

Kamal v Muss Dev. LLC

2025 NY Slip Op 33382(U)

September 10, 2025

Supreme Court, New York County

Docket Number: Index No. 156074/2022

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 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 11/12/2024
MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 133, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152

were read on this motion to/for JUDGMENT - SUMMARY.

Defendants Muss Development LLC, Joshua Lawrence Muss, and Jacqueline Eve Muss (“Jacqueline”) (collectively “Defendants”) move for summary judgment in this action alleging aiding and abetting fraudulent deregulation of a rent regulated building. Plaintiff Hany Kamal (“Plaintiff”) opposes and cross-moves for summary judgment, his second motion seeking such relief since filing the Note of Issue. The action is discontinued against all other defendants.

Plaintiff resides in Apartment 14B in a building located at 430 East 86th Street in Manhattan (“building”). The building is owned by non-parties Charles Alpert and 430 Realty, LLC. Defendants have no ownership interest in the building, but pursuant to records maintained by the New York State Division of Housing and Community Renewal (“DHCR”), Jacqueline was the prior tenant-of-record pursuant to a rent regulated lease from 1996 to 2003 and the apartment was deregulated upon her vacancy (NYSCEF Doc. No. 123, 9-10). Plaintiff’s wife

became tenant-of-record in 2004 pursuant to a non-rent regulated lease (NYSCEF Doc. No. 124). In 2011, Apartment 14B was re-regulated, and subsequent DHCR records list Plaintiff's wife as tenant-of-record beginning in 2006 (NYSCEF Doc. No. 123, 14-15). The papers indicate that a rent overcharge proceeding was filed and is currently pending in Housing Court.

Plaintiff filed a Note of Issue on October 4, 2023 (NYSCEF Doc. No. 52). Thereafter, Defendants moved to vacate it and for additional discovery, and Plaintiff cross-moved for summary judgment. In opposition to the cross-motion, Defendants asked the Court to search the record and grant them summary judgment. The Court decided the motion on August 26, 2024 (NYSCEF Doc. No. 120, "Prior Decision"). It denied Plaintiff's motion for summary judgment and Defendants' request to search the record. It further denied Defendants' motion to vacate the Note of Issue but permitted them to obtain additional discovery and gave them sixty days thereafter to file their summary judgment motion. Defendants now move for summary judgment dismissing the Complaint. Although his previous motion was denied, Plaintiff cross-moves for summary judgment in his favor.

As set forth in the Prior Decision:

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.

(Prior Decision, 1-2). Plaintiff alleges that Defendants were illusory tenants who aided and abetted the fraudulent scheme. He claims that Jacqueline did not actually live in Apartment 14B during the time her name appears on DHCR filings and that she allowed her name to be used until the owners could deregulate the unit. The Prior Decision details the evidence Plaintiff

relies on to support his claims, namely the affidavit of a private investigator who was unable to speak substantively with Jacqueline, DHCR records, Jacqueline's voter registration, marriage announcement, and reported campaign contributions, and records that she purchased a residence in 2003 (*id.* at 2-3).

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.*). "[B]ald, conclusory assertions or speculation and '[a] shadowy semblance of an issue' are insufficient to defeat summary judgment" (*Stonehill Capital Mgt. LLC v Bank of the W.*, 28 NY3d 439, 448 [2016], quoting *S.J. Capelin Assoc. v Globe Mfg. Corp.*, 34 NY2d 338, 341 [1974]).

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]). As conceded by Defendants, though not mentioned by Plaintiff, the Prior Decision recited the standard for fraud in a rent overcharge action set forth in *Regina Metro. Co., LLC v New York State Div. of Hous. & Cmty Renewal*, 35 NY3d 332, 356 n 7 (2020), and it has since been clarified that a court must approach a fraud determination considering "the totality of circumstances" (*Cox v 36 S Oxford St, LLC*, 237 AD3d 604, 606 [1st Dept 2025]).

In the Prior Decision, the Court found that Plaintiff failed to make a prima facie showing of entitlement to summary judgment. The Court wrote:

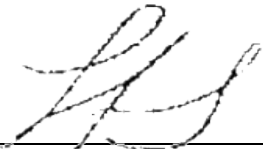
As to the underlying fraud, the documentary evidence presented demonstrates only that one tenant in the building may have maintained a second residence during some of the years she was listed as a tenant on DHCR filings. Even if that were sufficient to prove she was an “illusory tenant” for purposes 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.

(Prior Decision, 4).

In support of the instant motion, Defendants’ annex the Prior Decision and moving papers filed in support of that motion and argue that even analyzing the fraud claim using the “totality of the circumstances” standard, they demonstrate prima facie entitlement to summary judgment dismissing the Complaint. Plaintiff does not present any new arguments or additional evidence in support of his cross-motion, except that he annexes his own affidavit, which had not been included in the prior motion.

Even under the more permissive “totality of the circumstances” standard, Plaintiff fails to establish prima facie entitlement to summary judgment or raise a triable issue of fact sufficient to require a trial as to the underlying fraud. Even if it had, no evidence has been presented showing that Defendants had actual knowledge and provided substantial assistance, except for Plaintiff’s conclusory and speculative affidavit (NYSCEF Doc. No. 136). Accordingly, Defendants’ motion is granted, Plaintiff’s cross-motion is denied, and the action is dismissed in its entirety.

This constitutes the Decision and Order of the Court.

<u>9/10/2025</u> DATE	 LORI S. SATTLER, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> SUBMIT ORDER	<input type="checkbox"/> REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> FIDUCIARY APPOINTMENT		
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN			