

Thull v Hanoglu
2016 NY Slip Op 32466(U)
December 13, 2016
Supreme Court, New York County
Docket Number: 156178/16
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NY
COUNTY OF NEW YORK: PART 32**

**Index No.: 156178/16
Motion Seq. 001**

Rachel M. Thull,

Plaintiff,

-against-

Cumhur and Asiye Hanoglu,

Defendants.

DECISION/ORDER

HON. ARLENE P. BLUTH, JSC

The branch of defendants' motion to dismiss this action pursuant to CPLR §3211(a)(1) and (a)(7) is granted, and the case is hereby dismissed. The branch of their motion seeking costs and attorneys' fees is denied; the branch of their motion seeking to transfer the case to Housing Court is denied as moot.

Plaintiff, who is self-represented, and defendants, the owners of a residential condominium unit located in Manhattan (the "Unit"), entered into a one-year lease agreement dated May 15, 2016 which provided for a monthly rent of \$3200. The lease required plaintiff to make a total initial payment of \$6400-- \$3200 for the first month's rent and \$3200 as a security deposit. Plaintiff made that initial payment of \$6400. However, it is undisputed that plaintiff did not make any other rent payments to defendants after the initial payment, and to date, continues to remain in the Unit. And yet, *plaintiff* commenced this action seeking the following relief:

-First cause of action: money damages and an injunction barring defendants from recovering possession of the Unit from plaintiff based on "the invalid lease agreement" stemming from defendants' alleged violation of Real Property Law §223-b;

-Second cause of action: rescission and damages pursuant to Real Property Law §223-a based on plaintiff's allegation that defendants deliberately misrepresented to plaintiff that the premises were ready for occupancy on May 1, 2016;

-Third cause of action: damages for violating the Deceptive Practices Act of the General Business Law §349;

-Fourth cause of action: fraudulent inducement to enter into a lease;

-Fifth cause of action: rescission and a declaratory judgment that the subject lease is invalid and unenforceable.

The lease (exhibit A to Hanoglu affidavit in support) is a Blumberg form entitled “Lease of a Condominium unit” with an attached one-page typed rider. The lease states the address and unit number of the condominium apartment; it is signed by the parties and provides for a one-year term beginning May 15, 2016 with an option to renew for an additional year. The lease sets forth a monthly rent of \$3200 and a security deposit in the same amount. Thus, it contains all the elements necessary for a valid lease. *See Bernstein v 1995 Associates*, 185 AD2d 160, 586 NYS2d 115 (1st Dept 1997). Additionally, the lease specifically provided that “[a]ll promises made by the Landlord are in this Lease. There are no others.” (para. 28), and “Tenant has inspected the Unit and the Building. Tenant states that they are in good order and repair and takes the Unit as is” (para 32).

As the Appellate Division, First Department stated in *150 Broadway N.Y. Associates, L.P. v Bodner*, 14 AD3d 1, 5, 784 NYS2d 63, 65–66 (1st Dept 2004):

Dismissal of a complaint pursuant to CPLR 3211(a)(1) is warranted where “the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law” (Leon v. Martinez, 84 N.Y.2d 83, 88, 614 N.Y.S.2d 972, 638 N.E.2d 511 [1994]). In particular, where a written agreement (such as the lease in this case) unambiguously contradicts the allegations supporting a litigant's cause of action for breach of contract, the contract itself constitutes documentary evidence warranting the dismissal of the complaint pursuant to CPLR 3211(a)(1), regardless of any extrinsic evidence or self-serving allegations offered by the proponent of the claim (citations omitted). This follows from the bedrock principle that it is a court's task to enforce a clear and complete written agreement according to the plain meaning of its terms, without looking to extrinsic evidence to create ambiguities not present on the face of the document (citations omitted).

Defendants have submitted the lease which the Court finds is valid and enforceable; plaintiff's self-serving allegations regarding discussions among the parties or conditions in the Unit which contradict the lease do not state any cause of action for damages or injunctive relief.

