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2023-07-24

New York State Div. of Hous. & Community Renewal v. Zara Realty Holding Corp.

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**New York State Div. of Hous. & Community Renewal
v Zara Realty Holding Corp.**

2023 NY Slip Op 32843(U)

August 16, 2023

Supreme Court, New York County

Docket Number: Index No. 450245/2019

Judge: Erika M. Edwards

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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. ERIKA M. EDWARDS

PART 10M

Justice

-----X

NEW YORK STATE DIVISION OF HOUSING AND
COMMUNITY RENEWAL and THE PEOPLE OF THE
STATE OF NEW YORK, by LETITIA JAMES, Attorney
General of the State of New York,

INDEX NO. 450245/2019

MOTION DATE 07/24/2023

MOTION SEQ. NO. 003

Plaintiffs,

- v -

ZARA REALTY HOLDING CORP., ZARA CONTROL LLC,
KARRAN A/K/A KENNETH SUBRAJ, RAJESH ANTHONY
A/K/A TONY SUBRAJ, JAIRAJ A/K/A JAY SOBHRAJ, AMIR
SOBHRAJ, JASMINE SUBRAJ, DEVANAND SUBRAJ,
JASMINE HOMES, LLC, JAMAICA MANAGEMENT LLC,
149 ST LLC, 150 PARK LLC, 162-20 LLC, 164-03 LLC, 166
ST LLC, 195 ST LLC, 195-24 LLC, 51-25 VAN KLEECK
LLC, 57 ELMHURST, LLC, 8787 HILLSIDE PARK LLC, 88-
05 MERRICK BLVD LLC, 88-15 144 ST LLC, 88-22
PARSONS BLVD LLC, 89-21 153 LLC, 91-60 LLC, BELAIR
PARK 5 LLC, BELAIR PARK 8825 LLC, HILLSIDE PARK
168 LLC, HILLSIDE PLACE LLC, HUDSON HOUSE LLC,
JAMAICA ESTATES LLC, JAMAICA SEVEN LLC, KING'S
PARK 148 LLC, KING'S PARK 8809 LLC, NINETY ONE
SIXTY ONE LLC, ONE NINETY SIXTH ST LLC, PARK
HAVEN, LLC, PARSONS 88 REALTY LLC, PARSONS
MANOR LLC, WOODHULL PARK 191 LLC and
WOODSIDE PROPERTIES 45 ST LLC,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 68, 69, 70, 71, 72, 73, 74, 75, 76, 78, 79, 80, 81

were read on this motion to/for AMEND CAPTION/PLEADINGS/PRELIM. INJUNCTION.

Upon the foregoing documents, and for the reasons stated on the record during oral argument held before the court on August 15, 2023, the court grants in part Plaintiffs New York State Division of Housing and Community Renewal’s and The People of the State of New York, by Letitia James, Attorney General of the State of New York’s (collectively, “Plaintiffs”) motion filed under motion sequence 003, to the extent that the court grants Plaintiffs leave to amend the

caption and complaint to include additional defendants as set forth in their Proposed Amended Complaint, annexed to Plaintiffs' Affirmation in Support of their motion filed as NYSCEF Doc. No. 70, the court grants their request for a preliminary injunction as to the above-mentioned Defendants ("collectively "Defendants") and denies the remainder of Plaintiffs' motion, including their request for a preliminary injunction as to the proposed newly added Defendants.

Plaintiffs brought this action against the above-named Defendants (collectively, "Defendants"), pursuant to Rent Stabilization Law § 26-516(e), Rent Stabilization Code § 2526.3 and New York Executive Law § 63(12), to enjoin Defendants from persistently and flagrantly violating the Rent Stabilization Law and Rent Stabilization Code by illegally collecting fees and rents in excess of the legal regulated rents permitted for rent stabilized apartments and for additional relief. Plaintiffs allege in substance that Defendants and their related entities illegally collected broker's fees, security deposits, additional advances or "key money" required to gain access to the apartments, late fees, vacancy fees and additional rent and lease requirements, including waivers, not permitted by law. Plaintiffs further allege that Defendants' conduct amounted to tenant harassment under the Rent Stabilization Code.

Plaintiffs now move for leave to amend their complaint and caption to add Gagandeep Singh, Vibha Subraj, Lions Guard Brokerage LLC, James Bacchus, Michael J Homes, LLC, David Rawana and David K Homes LLC as defendants to this action.

According to the Notice of Motion, Plaintiffs also seek a preliminary injunction prohibiting all current Defendants and the proposed new Defendants Vibha Subraj, Lions Guard Brokerage LLC, James Bacchus, Michael J Homes, LLC, David Rawana and David K Homes LLC from collecting broker's fees or any other fees in excess of the legal regulated rent from rent-stabilized tenants.

Defendants oppose Plaintiffs' motion.

Pursuant to CPLR 3025(b), a court's leave for a party to amend a pleading at any time "shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading" (CPLR 3025[b]; *see Fahey v County of Ontario*, 44 NY2d 934 [1978]). Such leave to amend shall be freely given in the absence of prejudice or surprise, unless it is palpably insufficient or patently devoid of merit (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499 [1st Dept 2010]). However, "to conserve judicial resources, examination of the underlying merit of the proposed amendment is mandated" so "a motion for leave to amend a pleading must be supported by an affidavit of merits and evidentiary proof that could be considered upon a motion for summary judgment (*Zaid Theatre Corp. v Sona Realty Co.*, 18 AD3d 352, 354-355 [1st Dept 2005]).

The court grants the portion of Plaintiffs motion seeking leave to amend their complaint and caption to add claims against the proposed additional Defendants in the manner set forth in Plaintiffs' Proposed Amended Complaint. The court finds that Plaintiffs' supporting affidavit and documents adequately supported their allegations set forth in the Proposed Amended Complaint and that such Proposed Amended Complaint is not palpably insufficient or patently devoid of merit.

The court also finds that such amendment would not prejudice the Defendants, nor should it be an unfair surprise, and it would conserve judicial resources. As noted by Defendants, this action was filed over four years ago and extensive document and information discovery has been completed. Additionally, Plaintiffs could have brought this motion sooner, as the information

allegedly obtained through discovery was provided to Plaintiffs over one year ago. However, the court finds that this motion is not untimely, as discovery is on-going and depositions have yet to begin. Therefore, such amendment is not untimely or likely to delay the case unnecessarily.

If the court were to deny Plaintiffs leave to amend their complaint, Plaintiffs have indicated that they would bring a new action which would include an overlap of Defendants and factual allegations which would likely involve the same or similar discovery exchange and depositions of the same individuals. Therefore, discovery in the initial action may stall until the discovery in the new action progresses and the court may eventually consolidate both actions. Therefore, the court finds that the amendment would conserve judicial resources without prejudicing the Defendants.

Additionally, the court grants in part the portion of Plaintiff's motion seeking a preliminary injunction barring the current Defendants and proposed new Defendants, except for Gagandeep Singh, from collecting broker's fees or any other fees in excess of the legal regulated rent from rent-stabilized tenants to the extent that the court grants the preliminary injunction as to the current Defendants, but denies it as to the proposed new Defendants. The court determines that Plaintiffs failed to serve the proposed new Defendants with the motion, thus denying the proposed new Defendants notice of Plaintiffs' request for a preliminary injunction and depriving them of an opportunity to be heard. Therefore, the court denies Plaintiff's request to enjoin the proposed new Defendants at this time.

However, as to the current Defendants, the court grants the preliminary injunction and finds that Plaintiffs have demonstrated the likelihood of their success on the merits as to their First and Eleventh Causes of Action and that the balance of equities favor the court granting the preliminary injunction against the current Defendants. The court agrees with Plaintiffs and finds

that, pursuant to Executive Law § 63(12), the Attorney General is not required to show irreparable harm to obtain a preliminary injunction in this enforcement action. Plaintiffs merely seek to enjoin Defendants from engaging in illegal conduct, so no proof of injury is required.

The court is not persuaded by Defendants' arguments to the contrary.

Therefore, the court grants in part Plaintiff's motion and the court permits Plaintiffs to amend their complaint and amend the caption to add the proposed new Defendants, however, Plaintiffs are required to properly and timely serve all Defendants, pursuant to the provisions set forth in the CPLR, and the court grants the preliminary injunction against the current Defendants only. The court denies the remainder of Plaintiffs' motion.

The court has considered any additional arguments raised by the parties, which were not specifically discussed herein and the court denies any additional requests for relief not expressly granted herein.

As such, it is hereby

ORDERED that the court grants in part Plaintiffs New York State Division of Housing and Community Renewal's and The People of the State of New York, by Letitia James, Attorney General of the State of New York's motion filed under motion sequence 003, to the extent of the following:

- 1) The court grants Plaintiffs leave to amend the caption and complaint in the manner set forth in Plaintiffs' Proposed Amended Complaint, annexed to Plaintiffs' Affirmation in Support of their motion, filed as NYSCEF Doc. No. 70, which adds claims against additional Defendants Gagandeep Singh, Vibha Subraj, Lions Guard Brokerage LLC, James Bacchus, Michael J Homes, LLC, David Rawana and David K Homes LLC, as

long as Plaintiffs properly and timely serve all Defendants in the manner required by the CPLR;

- 2) The court grants the portion of Plaintiffs' motion requesting a preliminary injunction as to the current Defendants as set forth below; and
- 3) The court denies the portion of the motion requesting a preliminary injunction against the proposed new Defendants and denies the remainder of Plaintiffs' motion; and it is further

ORDERED that Defendants shall serve an Answer to Plaintiffs' Amended Complaint or otherwise respond thereto within twenty (20) days from the date of service of said Amended Complaint, unless otherwise stipulated by the parties; and it is further

ORDERED that since it appears to this court that one or more causes of action exist in favor of the Plaintiffs as against Defendants and that Plaintiffs are entitled to a preliminary injunction on the ground that Plaintiffs have the power to enjoin Defendants from committing fraud or illegal activities, as set forth above, the court hereby enjoins, restrains and prohibits Defendants, Defendants' agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of Defendants, during the pendency of this action, from doing or suffering to be done, directly or through any attorney, agent, servant, employee or other person under the supervision or control of Defendants or otherwise, from violating the Rent Stabilization Law and/or Rent Stabilization Code by illegally collecting fees and rents in excess of the legal regulated rents permitted from rent-stabilized tenants for rent-stabilized apartments.

This constitutes the decision and order of the court.

Erika M. Edwards
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<u>8/16/2023</u> DATE			<u>ERIKA M. EDWARDS, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE