Kuzmich v 50 Murray St. Acquisition LLC
2022 NY Slip Op 30689(U)
March 4, 2022
Supreme Court, New York County
Docket Number: Index No. 155266/2016
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL EDMEAD **PART** 35

Justice

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JOHN KUZMICH, SANDRA MAY, IGNATIUS NAVASCUES, KENDRICK CROASMUN, RISHI KHANNA, CAITLAN SENSKE, JAMIE AXFORD, JONATHAN GAZDAK, SUZY HEIMAN, MICHAEL GORZYNSKI, NIKESH DESAI, HEIDI BURKHART, BEN DRYLIE-PERKINS, KEIRON MCCAMMON, LISA CHU, SCOTT REALE, DAN SLIVJANOVSKI, SHIVA PEJMAN, LAURIE KARR, ADAM SEIFER, ANAND SUBRAMANIAN, DARCY JENSEN, ELIN THOMASIAN, HAZEL LYONS, DAVID DRUCKER, HOWARD PULCHIN, JIN LEE, JENN WOOD, NICHOLAS APOSTOLATOS, ALEX KELLEHER, BRIAN KNAPP, JEFF RIVES, LAURA FIESELER HICKMAN, FRANKLIN YAP, STEVEN GREENES, JASON LEWIS, JOSHUA SOCOLOW, LISA ATWAN, JENNIFER RYAN, BRAD LANGSTON, ALEJANDRA GARCIA,

Plaintiff,

- v -

50 MURRAY STREET ACQUISITION LLC,

Defendant.

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INDEX NO. 155266/2016

MOTION DATE 12/03/2021

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER .

Upon the foregoing documents, it is

ORDERED that the application of Defendant 50 Murray Street Acquisition, LLC for an order, pursuant to CPLR 3221(e), granting leave to renew the parties' respective summary judgment motions based upon newly discovered evidence (Motion Seq. 005) is denied; and it is further

ORDERED that the Court directs an award of sanctions against Defendant and in favor of Plaintiffs, for all costs and fees incurred in connection with the instant motion, pursuant to Part 130-1 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for Plaintiffs shall serve a copy of this order, along with notice of entry, on all parties within ten (10) days.

MEMORANDUM DECISION

In this Landlord-Tenant proceeding, Defendant 50 Murray Street Acquisition, LLC moves by Order to Show Cause for an order, pursuant to CPLR 3221(e), granting leave to renew the parties' respective summary judgment motions based upon newly discovered evidence, and, upon renewal, granting Defendant's prior motion for summary judgment and denying Plaintiff's prior cross-motion for summary judgment (Motion Seq. 005).

Plaintiffs oppose the instant motion in its entirety and seek an award of sanctions against Defendant for costs and fees.

BACKGROUND

Plaintiffs, Tenants of two Lower Manhattan residential buildings owned by Defendant, commenced this rent overcharge action in 2016, alleging that Defendant improperly deregulated rents while being the recipient of Real Property Tax Law (RPTL) 421-g benefits.[1]

On February 3, 2017, Defendant moved for summary judgment against certain causes of action asserted by Plaintiffs. Plaintiffs cross-moved for partial summary judgment finding that their apartments were subject to rent stabilization, and an order directing a prompt trial to

[1] For a detailed history of the background of this proceeding, see the Court's July 3, 2017 Decision and Order (NYSCEF doc No. 74).

determine the proper amount of rent overcharges and other damages (collectively, Motion Seq. 001).

By Decision and Order dated July 3, 2017, this Court denied Defendant's motion and granted Plaintiffs' cross-motion, finding that Plaintiff's apartments were subject to rent stabilization and directing that the issues of "the amount that each plaintiff has been overcharged" and "the amount of attorney's fees and costs properly incurred by the plaintiffs litigating this action" would be referred to a Judicial Hearing Officer (JHO) and/or Special Referee to Hear and Determine (NYSCEF doc No. 74).

Defendant thereafter appealed this Court's ruling to the Appellate Division, First Department. By Decision dated January 31, 2018, the First Department reversed this Court's ruling, denying Plaintiffs' cross-motion and granting Defendant's motion to the extent of declaring that Plaintiffs' apartments were properly deregulated and not rent stabilized (NYSCEF doc No. 82). However, on June 25, 2019, the Court of Appeals reversed the First Department's decision, finding that the apartments were *not* subject to deregulation (NYSCEF doc No. 91). The Court of Appeals granted Plaintiffs' cross-motion for partial summary judgment and remanded the case back to this Court for further proceedings.

On October 24, 2019, Defendant filed a petition for a writ of certiorari before the Supreme Court of the United States, arguing that the Court of Appeals' ruling constituted an unconstitutional "taking" under the Fifth and Fourteenth Amendments of the United States Constitution. The Supreme Court denied Defendant's petition on January 13, 2020.[2]

Separately, in reliance on the Court of Appeals' June 25, 2019 ruling, this Court issued an order again referring the issues previously referred in the Court's July 3, 2017 Decision to a

[2] *See* https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/19-554.html.

Special Referee on August 13, 2019 (NYSCEF doc No. 87). On February 5, 2021, the Appellate Division, First Department, modified the Court's reference order, finding that the "default formula" for calculating rent overcharges should not be implemented, and instead ruling that the Court of Appeals' decision in *Regina Metropolitan Co., LLC v New York State Division of Housing and Community Renewal*, 35 NY3d 332 [2020] should govern the calculation (NYSCEF doc No. 115).

This matter proceeded accordingly before this Court's Special Referee Part, and JHO Alan Marin was appointed to Hear and Determine the amount of rent overcharges for each Plaintiff pursuant to the *Regina* formula, as well as the amount of attorney's fees owed to Plaintiffs (NYSCEF doc No. 126 at 3).

On October 27, 2021, Defendant's counsel filed a Letter to the Court advising that "a foundational jurisdictional issue that has just come to light during the pre-hearing proceedings before JHO Marin" (NYSCEF doc No. 116). By email dated October 27, 2021, the Court responded:

> "JHO Marin shall proceed to Hear and Determine the amount that each plaintiff has been overcharged in rent and the amount of attorneys fees incurred by plaintiffs. If counsel believes there is a jurisdictional matter that requires court attention, counsel shall move for relief in accordance with the CPLR."
>
> (NYSCEF doc No. 125).

The Instant Motion

On November 12, 2021, Defendant commenced the motion now before this Court by Order to Show Cause, seeking leave to renew the parties' respective prior summary judgment motions. Defendant's application is premised on newly discovered evidence that was exchanged during pre-hearing proceedings before JHO Marin related to the representation of Plaintiffs by their law firm, Himmelstein McConnell Gribben & Joseph LLP (hereinafter, "Himmelstein").

Plaintiffs produced an engagement letter (the "Engagement Letter") signed only by Plaintiff John Kuzmich, and not any of the other named Plaintiffs, on behalf of "50 Murray Street Tenants Association," which is not a party to the case. Defendant argues that while Himmelstein separately produced a letter attesting that it is authorized to represent Plaintiffs, Himmelstein has not introduced any statements from the individual Plaintiffs attesting that they authorized or consented to Himmelstein's representation. Defendant thus concludes that throughout the entire duration of this action, Himmelstein has not been authorized to act on behalf of Plaintiffs, rendering all the firm's actions taken on behalf of Plaintiffs, including Plaintiffs' prior partial summary judgment motion, null and void. Defendant maintains that had this fact been previously known to the Court, it would have granted Defendant's prior motion for summary judgment dismissing this action.

In opposition, Plaintiffs first argue that Defendant has failed to satisfy the standard of leave for renewal under CPLR 2221, given that the Engagement Letter could have been obtained by Defendant at any point during the history of this proceeding. Plaintiffs further argue that even assuming the Engagement Letter properly constitutes newly discovered evidence, Defendant's application is wholly without merit as Plaintiffs have produced various types documentation showing that all Plaintiffs authorized Himmelstein to represent them, including Consent and Ratification forms signed by all Plaintiffs, along with invoices reflecting that the firm's fees have been jointly paid by all Plaintiffs. Plaintiffs have also submitted an affidavit from Mr. Kuzmich detailing the history of this proceeding and describing how he and other tenants formed the 50 Murray Tenants Association and retained Himmelstein. Plaintiffs additionally seek an award of costs and fees pursuant to Section 130-1.1 of the Rules of Chief Administrator based on the frivolous nature of the instant motion.

