

Langotsky v. 537 Greenwich LLC

Supreme Court of New York, Appellate Division, First Department

November 15, 2007, Decided; November 15, 2007, Entered

2086N, 116873/06

Reporter

45 A.D.3d 405 *; 845 N.Y.S.2d 313 **; 2007 N.Y. App. Div. LEXIS 11787 ***; 2007 NY Slip Op 8883 ****

[****1] ALON LANGOTSKY et al., Appellants, v 537 GREENWICH LLC ET AL., Respondents.

Subsequent History: Related proceeding at 537 *Greenwich LLC v. Chista, Inc.*, 19 Misc 3d 1133A, 862 NYS2d 807, 2008 N.Y. Misc. LEXIS 2843 (N.Y. Civ. Ct., May 14, 2008)

Prior History: [Langotsky v. 537 Greenwich LLC, 2007 N.Y. App. Div. LEXIS 8093 \(N.Y. App. Div. 1st Dep't, June 26, 2007\)](#)

Core Terms

joint venture agreement, summary proceeding, tenants, rights of a party, money damages

Headnotes/Summary

Headnotes

Actions--Consolidation and Severance

Counsel: [***1] Stroock & Stroock & Lavan LLP, New York (Ernst H. Rosenberger of counsel), for appellants.

Sills Cummis Epstein & Gross P.C., New York (Mitchell D. Haddad of counsel), for respondents.

Judges: Concur--Andrias, J.P., Marlow, Williams, Buckley and Malone, JJ.

Opinion

[*405] [**314] Order, Supreme Court, New York County (Herman Cahn, J.), entered May 15, 2007, which denied plaintiffs' motion to remove a summary

proceeding pending in Civil Court and consolidate it with this action pending in Supreme Court, and stayed the Supreme Court action pending resolution of the Civil Court proceeding, unanimously affirmed, with costs.

Both the Supreme Court action and the summary proceeding involve a dispute over the possession of premises, the resolution of which will determine all the rights of the parties (see generally [Cohen v Goldfein](#), 100 AD2d 795, 474 NYS2d 519 [1984]). Plaintiff tenants are free to raise as a defense in the summary proceeding the alleged existence of a fiduciary relationship among the parties arising from their alleged joint venture agreement, and to interpose a counterclaim for money damages arising from the breach of that agreement. Thus, the overarching claim of the breach of the joint venture agreement, and its impact upon the [***2] rights of the parties, can be resolved in Civil Court, the preferred forum for landlord-tenant disputes (see [44-46 W. 65th Apt. Corp. v Stvan](#), 3 AD3d 440, 772 NYS2d 4 [2004]; [Scheff v 230 E. 73rd Owners Corp.](#), 203 AD2d 151, 610 NYS2d 252 [1994]; [Subkoff v Broadway-13th Assoc.](#), 139 Misc 2d 176, 527 NYS2d 147 [1988]).

Plaintiff tenants failed to preserve their argument that the Civil Court cannot grant them complete relief on their claims for the imposition of a constructive trust and an injunction enjoining defendant landlord from selling the building. In any event, plaintiffs, either as tenants in the building or joint [*406] venturers in the redevelopment of the building, if they are indeed able to prove the existence of the joint venture agreement, would not be entitled to anything more than money damages.

[****2] We have considered plaintiff tenants' remaining arguments and find them without merit. Concur--Andrias, J.P., Marlow, Williams, Buckley and Malone, JJ. [See 2007 NY Slip Op 31197(U).]

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