

Gilbert v 24th St. LIC LLC
2022 NY Slip Op 34077(U)
December 3, 2022
Supreme Court, New York County
Docket Number: Index No. 152618/2022
Judge: Paul A. Goetz
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. PAUL A. GOETZ **PART** **47**

Justice

-----X

A.B. GILBERT

Plaintiff,

- v -

24TH STREET LIC LLC,

Defendant.

-----X

INDEX NO. 152618/2022

MOTION DATE 07/29/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for ORDER MAINTAIN CLASS ACTION.

This is a putative class action brought on behalf of current and former tenants of 41-42 24th Street LIK (the “Building”) seeking rent-stabilized leases and damages for rent overcharges from the defendant-landlord. The Building is part of a program under Real Property Tax Law (RPTL) Section 421-a, under which it receives substantial tax benefits and in exchange for those tax benefits the Building is subject to rent stabilization. Plaintiff A.B. Gilbert, a current tenant of the Building, moves pursuant to CPLR 901 and CPLR 902, for an order: (1) certifying this action as a class action; (2) appointing plaintiff as lead plaintiff and class representative; (3) designating Newman Ferrara LLP as class counsel; and (4) approving the proposed class notice and directing defendant to provide contact information for the class. Defendant-landlord opposes the motion.

In the complaint, plaintiff alleges that defendant violated the Rent Stabilization Law (Administrative Code of the City of NY) Section 26-512, based on defendant’s allegedly illegal calculation of rent for the apartments in the building. Plaintiff alleges, among other things, that while defendant advertised to tenants the “net effective rent”, which took certain rent

concessions into account, when it registered the rent with the Division of Housing and Community Renewal (DHCR), defendant relied on a higher, undiscounted figure in the lease.

Plaintiff seeks certification for a class defined as all current and former tenants of the Building who occupied their apartment at any time after March 28, 2016. In addition, plaintiff seeks certification of a subclass comprised of all current tenants in the Building.

The class action statute should be liberally construed (*Pruitt v Rockefeller Ctr. Props.*, 167 AD2d 14, 21 [1st Dept 1991]) and provides that a class action may be maintained 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

(CPLR 901 [a]). Once these prerequisites are satisfied, the factors in CPLR 902 must be considered (*Ackerman v Price Waterhouse*, 252 AD2d 179, 191 [1st Dept 1998]).

The plaintiff must establish by competent evidence the requirements set forth in CPLR 901 and 902 for obtaining class certification (*see Ackerman*, 252 AD2d at 191) but a trial court has broad discretion in determining whether a matter qualifies as a class action (*Rabouin v Metropolitan Life Ins. Co.*, 25 AD3d 349, 350 [1st Dept 2006]).

“In determining whether an action should proceed as a class action, it is appropriate to consider whether the claims have merit” (*Pludeman v Northern Leasing Sys., Inc.*, 74 AD3d 420, 422 [1st Dept 2010]). However, “inquiry on a motion for class action certification vis-à-vis the merits is limited to a determination as to whether on the surface there appears to be a cause of action which is not a sham” (*Brandon v Chefetz*, 106 AD2d 162, 168 [1st Dept 1985]).

A. CPLR 901 (a) (1) – Numerosity

Plaintiff argues that the class is so numerous that joinder of all members is impracticable. “There is no ‘mechanical test’ to determine whether ... numerosity has been met nor is there a set rule for the number of prospective class members which must exist before a class is certified” (*Friar v Vanguard Holding Corp.*, 78 AD2d 83, 96 [2d Dept 1980]). “Each case depends upon the particular circumstances surrounding the proposed class . . . and the court should consider the reasonable inferences and commonsense assumptions from the facts before it” (*id.* [citation omitted]).

Here, plaintiff has submitted evidence in the form of Streeteasy advertisements showing repeated and pervasive use of “net effective rents”, which are indicative of rent concessions. This is sufficient to demonstrate numerosity (*Chernett v. Spruce 1209, LLC*, 200 A.D.3d 596 [1st Dep’t 2021]). While defendant argues that the numerosity requirement cannot be established without examining lease specific issues, this argument was specifically rejected by the First Department (*Hoffman v. Fort 709 Associates, LP*, 204 A.D.3d 516 [1st Dep’t 2022]). Accordingly, the numerosity requirement has been satisfied.

B. CPLR 902 (a) (2) – Commonality

CPLR 901 (a) (2) requires that questions of law or fact common to the class predominate over any such questions affecting individual class members. “[C]ommonality cannot be determined by any mechanical test and . . . the fact that questions peculiar to each individual may remain after resolution of the common questions is not fatal to the class action” (*City of New York v Maul*, 14 NY3d 499, 514 [2010] [internal quotation marks and citation omitted]). Instead, the court should focus on whether class treatment will “achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated” (*Friar*, 78 AD2d at

97 [internal quotation marks and citation omitted]). “[T]he rule requires predominance not identity or unanimity among class members” (*Pludeman*, 74 AD3d at 423). Here, the issues of whether the concessions offered to tenants by defendant-landlord resulted in an overcharge predominate over individual issues, such as the calculation of damages (*Borden v. 400 East 55th Street Associates, L.P.*, 24 N.Y.3d 382, 399 [2014]). Accordingly, the commonality requirement has been satisfied.

C. CPLR 901 (a) (3) – Typicality

The typicality prerequisite is met where a “plaintiff’s claim derives from the same practice or course of conduct that gave rise to the remaining claims of other class members and is based upon the same legal theory” (*Friar*, 78 AD2d at 99). “Typicality does not require identity of issues and the typicality requirement is met even if the claims asserted by class members differ from those asserted by other class members” (*Pludeman*, 74 AD3d at 423). Here, plaintiff has met the typicality requirement, because, like all members of the proposed class, plaintiff’s claims arise out of defendant’s registration of rent that was higher than the rent actually charged to the tenant. Accordingly, the typicality requirement has been satisfied.

D. CPLR 901 (a) (4) -- Adequacy of Representation

“Whether the representative party will fairly and adequately protect the interests of class involves a number of considerations -- whether a conflict of interest exists between the representative and the class members, the representative's background and personal character, as well as his [or her] familiarity with the lawsuit, to determine his [or her] ability to assist counsel in its prosecution and, if necessary, to act as a check on the attorneys, and, significantly, the competence, experience and vigor of the representative's attorneys, and the financial resources available to prosecute the action”

(*Pruitt*, 167 AD2d at 24 [internal quotation marks and citations omitted]).

Plaintiff persuasively argues that he is an adequate representative of the class as he is competent and understands the issues in the case, and that he seeks the same relief as the putative

class members. Additionally, plaintiff contends that class counsel has demonstrated a level of competence ensuring that they can fairly and adequately represent plaintiff and the class. Further, plaintiff's counsel is advancing the costs of the litigation and thus plaintiff's financial resources are irrelevant. Accordingly, the adequacy of representation requirement has been satisfied.

E. CPLR 901 (a) (5) -- Superiority

Courts have held that “[a] class action is the ‘superior vehicle’ for resolving disputes ‘[where] the damages allegedly suffered by an individual class member are likely to be insignificant, and the costs of prosecuting individual actions would result in the class members having no realistic day in court’” (*Ferrari v National Football League*, 153 AD3d 1589, 1593 [4th Dept 2017], quoting *Stecko*, 121 AD3d at 543). Here, a class action is the best way to address the defendant's alleged failure to follow the rent-stabilization laws by avoiding a multiplicity of lawsuits. Accordingly, plaintiff has established that a class action is a superior method for resolving this dispute.

F. CPLR 902

The proposed class action must also meet the requirements of CPLR 902. Pursuant to CPLR 902, the court must consider:

- (1) the interest of members of the class in individually controlling the prosecution or defense of separate actions;
- (2) the impracticability or inefficiency of prosecuting or defending separate actions;
- (3) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
- (4) the desirability or undesirability of concentrating the litigation of the claim in the particular forum; [and]
- (5) the difficulties likely to be encountered in the management of a class action.

“Most of these considerations are implicit in 901” (*Gilman v Merrill Lynch, Pierce, Fenner & Smith*, 93 Misc 2d 941, 948 [Sup Ct, NY County 1978]), and have already been

analyzed above. Moreover, this court is an appropriate forum since the class members live in New York (*see* CPLR 902 [4]). Accordingly, the requirements of CPLR 902 have been satisfied.

G. CPLR 903

CPLR 903 provides that “[t]he order permitting a class action shall describe the class. When appropriate the court may limit the class to those members who do not request exclusion from the class within a specified time after notice.”

H. CPLR 904 -- Notice of Class Action

CPLR 904 (b) provides that “reasonable notice of the commencement of a class action shall be given to the class in such manner as the court directs.” In addition, CPLR 904 (c) states that “[t]he content of the notice shall be subject to court approval.” Plaintiff submits a proposed notice of class action in support of his motion and defendant does not object to its form or contents.

Accordingly, it is

ORDERED that the motion for class certification is granted and leave is granted for plaintiff to prosecute his claims on behalf of a class consisting of all current and former tenants of the Building who occupied their apartment at any time after March 28, 2016; and it is further

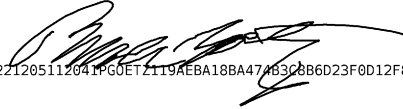
ORDERED that plaintiff’s motion to certify a subclass is granted and the subclass shall consist of current tenants of the Building; and it is further

ORDERED that plaintiff A.B. Gilbert shall be appointed as lead plaintiff and representative of the class; and it is further

ORDERED that Newman Ferrara LLP is appointed as class counsel; and it is further

ORDERED that plaintiff’s class notice (NYSCEF Doc. 17) is approved for distribution to the class and subclass by U.S. Mail; and it is further

ORDERED that defendant is to provide plaintiff with the current rent roll and full and complete names and last known contact information, including email addresses, within 45 days of entry of this order.


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12/3/2022

DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE