

<b>Vorotyntsev v DIB Mgt., Inc.</b>
2026 NY Slip Op 31691(U)
April 17, 2026
Supreme Court, New York County
Docket Number: Index No. 164440/2025
Judge: Gerald Lebovits
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. GERALD LEBOVITS PART 07**

*Justice*

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**INDEX NO. 164440/2025**

MIKHAIL VOROTYNTSEV and ELENA VOROTYNTSEVA,

**MOTION SEQ. NO. 003 004**

Plaintiffs,

- v -

DIB MANAGEMENT, INC., MIZRAHI LAW OFFICES, LLC,  
ROGERS DIB, ROLAND DIB, GEORGES DIB, 37 GREAT  
JONES STREET PROPERTY, LLC, ROBERT MIZRAHI,  
and GARY TATINTSIAN,

**DECISION + ORDER ON  
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 19, 20, 21, 22, 23 were read on this motion to CONSOLIDATE/JOIN FOR TRIAL.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 28, 29, 30, 31 were read on this motion to STAY.

*Mikhail Vorotyntsev*, New York, NY, plaintiff pro se.  
No appearance for defendants.

Gerald Lebovits, J.:

This action is related to a long-running residential-landlord-tenant dispute. Plaintiff Mikhail Vorotyntsev is the principal of the company (Hawkr Inc.) that leased the residential premises at issue in that dispute; his wife, plaintiff Elena Vorotyntseva, executed a guarantee of Hawkr’s obligations under the lease. Defendants here include Hawkr’s landlord and the landlord’s principals (the landlord defendants), as well as outside counsel that represented landlord in dealings with plaintiffs (the attorney defendants).

On motion sequence 003, plaintiffs ask this court to remove to itself a Housing Court eviction proceeding brought against Hawkr by the landlord defendants and then to consolidate that proceeding with this action. On motion sequence 004, plaintiffs apply for an order to show cause for the same relief, along with an interim stay of proceedings in Housing Court.

The motion to remove/consolidate (mot seq 003) is denied. The court declines to sign plaintiff’s proposed OSC and denies the requested interim stay (mot seq 004).

## BACKGROUND

Plaintiffs have asserted claims against all defendants for intentional infliction of emotional distress (IIIE), abuse of process, breach of the covenant of good faith and fair dealing, and civil conspiracy, seeking compensatory and punitive damages totaling \$3 million. (*See* NYSCEF No. 1 at 17-18.) Plaintiffs have also asserted claims under Judiciary Law § 487 against the attorney defendants, seeking treble damages of at least \$1.5 million. (*See id.* at 18.) Plaintiffs also seek injunctive relief against all defendants to bar them from bringing any eviction proceeding against plaintiffs, and to bar them from enforcing or executing on an eviction warrant that was issued, but never acted on, in a prior summary proceeding brought by the landlord defendants against plaintiffs.<sup>1</sup> (*See id.* at 5-6 ¶¶ 21-23, 18.)

Plaintiffs brought this action in November 2025. (*See* NYSCEF No. 1.) The same week they filed the complaint, plaintiffs also asked this court to issue an order to show cause and an accompanying temporary restraining order (mot seq 001). Plaintiffs sought a preliminary injunction barring the landlord defendants from bringing a Housing Court proceeding to evict plaintiffs from their apartment, arguing, in essence, that any such eviction proceeding would be retaliatory and improper. (*See* NYSCEF No. 2 at 1-2 [proposed OSC/TRO].) Plaintiffs also sought preliminary injunctive relief and a TRO to block execution or enforcement of the eviction warrant from the prior summary proceeding. (*See id.* at 2.) This court denied the TRO and declined to sign the OSC. (*See* NYSCEF No. 7.) This court concluded that plaintiffs could fully assert their retaliatory-eviction arguments in Housing Court as defenses to any new eviction proceeding; and that plaintiffs' requests with respect to the eviction warrant issued in the *prior* eviction proceeding had to be raised there, not here. (*See id.* at 7.)

A few days after the complaint was filed in this action, the landlord defendants brought the anticipated eviction proceeding against plaintiffs in Housing Court, New York County. (*See Great Jones Street Property, LLC v Hawkr Inc.*, Index No. LT-319157-25 [Civ Ct, Hous Part, NY County].) In early December 2025, plaintiffs here answered and counterclaimed in the eviction proceeding. (*See* Index No. LT-319157-25, NYSCEF No. 5.) The answer, among other things, raised the retaliatory-eviction defense that had been previously discussed in the request for (and declination of) the order to show cause on motion sequence 001 in this action. Plaintiffs' answer in the Housing Court proceeding also asserted counterclaims, sounding in harassment and abuse of process, that parallel some of the claims that plaintiffs have brought in this action. (*See* Index No. LT-319157-25, NYSCEF No. 5 at 8-9.) The answer also contends that Housing Court “lacks subject matter jurisdiction to adjudicate the complex legal and factual issues presented, which sound in claims of civil conspiracy, abuse of process, and high-value torts that are beyond the limited jurisdiction of the Civil Court. (*Id.* at 7 ¶ 28.) And it alleged that respondents in the Housing Court proceeding (plaintiffs here) “intend to file a motion pursuant to CPLR 602(b) to remove this summary proceeding to the Supreme Court for consolidation with the plenary action.” (*Id.* at 5 ¶ 22.)

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<sup>1</sup> The landlord defendants have moved to dismiss the claims against them (mot seq 002). (*See* NYSCEF No. 9.) That motion is currently pending before this court.

