

Casanas v Carlei Group, LLC
2018 NY Slip Op 31305(U)
January 12, 2018
Supreme Court, New York County
Docket Number: 153156/16
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

-----X

ALEIDA E. CASANAS,

Plaintiffs,

--against--

THE CARLEI GROUP, LLC and RICHARD M.
CASANAS,

Defendants.

-----X

CAROL R. EDMEAD, J.S.C.:

Index No. 153156/16

Motion Seq. No. 004

DECISION AND ORDER

In a rental and real estate dispute between a brother and sister, defendants The Carlei Group, LLC (the Carlei Group) and Richard Casanas (Richard) move, pursuant to CPLR 3212, for summary judgment dismissing plaintiff Aleida E. Casanas’s (Aleida E) complaint and her affirmative defenses to defendants’ counterclaims, as well as granting defendants summary judgment on their counterclaims. Alternatively, defendants move, pursuant to CPLR 325 (e), for dismissal of plaintiff’s second cause of action for declaratory judgment as to her ownership rights in the Carlei Group and a real property located at 461 Columbus Avenue and 73 West 82nd Street in Manhattan (the Building).

BACKGROUND

In 1970, nonparty Aleida Realty Corp. (Aleida Realty) bought the Building. Aleida Realty was a corporation formed by the parents of Aleida E. and Richard: Carlos and Aleida P. Casanas. In September 1993, plaintiff alleges that she executed a lease with Aleida Realty for Apartment 2C. Defendants submit the purported lease for Apartment 2C, and it provides for a term of 30 years. Moreover, it provides for “preferential rent,” which the document defines as a

“rent waiver in exchange for 20 (twenty) hours a week” (defendants’ ex L, ¶ 40). The document is signed by Aleida P., on behalf of Aleida Realty, and plaintiff.

Plaintiff also alleges that, in 2003, she executed another lease with Aleida Realty for another unit in the Building, Apartment 2W, for a thirty year term running from December 1, 2006 until January 1, 2036. Defendants submit the purported lease document, which provides for “preferential rent,” specified as “rent waiver in exchange for 20 hours work per week” (defendants’ ex K, ¶ 40). Plaintiff alleges that “[a]t different times between the years 1993 and 2009, I was occupying and subleasing the apartments” (Aleida E. aff, ¶ 6).

Plaintiff submits a letter from Susan Frank (Frank), a real estate broker and property manager, dated August 20, 2016. Frank writes that “[f]rom 2001-2008, I acted as a Real Estate Broker, finding occupants for APT #2C” (plaintiff’s ex E, ¶ 2). Later, from “2008 until July 24, 2009,” Frank states that she “acted as a Real Estate Broker in the sublease of APT # 2W” (*id.*, ¶ 3). Frank additionally states that she “marketed APT #2C and APT # 2W to prospective subtenants; scheduled and conducted showings of apartments; prepared sublease agreements and collected rent and security deposits on behalf of OverTenant, Aleida E. Casanas (*id.*, ¶ 4). Finally, Frank writes that Richard lived in the Building and that she “had direct contact with Richard Casanas in 2001/2002 in discussions with the preparation of current leases and that the leases should ensure that Aleida E. Casanas is listed as OverTenant” (*id.*).

In *Casanas v Carlei Group, LLC*, index No. 101067/12, another Casanas sibling, Peter, and his wife, sued Richard and the Carlei Group in Supreme Court, New York County for a declaratory judgment as to their status as tenants in two other apartments in the building under a long-term lease purportedly executed by themselves and Aleida Realty. The First Department, in denying a motion to dismiss the action as against Richard, found that

“the record shows that defendant Carlei Group LLC paid nothing to acquire the subject building from its former owner Aleida Realty Corp. [Aleida P.], the mother of defendant Richard Casanas and plaintiff Peter Casanas, signed the purported transfer of title for both Aleida Realty, the seller, and Carlei, the buyer. The record also shows that [Aleida P.] was immediately replaced as manager by Richard Casanas, who has since had complete control of the Carlei.”

(*Casanas v Carlei Group, LLC*, 105 AD3d 570, 570 [1st Dept 2013]).

The transfer referred to by the First Department -- which passed ownership of the ownership of the Building from Aleida Realty to the Carlei Group -- took place, according to Richard, in February 2008 (Richard aff, ¶ 11). In May 2008, Carlos Casanas died (Richard aff, ¶ 13). The following year, in 2009, a fire damaged the building and all occupants had to vacate (Aleida E. aff, ¶ 13).

With respect to “20 hours” referred to in each of the purported leases, plaintiff alleges that, up until the fire in 2009, she “was performing the required 20 hours of work for the Premises (as required by each Lease)” (*id.*, ¶ 15). This work, plaintiff states, involved “keeping the Apartments in good order, renovating the apartments, hiring contractors, managing subleases for the apartments, and communicating with Defendant and brokers for the purposes of subleasing the Apartments. Some of this work was at times performed at the direction of [Richard]” (*id.*).

Plaintiff alleges that Richard was, at one point, one of her sublessees: “From 2003 through 2008, I agreed to sublease Apartment 2W to Defendant Richard Casanas, who agreed to renovate Apartment 2W in exchange for living in 2W from years 2003 through 2005 and pay monthly rent of \$1000 from 2005 through 2008 ... pursuant to our sub-lease agreement” (*id.*, ¶ 9). Plaintiff alleges that when Richard vacated Apartment 2W in 2008, she subleased the apartment to another sublessee. After the fire, plaintiff returned that subtenant’s security deposit and executed a termination agreement with him (*id.*, ¶ 13; plaintiff’s ex H).

After the fire, plaintiff alleges that Richard “assumed full control over the Building, and agreed with me that he would fix the damage to the apartments. We further agreed that I would reimburse him for the cost of the repairs by subtracting any amount from rental proceeds from the Apartments which he would rent out on behalf of me” (plaintiff’s aff, ¶ 14). Plaintiff also alleges that, after the fire, defendant began making it “extremely difficult” to conduct her work at the premises by ignoring her calls, withholding keys, and preventing her entry to the Building (*id.*, ¶ 14). In 2012, when post-fire renovations were complete, Richard began renting the apartments again (*id.*, ¶ 22). Plaintiff alleges that he paid plaintiff rent proceeds on Apartments 2C and 2W from 2012 until January 2016, when he began claiming that the leases are invalid and “substantially decreased” the rent proceeds turned over to plaintiff (*id.*, ¶ 26).¹

Plaintiff filed her summons and complaint, *pro se*, on April 13, 2016. Her first cause of action seeks a declaratory judgment declaring that the leases for Apartment 2C and Apartment 2W are valid and enforceable contracts. The second cause of action alleges that the property of Carlos Casanas, who died intestate, was not distributed as provided by law and that plaintiff is entitled to a declaratory judgment as to “the rights and obligations of the parties with respect to Defendant Carlei and the Building” (Complaint, ¶ 40). In the third cause of action, plaintiff seeks an accounting of all rental proceeds from the Building, including Apartment 2C and 2W, and of any insurance reimbursement from the fire.

Defendants filed their answer with counterclaims on June 13, 2016. Following motion practice, plaintiff amended her complaint and, on March 20, 2017, defendants filed an amended answer with counterclaims. Defendants bring five counterclaims. In the first counterclaim,

¹ Plaintiff alleges that, during this period before Richard’s claim that the rents were invalid, he was improperly subtracting \$1,000 per month from the rent proceeds for the cost of the post-fire renovations, despite receiving an insurance payment for the cost of the renovations.

defendants seek a judgment declaring that the purported leases are “fraudulent, illegitimate, invalid, and unenforceable and/or do not exist.” (Amended Answer, ¶ 48). The second counterclaim seeks a judgment declaring that plaintiff has no possessory rights in Apartment 2C or Apartment 2W (*id.*, ¶ 50). The third counterclaim seeks a declaration that, to the extent that the leases are genuine, they are unenforceable as a matter of law, while the fourth seeks a declaration that, if the leases are genuine and enforceable, the Carlei Group has a right to terminate the leases for plaintiff’s noncompliance. Finally, the fifth cause of action seeks \$250,000 in monetary damages for plaintiff’s alleged breach of the leases in failing to perform 20 hours per week on behalf of the building.

Richard submits an affidavit in support of defendants’ motion in which he states that he was named managing agent of the Aleida Realty in 1991 (Richard aff, ¶ 7). Richard also submits a document purporting to be minutes of a “Special Meeting of the Board” of Aleida Realty. The board consisted of Richard’s mother and father, and the minutes indicate that Richard was “officially recognized as the SECRETARY/ TREASURER and an officer” in Aleida Realty and that “[a]s SECRETARY/ TREASURER/ MANAGING AGENT, RICHARD M. CASANAS shall receive a salary of THIRTY-SIX THOUSAND DOLLARS per year” (Defendants’ ex F).

Richard alleges that, on June 13, 1996, he purchased his father’s 50% share in Aleida Realty (Richard aff, ¶ 10). Richard submits a stock certificate showing him as the owner of the 50 shares in Aleida Realty, as well meeting minutes indicating that he gained Carlos Casanas’s 50% share in Aleida Realty for \$30,000 up front, as well as \$300,000 over time, and because he made good on a deal he made with his father in 1980 to work hard and show business acumen (Defendants’ exs G and H). Richard also submits meeting minutes showing that he was named president of Aleida Realty at this time (Defendants ex I).

Richard alleges that, as president of Aleida Realty, he was “solely responsible for the operations and management of the Building’s and [Aleida] Realty’s affairs” (Richard aff, ¶ 11). As to the transfer of the property from Aleida Realty to the Carlei Group, Richard alleges that the transfer took place on February 19, 2008 and that, on March 1, 2008, he became the manager of the Carlei Group (*id.*, ¶¶ 11-12). As such, Richard alleges that he continued to be “solely responsible for the operation and management of the Building” (*id.*, ¶ 12).

Richard’s account of Aleida E.’s relationship to Apartment 2C and Apartment 2W conflicts with his sister’s. In her version, her parents gave her a long-term leases with preferential rent. In Richard’s account, despite plaintiff’s submission of leases, there are no leases, and instead, he gave her license to occupy Apartment 2C (he does, in the context of licenses, discuss the history Apartment 2W):

“In or about 1992, I on behalf of [Aleida Realty], granted Plaintiff an oral license to occupy Apartment 2C after I discovered that she had moved into the Apartment without my prior knowlege or permission while I was temporarily away from the Building. Plaintiff occupied Apartment 2C until approximately 1999 or 2000 when, after the birth of her first child, she relinquished physical possession thereof and moved to Westchester County. Thereafter, I, on behalf of [Aleida Realty] and later Carlei, permitted Plaintiff to sublicense Apartment 2C to others on her behalf from 2000 to July, 2009. In July, 2009, there was a fire in the Building and all apartments in the Building needed to be vacated. The Apartments’ sublicensees never returned to the Apartments. On behalf of Carlei, I thereupon terminated whatever rights Plaintiff may have had to sublicense the Apartments. Plaintiff, moreover, relinquished any rights she may have had in and to the Apartments. Indeed, following the fire, Carlei has, with Plaintiff’s knowledge, rented the Apartments to tenants on its own behalf for the past several years -- without objection, interference, or involvement by Plaintiff”

(*id.*, ¶¶ 15-20).

As to the leases submitted by plaintiff, Richard states that “I had never been made aware of any such leases being signed by Plaintiff and any other person acting, or purporting to act, on behalf of Carlei or [Aleida Realty] (*id.*, 24). Richard goes on to state that, even if the leases were

genuine, which he is not convinced of, the “preferential rent” provisions are too vague to be enforceable (*id.*, ¶¶ 25-31). Moreover, as to Apartment 2W specifically, Richard argues that Carlos, whose signature appears above the designation of landlord, did not have authority to enter into a lease on behalf of Aleida Realty, as he had already sold his shares in the entity by that point (*id.*, ¶ 34). Finally, Richard argues that, even if the leases were valid, plaintiff incurably breached them by failing to perform 20 hours work a week for the duration of the leases (*id.*, ¶¶ 32-33).

With respect to plaintiff’s cause of action for a declaratory judgment relating to the ownership of the Carlei Group, defendants argue that the claim should be dismissed, as it is time-barred, refuted by documentary evidence, and because plaintiff lacks standing to bring the claim. Alternatively, defendants argue that the action should be dismissed without prejudice to recommence in Surrogate’s Court. Plaintiff, who is now represented by counsel, concedes that this claim should be dismissed without prejudice.

While defendant is moving under CPLR 3212, very little discovery has taken place.

DISCUSSION

It is well settled that where a defendant is the proponent of a motion for summary judgment, the defendant must establish that the “cause of action . . . has no merit” (CPLR §3212[b]) sufficient to warrant the court as a matter of law to direct judgment in its favor (*Friedman v BHL Realty Corp.*, 83 AD3d 510, 922 NYS2d 293 [1st Dept 2011]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). Thus, the proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, by advancing sufficient “evidentiary proof in admissible form” to demonstrate the absence of any material issues of fact (*Madeline D’Anthony Enterprises, Inc. v Sokolowsky*, 101

AD3d 606, 957 NYS2d 88 [1st Dept 2012] citing *Alvarez v Prospect Hosp.*, 68 NY2d 320, 501 NE2d 572 [1986] and *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Where the proponent of the motion makes a *prima facie* showing of entitlement to summary judgment, the burden shifts to the party opposing the motion to demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action (CPLR §3212 [b]; *Madeline D'Anthony Enterprises, Inc. v Sokolowsky*, 101 AD3d 606, 957 NYS2d 88 [1st Dept 2012]). Mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient (*Alvord and Swift v Steward M. Muller Constr. Co.*, 46 NY2d 276, 281-82, 413 NYS2d 309 [1978]; *Carroll v Radoniqi*, 105 AD3d 493, 963 NYS2d 97 [1st Dept 2013]). The opponent “must assemble and lay bare [its] affirmative proof to demonstrate that genuine issues of fact exist,” and the “issue must be shown to be real, not feigned since a sham or frivolous issue will not preclude summary relief” (*American Motorists Ins. Co. v Salvatore*, 102 AD2d 342, 476 NYS2d 897 [1st Dept 1984]; see also, *Armstrong v Sensormatic/ADT*, 100 AD3d 492, 954 NYS2d 53 [1st Dept 2012]).

I. The Statute of Frauds

Plaintiff's first cause of action seeks a declaratory judgment as to the validity of two putative leases for, respectively, Apartment 2C and Apartment 2W in the Building. Defendants' first and third counterclaims all maintain that the leases are unenforceable, while the second maintains that, as a result, plaintiff has no possessory interest in the building. Alternatively, defendants' fourth and fifth counterclaims seek damages for plaintiffs' noncompliance. The first question for the court to address, then, is the validity and enforceability of the leases.

The purported leases for Apartment 2C and Apartment 2W each have terms of thirty years. Thus, the each fall within the purview of Statute of Frauds, which, as it applies to leases

running longer than a year, is codified at General Obligations Law (GOL) § 5-703 (2), which provides:

“A contract for the leasing for a longer period than one year, or for the sale, of any real property, or an interest therein, is void unless the contract or some note or memorandum thereof, expressing the consideration, is in writing, subscribed by the party to be charged, or by his lawful agent thereunto authorized by writing.”

Defendants cite to *Kobre v Instrument Sys. Corp.*, which involved the sale of a corporation, for the proposition that a writing required by the Statute of Frauds “must contain substantially the whole agreement, and all its material terms and conditions, so that one reading it can understand from it what the agreement is” (54 AD2d 625, 626 [1st Dept 1976]).

Defendants note, citing to *Joseph Martin, Jr., Delicatessen v Schumacher*, that the amount of rent, or other consideration, is a material and essential term in a lease (52 NY2d 105, 105 [1980] [holding that a lease’s renewal provision was “unenforceable for uncertainty” because the lease provided that the rent for the renewal period was “to be agreed upon”]).

Critical to defendants’ position is the contention that the leases are insufficient on their face and, thus, no parol evidence can be used to make the writings sufficient. In *Bazak Intl. Corp. v Mast Indus.*, in which the Court of Appeals held that the “merchant’s exception” to the Statute of Frauds was applicable, the Court also held that parol evidence is immaterial to the question of whether a writing satisfies the statute of frauds:

Parol evidence, even in affidavit form, is immaterial to the threshold issue whether the documents are sufficient on their face to satisfy the Statute of Frauds. Consideration of parol evidence in assessing the adequacy of a writing for Statute of Frauds purposes would otherwise undermine the very reason for a Statute of Frauds in the first instance. That issue must be determined from the documents themselves, as a matter of law

(73 NY2d 113, 118 [1989]; see also *Elite Tech. NY Inc. v Thomas*, 70 AD3d 506 [1st Dept 2010] [holding, in the context of an employment contract that, the “[d]efendants’ subjective understanding of the agreement does not render its terms ambiguous with respect to the creation of an employment contract” and that “[parol evidence may not be used to prove the parties’ intent and establish essential missing terms where the instrument does not satisfy the statute of frauds”]).

Defendants argue that the rental terms for Apartment 2C, “rent waiver in exchange for 20 (twenty) hours a week,” and Apartment 2W, “rent waiver in exchange for 20 hours work per week” are so vague as to be equivalent to missing terms that render the leases insufficient to satisfy the requirements of the Statute of Frauds.

Plaintiff contends that the lease sufficiently sets forth terms and relies, among others, on the Court of Appeals decision in *Matter of 166 Mamaroneck Ave. Corp. v 151 E. Post Rd. Corp.* (78 NY2d 88 [1991]). *Matter of Mamaroneck* is a bookend, or counterpoint, to the Court of Appeals earlier decision in *Martin Delicatessen*, which held that a lease renewal option was unenforceable for vagueness where rent for the renewal period was “to be agreed upon” (52 NY2d 105). *Matter of Mamaroneck* also involved a renewal option that did not specifically set the rental price for the renewal period, but the critical difference was that it provided for arbitration if the parties could not agree on a rental price for the renewal period. Thus, the Court of Appeals held that the renewal option was “not an invalid ‘agreement to agree’ because the arbitration clause provides an objective standard for determining the amount of rent” (78 NY 2d at 90).

The Court of Appeals, in arriving at this holding, expounded at length on the doctrine of definiteness:

“The doctrine of definiteness or certainty is well established in contract law. In short, it means that a court cannot enforce a contract unless it is able to determine what in fact the parties have agreed to. As we noted recently ... [i]f an agreement is not reasonably certain in its material terms, there can be no legally enforceable contract. Further, a mere agreement to agree, in which a material term is left for future negotiations, is unenforceable. This Court, however, has not applied the definiteness doctrine rigidly. Contracting parties are often imprecise in their use of language, which is, after all, fluid and often susceptible to different and equally plausible interpretations. Imperfect expression does not necessarily indicate that the parties to an agreement did not intend to form a binding contract. A strict application of the definiteness doctrine could actually defeat the underlying expectations of the contracting parties. Thus, where it is clear from the language of an agreement that the parties intended to be bound and there exists an objective method for supplying a missing term, the court should endeavor to hold the parties to their bargain. Striking down a contract as indefinite and in essence meaningless is at best a last resort”

(78 NY2d at 91 [internal quotation marks and citations omitted]).

