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### 783/5 Lex Assoc. LLC v. Mezgitic

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[\*1]

<b>783/5 Lex Assoc. LLC v Mezgitic</b>
2021 NY Slip Op 50809(U) [72 Misc 3d 1220(A)]
Decided on July 20, 2021
Civil Court Of The City Of New York, New York County
Perry, J.
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on July 20, 2021

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

<p><b>783/5 Lex Associates LLC, Plaintiff,</b></p> <p><b>against</b></p> <p><b>Soner Mezgitic, Defendant.</b></p>
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Index No. CV-2417-2021

Counsel for plaintiff - Silversmith & Associates Law Firm, PLLC, 39 Broadway, Suite 910, New York, New York 10006 by Jason S. Garber, Esq.

Counsel for defendant — Usar Law Group, P.C., 2 Park Ave., 20th Floor, New York, New York 10016 by Faruk Usar, Esq.

Phaedra F. Perry, J.

Recitation as Required by CPLR §2219(a): The following papers were read on this Motion for Summary Judgment:

Papers Numbered

Defendant's Notice of Motion, Affirmation in Support, and Exhibits 1

## Plaintiff's Affirmation in Opposition, and Exhibits 2

## Defendant's Reply Affirmation 3

### **Upon the foregoing cited papers, the Decision/Order in this motion is as follows:**

Plaintiff, 783/5 Lex Associates LLC, commenced the underlying action by filing a Summons and Complaint on or about February 16, 2021, seeking a judgment in the amount of \$23,000.00 against Defendant, Soner Mezgitic, for defaulting on a residential lease agreement for premises located at 141 East 61st Street, Apt 4A, New York, NY. Plaintiff is also seeking \$2,500.00 in legal fees. On March 26, 2021, Defendant filed the instant pre-answer motion to dismiss pursuant to CPLR 3211(a)(4) and (2) on the ground that there is another action pending between the same parties for the same cause of action in New York City Civil Court and that this court does not have subject matter jurisdiction of the cause of action. The motion was marked fully submitted on May 25, 2021.

In its motion, Defendant argues there is currently a pending holdover petition in New York Housing Court, New York County entitled *783/5 LEX ASSOCIATES, LLC v. SONER [\*2]MEZGITCI*, index LT-306421-20/NY previously filed on December 18, 2020 regarding the same premises involved in this matter. It is undisputed that both the holdover action and this action involves the same parties or their privies. In the holdover action, the Plaintiff seeks unpaid rent in the sum of \$16,100.00, the fair and reasonable value of use and occupancy of the premises from December 1, 2020, a warrant of eviction, and legal fees. On January 26, 2021, Defendant filed a Declaration of Hardship during the COVID-19 Pandemic, and as a result, the holdover proceeding was stayed.

Defendant argues that the relief sought in both actions are the same or substantially the same and that the issue of nonpayment of rent will be resolved in the first action, rendering the instant action unnecessary. Defendant also claims that because the legal fees requested puts the total sought by Plaintiff over \$25,000, it exceeds the jurisdictional limit set by New York City Civil Court Act 202.

In opposition, Plaintiff argues that the relief sought in each proceeding is disparate. They claim the holdover proceeding is premised upon the Defendant's lease expiration and the Plaintiff's attempt to obtain possession of the premises, while this plenary action is based upon the Plaintiff's endeavor to obtain a money judgment against the Defendant for all rents and use and occupancy due through February 2021. Moreover, they argue that by virtue of the stay in the holdover proceeding, it cannot be said "in no meaningful way" that the other

action is "pending." Finally, Plaintiff argues that counsel fees is a separate cause of action and will not cause this court to lose jurisdiction if the aggregate judgement is over \$25,000.00.

In reply, Defendant insists the two actions are not dissimilar and the Plaintiff should not be permitted to maintain two simultaneous lawsuits seeking the same relief against Defendant.

### *DISCUSSION*

The Court has broad discretion to dismiss a Complaint under CPLR 3211(a)(4) if there is already another action pending between the same parties for the same cause of action in a court of any state or the United States. "It is not necessary that the precise legal theories presented in the first action also be presented in the second action so long as the relief ... is the same or substantially the same" [\*Swartz v. Swartz\*, 145 AD3d 818](#) (2nd Dept. 2016). In exercising this discretion, courts may examine the circumstances under which the second action is brought.

On December 28, 2020, Governor Cuomo signed into law the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (CEEFPFA) staying residential eviction proceedings in New York State filed within thirty days of December 28, 2020 for sixty days and, where a tenant submits a completed Hardship Declaration, staying the proceedings until at least May 1, 2021. The stay of proceedings was then extended to August 31, 2021.

Here, both actions involve the same parties regarding the same premises seeking substantially the same relief. In the holdover proceeding, Plaintiff is seeking unpaid rent, counsel fees, and eviction; here, Plaintiff is seeking unpaid rent and counsel fees. A resolution in housing court would render this action moot and redundant. To hold otherwise would circumvent the stated purpose of CEEFPFA as intended by the Legislature. Plaintiff's attempt to redefine the word "pending" is also unavailing. The holdover action is "pending" because, by definition, it remains active and undecided. Moreover, as the stay on the holdover proceeding is extended only until August 31, 2021, it cannot be said that it is not "pending" in any meaningful way. Therefore, the Defendant's motion to dismiss the Complaint is GRANTED.

*[\*3]CONCLUSION*

Accordingly, it is hereby

ORDERED that Defendant's motion to dismiss is granted and the Complaint is dismissed; and it is further

ORDERED that Defendant shall serve and file a copy of Notice of Entry of this Decision via EDDS within 30 days of the date of this Order.

This constitutes the Decision and Order of the Court.

Dated: July 20, 2021  
New York, New York

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Hon. Phaedra F. Perry, J.C.C.

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