Arlus Owner LLC v 829 Mad. Ave. LLC
2024 NY Slip Op 33788(U)
October 15, 2024
Supreme Court, New York County
Docket Number: Index No. 653842/2022
Judge: Nancy M. Bannon
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. NANCY M. BANNON** **PART** **61M**

Justice

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ARLUS OWNER LLC, FALU, LLC, FJLU, LLC, 829 MADISON WE TIC OWNER LLC,

Plaintiffs,

- v -

829 MAD. AVE. LLC, STANLEY MYER,

Defendants.

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INDEX NO. 653842/2022

MOTION DATE 07/11/2024

MOTION SEQ. NO. 014

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 014) 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 218, 219, 220, 221

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

In this action sounding in breach of contract and fraud, the plaintiffs, Arlus Owner LLC, FALU, LLC, FJLU, LLC, and 829 Madison WE TIC Owner LLC, move pursuant to CPLR 602 to consolidate the instant action with three other actions currently pending in the New York County Supreme Court: (i) Vanita Fina Art & Antiques, Inc. v FALU LLC et al, Index No. 153029/2022 (the "Vanita Action"), which is before Justice Paul Goetz; (ii) Arlus Owner LLC et al v Twain Time, Inc., Index No. 652659/2023 (the "Twain Time Action"), which is before Justice Nicholas Moyne; and (iii) Arlus Owner LLC et al v Michail Theodoropoulos et al, Index No. 153476/2024 (the "Declaratory Judgment Action"), which is also before this court. The defendants, 829 Mad. Ave. LLC and Stanley Myer, oppose the motion. The motion is denied.

CPLR 602(a) permits the court, in its discretion, to consolidate actions that involve common questions of law and fact so as to "reduce the cost of litigation, make more economical use of the trial court's time, and speed the disposition of cases." Matter of New York City Asbestos Litig., 121 AD3d 230, 242 (1st Dept. 2014)], aff'd 27 NY3d 765 (2016) [internal quotation marks and citation omitted]). The party seeking consolidation must specify the commonality in issues of fact or law between the actions sought to be consolidated. See Heydt Contr. Corp. v Tishman Const. Corp. of New York, 163 AD2d 196, 197–98 (1st Dept. 1990); RCN Const. Corp. v Fleet Bank, N.A., 34 AD3d 776, 777–78 (2nd Dept. 2006). A party opposing

the motion must show that "consolidation will prejudice a substantial right." Geneva Temps. Inc., New World Comm., Inc., 24 AD3d 332, 334 [(1st Dept. 2005). While mere delay is not a sufficient reason to deny the motion (see Raboy v McCrory Corp., 210 AD2d 145, 147 [1st Dept. 1994]), consolidation may be denied where the "actions are at markedly different procedural stages and consolidation would result in undue delay in the resolution of either matter." Abrams v Port Auth. Trans-Hudson Corp., 1 AD3d 118, 119 (1st Dept 2003). Here, the plaintiffs seeking consolidation do not meet their burden and the defendants opposing have met theirs.

The four subject actions arise out of a series of real estate transactions assigning interests in the property known as 829 Madison Avenue (the "Property"). Portions of the Property are leased to commercial tenants (i) Vanita Fine Arts & Antiques, Inc. ("Vanita"); (ii) Twain Time, Inc. ("Twain Time"); and (iii) Michail & Utarefson, Inc. ("M&U") (collectively with Vanita and Twain Time, "Tenants"). Pursuant to an Agreement of Purchase and Sale, dated January 28, 2022 (the "PSA"), the plaintiffs purchased the Property for $17 million from defendant 829 Mad. Ave. LLC, of which defendant Stanley Myer is a member.

Discovery in the Declaratory Judgment Action, which was commenced in April 2024, has yet to begin. Pre-answer motions to dismiss the complaint filed by all the defendants therein are currently held in abeyance until a decision is rendered on the instant consolidation motion in this action. Discovery in the Twain Time Action, which was commenced in June 2023, has likewise yet to begin or is in its early stages. By contrast, discovery is almost complete in both the instant action, commenced in October 2022, and the Vanita Action, commenced in April 2022 - both of these actions have deadlines for the filing of the note of issue in the coming months.

The plaintiffs contend that there is a single purportedly common issue shared by all four of the subject actions: the disputed validity of certain 2021 lease amendments for the commercial leases held by the Tenants. However, their submissions do not demonstrate that those lease amendments are, in fact, presently at issue in all four of the cases to be consolidated. Moreover, there are distinct and separate lease amendments for each of the three Tenants. Further, there are additional, distinct factual issues that distinguish the four subject actions. See Brown v Neighborhood Ass'n for Inter-Cultural Affs., Inc., 215 AD3d 416 (1st Dept. 2023); Licona-Rubio v New York City Health & Hosps. Corp., 219 AD3d 1225 (1st Dept. 2023). The 2021 lease amendments on which the plaintiffs rely were only purportedly discovered by the Tenants and disclosed to the plaintiffs in late 2023, after three of the four subject actions had already been commenced. Moreover, aside from the plaintiffs themselves, those three

actions— the Twain Time and Vanita Actions, as well as this action—do not have any parties in common. See Brown v Neighborhood Ass'n for Inter-Cultural Affs., Inc., supra.

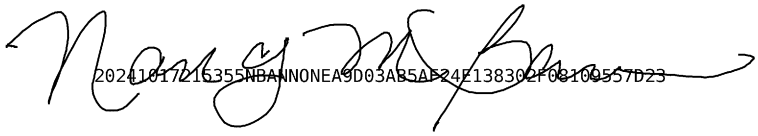
The four actions the plaintiffs seek to consolidate involve widely disparate legal theories. The present action sounds in breach of contract and fraud, while the Declaratory Judgment Action involves a pair of declaratory judgment claims—only one of which potentially implicates the Tenants' 2021 lease amendments—as well as causes of action sounding in tort, abuse of process, and civil conspiracy. These two actions should not be consolidated because "[w]hen one action sounds in contract and the other in tort, it is inappropriate to grant consolidation." 3B Assocs. LLC v eCommission Sols., LLC, 226 AD3d 527 (1st Dept. 2024). The remaining two actions, the Twain Time Action and Vanita Action, are landlord/tenant disputes seeking, respectively, an order of access to Twain Time's leased space and an injunction to prevent the plaintiffs from terminating Vanita's lease. As the defendants correctly observe, accounting for counterclaims, if the subject actions were consolidated there would be more than twenty causes of action sounding collectively in, *inter alia*, breach of (multiple, separate) contracts, fraud, tort, landlord/tenant law, and various claims for declaratory judgment, many of which would uniquely implicate only a small subset of the parties in the consolidated action. As such, consolidation would thus very likely risk jury confusion and unwieldy litigation. See Brown v Neighborhood Ass'n for Inter-Cultural Affs., Inc., supra; Licona-Rubio v New York City Health & Hosps. Corp., supra; Cromwell v CRP 482 Riverdale Ave., LLC, 163 AD3d 626, 628 (2nd Dept. 2018). Indeed, consolidation would result in multiple parties—the plaintiffs herein, who are defendants in the Vanita Action, as well as Vanita, which is a defendant in the Declaratory Judgment Action—being both plaintiff and defendant in a consolidated action. See Geneva Temps, Inc. v New World Comm., Inc., 24 AD3d 332, 335 (1st Dept. 2005).

Consolidation would also risk potential prejudice to the various parties, especially the Tenants, in that they be brought into a costly trial dominated by factual and legal issues related to the plaintiff's fraud claims, which will have little bearing on the landlord/tenant disputes they are actually in court to litigate. See Sokolow, Dunaud, Mercadier & Carreras LLP v Lacher, 299 AD2d 64, 74 (1st Dept. 2002). Additionally, the Declaratory Judgment Action and Twain Time Action have either yet to commence, or have just begun, discovery, while discovery in this and the Vanita Action is nearly complete, raising the risk that consolidation would result in undue and prejudicial delay in this action and the Vanita Actions. See Ambac Assurance Corp. v Countrywide Home Loans, Inc., 94 AD3d 455 (1st Dept. 2012); Ahmed v C.D. Kobsons, Inc., 73 AD3d 440 (1st Dept. 2010).

Accordingly, upon the foregoing papers, it is

ORDERED that the plaintiffs' motion to consolidate this action with three other actions pending in this court - Vanita Fina Art & Antiques, Inc. v FALU LLC et al, Index No. 153029/2022, Arlus Owner LLC et al v Twain Time, Inc., Index No. 652659/2023, and Arlus Owner LLC et al v Michail Theodoropoulos et al, Index No. 153476/2024 - is denied.

This constitutes the Decision and Order of the court.



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10/15/2024							
DATE				NANCY M. BANNON, J.S.C.			
CHECK ONE:	☐	CASE DISPOSED		X	NON-FINAL DISPOSITION		
	☐	GRANTED	X DENIED	☐	GRANTED IN PART	☐	OTHER
APPLICATION:	☐	SETTLE ORDER		☐	SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN		☐	FIDUCIARY APPOINTMENT	☐	REFERENCE