

Nikonov v Bailey-Holt House Hous. Dev. Fund Corp.

2025 NY Slip Op 34580(U)

December 1, 2025

Supreme Court, New York County

Docket Number: Index No. 155373/2023

Judge: Phaedra F. Perry

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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. PHAEDRA F. PERRY PART 35

Justice

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INDEX NO. 155373/2023

DENYS NIKONOV,

MOTION DATE 03/27/2024

Plaintiff,

MOTION SEQ. NO. 002

- v -

BAILEY-HOLT HOUSE HOUSING DEVELOPMENT FUND CORPORATION, AND BAILEY HOUSE, INC.

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

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

Upon the foregoing documents, the Small Claims Action is hereby consolidated with the above-captioned action under Index No. 155373/2023

Defendants Bailey-Holt House Housing Development Fund Corporation and Bailey House, Inc. (collectively, Defendants) move, pursuant to CPLR 602(a)-(b), for an order (i) removing the matter Nikonov v. Bailey-Holt House, Index No. SC-000704-21/NY (the Small Claims Action) from the Small Claims Part of the Civil Court of the City of New York, (ii) transferring it to this Court, and (iii) consolidating it with the above-captioned Supreme Court action. The motion is supported by the Affirmation of Alexander Janoso, Esq. dated March 27, 2024 (NYSCEF Doc No. 28), Exhibits A-G (NYSCEF Doc Nos. 30-36), and Defendants' Memorandum of Law (NYSCEF Doc No. 29). Plaintiff, represented in the Supreme Court Action but pro se in the Small Claims Action, did not file opposition.

Procedural History

A. Small Claims Action

On June 23, 2021, Plaintiff commenced the Small Claims Action seeking \$2,500 for "damage caused to other personal property" (NYSCEF Doc No. 30). A hearing was scheduled for September 18, 2023, at which Plaintiff failed to appear. The action was dismissed for failure to appear (NYSCEF Doc No. 34).

On October 25, 2023, Plaintiff submitted an Order to Show Cause to vacate the dismissal (NYSCEF Doc No. 35). In his affidavit, Plaintiff asserted property damages caused by alleged

bedbug, mouse, and cockroach infestation, and claimed a building representative promised him compensation of \$2,650 if he moved out (*id.*).

The Small Claims Court granted the Order to Show Cause, restored the matter to the calendar, and scheduled a hearing. A trial date was set for March 28, 2024.

B. Supreme Court Action

On June 14, 2023, Plaintiff commenced this Supreme Court Action by Summons and Verified Complaint asserting eight causes of action sounding in negligence, nuisance, breach of contract, breach of warranty of habitability, emotional distress, and constructive eviction, all arising from the same alleged infestation conditions between 2021 and 2023 (NYSCEF Doc No. 31). Defendants answered on September 11, 2023, and November 1, 2023 (NYSCEF Doc Nos. 32, 33). Plaintiff later filed a Bill of Particulars describing damages from extermination and alleged mismanagement (NYSCEF Doc No. 36).

C. Overlap Between the Two Actions

Defendants demonstrate—and the record confirms—that both actions arise from the same alleged infestation, alleged failure to maintain the premises, and related property and personal damages. Plaintiff has presented the same photographs and evidence in both matters (NYSCEF Doc No. 28 ¶¶ 13–14). The two matters share: (1) common parties (Bailey-Holt House); (2) common issues of law and fact; (3) overlapping damages claims arising from the same alleged building conditions; and (4) identical documentary and testimonial evidence.

Discussion

CPLR 602(a) provides that when actions involve common questions of law or fact, the Court may order consolidation to avoid unnecessary cost or delay. Where, as here, the Supreme Court action is pending, CPLR 602(b) authorizes removal of the lower-court action into Supreme Court for consolidation. Consolidation is favored unless a party demonstrates prejudice to a substantial right. *Lamboy v. Inter Fence Co.*, 196 AD2d 705 (1st Dept 1993).

There is no prejudice to Plaintiff in consolidating the matters. Plaintiff initiated both litigations based on the same underlying set of facts. Although consolidation may delay the final resolution of the \$2,500 Small Claims Action, “mere delay is insufficient to deny consolidation.” *Raboy v. McCrory Corp.*, 210 AD2d 145, 147 (1st Dept 1994). By contrast, refusing consolidation risks inconsistent findings, duplicative fact-finding, piecemeal litigation, and prejudice to Defendants by requiring them to litigate the same factual dispute in two forums with different procedural rules. New York courts routinely permit removal of small claims matters into Supreme Court where the claims share a common nucleus of fact. *Moise v. Brown*, 26 Misc 3d 1224(A) (Sup Ct, Kings County 2010).

The record establishes identical operative events: alleged infestation conditions from January 2021 through 2023; damage to property; alleged breaches of contract and housing conditions; and the same photographs and email evidence presented by Plaintiff. Both cases involve the same Defendant(s), and the Small Claims Action's property damage claim is a subset of the wider damages alleged in the Supreme Court Action.

Consolidation will promote judicial economy and avoid inconsistent verdicts. No substantial right of Plaintiff is prejudiced; consolidation will simply ensure one unified adjudication of his claims. Therefore, consolidation is warranted.

Accordingly, it is hereby

ORDERED that Defendants' Motion to Remove and Consolidate (NYSCEF Doc No. 27) is **granted** in its entirety; and it is further

ORDERED that the Small Claims Action *Nikonov v. Bailey-Holt House*, Index No. SC-000704-21/NY, pending in the Civil Court of the City of New York, New York County, is hereby **removed to this Court** pursuant to CPLR 602(b); and it is further

ORDERED that the Small Claims Action is hereby **consolidated** with the above-captioned action under Index No. 155373/2023; and it is further

ORDERED that the consolidated action shall proceed under the following caption:

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

DENYS NIKONOV,

Plaintiff,

—against—

**BAILEY-HOLT HOUSE HOUSING DEVELOPMENT FUND
CORPORATION, BAILEY HOUSE, INC., and BAILEY-HOLT
HOUSE,**

Defendants.

and it is further

ORDERED that upon filing of this Decision and Order with the County Clerk, the Clerk of the Supreme Court, New York County, is directed to take all necessary steps to effectuate the removal of *Nikonov v. Bailey-Holt House*, Index No. SC-000704-21/NY, from the Civil Court of the City of New York to this Court pursuant to CPLR 602(b), and to consolidate that matter into

Index No. 155373/2023 under the consolidated caption set forth above; and the Clerk of the Civil Court of the City of New York, New York County, is directed upon receipt of a copy of this Decision + Order with Notice of Entry to transfer the file and all papers in the Small Claims Action to the Clerk of the Supreme Court, New York County, accordingly.

ORDERED that Defendants shall serve a copy of this Decision + Order with Notice of Entry upon Plaintiff and the Civil Court of the City of New York within ten (10) days of entry.

This constitutes the decision of the Court.

12/1 /2025
DATE


_____, 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