Rent here is clearly a material term in the leases. Thus, the rental terms must be reasonably certain. Rent waivers “in exchange for 20 (twenty) hours a week” or for “20 hours work per week” are plainly vague and indefinite. Unlike the lease in *Matter of Mamaroneck*, which provided for the appointment of an arbitrator to specify the indefinite term, the leases here provide no objective method for clarifying their indefinite material terms. As a consequence, the purported leases for Apartment 2C and Apartment 2W each violate the Statute of Frauds, as codified by GOL section 5-703 (2), and are thus invalid and unenforceable.

Plaintiff contends that the court should exercise its equitable powers to enforce the leases despite their violation of the Statute of Frauds. The same section in the GOL which codifies the Statute of Frauds as it applies to leases running longer than a year also specifically carves an out an exception for partial performance: “Nothing contained in this section abridges the powers of

courts of equity to compel the specific performance of agreements in cases of part performance” (GOL § 5-703 [4]).²

Plaintiff cites to *Tuttle, Pendelton & Gelston v Dronart Realty Corp.*, a Second Department case which held that “[t]he Statute of Frauds will not be a bar to specific performance of a lease where it has been demonstrated that there has been partial performance of the lease” (*Tuttle, Pendelton & Gelston v Dronart Realty Corp.* 90 AD2d 830, 831 [2d Dept 1982]; see also *Yenom Corp. v 155 Wooster St. Inc.*, 33 AD3d 67, 71 [1st Dept 2006] [holding that “a party asserting the statute of frauds may lose the benefit of the defense, or waive its protections, by inducing or permitting part performance of an oral agreement by the party seeking to enforce it”]). *Tuttle* detailed how the doctrine of partial performance should be analyzed in this context: “Such performance must be unequivocally referable to the agreement. Although mere payment of money is not enough to constitute part performance, other acts, such as taking possession or making improvements, when combined with the payment of rent, may be sufficient” (*id.* [internal quotation marks and citation omitted]).

Defendants, in reply, call upon Justice Cardozo, who, nearly a century ago, wrote that an act is “unequivocally referable” to an oral promise affecting rights in land when “[w]hat is done must itself supply the key to what is promised. It is not enough that what is promised may give significance to what is done” (*Burns v McCormick*, 233 NY 230, 231 [1920]). In other words, “in order to be unequivocally referable, conduct must be inconsistent with any other explanation” (*Richardson & Lucas, Inc. v New York Athletic Club of City of N.Y.* [1st Dept 2013]).

² One federal district court, interpreting New York law, found that New York requires “courts to enforce seemingly indefinite contract terms if parties have partially performed them” (*Greater Eastern Transport LLC v Waste Management of Connecticut, Inc.*, 211 F Supp2d 499, 502 [SD NY 2002]).

Plaintiff claims that she performed 20 hours per week of work on behalf of the Building pursuant to the lease up until her brother Richard prevented her from doing so after the fire at the Building in 2009. Plaintiff claims also that she both lived in and subleased the subject apartments. Moreover, she submits evidence, such as subleases, and the testimony of her real estate broker, suggesting that Aleida Realty and, later, the Carlei Group also permitted plaintiff to act as though she held rights under the leases. Plaintiff contends that this partial performance takes the lease out of the purview of the Statute of Frauds.

Defendants argue in reply that plaintiff's alleged conduct is equally consistent with Richard's contention that Aleida E. was a licensee rather than a tenant. The court agrees that this other explanation keeps plaintiff's conduct from being unequivocally referable to the purported leases. Moreover, the circumstances here are distinguishable from the circumstances in *Tuttle*, in that the Statute of Frauds, in *Tuttle*, was violated by the absence of a signature, whereas here it is violated by the indefinite rental terms in the two leases. In *Tuttle*, where the material terms of the lease were definite, when the Court invoked its equitable power to allow the tenant to sidestep the Statute of Frauds and to, essentially, write the landlord's signature into the contract, the terms of the lease were clear and definite. Here, if the court invoked its equitable powers to allow plaintiff to avoid the consequences of the Statute of Frauds, the terms of the obligations, whether it be to "20 hours" or "20 hours work" would remain vague and indefinite, and they would continue to cause uncertainty. Accordingly, the court declines to invoke its equitable powers in these circumstances.

Thus, the Statute of Frauds renders the leases for Apartment 2C and Apartment 2W invalid and unenforceable. Thus, the branch of defendants' motion seeking dismissal of plaintiff's first cause of action for a judgment declaring the leases valid must be granted.

Equally, defendant is entitled to summary judgment on their third cause of action declaring that the leases are invalid. As a corollary, defendants' fourth and fifth counterclaims, which each claim that plaintiff breached the leases, are also dismissed, pursuant to CPLR 3212 (b), as the court, searching the record, finds that plaintiff could not have breached an invalid and unenforceable lease. Defendants' second cause of action must be granted to the extent that defendants are entitled to a declaration that plaintiff has no possessory rights arising from the subject leases. Additionally, defendants' application for dismissal of plaintiff's affirmative defenses against defendants' counterclaims is denied as moot.

II. Plaintiff's Application for a Declaratory Judgment As to Ownership of the Carlei Group

Defendant characterizes this cause of action as one for replevin and argues that the claim should be dismissed on statute of limitations grounds and for lack of standing. In the alternative, defendant contends that the claim should be dismissed without prejudice, so that plaintiff can refile in Surrogate's Court. Plaintiff characterizes the cause of action as one alleging fraud, even though that word is not used in the complaint, but agrees with defendants' alternative position that the cause of action should be dismissed without prejudice, so she can bring the claim in Surrogate's Court. Here, the Court, without deciding the issues of standing and statute of limitations, agrees to dismiss the second cause of action without prejudice.

III. Plaintiff's Third Cause of Action for An Accounting

As the resolution of the first two causes actions remove any basis on which plaintiff might have a right to an accounting, the third cause of action is also dismissed without prejudice.

CONCLUSION

Accordingly, it is

ORDERED that the branch of defendants' seeking summary judgment on the third counterclaim for a judgment declaring that the leases are invalid is granted; and it is further

ORDERED that the branch of defendants' motion seeking summary judgment on the second counterclaim for a judgment declaring that plaintiff has no possessory rights arising from the subject leases is granted; and it is further

ORDERED, DECLARED, AND ADJUDGED that the purported leases submitted by plaintiff Aleida E. Casanas (e-filed document Nos. 112 and 114) for Apartments 2C and 2W in the subject building located at 73 West 82nd Street are invalid and unenforceable; accordingly, plaintiff has no possessory interest in the apartments arising from these purported lease; and it is further

ORDERED that the branch of defendants' motion that seeks dismissal of plaintiff's first cause of action is granted; and it is further

ORDERED that the branch of defendants' motion that seeks dismissal of plaintiff's second and third causes of action are granted to the extent that those causes of action are dismissed without prejudice; and it is further

ORDERED defendants remaining counterclaims are dismissed as moot; and it is further

ORDERED that the branch of defendants' motion that seeks dismissal of plaintiff's affirmative defenses to the counterclaims is denied as moot; and it is further

ORDERED that the Clerk is to enter judgment accordingly; and it is further

ORDERED that counsel for defendants shall serve a copy of this order with notice of entry upon all parties within 20 days of entry.

This constitutes the decision and order of the court.

Dated: January 12, 2018

ENTER:



Hon. CAROL R. EDMED, JSC

HON. CAROL R. EDMED
J.S.C.