DISCUSSION

A motion for leave to renew pursuant to CPLR 2221 "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination" and "shall contain reasonable justification for the failure to present such facts on the prior motion." (*American Audio Serv. Bur. Inc. v AT & T Corp.*, 33 AD3d 473, 476 [1st Dept 2006]). The motion to renew, when properly made, posits newly discovered facts that were not previously available or a sufficient explanation is made why they could not have been offered to the Court originally (see discussion in *Alpert v. Wolf*, 194 Misc.2d at 133; D. Siegel New York Practice § 254 [3rd ed.1999]). A motion to renew "is intended to draw the court's attention to new or additional facts which, although in existence at the time of the original motion, were unknown to the party seeking renewal and therefore not brought to the court's attention." (*Beiny v Wynyard*, 132 AD2d 190, lv. dismissed 71 NY2d 994).

Here, the Court finds that Defendant has not satisfied its burden in demonstrating entitlement for leave to renew the parties' prior summary judgment motions pursuant to CPLR 2221. Defendant's application is, at bottom, premised on the Engagement Letter, which is dated March 23, 2016 and signed by Plaintiff John Kuzmich on behalf of 50 Murray Tenants Association (NYSCEF doc No. 119). Defendant argues that the Engagement Letter constitutes new evidence that, while in existence at the time the Court rendered its July 3, 2017 Decision resolving the parties' prior summary judgment motions, was not before the Court as Defendant was unaware of its existence prior to the pre-hearing proceedings before JHO Marin. However, the Court does not consider this to be a sufficient explanation for why Defendant could not have brought this matter to the Court's attention earlier, as is required under CPLR 2221.

"A motion to renew is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation" (*Queens Unit Venture, LLC v Tyson Court Owners Corp*., 111 AD3d 552 [1st Dept. 2013]). Here, Defendant could have requested production of the Engagement Letter at any point during the discovery stages of this now six-year-old proceeding and has provided no explanation for why it did not do so. Defendant's failure to seek discovery related to Plaintiffs' counsel's representation is even more noticeable when considering that Plaintiffs' initial complaint (NYSCEF doc No. 1) contains a cause of action for reimbursement for attorney's fees, and thus Defendant would have been well entitled to the Engagement Letter and all other documentation relating to Plaintiffs' legal representation. Defendant's presentation of the Engagement Letter to the Court at this stage thus constitutes "belatedly-obtained information" and not "the type of new evidence justifying a grant of renewal" (*225 Fifth Ave. Retail LLC v. 225 5th, LLC*, 92 AD3d 471, 472 [1st Dept 2012] [denying Defendant leave to renew summary judgment in a breach of contract proceeding when the alleged new fact could have been reasonably discovered through discovery "long before any motion practice was conducted"]).

As Defendant has not provided a reasonable justification for its failure to present the "new facts" to the Court in compliance with CPLR 2221, the instant motion must be denied.

Furthermore, a*ssuming arguendo* that the Court was inclined to grant leave to renew based on Defendant's belatedly obtained information, the Court would adhere to its original determination on the parties' prior summary judgment motions as Defendant has not demonstrated that Himmelstein had no authority to commence this action or move for summary judgment on behalf of Plaintiffs.

Plaintiffs Authorized Himmelstein's Representation and Commencement of this Action

As discussed, Defendant argues that Himmelstein not retained by Plaintiffs as the Engagement Letter was signed only by Plaintiff John Kuzmich on behalf of 50 Murray Tenants Association. Defendant claims that to establish an attorney-client relationship where no signed engagement letter exists, it must be shown that the terms of the engagement are "fair, fully understood, and agreed to by the client" (*Gary Friedman, P.C. v O'Neill*, 115 AD3d 792, 794 [2nd Dept 2014]). Defendant argues that despite this requirement, Plaintiffs have failed to provide evidence establishing that they "otherwise contemporaneously authorized Himmelstein to proceed on their behalf" or otherwise understood and agreed to the Engagement Letter "at the time this action was commenced or at any other time until Defendant raised this issue" (NYSCEF doc No. 126 at 6-7).

Defendant argues that given the lack of affirmative conduct taken by Plaintiffs, Himmelstein acted without authority when it commenced this proceeding and moved for summary judgment on Plaintiffs' behalf. Defendant cites to the case of *1230 Park LLC v North Source, LLC*, 48 AD3d 355 (1st Dept 2008), where the First Department found that a part owner of the plaintiff LLC had no authority to enter into relevant loan transactions with defendant on plaintiff's behalf. While not related to legal representation, Defendant relies on this case to support its argument that Himmelstein acted without the authority of all named Plaintiffs. However, the plaintiff part owners in *1230 Park* were bound by operating agreements that made clear that business transactions could be conducted only by a majority vote of operating managers (*id.*). No majority vote occurred, and the other plaintiffs had no knowledge of the transaction. The First Department thus concluded that the part owner plaintiff's "only authority

arose from his own acts. No acts or statements by plaintiffs conferred such authority" (*id.* at 356).

Defendant also cites to *Szuldiner v City of New York,* 18 AD2d 897 (1st Dept 1963) for the proposition that the court should disregard a motion made by an attorney without proper authority. *Szuldiner* involved a motion to renew made by an attorney that purported to newly represent the defendant. However, the attorney was never properly substituted as the attorney of record, and the First Department concluded that the attorney had no standing to bring the renewal motion (*id.* at 897).[3]

The caselaw relied on by Defendant is wholly distinguishable from the present circumstances. Himmelstein has been Plaintiffs' attorney of record throughout the entirety of this proceeding. More critically, Plaintiffs have provided extensive documentation reflecting Plaintiffs' affirmative conduct that granted Himmelstein authority to commence and prosecute the instant action.

In his affidavit in opposition to the instant motion, Plaintiff John Kuzmich explains that he and his neighbors formed the 50 Murray Tenants Association (the "Association") in February 2016 (NYSCEF doc No. 129 at 4). The Association's By-Laws state that its purpose is to "pool resources to secure legal services in regards to enforcing statutes on the subject of rent stabilization in a multi-plaintiff suit" (NYSCEF doc No. 137, Article VI). The By-Laws also explicitly state that the individual tenants *who elect to join the Association and become plaintiffs will be individually named as members on the legal action* and notes that the "Association will not be named on any legal action" (*id.*, Article XII) (emphasis added).

[3] Defendant also cites to *People v Chapnick* 114 AD2d 421 [2nd Dept 1985], *Dobbins v County of Erie*, 58 AD2d 733 [4th Dept 1977], and *Monacelli v Armstrong*, 78 AD2d 580 [4th Dept 1990], which all similarly involved a finding that a movant's counsel had not been properly named as the attorney of record.

The By-Laws detail the affirmative steps that tenants must take to join the Association, which included making an initial payment of $500 per apartment and either signing the By-Laws or acknowledging consent through the Association's website (*id.*). Plaintiffs have attached a spreadsheet of initial payments from each Association member (NYSCEF doc No. 138).

On March 23, 2016, Mr. Kuzmich, pursuant to his authority as President of the Association set forth in the By-Laws, retained Himmelstein and paid the initial retainer with funds obtained from the Association's Treasurer (NYSCEF doc No. 129 at 6). Mr. Kuzmich signed the Engagement Letter on behalf of the Association[4]. The Engagement Letter was circulated to all members of the Association, many of whom made proposed changes that were incorporated into the final version (*id.*).

Association members also had to take further action to affirm that they wished to be named as Plaintiffs in the legal action commenced by Himmelstein, as not all Association members were automatically named as Plaintiffs. Members that wished to be named as Plaintiffs filled out forms with their personal information (NYSCEF doc No. 140) and also contacted the New York State Division of Housing and Community Renewal (DHCR) to obtain access to their apartments' registration history (NYSCEF doc No. 141). Information from the Plaintiffs' forms and DHCR history was then incorporated into the Complaint and Summons, which were circulated to all Plaintiffs for approval prior to finalization (NYSCEF doc No. 129 at 8).

Therefore, contrary to Defendant's assertions, it is unambiguously clear that *all* Plaintiffs herein engaged in the affirmative conduct of electing to join the Association formed for the purpose of engaging Himmelstein to commence this matter and agreeing to share the cost of

[4] Defendant draws the Court's attention to the fact that the signature line of the engagement letter reads "50 Murray Street Tenants Association," as opposed to "50 Murray Tenants Association," allegedly raising even more questions about the nature of Plaintiffs' representation. However, this appears to be a mere clerical error given that Plaintiffs' tenant association is consistently referred to as "50 Murray Tenants Association" on all other records.

Himmelstein's retainer. Plaintiffs took further action to affirm they wished to be named as Plaintiffs with full knowledge that the Association itself, while named as the client under the Engagement Letter, would not be named as a party in the legal action. The caselaw relied on by Defendant pertaining to a lack of apparent authority is thus inapplicable to the present circumstances.

Defendant's reliance on caselaw pertaining to the lack of a signed Engagement Letter is also misplaced.

The "letter of engagement rule," codified under 22 NYCRR 1215.1, requires attorneys to provide all clients with a written letter of engagement explaining the scope of legal services, the fees to be charged, billing practices to be followed, and the right to arbitrate a dispute where applicable. The rule's intent "was not to address abuses in the practice of law, but rather, to prevent misunderstandings about fees that were a frequent source of contention between attorneys and clients", and there is no express penalty for noncompliance (*Seth Rubenstein, P.C. v Ganea*, 41 AD3d 54, 60 [2nd Dept 2007]).

The sole case cited by Defendant involving a lack of a proper Engagement Letter, *Gary Friedman, PC v. O'Neill*, 115 AD3d 792, (2nd Dept 2014), involved an attorney who sued a former client to recover legal fees. The Second Department held that an attorney who fails to comply with 22 NYCRR 1215.1 is not precluded from recovering legal fees in quantum meruit, but to do so, the non-compliant attorney "bears the burden of proving the terms of the retainer and establishing that the terms of the alleged fee arrangement were fair, fully understood, and agreed to by the client" (*id.*). The Second Department's holding thus clearly pertained to attorney-client disputes and cannot be relied on by an adverse party to challenge the other side's representation. Defendant's argument that Plaintiffs are required under *O'Neill* to show that the

terms of the Engagement Letter were fair and fully understood is thus erroneous[5], and Defendant has no standing to challenge Plaintiffs' legal representation based on an alleged violation of 22 NYCRR 1215.1.

Furthermore, Defendant's position here is not that no Engagement Letter exists, but rather that no Engagement Letter exists that was signed by all named Plaintiffs. Defendant cites to no caselaw or statutory authority precluding a group of Plaintiffs from designating a representative to sign an attorney retainer on their behalf. As discussed *supra*, Mr. Kuzmich retained Himmelstein pursuant to his authority set forth in Article XI of the Association's By-Laws, which directs that the President shall propose the scope "for initial legal services tied to the initial payment and future legal services as required" for the Association's purpose of commencing a multi-plaintiff rent stabilization suit on its behalf [6] (NYSCEF doc No. 137). The Court finds no reason to view the Association's actions differently from that of a business organization authorizing one of its members to commence a legal action on its behalf (*See, e.g. Mintz & Gold LLP v Zimmerman*, 848 NYS2d 814 [Sup Ct, NY Cty, 2007], *aff'd,* 56 AD3d 358 [1st Dept 2008] [Finding that an underlying action allegedly commenced without authorization on behalf of a non-party corporation was, in fact, properly commenced by the corporation's then-president pursuant to a resolution passed by the corporation that authorized the president to commence and prosecute the suit]).

The Court thus concludes that Defendant has asserted no grounds to properly challenge the nature of Plaintiffs' legal representation, as all Plaintiffs acted affirmatively in electing to

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[5] *Assuming arguendo* that Plaintiffs were somehow obligated to meet the burden set forth for noncompliant attorneys seeing fees in *O'Neill*, it is clear from the record before the Court that the terms of Himmelstein's representation were fully understood and agreed to by all named plaintiffs.

[6] As noted, the decision to name the plaintiffs individually and not the Association as a party to this legal action was also made pursuant to the By-Laws (NYSCEF doc No. 137, Article XII).

join the Association and authorized Mr. Kuzmich to retain Himmelstein to commence their multi-plaintiff suit. Accordingly, there is no basis for the Court to find that all prior rulings and judgments in this matter should be disregarded.

The Court separately notes that the evidentiary record also reflects further affirmative steps that Plaintiffs took during the pendency of the instant proceeding.

First, Plaintiffs have provided monthly invoices detailing the services that Himmelstein rendered (NYSCEF doc No. 149). The invoices, which date back to 2016, include references to calls and meetings with several of the named Plaintiff Tenants (*See id.* at 143, describing a meeting with Plaintiff Jen Wood). Plaintiffs have also submitted documentation reflecting that all Plaintiffs paid their portion of the fees for Himmelstein's services rendered over the course of this litigation (NYSCEF doc No. 138). The fact that all Plaintiffs have paid the legal fees throughout this matter further underscores the absurdity of Defendant's suggestion that Plaintiffs did not consent to Himmelstein's representation.

Second, Plaintiffs have supplied the retainer agreement entered with Friedman Kaplan Sieler & Adelman LLP ("Friedman"), a firm retained by Plaintiffs as appellate counsel in 2018 (NYSCEF doc No. 147). The Friedman retainer agreement refers to the individual Plaintiffs as the "tenant clients" and directs that fees and overages collected from Defendant will be paid by Himmelstein. All Plaintiffs signed the Friedman retainer agreement in 2018, ratifying Himmelstein's continued representation as they pursued their appeal of the First Department's 2018 decision before the Court of Appeals.

