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Mahmood v Riverside 1795 Assoc. L.L.C.
2020 NY Slip Op 20229
Decided on September 10, 2020
Supreme Court, New York County
Borrok, J.
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Mayra Mahmood, ANTHONY CIMINO, RALPH PORR, C.E. MONDEN, MARK TADROS, MARGOT ROSS, KIMBERLEY GARRETT, P.G. LYNE, J.M. LUMPKIN, LARRY BENNETT, WENDY BENNETT, LUNA ALARCON, ALEXIS BARBER-DAVIS, ALEX DRYDEN, STEPHENIE FUTCH, FILOMENA REYES, MELISSA ABLER, RAMA NDIAYE, ERIC FRANKLIN, FRANKSHELL MACHUA, GIOVANNI ANDOLLO, NICOLE AUGSTEIN, CALI HERSH, LEN GUTMAN, KAREN SCHROEDER, DAN DAVENPORT, RUYI JIAO, EMILY HOCHBERG, MICHELLE COURSEY, MATTTHEW GALE, WILLIAM GRUBBS, YURIY VASKEVICH, BENJAMIN BROWN, KRISTINA CAPPUCCILLI, SYED RIZVI, EOGHAN MCNULTY, ROISIN MCNULTY, CATHERINE HATTEN, DENISE AQUINO, ALESSANDRA SIMEONE, JILLIAN CHASE, CASSONDRA PULS, NEHA SAVANT, SAMUEL GOODSPEED, JON WILLIAMS, ROBERT CARR, GIOVANNI CASSINELLI, OUSMAN LAAST, ANDREW MARTIN, NARI BOWIE, FADIA QADER, JOSE VALDEZ, AMANDA WATERMEYER, RACHAEL WILLOUGHBY, JORDAN SHIPLEY, YANA ANJUDINOVA, IGOR BORODYANSKY, ERIC ROCHMAN, SHELLEY OHMES, JASON GALLAGHER, ROBIN MINITER, Plaintiff,

against

Riverside 1795 Associates L.L.C., DYCKMAN STREET 115 ASSOCIATES, 120 VERMILYEA ASSOCIATES, L.L.C., SIDE KICK RIDE ASSOCIATES, L.L.C., STELLAR WEST 110 LLC,

EMBASSY HOUSE EAT LLC,STELLAR 341 LLC,NEXT GENERATION 13TH STREET ASSOCIATES L.L.C., BIRDIE 141 BROADWAY ASSOCIATES, L.L.C., COB 3351 BROADWAY LLC,600 W 144TH STREET L.L.C., 620 WEST 152 STREET ASSOCIATES L.L.C, STELLAR WEST 178 LLC,4181 BROADWAY L.L.C., 700 W. 180TH STREET ASSOCIATES, INC.,EAGLE HAMILTON ASSOCIATES, L.L.C., Defendant.

157260/2019

For Plaintiffs, Newman Ferrara LLP (Roger Sachar), 1250 Broadway Suite 2700, New York NY 10001

For Defendants, Rosenberg & Estis, P.C. (Ethan Cohen), 733 Third Avenue, 14th Fl., New York, NY 10017

Andrew Borrok, J.

The following e-filed documents, listed by NYSCEF document number (Motion 017) 133, 134, 135, 136, 137, 138, 139, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 463, 480 were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 018) 140, 141, 142, 143, 144, 145, 146, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 464, 481 were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 019) 147, 148, 149, 150, 151, 152, 153, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 465, 482 were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 020) 154, 155, 156, 157, 158, 159, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 466, 483 were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 021) 160, 161, 162, 163, 164, 165, 166, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 467, 484 were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 022) 167, 168, 169, 170, 171, 172, 173, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 468, 485 were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 023) 174, 175, 176, 177, 178, 179, 180, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 469, 486 were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 024) 181, 182, 183, 184, 185, 186, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 470, 487 were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 025) 187, 188, 189, 190, 191, 192, 193, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 471, 488 were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 026) 194, 195, 196, 197, 198, 199, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 472, 489 were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 027) 200, 201, 202, 203, 204, 205, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 473, 490 were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 028) 206, 207, 208, 209, 210, 211, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 474, 491 were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 029) 212, 213, 214, 215, 216, 217, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 475, 492 were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 030) 218, 219, 220, 221, 222, 223, 224, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 476, 493 were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 031) 225, 226, 227, 228, 229, 230, 231, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 477, 494 were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 032) 232, 233, 234, 235, 236, 237, 238, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 478, 495 were read on this motion to/for DISMISSAL.

The critical issue upon the defendants' motions (mtn. seq. 017-032) is whether the New York State Court of Appeals decision in *Maddicks v Big City Properties, LLC* (34 NY3d 116, 119 [2019]) requires denial of these motions brought pursuant to CPLR §§ 3211, 603, 1002 and 1003 to dismiss, or, in the alternative, to sever, a putative group rent overcharge class action against 18 different building owned by 16 different special purposes entities allegedly owned and controlled by the same person, which the defendants argue could never be certified as a class. Because this court answers this question in the affirmative, and except as set forth below, the motions are denied. .

THE RELEVANT FACTS AND CIRCUMSTANCES

This is the second putative class action (**Mahmood II**) alleging rent overcharge during the period commencing in 2011 and continuing through today that is brought by 61 tenants of 18 different buildings. The first lawsuit (**Mahmood I**) was brought against the buildings' management company, Mason Management Services Corp. d/b/a Stellar Management (**Stellar Management**), and Laurence Gluck, the controlling member of the entities that own the [*2]buildings, alleging substantially similar claims (*Mahmood v Mason Mgmt. Serv. Corp. d/b/a Stellar Mgmt. and Laurence Gluck,* Index No. 153574/2017 [Sup Ct NY Cnty]). By decision and order dated July 23, 2019 (NYSCEF Doc. No. 10), the court (Cohen, J.) dismissed *Mahmood I* because it held that, *inter alia*, Stellar Management, as agent for the owners, could not be held responsible for any alleged rent overcharge by the building owners, and that the direct owners of the buildings were the proper parties for purposes of the rent overcharge claims (NYSCEF Doc. No. 138 at 6). The plaintiffs immediately filed the instant action. Stellar and Mr. Gluck are not defendants in *Mahmood II.*

According to the First Amended Class Action Complaint (the **Complaint**), the 16 different building owner defendants are single-purpose-entity limited liability companies all of whom share the same managing member, Mr. Gluck (NYSCEF Doc. No. 136). In sum and substance, the Complaint alleges that the defendants have jointly engaged in a scheme designed to inflate rents above the amounts that they are legally permitted to charge by (1) misrepresenting the costs of individual apartment improvements (**IAIs**) on the plaintiffs' apartments and/or (2) deregulating apartments despite receiving J-51 tax benefits, which is prohibited under the Court of Appeals ruling in *Roberts v Tishman Speyer Props., L.P.* (13 NY3d 270 [2009]; *id.*, ¶¶ 2-14). Several of the apartment buildings owned and operated by the defendants allegedly receive, or have received, tax abatements and/or exemptions pursuant to the J-51 tax benefits program (the **J-51 Program**) (*id.*, ¶ 11). Owners of buildings receiving J-51 tax benefits are generally required to provide their tenants with rent-stabilized leases as a condition of receiving such tax benefits and are also required to register the apartments in those buildings with the Division of Housing and Community Renewal (**DHCR**) and to provide tenants with appropriate riders detailing the tax credit and disclosing when the credit expires (*id.*, ¶¶ 12, 14; NYC Admin. Code. § 26-504[c]).

For a example, the Complaint alleges that 87 Hamilton Place, one of the defendants' buildings, has been receiving J-51 tax credits since 2007, but that in 2010 (and following the Court of Appeals decision in *Roberts v Tishman Speyer*, *supra*) plaintiff Igor Borodyansky's apartment was impermissibly listed as a high-rent vacancy and destabilized, and that from 2011 to 2015 the defendants impermissibly failed to file the legally required registrations with DHCR for Mr. Borodyansky's apartment and that he never received the required J-51 riders for his apartment (NYSCEF Doc. No. 136, ¶¶ 15-19).

The Complaint also alleges that Mr. Gluck, the managing member of the defendants, has a "longstanding secret arrangement with contractors employed by Stellar, wherein the contractors charge Stellar [] grossly inflated prices for IAIs performed" and "in turn, the contractors then credit this amount to [Mr.] Gluck, to be used on other projects, including the other buildings in which [Mr.] Gluck has a direct and/or indirect ownership interest," including his personal residence (NYSCEF Doc. No. 136, ¶ 28). To that end, Stellar allegedly maintains two sets of financial records to track these "overpayments, the true value of the work performed, and how the funds were reallocated to other buildings" in which Mr. Gluck has a direct and/or indirect ownership interest in "a blatant attempt to circumvent New York

City's rent regulation process, at the expense" of the tenants residing in these buildings (*id.*, ¶¶ 29, 31).

Thus, the plaintiffs' claims fall into two general categories: (1) that the defendants failed to treat their apartments as rent-stabilized, as required by the J-51 Program, and (2) that the defendants did not performs IAIs in the amounts required (and claimed) to deregulate the apartments and/or to justify the current rent levels being charged to tenants. Approximately half of the plaintiffs raise claims related to the J-51 Program, alleging that their apartments were impermissibly deregulated. The remaining plaintiffs raise claims arising out of IAIs.

Some of the plaintiffs claim that they are harmed by both the so-called "IAI scheme and the J-51 scheme" (*id.*, ¶ 20). For example, plaintiff Anthony Cimino, who resides in 1795 Riverside Drive in Manhattan, had his legal rent on his apartment increased from $759.91 to exempt from rent stabilization in 2012, which would have required more than $92,000 in IAIs to be permissible (*id.*, ¶¶ 21-22). The Complaint alleges that $92,000 in IAIs did not occur on Mr. Cimino's apartment and that, in any event, because 1795 Riverside Drive receives J-51 tax benefits, Mr. Cimino's apartment could not listed as exempt regardless of the amount of IAIs that may have been performed (*id.,* ¶¶ 23-26). Mr. Cimino also did not receive any of the required J-51 riders for his apartment (*id.*, ¶ 27).

Based on the foregoing, the plaintiffs claim that the defendants' conduct violates the terms of the J-51 Program and New York City's rent stabilization law (**RSL**) as codified by the Rent Stabilization Code (**RSC**) and allege (1) a violation of RSL § 26-512 (on behalf of the proposed class —i.e., the "current and former tenants of the Stellar Buildings who occupied their units between April 18, 2011 and the conclusion of this action" (NYSCEF Doc. No. 136, ¶ 421)), (2) a violation of RSL § 26-512 (on behalf of the proposed sub-class, i.e., "all current tenants of Stellar Buildings, who currently reside in a rent-stabilized apartment or unlawfully deregulated apartment" (*id.*, ¶ 423) and (3) demands declaratory relief (on behalf of the proposed sub-class).

DISCUSSION

I. The Motion to Dismiss Pursuant to CPLR 3211 is Denied

On a motion to dismiss pursuant to CPLR 3211, the pleading must be afforded a liberal construction, and the court must accept the facts alleged in the complaint as true, accord the allegations in the complaint all favorable inferences, and only determine whether the facts as alleged fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). With respect to allegations made with respect to a putative class action complaint, as the Court of Appeals recently explained:

> Nothing in the CPLR prevents a [class action] defendant from moving to dismiss a claim pursuant to CPLR 3211. However, a motion to dismiss should not be equated to a motion for class certification.

(*Maddicks v Big City Properties, LLC*, 34 NY3d 116, 119 [2019]).

Maddicks involved a rent overcharge action commenced by plaintiff-tenants of over twenty different apartment buildings, on behalf of a putative class and subclass (*id.*). At issue in that case was:

> what plaintiffs characterize as the Big City Portfolio, which consist[ed] of multiple apartment buildings located primarily in the Harlem neighborhood in Manhattan. The portfolio [was] managed by defendant Big City Realty Management, LLC. Individual corporate defendants own[ed] various buildings in the portfolio, and plaintiffs —who [were] current and former tenants in various buildings within the portfolio — suggest[ed] that those corporate entities [were] owned or controlled by a single holding company, defendant Big City Acquisitions, LLC.

(*id.* at 120).

The plaintiff-tenants in *Maddicks* alleged that the defendant-landlords engaged in a common fraudulent scheme designed to inflate rents by, among other things, (i) misrepresenting and inflating the costs of IAIs performed, and (ii) failing to register rental information as required by the J-51 Program (*id.* at 120-121). In support of their class action, the *Maddicks* plaintiffs alleged that their factual and legal issues were common to each other and to the members of the proposed class and subclass, and sought, among other things, reformation of the illegal leases to provide that the units subject to those agreements were subject to rent stabilization laws (*id.* at 121).

Before the "appropriateness of the claims for class action could be tested through the mechanisms fixed in Article 9 of the CPLR," the *Maddicks* defendants moved to dismiss in lieu of answering, arguing "that plaintiffs failed to state a cause of action and that the class

allegations fail as a matter of law" because "plaintiffs' claim of illegality of fraud is not a single instance of wrongdoing, and improperly attempts to bind together four disconnected theories of malfeasance" (*id.* at 122). The trial court agreed with the defendants and dismissed the action, finding that the amended complaint in that action failed to assert "how the Defendants [we]re factually or legally related or bound in th[e] action," and because the "Plaintiffs' allegations that all properties [were] part of [one] Portfolio [were] insufficient to join all claims and all parties based on the facts alleged in the amended complaint" (2017 NY Slip Op 32385[U] at *4 [Sup Ct, NY County 2017] [Edwards, J.]). The trial court further concluded that dismissal was warranted as the *Maddicks* plaintiffs sought to impermissibly "join former and current tenants of several different properties, owned by separate and distinct companies, which are based on different theories of recovery, involving separate and distinct law and facts," requiring a "fact specific analysis [that] precludes class certification (*id.* at *4-5). Although nuanced, this is, essentially, what the defendants in the case at bar argue on the instant motions.

On appeal, a divided Appellate Division, First Department modified the trial court's order by denying that part of the motion seeking dismissal of the class action claims, except to the extent those allegations addressed a cause of action for violation of General Business Law § 349 (163 AD3d 501 [1st Dept 2018]). Significantly, the Appellate Division held that dismissal of the class allegations at the pleading stage, "before an answer was filed and before any discovery occurred, was premature" (*id.* at 502).

The Court of Appeals affirmed (34 NY2d at 123 ["dismissal of class claims based on allegations of a methodical attempt to inflate rents was premature"]). The Court explained that [*3]the legislative purpose of CPLR article 9 was intended to "provide a flexible, functional scheme wider and more welcoming that 'the narrow class action legislation which preceded it'" (*id.* at 125, quoting *City of New York v Maul*, 14 NY3d 499, 509 [2010]). Thus, although the complaint in *Maddicks* addressed "harm effectuated through a variety of approaches," because those allegations were all alleged to be "within a common systematic plan," they should not have been dismissed at the pleading stage and such dismissal by the trial court was error (*id.* at 125-126).

Here, as in *Maddicks,* the defendants argue that each plaintiff, at most, has a potentially viable rent overcharge claim against his or her ***own*** landlord-defendant only and not against the other landlord-defendants in this action. The defendants seek to distinguish *Maddicks* by

arguing that severance was never an issue in *Maddicks* and, therefore, that decision is wholly inapplicable. This nuanced distinction fails.

Simply put, *Maddicks* stands for the proposition that a CPLR 3211 motion to dismiss should not be equated with an Article 9 motion for class certification and it is premature to dismiss "class claims based on allegations of a methodical attempt to illegally inflate rents" by landlords based on the notion that the claims cannot be certified against all of the named defendants (34 NY3d at 123). The fact that the *Maddicks* defendants never sought to sever the claims asserted against them, and, instead, only sought to dismiss those claims does not render *Maddicks* inapplicable. Like the case at bar, *Maddicks* involved multiple plaintiffs alleging rent overcharge claims on behalf of a putative class and subclass comprised of current and former tenants of multiple different buildings owned by separate corporate entities and under common control (i.e.,18 different buildings in this action, and "over 20" different buildings in *Maddicks*). What is different in this action from *Maddicks* is that (i) there is no allegation that any one defendant is an umbrella owner of all the other defendants, and (ii) neither the management company nor Mr. Gluck, the purported beneficial owner of the defendants, are named as defendants. The allegations in the Complaint do, however, include that Mr. Gluck is the managing member [and an owner] of all of the landlord-defendants and that he impermissibly caused rent overcharges including, allocation of credits from IAI overcharges from one building to the next and to his personal residence. Therefore, these differences are not sufficiently significant to distinguish this case from *Maddicks* (*see Chang v Bronstein Props. LLC*, 2020 WL 3485526 [Sup Ct NY Cnty June 26, 2020] [Kalish, J] [denying motion on substantially similar facts and arguments]). Accordingly, the motion must be denied.

Article 9 does not require a formal corporate relationship or common ownership (*see* CPLR § 901). It is sufficient that the Complaint alleges that the defendants are all controlled by Mr. Gluck and that they all engaged in a common fraudulent scheme to inflate rents either through inflated IAIs or by failing to register in accordance with the J-51 Program, or both. The fact that the management company, which was dismissed in *Mahmood I,* is not a named defendant in this action is not material to whether the defendants may be held accountable for their alleged fraud, particularly as the Complaint alleges that the defendants' action were undertaken as part of a common scheme.

Finally, and for completeness, inasmuch as the defendants argue that this action is improper because it necessarily asserts claims by individual plaintiffs against certain defendants [*4]who are not their individual landlords, this argument is also unavailing at this juncture (*see Quinn v Parkoff Operating Corp.*, 178 AD3d 450 [1st Dept 2019] [reversing trial court denial of motion for lack of typicality and commonality as premature]). Construing the Complaint liberally, as the court must on this motion to dismiss, the Complaint asserts claims by each plaintiff against his or her respective landlord. Nothing in the Complaint or the papers submitted in opposition to the instant motions, suggests that any one plaintiff seeks to hold any defendant who is not his or her landlord responsible for their rent overcharge either individually or joint and severally. Rather, this is a putative class action based on allegations of a common scheme and a systemic effort by the defendants. Whether a class action is ultimately the appropriate vehicle to prosecute the plaintiffs' allegations will be the subject of a motion for class certification, which the defendants can oppose at the appropriate time (*Maddicks,* 163 AD3d at 503, *affd* 34 NY3d 116).

II. Dismissal and/or Severance Under CPLR §§ 603, 1002 and 1003 is Also Denied

CPLR § 603 provides that, "[i]n furtherance of convenience or to avoid prejudice the court may order a severance of claims, or may order a separate trial of any claim, or of any separate issue." Notably, the decision to sever is within the trial court's discretion and turns on considerations of convenience and the avoidance of prejudice (*Mignott v Sears, Roebuck & Co.,* 101 AD2d 731 [1st Dept 1984]).

The fact that plaintiffs may have different individual damages is not a reason to reject a class action (*Globe Surgical Supply v GEICO Ins. Co.*, 59 AD3d 129, 141 [2d Dept 2008]). The gravamen of the plaintiffs' Complaint, and for which they seek class certification, is that the defendants, ***jointly***, engaged in a fraudulent scheme to set illegally inflated rents on the plaintiffs' apartments. It is wholly irrelevant at this juncture that the defendants would prefer to treat the plaintiffs' claims as individual rent overcharge claims or to address them on a building-by-building basis in 16 or 18 separate putative class actions. It is well settled that a putative class action alleging rent overcharge may be maintained and class certification may be established where claims against different single-purpose entities can be maintained in one action *(see Quinn v Parkoff Operating Corp* (178 AD3d 450 [1st Dept 2019]; *Downing v First Lenox Terrace Assocs.* (107 AD3d 86 [1st Dept 2013]). This, of course, makes sense

because CPLR §§ 603, 602 and 1002 employ the same common questions of law or fact analysis as CPLR § 901 (*see Chang, supra,* 2020 WL 3485526 at * 5). Put another way, now is not the time to decide a motion to sever.[FN1]

