

Prosser v 189-191 Realty, LLC
2014 NY Slip Op 33123(U)
December 2, 2014
Sup Ct, New York County
Docket Number: 150123/11
Judge: Anil C. Singh
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

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PETER PROSSER, LISA ARKIS, and JOEL
CHATFIELD,

Plaintiffs,

DECISION AND
ORDER

-against-

Index No.
150123/11

189-191 REALTY, LLC, BMH REALTY, LTD.
d/b/a HELLER REALTY, and PEST AWAY
EXTERMINATING, INC.,

Defendants.

-----X
HON. ANIL C. SINGH, J.:

Defendants 189-191 Realty, LLC, and BMH Realty, Ltd., d/b/a Heller Realty (the "Realty" defendants) move for partial summary judgment pursuant to CPLR 3212, dismissing the claims of plaintiff Lisa Arkis for intentional and negligent infliction of emotional distress based on an infestation of bedbugs in her apartment. Co-defendant Pest Away Exterminating, Inc. ("Pest Away") cross-moves for partial summary judgment, also seeking dismissal of the claims for emotional distress. Plaintiffs oppose the motion and cross-motion.

The material facts are as follows.

Plaintiffs Peter Prosser, Lisa Arkis and Joel Chatfield are tenants who reside in apartments at 189-191 Claremont Avenue in Manhattan. The Realty defendants

are the landlord and managing agent of building.

Plaintiffs contend that their apartments became infested with bedbugs on two separate occasions in 2007 and 2010. The landlord hired Pest Away to eliminate the insects.

Plaintiffs commenced the instant personal injury action by filing a summons and complaint. The complaint alleges that each infestation began with bedbugs in one apartment and, due to defendants' failure to follow proper procedures, spread to other apartments. The complaint asserts causes of action for breach of the implied warranty of habitability (first cause of action), negligence (second cause of action), negligent infliction of emotional distress (third cause of action), and intentional infliction of emotional distress (fourth cause of action).

In the motion and cross-motion, defendants are moving to dismiss the causes of action for intentional and negligent infliction of emotional distress of plaintiff Lisa Arkis. It is important to note that on May 22, 2014, this Court dismissed the claims of plaintiffs Peter Prosser and Joel Chatfield for negligent and intentional infliction of emotional distress.

Discussion

The standards for summary judgment are well settled. "The proponent of a summary judgment motion must make a prima facie showing of entitlement to

judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (Winegrad v. New York University Medical Center, 64 N.Y.2d 851, 853 [1985]). Despite the sufficiency of the opposing papers, the failure to make such a showing requires denial of the motion (id.) Summary judgment is a drastic remedy and should only be granted if the moving party has sufficiently established that it is warranted as a matter of law (Alvarez v. Propect Hosp., 68 N.Y.2d 320, 324 [1986]). Moreover, summary judgment motions should be denied if the opposing party presents admissible evidence establishing that there is a genuine issue of fact remaining (Zuckerman v. City of New York, 49 N.Y.2d 557, 560 [1980]). “In determining whether summary judgment is appropriate, the motion should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility” (Garcia v. J.C. Duggan, Inc., 180 A.D.2d 579, 580 [1st Dept., 1992], citing Assaf v. Ropog Cab Corp., 153 A.D.2d 520, 521 [1st Dept., 1989]).

In short, the Court finds that the record fails to establish facts sufficient to make out a prima facie case for negligent or intentional infliction of emotional distress (see, for example, Bour v. 259 Bleecker LLC, 104 A.D.3d 454 [1st Dept., 2013]).

Accordingly, it is

ORDERED that the Realty defendants motion for partial summary judgment is granted; and it is further

ORDERED that defendant Pest Away's cross-motion for partial summary judgment is granted; and it is further

ORDERED that the third cause of action (negligent infliction of emotional distress) and fourth cause of action (intentional infliction of emotional distress) of plaintiff Lisa Arkis's complaint are dismissed.

The foregoing constitutes the decision and order of the court.

Date: Dec 2, 2014
New York, New York



Anil C. Singh

HON. ANIL C. SINGH
SUPREME COURT JUSTICE