Finally, in response to the concerns raised by Defendant in the proceedings now before JHO Marin, Plaintiffs executed Consent and Ratification Forms (the Ratification Forms) in October 2021, verifying that they are named Plaintiffs in this action and members of the

Association, that they authorized Mr. Kuzmich as President of the Association to retain Himmelstein, and that they have contributed to the legal fees throughout the course of this proceeding (NYSCEF doc No. 148).[7]

In sum, *assuming arguendo* that Defendant's instant motion constituted a proper application for leave to renew, the Court would nonetheless adhere to its original July 3, 2017 determination as Defendant has failed to establish that the named Plaintiffs in this action did not authorize their counsel to commence this proceeding or move for summary judgment on their behalf.

Plaintiffs' Application for Sanctions

In addition to seeking denial of the instant motion, Plaintiffs also seek an award of sanctions pursuant to Part 130-1 of the Rules of the Chief Administrative Judge, which provides, as relevant:

> "(a) The court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court, except where prohibited by law, costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct as defined in this Part…
>
> (c) For purposes of this Part, conduct is frivolous if:
>
> (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
>
> (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
>
> (3) it asserts material factual statements that are false.

[7] Defendant correctly states that the recently signed Ratification Forms do not evidence contemporaneous authorization of Himmelstein's prior actions. Nevertheless, Defendant's argument that the Ratification Forms constitute an "unsuccessful and belated attempt to cure the fatal defects in this action that Defendant has brought to light" (NYSCEF doc No. 126 at 8) is of no moment, given that the Court has determined there is nothing defective about Himmelstein's representation of Plaintiffs. The Ratification Forms cannot be deemed a failed attempt to cure "fatal defects" that do not exist.

> Frivolous conduct shall include the making of a frivolous motion for costs or sanctions under this section. In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues the (1) circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct; and (2) whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party."

Viewing the totality of the circumstances herein, the Court finds that Plaintiffs are entitled to reimbursement of the costs and attorney's fees incurred with the instant motion. As discussed *supra,* Defendant's motion does not satisfy the requirement of CPLR 2221, and more critically, the evidentiary record clearly reflects that the named Plaintiffs to this proceeding took various steps to affirm that they elected to join the 50 Murray Tenants Association and authorized Himmelstein to commence this legal action on their behalf.

Given the credible proof Plaintiffs have presented, it strains credulity for Defendant, following six years of litigation that has seen this case move through the Appellate Division, the Court of Appeals, and the United States Supreme Court, to argue that all prior proceedings are null and void. The frivolous nature of Defendant's motion is underscored by the fact that Defendant cites to no legal authority relevant to the circumstances under which Himmelstein agreed to represent Plaintiffs.

Furthermore, the fact that Defendants commenced this motion even after Plaintiffs attempted to resolve the instant dispute in good faith leaves the Court to surmise that Defendant commenced the instant motion in an effort to obfuscate the ongoing proceedings before JHO Marin and prolong the awarding of rent overcharge damages that the Court of Appeals has declared Plaintiffs are entitled to. Although the Court, in its October 27, 2021 email, directed Defendant's counsel to "move in accordance with the CPLR", it did so with the proviso that counsel should take such action if there is a "jurisdictional matter that requires court attention."

The fact that Defendant's concerns about Plaintiffs' authorization of Himmelstein's representation could have been resolved by requesting and reviewing the documentation submitted by Plaintiffs herein reflects that the instant dispute did not require the Court's attention.

Accordingly, the Court directs an award of sanctions against Defendant and in favor of Plaintiffs, for all costs and fees incurred in connection with the instant motion.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED that the application of Defendant 50 Murray Street Acquisition, LLC for an order, pursuant to CPLR 3221(e), granting leave to renew the parties' respective summary judgment motions based upon newly discovered evidence (Motion Seq. 005) is denied; and it is further

ORDERED that the Court directs an award of sanctions against Defendant and in favor of Plaintiffs, for all costs and fees incurred in connection with the instant motion, pursuant to Part 130-1 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for Plaintiffs shall serve a copy of this order, along with notice of entry, on all parties within ten (10) days.

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3/4/2022
DATE

CAROL EDMEAD, J.S.C.

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