

Legrand v 67 Wall St. Owner, LLC
2022 NY Slip Op 31461(U)
May 3, 2022
Supreme Court, New York County
Docket Number: Index No. 162102/2019
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK
 NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS **PART** **57TR**

Justice

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REGINE LEGRAND, EMILY LIPA, HEE NAHM, STEPHEN
 MESSERE, LAURA SEOANE, WILLIAM BAILEY

Plaintiff,

INDEX NO. 162102/2019

MOTION DATE 04/27/2022

MOTION SEQ. NO. 002

- v -

67 WALL STREET OWNER, LLC,

Defendant.

**DECISION + ORDER ON
 MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 24, 25, 26
 were read on this motion to/for DISMISS.

BACKGROUND

Plaintiffs commenced this action for declaratory judgment and for injunctive relief, arising out of RPTL § 421-g(6), in light of the Luxury Deregulation provisions of the Rent Stabilization Law, as amended by the Rent Regulation Reform Act of 1993 and 1997. Plaintiffs, current and former tenants of 67 Wall Street (the “Building”), are members of a putative class that has already sued defendant in *Tallen Todorovich v. 63 Wall St. Owner, L.L.C.*, No. 161441/2019 (Sup. Ct., N.Y. Cnty.) (the “Class Action”).

Defendant had previously moved for a dismissal of this action based on the fact that the class action was pending, and plaintiff cross-moved for stay. Pursuant to a decision and order dated June 30, 2021, the court (Kelly, J) issued an order staying this action. Judge Kelly’s order provided in pertinent part:

ORDERED that the motion is granted to the extent of staying further proceedings in this action, except for an application to vacate or modify said stay; and it is further

ORDERED that either party may make an application by order to show cause to vacate or modify this stay upon the final determination of the action/proceeding known as *Tallen Todorovich v. 63 Wall St Owner, LLC* ...

PENDING MOTIONS

On April 13, 2022, defendant renewed its motion for dismissal of this action. On April 27, 2022, plaintiffs cross-moved for a stay. On April 27, 2022, the motion and cross-motion were fully briefed and were submitted to this court for determination.

As this court finds that the stay previously issued by Judge Kelly remains in effect, the motion and cross-motion are denied.

DISCUSSION

Defendant alleges that a final order and judgment was entered approving a settlement in the Class Action, which included a broad release of all claims class members may have against defendant. Plaintiffs did not opt-out of the Settlement, as a result, plaintiffs released all claims against defendant and are barred from proceeding in this action.

Plaintiffs counter that they have moved in the *Todorovich vs. 63 Wall Street Owner LLC and 67 Wall Street Owner LLC*, action seeking an order to exclude them from the Class Action Settlement, contending in part that: (a) Plaintiffs had effectively opted out of the Settlement by pursuing their own individual lawsuit beginning on December 19, 2019; (b) alternatively, that the formal opt-out letters were not submitted was excusable and the Court should extend Plaintiffs' time to do so; and (c) that due process and fairness considerations support Plaintiffs' request to opt out. The motion is returnable on May 17, 2022. Plaintiffs therefore allege that defendant's motion is premature.

This court agrees.

Initially the court notes that Judge Kelly's order stayed this action until either party moved by order to show cause to vacate or modify the stay. To date no such motion has been made, as such the stay remains in full force and effect.

Even if defendant's motion were deemed to be a motion to vacate the stay, the court would deny it, as both parties agree that there is a pending motion in the class action pertaining to whether or not plaintiffs shall be deemed part of the class.

Based on the foregoing, the motion and cross-motion are denied as the stay issued by Judge Kelly remains in full force and effect. Once a final determination has been made regarding whether or not plaintiffs are deemed part of the class and bound by the settlement, this court will entertain an application to lift the stay.

CONCLUSION

WHEREFORE it is hereby:

ORDERED that the motion and cross-motion are denied and the stay of this action remains in full force and effect; and it is further

ORDERED that, within 20 days from entry of this order, plaintiffs shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk 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); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.

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5/3/2022
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: