

People v Marolda Props., Inc.
2017 NY Slip Op 32497(U)
November 27, 2017
Supreme Court, New York County
Docket Number: 452118/16
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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THE PEOPLE OF THE STATE OF NEW YORK, by
ERIC T. SCHNEIDERMAN, Attorney General
of the State of New York,

Index No. 452118/16

Plaintiff,

-against-

MAROLDA PROPERTIES, INC.; GREEN LEAF
ASSOCIATES, LLC; FORSYTH GREEN, LLC;
FORSYTH BLUE, LLC; 83-85 BAXTER STREET,
LLC; 7 RIVINGTON STREET, LLC;
M90 ELIZABETH ½., LLC; LUDLOW 65 REALTY,
LLC; 13-15 ESSEX STREET, LLC; 145 AVE. C,
LLC; 100 FORSYTH ASSOCIATES, LLC,

Defendants.

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JENNIFER G. SCHECTER, J.:

Motion sequence numbers 001, 002 and 003 are consolidated
for disposition.

Background

New York law regulates rent-stabilized and rent-controlled tenancies and restricts rent increases. When rent-regulated tenants vacate apartments their landlords may be able to raise the rents for those apartments or deregulate them entirely. To protect tenants from wrongful eviction, regulations require compliance with certain procedures before rent-regulated tenants can be removed from their apartments. Additionally, the law forbids harassment of rent-regulated tenants by engaging in a course of conduct that interferes with their use or occupancy of housing accommodations with the

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intention of causing them to vacate or waive legally protected rights.

On November 1, 2016, the People of the State of New York, by Eric T. Schneiderman, Attorney General of the State of New York (the People) commenced this action against 11 defendants, which are "managers and owners of rent-regulated buildings in New York City who have engaged in repeated illegal and deceptive practices . . . in an effort to wear rent-regulated tenants down and convince them to accept buyout offers and/or vacate their apartments. Once vacated, defendants could then raise the legal regulated rent for these apartments or deregulate them altogether, thus increasing their profits" (Affirmation in Support of Motion Sequence Number 003, Ex A [Complaint] at ¶ 1).¹

In the 40-page complaint, the People allege numerous illegal and fraudulent practices that the building owners, along with their property manager defendant Marolda Properties, Inc. (Marolda), engaged in to try and wear rent-regulated tenants down and have them vacate their apartments. For example, the People assert that:

¹ In analyzing a CPLR 3211 motion to dismiss, the court accepts all of the allegations in the complaint to be true.

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- defendants commenced proceedings challenging the residency or succession rights of rent-regulated tenants without any basis or sometimes knowing that there was no basis for their removal (Complaint at ¶¶ 35, 38, 40, 42, 45);
- defendants sent tenants, a large percentage of whom are elderly and non-English proficient, woefully defective notices and threatened to commence or commenced proceedings to remove them from their apartments without any basis (*id.* at ¶ 38);
- defendants repeatedly failed to offer proper rent-regulated renewal leases or provided non-stabilized leases to tenants that they knew or should have known were entitled to rent-regulated leases (*id.* at ¶ 54);
- defendants brought baseless non-payment proceedings against tenants without "any documentary evidence demonstrating a rent deficit" or refused to account for checks that tenants submitted or to credit tenants for rent received in the form of benefits (*id.* at ¶¶ 58-59, 61);
- defendants "repeatedly installed new locks and then required that tenants provide personal documentation including social security numbers to obtain keys" (*id.* at ¶ 63);
- defendants harassed tenants by changing apartment locks without providing them with keys, removing tenants' belongings from their apartments while they were out and refusing to make necessary repairs rendering apartments uninhabitable for days or longer (*id.* at ¶¶ 68, 70);
- defendants performed work without obtaining required permits or submitted false permit applications to the Department of Buildings stating that their buildings were unoccupied

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and did not contain rent-regulated units in order to avoid complying with requirements such as filing Tenant Protection Plans (*id.* at ¶¶ 80-82).

The People allege that defendants frequently engaged in several of these prohibited practices simultaneously and, when tenants appeared in court, defendants offered them buyouts (*id.* at ¶¶ 75-76). The People, plead, moreover, that "in a number of instances" defendants engaged in prohibited conduct "immediately following and in direct retaliation for tenants' refusal to waive their rights as rent-regulated tenants by accepting buyout offers" (*id.* at ¶ 86).

