

Bengoechea v 400 E57 Owner LLC
2017 NY Slip Op 32638(U)
December 19, 2017
Supreme Court, New York County
Docket Number: 100740/2016
Judge: Erika M. Edwards
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

INIGO BENGOCHEA,

Index No.: 100740/2016

Plaintiffs,

DECISION/ORDER

-against-

400 E57 OWNER LLC and STONEHENGE
MANAGEMENT LLC,

Defendants.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Notice of Motion/Cross-Motion and Affidavits/ Affirmations/Memos of Law annexed	1, 2
Opposition Affidavits/Affirmations and Memos of Law annexed	3, 4
Reply Affidavits/Affirmations/Memos of Law annexed	5, 6

ERIKA M. EDWARDS, J.:

Plaintiff Inigo Bengoechea ("Plaintiff") brought this action against Defendants 400 E57 Owner LLC ("Owner") and Stonehenge Management LLC ("Stonehenge") (collectively "Defendants") seeking damages in the amount of at least \$140,000 for the diminution in rental value of his residential apartment in the building owned by Owner and managed by Stonehenge, as well as punitive damages and attorney's fees. Plaintiff's claims in his amended complaint allege 1) violations of warranty of habitability under Real Property Law ("RPL") § 235-b against Owner; 2) private nuisance against both Defendants; 3) deceptive practices in violation of General Business Law ("GBL") § 349 against both Defendants; 4) retaliation in violation of RPL § 223-b against both Defendants; 5) harassment in violation of New York City Administrative

Code ("AC") § 27-2005 against both Defendants; and 6) reasonable attorney's fees against both Defendants.

Defendants move pre-Answer to dismiss Plaintiff's amended complaint pursuant to CPLR 3211(a)(1), (5) and (7) and for Owner's costs and disbursements, including reasonable attorney's fees. Plaintiff opposes the motion and cross-moves, pursuant to CPLR 3126 and 3211(d), for a stay of the proceedings; and orders directing Defendants to immediately comply with the court's discovery Order, dated January 5, 2017; for a default judgment against Defendants; a judgment in favor of Plaintiff as to liability; prohibiting Defendants from opposing Plaintiff's claims; prohibiting Defendants from producing any evidence in opposition to Plaintiff's claims or in favor of Defendants' claims; Plaintiff's reasonable attorney's fees and costs; scheduling a hearing on damages, costs and fees; and an opportunity to re-plead, should the court find that one or more of Plaintiff's claims are insufficiently pled.

For the reasons set forth herein, the court grants Defendants' motion to dismiss in part and denies Plaintiff's cross-motion in part to the extent that the court 1) grants Defendants' motion to dismiss all claims against Stonehenge and Plaintiff's Third through Fifth Causes of Action for deceptive practices in violation of General Business Law ("GBL") § 349, retaliation in violation of RPL § 223-b and harassment in violation of New York City Administrative Code ("AC") § 27-2005 against Owner; 2) denies Defendants' motion to dismiss Plaintiff's First, Second and Sixth Causes of Action for violation of warranty of habitability, private nuisance and reasonable attorney's fees, as to Defendant Owner only; 3) directs Defendant Owner to file its Answer to Plaintiff's amended complaint and to comply with the court's discovery Order, dated January 5, 2017, on or before January 12, 2018; and 4) denies the remainder of Plaintiff's and Defendants' requests for relief.

Dismissal based on documentary evidence is warranted only where such evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law (CPLR 3211[a][1]; *Leon v Martinez*, 84 NY2d 83, 88 [1994]). Dismissal is proper where the documents relied upon definitively disposed of a plaintiff's claim (*Bronxville Knolls v Webster Town Ctr. Pshp.*, 634 NYS2d 62, 63 [1995]).

When considering Defendants' motion to dismiss Plaintiffs' amended complaint for failure to state a cause of action, pursuant to CPLR 3211(a)(7), the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the Plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). A court may freely consider affidavits submitted by a plaintiff to remedy any defects in the complaint, but the court should not consider whether the plaintiff has simply stated a cause of action, but rather whether the plaintiff actually has one (*Amaro v Gani Realty Corp.*, 60 AD3d 491, 492 [1st Dept 2009]). Normally, a court should not be concerned with the ultimate merits of the case (*Anguita v Koch*, 179 AD2d 454, 457, 579 NYS2d 335 [1st Dept 1992]). However, these considerations do not apply to allegations consisting of bare legal conclusions as well as factual claims which are flatly contradicted by documentary evidence (*Simkin v Blank*, 19 NY3d 46, 52, 945 NYS2d 222, [2012]).

Under certain circumstances, dismissal based on collateral estoppel, release, res judicata, or the applicable statute of limitations may be warranted pursuant to CPLR 3211(a)(5).

When the relevant terms of an agreement are clear and unambiguous, the intentions of the parties are apparent and the court is prohibited from altering the terms of the contract (*see Osprey Partners, LLC v Bank of N.Y. Mellon Corp.*, 115 AD3d 561, 561-562 [1st Dept 2014]).

However, when the meaning of a contract provision is reasonably susceptible to more than one interpretation, courts can look to the surrounding facts and circumstances extrinsic to the agreement to determine the intent of the parties (*67 Wall St. Co. v Franklin Natl. Bank*, 37 NY2d 245, 248 [1975]).

Here, at this early stage of litigation, prior to any meaningful discovery, the court is not persuaded by Defendants' arguments that Plaintiff's claims prior to October 20, 2015, are barred because Plaintiff released all or portions of his claims that arose prior to this date by signing his renewal lease. The court finds that the language in the lease regarding Plaintiff's alleged release of his claims against Owner is too vague and ambiguous to warrant dismissal without the court considering extrinsic evidence, like deposition testimony, to determine the parties' intent.

Additionally, the court determines that Defendants failed to demonstrate that dismissal is warranted as a matter of law based on the documents they submitted because such evidence does not utterly refute Plaintiff's factual allegations, nor conclusively establish a defense as a matter of law. Furthermore, when affording Plaintiff's amended complaint liberal construction, accepting all facts as alleged in the pleading to be true and according Plaintiff the benefit of every possible inference, the court denies Defendant's motion to dismiss for failure to state a cause of action as to Plaintiff's First Cause of Action for breach of the implied warranty of habitability, Plaintiff's Second Cause of Action for private nuisance, and Plaintiff's Sixth Cause of Action for reasonable attorney's fees, all against Owner only.

Based on the allegations set forth in Plaintiff's amended complaint, although many of Plaintiff's allegations involve complaints about Defendants' promises regarding luxurious living conditions, Plaintiff's allegations sufficiently include the elements of a claim for violation of Owner's warranty of habitability pertaining to alleged conditions that materially affect Plaintiff's

health and safety and involve essential functions and services which tenants can reasonably expect Owner to provide (*Park West Management Corp. v Mitchell*, 47 NY2d 316, 327 [1979]; *Solow v Wellner*, 86 NY2d 582, 589 [1995]). As such, the court denies Defendants' motion to dismiss Plaintiff's First Cause of Action for violation of warranty of habitability.

As to Plaintiff's Second Cause of Action for private nuisance, Defendants met their initial burden of establishing, prima facie, that all incidents which allegedly occurred prior to May 10, 2013, are time barred by the applicable statute of limitations and Plaintiff failed to challenge this claim (*see Benn v Benn*, 82 AD3d 548, 548 [1st Dept 2011] [internal quotation and citation omitted]; *Zumpano v Quinn*, 6 NY3d 666, 673 [2006]). However, when accepting all facts as alleged in the pleading to be true, Plaintiff sufficiently pled the remainder of this claim as against Owner, but the court dismisses this claim against Stonehenge as Plaintiff failed to set forth a prima facie claim against Stonehenge.

For many of the reasons argued by Defendants, the court determines that Plaintiff failed to sufficiently plead each element of Plaintiff's Third through Fifth Causes of Action for deceptive practices in violation of General Business Law ("GBL") § 349, retaliation in violation of RPL § 223-b and harassment in violation of New York City Administrative Code ("AC") § 27-2005, respectively, against both Defendants.

Furthermore, the court also strikes Plaintiff's claims for punitive damages as Plaintiff's allegations fail to sufficiently support the imposition of punitive damages against either Defendant. Additionally, the court denies Defendants' request for reasonable attorney's fees at this time.

Based on the allegations alleged in Plaintiff's amended complaint, the court dismisses all claims against Stonehenge as Plaintiff failed to adequately plead any claim or contractual

obligation against Stonehenge. Here, Stonehenge was not a party to the lease between Plaintiff and Owner/prior owner of the premises.

Finally, Defendants clearly violated the terms of the court's discovery Order, dated January 5, 2017, by failing to produce documents and serve interrogatory responses within twenty (20) days of Defendants' *response* (not Answer) to Plaintiff's amended complaint. As such, the court directs Owner to file its Answer to Plaintiff's amended complaint and comply with the court's order on or before January 12, 2018.

Accordingly, it is hereby

ORDERED that, as to claims against Defendant Stonehenge Management LLC, the court grants in part Defendants 400 E57 Owner LLC's and Stonehenge Management LLC's motion to dismiss Plaintiff Inigo Bengoechea's amended complaint and for other relief in that the court dismisses all claims in Plaintiff's amended complaint against Defendant Stonehenge Management LLC; the Clerk is directed to enter judgment accordingly in favor of Defendant Stonehenge Management LLC as against Plaintiff; the court severs and continues the action against Defendant 400 E57 Owner LLC; directs the Clerk to amend the caption to reflect the dismissal; and directs that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for Defendant Stonehenge Management LLC shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the Trial Support Office, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that, as to claims against Defendant 400 E57 Owner LLC, the court grants in part the motion to dismiss and dismisses Plaintiff's Third, Fourth and Fifth Causes of Action for

deceptive practices in violation of General Business Law (“GBL”) § 349, retaliation in violation of RPL § 223-b and harassment in violation of New York City Administrative Code (“AC”) § 27-2005, respectively; dismisses all incidents relating to Plaintiff’s Second Cause of Action for private nuisance which allegedly occurred prior to May 10, 2013, as being time barred by the applicable statute of limitations; and strikes and dismisses Plaintiff’s claims for punitive damages; and it is further

ORDERED that, as to Defendant 400 E57 Owner LLC, the court denies in part Defendants 400 E57 Owner LLC’s and Stonehenge Management LLC’s motion to dismiss Plaintiff Inigo Bengoechea’s amended complaint and for other relief, in that the court denies dismissal of Plaintiff’s First, Second and Sixth Causes of Action for violation of warranty of habitability, private nuisance and reasonable attorney’s fees, respectively, as to Defendant 400 E57 Owner LLC; and it is further

ORDERED that the court denies in part Plaintiff Inigo Bengoechea’s cross-motion, but directs Defendant 400 E57 Owner LLC to file its Answer to Plaintiff’s amended complaint and to comply with the court’s discovery Order, dated January 5, 2017, on or before January 12, 2018; and it is further

ORDERED that the court denies the remainder of the relief requested by both parties that was not expressly granted herein; and it is further

ORDERED that the parties must appear for a preliminary conference on March 1, 2018 at 9:30 a.m., in Part 47, Room 320, 80 Centre Street, New York, New York.

Date: December 19, 2017



HON. ERIKA M. EDWARDS