

20 Starr LLC v Pieta

2025 NY Slip Op 34172(U)

October 24, 2025

Supreme Court, Kings County

Docket Number: Index No. 500703/2025

Judge: Carolyn E. Wade

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KINGS COUNTY CLERK
2025 OCT 27 A 10:16

At an IAS Term, Part 84, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 24th day of October, 2025.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS
Hon. Carolyn E. Wade, J.S.C.

-----X
20 STARR LLC,

Plaintiff,

Index No. 500703/2025

-against-

DECISION AND ORDER

NICOLE G. PIETA, BROOKE MARY
HAMMANN and CAROLINE ELINA MOORE,

WSS i

Defendants,

-----X
The following e-filed papers read herein:

NYSCEF Nos.:

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	_____	17-19
Opposing Affidavits (Affirmations)	_____	39

Upon the foregoing papers, Defendants Brooke Mary Hammann and Caroline Elina Moore ("Defendants") move for an Order, pursuant to CPLR 3211 (a) (1), (3) and (7), dismissing this action as against them.

On January 8, 2025, this action was commenced, originally in the name of Starr Opay, LLC ("Starr Opay"), to recover sums allegedly owed under a residential apartment lease between Starr Opay, as landlord, and Defendants and non-moving Defendant Nicole G. Pieta, as tenants. On March 23, 2022, parties entered into a lease that required a monthly rental amount of \$2,900.00. Additionally, the lease contained certain provisions addressing late fees, attorney's fees and other charges in the event of a holdover or default. On April 1, 2023, the lease term expired. Defendants

remained in possession and continued to occupy the apartment, creating a month-to-month tenancy, during which rent was increased from \$2,900.00 to \$3,375.00. Defendants made payments of \$2,900.00 for the months of April 2023 through and including October 2023, resulting in rental arrears of \$2,850.00. From November 2023 through November 2024, Defendants did not pay rent nor vacate the apartment, thus leaving an alleged balance due and owing of \$106,805.50, inclusive of late fees and holdover fees provided within the lease.

On March 6, 2025, 20 Starr LLC (“Plaintiff”) filed a supplemental summons and amended complaint, substituting it as named Plaintiff in place of Starr Opay. In the amended complaint, Plaintiff alleges that Starr Opay was the “predecessor-in-interest” to Plaintiff and that, “[p]ursuant to a series of assignments, the Outstanding Rent was assigned to Plaintiff on or about September 5, 2024” (Amended Complaint, NYSCEF Doc No. 11, ¶¶ 7, 23). No other substantive amendments were made to the original complaint.

On April 14, 2025, Defendants brought the instant Motion to Dismiss, pursuant to CPLR 3211 (a) (1), (3), and (7), contending therein that (a) the supplemental summons and amended complaint substituting Plaintiff was improperly made without leave of court; (b) that Plaintiff is not in contractual privity with Defendants and thus has no standing to enforce the lease; (c) that the allegations in the amended complaint regarding assignment of outstanding rent to Plaintiff are conclusory and insufficient to show Plaintiff’s standing; and (d) that, to the extent the original complaint remains the operative pleading, the new allegations regarding the assignment of outstanding rent from Starr Opay to Plaintiff constitute a judicial admission that the original Plaintiff, Starr Opay, no longer has standing to recover from defendants.

Plaintiff’s succession to the interest of Starr Opay ensues from the execution of a consolidated mortgage, by Starr Opay in favor of Ice Lender Holdings LLC (“ILH”), dated

November 27, 2019 and recorded December 6, 2019, to secure a \$3,450,000.00 loan. Contemporaneously, and as additional security for the loan, Starr Opay executed an assignment of leases and rents (“ALR”) in favor of ILH. The consolidated mortgage and ALR were subsequently assigned from ILH to Victoria Capital Trust (“VCT”) by assignments dated December 27, 2019 and recorded January 22, 2020. VCT commenced a foreclosure action on the consolidated mortgage, which resulted in a Consent Judgment of foreclosure and sale issued on August 21, 2021. By assignment, dated December 5, 2023 and recorded December 7, 2023, the consolidated mortgage was assigned from VCT to ILH, which then assigned it to Ice Lender XXIII LLC (“ILXXIII”), dated December 29, 2023 and recorded January 5, 2024. On March 14, 2024, following a foreclosure sale, a referee’s deed to the subject premises was issued to ILXXIII, which was recorded March 21, 2024. On September 5, 2024, ILXXIII then conveyed the property to Plaintiff, by deed, recorded on October 16, 2024. In addition to the foregoing and undisputed recorded transfers and conveyances, Plaintiff submits exhibits, in opposition, which include: an unrecorded assignment of leases and rents from VCT to ILH, dated December 7, 2023 (NYSCEF Doc No. 43); an unrecorded assignment of leases and rents from ILH to ILXXIII, dated December 29, 2023 (NYSCEF Doc No. 44); and an unrecorded assignment of leases and rents from ILXXIII to plaintiff, dated September 5, 2024 (NYSCEF Doc No. 47). In response to Defendants’ argument that Plaintiff was improperly substituted in the supplemental summons and amended complaint without leave of court, Plaintiff argues that because the time for Defendants to respond to the original complaint had not expired when Plaintiff filed the amended complaint, leave was not required under CPLR 3025 (a).¹

¹ CPLR 3025(a) provides that a party “may amend his pleading once without leave of court within twenty days after its service, or at any time before the period for responding to it expires, or within twenty days after service of a pleading responding to it.”

However, the amendments to the complaint go beyond adding factual allegations and/or causes of action as the amendments seek to substitute a new party based on Plaintiff's contention that it is the proper assignee of the lease and is the party with standing to enforce its terms. CPLR 1018 provides that "[u]pon 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 procedure for substitution is governed by CPLR 1021 which provides that a "motion for substitution" be made by "the successors or representatives of a party or by any party." Because the statute contemplates that the substitution of a successor-in-interest as a party be made upon motion, which was not brought by Plaintiff, the Court finds the filing of the supplemental summons and amended complaint substituting Plaintiff as a party without leave is improper.

Further, the purported substitution did not seek to substitute a party which succeeded to the interest of a Plaintiff during the pendency of the action. According to the allegations in the amended complaint and the assignments submitted by Plaintiff in its opposition, Plaintiff succeeded to the leases and rents on September 5, 2024, prior to the commencement of this action on January 8, 2025. "[T]he failure to name the real party in interest as the plaintiff is fatal to a complaint, and such failure cannot be remedied by the substitution or addition of the correct party." See *Robbins v Bonim*, 2012 NY Slip Op 30678[U] [Sup Ct, NY County 2012]). "While CPLR 305 [c] accords the court the authority to permit an amendment to a summons in certain circumstances, the section cannot be used as a device with which to add or substitute a new party, where an incorrect party was originally named" *Id.* quoting *Hart v Marriott Intl.*, 304 AD2d 1057, 1059 [3d Dept 2003]). "Amendment or substitution is not available where a plaintiff seeks to correct 'a fundamental and fatal defect - namely counsel's failure to properly identify the plaintiff

in [the] action.” *Id.* quoting *Resurgent Capital Servs., LLC v Mackey*, 32 Misc 3d 265, 266 [Dist Ct, Nassau County 2011]). “Proper identification of the plaintiff is not only a statutory requirement, but is a basic requirement of due process.” *Id.* citing 82 NY Jur 2d, Parties § 19).

As Starr Opay was not the real party in interest when this action was commenced, it lacked standing which could not be remedied by substitution through the filing of an amended complaint without leave of court (*see National Fin. Co. v Uh*, 279 AD2d 374, 375 [1st Dept 2001]).

As a result, Defendants’ Motion to Dismiss this action pursuant to CPLR 3211(a) (3), is **GRANTED**. In light of this disposition, the Court need not address the branch of Defendants’ Motion seeking dismissal pursuant to CPLR 3211 (a) (1) and (a) (7).

The complaint is hereby dismissed as against Defendants Brooke Mary Hammann and Caroline Elina Moore.

This constitutes the Decision and Order of the Court.

ENTER:



Hon. Carolyn E. Wade, J.S.C.

HON. CAROLYN E. WADE
JUSTICE OF THE SUPREME COURT

2025 OCT 27 A 10:19
KINGS COUNTY CLERK