Cambridge House Tenants' Assn. v Cambridge Dev., L.L.C.
2010 NY Slip Op 30117(U)
January 14, 2010
Supreme Court, New York County
Docket Number: 106632/2009
Judge: Joan A. Madden

[* 1]

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

PRESENT: Hon Joan A. Madden PART 11

Index Number : 106632/2009
CAMBRIDGE HOUSE TENANTS' ASSN
VS.
CAMBRIDGE DEVELOPMENT, LLC
SEQUENCE NUMBER : 002
DISMISS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed Memorandum Decision and Order.

FILED
JAN 22 2010
COUNTY CLERK'S OFFICE
NEW YORK

Dated: January 14, 2010

J.S.C.

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

Check one: FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

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CAMBRIDGE HOUSE TENANTS' ASSOCIATION, ANNETTE GOURGEY, ELIZABETH BOYAR, and all other persons similarly situated,

Index No. 106632/2009

Plaintiffs,

-against-

CAMBRIDGE DEVELOPMENT, L.LC., CAMBRIDGE AFFILIATES, LLC, ATRIA SENIOR LIVING GROUP, INC., SENIOR QUARTERS MANAGEMENT CORP. d/b/a/ ATRIA WEST SIDE a/k/a ATRIA 86TH STREET a/k/a ATRIA RETIREMENT AND ASSISTED LIVING, and KAPSON SENIOR QUARTERS CORP.,

Defendants.

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JOAN A. MADDEN, J.:

Defendants move for an order (1) dismissing the class action allegations in the complaint for failure to satisfy the requirements of CPLR 901 or alternatively granting pre-certification disclosure concerning the allegations, (2) dismissing the complaint as to Cambridge House Tenants' Association for lack of standing or alternatively requesting a more definitive statement of allegations, and (3) dismissing plaintiffs' damage claims for injury to personal property, damage to individuals and emotional distress for failure to state a cause of action. Plaintiff opposes the motion, which is granted to the extent set forth below.

Background

This action arises out of allegations made by plaintiffs, Cambridge House Tenants' Association ("CHTA "), an unincorporated tenants' association located at 33 West 86th Street, New York, New York ("the Building"), and two individually named tenants who are members of

the CHTA. Defendants consist of the lessee of the Building, the fee owner and other corporate entities that are affiliates of the lessee. Plaintiffs allege causes of action for nuisance, breach of the warranty of habitability and harassment under New York City's Administrative Code during a span of six years preceding the filing of the complaint. Plaintiffs allege that defendants attempted to induce plaintiffs to give up possession of their rent regulated apartments by, among other things, failing to provide repairs and services, instituting eviction proceedings, leaving common areas in an unsanitary condition, having overcrowded elevators, having unsupervised workers and other security issues.[1] Twenty-three members of the CHTA have signed a form giving support to file the instant lawsuit. Plaintiffs seek damages, injunctive relief, and certification of their suit as a class action.

In this motion, defendants seek to dismiss the complaint, arguing that the CHTA fails to satisfy the statutory requirements for a class action as set forth in CPLR 901 and that the CHTA lacks standing to bring the action. Defendants also argue that the claims for personal injury, property damage and emotional distress contained in the second cause of action do not state a claim.

Plaintiffs oppose the motion, arguing that the requirements under CPLR 901 have been met, that the CHTA has standing in this matter, and that plaintiffs have plead their claim with sufficiency in the complaint. Plaintiffs argue that the class size is large enough to meet

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[1]Defendants deny the allegations in the complaint and in connection with the dismissal motion, submit an affidavit from Marvin Cohen, the managing agent of the Building, stating that the owner of the Building has renovated the hallways with new flooring, lighting, wallpaper, handrails and sprinklers, increased the number of security cameras, and has plans to install another elevator to expedite movement and renovate the laundry room with new and additional washing machines and dryers. Cohen Affidavit || 3-4.

numerosity particularly in light of the fact that the CPLR requirements must be liberally construed. In addition, plaintiffs contend that commonality is met because the complaint lists claims that are common to all plaintiffs, excluding issues contained within individual apartments and restricting the claim to problems in the common areas. Plaintiffs also argue that all questions of liability can be resolved in one class action suit, making it a more efficient mechanism for adjudicating this claim. As to the issue of standing, plaintiffs claim that the CHTA has standing based on the First Department's decision in Martha Washington Tenants Association v. Roberts, 292 AD2d 225 (1st Dept 2002). Finally, plaintiffs argue that the complaint has been pleaded with sufficiency due to the liberal notice pleading rules of the CPLR.

Requirements for Class Action

CPLR 901(a) sets forth the following requirements for a class action:

One or more members of a class may sue or be sued as representative parties on behalf of all if:

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 all 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;

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

In general, when pre-certification discovery has not been taken, it is premature to dismiss class action allegations as legally insufficient. See Bernstein v. Kelso & Co., Inc. 231 AD2d 314, 323 (1st Dept 1997)(holding that trial court prematurely dismissed class action allegations in the complaint before answer was served); Mountz v. Global Vision Products, Inc. 3 Misc3d 171, 179 (Sup Ct NY Co. 2003)(holding that where a plaintiff has not yet requested class certification, a defendant's request for denial of class certification should only be granted if the substantive claim is dismissed); Weinstein, Korn & Miller, New York Civil Practice, | 901.09[4][a] (2d ed. 2005) ("consideration by the court of the certifiability of a class action requires some factual input through pre-certification discovery." In certain instances, however, courts have dismissed class action allegations where it appears conclusively from the complaint and from the affidavits that there was as a matter of law no basis for class action relief." Wojciechowki v. Republic Steel Corp., 67 AD2d 830, 831 (4th Dept), lv dismissed, 47 NY2d 802 (1979). In this case, it would be inappropriate to dismiss the class action allegations since the allegations in the verified class action complaint provide a potential basis for a class action.

Here, the class size has not yet been determined and appears to be anywhere from 23-51 tenants. There is no set number that plaintiffs need to reach in order to satisfy numerosity. Friar v. Vanguard Holding Corp., 78 AD2d 83, 96 (2nd Dept 1980). Federal courts presume numerosity at 40 members, see Consolidated Rail Corp. v. Town of Hyde Park, 47 F3d 473 (2nd Cir), cert denied, 515 US 1122 (1995), but there is no binding precedent in this Department regarding a specific numeric threshold. Each case depends on the "particular facts surrounding the proposed class and the court should consider the reasonable inferences and commonsense assumptions from the facts before it." Friar v. Vanguard Holding Corp., 78 AD2d at 96.

Plaintiffs may satisfy numerosity given the current range of the class size. Pre-certification discovery can be used to ascertain the number of the class and whether there are other factors the Court should consider when ruling on numerosity.

As to commonality, plaintiffs must show that the common issues of law or fact predominate over questions affecting only individual members. See Mitchell v. Barrios-Paoli, 253 AD2d 281, 291 (1st Dept 1999); Alix v. Wal-Mart Stores, Inc., 16 Misc3d 844 (Sup Ct Albany Co. 2007), aff'd, 57 AD3d 1044 (2008). The complaint alleges that defendants subjected tenants to, *inter alia*, unsafe and unsanitary conditions in the common areas, eviction proceedings, hostility by management, and other issues. Complaint || 25-29. Plaintiffs argue that they have limited their claims of wrongdoing done by defendants to plaintiffs as a class. Plaintiffs contend that they have not listed problems occurring in individual apartments to limit the individuality of the claims asserted.

However, it appears from the allegations in the complaint that plaintiffs seek rent abatements and damages for physical and emotional injuries as well as property damage. The type of claims asserted and relief sought might require significant individual determinations to be made by the court, which would undercut plaintiffs' ability to satisfy both commonality and superiority under CPLR 901. See, e.g., Hurtado v. Purdue Pharma Co. 2005 NY Slip Op 50045U, 6 (NY Sup Ct 2005) (class certification was denied because an individual determination would be required to assess causation issues of patients who took a faulty medication); Rosenfeld v. A.H. Robins Co., 63 AD2d 11, 20 (2nd Dept), appeal dismissed, 46 NY2d 731 (1978) (class certification denied because the common factual issues are thoroughly intertwined with individual issues in a case concerning personal injuries suffered by users of an intrauterine

device). If further discovery shows that the benefits to judicial economy will be relatively minimal due to the considerable intertwining of common issues with individual issues, then the court may choose to deny certification. See Mitchell v. Barrios-Paoli, 253 AD2d at 291 (individualized examination of each plaintiff's medical history would defeat class action's goal of saving judicial time and resources).

However, as the allegations in the class action complaint are sufficient to provide a potential basis for the satisfying the requirements of commonality, superiority as well as numerosity, that part of the motion seeking to dismiss class action allegations is granted only to the extent of granting pre-certification disclosure[2].

Standing of Tenants' Association

The next issue is whether the CHTA has standing to bring this action. "Standing is a threshold determination, resting in part on policy considerations, that a person should be allowed access to the courts to adjudicate the merits of a particular dispute that satisfied the other justiciability criteria." Society of Plastics Industry Inc. v. County of Suffolk, 77 NY2d 761, 769 (1991). "The various tests for standing are designed to ensure that a party seeking relief has a sufficiently cognizable stake in the outcome so as to 'cast [ ] the dispute in a form traditionally capable of judicial resolution.'" Community Bd 7 v. Schaffer, 84 NY2d at 154-155, quoting Society of Plastics v. County of Suffolk, 77 NY2d at 772-773 (internal citations omitted).

In applying these principles to determine if an unincorporated association has standing to

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[2]Defendants also argue that class certification is improper as the complaint seeks monetary penalties under the Administrative Code of the City of New York. However, as plaintiffs point out, the third cause of action seeking recovery under the Administrative Code seeks injunctive relief and a direction that no further violations occur but no monetary penalties.

bring an action, the courts examine whether the injury alleged belongs to the association itself or to all of its members such that "the association itself has a genuine stake in the outcome" of the action. Locke Associates Inc. v. Foundation for the Support of the United Nations, 173 Misc.2d at 505; see also Connolly v. O'Malley, 18 AD2d 620 (1st Dept 1962).

The rationale underlying this rule was articulated by Justice Bloom in Shapiro v. Sobel, 85 AD2d 552 (1st Dept 1981), appeal dismissed, 56 NY2d 648 (1982). Justice Bloom wrote that "an unincorporated association has no life separate and apart from its members" (citation omitted). Id. at 553. Nonetheless, General Associations Law section 12, "provides a shorthand technique. . . [that] permits [the] initiation [of an action] without naming each of the individual members as parties plaintiff. . . " Id. "However, [the members'] interest in the subject matter of the suit must be sufficiently common so that in an action brought by . . . the association. . . each could be properly named as a plaintiff." Id.

Thus, when the unincorporated association itself suffers no injury and the claims are not common to all the members of the association, it has been found that the association lacks standing to sue. Bartley v. Walentas, 78 AD2d 310 (1st Dept 1980), involved a claim for the breach of the warranty of habitability brought by a tenants' association against the landlord and managing agent, alleging the denial and deprivation of building services and necessary repairs to the premises, including water leaks, improper lighting, defective terraces, and inadequate elevator service. The Appellate Division, First Department, dismissed the claims brought by the tenants' association, noting that the association itself did not suffer any damage.

Here, the CHTA itself suffered no alleged injury as a result of the injury. It then becomes incumbent upon the CHTA to show that the effects of defendant's alleged misconduct were

common to all tenants. Although there are common claims asserted in this matter, there are also claims that appear to be individual in nature. The alleged harassment, eviction proceedings and the uniqueness of each plaintiff's property damage and personal injuries make some claims unique to certain tenants. In addition, plaintiffs seek to potentially include tenants in the building who are not members of the CHTA. Therefore, the members do not have a common interest in the relief sought.[3]

Moreover, Martha Washington Tenants Association v. Roberts, 292 AD2d 225 (1st Dept 2002), on which plaintiffs rely, is not to the contrary. In Martha Washington Tenants Association v. Roberts, the First Department found that a tenants' association had standing to bring an Article 78 proceeding challenging an agency determination granting a certificate of no harassment to a hotel owner without a hearing where all the members of the association were tenants in the hotel owner's building. Notably, unlike in the present case, Martha Washington Tenants Association v. Roberts, involved a single issue common to all members of the tenant association.

Accordingly, CHTA lacks standing to bring this action on behalf of its members and therefore the claims by CHTA must be dismissed.

Failure to State A Cause of Action

Defendants also argue that the complaint must be dismissed as it inadequately specifies damages suffered to plaintiffs' property and physical and emotional based on an alleged breach

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[3]It is worth noting that although the claims are not entirely common to all plaintiffs, this does not preclude the Court from finding that the commonality prong has been satisfied under CPLR 901. Commonality under CPLR 901 does not require that all claims be identical, but that the common claims predominate over individual claims. See Mimnorm Realty Corp. v. Sunrise Fed. Savings & Loan Association, 83 AD2d 936, 937-938 (2d Dept 1981).

of the warranty of habitability and nuisance and that no causative relationship is alleged between the alleged wrongdoing and damages. Defendants also argue that the complaint does not adequately allege a claim for the intentional infliction of emotional distress.

The relevant test on a pre-answer motion to dismiss a complaint for failure to state a claim is "whether a recognizable cause of action can be discerned from the four corners of the complaint . . ." Blonder & Co., Inc. v. Citibank, N.A., 28 AD2d 180, 187 (1st Dept 2006). In light of the liberal notice pleading standards in CPLR 3013, plaintiffs have adequately pleaded their claims for breach of the warranty of habitability and nuisance by alleging a duty owed by defendants to plaintiffs, and resulting damages to the person and property.

However, the complaint is insufficient to state a claim for intentional infliction of emotional distress. To state such a claim, it must be shown that the alleged conduct was "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized society." Murphy v American Home Products Corp., 58 NY2d 293, 303 (1983). In this case, the allegations in the complaint regarding defendants' alleged conduct are insufficient to meet this threshold. See e.g. Spinale v. Guest, 270 AD2d 39, 40 (1st Dept 2000). Notably, in opposition, plaintiffs do not assert that the complaint was intended to state a claim for the intentional infliction of emotional distress.

Accordingly, except insofar as it does not state a claim for the intentional infliction of emotional distress, the motion to dismiss for failure to state a cause of action is denied.

Conclusion

In view of the above, it is

ORDERED that the motion to dismiss is granted to the extent of (i) directing that pre-certification disclosure be conducted regarding whether plaintiffs satisfy the numerosity, commonality and superiority requirements of CPLR 901, (ii) dismissing the complaint as to plaintiff Cambridge House Tenants' Association, and (iii) dismissing any claim for the intentional infliction of emotional distress; and it is further

ORDERED that the parties shall appear for a preliminary conference on February 25, 2010 at 9:30 am.

DATED: January 14, 2010

J.S.C.