CPLR §§ 1002(a), (b) and 1003 also do not provide a basis for severance. CPLR § 1002 governs permissive ***joinder*** of parties and advances the twin modern goals of modern civil procedure, i.e., reducing multiplicity of actions and delay and expense in litigation (*see Akely v [*5]Kinnicutt*, 238 NY 466 [1924]). CPLR § 1002 is not a basis for dismissal here because dismissal would have the opposite effect from what the statute is intended to effect by increasing the number of actions and the cost of litigation. CPLR § 1003, which governs nonjoinder and misjoinder of parties, is also not a basis for dismissal, and to the extent that any defendants seek to add any necessary parties this may be done at any time in this action. Moreover, inasmuch as this is a putative class action, the court's role in protecting both the potential present and absent class members is sacrosanct and the defendants may not invade the court's purview in a feigned attempt to argue that certain members of the class are missing in order to gain early dismissal (*Matter of Saks Inc. Shareholder Litig. v 67X*, 67 Misc 3d 1203[A] [Sup Ct NY Cnty March 26, 2020]).

In support of their argument for severance, the defendants rely primarily on *Rivkin v Fischer* (1990 WL 10629439 [Sup Ct Kings Cnty 1990]), *Hickson v Mt. Sinai Med. Ctr.,* (87 AD2d 527, 527-28 [1st Dept 1982]), *Shanklin v Wilhemina Models, Inc.* (2018 WL 501118 [Sup Ct NY Cnty January 18, 2018]), and *Schneph v New York Times Co*. (21 AD2d 599 [1st Dept 1964]). Putting aside that all of these decisions predate *Maddicks*, none require or suggest a different outcome.

Relying on *Rivkin,* the defendants argue that "the instant action cries out for severance" (1990 WL 10629439). The defendants' reliance is misplaced. *Rivkin* involved 22 different plaintiffs who allegedly invested different amounts in different corporations giving rise to ***different factual circumstances*****,** and the court found that "to effectively dispose of this action without prejudicing the parties, the ends of justice demand severance" (*id.*). Although the court in *Rivkin* did not discuss the facts underlying its conclusion any further, the opposite is the case here as the plaintiffs here allege the same or similar allegations carried out pursuant to a single common scheme to impermissibly overcharge rent by entities managed by Mr. Gluck. The "ends of justice" simply do not, at this time, "demand severance."

Hickson. also does not support the defendants' position (87 AD2d at 527-28). The *Hickson* Court held that severance was appropriate where there were only the "most superficial common grounds to be explored" in trying the two plaintiffs' claims alleging workplace discrimination against a large, common employer together because of their numerous significant differences, i.e., that the plaintiffs had different jobs, different responsibilities, different supervisors, different races, different damages, and different dates of employment (*id.* at 527). The gravamen of the allegations in the case at bar are primarily similar and the differences are largely superficial and, in any event, will be vetted in an ensuing class certification motion as discussed above.

Shanklin does not support a different outcome either (2018 WL 501118). The severance issue in *Shanklin* involved the moving defendant seeking to have the sole remaining cause of action against it transferred to the Civil Court. The court granted the motion on reargument because it found that, "[t]here are few, if any, remaining legal and factual issues involved in the claim against [the movant] that are shared by the rest of this action" (*id.*). This is wholly different than the allegations in the case at bar where the allegations involve a coordinated scheme of all of the defendants to overcharge rent.

Finally, *Schneph* involved allegations of libel against three different newspapers and contained no allegations that the three newspapers acted in concert or shared a common ownership (21 AD2d 599). As discussed above, this is exactly the opposite of what is alleged here — i.e., a common scheme among the defendants controlled by Mr. Gluck as their managing member to overcharge rent. It is hardly surprising that the *Schneph* Court in that case found severance appropriate under those circumstances.

III. Omission of Named Plaintiffs Gallagher and Miniter from Summons Does Not Require Dismissal

Finally, inasmuch as the defendants argue that Jason Gallagher and Robin Miniter should be dismissed from this action because the summons filed in this action inadvertently omitted their names from the caption, this was clearly an oversight, and is not a basis for dismissal. The original complaint, which was annexed to the original summons in this action, clearly contains Mr. Gallagher and Ms. Miniter's names in its caption as well as allegations with respect to these plaintiffs (NYSCEF Doc. No. 1, ¶¶ 127-133, 252-256). CPLR § 305(c) permits the court to allow the filing of an amended summons at any time where a substantial

right of a party against whom the summons is issued is not prejudiced as here, and, indeed, the plaintiffs have filed a proposed amended summons accordingly (NYSCEF Doc. Nos. 251, 279; *see also* CPLR § 2001 [permitting correction]). Therefore, this is not a basis to dismiss Mr. Gallagher and Ms. Miniter's claims and the plaintiffs are directed to file the amended summons.

IV. The Defendants' Mootness Claims Largely Fail

The defendants also argue that some of the plaintiffs' claims for a declaratory judgment regarding their rent stabilized status have been "mooted" because their apartments have either always been registered or have been re-registered (*see*, *e.g.,* NYSCEF Doc. No. 180 at 20; NYSCEF Doc. No. 238 at 20). This, however, misses the point of the Complaint, which seeks not only rent-stabilized leases for current tenants, but also asks that those registered leases ***be corrected*** (*see* Complaint, NYSCEF Doc. No. 116, ¶¶ 449, 459). However, to the extent that any of the named plaintiffs have a lease that is currently properly registered as rent-stabilized, the request as to whether those units are registered is dismissed as moot. For the avoidance of doubt, to the extent that the plaintiffs seek a declaration as to whether those units have the correct rent or were properly registered, this is not dismissed.

V. The Declaratory Judgment Claim Under Count 3 is Duplicative

The defendants argue that the plaintiffs' claims for declaratory relief as set forth in paragraphs 451 and 459 in count two (NYSCEF Doc. No. 116, ¶ 451) and count three (*id.*, ¶ 459) of the Complaint overlap and are, therefore, duplicative. At oral argument, the plaintiffs did not dispute as much but referred to this as a "belt and suspenders" approach. Therefore, count three is dismissed and count two survives as set forth in the Complaint and otherwise as it relates to a declaration of compliance with both the RSC and the RSL.

VI. Prayer for Relief C

The Complaint's Prayer for Relief C requests an order "against Defendants for injunctive relief to undertake all appropriate and corrective measures, including, but not limited to,

[*6]appointing an independent individual or entity to audit and undertake an accounting of every rent-stabilized and deregulated apartment at the Stellar Buildings and reforming leases to establish the correct legal regulated rent, and to comply with RSL and RSC where necessary" (NYSCEF Doc. No. 116 at 52). This is not inappropriate, and inasmuch as the defendants take issue with this "because under no circumstances can [the] Defendant[s] be compelled by Plaintiffs to appoint an independent entity to audit and undertake an accounting," it would clearly be the court that undertook such appointment, if warranted and not the defendants (NYSCEF Doc. No. 139 at 22). This argument is without merit.

Accordingly, it is

ORDERED that the motion to dismiss the First Amended Class Action Complaint is granted only to the extent of dismissing the third cause of action in the complaint as duplicative and otherwise denied; and it is further

ORDERED that the plaintiffs are directed to file an amended summons within 20 days of this decision and order correcting the inadvertent error and adding Jason Gallagher and Robin Miniter to the same; and it is further

ORDERED that the defendants are directed to file an Answer to the First Amended Class Action Complaint within 30 days of this decision and order.

Dated: September 10, 2020

Footnotes

Footnote 1: Indeed, the court has broad discretion to manage a class action under Article 9, and may even decertify a class after it has been certified if it proves unmanageable (*Mid Island LP v Hess Corp.*, 184 AD3d 439 [1st Dept 2020]. The defendants' concerns with defending against the claims asserted may, therefore, be addressed at a latter stage in these proceedings, up to the time a decision on the merits is issued (*id.*).

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