

**Kamal v Muss Dev. LLC**

2024 NY Slip Op 33005(U)

August 26, 2024

Supreme Court, New York County

Docket Number: Index No. 156074/2022

Judge: Lori S. Sattler

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LORI S. SATTLER PART 02M**

*Justice*

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HANY KAMAL,

Plaintiff,

- v -

MUSS DEVELOPMENT LLC, JOSHUA LAWRENCE MUSS,  
JACQUELINE EVE MUSS, BETH WENGROFSKY  
RICHARDS, BRUCE LAWRENCE RICHARDS, ABBY SUE  
ZUCKERMAN WALLACH, STEVE WALLACH, JULIA  
PAULSON, ABE REISS, JULIE HURVITZ FRIEDLAND,  
DAVID ALAN FRIEDLAND

Defendant.

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**INDEX NO.** 156074/2022  
**MOTION DATE** 10/19/2023  
**MOTION SEQ. NO.** 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 90, 91, 92, 93, 94

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE/JURY  
DEMAND/FROM TRIAL CALENDAR.

In this action alleging aiding and abetting fraudulent deregulation of a rent regulated building, Defendants Muss Development LLC (“Muss Development”), Joshua Lawrence Muss (“Joshua”), and Jacqueline Eve Muss (“Jacqueline”) (collectively “Muss Defendants”) move to vacate the Note of Issue and for additional discovery. Plaintiff Hany Kamal (“Plaintiff”) opposes the motion and cross-moves for summary judgment. The Muss Defendants oppose the cross-motion and ask the court to search the record and grant them summary judgment. The action has been discontinued against the other defendants and the Muss Defendants are the only defendants remaining in the action.

Plaintiff is a resident of Apartment 14B in a building located at 430 East 86th Street in Manhattan (“building”). It is undisputed that the building is owned by Charles Alpert (“Alpert”) and 430 Realty, LLC, neither of whom are parties to this action. Plaintiff alleges that Alpert and

430 Realty, LLC have engaged in a fraudulent scheme to improperly deregulate units in the building, including Apartment 14B, by renting these units to “illusory tenants” who do not live in the building, and then, with the complicity of these tenants, manipulating rent regulation laws so that these apartments would become eligible for deregulation. Plaintiff describes these illusory tenants as friends of Alpert or other members of the real estate industry who would cooperate with the scheme. Plaintiff claims the Muss Defendants were illusory defendants who aided and abetted the fraudulent scheme. Specifically, according to the affirmation of Plaintiff’s counsel accompanying the cross-motion, Jacqueline appeared on the building’s Department of Housing and Community Renewal (“DHCR”) filings as a tenant in Apartment 14B just prior to the unit’s deregulation, but purportedly did not live there and allowed her name to be used until such time as the owners were able to deregulate the unit.

Plaintiff’s summary judgment motion is based on an affidavit of a private investigator (NYSCEF Doc. No. 66), who interviewed people who used to live in the building, including some of the former defendants in this action. According to the private investigator, some stated that they knew Alpert. All said they lived in the building in the 1990s. None admitted to knowing about, let alone supporting, the scheme alleged by Plaintiff. The investigator was unable to speak substantively with Jacqueline. Plaintiff does not annex his own affidavit, nor does he annex deposition transcripts from his own deposition or that of any of the defendants. Plaintiff does attach records from the DHCR which show that a tenant named Jacqueline Muss rented Apartment 14B from 1997 until 2003, that the apartment was vacant in 2004, and was deregulated in 2005 (NYSCEF Doc. No. 68). He further attaches documentation indicating that Jacqueline was registered to vote at another address in Manhattan in 1997 (NYSCEF Doc. No. 75), married in 2000 (NYSCEF Doc. No. 72), reported campaign contributions using her

husband's address in 2002 (NYSCEF Doc. No. 73, 76), and then purchased a new residence with her husband in 2003 (NYSCEF Doc. No. 74).

