

Dill v Werba Realty

2015 NY Slip Op 32475(U)

December 9, 2015

Supreme Court, Queens County

Docket Number: 700404-2015

Judge: Robert L. Nahman

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SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HON. ROBERT L. NAHMAN
Justice

IAS PART 19

The Estate of Scott Dill and Maureen Dill, As an Individual and in her capacity as Temporary Administrator of The Estate of Scott Dill,

Index No.: 700404-2015

Motion

Date: December 3, 2015

Plaintiff,

Motion

- against -

Cal. No.: 1

Werba Realty, Maria Strbik, Community Services Realty, LLC, Libertino Arrigo, Banat Realty, Inc., Sazan H. Bejo, Grimaldi Realty Corp., Debra A. Bianco, Coldwell A. Banker Kueber Realty, Daniela Horoutunian, Top Realty Company and Joseph V. Fabrizio

Mot. Seq.

Number: 9

Defendants.

FILED
DEC 14 2015
COUNTY CLERK
QUEENS COUNTY

Upon the following papers e-file number 114 through 164 read on this motion by plaintiff to dismiss the counterclaims of defendants Grimaldi Realty Corp., and Debra A. Bianco pursuant to CPLR §3211(a)(7) upon the grounds that the counterclaims fail to state a cause of action, and the cross motion by defendants Grimaldi Realty Corp., and Debra A. Bianco to dismiss plaintiffs' complaint, pursuant to CPLR §§3211(a)(5), (7), (8) and (10); for summary judgment dismissing plaintiff's complaint; for summary judgment on their counterclaims; and for attorney fees and costs:

	<u>Papers E-File</u> <u>Numbered</u>
Notice of Motion/Affirmation/Exhibits	114 - 116
Notice of Cross Motion/Affirmation/Exhibits	118 - 124
Memorandum in Opposition to Cross.....	125
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This action was brought to recover damages for alleged violations of the New York State Human Rights Law, N.Y. Exec. Law §290, *et seq.* (NYSHRL), and the New York City Human Rights Law, NYC Admin. Code §8-107, *et seq.* (NYCHRL). Plaintiff, Maureen Dill, Individually and as Administrator of the Estate of her late son, Scott Dill, alleges her son, in his pursuit of an apartment, was wrongfully discriminated against by the defendant realtors because he was disabled and because of his source of income. Plaintiff alleges the decedent answered advertisements for available apartments, listed by the defendant real estate agencies, requested apartments commensurate to the rent assistance provided to him by the HIV/AIDS Services Administration (HASA), and, after revealing his disability and his receipt of rent assistance from HASA, was told that no apartments were available.

During oral argument, the defendants Grimaldi Realty Corp., and Debra A. Bianco agreed to withdraw their counterclaims and to withdraw the branch of their motion for costs and attorneys fees and plaintiff withdrew the motion to dismiss the counter-claims.

In the remaining branches of the cross motion the defendants Grimaldi Realty Corp., and Debra A. Bianco move both for summary judgment and to dismiss the complaint upon the grounds that the complaint fails to state a cause of action, that the action is barred by the statute of limitations since it was not commenced within one year of the death of Scott Dill, that plaintiff has failed to join an indispensable party, i.e. the landlord, and that plaintiff Maureen Dill, individually has no standing to sue.

Defendants Grimaldi Realty Corp., and Debra A. Bianco contend that plaintiff Maureen Dill, individually is not an “aggrieved person” under New York State Human Rights Law, N.Y. Exec. Law §297(9), and the New York City Human Rights Law, NYC Admin. Code §8-502(a).

Executive Law §297(9) provides in part:

“[a]ny person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of appropriate jurisdiction...”

New York City Administrative Code §8-502(a) provides in part:

“[e]xcept as otherwise provided by law, any person claiming to be an aggrieved by an unlawful discriminatory practice... shall have a cause of action in any court of appropriate jurisdiction...”

The courts have held that in determining when a person is “aggrieved” there must be a showing that the person has been personally and adversely affected, (*see generally,*

Douglaston v Galvin, 36 NY2d 1 (1974) a civic association has standing to assert the rights of all of its members who have been aggrieved; *Mill River v NYS*, 59 Ad3d 549 (2nd Dept., 2009) a club member is aggrieved by club's discriminatory practice since he is denied association with people not admitted due to discriminatory practice; *Weinstein v Hospital for Joint Disease*, 53 AD2d 627 (2nd Dept., 1976) spouse of employee alleging employment discrimination does not have standing since she is not aggrieved;

The court finds that plaintiff Maureen Dill, as the Administrator of the Estate of Scott Dill has sufficiently claimed in the complaint the elements of a housing discrimination action based on disability and income, through violations of the New York State Human Rights Law and the New York City Human Rights Law. The complaint sufficiently alleges that the decedent Scott Dill was a member of a protected class, who applied for, and was qualified to rent, housing which was denied him "under circumstances which give rise to an inference of unlawful discrimination" (*Matter of New York State Div. of Human Rights v Caprarella*, 82 AD3d 773, 774 [2011]). Accordingly, it is

ORDERED that the branch of the cross motion by defendants Grimaldi Realty Corp., and Debra A. Bianco to dismiss the plaintiff Maureen Dill, as the Administrator of the Estate of Scott Dill's complaint for failure to state a cause of action is denied.

The court further finds that plaintiff Maureen Dill, individually, does not fall within the meaning of an "aggrieved person" within the meaning of Executive Law §297(9) or the New York City Administrative Code §8-502(a). Accordingly, it is

ORDERED that the branch of the cross motion by defendants Grimaldi Realty Corp., and Debra A. Bianco to dismiss the plaintiff Maureen Dill's individual claims upon the grounds that she lacks standing is granted; and it is further

ORDERED that the branch of the cross motion by defendants Grimaldi Realty Corp., and Debra A. Bianco to dismiss plaintiffs' complaint for failure to join the landlord as an indispensable party is denied since the defendants have not shown that a determination in this action may adversely affect the landlords rights; and it is further


ORDERED that the branch of the cross motion by defendants Grimaldi Realty Corp., and Debra A. Bianco to dismiss plaintiffs' complaint upon the grounds that the statute of limitations has run is denied as without merit.

CPLR §210(a) provides that when a person entitled to commence an action dies before the expiration of the applicable statute of limitations and the cause of action survives the death, an action may be commenced by the representative of the estate within one year after his death. CPLR §210(a) is a tolling provision that does not operate to shorten the statute of limitation on a cause of action that is otherwise timely, as is the case herein which

has a three year statute of limitations; and it is further

ORDERED that the branch of the cross motion by defendants Grimaldi Realty Corp., and Debra A. Bianco for summary judgment is denied as premature since discovery is not yet complete.

Dated: December 9, 2015



Robert L. Nahman, J.S.C.

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QUEENS COUNTY