The complaint contains sixteen causes of action. The People specify which causes of action are being brought against which defendants as not every defendant is subject to every claim.

The bulk of the People's causes of action (first through thirteenth, fifteenth and sixteenth) are brought pursuant to Executive Law § 63(12), which authorizes the Attorney General to commence an action in the name of the people against anyone engaged in repeated or persistent fraudulent or illegal activity in conducting business. The first thirteen and fifteenth causes of action are predicated on specified defendants having engaged in persistent illegal conduct and

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each one of those claims sets forth the particular laws alleged to have been violated. The sixteenth cause of action charges all of the defendants with "persistent fraud in the carrying on, conducting or transaction of business in the State of New York" (Complaint at ¶ 163).

The fourteenth cause of action seeks redress pursuant to General Business Law (GBL) § 349, which prohibits "deceptive acts or practices in the conduct of any business . . . or in the furnishing of any service in this state."

Motions to Dismiss

Defendant 7 Rivington Street, LLC (Rivington), which owns a building containing rent regulated apartments on the Lower East Side (Complaint at ¶ 13), moves to dismiss the complaint pursuant to CPLR 3211(a)(5) and (7) based on passage of the statute of limitations and failure to state a cause of action. Defendants Forsyth Blue, LLC (Blue) and 100 Forsyth Associates, LLC (Forsyth) (collectively the Forsyth Defendants) own interests in buildings with rent-regulated apartments on the Lower East Side as well and they move to dismiss on the same grounds (*id.* at ¶¶ 11 and 18). Defendants Green Leaf Associates, LLC (Green Leaf), 83-85 Baxter Street, LLC (Baxter), Ludlow 65 Realty LLC (Ludlow) and 13-15 Essex

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Street, LLC (Essex) (collectively the Essex Defendants) also own interests in buildings with rent-regulated apartments on the Lower East Side of Manhattan (*id.* at ¶¶ 9, 12, 15 and 16). The Essex Defendants answered the complaint and now move to dismiss for failure to state a cause of action.

Dismissal is denied.

Analysis

Statute of Limitations

Rivington and the Forsyth Defendants urge that the complaint must be dismissed as time barred because more than three years passed between their alleged wrongdoing and this action's commencement. Rivington maintains that causes of action asserted against it accrued in July 2013 (Golino Affirmation in Support at ¶ 5; Memo in Support at 1; Reply Memo at 3). As to the Forsyth Defendants, the complaint includes allegations of misconduct that took place in October 2013, June 2014 and September 2014 (Complaint at ¶ 37, 47 and 85).

This action, which was commenced on November 1, 2016-- after the parties agreed to suspend the statutes of limitations "for six months beginning on October 8, 2015 and ending April 6, 2016" (Popp Affirmation in Opposition to

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Motion Sequence Numbers 001 and 002, Ex A) --is clearly timely. The Executive Law claim based on fraud (sixteenth cause of action) is subject to a six-year statute of limitations (see *People v Credit Suisse Sec. [USA] LLC*, 145 AD3d 533, 535 [1st Dept 2016]). The People's remaining claims are subject to at least a three-year period. Because defendants' alleged conduct post dates May 1, 2013, which accounts for the parties' six-month tolling agreement, defendants' motions on statute-of-limitations grounds are denied.

Failure to State a Cause of Action

In analyzing a CPLR 3211 motion to dismiss, "the pleadings are necessarily afforded a liberal construction [and plaintiff is accorded] the benefit of every possible favorable inference" (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]; *Access Nursing Servs. v Street Consulting Group*, 137 AD3d 678, 679 [1st Dept 2016]; *Greystone Funding Corp. v Kutner*, 121 AD3d 581, 583 [1st Dept 2014]). "The motion must be denied where the complaint adequately alleges, for pleading survival purposes, viable causes of action. The sole criterion on a motion to dismiss is whether the pleading states a cause of action, and if from its four corners factual

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allegations are discerned which taken together manifest any cognizable action at law, a motion for dismissal will fail" (*Harris v IG Greenpoint Corp.*, 72 AD3d 608, 609 [1st Dept 2010]).

