

Wheeler v Linden Plaza Preserv. LP

2018 NY Slip Op 30397(U)

March 7, 2018

Supreme Court, New York County

Docket Number: 150079/17

Judge: Lynn R. Kotler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON.LYNN R. KOTLER, J.S.C.

PART 8

DEBORAH WHEELER

INDEX NO. 150079/17

MOT. DATE

- v -

LINDEN PLAZA PRESERVATION LP et al.

MOT. SEQ. NO. 004, 005 and 006

The following papers were read on this motion to/for dismiss (004)

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits NYSCEF DOC No(s) 59-69
Notice of Cross-Motion/Answering Affidavits — Exhibits NYSCEF DOC No(s) 98-99
Replying Affidavits NYSCEF DOC No(s) 118, 119-120

The following papers were read on this motion to/for summary judgment (005)

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits NYSCEF DOC No(s) 70-79
Notice of Cross-Motion/Answering Affidavits — Exhibits NYSCEF DOC No(s) 100-101
Replying Affidavits NYSCEF DOC No(s) 115-117

The following papers were read on this motion to/for summary judgment (006)

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits NYSCEF DOC No(s) 86-97
Notice of Cross-Motion/Answering Affidavits — Exhibits NYSCEF DOC No(s) 102-103,104-105
Replying Affidavits NYSCEF DOC No(s) 118, 119-120

Plaintiff is a tenant of Apartment 9L in a building owned by defendants Linden Plaza Preservation LP ("LPP") and Linden Plaza Housing Co., Inc. ("LPH" and collectively Linden Plaza) located at 675 Lincoln Avenue in Brooklyn, New York (the "apartment"). In this action, plaintiff alleges that on November 1, 2016, she was lawfully evicted from the apartment by Linden Plaza with the assistance of agents of defendant RY Management Co., Inc. ("RY Management") and defendant Madison Security Group, Inc. ("Madison"). After this eviction, plaintiff claims that she made demands to the defendants for access to her apartment to obtain medical supplies and medication. This action ensued.

In motion sequence number 004, RY Management moves pre-answer to dismiss plaintiff's claims against it pursuant to CPLR § 3211[a][1], [5] and [7]. In motion sequence number 005, Linden Plaza moves for summary judgment in its favor dismissing plaintiff's complaint (CPLR § 3212). Finally, in motion sequence number 006, Madison moves for summary judgment in its favor. Plaintiff opposes each motion. Since the motions are interrelated, they are hereby consolidated for the court's consideration and disposition in this single decision/order. The court's decision follows.

In her amended complaint, plaintiff claims that on November 1-4, 2016, subsequent to her lawful eviction, she demanded that the defendants, their agents, servants and/or employees "for her urgent,

Dated: 3/21/18

HON. LYNN R. KOTLER, J.S.C.

- 1. Check one: [X] CASE DISPOSED [] NON-FINAL DISPOSITION
2. Check as appropriate: Motion is [X] GRANTED [] DENIED [] GRANTED IN PART [] OTHER
3. Check if appropriate: [] SETTLE ORDER [] SUBMIT ORDER [] DO NOT POST
[] FIDUCIARY APPOINTMENT [] REFERENCE

life-preserving medical supplies and medications that were in the apartment” and the defendants unlawfully refused said demands. Plaintiff claims that as a result, she suffered physical and psychological injuries.

Plaintiff asserts ten causes of action: [1] negligent deprivation of post-operative medical supplies; [2] negligent deprivation of medicines for underlying health condition; [3] intentional deprivation of post-operative medical supplies and punitive damages; [4] intentional deprivation of medicines for underlying health condition and punitive damages; [5] negligent training; [6] negligent supervision; [7] trespass to chattels; [8] conversion; [9] intentional infliction of emotional distress; and [10] negligent infliction of emotional distress.

In opposition to the motions, plaintiff has provided an affidavit which states in pertinent part as follows. A week prior to her eviction, plaintiff was discharged from the hospital after having undergone a major surgery. Plaintiff claims that “[a]s a result of the surgery, [she] was required to take essential post-operative medication and use medical supplies for surgical wound care” as well as “life-saving medications for other health problems.’

On November 1, 2016, a few minutes before she was evicted, plaintiff states that she left her apartment to go to the store downstairs to buy something. Plaintiff goes on to state:

I wasn't wearing a coat and took nothing with me because I was going to the store right next door to my building and knew I would be back in just a few minutes. When I returned to my apartment, I saw a security guard from Madison [] and the superintendent, who was changing the lock. Although I pleaded with them to allow me to get my medications and medical supplies that I needed from my apartment, they refused. I was crying and hysterical and told them that I just had surgery and was very sick and weak. I said I could die if I didn't get my medications but they would not allow me to get them.