Further, plaintiff's allegation (also in the first cause of action) that defendants violated RPL §223-b "Retaliation by landlord against tenant", fails to state a cause of action. Significantly, plaintiff not alleged that she made a good faith complaint a governmental authorities concerning conditions within the Unit (*see East 145 Co. v Benayoun*, 190 Misc.2d 164, 165, 736 NYS2d 830, 831 [App Term, 1st Dept 2001]), that she took any action to enforce any rights under the lease, or, that she participated in a tenant's organization which resulted in a retaliatory motive for an eviction. See RPL §223-b(1)(a)-(c). In fact, plaintiff has not even alleged that defendants have commenced an action or proceeding to evict her. Accordingly, defendants' motion to dismiss the first cause of action is granted, and the first cause of action is hereby dismissed.

As for the second cause of action, RPL §223-a gives tenants the right to rescind a lease and to recover the consideration paid when the landlord fails to deliver possession at the start of the lease term, unless the lease contains an express term to the contrary. *See Pacific Coast Silks, LLC v 247 Realty, LLC*, 76 AD3d 167, 174, 904 NYS2d 407, 412 (1st Dept 2010). The subject lease clearly states that the term began on May 15, 2016; any extrinsic evidence about statements that plaintiff claims defendants made about delivering possession on May 1, 2016 are belied by the documentary evidence, specifically para. 5 of the lease, and are insufficient to defeat this branch of defendant's motion to dismiss. Accordingly, defendants' motion to dismiss the second cause of action is granted, and the second cause of action is hereby dismissed.

Defendants have demonstrated that third cause of action, alleging a violation of General

Business Law § 349, fails to state a cause of action. Viewing the complaint with the assumption that all the allegations contained therein are true, plaintiff, in opposition, fails to allege facts sufficient to support her contention that the defendants violated GBL §349. Since the complaint alleges a private dispute that is unique to these parties, rather than conduct that affects consumers at large, the complaint fails to state a cause of action pursuant to GBL §349. *See Korn v First UNUM Life Ins. Co.*, 277 AD2d 355, 356, 717 NYS2d 606, 606 (2d Dept 2000). Accordingly, defendants' motion to dismiss the third cause of action is granted, and the third cause of action is hereby dismissed.

Finally, plaintiff seeks compensatory and punitive damages based on fraudulent inducement to enter into the lease (fourth cause of action), and seeks rescission of the lease based on defendants' material misrepresentations that the lease would not be approved by the Condominium Board (fifth cause of action).

The elements of a claim for fraudulent inducement are: 1) a false representation of material fact, 2) known by the utterer to be untrue, 3) made with the intention of inducing reliance and forbearance from further inquiry, 4) that is justifiably relied upon, and 5) results in damages. *See MBIA Ins. Corp. v Credit Suisse Securities (USA) LLC*, 530, 32 Misc.3d 758, 773, 927 NYS2d 517, (Sup Ct, NY Co. 2011). Plaintiff has not alleged that defendants made any such representations, or that she justifiably relied on any representations. Significantly, plaintiff has been living in the Unit rent-free since June 2016 and certainly has not demonstrated that she has suffered any damages. Accordingly, defendants' motion to dismiss the fourth and fifth causes of action is granted, and the fourth and fifth causes of action are hereby dismissed.

Accordingly, it is

ORDERED that the branch of defendants' motion to dismiss this action is granted, and the complaint is hereby dismissed.

The branch of the motion seeking costs and attorneys' fees is denied; the branch of the motion seeking to transfer the case to Housing Court is denied as moot.

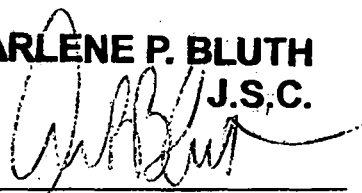
This is the Decision and Order of the Court.

Dated: December 13, 2016

New York, New York

DEC 13 2016

ARLENE P. BLUTH
J.S.C.



HON. ARLENE P. BLUTH, JSC