

Hendler v Ilan Props. Inc.

2023 NY Slip Op 32735(U)

August 8, 2023

Supreme Court, New York County

Docket Number: Index No. 153082/2023

Judge: Lori S. Sattler

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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. LORI S. SATTLER PART 02TR

Justice

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HANNA HENDLER,

Plaintiff,

- v -

ILAN PROPERTIES INC., ARGENT VENTURES
LLC, CURTIS WEST 76 LLC

Defendant.

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INDEX NO. 153082/2023
MOTION DATE 04/04/2023
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Plaintiff Hanna Hendler (“Plaintiff”), individually and in her capacity as administrator of the estate of her late husband David Benishai (“David”), commenced this action asserting five causes of action. The first alleges entitlement to a judgment declaring that Plaintiff has the right to occupy Apartment #7A (“Apartment”) at 252 West 76th Street in Manhattan (“Building”) for her lifetime. She also asserts a second, third and fourth causes of action for breach of fiduciary duty, abuse of process, and entitlement to an accounting, respectively. The fifth cause of action, which Plaintiff asserts in the alternative, is for an injunction restraining Defendants Ilan Properties, Inc. (“Ilan”), Argent Ventures LLC (“Argent”), and Curtis West 76 LLC (“Curtis”) (collectively, “Defendants”) from interfering in her use and enjoyment of the Apartment.

Contemporaneously with the commencement of the action, Plaintiff filed an emergency Order to Show Cause seeking to enjoin Defendants from commencing any proceeding to recover possession of or interfere with Plaintiff’s use and enjoyment of or purported rights to the Apartment during the pendency of this action, and to stay any such proceedings currently

pending. The Court granted the injunctive relief on an interim basis when it signed the Order. Defendants oppose the motion and cross-move for dismissal of all causes of action, which Plaintiff opposes.

Variations of the same underlying dispute between these parties have been the basis of numerous actions in the Supreme, Civil, and Surrogate's Courts in New York County for more than ten years. The basic facts are undisputed. The Building was purchased by David's parents in the 1960s through Ilan. After their deaths, David and his three siblings came to an agreement, memorialized in a Settlement Agreement dated March 31, 2009 (NYSCEF Doc. No. 22, "Settlement Agreement"), pursuant to which David and his brother Jack each became 50% owners of Ilan. The Settlement Agreement further provided that Ilan was to refinance its mortgage and the proceeds were to be loaned to David and Jack in order to buy out the other two siblings' interest. Additionally, *inter alia*, the Settlement Agreement provided that David had the right to execute a renewable two-year lease on an apartment in the building with a rent of \$1,000 per month (Settlement Agreement, ¶ 15). David elected to exercise this right and rented the Apartment.

In the following years, Jack sold most of his interest in Ilan to Curtis, and David sold most of his interest to Argent. As part of the latter sale, David and Argent entered into a Share Purchase Agreement on May 7, 2014, to which Ilan was not a party. That agreement, *inter alia*, recognized David's entitlement to occupy the Apartment and further provided: "Seller and Purchaser agree that the rent of the [Apartment] is set at \$1,000 per month and that the tenancy for the [Apartment] shall run for the life of David Benishai and his wife, Hanna Hendler" (NYSCEF Doc. No. 23, § 2.10).

Several actions between David and Defendants followed once Argent and Curtis took control of Ilan. First, as part of an action commenced in 2014 (“2014 Action”), Ilan sought to collect on the loan Ilan gave to David and Jack pursuant to the Settlement Agreement. Then, in 2019, David commenced an action against Defendants alleging seven causes of action including breach of fiduciary duty and an accounting (“2019 Action”). The Court granted Ilan summary judgment in the 2014 Action and, *inter alia*, directed judgment in favor of Ilan and against David in the amount of \$1,118,249.18 plus interest (*Ilan Properties, Inc. v David Benishai, Jack Benishai*, Sup Ct, NY County, January 16, 2020, Schechter, J., Index No. 651682/2014). The Court further dismissed the 2019 Action on the same day (*David Benishai et al v Curtis West 76 LLC et al*, Sup Ct, NY County, January 16, 2020, Schechter J., Index No. 652113/2019). The decisions were jointly affirmed (*Ilan Props., Inc. v Benishai*, 205 AD3d 541 [1st Dept 2022]).

Additionally, in 2017, Ilan commenced an action in part seeking to eject David from the Apartment. That action was disposed when the Court compelled arbitration in accordance with paragraph 26 of the Settlement Agreement (*Ilan Properties, Inc. v David Benishai et al*, Sup Ct, NY County, January 22, 2018, Hagler, J., Index No. 157086/2017). The matter was arbitrated, and the Arbitrator determined that David was entitled to remain in the Apartment (NYSCEF Doc. No. 20). As part of that determination, the Arbitrator determined that the Share Purchase Agreement did not supersede the Settlement Agreement and, because Ilan was not a party to it, it does “not impact the relationship between Ilan and Benishai with respect to Apartment 7A” (*id.*). The arbitration award was confirmed by the Court in a proceeding commenced in 2020 (*David Benishai v Ilan Properties, Inc.*, Sup Ct, NY County, April 26, 2020, Crane, J., Index No. 650363/2020).

