

Hellmuth Owners Corp. v Kaplan

2025 NY Slip Op 34550(U)

December 5, 2025

Civil Court of the City of New York, New York County

Docket Number: Index No. L&T 321107/24

Judge: Clinton J. Guthrie

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART D

-----X

HELLMUTH OWNERS CORP.,

Index No. L&T 321107/24

Petitioner,

-against-

DECISION/ORDER

DAPHNE RECANTI KAPLAN, THOMAS
KAPLAN, JOHN DOE, JANE DOE,

Respondents.

-----X

Present:

Hon. CLINTON J. GUTHRIE
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of petitioner’s motion to sever/dismiss certain counterclaims (seq. 1), respondents’ (cross) motion for discovery (seq. 2), and petitioner’s motion to dismiss all of respondents’ affirmative defenses (seq. 3):

Papers	Numbered
Notice of Motion & All Documents Annexed (Seq. 1).....	<u>1 (NYSCEF #14-19)</u>
Notice of (Cross) Motion & All Documents Annexed (Seq. 2).....	<u>2 (NYSCEF #20-25)</u>
Notice of Motion & All Documents Annexed (Seq. 3).....	<u>3 (NYSCEF #26-27)</u>
Affirmations in Opposition (Seq. 2).....	<u>4 (NYSCEF #28-29)</u>
Memorandum of Law in Opposition (Seq. 1).....	<u>5 (NYSCEF #30)</u>
Memorandum of Law in Opposition (Seq. 3).....	<u>6 (NYSCEF #31)</u>
Reply Affirmation (Seq. 1).....	<u>7 (NYSCEF #32)</u>
Reply Memorandum of Law (Seq. 3).....	<u>8 (NYSCEF #33)</u>
Reply Brief (Seq. 2).....	<u>9 (NYSCEF #34)</u>

Upon the foregoing cited papers, the decision and order on petitioner’s motions (seqs. 1 and 3) and respondents’ (cross) motion (seq. 2), consolidated for determination herein, is as follows.

PROCEDURAL HISTORY

This summary nonpayment proceeding involving a cooperative apartment (comprised of

3 combined apartments) was filed in December 2024. On December 16, 2024, counsel for respondents Daphne Recanti Kaplan and Thomas Kaplan (“respondents”) interposed a verified answer with counterclaims. In early February 2025, the parties made a flurry of motions. First, petitioner made a motion to sever and/or dismiss certain of respondents’ counterclaims, some with prejudice and some without prejudice.¹ A day later, respondents made a motion (deemed here a cross motion) for discovery, primarily in relation to matters related to the roof of the subject building. Later the same day, petitioner made a separate motion to strike all of respondents’ affirmative defenses.² After all three motions were briefed, this court heard argument on March 10, 2025.

DISCUSSION

I. Motion to Sever/Dismiss Respondents’ Counterclaims

The court will first assess petitioner’s motions to sever and/or dismiss the counterclaims. The motion differentiates between those counterclaims petitioner seeks to sever and dismiss without prejudice and those that it seeks to dismiss with prejudice. Respondents oppose the motion in its entirety.

Petitioner’s motion seeks severance of several of respondents’ counterclaims for lack of subject matter jurisdiction. Those include counterclaims seeking property damage, personal injuries, negligence, nuisance, injunctive relief, declaratory relief, and corporate obligations. The Appellate Division, First Department, in *Wheeler v Linden Plaza Preserv. LP*, 172 AD3d 608, 609 [1st Dept 2019]), held that “The New York City Civil Court Act and article 7 of the

¹ This motion was made by “of counsel” attorneys appearing to petitioner’s attorneys for the purpose of addressing the counterclaims only.

² Though it was petitioner’s prerogative to retain separate counsel for the counterclaims, the piecemeal nature of the motion practice is not the court’s preference.

RPAPL provide the housing court with limited jurisdiction in summary proceedings, that is: recovery of possession of real property under various circumstances, and actions for the collection of rent.” (internal citations omitted). The Court in *Wheeler* also observed that “requiring the housing court to hear any manner of claim merely because they arise, however tangentially, out of the same facts as an article 7 proceeding would turn the housing court into a court of general jurisdiction.” (172 AD3d at 609). Additionally, in *Rostant v Swersky*, 79 AD3d 456, 457 [1st Dept 2010], the Appellate Division, First Department held that Housing Court does not have jurisdiction over a claim of purely monetary damages (there, for illegal eviction) and noted that such damages “must be sought in a court of competent jurisdiction.” (internal citations omitted) (*see also Saccheri v Cathedral Props. Corp.*, 16 Misc 3d 111, 114 [App Term, 2d Dept, 2d & 11th Jud Dists 2007]).

Applying these principles to the instant proceeding, the court finds that petitioner has established a sufficient basis to sever, *without prejudice*, respondents’ first counterclaim (seeking monetary damages for the breach of the proprietary lease), second counterclaim (seeking monetary damages for breach of a 2011 Roof Agreement), third counterclaim (seeking monetary damages for a breach of the covenant of good faith and fair dealing), fifth counterclaim (seeking monetary damages for breach of corporate obligations), seventh counterclaim (seeking monetary damages for private nuisance), and eighth counterclaim (for monetary damages related to negligence).

As for the ninth and tenth counterclaims, seeking, respectively, injunctive and declaratory relief, there is ample appellate case law limiting this court’s power to grant injunctive and declaratory relief (*see Jones v Gianferante*, 305 NY 135, 139 [1953] [A summary eviction

proceeding under the predecessor statute to article 7 of the RPAPL “cannot validly produce a declaratory judgment as to the rights of the parties as of times subsequent to its commencement[.]”]; *Lex 33 Assoc. v Grasso*, 283 AD2d 272, 273 [1st Dept 2001]; *Oparaji v Turkish Airlines, Inc.*, 87 Misc 3d 127[A], 2025 NY Slip Op 51471[U] [App Term, 1st Dept 2025]; *Board of Mgrs. Of the Towers on the Park Condominium v Cruz*, 2015 NY Slip Op 51641[U] [App Term, 1st Dept 2015]). The narrow instances of this court having jurisdiction to entertain injunctive relief are those involving proceedings for the enforcement of housing standards and applications for certain provisional remedies pursuant to Civil Court Act § 209(b) (see *North Waterside Redevelopment Co., L.P. v Febbraro*, 256 AD2d 261, 262 [1st Dept 1998]; *Topaz Realty Corp. v Morales*, 9 Misc 3d 27, 28 [App Term, 2d Dept, 2d & 11th Jud Dists 2005]; *Broome Realty Assoc. v Sek Wing Eng*, 182 Misc 2d 917, 918 [App Term, 1st Dept 1999]). Thus, the tenth counterclaim, seeking declaratory relief, is severed without prejudice. The ninth counterclaim, seeking injunctive relief, is severed without prejudice, *except* to the narrow extent that it is deemed to seek an order to correct any violations of the Housing Maintenance Code pursuant to NYC Admin. Code § 27-2121 (see *D’Agostino v Forty-Three E. Equities Corp.*, 12 Misc 3d 486, 489 [Civ Ct, NY County 2006], *affd* 16 Misc 3d 59 [App Term, 1st Dept 2007]).

The remainder of petitioner’s motion seeks the dismissal of certain counterclaims, namely those for constructive eviction, negligence, and the breach of good faith and fair dealing, with prejudice. As the court has already severed the defenses based on negligence and the breach of good faith and fair dealing for lack of subject matter jurisdiction, the request to dismiss them with prejudice is denied. To hold otherwise would exceed this court’s authority and result

in an impermissible advisory opinion (*see Matter of B.Z. Chiropractic, P.C. v Allstate Ins. Co.*, 197 AD3d 144, 154 [2d Dept 2021] [citing, inter alia, *Self-Insurer's Assn. v State Indus. Commn.*, 224 NY 13, 16 [1918, Cardozo, J.]).

