

Styles v Larrimor's Inc.
2011 NY Slip Op 33919(U)
November 16, 2011
Sup Ct, NY County
Docket Number: 103500/11
Judge: Donna M. Mills
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SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS
Justice

PART 58

PATRICIA BESNER STYLES
Plaintiff,
-v-
LARRIMOR'S INC.,
Defendant.

INDEX NO. 103500/11
MOTION DATE _____
MOTION SEQ. NO. 001
MOTION CAL NO. _____

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

	PAPERS NUMBERED
Notice of Motion/Order to Show Cause-Affidavits- Exhibits....	<u>1, 2</u>
Answering Affidavits- Exhibits _____	<u>3</u>
Replying Affidavits _____	<u>4</u>

CROSS-MOTION: _____ YES NO

FILED

Upon the foregoing papers, it is ordered that this motion is decided as follows **NOV 18 2011**

DECIDED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM
NEW YORK COUNTY CLERK'S OFFICE

DECISION.

Dated: 11/16/11

Donna M. Mills
J.S.C.

DONNA M. MILLS, J.S.C.

Check one: _____ FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 58

PATRICIA BESNER STYLES,

Plaintiff,

- against -

LARRIMOR'S, INC.,

Defendant.

INDEX NO.
103500/11

DECISION/ORDER

FILED

NOV 18 2011

NEW YORK
COUNTY CLERK'S OFFICE

DONNA MILLS, J.:

Plaintiff, Patricia Besner Styles ("Landlord"), is the owner of Apartment 4K at 77 West 55th Street, New York, New York, 10019. Landlord's husband, Irvin Styles, entered into a non-rent stabilized lease agreement for the subject apartment in August 1979 with defendant, Larrimor's Inc. and Carl Slesinger. Plaintiff brings this action contending that Larrimor's is in breach of the subject lease.

Defendant now moves, by way of this pre-action motion to dismiss, on the grounds that the complaint is barred by res judicata based upon the decision rendered in an action arising out of the lease at issue herein in 2001, and that the complaint is barred by documentary evidence.

Defendant contends that the complaint in the instant action is a restatement of the claims that were asserted or could have been asserted in the 2001 action. There is no dispute between the parties that the 2001 action resulted in a determination by the court that the tenant was entitled to rent protection and the lease entered into between the parties was valid.

The doctrine of res judicata operates to preclude the renewal of issues actually litigated and resolved in a prior proceeding as well as claims for different relief which arise out of the same factual grouping or transaction and which should have or could have been resolved in the prior proceeding" (Koether v. Generalow, 213 A.D.2d 379, 380, 623

N.Y.S.2d 328 [internal quotation marks omitted]). The instant action is based on the theory that Larrimor's use of Apartment 4K is not in accordance with the subject lease agreement. It should be noted that Judge Lebedeff in her May 28, 2002 decision in the 2001 matter between the same parties, wrote in her decision that "the issue of whether the tenant's use of the apartment is consistent with the certificate of occupancy has not been raised by the pleadings and the court does not rule upon such point." Additionally, plaintiff in opposition to the dismissal motion contends that the use of the apartment in the preceding action was not an issue.

A motion to dismiss a complaint pursuant to CPLR 3211 (a) (1) may be granted only if the documentary evidence submitted by the moving party utterly refutes the factual allegations of the complaint and conclusively establishes a defense to the claims as a matter of law (see *Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]). Put differently, the documentary evidence must "resolv[e] all factual issues as a matter of law and conclusively dispose of the plaintiff's claim" (*Paramount Transp. Sys., Inc. v Lasertone Corp.*, 76 AD3d 519, 520 [2010]).

In determining defendant's motion to dismiss, this Court is required to view the evidence in the light most favorable to plaintiff, and plaintiff is entitled to the benefit of all favorable inferences to be drawn therefrom (see, *Santiago v. Steinway Trucking*, 97 A.D.2d 753, 468 N.Y.S.2d 175). In this court's view, applying the aforementioned legal principles to the facts of this case, defendant has failed to establish that the complaint is barred by res judicata or that the complaint is barred by documentary evidence.

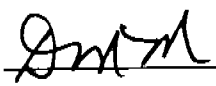
Accordingly, in the circumstances of this case, it is

ORDERED that the defendant's motion to dismiss is denied; and it is further

ORDERED that defendant is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 574, 111 Centre Street, on February 17th, 2012, at 10:00 AM.

Dated: 11/16/11

ENTER:


J.S.C.

DONNA M. MILLS, J.S.C.

FILED

NOV 18 2011

NEW YORK
COUNTY CLERK'S OFFICE