

Marrero v Property Servs., LLC
2018 NY Slip Op 31132(U)
May 18, 2018
Civil Court of the City of New York, Bronx County
Docket Number: CV-6492-16/BX
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: PART 11

MERCEDES MARRERO X

Plaintiff,

-against-

PROPERTY SERVICES, LLC

Defendant, X

PROPERTY SERVICES, LLC

Third Party Plaintiff

- against -

PETER & DANNY CONTRACTORS, LLC

Third Party Defendant X

HON. SABRINA B. KRAUS

DECISION AFTER TRIAL

Index No.: CV-6492-16/BX

BACKGROUND

Mercedes Marrero (Marrero) commenced this action against Property Services LLC (PSL) pursuant to a summons and endorsed complaint dated June 29, 2016, seeking judgment for \$20,000 for damages to personal property in her apartment, as a result of water used to extinguish a fire in a higher floor in the same building.

PROCEDURAL HISTORY

The summons and endorsed complaint were filed on June 29, 2016. Proof of service was filed on July 5, 2016.

On July 26, 2016, Marrero filed a request for inquest. An inquest was scheduled for August 19, 2016., and then adjourned to September 9, 2016.

On September 6, 2016, counsel for PSL appeared and filed a verified answer as well as a third party summons and complaint against Peter & Danny Contractors, LLC (PDC). PSL's answer asserted five affirmative defenses including that Marrero received compensation from a collateral source, improper service, failure to mitigate damages and culpable conduct by Marrero.

On September 9, based on PSL's appearance, the court (Capella, J) issued an order transferring the action to the Part 11 calendar for trial on October 17, 2016.

On October 17, 2016, PDC appeared by counsel and accepted service of the third part summons and complaint, and the trial was adjourned by stipulation to December 22, 2016, to afford PDC an opportunity to serve and file an answer.

The action was adjourned over a number of additional dates, with references made on the file jacket to ongoing discovery.

On January 12, 2018, the trial was adjourned to March 28, 2018, and marked final against Marrero. The court file indicates that Marrero was "instructed" to file a motion seeking to add "owner" as a defendant, and that PDC was to conduct depositions.

On March 28, 2018, the court held a bench trial. Marrero initially appeared *pro se*, but during her testimony, Francisco Serrano, Esq, appeared on her behalf, completed Marrerro's direct examination and argued the case on her behalf. After Marrero rested, PSL moved for an order dismissing the action and the court reserved decision on the motion .

The trial then concluded and at the conclusion of the trial PSL discontinued the action as to PDC without prejudice. The action was adjourned to May 18, 2018 for submission of post trial memoranda.

FINDINGS OF FACT

Marrero resides in apartment 3B at 1750 Montgomery Avenue, Bronx New York 10453 (Subject Premises). Marrero lives there with her two daughters and their three children.

On December 1, 2015, there was a fire that started in an apartment on the 6th floor of the building where Marrero lives. The fire department was called to put out the fire, and the water they used caused damage to the Subject Premises, as well as Marrero's belongings. The damage was so substantial that Marrero was unable to live in the Subject Premises for four months. Marrero paid no rent for the Subject Premises for the period she was out of possession. Marrero testified that parts of the bathroom ceiling fell down, pieces of the wall fell in various rooms and the flooring came up.

During the period that Marrero was out of possession, she testified that first she stayed in a hotel and then she stayed with friends of her children. Marrero testified, without credibility, that she paid her children's friends weekly for the time she stayed there, and then in response to multiple leading questions, Marrero agreed that she paid these friends \$500 per month or a total of \$2000.00, in addition to further amounts for food and electricity.

Marrero was given sporadic access to the Subject Premises during the four month period she was out of possession, and testified that her clothing and furniture were ruined. Marrero submitted photos of the Subject Premises taken during the four month period she was out of possession (Exs 3-4).

Marrero testified that she threw out a sofa, her living room furniture, and most of her shoes and clothing. Marrero acknowledged she made no effort to have the clothing cleaned before throwing them out. Marrero offered a receipt in evidence showing purchase of furniture

on May 5, 2015 for \$9,988.00 (Ex 1 & Ex A). The receipt was for a bedroom set, a living room set, a dining room table and chairs and two televisions. The receipt indicates payment was made in cash.

Marrero testified she spent \$20,000 to replace the damaged furniture and other belongings. Marrero submitted three additional receipts in evidence which were for dates after the fire (Ex 2A-C). All receipts entered in evidence were from J Garcia Inc.

The first receipt is dated March 23, 2016 for \$2380 and was for two mattresses (Ex 2C). The receipt indicates payment in full was made by cash. The second receipt is dated August 12, 2016 (Ex 2B) for \$1793 again stating the amount was paid in full in cash, and also appears to be for mattresses. The third receipt is dated September 15, 2016, but was in the name of a different individual and to be sent to a different address (Ex 2A). The court does not afford any weight to the third receipt.

Marrero could not recall the name of the store where she purchased the furniture. Overall the court did not find Marrero to be a credible witness.

Marrero testified that she paid rent to PSL for the past 18 years, but failed to offer any documentary proof of said payments, any lease showing who the landlord of the Subject Premises is or any proof as to who the owner of the Subject Building is.

Marrero acknowledged that she did not know where the fire occurred or what caused the fire.

DISCUSSION

MARRERRO FAILED TO PROVE ANY BASIS FOR LIABILITY AS TO PSL

Assuming arguendo that Marrerro's testimony that she paid rent to PSL was sufficient to prove that PSL is her landlord, Marrerro still failed to prove any liability on the part of PSL for the property damages.

It is well settled that Marrerro may not rely on the breach of warranty of habitability or RPL § 235-b to provide a basis for liability against PSL absent proof of negligence on their part. "There is no hint either in the decisions that section 235-b was designed to codify, or the legislative history of that section, of any purpose to extend the doctrine of strict liability to landlords with regard to wrongs that had traditionally been an area of tort liability (*Curry v New York City Housing Authority* 77 AD2d 534, 536)." In a case directly on point, where a tenant sued for property damage resulting from a fire the court held "Real Property Law § 235-b does not permit a tenant to recover damage to his personal property resulting from a breach of the warranty (*40 Eastco v Fischman* 155 AD2d 231; *see also Carpenter v Smith* 191 AD2d 1036; *Segal v Justice Court Mutual Housing Cooperative, Inc.* 108 Misc2d 1074)."

As there was no evidence that PSL was in any way responsible for the fire, and no proof of any breach of any other obligation by PSL, PSL's motion to dismiss is granted and the action is dismissed with prejudice.

This constitutes the decision and order of the Court.

Dated: Bronx, New York
May 18, 2018

Sabrina B. Kraus, JCC

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