Four months later, on April 13, 2026, plaintiffs brought motion sequence 003 in this action, seeking to remove the Housing Court proceeding to this court and, upon removal, consolidating that proceeding with this action. (*See* NYSCEF No. 19 at 1 [notice of motion].) Plaintiffs, apparently in the alternative, ask this court to stay the Housing Court proceeding pending “adjudication of [a] related federal Civil RICO action”; and to “[a]bat[e] use and occupancy to zero pendente lite” based on asserted breaches of the implied warranty of habitability and covenant of quiet enjoyment.” (*Id.* at 2.)

Motion sequence 003 is returnable on April 22, 2026. On April 16, 2026, plaintiffs applied for an order to show cause (mot seq 004). (*See* NYSCEF No. 28.) Plaintiffs’ proposed OSC again seeks the removal and the subsequent consolidation of the Housing Court eviction proceeding; and the OSC is accompanied by a request for an interim stay of that proceeding pending determination of motion sequence 004. (*See id.* at 1-2.) Plaintiffs’ motion papers do not address whether they provided the landlord defendants with advance notice of this application, or would be significantly prejudiced if notice were provided, as 22 NYCRR 202.7 (f) requires. (*See* NYSCEF No. 29 [mem. of law]; NYSCEF No. 30 [Mikhail Vorotyntsev aff.] )

### DISCUSSION

Plaintiffs rely on CPLR 325 (b). That rule provides that when “it appears that the court in which an action is pending does not have jurisdiction to grant the relief to which the parties are entitled, a court having such jurisdiction may remove the action to itself upon motion.” Whether to remove an action satisfying the lack-of-jurisdiction requirement “rests in the sound discretion of the IAS court in the interest of the proper administration of justice.” (*Atherton v 21 E. 92nd St. Corp.*, 149 AD2d 354, 355 [1st Dept 1989].)

Plaintiffs fail to satisfy CPLR 325 (b)’s lack-of-jurisdiction requirement. As an initial matter, this court agrees with plaintiff that Housing Court lacks authority to decide their “complex tort claims for damages” raised as counterclaims in the Housing Court proceeding.<sup>2</sup> (Index No. LT-319157-25, NYSCEF No. 5, at 7 ¶ 30; *see Wheeler v Linden Plaza Preservation LP*, 172 AD3d 608, 609 [1st Dept 2019] [holding that plaintiff’s damages claims were not subject to dismissal on claim-preclusion grounds in light of the resolution of an earlier Housing Court proceeding, because those claims, “arising out of torts unrelated to possession of the premises or collection of rent . . . could not have been brought as counterclaims in Housing Court”].) But even assuming that plaintiffs are correct that Housing Court lacks authority to adjudicate the counterclaims that they have asserted in that proceeding, that lack of authority would still not permit removal of the Housing Court proceeding to this court.

When Housing Court lacks authority to decide a counterclaim, the court may dismiss that counterclaim without prejudice; alternatively, it may sever that counterclaim under CPLR 407 and order the claim to continue as a plenary action in the general part of Civil Court (*see Fountains-Clove Road Apts., Inc. v Gunther*, 54 Misc 3d 49, 51 [App Term, 2d Dept 2017]; *Engel v Wolfsohn*, 38 Misc 3d 17, 20 [App Term, 2d Dept 2012]). If a cause of action is initially asserted as a counterclaim in a Housing Court summary proceeding and then severed, the cause

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<sup>2</sup> That said, this court defers any definitive resolution of that question to Housing Court.

of action retains its nature as a counterclaim following severance. (See *Jone v Simkowitz*, 163 AD2d 77, 78-79 [1st Dept 1990].) And under New York City Civil Court Act § 208 (b), Civil Court’s jurisdictional monetary limits do not apply to counterclaims. (See *id.*; accord *Matter of Moorman v Meadow Park Rehabilitation & Health Care Ctr., LLC*, 57 AD3d 788, 789 [2d Dept 2008] [affirming on this ground the denial of an application to remove an action from Civil Court to Supreme Court that was based on the amount sought on movant’s planned counterclaim].)

Thus, whether or not Housing Court is the proper forum to decide plaintiffs’ counterclaims asserted in the related summary proceeding, at a minimum *Civil Court* would still have subject-matter jurisdiction to adjudicate those counterclaims in its general part. The existence of subject-matter jurisdiction in Civil Court over the summary proceeding forecloses removal of that proceeding to this court under CPLR 325 (b).

Regardless, this court doubts that removal to this court of the Housing Court proceeding would be appropriate even if Civil Court lacked jurisdiction to award movants the full amount they seek on their counterclaims. Housing Court “is the preferred forum for resolving landlord-tenant disputes.” (*44-46 W. 65th Apt. Corp. v Stvan*, 3 AD3d 440, 441 [1st Dept 2004] [reversing Supreme Court injunction staying holdover-eviction proceeding pending resolution of related first-in-time claims in Supreme Court].) And nothing prevents movants from raising their asserted defenses to eviction in the Housing Court proceeding while fully pursuing here any tort cause of action available to them. Movants’ evident desire to litigate all their claims in one forum—and to have that forum be this court, rather than Housing Court—is not a sufficient basis, standing alone, to require litigation in Supreme Court of holdover-eviction claims brought first under article 7 of the Real Property Actions and Proceedings Law.

Accordingly, it is

ORDERED that plaintiffs’ motion to remove the Housing Court proceeding, consolidation of that proceeding with this action, and other related relief (mot seq 003) is denied; and it is further

ORDERED that this court declines to sign plaintiffs’ proposed order to show cause seeking removal and consolidation (mot seq 004); and it is further

ORDERED that plaintiffs’ requested interim stay of the Housing Court proceeding (mot seq 004) is denied.

  
**HON. GERALD LEBOVITS**  
J.S.C.

4/17/2026  
DATE

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE