

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HONORABLE MARGUERITE A. GRAYS**
Justice

IAS PART 4

FILED
6/17/2024
COUNTY CLERK
QUEENS COUNTY

-----x
RONDA KASL on behalf of herself and all
others similarly situated,

Plaintiff(s),

Index
No.: 721359/2022

Motion
Date: February 27, 2024

-against-

1719 27ST LLC,

Defendant(s).

Motion
Cal. No.:

Motion
Seq. No.: 2

-----x
The following papers numbered EF 37 - 60 read on the motion by plaintiff Ronda Kasl for an Order granting leave to renew pursuant to CPLR §2221(e) and, upon renewal, granting plaintiff's motion to: (1) certify this action as a class action pursuant to CPLR §9, on behalf of current and former tenants at the Building; (2) appoint plaintiff Ronda Kasl as lead plaintiff, and class representative; (3) appoint the law firm of Newman Ferrara LLP as counsel for the class; (4) direct that proposed notice be provided to the class; and (5) require defendant 1719 27 ST LLC to provide the names, and contact information of the class members.

	PAPERS NUMBERED
Notice of Motion Affid.-Exhibits.....	EF 37-58
Memorandum of Law.....	EF 59
Stipulation Setting Briefing Schedule.....	EF 60

Upon the foregoing papers, it is ordered that this unopposed motion by plaintiff Ronda Kasl for an Order granting leave to renew pursuant to CPLR §2221(e) and, upon renewal, granting plaintiff's motion to: (1) certify this action as a class action pursuant to CPLR § 9, on behalf of current and former tenants at the Building; (2) appoint plaintiff Ronda Kasl as lead plaintiff, and class representative; (3) appoint the law firm of Newman Ferrara LLP as counsel for the class; (4) direct that proposed notice be provided to the class; and (5) require defendant to provide the names, and contact information of the class members, is determined as follows.¹

Plaintiff Ronda Kasl (plaintiff Kasl) is a tenant in an apartment building located at 27- 03 42nd Road, Long Island City, New York owned by defendant 1719 27ST LLC (defendant Building). Defendant Building participates in the RPTL § 421-a program, and pursuant to that program's rules,

¹ The Court notes that pursuant to CPLR §2221(a), as the Judge who signed the Decision and Order dated January 12, 2024 is unable to hear this motion, the motion is appropriately before this Court for determination.

defendant is required to provide its tenants with the protections of rent stabilization in exchange for significant tax credits.

By Summons and Complaint, plaintiff Kasl commenced this action on October 12, 2022. On December 12, 2022, defendant 1719 21ST LLC appeared by Answer with Counterclaims. Plaintiff interposed an Answer to defendant's counterclaim on December 13, 2022. According to the Complaint, plaintiff Kasl, individually and as a proposed representative of a putative class and subclass, seeks class certification pursuant to CPLR § 901 et seq., monetary damages, injunctive relief and attorneys' fees as a result of defendant Building's alleged fraudulent scheme to evade rent stabilization laws. Plaintiff Kasl asserts that defendant Building's alleged scheme involving rent concessions and false registration. The Complaint alleges that defendant Building entered into leases with plaintiff Kasl and the members of the proposed class and sub-class who were charged more than the maximum legal rent for their apartments, and/or were denied the other benefits of rent-stabilization, such as mandatory lease renewals at amounts allowed under New York State law, all the while that defendant Building received substantial RPTL § 421-a tax concessions.

By Order dated January 12, 2024, plaintiff Kasl's motion for an Order [Motion Sequence No. "1"] granting (1) class certification; (2) appointing plaintiff as class representative, and (3) appointing Newman Ferrara LLP as class counsel, was denied. Pursuant to that Order, the motion was denied on the basis that it was untimely pursuant to CPLR § 902 and plaintiff offered no justification for the late filing. Plaintiff Kasl now moves to renew that prior motion pursuant to CPLR § 2221[e]).

Plaintiff Kasl maintains that renewal should be granted as the denial of the original motion [Motion Sequence No. "1"] seeking class certification on the ground that the motion was untimely was raised *sua sponte* by the Court, and not by defendant. Plaintiff emphasizes that defendant argued in opposition to that motion for class certification, that the motion was "premature" as more information needed to be had.

Plaintiff Kasl argues that she supports this motion for renewal by good cause, explaining her failure to timely make the motion. Plaintiff alleges that the parties initially were going to stipulate to class certification without motion practice. She argues that over a period of months the attorneys for the parties exchanged emails over this issue and discussed the many other actions they have in common. After plaintiff circulated a proposed stipulation for class certification, however, defendant Building no longer agreed and the motion for class certification was then made. Further, plaintiff Kasl avers that there can be no prejudice here as defendant asked for two extensions of time in opposing the original motion.

It is well settled that a motion to renew pursuant to CPLR § 2221(e) "shall be based upon new facts not offered on the prior motion that would change the prior determination," and it "shall contain reasonable justification for the failure to present such facts on the prior motion" (CPLR §2221[e][2]; *Varela v Clark*, 134 AD3d 925, 926 [2015]). This requirement has been held "not to be inflexible" such that "the court has the discretion to grant renewal even upon facts known to the movant at the time of the original motion" (*Argento v Wal-Mart Stores, Inc.*, 66 AD3d 930, 932 [2009]; *see also*,

Shin v ITCI, Inc., 115 AD3d 736 [2014]).

On a motion for class certification, it is the plaintiff who bears the burden of demonstrating the statutory prerequisites for class certification pursuant to CPLR §§901 and 902 (*Jenack v Goshen Operations, LLC*, 222 AD3d 36 [2023]; *Williams v Air Serv. Corp.*, 121 AD3d 441 [2014]). Class certification is appropriate “to achieve the economies of time, effort and expense and promote uniformity of decision and to persons similarly situated” (*Friar v Vanguard Holding Corp.*, 78 AD2d 83, 97 [1980]). The requirement that a motion for class action certification be made no later than sixty (60) days after the time expires for the service of all responsive pleadings is to promote an early determination of the appropriateness of class action relief (CPLR §902; *O’Hara v Del Bello*, 47 NY2d 363, 368 [1979]).

Pursuant to CPLR §2004, it is within the Court’s discretion to extend the sixty (60) day deadline “either prospectively or retroactively upon good cause shown” (*Argento v Wal-Mart Stores, Inc.*, 66 AD3d at 932-933; *Galdamez v Biordi Constr. Corp.*, 50 AD3d 357, 358 [2008]; *Caesar v Chemical Bank*, 118 Misc 2d 118 [1983], *aff’d* 106 AD2d 353 [1984], *mod on other grounds* 66 NY2d 698 [1985]). Where a plaintiff makes the requisite showing of good cause, a motion for an extension of time in which to seek class certification should be granted (*Lomeli v Falkirk Mgt. Corp.*, 179 AD3d 660, 664 [2020]). Similarly, where a Court raises the issue of timeliness *sua sponte* and a plaintiff promptly moves for leave to renew and supports that motion with good cause for the delay, a court should exercise its discretion and deem the motion for class certification timely made, grant renewal and address the underlying motion for class certification (*Argento v Wal-Mart Stores, Inc.*, 66 AD3d at 933).

In the motion to renew, plaintiff Kasl has demonstrated good cause for failing to timely move for class certification (CPLR §901) including that the delay was minimal, that defendant sought extensions of time with the motion and the parties’ discussions with respect to stipulating to class certification without the need for motion practice. Further, the issue of timeliness was raised *sua sponte* by the Court and not raised in defendant’s opposition to the underlying motion. Moreover, defendant has not opposed this motion to renew and had stipulated to a briefing schedule for this motion (NYSCEF Doc. No. 60). For these reasons, leave to renew is granted and the motion for class certification will be considered on the merits (CPLR § 2221[e]; *Argento v Wal-Mart Stores, Inc.*, 66 AD3d at 933).

Civil Practice Law and Rules §901(a) sets forth five prerequisites to class certification:

1. the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;
2. there are questions of law or fact common to the class which predominate over any questions affecting only individual members;
3. the claims or defenses of the representative parties are typical of the claims or defenses of the class;
4. the representative parties will fairly and adequately protect the interests of the class;

and

5. a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

It is well settled that the criteria set forth in CPLR §901(a) “should be broadly construed not only because of the general command for liberal construction of all CPLR sections, but also because it is apparent that the Legislature intended article 9 to be a liberal substitute for the narrow class action legislation which preceded it” (*City of New York v Maul*, 14 NY3d 499, 509 [2010]; *Wilder v May Dep't. Stores Co.*, 23 AD3d 646, 649 [2005]).

Pursuant to CPLR § 901(a), there are five statutory prerequisites for class certification and they are numerosity, commonality, typicality, adequacy and superiority (CPLR §§ 901[a][1 – 5]). Addressing the merits of the underlying motion and construing the arguments liberally, plaintiff Kasl has sustained her burden of demonstrating that the five statutory prerequisites for class action certification set forth in CPLR § 901(a) are satisfied, as follows:

1. Numerosity: “There is no 'mechanical test' to determine whether ... numerosity has been met nor is there a set rule for the number of prospective class members which must exist before a class is certified” (*Friar v Vanguard Holding Corp.*, 78 AD2d at 96). When first enacted, the legislature contemplated classes involving as few as 18 members (*see e.g., Borden v 400 E 55th St. Assoc., LP*, 24 NY3d 382, 399 [2014]).

Here, plaintiff claims that there are approximately forty (40) apartments involved approximately five hundred (500) tenants, numbers well above the numerosity threshold contemplated by the legislature and approved by courts (*Id*). She claims that the class is so numerous that joinder of all members is impracticable. It is undisputed that defendant has conceded numerosity. Accordingly, the numerosity requirement has been satisfied (CPLR § 901[a][1]).

2. Commonality: CPLR § 901(a)(2) requires that there be questions of law or fact common to the class which predominate over any issues affecting only individual class members. “[C]ommonality cannot be determined by any mechanical test and . . . the fact that questions peculiar to each individual may remain after resolution of the common questions is not fatal to the class action” (*City of New York v Maul*, 14 NY3d at 514). This standard requires “predominance, not identity or unanimity, among class members.” (*Maddicks v Big City Props., LLC*, 34 NY3d 116, 125 [2019] quoting *Friar v Vanguard Holding Corp.*, 78 AD2d at 98).

Here, the alleged fraudulent scheme involving rent concessions and false registration to evade rent stabilization laws predominates and is alleged to involve all the units such that the requirement of commonality has been met (CPLR § 901[a][2]).

3. Typicality: Pursuant to CPLR § 901(a)(3), the typicality requirement ensures similarity of the claims of the representative plaintiffs and the other class members. The focus of typicality is defendant's conduct, and the fact that the extent of the damage may vary among the class, that does not

preclude class certification (*Borden v 400 E 55th St. Assoc.*, 24 NY3d at 399; *Pludeman v Northern Leasing Sys., Inc.* 74 AD3d 420, 424 [2010]). CPLR § 901(a)(3) requires that the claims asserted by the plaintiff seeking to represent the class, as well as any defenses to those claims, be typical of the claims made by and the defenses asserted against the class members (*Pludeman v Northern Leasing Sys., Inc.*, 74 AD3d 420, 424 [2010]). The requirement is satisfied if the "plaintiff's claim derives from the same practice or course of conduct that give rise to remaining claims of other class members and is based upon the same legal theory" (*Friar v Vanguard Holding Corp.*, 78 AD2d at 99).

Here, as plaintiff's claim derives from the same course of conduct, namely that defendant Building failed to follow the strictures of the RPTL § 421-a program, plaintiff Kasl's claims are typical of those of all other class members and is based upon the same legal theory and the typicality requirement is satisfied (CPLR § 901[a][3]).

4. Adequacy: Another requirement for class certification is a demonstration that "the representative parties will fairly and adequately protect the interests of the class" (CPLR § 901[a][4]). The three essential factors to consider in determining adequacy of representation are whether any conflict exists between the representative and the class members, the representatives' familiarity with the lawsuit, and his or her financial resources, and the competence and experience of counsel" (*Ackerman v Price Waterhouse*, 252 AD2d 179 [1998]; *see also Rodriguez v Tri-Borough Certified Home Care, Ltd.*, __ AD3d __, 2024 NY Slip Op 02787 [2024]).

Plaintiff Kasl received her doctorate from New York University and is a specialist in the art of Spain and Spanish America. Plaintiff Kasl argues that she is actively involved in this litigation and understands the nature of the case, her responsibilities, duties and the consequences of proceeding as a class representative. She posits that she is an adequate representative of the proposed class, there are no conflicts of interest between herself and the proposed class as they share the common goals of (1) ensuring that defendant Building complies with New York's rent stabilization laws, and (2) all the members of the putative class receive compensation for defendant's alleged unlawful acts and the damages they suffered as a result therefrom.

As plaintiff's counsel has promised to assume the responsibility for litigation expenses and full financial risk, the finances of plaintiff Kasl as Lead Plaintiff are irrelevant (*Gudz v Jemrock Realty Company, LLC*, 105 AD3d 625, 626 [2013]; *Wilder v May Dep't Stores Co.*, 23 AD3d 646, 648–49 [2005]; *Ackerman v Price Waterhouse*, 252 AD2d at 201).

Upon review of the pleadings, affidavits and affirmations submitted, the plaintiff has demonstrated that the law firm of Newman Ferrara LLP is competent as its attorneys have decades of experience in landlord-tenant and real estate litigation, including class actions involving thousands of class members. Further, in light of defendant's default, plaintiff's counsel's competency is not challenged. Plaintiff Kasl has met the adequacy requirement as to her position as lead plaintiff and as to Newman Ferrara LLP as counsel to the class (CPLR § 901[a][4]).

5. Superiority: Under CPLR § 901(a)(5), prior to certifying a class, the Court should determine

whether "a class action is superior to other available methods for the fair and efficient adjudication of the controversy" (*Lavrenyuk v Life Care Servs., Inc.*, 198 AD3d 569, 570 [2021]). In a case involving rent overcharges, the Court of Appeals determined that to preserve judicial resources, class certification was superior to having the claims adjudicated individually (*Borden v 400 E. 55th St. Assocs., L.P.* 24 NY3d at 400).

Under these circumstances, requiring each current and former tenant to individually bring their own claim would be inconsistent with judicial economy and require that identical claims involving the same facts be re-litigated and may result in inconsistent rulings (*Borden* at 400; *Friar v Vanguard Holding Corp.*, 78 AD2d at 97). In light of the above, the Court concludes that a class action is the superior method of adjudication of this matter.

In addition to satisfying the requirements of CPLR §901(a), the proposed class representative must meet the feasibility requirements of CPLR §902. In determining whether to certify a class, the court must consider: (a) The interest of members of the class in individually controlling the prosecution or defense of separate actions; (b) The impracticability or inefficiency of prosecuting or defending separate actions; (c) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (d) The desirability or undesirability of concentrating the litigation of the claim in the particular forum; and (e) The difficulties likely to be encountered in the management of a class action (CPLR § 902; *Ackerman v Price Waterhouse*, 252 AD2d at 191).

Here, based on plaintiff Kasl's showing, the Court finds that these additional feasibility considerations favor class certification in this case. There is no evidence that individual class members are seeking to control their own action, as it does not appear that there is other pending litigation which seeks to raise the same claims. Plaintiff Kasl argues that the class members would have a minimal interest in controlling the litigation because the value of each class member's individual claim is likely outweighed by the costs of individually or separately litigating them. Lastly, it is argued that it would be a waste of judicial resources to bring each putative class members' claim as a separate action, or by way of a multiplicity of administrative proceedings.

As all the class and subclass members are current or former New York City residents, and their claims arose out of their occupancy of an apartment building in Queens County in the City of New York, plaintiff argues that this forum is the most appropriate. It is plaintiff Kasl's position that there are no difficulties anticipated in this action that would auger against class certification. Counsel for plaintiff Kasl and the proposed class claims to have regularly managed class actions involving thousands of class members.

Additionally, plaintiff Kasl seeks an order, pursuant to CPLR § 904, approving for distribution the Proposed Notice of the Class Action's Pendency annexed to the motion (EF49) on the ground that it is fair and reasonable. CPLR § 904 provides that in class actions not brought primarily for injunctive or declaratory relief, "reasonable notice of the commencement of a class action shall be given to the class in such manner as the court directs" and requires that the content of the notice be subject to court approval."

Here, the proposed notice is reasonable as it provides a clear and cogent description of the

claims in this case and class members' rights and options and is therefore approved. In light of that approval, in order for plaintiff to identify the class members and provide the approved notice, defendant is directed to provide the class identification information.

Accordingly, it is hereby

ORDERED that the branch of plaintiff Kasl's motion for an Order granting leave to renew pursuant to CPLR 2221(e), is granted; and it is further

ORDERED that upon renewal, the Court vacates the prior Order dated January 12, 2024 and grants plaintiff's motion as provided *infra*; and it is

ORDERED that Plaintiff Kasl's motion to certify the class and subclass is granted in its entirety; and it is further

ORDERED that the certified class will consist of all current and former tenants of the Building owned by defendant 1719 27ST LLC who occupied their apartment at any time after October 12, 2016, and who received a rent concession, excluding all tenants who occupy apartments in the Building regulated by the New York City Housing Development Corporation Amended and Restate Regulatory Agreement dated October 19, 2011 (the Class); and it is further

ORDERED that plaintiff Ronda Kasl is appointed as lead plaintiff and class representative; and it is

ORDERED that the law firm of Newman Ferrara LLP is appointed as class counsel; and

ORDERED that defendant is directed to provide the names and contact information of the class members, including email addresses, for current tenants through a current rent roll and to provide the last known contact information of the former tenants; and it is further

ORDERED that notice in the proposed form annexed to this motion (EF49) is approved and is directed to be provided to the class.

Dated: 6/14/24

FILED
6/17/2024
COUNTY CLERK
QUEENS COUNTY



MARGUERITE A. GRAYS
J.S.C.