In response, Defendants annex affidavits of Jacqueline and Joshua, who is Jacqueline's father. Jacqueline states: "My only involvement with the Apartment is that while I cannot remember the exact dates, I lived there during the mid-1990s and early 2000s" (NYSCEF Doc. No. 79 ¶ 5). She further stated: "I lived there, I signed leases for the Apartment, and I paid rent for the Apartment. Nobody ever spoke to me about any type of special arrangement with respect to the Apartment, and I never agreed to participate in any scheme or deception" (*id.* ¶¶ 7-8). Additionally, Joshua states he is the chairman of Muss Development and was its president during the period when Jacqueline appears as a tenant in the building in the DHCR's records (NYSCEF Doc. No. 80 ¶¶ 1, 9). He states that he never lived in Apartment 14B or elsewhere in the building, that Muss Development has never had an ownership in Apartment 14B or the building, and that neither he nor Muss Development was ever asked to, and never did, participate in any deregulation scheme with respect to Apartment 14B or the building (*id.* ¶¶ 5-8).

On a motion for summary judgment, a movant must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). If the movant makes this showing, "the burden shifts to the party opposing the motion . . . to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact" such that trial of the action is required (*id.*). The Court must view the facts "in the light most favorable to the non-moving party" (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]). An affirmation of

counsel with no personal knowledge of the matter is without evidentiary value and unavailing (*Zuckerman v City of New York*, 49 NY2d 557, 563 [1980]).

A plaintiff asserting a claim for aiding and abetting fraud must demonstrate the existence of the underlying fraud, actual knowledge, and substantial assistance (*William Doyle Galleries, Inc. v Stettner*, 167 AD3d 501, 503 [1st Dept 2018] quoting *Oster v Kirschner*, 77 AD3d 51, 55 [1st Dept 2010]). In cases claiming the existence of a fraudulent scheme to deregulate rental units, fraud consists of evidence of “a representation of material fact, falsity, scienter, reliance, and injury. . . . In this context willfulness means ‘consciously and knowingly charging . . . improper rent’” (*Regina Metro. Co., LLC v New York State Div. of Hous. & Cmty Renewal*, 35 NY3d 332, 356 n 7 [2020] quoting *Levanant v State Div. of Hous. & Cmty Renewal*, 148 AD2d 185, 190 [1st Dept 1989]).

Plaintiff fails to make a prima facie showing of entitlement to summary judgment. As to the underlying fraud, the documentary evidence presented demonstrates only that one tenant in the building may have maintained a second residence during some of the years she was listed as a tenant on DHCR filings. Even if that were sufficient to prove she was an “illusory tenant” for purposes of advancing a fraudulent scheme Plaintiff fails to present any evidence that Jacqueline or any of the other Muss Defendants had actual knowledge or did anything that would amount to substantial assistance. Plaintiff fails to annex an affidavit or deposition testimony of anyone with personal knowledge of a scheme or the Muss Defendants’ participation therein. Therefore, Plaintiff’s motion for summary judgment is denied. The Muss Defendants’ request that the Court search the record and grant them summary judgment pursuant to CPLR 3212(b) is also denied.

With respect to their motion to vacate the Note of Issue, the Muss Defendants maintain they had made a post-deposition document demand and that Plaintiff responded and then filed the Note of Issue certifying the completion of discovery before the Muss Defendants had determined whether the documents produced were fully responsive to their request. The motion to vacate the Note of Issue is denied, but the Muss Defendants shall have 20 days to serve a demand with respect to any outstanding discovery, Plaintiff shall have 20 days to respond thereto, and the Muss Defendants shall have 60 days thereafter to file any summary judgment motion.

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

ORDERED that Defendant’s motion to vacate the Note of Issue is granted to the limit extent set forth herein and is otherwise denied; and it is further

ORDERED that Plaintiff’s motion for summary judgment is denied.

This constitutes the Decision and Order of the Court.

8/26/2024

DATE

LORI S. SATTLER, 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