As for the constructive eviction counterclaim (sixth counterclaim), petitioner seeks dismissal on the merits because respondents did not allege that they vacated or abandoned the subject premises. While petitioner is correct that abandonment of at least a portion of the subject premises is required for a constructive eviction claim to proceed (*see Barash v Pennsylvania Term. Real Estate Corp.*, 26 NY2d 77, 83 [1970]; *Minjak Co. v Randolph*, 140 AD2d 245, 248 [1st Dept 1988]), respondents' constructive eviction counterclaim asserts that the roof condition has rendered portions of the apartment uninhabitable and that respondents have experienced a "complete loss of a bedroom suite and bathroom." (Answer, ¶ 99 [NYSCEF Doc. 10]). As pleaded, therefore, the court finds that the constructive eviction counterclaim has sufficient merit to proceed and should not be dismissed at this juncture (*see Matter of Harbourview Realty, LLC v Village of Roslyn*, 2025 NY Slip Op 05239, *2 [2d Dept 2025] [On a motion to dismiss counterclaims, the court must afford the pleader the benefit of every possible favorable inference]).

Accordingly, petitioner's motion to sever and/or dismiss counterclaims is granted to the foregoing extent and is otherwise denied.

II. Motion to Dismiss Respondents' Affirmative Defenses

Petitioner seeks dismissal of all 17 of respondents' affirmative defenses. Respondents oppose the motion in its entirety. Pursuant to CPLR § 3211(b), "[a] party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no

merit.” On a CPLR § 3211(b) motion, “the plaintiff [petitioner] bears the burden of demonstrating that the defenses are without merit as a matter of law . . . [and] the defendant [respondent] is entitled to the benefit of every reasonable intendment of the pleading, which is to be liberally construed[.]” (534 E. 11th St. Hous. Dev. Fund Corp. v Hendrick, 90 AD3d 541, 541-542 [1st Dept 2011]).

Petitioner argues that each of respondents’ affirmative defenses are insufficiently pleaded and/or lack merit and should be dismissed accordingly. The court notes at the outset that an answer in a summary eviction proceeding “may contain any legal or equitable defense[.]” (RPAPL § 743; see also *Nissequogue Boat Club v State of New York*, 14 AD3d 542, 544 [2d Dept 2005]). Upon due consideration, the court finds that the defenses set forth in the answer are not devoid of merit *except* for the second affirmative defense (failure to maintain), sixth affirmative defense (breach of corporate obligations), ninth affirmative defense (breach of good faith and fair dealing), tenth affirmative defense (retaliatory conduct), thirteenth affirmative defense (failure of predicate notices), fourteenth affirmative defense (failure to exercise good faith), and sixteenth affirmative defense (petitioner’s acts and omissions). Specifically, the tenth affirmative defense for retaliatory conduct does not make out a defense under either Real Property Law § 223-b or the common law standard (see *Toms Point Apts. v Goudzward*, 79 Misc 2d 206 [App Term, 2d Dept, 9th & 10th Jud Dists 1973], *affg* 72 Misc 2d 629 [Nassau Dist Ct, 3d Dist 1972]). Additionally, the defense of improper service of the predicate notice (thirteenth) does not include a sufficient denial to rebut the affidavits of service for the rent demand (see *1711 Boone Ave. LLC v Alhudais*, 84 Misc 3d 127[A], 2024 NY Slip Op 51449[U] [App Term, 1st Dept 2024]; *Marmon Realty Group, LLC v Khalil*, 72 Misc 3d 136[A], 2021 NY Slip Op

50733[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2021]). As for the second, sixth, ninth, fourteenth, and sixteenth affirmative defenses, the court finds that they are insufficiently pleaded to demonstrate a nexus with petitioner’s claims in this summary nonpayment proceeding (see *Eden v Avillar*, 76 Misc 3d 131[A], 2022 NY Slip Op 50905[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2022]).

Thus, petitioner’s motion to dismiss respondents’ affirmative defenses is granted to dismiss, *without prejudice*, respondents’ second affirmative defense (failure to maintain), sixth affirmative defense (breach of corporate obligations), ninth affirmative defense (breach of good faith and fair dealing), tenth affirmative defense (retaliatory conduct), thirteenth affirmative defense (failure of predicate notices), fourteenth affirmative defense (failure to exercise good faith), and sixteenth affirmative defense (petitioner’s acts and omissions). The motion is otherwise denied.

III. Respondents’ Cross Motion for Discovery

Respondents move, pursuant to CPLR § 408, for discovery from petitioner, specifically documents and communications. Petitioner opposes the motion in its entirety.

Pursuant to CPLR § 408 (which applies to special proceedings), “leave of court shall be required for disclosure except for a [notice to admit].” The standard that has developed for obtaining leave of court is “ample need,” which is predicated on the demonstration of the six factors first set out in *New York University v Farkas*, 121 Misc 2d 643 [Civ Ct, NY County 1983, Saxe, J.]. The factors are as follows: (1) whether the party seeking discovery has asserted facts to establish a cause of action; (2) whether there is a need to determine information directly related to the cause of action; (3) whether the requested disclosure is carefully tailored and is

likely to clarify the disputed facts; (4) whether prejudice will result from the granting of an application for disclosure; (5) whether the prejudice can be diminished or alleviated by an order fashioned by the court for this purpose; and (6) whether the court, in its supervisory role, can structure discovery so that pro se tenants, in particular, will be protected and not adversely affected by discovery requests (*see Farkas*, 121 Misc 2d at 647; *see also Georgetown Unsold Shares, LLC v Ledet*, 130 AD3d 99, 106-107 [2d Dept 2015]). More recently, some lower courts have focused the “ample need” inquiry on whether discovery “will speed a case towards a fair resolution, whether by stipulation or trial.” (*Temo Realty LLC v Herrera*, 82 Misc 3d 299, 301 [Civ Ct, Kings County 2023] [citing *50th St. HDFC v Abdur-Rahim*, 72 Misc 3d 1210[A], 2021 NY Slip Op 2021 NY Slip Op 50693[U] [Civ Ct, Kings County 2021] and *717 Sterling Corp. v Cook*, 78 Misc 3d 1224[A], 2023 NY Slip Op 50345[U] [Civ Ct, Kings County 2023]]; *see also South Brooklyn Ry. Co. v Heung Man Lau*, 84 Misc 3d 527, 541 [Civ Ct, Kings County 2024]).

Respondents’ document requests include not only documents and communications about roof repairs and a water tank installation on the roof and conditions related thereto, but also corporate documents, legal opinions, and documents and communications underlying a 2011 roof agreement. Taken together, the demands are not “narrowly tailored” to clarify disputed facts in this summary nonpayment proceeding or speed the proceeding towards a resolution. While certain requests, standing alone, may be relevant to certain defenses, it is not this court’s obligation to prune an overly broad discovery demand (*see Board of Mgrs. Of the Park Regent Condominium v Park Regent Assoc.*, 78 AD3d 752 [2d Dept 2010]; *Poon v McSam Hotel Group, LLC*, 37 Misc 3d 138[A], 2012 NY Slip Op 52191[U] [App Term, 1st Dept 2012]). Accordingly, respondents’ cross motion for discovery is denied.

CONCLUSION

The parties' respective motions are disposed to the foregoing extent. The proceeding will be restored for all purposes, including trial transfer, on January 9, 2026 at 9:30 AM. This Decision/Order will be filed to NYSCEF.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: New York, New York
December 5, 2025



HON. CLINTON J. GUTHRIE
J.H.C.

CHECK ONE:

MOTION SEQ. #: 1

MOTION SEQ. #: 2

MOTION SEQ. #: 3

CHECK IF APPROPRIATE:

NOTES

<input type="checkbox"/>	CASE DISPOSED			<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
NOTES						