

Do Campo v Hammer
2012 NY Slip Op 33511(U)
October 3, 2012
Sup Ct, NY County
Docket Number: 15059/2011
Judge: Anil C. Singh
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANIL C. SINGH
SUPREME COURT JUSTICE
Justice

PART 61

Index Number : 150559/2011
DO CAMPO, PATRICIA
vs.
HAMMER, ROBERT
SEQUENCE NUMBER : 001
SUMMARY JUDGMENT

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) 1
Answering Affidavits — Exhibits No(s) 2
Replying Affidavits No(s) 3

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

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

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

Dated: 10/3/12

[Signature], J.S.C.

HON. ANIL C. SINGH
SUPREME COURT JUSTICE

- 1. CHECK ONE: CASE DISPOSED
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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----X

PATRICIA DO CAMPO,

Plaintiff,

DECISION AND
ORDER

-against-

Index No.
150559/2011

ROBERT HAMMER, individually, and on behalf of
MELOHN PROPERTIES, INC., MELOHN
PROPERTIES, INC., and 301 WEST 45TH STREET, LLC,

Defendant.

-----X

HON. ANIL C. SINGH, J.:

Defendant Robert Hammer moves pursuant to CPLR 3211 and 3212 for summary judgment dismissing plaintiff's claims against him individually, contending that he cannot be held liable individually due to the corporate shield doctrine and the business judgment rule. Plaintiff opposes the motion and cross-moves pursuant to CPLR 602(a) and 602(b) to consolidate this action for joint discovery and trial with a related holdover proceeding that is pending in the Housing Part of the Civil Court of New York City. Defendants consent to consolidation.

Plaintiff Patricia Do Campo is the tenant of apartment 9J at 301 West 45th Street in Manhattan. Defendant 301 West 45th Street, LLC is her landlord.

Defendant Melohn Properties, Inc., is the management company for the apartment building. It is the employer of defendant Robert Hammer, who is the building manager.

Plaintiff commenced this action by filing a summons and complaint on December 1, 2011. Ms. Do Campo alleges that defendants failed to prevent water from leaking into her apartment. As a result, toxic mold has contaminated the walls, making her sick. The complaint alleges five causes of action, including negligence and breach of the warranty of habitability.

Defendant Robert Hammer, the building manager, states in a sworn affidavit that, absent specific allegations in the complaint of tortious conduct against him, the plaintiff has no claim against him individually. According to Hammer, plaintiff's complaint centers on her perceived issues and disagreements with decisions of the corporate entities of this action, and there are "no specific allegations made against me."

The Court has reviewed plaintiff's complaint carefully. On its face, the pleading contains no separate allegations against Robert Hammer in his individual capacity nor does it contain any allegations whatsoever regarding or supporting a piercing of the corporate veil or a violation of the business judgment rule. Nor does the complaint assert specific allegations against Robert Hammer sufficient to

state a claim for fraudulent misrepresentation.

“[I]t is elementary that the primary purpose of a pleading is to apprise an adverse party of the pleader’s claim and to prevent surprise” (Cole v. Mandell Food Stores, Inc., 93 N.Y.2d 34, 40 [1999]). “Absent such notice, a defendant is prejudiced by its inability to prepare a defense to the plaintiff’s allegations” (Id.)

For example, in Messner v. 112 E. 83rd St. Tenants Corp., 42 A.D.3d 356 [1st Dept., 2007], the First Department upheld the dismissal of a tenant’s action against individual directors of a co-op board in the absence of any allegations that they committed separate tortious acts.

Likewise, plaintiff’s complaint in the instant action fails to allege that defendant Hammer committed any separate tortious acts. The complaint as against him must, therefore, be dismissed.

As we noted above, the defendants consent to consolidation of this matter with the holdover proceeding pending in the Housing Part of Civil Court.

Accordingly, it is hereby

ORDERED that the motion of defendant Robert Hammer to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against him, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said

defendant; and it is further;

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption is amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that the cross-motion of plaintiff to consolidate is granted and the above-captioned action is consolidated for joint discovery and trial in this Court with 301 West 45th Street, LLC v. Patricia Docampo, Civil Court of New York City, Index No. L&T 09N093318, New York County; and it is further

ORDERED that, within 30 days from entry of this order, counsel for the movant shall serve a certified copy of it upon Peter Catella, Assistant Deputy Chief Clerk, at the Civil Court of New York City, 111 Centre Street, Room 225, Window #10, who, upon payment of the proper fees, shall transfer to the Clerk of the Supreme Court, New York County, all of the papers on file in the proceeding 301 West 45th Street, LLC v. Patricia Docampo, L&T Index No. 09N093318; and

it is further

ORDERED that the Clerk of the Supreme Court, New York County, upon receipt of a copy of this order with notice of entry, shall, without further notice, assign a no-fee index number to the matter transferred pursuant to this order; and it is further


ORDERED that, within 45 days from entry of this order, counsel for the movant shall serve a copy of it with notice of entry upon the Clerk of the Trial Support Office (Room 158), together with a Request for Judicial Intervention, for which the Clerk shall charge any applicable fee; and it is further

ORDERED that the Clerk of the Trial Support Office shall assign the transferred matter to the undersigned; and it is further

ORDERED that upon payment of the appropriate calendar fees and the filing of notes of issue and statements of readiness in each of the above actions, the Clerk of the Trial Support Office shall place the aforesaid actions upon the trial calendar for a joint trial; and it further.

ORDERED that at said joint trial petitioner in the holdover proceeding shall have the right to open and close before the jury.

Date: 10/3/11
New York, New York



Anil C. Singh
HON. ANIL C. SINGH
SUPREME COURT JUSTICE