

Strout v CF 88 LLC

2022 NY Slip Op 31439(U)

May 3, 2022

Supreme Court, New York County

Docket Number: Index No. 161439/2019

Judge: Sabrina Kraus

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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. SABRINA KRAUS **PART** **57TR**

Justice

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BRIAN STROUT,

Plaintiff,

- v -

CF 88 LLC, SM E 88 LLC, THE CHETRIT GROUP
LLC, STELLAR MANAGEMENT LLC, JUMEAUX
MANAGEMENT LLC,

Defendant.

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INDEX NO. 161439/2019

MOTION DATE 04/13/2022,
04/15/2022

MOTION SEQ. NO. 007 008

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 007) 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 146, 147, 148, 149, 150

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 100, 101, 102, 103, 139, 140

were read on this motion to/for LEAVE TO FILE AMENDED COMPLAINT.

BACKGROUND

Plaintiff a tenant of apartment 12C at 160 East 88th Street, New York, New York 10128 (Subject Premises) commenced this action seeking a finding of rent overcharge and a declaration that the Subject Premises remains subject to rent regulation.

Plaintiff filed the summons and complaint on November 22, 2019. An amended complaint was filed on January 8, 2021. The amended complaint several asserts causes of action including a declaratory judgment that the Subject Premises is Rent Stabilized and a request for a permanent injunction preventing defendants from commencing eviction actions against plaintiff except in accordance with the Rent Stabilization Law.

On July 9, 2021, defendants filed an answer asserting six affirmative defenses including failure to state a cause of action and statute of limitations.

PENDING MOTIONS

On April 13, 2022, defendants moved for an order: pursuant to CPLR §3211(a)(7) dismissing the action as to Stellar Management LLC (Stellar), The Chetrit Group LLC (Chetrit) and Jumeaux Management LLC (Jumeaux); and pursuant to “CPLR §3211(a)(5)(7)”.

On April 15, 2022, plaintiff moved for an order granting leave to amend his complaint.

On April 15, 2022, the motions were mark submitted and referred to this court for determination. The motions are consolidated herein for and granted to the extent set forth below.

MOTION SEQ NO 7

The prior Agreement by Counsel as memorialized in Email Correspondence is Enforceable

Although plaintiff is currently *pro se* he was previously represented by counsel. His attorney and counsel for defendants agreed to discontinue the instant action as to defendants Chetrit, Stellar and Jumeaux. This agreement was expressed and confirmed during a phone conference with the Court on June 28, 2021 and was in exchange for defendants' withdrawal of a then pending motion to dismiss. The agreement was confirmed through email correspondence between counsel.

Jumeaux is the management company retained by Owners to manage the day to day operation of the subject building. Stellar and Chetrit are not proper parties to this action are not the deed owners of the premises nor in any way involved with the ownership or operation of the subject building/premises.

The court agrees that there was an enforceable agreement to discontinue as to the three (3) aforementioned defendants and the instant motion to dismiss should be granted in accordance

with same as to defendants Chetrit, Stellar and Jumeaux and otherwise deemed withdrawn in accordance with said agreement. [See *Matter of Philadelphia Ins. v Kendall*, 2021 NY Slip Op 04284, 197 A.D3d 75 (2021)].

MOTION SEQ NO 8

Defendant moves to amend the complaint to add two individual defendants and “additional causes of action”. No proposed amended pleading is annexed to the motion as required by CPLR §3025(b). Plaintiff attached to his motion a copy of his first Amended Complaint which has been redlined, foot noted, etc. The result is a document which is virtually impossible to decipher, interpret or understand, and does not comply with the provisions of CPLR §3025(b).

Moreover, the request to add Chetrit and Gluck as individual defendants is without merit. Section 609 of NYLLCL provides that members and managers of LLC's are "...not liable for the debts and obligations of the LLC solely by reason of such status". See *Broadway 26 Waterview LLC v. Bainton, McCarthy & Siegel, LLC*, 941 N.Y.S.2d 620 (App. Div. 1st Dep't 2012).

Additionally, plaintiff does not sufficiently identify the proposed causes of action he seeks to add.

Based on the foregoing, the motion to amend the complaint is denied.

CONCLUSION

WHEREFORE it is hereby:

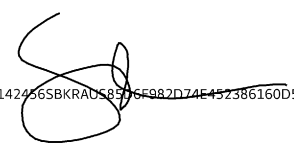
ORDERED that the motion of defendants Stellar Management LLC , The Chetrit Group LLC and Jumeaux Management LLC to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendants, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for defendants shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office 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).



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5/3/2022
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
			<input type="checkbox"/>	DENIED	OTHER
					REFERENCE