Despite requesting to be let back in to get her medications and medical supplies, and even offering to tell the superintendent and the security guard where same were located so that they could retrieve the items, defendants denied plaintiff's requests. Plaintiff went to speak to the manager about getting her medications from the apartment, whom she eventually spoke to but the manager “reudly walked away from [plaintiff].”

On November 2, 2016, plaintiff went to the Housing Part of the New York City Civil Court, Kings County and filed an Order to Show Cause to restore her to possession (the “OSC”) in *Linden Plaza Preservation L.P. v. Wheeler*, Index No. 078357/16. Defendants have provided a copy of plaintiff's OSC, which was signed by Judge Marck Finkelstein and returnable November 3, 2016. The OSC further ordered that plaintiff was permitted “access for the limited purpose of obtaining his/her possessions.” Plaintiff claims that she returned to the building that day, and was denied access to her apartment to obtain her possessions, despite the aforementioned court order.

On November 3, 2016, plaintiff appeared in court and was represented by Brooklyn Legal Services. The parties entered into a stipulation of settlement, which has been provided to the court, which states, in pertinent part:

The parties understand that each party has the right to a trial, the right to see a Judge at any time and the right not to enter into a stipulation of settlement. However, after review of all the issues, the parties agree that they do not want to go to trial and instead agree to the following stipulation in settlement of the issues in this matter.

The 11/3/16 Stipulation provided that plaintiff was to pay past rent and attorneys fees and Linden Plaza was to restore plaintiff to the apartment after payment. Finally, the stipulation granted plaintiff “limited access to premises today at 4:00 pm to gather medications and other essential items...” The following

day, on November 4, 2016, the Parties filed a final Settlement with the Court which effectuated the prior agreement and restored Plaintiff to her apartment that day.

DISCUSSION

On a motion to dismiss pursuant to CPLR § 3211, the pleading is to be afforded a liberal construction (*Leon v. Martinez*, 84 NY2d 83, 87-88 [1994]). The court must accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*id.* citing *Morone v. Morone*, 50 NY2d 481 [1980]; *Rovello v. Orofino Realty Co.*, 40 NY2d 633 [1976]).

Under CPLR§ 3211(a)(1), “dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law (*Leon v. Martinez, supra* at 88).

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a prima facie case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). The party opposing the motion must then come forward with sufficient evidence in admissible form to raise a triable issue of fact (*Zuckerman, supra*). If the proponent fails to make out its prima facie case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court’s function on these motions is limited to “issue finding,” not “issue determination” (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

At the outset, summary judgment relief is available with respect to Madison and Linden Plaza, since issue has been joined but note of issue has not yet been filed. Nonetheless, plaintiff’s complaint cannot survive RY Management’s motion to dismiss for the following reasons, and relatedly, the remaining defendants’ motions for summary judgment must also be granted.

Defendants argue that plaintiff’s claims are barred by the doctrine of *res judicata*. The Court of Appeals has explained that “once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy” (*O’Brien v. City of Syracuse*, 54 NY2d 353 [1981]).

Plaintiff’s claims arise out of the same operative set of facts as those that were raised in the OSC to restore plaintiff to possession. Indeed, plaintiff was granted limited access to retrieve her possessions in that OSC. When plaintiff was denied such access, the subject of forms the basis for the underlying complaint, plaintiff, while represented by counsel, then entered into the 11/3/16 Stipulation. By entering into the stipulation, plaintiff effectively foreclosed any claims which were or could have been litigated in the Housing Part. Therefore, defendants’ motions must be granted, since plaintiff’s claims are barred by the doctrine of *res judicata*.

The court rejects plaintiff’s argument that this action is not barred by *res judicata* because she could not assert the instant claims in a summary proceeding before the Housing Part. The Housing Part of the Civil Court has jurisdiction over “any counterclaim for money only, without regard to amount” (NY City Civ Ct Act 208[b]). Nor is plaintiff’s failure to raise a claim for money damages in the Housing Part availing, since *res judicata* bars claims that were or could have been litigated in a prior action (see e.g. *Hartigan v. Manhattan Embassy Co.*, 306 AD2d 135 [1st Dept 2013] citing *Coleman v. Chaiban Props.*, 188 AD2d 413 [1st Dept 1992]).

Accordingly, defendants' motions are granted and plaintiff's complaint is dismissed in its entirety.

CONCLUSION

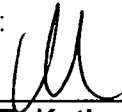
In accordance herewith, it is hereby:

ORDERED that motion sequence number 004, 005 and 006 are granted in their entirety; and it is further

ORDERED that plaintiff's complaint is dismissed and the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected and this constitutes the decision and order of the court.

Dated: 3/7/18
New York, New York

So Ordered: 

Hon. Lynn R. Kotler, J.S.C.