Defendants' motions to dismiss for failure to state a cause of action are denied. The complaint is not a "group pleading" that fails to set forth the precise conduct charged to each defendant. Below each cause of action, the complaint lists the particular defendants to whom it applies and then provides the material elements of the claim being asserted (contrast *Aetna Cas. & Sur. Co. v Merchants Mut. Ins. Co.*, 84 AD2d 736 [1st Dept 1981]).

Further specificity is not required. There is no authority applying CPLR 3016 to Executive Law § 63(12) or GBL § 349 causes of action (see *Joannou v Blue Ridge Ins. Co.*, 289 AD2d 531, 532 [2d Dept 2001] [CPLR 3016 inapplicable to causes of action sounding in violation of GBL § 349]). In *People v Wells Fargo Ins. Servs. Inc.* (62 AD3d 404, 405 [1st Dept 2009], *affd* 16 NY3d 166 [2011]), the Executive Law claim was dismissed because there was no allegation of wrongdoing within the meaning of the statute. Here, in contrast, each Executive Law § 63(12) cause of action sets forth the specific illegal

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conduct that is being alleged and the fraud based claim sets forth acts that can be characterized as dishonest or misleading (*People v Concert Connection*, 211 AD2d 310, 320 [2d Dept 1995], *appeal dismissed* 86 NY2d 837 [1995]). The "elements of fraud need not be alleged" (*People v Coventry First LLC*, 52 AD3d 345, 346 [1st Dept 2008], *affd* 13 NY3d 108 [2009]).

The complaint, moreover, sufficiently pleads consumer-oriented "deceptive acts or practices in the conduct of any business . . . or in the furnishing of any service in this state" (GBL § 349; *see Lozano v Grunberg*, 195 AD2d 308 [1st Dept 1993] [reversing dismissal of complaint that included a GBL § 349 claim by a tenant against her landlord based on improper notices]; *see also Buyers and Renters United to Save Harlem v Pinnacle Group N.Y. LLC*, 575 F Supp 2d 499, 512 [SDNY 2008] [citing cases establishing that "New York courts, interpreting consumer protection statutes, give tenants private rights of action against their landlords" and holding that rent-stabilized tenants properly pleaded a GBL § 349 claim against the owners or managers of their buildings]).

This action is not about a single isolated incident between any of the building owners and their tenants. In the

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complaint, the People allege that each of the defendants in concert with its property manager Marolda engaged in numerous types of illegal or fraudulent acts in an effort to pressure rent-regulated tenants to vacate their apartments. The allegations satisfy the requirements that the conduct alleged be "repeated or persistent."

Finally, as to each of the moving defendants, the complaint even goes so far as to set forth at least one specific example of alleged misconduct (see Complaint at ¶¶ 37, 47 [Blue and Marolda served defective notices on tenants at 100 Forsyth Street, in one particular case, despite having information that rendered the notice inaccurate]; ¶¶ 41, 55 [Baxter served rent-regulated tenant who resided in the building since 1971 with a *Golub* notice despite the fact that its employees spoke to her in her apartment several times to discuss repairs and new keys]; ¶ 50 [Ludlow issued improper *Golub* notice and pursued holdover proceedings despite proof of residency]; ¶ 62 [Rivington filed successive improper non-payment proceedings]; ¶¶ 72-73 [Green Leaf,² Essex and Baxter

²The People assert that Green Leaf "maintains a direct and substantial financial interest in the 83-85 Baxter Street building and meets the definition of "owner" for purposes of liability under the Rent Stabilization Code" and that it therefore is liable for conduct that occurred at 83-85 Baxter Street after 2011 (Popp Affirmation in Opposition

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did not address problems with living conditions despite receiving complaints or violations in an effort to cause rent-regulated tenants to vacate]; ¶ 85 [Forsyth Defendants filed improper application and "illegally evaded the requirement to create a Tenant Protection Plan"]).

In the end, defendants have not established a basis for dismissal of the complaint.

Accordingly, it is

ORDERED that defendants' motions to dismiss (sequence numbers 001, 002 and 003) are all denied except that the thirteenth cause of action is withdrawn as against defendant Green Leaf;³ and it is further

ORDERED that Rivington and the Forsyth Defendants are to answer within 10 days of the date of this decision and order.

This is the decision and order of the court.

Dated: November 27, 2017.



HON. JENNIFER G. SCHECTER

to Motion Sequence Number 003 [Popp Aff] at ¶¶ 17-28).

³ See Popp Aff at ¶ 7.