

Charlton v 92 Pinehurst Ave. LLC

2024 NY Slip Op 32783(U)

August 8, 2024

Supreme Court, New York County

Docket Number: Index No. 151342/2021

Judge: Lynn R. Kotler

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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. LYNN R. KOTLER PART 08

Justice

-----X

LEENA CHARLTON

Plaintiff,

- v -

92 PINEHURST AVENUE LLC,

Defendant.

-----X

INDEX NO. 151342/2021
MOTION DATE 04/18/2024
MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194

were read on this motion to/for PARTIES - ADD/SUBSTITUTE/INTERVENE

Upon the foregoing documents, this motion is decided as follows. This is an action for rent overcharge. Defendant 92 Pinehurst LLC (“Pinehurst”) moves for an order pursuant to CPLR §§ 1018, 1021, and/or RPL 223, substituting Getty Industries LLC (“Getty”) as defendant in place of 92 Pinehurst Avenue LLC (“Pinehurst”), and amending all papers and pleadings, *nunc pro tunc*. Plaintiff partially opposes the motion: she consents to adding Getty as an additional defendant, but opposes any order that in effect dismisses Pinehurst from this action. For the reasons that follow, the motion is granted to the extent that Getty is added as a party defendant and the motion is otherwise denied.

In support of its request for relief, Pinehurst relies on three statutes: CPLR §§ 1018, 1021, and RPL 223. CPLR § 1018, entitled “Substitution upon transfer of interest” provides as follows:

Upon any transfer of interest, the action may be continued by or against the original parties unless the court directs the person to whom the interest is transferred to be substituted or joined in the action.

“The determination to substitute or join a party pursuant to CPLR 1018 is within the discretion of the trial court” (*Kelley v Garuda*, 189 AD3d 807 [2d Dept 2020] citing *Citicorp Mtge. v. Adams*, 153 A.D.3d 779, 780 [2d Dept 2017]).

CPLR § 1021 outlines the procedure by which a motion to substitute shall be made and permits dismissal for failure to substitute “within a reasonable time.” Finally, RPL § 223, entitled “Rights where property or lease is transferred”, provides that a grantee or lessee has all rights and remedies of the grantor or lessor when real property is conveyed from the latter to the former.

The court agrees with plaintiff’s counsel that CPLR § 1021 and RPL § 223 do not support Pinehurst’s request for relief. Nor is Pinehurst entitled to an order substituting it out of this action under CPLR § 1018. In this action, plaintiff seeks damages against Pinehurst for fraud and alleges that Pinehurst willfully overcharged plaintiff which would entitle plaintiff to treble damages. On these facts, joinder of the new owner rather than substitution would be appropriate (*J.C. Tarr, Q.P.R.T. v. Delsener*, 70 AD3d 774, 779 [2d Dept 2010]; *see also Ruiz v. Ruiz* 81 Misc3d 1238[A] [NYC Civ Ct 2024] [respondent raised claims of constructive trust, retaliatory eviction, and harassment against petitioner who had sold his building and sought to be substituted, and the court found that joinder was more appropriate than substitution]).

Pinehurst’s motion relies primarily on *Medallion Auto Inc. v. Sanders*, 272 AD2d 85 (1st Dept 2000). In that case, the First Department modified the lower court’s decision to substitute a new owner in place of the prior owners when the subject property was transferred after the action was commenced. However, in *Medallion*, the court specifically noted that the proposed substitution was not opposed. Therefore, *Medallion* is not persuasive.

Rather, prejudice to plaintiff resulting from the proposed substitution militates against granting Pinehurst's motion. Plaintiff may not only be foreclosed from asserting a claim for treble damages in this action if Getty were substituted for Pinehurst, but in light of pending discovery requests and plaintiff's counsels' assertion that they intend to call Pinehurst witnesses at trial, substitution would adversely affect plaintiff's case.

For at least these reasons, the motion to substitute is granted only to the extent that Getty is added as a party defendant. Although Getty's liability mirrors Pinehurst's, there are distinctions. To avoid any procedural irregularity, the court will grant plaintiff leave to file and serve an amended complaint consistent with this decision/order adding Getty as a party defendant. Since Pinehurst's counsel represented to the court that he and/or his firm also represented Getty, the court directs Pinehurst's counsel to file a notice of appearance on behalf of Getty within 60 days, which may be subsumed by any answer or other appropriate response to plaintiff's amended complaint.

Accordingly, it is hereby

ORDERED that the motion is granted ONLY to the extent that Getty Industries LLC are added to the caption as Defendants; and it is further

ORDERED that the caption of this action be amended so that it now reads:

-----X
LEENA CHARLTON,

Plaintiff(s)

-against-

92 PINEHURST AVENUE, LLC and
GETTY INDUSTRIES LLC

Defendant(s).

-----X

And it is further

ORDERED that plaintiff's counsel shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the parties being added pursuant hereto; and it is further

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

ORDERED that plaintiff shall file and serve an amended complaint within 30 days consistent with this decision/order adding Getty as a party defendant; and it is further

ORDERED that Getty may answer plaintiff's amended complaint as per the CPLR; and it is further

ORDERED that the court directs Pinehurst's counsel to file a notice of appearance on behalf of Getty within 60 days, which may be subsumed by any answer or other appropriate response to plaintiff's amended complaint; and it is further

ORDERED that the parties are directed to appear for a status conference via Microsoft Teams on October 30, 2024 at 10:00am.

Invitations to the Microsoft Teams meeting will be sent to counsel of record on NSYCEF. Any party that needs an invitation to the meeting should contact Eric Wursthorn, Esq., Principal Court Attorney, at EWURSTHO@nycourts.gov. Please be advised that "each attorney who receives notification of an appearance on a specific date and time **is responsible for notifying all other parties by email that the matter is scheduled to be heard on that assigned date and time**" (Uniform Civil Rules for the Supreme Court and the County Court § 202.23[c]).

If the parties are able to meet and confer and set deadlines for all outstanding discovery in a written stipulation to be so ordered by the court, they may file the stipulation on NYSCEF with a request that it be so ordered and notify the court that the conference is unnecessary and said conference will be cancelled.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.



8/8/2024
DATE

LYNN R. KOTLER, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE