

Osborne v BLDG Mgt. Co., Inc.
2015 NY Slip Op 30060(U)
January 17, 2015
Supreme Court, New York County
Docket Number: 112231/11
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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JOSEPH OSBORNE and CARI LEWIS-OSBORNE,

Plaintiffs,

DECISION AND
ORDER

-against-

Index No.
112231/11

BLDG MANAGEMENT CO., INC.,

Defendant.

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HON. ANIL C. SINGH, J.:

Plaintiffs move for summary judgment against defendant pursuant to CPLR 3212 on the causes of action for breach of contract on the original lease (first cause of action); breach of contract of the renewal lease (second cause of action); fraudulent misrepresentation concerning air conditioning and heating (third cause of action); fraudulent misrepresentation under the lease agreement (fourth cause of action); violation of the duty of good faith and fair dealing (fifth cause of action); and unjust enrichment (sixth cause of action). Defendant opposes the motion and cross-moves for summary judgment dismissing the complaint in its entirety.

Plaintiffs Joseph Osborne and Cari Lewis-Osborne commenced the instant action by filing a summons and verified complaint on October 27, 2011. The complaint alleges the following facts.

Plaintiffs are former tenants of unit 11J in “The Montana,” a residential apartment building at 247 West 87th Street in Manhattan. Defendant BLDG Management Co., Inc., is the landlord. The parties entered into a written lease agreement on March 18, 2010, for a term of one year commencing March 31, 2010. The lease was subsequently renewed for an additional two years.

Plaintiff/tenants allege that, through fraudulent misrepresentation at the beginning of the first and second lease terms, defendant/landlord coerced them to accept certain lease terms when the landlord did not intend to honor the terms and, in fact, did not satisfy its contractual obligations. Specifically, plaintiffs allege that the landlord failed to address the lack of sufficient heating and air conditioning, particularly in the room used for plaintiffs’ toddler. They contend that the landlord’s broker misrepresented the den of the apartment as a third bedroom and assured that the air-conditioning and heat in the room was functioning. Plaintiffs assert that the room was unhealthy and uncomfortable; it was ice cold in the wintertime, and hot and humid in the summertime.

The complaint asserts eight causes of action: breach of contract on the original lease (first cause of action); breach of contract on the renewal lease (second cause of action); fraudulent misrepresentation concerning air conditioning and heating (third cause of action); fraudulent misrepresentation under the lease

agreement (fourth cause of action); violation of the covenant of good faith and fair dealing (fifth cause of action); unjust enrichment (sixth cause of action); specific performance (seventh cause of action); and release from the lease agreement and terms (eighth cause of action).

As we noted at the outset, plaintiffs are moving now for summary judgment on the first, second, third, fifth and sixth causes of action, and defendant is cross-moving for summary judgment dismissing the complaint in its entirety.

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 be granted only 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 non-moving 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]). The court’s role is “issue-finding, rather than issue-determination” (Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395, 404 [1957] (internal quotations omitted)).

Plaintiff Cari Lewis-Osborne has submitted a sworn affidavit that is eleven pages long. Ms. Lewis-Osborne states that she visited the premises for the first time in March 2010, when plaintiffs were searching for a three-bedroom apartment. At that time, she noticed that one of the bedrooms did not have the same controls for the heating/cooling unit as the other two bedrooms. She asserts that the building’s in-house broker, a BLDG representative, assured her that the room had fully functioning air-conditioning and heat controlled by the unit in the living room. According to Ms. Lewis-Osborne, she specifically informed defendant that they intended on making the room in question into a bedroom for their son, and that adequate heating and air conditioning “was absolutely essential for us,” and the landlord assured them that the heating and air conditioning would be working properly. After moving in, they discovered that the heating and air-conditioning in

the room in question was not properly functioning.

Ms. Lewis-Osborne states that the landlord reneged on their own proposal to resolve the air-conditioning/heating issue due to the alleged requirement of sidewalk bridges and permits; pressured plaintiffs into a greater lease amount without adequate notice and under misrepresentative pretenses; and demanded a release prior to resolving the air-conditioning/heating habitability issue. Finally, she states that plaintiffs renewed the lease based on landlord's representations that it would help plaintiffs resolve the heating/cooling problems, but the landlord subsequently failed to act in good faith to rectify the problems.

In opposition, defendant exhibits the sworn affidavits of Christopher Orpheus, who states that he is employed by defendant as the building manager, and Zachary Burroughs, who states that he worked as an in-house broker for the building.

Christopher Orpheus states that, contrary to plaintiffs' contentions, the lease did not require the landlord to provide air-conditioning to the plaintiffs, and the landlord never obligated itself to provide air-conditioning, nor did defendant advertise the apartment as having three bedrooms. Although he asserts that there is no contractual obligation to plaintiffs regarding air-conditioning, there are cooling units located in various rooms of the apartment and in other apartments. Further,

Mr. Orpheus contends that the building circulates chilled water through pipes in these units, and electric fans blow over the pipes that cool each apartment. Finally, he states that he never received a complaint from any other tenants regarding alleged inadequate heat/cooling concerning the den in the apartment or in any similar unit; that no violation for heat/cooling has ever been placed against the apartment or any apartment in the building by any local, state or federal enforcement agency; and the landlord made good-faith efforts to satisfy the plaintiffs.

Zachary Burroughs, the in-house broker, states that he is aware that there is no air-conditioning unit in the den, only a heater, and he never told plaintiffs that there was an air-conditioning unit in the den. Mr. Burroughs states further that he never made any false statements or representations to plaintiffs; any statements he made to plaintiffs regarding heating/cooling were true; and he had no knowledge of, or reason to believe, there were any problems with the apartment.

Ms. Lewis-Osborne has submitted an affidavit in opposition to the cross-motion for summary judgment. She asserts that the room in issue was not described to plaintiffs as a den, but as part of a three-bedroom apartment, which Zachary Burroughs represented to plaintiffs at the time of their visit to the premises. Further, she contends that defendant obligated itself to provide adequate

heating/cooling in the third bedroom based on: 1) Burroughs' having misrepresented the facilities of the third bedroom prior to signing the lease; and 2) the warranty of habitability. Finally, Ms. Lewis-Osborne asserts that defendant exhibited a pattern of renegeing on its assurances to rectify the heating/cooling conditions in the third bedroom.

Based on the parties' conflicting affidavits, the Court finds that there are genuine issues of material fact regarding plaintiff's causes of action for breach of contract, fraudulent misrepresentation, and violation of the covenant of good faith and fair dealing. Accordingly, neither party has demonstrated entitlement to summary judgment on those claims.

Plaintiffs' claim that the defendant was unjustly enriched from the rent payments when adequate heating/cooling was not provided is a quasi-contractual claim. The existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi-contract for events arising out of the same subject matter (Melcher v Apollo Medical Fund Mgmt LLC, 105 AD3d 15, 27 [1st Dept 2013] citing Clark-Fitzpatrick, Inc. v Long Is. R.R. Co., 70 NY2d 382,388 [1987]). Therefore, the unjust enrichment claim cannot be asserted with the parties' lease, which governs the dispute.

Accordingly, it is

ORDERED that plaintiffs' motion for summary judgment is denied, and it is further

ORDERED that defendant's cross-motion for summary judgment is granted in part, and the sixth cause of action (unjust enrichment) of the complaint is dismissed; and it is further

ORDERED that the action shall continue as to the remaining causes of action and it is further

The above constitutes the decision and order of the Court.

Date: 1/14/15
New York, New York

Anil C. Singh
Anil C. Singh