

Hammami v K & T Realty Assoc., LLC
2011 NY Slip Op 33945(U)
December 9, 2011
Sup Ct, NY County
Docket Number: 150388/10
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL EDMOND
Justice

PART 35

Index Number : 150388/2010
HAMMAMI, OUALID
vs.
K & T REALTY ASSOCIATES, LLC.
SEQUENCE NUMBER : 001
DISMISS ACTION

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

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____
Answering Affidavits — Exhibits _____ No(s). _____
Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is

Motion sequence 001 is decided in accordance with the accompanying Memorandum Decision. It is hereby

ORDERED that defendant Cooper Square Realty Inc.'s motion to dismiss the complaint as to it is granted; and it is further ORDERED that all claims asserted against defendant Cooper Square Realty are severed and dismissed, and the complaint is dismissed with costs and disbursements to this defendant as taxed by the Clerk of the Court upon presentation of an appropriate bill of costs; and it is further ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: 12.9.11


J.S.G.
HON. CAROL EDMOND

1. CHECK ONE: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

-----X

OUALID HAMMAMI and AMY LYNE,

Plaintiffs,

Index No. 150388/10

-against-

K & T REALTY ASSOCIATES, LLC and
COOPER SQUARE REALTY, INC.,

Defendants.

-----X

Carol R. Edmead, J.:

In this action for, among other things, the recovery for damage to property stemming from a bed bug infestation in plaintiffs' apartment, defendant Cooper Square Realty, Inc. (Cooper) moves, pursuant to CPLR 3211 (a) (7), to dismiss the complaint as to it.

Plaintiffs Oualid Hammami and Amy Lyne were tenants in an apartment located at 314 East 9th Street, New York, New York (premises). Defendant K & T Realty Associates, LLC (K&T) was the owner of the premises, while Cooper claims to have been the managing agent of the premises, as a disclosed agent of the its principal, K&T.

Plaintiffs claim that the premises became infested with bed bugs and, despite attempts to eradicate the situation by calling in exterminators, the situation was not alleviated, and plaintiffs were compelled to vacate the premises as uninhabitable. Cooper does not deny these facts, but, instead,

argues that, as manager of the premises, whose disclosed contract extended only to the owner, K&T, it cannot be held liable for any damages plaintiffs might seek arising from problems in their apartment.

On a motion to dismiss pursuant to CPLR 3211, we must accept as true the facts as alleged in the complaint and submissions in opposition to the motion, accord plaintiffs the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory.

Sokoloff v Harriman Estates Development Corp., 96 NY2d 409, 414 (2001); see also *Leon v Martinez*, 84 NY2d 83 (1994).

A managing agent of a disclosed principal owner of property will ordinarily not be liable for damages to a tenant for damage to that property. See *Paganuzzi v Primrose Management Co.*, 268 AD2d 213 (1st Dept 2000). The managing agent will bear no responsibility unless it is shown that it has "complete and exclusive control of the demised space." *Howard v Alexandra Restaurant*, 84 AD3d 498, 499 (1st Dept 2011); see also *Mangual v U.S.A. Realty Corp.*, 63 AD3d 493 (1st Dept 2009).

In support of its motion, Cooper provides a Building Registration Summary Report showing it to be K&T's managing agent (Not. of Mot., Ex. C), and a memorandum posted for tenants in the building, concerning extermination efforts, which identifies Cooper "as Agents for K&T Realty LLC." Not. of Mot., Ex. D. In reply to plaintiffs' opposition, Cooper supplies the managing agreement between it and K&T, which evidences the agency

relationship between these parties. Reply, Ex. A.

Plaintiffs are correct that the Building Registration Summary Report provided by Cooper does not show that Cooper was the managing agent of the premises at the time plaintiffs sustained their damages, as it is dated 2011.

However, plaintiffs offer no facts to show that Cooper was anything other than K&T's managing agent. Plaintiffs' main argument is that, because Cooper appeared to be in complete control of the extermination project, based on numerous memoranda posted to provide tenants with information concerning the extermination process (which do not identify Cooper as K&T's agent), it can be said that Cooper had "complete and exclusive control of the demised space." *Howard v Alexandra Restaurant*, 84 AD3d at 499. Plaintiffs also point to the identification on the Building Registration Summary (however immaterial) of Kimmarré Mealer (Mealer) as both head officer of K&T, and managing agent of Cooper. Plaintiffs provide the affidavit of plaintiff Amy Lyne (Lyne), who asserts that she dealt with Mealer as property manager of the building. Lyne also offers her opinion that it was always Cooper that provided for the repair and maintenance of the building.

Plaintiffs have offered nothing but conclusory allegations that Cooper might be connected with K&T in such a manner as to be in complete control of the building. It is no proof to show that

a managing agent manages the property, as plaintiffs attempt to do, as that is the purpose of a managing property agent. Any double role that Mealer might occupy does not affect the situation, despite plaintiffs' speculation that discovery might show something helpful to its case. As such, plaintiffs have failed to show that Cooper had "complete and exclusive control of the demised space," or was anything other than managing agent for K&T.

Accordingly, it is

ORDERED that defendant Cooper Square Realty Inc.'s motion to dismiss the complaint as to it is granted; and it is further

ORDERED that all claims asserted against defendant Cooper Square Realty are severed and dismissed, and the complaint is dismissed with costs and disbursements to this defendant as taxed by the Clerk of the Court upon presentation of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: December 9, 2011

ENTER:



J. S. C.
HON. CAROL EDMED