

Allerand, LLC v Ordon
2014 NY Slip Op 31346(U)
May 22, 2014
Sup Ct, New York County
Docket Number: 158799/2013
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: Hon. EILEEN A. RAKOWER PART 15

Justice

ALLERAND, LLC,

Plaintiff,

- v -

JULIE ORDON a/k/a JULIE ANJA
ORDON-SWARCJZYNSKI and
DAVID MIMRAN,

Defendants.

INDEX NO. 158799/2013

MOTION DATE _____

MOTION SEQ. NO. 1

MOTION CAL. NO. _____

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

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

Answer — Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1-3

4-5

6

Cross-Motion: Yes X No

The instant action seeks money damages for property damage and unpaid rent. The Complaint alleges that David Mimran (“Mimran”) was the residential tenant of Condominium Unit 401, located at 500 Greenwich Street, New York, New York (“the Subject Unit”) through August 2012. Defendant Julie Ordon a/k/a Julie Anja Ordon-Swarczynski (“Ordon”) is alleged to be Mimran’s wife “through August 2, 2012” was also the occupant of” the Subject Unit.

The Complaint alleges that on or about February 8, 2009, plaintiff Allerand, LLC (“Plaintiff” or “Allerand”), as landlord, and Mimran, as tenant, entered into a Lease for the Subject Unit with a term expiring on July 31, 2010. That Lease was extended through July 31, 2012. The Complaint alleges that the Subject Unit was leased fully furnished with antiques, furniture and equipment.

The first cause of action is for “unpaid rent, liquidated holdover rent and late charges.” It alleges,

“34. Defendants owe Allerand \$96,000 in unpaid rent for the months

of July, and August of 2012.

35. Defendants owe Allerand \$9,000 for underpayment of \$3,000 for each of these months.
36. Defendants owe Allerand \$32,000 in liquidated damage rent for holding over in the subject unit during the month of August.
37. Defendants owe Allerand not less than \$9600 for unpaid late charges.
38. Allerand respectfully demands judgment against the Defendants in the amount of \$146,000 for unpaid rent, liquidated damage rent and late charges.”

The second cause of action is for legal fees. It alleges, “Allerand is entitled to an award of its reasonable legal fees based upon applicable provisions of contract law and the Lease,” and “requests a judgment against Defendants for the amount of its legal fees in an amount to be determined by the Court.”

The third cause of action is for “property damage and lost rents.” It alleges the following:

- “43. Defendants through negligence, gross negligence and/or intentional actions caused tremendous damage to the subject unit and its contents.
44. Defendants caused damage to the subject unit itself (real property) in an amount not less than \$110,491.
45. Defendants caused damage to the personal property still in the subject unit in an amount not less than \$42,860.
46. Defendants caused damage to Allerand by stealing and/or discarding of \$4,450 in personal property.
47. Defendants caused damage to Allerand in the form of property damage in the amount of \$157,801.
48. Due to the extensive damage caused by the Defendants, the subject

premises will not be suitable to use or rental for a period of not less than three months, thereby damaging Allerand in an amount of not less than \$96,000.”

Ordon now moves to dismiss Plaintiff’s action, pursuant to CPLR § 3211(a)(1), and for sanctions under Section 130-1.1© of the Uniform Rules for the New York State Trial Courts.

Ordon submits an affidavit and states that she “was not a signatory to the Lease” and “was not a tenant thereunder”. A copy of the Lease and Lease Amendment are annexed to Ordon’s affidavit.

In opposition, Plaintiff submits the affidavit of Richard Sabella, managing member of Allerand and owner of the Subject Unit. Sabella avers that Plaintiff does not challenge that Gordon was “not a signatory to the Lease” nor a “tenant thereunder.” Sabella avers that the action is commenced as against Ordon because Ordon was an occupant of the Subject Unit at the time that Mimran surrendered the keys in August 2012. Sabella further states that Plaintiff’s claim against Ordon “concerns her personal negligence or intentional conduct in the substantial damage that occurred to the subject unit and the fine furniture and personal property that was destroyed or taken by her or her agents and not any claim for rental arrears.”

CPLR §3211 provides, in relevant part:

(a) a party may move for judgment dismissing one or more causes of action asserted against him on the ground that:

(1) a defense is founded upon documentary evidence;

On a motion to dismiss pursuant to CPLR §3211(a)(1), “the court may grant dismissal when documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” (*Beal Sav. Bank v. Sommer*, 8 NY3d 318, 324 [2007]) (internal citations omitted). A movant is entitled to dismissal under CPLR § 3211 when his or her evidentiary submissions flatly contradict the legal conclusions and factual allegations of the complaint. (*Rivietz v. Wolohojian*, 38 A.D.3d 301 [1st Dept. 2007]) (citation omitted).

Here, Plaintiff’s opposition concedes that its first and second causes of action, which are based on the Lease, are not intended to be asserted against

Ordon, and further that Plaintiff's claim against Ordon "concerns her personal negligence or intentional conduct in the substantial damage that occurred to the subject unit and the fine furniture and personal property that was destroyed or taken by her or her agents and not any claim for rental arrears."

The documentary evidence, the Lease and its amendments, submitted by Ordon flatly contradict any basis for imposing contractual liability under the Lease as against Ordon. However, the documentary evidence submitted does not flatly contradict the factual allegations that Ordon caused damage to the Subject Unit and personal property therein as alleged in the third cause of action.

Wherefore, it is hereby

ORDERED that Defendant Jule Ordon's motion is granted only to the extent that the first and second causes of action of the Complaint are dismissed as against defendant Julie Ordon.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: MAY 22, 2014



HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE