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Welsh v. 12 E. 86th St. LLC

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Welsh v 12 E. 86th St. LLC

2023 NY Slip Op 30131(U)

January 12, 2023

Supreme Court, New York County

Docket Number: Index No. 154120/2020

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART **33M**

Justice

-----X

SALLY KATHLEEN WELSH,

Plaintiff,

- v -

12 EAST 86TH STREET LLC, BRODSKY ORGANIZATION,
LLC

Defendant.

-----X

INDEX NO. 154120/2020

MOTION DATE 10/20/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

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

Upon the foregoing documents, Plaintiff Sally Kathleen Welsh's ("Plaintiff") motion seeking to consolidate this action with a pending holdover proceeding in Civil Court under index number L&T 301512/2020 (the "Civil Court case") is denied.

CPLR § 602(a) provides that "when actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all the matters in issue...and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." Further, "[t]here is a preference to join cases for discovery and trial in the interests of judicial economy and ease of decision making where there are common questions of law and fact, unless the party opposing the motion demonstrates that [consolidation] will prejudice a substantial right" (*Lema v 1148 Corporation*, 176 AD3d 653, 654 [1st Dept 2019]).

However, there is a competing and strong preference for resolving landlord-tenant disputes in Civil Court due to its unique ability to resolve such issues (*44-46 West 65th Apartment Corp. v Stvan*, 3 AD3d 440, 441 [1st Dept 2004]). Indeed, consolidation is inappropriate when the two

actions maintain their own distinct causes of action, removal from Civil Court to consolidate in Supreme Court is inappropriate (*Simens v Darwish*, 105 AD3d 686, 686-687 [1st Dept 2013]). Further, even where there are common questions of law or fact, consolidation of actions will be properly denied if the actions are at markedly different procedural stages and consolidation would result in undue delay in the resolution of either matter (*L.B. v Stahl York Ave. Co.*, 188 AD3d 421, 422 [1st Dept 2020]).

The case at bar was commenced on June 9, 2020 (NYSCEF Doc. 1). Plaintiff is suing her landlord, Defendant 12 East 86th Street LLC (“Landlord”) as well as Defendant Brodsky Organization LLC, for (1) breach of warranty of habitability; (2) breach of the lease; (3) constructive eviction; (4) negligence, and (5) intentional infliction of emotional distress (NYSCEF Doc. 2). The relief Plaintiff seeks is monetary compensation for damages to her person and property as well as loss of income (*id.*). There is no injunctive or declaratory relief pled. Plaintiff alleges that her damages commenced in August of 2016 as a result of construction on the top floor of the Building which caused excessive noise, dust, and other debris (*id.* at ¶¶ 9-16). Plaintiff claims that construction did not end until May 2018, which forced her to leave her apartment for a period of 11 months, prevented her from working, and caused her to develop stress related shingles and Pruritus Nodularis (*id.* at ¶¶ 17 and 20-23). Plaintiff alleges that the Landlord informed her that her lease would not be renewed in October of 2019 (*id.*). Discovery in this case is in the preliminary stages, as Plaintiff is to undergo several independent medical exams due to her alleged personal injuries and depositions have not yet taken place (NYSCEF Doc. 10).

The Civil Court case was initiated by Landlord on August 31, 2020 and seeks to evict Plaintiff for remaining in possession of her apartment after expiration of her lease and without paying rent (NYSCEF Doc. 25). Plaintiff filed an Answer and sought to dismiss Landlord’s

petition under a variety of bases; however, Travis J. Arrindell, J.H.C. denied Plaintiff's motion to dismiss in a Decision and Order dated October 17, 2022. While Plaintiff has asserted as an affirmative defense to the holdover proceeding that her apartment is rent stabilized and therefore the lease termination was improper; in the present action there is no allegation, let alone any relief pled related to the rent-stabilized status of the apartment. Thus, contrary to Plaintiff's assertion, there is no overlap in the instant action and the holdover proceeding regarding the rent-stabilized status of the apartment. Further, the Landlord's cause of action in the Civil Court action accrued after and wholly separately from Plaintiff's causes of action in the present action.

There is a strong rule against removing landlord-tenant disputes in Civil Court where relief can be fully granted in Civil Court for purposes which militates against consolidation (*44-46 West 65th Apartment Corp. v Stvan*, 3 AD3d 440, 441 [1st Dept 2004]; *Scheff v 230 East 73rd Owners*, 230AD2d 151, 152 [1st Dept 1994]). Moreover, the causes of action in the case at bar, which are for personal injury, property damage, and loss of income are wholly separate and distinct from the relief sought – namely ejectment – in the Civil Court proceeding. This too weighs against consolidation (*Simens v Darwish*, 105 AD3d 686, 686-687 [1st Dept 2013]). Further, the cases are at wholly separate stages of litigation – as depositions, independent medical exams, and post-deposition paper discovery have yet to take place in the case at bar, while the Civil Court action, based on the motion papers, is ostensibly approaching trial. Thus, the markedly different procedural stages weighs against consolidation (*L.B. v Stahl York Ave. Co.*, 188 AD3d 421, 422 [1st Dept 2020]). Finally, it would prejudice a substantial right of the Landlord—namely possession of its owned property—if the holdover proceeding was significantly delayed by consolidation with this case (*Sokolow, Dunaud, Mercadier & Carreras LLP v Lacher*, 299 AD2d 64, 73-74 [1st Dept

2002] [holding consolidation improper where opposing party demonstrates prejudice to a substantial right]).

Accordingly, it is hereby,

ORDERED that Plaintiff's motion to consolidate is denied; and it is further

ORDERED that the parties are directed to appear for a compliance conference on February 1, 2023, at 9:30 a.m. in person at 60 Centre Street, Room 442, New York, New York 10007; and it is further

ORDERED that within ten (10) days of entry, counsel for Landlord shall serve a copy of this Decision and Order on all parties to this action with notice of entry.

This constitutes the Decision and Order of the Court.

<u>1/12/2023</u> DATE		<u>Mary V Rosado JSC</u> HON/ MARY V. ROSADO, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
	<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