

C.Y. v H.C.

2007 NY Slip Op 31771(U)

June 21, 2007

Supreme Court, New York County

Docket Number: 0102658/2006

Judge: Rosalyn H. Richter

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SUPREME COURT OF THE STATE OF NEW YORK -- NEW YORK COUNTY

PRESENT: ROSALYN RICHTER
Justice

PART 24

Y.C.

C.H.

- v -

INDEX NO. 102658/d6

MOTION DATE _____

MOTION SEQ. NO. 1

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

FILED

JUN 22 2007

NEW YORK
COUNTY CLERK'S OFFICE

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE
WITH THE ATTACHED MEMORANDUM DECISION.**

*PC Scheduled for 7/19/07 at 2:15pm

Dated: June 21, 2007

Rosalyn Richter

HON. ROSALYN RICHTER S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

ownership of any property the parties had. In the absence of an allegation of an oral promise, the cause of action for promissory estoppel must be dismissed.²

In the fifth cause of action, C.Y. alleges that H.C. was unjustly enriched due to C.Y.'s contributions to the upkeep, expenses and improvements to the townhouse they both owned. As a result, C.Y. demands judgment against H.C. to recover a one-half undivided interest in the property. "A cause of action for unjust enrichment is stated where plaintiffs have properly asserted that a benefit was bestowed . . . by plaintiffs and that defendants will obtain such benefit without adequately compensating plaintiffs therefor". *Sergeants Benevolent Association Annuity Fund v. Renck*, 19 A.D.3d 107 (1st Dept. 2005). Here, C.Y.'s cause of action for unjust enrichment based on her alleged contributions to the premises is merely duplicative of the cause of action for partition. Since the equitable remedy of partition provides C.Y. with the ability to obtain her fair share of the premises, the equitable claim for unjust enrichment must be dismissed. *See, e.g., Cooper, Bamundo, Hecht & Longworth, LLP v. Kuczinski*, 14 A.D.3d 6 (2d Dept. 2005)(dismissing unjust enrichment claim as duplicative of a breach of contract claim). For the same reasons, C.Y.'s seventh cause of action for ouster is also dismissed since the partition claim allows C.Y. to be compensated for any ouster that occurred.

In the sixth cause of action, C.Y. seeks to recover under a theory of unjust enrichment for "services rendered" to H.C. Specifically, C.Y. maintains that during the parties' relationship, she cared for and helped parent H.C.'s two children, planned some renovations to the parties' home in which they lived together, and did household chores for her partner and the children during the relationship. She argues that it would be inequitable if she were not compensated for her services. This claim must be

² In light of the arguments proffered at the partition trial concerning the parties' alleged promises and the deed language, the promissory estoppel claim may duplicate the partition claim.

dismissed because New York law does not recognize a cause of action by cohabitating parties seeking remuneration for such activities under a theory of implied contract or unjust enrichment. *Morone v. Morone*, 50 N.Y.2d 481 (1980); *Potter v. Davie*, 275 A.D.2d 961 (4th Dept. 2000); *Matos v. Gadman*, 173 A.D.2d 442 (2d Dept. 1991); *Soderholm v. Kosty*, 177 Misc.2d 403 (Sup. Ct. Chemung Cty. 1998).

Moreover, although *Morone* recognized that a cause of action for services rendered in a relationship can be sustained where there is an express agreement, the complaint here does not allege any express promise by H.C. to pay C.Y. any specific amount for particular services. Indeed, there is nothing in the complaint to suggest that the parties discussed monetary compensation at all for C.Y.'s efforts or her performance of family functions. Finally, there is no merit to C.Y.'s claim that the parties' Certificate of Domestic Partnership constitutes an express agreement for the payment of the services allegedly rendered. Indeed, C.Y. does not point to anything in the Certificate or the law which created the domestic partner registry which would indicate that mere registration creates an express or implied promise of financial compensation for the types of household activities identified by C.Y. in her complaint. Thus, the sixth cause of action for unjust enrichment is dismissed.

Next, H.C. contends that the assault and battery claims must be dismissed to the extent they relate to incidents that occurred more than one year before the filing of the complaint. It is well-settled that the torts of assault and battery are governed by a one year statute of limitations. C.P.L.R. § 215[3]. Nevertheless, C.Y. argues that H.C. should be equitably estopped from asserting the statute of limitations defense to these claims. However, the complaint fails to allege sufficient facts to show that C.Y. was induced by fraud, misrepresentations or deception to refrain from filing suit earlier. See *Zumpano v. Quinn*, 6 N.Y.2d 666 (2006). Nor do the factual allegations in the complaint establish that C.Y. reasonably relied on any such misrepresentations in failing to bring her claims timely. *Id.* Thus, the doctrine of equitable estoppel is inapplicable under the facts as pled in the complaint and the claims

of assault and battery are dismissed to the extent they relate to incidents more than one year before the filing date. *See Ross v. Louise Wise Services, Inc.*, 28 A.D.3d 272 (1st Dept. 2006).

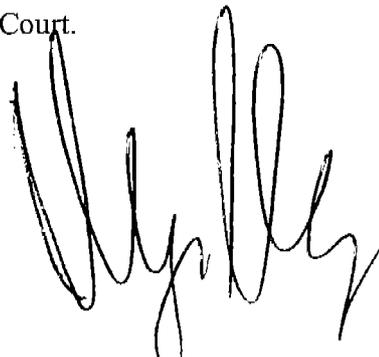
The eighth cause of action alleging intentional infliction of emotional distress is dismissed as duplicative of the assault and battery claims. *See Leonard v. Reinhardt*, 20 A.D.3d 510 (2d Dept. 2005)(cause of action alleging intentional infliction of emotional distress dismissed as duplicative of the causes of action alleging assault and battery); *see also 164 Mulberry St. Corp. v. Columbia University*, 4 A.D.3d 49 (1st Dept. 2004)(“if another traditional tort claim is pleaded and sustained, there is authority that the tort of intentional infliction of emotional distress merely duplicates the traditional tort and must be dismissed”). Finally, the ninth cause of action for attorney’s fees is dismissed in the absence of an agreement between the parties or statutory authority permitting such fees to be awarded.³

H.C. shall serve and file an answer to the assault and battery causes of action that relate to incidents within a year of the filing of the complaint, which are the only claims remaining in the action, within 20 days of the date of this decision. The parties shall appear for a preliminary conference on July 19, 2007 at 2:15 p.m.

This constitutes the decision and order of the Court.

June 21, 2007

FILED
 JUN 22 2007
 NEW YORK
 COUNTY CLERK'S OFFICE



Justice Rosalyn Richter

³ C.Y. does not oppose dismissal of this cause of action.