David died in January 2021. Plaintiff was appointed administrator of his estate several months later. On April 3, 2023, Ilan commenced a holdover proceeding against Plaintiff in connection with the Apartment in the New York County Civil Court (*Ilan Properties, Inc. v Hanna Hendler et al*, Index No. LT-306771-23/NY). Plaintiff commenced the instant action the following day.

The threshold issue to be addressed in this motion sequence is whether Defendants' cross-motion to dismiss must be granted. Defendants seek to dismiss the first, third, and fifth cause of actions, which relate to Plaintiff's alleged right to occupy the Apartment, pursuant to CPLR §§ 3211(a)(4) and 3211(a)(7) and the second and fourth causes of action based on the doctrine of res judicata.

Defendants argue that the causes of action relating to Plaintiff's occupancy of the Apartment should be dismissed because the holdover proceeding filed one day earlier in the Civil Court is between the same parties and involves a cause of action for legal possession of the Apartment. Defendants contend Plaintiff's commencement of this action immediately thereafter constitutes forum shopping. They argue that it is well settled that the Civil Court's Housing Part is the preferred forum for adjudicating landlord-tenant disputes. In opposition, Plaintiff argues her claims in this action are broader than the "summary proceedings to recover possession of real property" heard in Civil Court. She contends she seeks monetary relief not related to rents, declaratory relief, and equitable relief which the Civil Court is less equipped to adjudicate.

A party may move for judgment dismissing one or more causes of action on the ground that there is another action pending between the same parties for the same cause of action in another court (CPLR § 3211[a][4]). It is not necessary that the precise legal theories be presented in both actions. The "critical element is that both suits arise out of the same subject

matter or series of alleged wrongs” (*Syncora Guar. Inc. v J.P. Morgan Sec. LLC*, 110 AD3d 87, 96 [1st Dept 2013], quoting *Cherico, Cherico & Assocs. v Midollo*, 67 AD3d 622 [2d Dept 2009]).

In general, the Civil Court is the preferred forum for resolving landlord-tenant issues (*44-46 W. 65th Street Apt Corp v Stvan*, 3 AD3d 440, 441 [1st Dept 2004]). When “the primary relief sought is repossession of the premises, the addition of a prayer for declaratory or equitable relief does not negate the presumption that Civil Court is the preferred forum” (*Marbru Assoc. v White*, 114 AD3d 554, 555 [1st Dept 2014]). The determination whether to dismiss based on CPLR § 3211(a)(4) is within the trial court’s broad discretion (*Whitney v Whitney*, 57 NY2d 731, 732 [1982]).

Although Plaintiff endeavors to conflate the issue regarding her right to occupy the Apartment with the commercial disputes that have embroiled Defendants and her deceased husband for years, ultimately her claims in these causes of action are primarily about whether or not she is entitled to remain in the Apartment. Accordingly, the Civil Court holdover proceeding, which was first-in-time, constitutes another action between the same parties for the same cause of action. Therefore, Defendants’ motion to dismiss the first, third and fifth causes of action is granted and Plaintiff’s motion for a preliminary injunction and related relief is denied.

Defendants further seek to dismiss the second and fourth causes of action, for breach of fiduciary duty and an accounting, maintaining that Plaintiff is attempting to relitigate issues as administrator of David’s estate that were decided against David in the 2014 and 2019 Actions. Defendants contend that Plaintiff is resubmitting the same claims for breach of fiduciary duty and accounting based on the same transactions and attaching the same documentation. In

opposition, Plaintiff argues these claims were dismissed without prejudice and that David was explicitly not precluded from commencing another action for these claims. She further argues that she brings the claims on behalf of herself individually, and that those claims cannot be dismissed based on res judicata because she was not a party in the earlier actions. In reply, Defendants contend that the Appellate Division disposed of the claims on the merits and that Plaintiff's contention that her pleadings contain new bases upon which the relief should be granted is conclusory and unsupported.

A litigant is barred from obtaining relief in an action on the basis of res judicata when there is already a valid final judgment between the same parties on the same cause of action (*Parker v Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 347 [1999], citing *Reilly v Reid*, 45 NY2d 24, 27 [1978]). “Once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy” (*O'Brien v Syracuse*, 54 NY2d 353, 357 [1981], citing *Reilly*, 45 NY2d, at 29-30).

In affirming the lower court's dismissal of David's breach of fiduciary duty claim in the 2019 Action, the Appellate Division, First Department held that the cause of action was time-barred and there was no continuing wrong that would toll the statute of limitations (*Ilan Props*, 205 AD3d at 542). Likewise, the Supreme Court dismissed the accounting claim, finding it was not an appropriate remedy under the circumstances, and that finding was undisturbed on appeal. A comparison of the Complaint in this action and in the 2019 Action reveals that Plaintiff here proffers nothing that would change the prior determination (compare NYSCEF Doc. No. 1 with NYSCEF Doc. No. 30). Accordingly, these claims have been brought to their final conclusion in the prior action and must be dismissed here as barred by the doctrine of res judicata.

Accordingly, for the reasons set forth herein, it is hereby:

ORDERED that Plaintiff's motion is denied in its entirety; and it is further

ORDERED that Defendants' cross-motion is granted and the Complaint is dismissed in its entirety.

This constitutes the Decision and Order of the Court.

8/8/2023

DATE

LORY S. SATTLER, 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: