

**Tunne v Halpern**

2016 NY Slip Op 30413(U)

March 14, 2016

Supreme Court, New York County

Docket Number: 451201/14

Judge: Jennifer G. Schechter

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 57

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MARK TUNNE,

Index No. 451201/14

Plaintiff,

-against-

GERALD P. HALPERN et al.,

Defendants.

-----x  
JENNIFER G. SCHECTER, J.:

Defendants move for summary judgment dismissal of this action. Their motion is granted.

Background

Mark Tunne (Mr. Tunne) was a rent-stabilized tenant of Fred Ziess, who died. In 2006, Gerald P. Halpern, as Executor of the Estate of Fred Ziess and Mautner-Glick Corporation, which was the managing agent of the demised premises, (collectively Holdover Petitioners) commenced a holdover proceeding against Mr. Tunne. After a protracted trial--during which seven witnesses testified on behalf of the Holdover Petitioners, including Charles Pisani, David Parks, Mary Clark, Aster Johnson, Lorena Moreno, Jezabelle Pace and Jennifer Giordano--Civil Court granted the Holdover Petitioners a final judgment of possession, concluding that Mr. Tunne "breached his rent-stabilized lease by behaving in a manner over several years that constitutes a nuisance and by chronically failing to pay his rent when due" (Affirmation in Support [Supp], Ex D at 2).

In 2012, the Appellate Term, Second Department affirmed the final judgment, explaining:

"Here, the Civil Court found, based on the testimony adduced, that landlords had established a recurrence of objectionable conduct. The decision of a fact-finding court should not be disturbed upon appeal unless it is obvious that the court's conclusions could not be reached under any fair interpretation of the evidence. Furthermore, the determination of a trier of fact as to the issues of credibility is given substantial deference, as a trial court's opportunity to observe and evaluate the testimony and demeanor of the witnesses affords it a better perspective from which to assess their credibility. Given the testimony proffered by the landlords' witnesses regarding tenant's abusiveness toward the superintendent's wife and the management company's staff, the Civil Court's determination with regard to the nuisance allegations is amply supported by the record" (Supp, Ex F at SM-3-SM-4).

In January 2013, after receiving a notice of eviction and believing that his eviction was imminent, Mr. Tunne vacated the apartment. On May 9, 2013, a marshal returned possession of the apartment to the landlord and there is a separate action pending related to possessions that Mr. Tunne allegedly left at the premises (Index No. 450873/2014).

In May 2014, Mr. Tunne commenced this action against Gerald P. Halpern, Alan Ziess, Alvin Glick, David Parks, Astor Johnson, Charles Pisani, Jezabelle Pace, Jennifer Giordano, Marie T. Clark, Jose Moreno, Lorena Moreno, Noah Berman and Joshua Clinton Price. In his more-than-65-page complaint, Mr. Tunne asserts that each defendant, jointly and severally, is

liable for "perjury, conspiracy to commit perjury, fraud, conspiracy to commit fraud; negligence, negligence per se; negligent supervision; oral defamation, slander, invasion of privacy in a false light; landlord-tenant harassment for filing a false instrument--vis a vis--a defective notice, predicate notice, and landlord-tenant petition to execute a fraudulent eviction, failure to control a third-party; actual and/or constructive eviction added on to a systemic history of other prior bad acts committed against [Mr. Tunne] throughout his tenancy" (Supp, Ex A at 2). He further alleges, among other things, that defendants violated his civil and constitutional rights, committed "intentional and/or actual infliction of emotional distress" and overcharged him rent (*id.* at 4).

Because not a single one of Mr. Tunne's 21 pleaded causes of action is viable, his action is dismissed in its entirety.

#### Analysis

Mr. Tunne cannot attack or circumvent an affirmed Civil Court judgment. Nor can he seek relief related to Civil Court proceedings or sue witnesses based on their testimony at a trial that he lost and the Holdover Petitioners won. Therefore, his claims for perjury/defamatory allegations in court (first cause of action. <sup>4</sup> of <sup>7</sup> see Supp. Ex A at ¶ 74). fraud

based on "misrepresentations to the plaintiff, housing court, [and] two appellate term courts" and "false, frivolous, unsubstantiated claims of nuisance" (second cause of action, *id.* at ¶¶ 162-163), harassment based on conspiring against him by bringing unfounded holdover proceedings (third cause of action, *id.* at ¶¶ 169, 171), negligence (fourth cause of action, *id.* at ¶¶ 181-182), public defamation based on nuisance allegations (sixth cause of action, *id.* at ¶ 192), slander (seventh cause of action, *id.*, at ¶ 197), invasion of privacy in a false light (eighth cause of action, *id.* at ¶ 202), landlord-tenant harassment based on holdover petitions (ninth cause of action, *id.* at ¶¶ 209-210, 216), breach of contract (eleventh cause of action, *id.* at ¶¶ 229, 231), abuse of process (twelfth cause of action, *id.* at ¶ 238), retaliation (thirteenth cause of action, *id.* at ¶ 244); "declaratory judgment and enforcement of a dismissal on [two Civil Court] petitions on the ground of vitiation" (fourteenth cause of action, *id.* at ¶¶ 256, 260), "actual eviction" in 2013 "after a long tortuous appellate proceeding" (fifteenth cause of action, *id.* at ¶ 266), intentional infliction of emotional distress (sixteenth cause of action, *id.* at ¶¶ 271-274), Constitutional violations based on false allegations and perjury in court (nineteenth cause of action, *id.* at ¶¶ 284

287) and reckless infliction of emotional distress (twentieth cause of action, *id.* at ¶ 292) must all be dismissed as a matter of law.

Additionally, claims based on an alleged "actual eviction" in 2003 and on the Criminal-Court proceedings--the third, fifth, tenth, fifteenth, sixteenth, seventeenth and eighteenth causes of action--are barred by the applicable statutes of limitation and by *res judicata* based on the 2004 action that Mr. Tunne commenced in which he either raised or could have raised such allegations (*see* Supp, Ex G; *see also* Plaintiff's Reply Opposition to Defendants' Motion for Summary Judgment at ¶¶ 28, 59).

The twenty-first cause of action for rent overcharge is dismissed as Mr. Tunne never paid the rent that was billed for the period between January and May 2013 and defendants have not sought that money from him. He therefore has suffered no damages and cannot recover for rent overcharge.

In the end, because Mr. Tunne's causes of action are not viable, his complaint is dismissed.

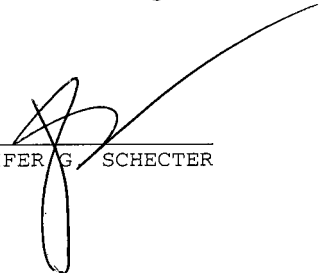
Pursuant to CPLR 3212(b), Defendants' counterclaim is dismissed.

Accordingly, it is ORDERED that this action is dismissed in its entirety. The Clerk is directed to enter judgment in  
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favor of the defendants and against the plaintiff on the

complaint and in favor of plaintiff and against the defendants on the counterclaim.

This constitutes the Decision, Order and Judgment of the Court.

Dated: March 14, 2016

  
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HON. JENNIFER G. SCHECTER