

The Monthly Law Journal for the New York Real Estate Community

Consolidation

Hon. Saliann Scarpulla, J.C.C.

Consolidation Inappropriate When Resolution of Summary Proceeding Would Be Delayed

Despite the overlap between the operative time frames in a plenary action and a summary proceeding, those cases could not be consolidated when the result would be to delay resolution of the summary proceeding according to the court in *Dow v. 48 Tenant's Corp.*

Plaintiff-tenant sought consolidation of a non-payment proceeding brought against her by defendant-landlord with an action brought by the tenant premised upon breaches of the warranty of habitability.

Plaintiff commenced her case on May 11, 2001, asserting four causes of action premised on landlord's negligence (relating to flooding in the subject premises and the burglary of certain storage space utilized by plaintiff), its unreasonable interference with plaintiff's desire to sublet her apartment, and defendant's alleged prevention of plaintiff's filming in the apartment in question.

After defendant interposed an answer, the matter was transferred pursuant to CPLR 325 from the Supreme Court to the Civil Court, with the defendant filing a motion for summary judgment shortly thereafter. Deciding the motion, Judge Karen Smith dismissed three of plaintiff's four causes of action and limited the remaining negligence cause of action to flooding that allegedly occurred after 1997, limited any damages to a rent abatement, and limited claims relating to noise and fumes to the time frame defined by the applicable statute of limitations.

On August 13, 2002, defendant sued plaintiff in the Housing Part of the Civil Court for the nonpayment of rent for arrears accrued between 1999 and 2002. Plaintiff interposed an answer, and thereafter an amended answer, which asserted her warranty of habitability claims. Plaintiff then sought to consolidate the two cases.

In denying the plaintiff's application, the Court articulated the standard provided for in CPLR 602(a), and stated that "[c]onsolidation is appropriate where it will avoid unnecessary duplication of trials, save unnecessary costs and expense and prevent the injustice which would result from divergent decisions based on the same facts." (Citation omitted).

The Court went on to note, however, that "implicit in consolidation of a plenary action with a summary proceeding is a stay of the summary proceeding." Because "[t]he ends of justice are always promoted by the speedy trial of an action," (citations omitted), the Court reasoned that despite the overlap between the operative time frames in the two actions, consolidation was inappropriate in that the summary judgment's resolution, which would provide the parties with relief, would be unduly delayed.

Case: *Dow v. 48 Tenant's Corp.* (Civ. Cl., N.Y. Co.; **031203; 5 pages).

Our thanks to Adam Leitman Bailey, Esq. of the Law Firm of Adam Leitman Bailey, P.C., for sharing this decision with our readers. Mr. Bailey's firm represented the victorious respondent.

Sanctions

Hon. Karla Moskowitz, J.S.C.

Plaintiff's Continuous, Repetitious Litigation Leads To Sanctions

When a litigant repeatedly advances the same issue, despite prior adverse determinations, and in the process proffers specious arguments, that party may be subject to sanctions, attorneys' fees, and an injunction preventing future litigation according to *Million Gold Realty Co., Inc. v. S.E. & K. Corp., et al.*

Plaintiff alleged that the Defendants conspired to prevent Plaintiff from exercising a right of first refusal to purchase a certain New York City property, and to evict the Plaintiff from said property. In four previous decisions issued by Justice Paula Omansky, Plaintiff's claims were rejected, and its notices of pendency stricken.

Defendants sought the action's dismissal, as well as an injunction against plaintiff and its attorneys from commencing further litigation, together to an award of Defendants' attorneys' fees and costs.

In its decision, the court noted that Plaintiff was attempting to litigate an identical issue once again, and

observed that Justice Omansky had "reluctantly denied defendants' request for sanctions" in the prior cases.

This time around, Plaintiff's procedural claims that Defendants' motions and cross-motions were characterized as untimely, were "specious," and its argument that the filing of appeals in the previous actions stayed the instant action was rejected. The Court reasoned that "Plaintiff has not filed any bond and this court's decisions are *res judicata* and collaterally estop plaintiff from continuing to argue that it was unfairly deprived of any rights."

After noting that there is no separate cause of action for "conspiracy," and dismissing the complaint with prejudice, the Court sanctioned Plaintiff and its counsel \$1,000 pursuant to 22 NYCRR 130-1.1(c), after concluding that this action was duplicative of those claims heard by Justice Omansky, dismissive of the "well-reasoned opinions and decisions" of that jurist, and thus frivolous.

Additionally, Plaintiff was ordered to pay Defendants' counsels' fees, particularly in light of Plaintiff's failure to oppose Defendants' request for that relief. As the amount of fees incurred by Defendants was not then determinable, the matter was set down for a hearing.

Finally, while noting that such relief was rarely granted, the Court issued an injunction in Defendants' favor, preventing Plaintiff from initiating future litigation.

*Case: Million Gold Realty Co., Inc. v. S.E. & K. Corp., Sherwin Choy, Jarns Holding Inc., and Jackson Mak (S.Ct., New York County, **032803; 4 pages)*

We would like to thank Adam Leitman Bailey, Esq. of the Law Firm of Adam Leitman Bailey, P.C., for sharing this decision with our readers. Mr. Bailey's firm represented the victorious defendants, S.E. & K Corp. and Sherwin Choy.