulatory framework which governs rent regulation in New York City—as well as the case law interpreting that framework—indicates that the proper parties to defend this action are the owners of the subject apartment buildings.

Plaintiffs characterize Stellar Management as, variously, the "indirect owner" of the subject apartment buildings, the "operator" of those buildings, and the "agent" of the actual, direct owners. None of these appellations, however, support Stellar Management's liability on Plaintiffs' first three causes of action as alleged in the Amended Complaint.

Plaintiffs' remaining causes of action all stem from the RSL and RSC: counts one and two allege violations of RSL §26-512 on behalf of the Class and Sub-Class, respectively, while the declaratory relief sought in count three is predicated on Defendants' allegedly violating "the clear requirements of the RSL and RSC." (*See* Am. Compl. ¶¶ 402-424). Under RSL §26-512, "[n]o owner of property . . . shall charge or

collect any rent in excess of the" legally regulated rent. An "owner" is defined in the RSC as follows:

> [F]ee owner, lessor, sublessor, assignee, net lessee, or a proprietary lessee of a housing accommodation in a structure or premises owned by a cooperative corporation or association, or an owner of a condominium unit of the sponsor of such cooperative corporation or association or condominium development, or any other person or entity receiving or entitled to receive rent for the use or occupation of any housing accommodation, or an agent of any of the foregoing, but such agent shall only commence a proceeding pursuant to section 2524.5 of this Title, in the name of such foregoing principals.

RSC §2520.6(i).

Stellar Management is not alleged in the Amended Complaint to fall within the statutory definition of "owner." Instead, the Amended Complaint describes Stellar Management as "the indirect owner and operator of the buildings that make up the Stellar Portfolio." (Am. Compl. ¶332). Neither "indirect owner[s]" nor "operator[s]" are considered "owners" under the governing statute, however, so the Amended Complaint fails to show how the RSL or RSC could impose liability on Stellar Management in those capacities. Both terms, moreover, are opaque: Neither sheds much light on the actual role Stellar Management plays in the rent administration of the apartment buildings. This uncertainty leaves critical gaps in the pleadings. As alleged in the Amended Complaint, for example, the "landlords" shoulder the obligations related to rent regulation. (*See, e.g.*, *id.* ¶340 ("The RSL and RSC limit the rent that landlords can charge and circumscribe the manner in which landlords are able to raise rents, cover the cost of improvements, and deregulate apartments.")). Yet, Stellar Management is not alleged to be the "landlord" for any of the apartment units here. On its face,

therefore, the Amended Complaint fails to plead that Stellar Management is a proper Defendant.

To get around that problem, Plaintiffs advance for the first time, in its opposition to Defendants' motion to dismiss, the notion that Stellar Management can be held liable as an "agent" on behalf of the apartments' owners. This argument draws on RSC §2520.6(i), which defines "owner" to include, in part, the "[f]ee owner" and "an agent" thereof. Plaintiffs reason that, "[b]y virtue of its management role, Stellar Management is an agent of the fee owners of all the properties in the Stellar Portfolio," and "[t]hus, for purposes of the rent regulations, and this action, Stellar Management is considered the 'owner.'" (Pls.' Mem. of Law at 25) (NYSCEF Dkt. No. 99). Accordingly, Plaintiffs argue, the Amended Complaint need not "name each of the individual pass through entities that directly own the properties in question." (*Id.*). That is incorrect.

Applying common-law principles of agency adapted to the real estate context, New York courts generally forbid rent-overcharge liability against managing agents. In *Crimmins v. Handler & Co.*, 249 A.D.2d 89 (1st Dep't 1998), the Appellate Division, First Department, held that "the managing agent of the premises . . . is not liable for any portion of the overcharge," and that generally "an agent for a disclosed principal will not be personally bound unless there is clear and explicit evidence of the agent's intention to substitute or superadd his personal liability for, or to, that of his principal." *Id.* at 91-92; *see Paganuzzi v. Primrose Mgmt. Co.*, 181 Misc. 2d 34, 36 (Sup. Ct. N.Y. Cty. 1999), *aff'd*, 268 A.D.2d 213 (2000) ("[T]he tenant could not hold the managing agent liable for a rent overcharge.") (citing *Crimmins*). The holding in *Crimmins*—and *Paganuzzi*—derives from the common-law "presumption" that "the agent intends to bind

the principal and not himself." *RKO-Stanley Warner Theatres, Inc. v. Plaza Pictures*, 54 A.D.2d 623, 624 (1st Dep't 1976) (reciting general rule that, "[w]hen there is a disclosed principal, and the agent acts within his agency, the agent will not be personally bound unless there is clear and explicit evidence of the agent's intention to substitute or add his personal liability for or to that of his principal").

Here, to the extent Stellar Management acted as an agent, it acted as "an agent for a disclosed principal." Plaintiffs acknowledge that Stellar Management signed Plaintiffs' leases "as 'agent' for the owner." (Pls.' Mem. of Law at 25 n.48). A sample apartment lease provided by Plaintiffs shows the "Landlord" listed as "Eagle Hamilton Assoc., LLC C/O Stellar Management," and signed by a Stellar Management employee "[o]n behalf of Eagle Hamilton Assoc., LLC." (Affirmation of Lucas A. Ferrara, Ex. P) (NYSCEF Dkt. No. 94). But Plaintiffs have not alleged that Stellar Management intended to "substitute or superadd [its] personal liability for, or to, that of [its] principal." Therefore, Plaintiffs' agency theory of liability fails under New York common law. *See Siguencia v BSF 519 West 143rd Street Holding LLC*, No. 158420/2017, 2018 WL 6198380 (Sup. Ct. N.Y. Cty. Nov. 28, 2018), at *2 ("[A]lthough the complaint identified Barberry and Diaz as BSF's managing agents, plaintiff failed to plead any specific allegations showing that they . . . intended to be held personally liable to plaintiff."); *West v. B.C.R.E.-90 W. St., LLC*, 57 Misc. 3d 428, 441, 56 N.Y.S.3d 859, 868 (N.Y. Sup. Ct. 2017), *rev'd sub nom. on other grounds*, *Kuzmich v. 50 Murray St. Acquisition LLC*, No. 50, 2019 WL 2583118 (N.Y. June 25, 2019) (granting summary judgment dismissing allegations against managing agent "[s]ince plaintiffs have made no allegations that Rosen acted as other than a managing agent for the Owner").

Plaintiffs' argument also fails as a matter of statutory interpretation. "[I]t is far from clear that the legislature intended to define a managing agent as an owner for the purposes of liability for rent overcharges." *Cooper v. 85th Estates Co.*, 57 Misc. 3d 1223(A), at *15 (Sup. Ct. N.Y. Cty. 2017) (citing RSC §2520.6(i)). To begin with, Plaintiffs' statutory argument is premised on a misstatement of the statute. The full definition of "owner" in RSC §2520.6(i) includes "an agent of any of the foregoing, *but such agent shall only commence a proceeding pursuant to section 2524.5 of this Title, in the name of such foregoing principals*." (emphasis added). Plaintiffs omit the italicized portion of the statute from their briefing, without explanation. *See* Pls.' Mem. of Law at 25. Their resulting interpretation can be accorded little weight.

When read as a whole, RSC §2520.6(i) does not support Plaintiffs' position. The provision could be read to mean that "an agent of [a fee owner]" may act "in the name of such [fee owner]," but only in limited circumstances—*i.e.*, to "commence a proceeding pursuant to section 2524.5 of this Title." Separately, the phrase "in the name of such foregoing principals" could be read to require that Plaintiffs name "such foregoing principals"—which the Amended Complaint fails to do. At any rate, "while in certain circumstances various housing statutes provide for multiple definitions of an owner, [Plaintiffs] ha[ve] not adequately pled how [Stellar Management] can be held liable as an owner in [its] causes of action." *Giacobbe v. 115 Mulberry, LLC*, No. 155436/2016, 2018 WL 1305340, at *4 (Sup. Ct. N.Y. Cty. Mar. 13, 2018).

In fact, New York courts have rejected Plaintiffs' statutory argument. In *Siguencia*, for example, the court rejected the argument that "a rent overcharge claim may be imposed upon managing agents . . . because they qualify as owners, as the

term is defined in the Rent Stabilization Code," noting that "the Appellate Division, First Department . . . has expressly rejected this position." No. 158420/2017, 2018 WL 6198380 (Sup. Ct. N.Y. Cty. Nov. 28, 2018), at *3-4 (citing *Crimmins*, 249 A.D.2d at 91-92). *See Cooper*, 57 Misc. 3d 1223(A), at *14 (Sup. Ct. N.Y. Cty. 2017) (holding that "[a]s managing agent for the building, Greenthal is not liable to plaintiffs for damages and therefore is not a proper party defendant" despite plaintiffs' argument under RSC §2520.6(i)). Most recently in *Chang v. Bronstein Properties, LLC*, Index. No. 1566665/2017 (Sup. Ct. N.Y. Cty. March 26, 2018) (the "*Chang* Decision"), the court dismissed a putative class action against "indirect owners and operators" of apartment buildings, requiring that the actual owners of the apartment buildings be named as defendants. (*See* Affirmation of Deborah Riegel, Ex. 2 (Transcript of *Chang* Decision at 25) ("I am dismissing the case without prejudice. . . . None of this is alleged anywhere in your papers that there is an agent, that they are doing this or that. Do it right.")) (NYSCEF Dkt. No. 105).

Therefore, Plaintiffs' first, second, and third causes of action against Stellar Management are dismissed.

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Accordingly, it is:

ORDERED that Defendants' motion to dismiss is GRANTED.

This constitutes the Decision and Order of the Court.

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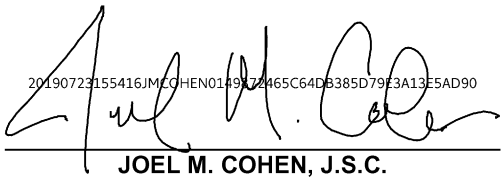

7/23/2019
DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE