

Wright-Leslie v Wong
2018 NY Slip Op 33421(U)
December 13, 2018
Supreme Court, Kings County
Docket Number: 502871/18
Judge: Dawn M. Jimenez-Salta
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At an IAS Term, Part 88 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 13th day of December, 2018.

P R E S E N T:

HON. DAWN JIMENEZ-SALTA,

Justice.

-----X
GARY WRIGHT-LESLIE,

Plaintiff,

- against -

ANGELA CHANG WONG, OBESE WONG LLC,
and John and Jane DOES #1-100

First name of DEFENDANTS being fictitious
And unknown to Plaintiff, and Persons intended
to be added herein as Defendant,

Defendants.

-----X
The following papers numbered 1 to 10 read herein:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____
Opposing Affidavits (Affirmations) _____
Reply Affidavits (Affirmations) _____
_____ Affidavit (Affirmation) _____
Other Papers _____

Index No. 502871/18

Noted Seq #s 1, 2, 3

Papers Numbered

1-3, 4-5, 6-7

8, 9

10

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Upon the foregoing papers, plaintiff Gary Wright-Leslie moves, by order to show cause, for an order 1) granting a preliminary injunction enjoining prosecution of a summary holdover proceeding in Civil Court, and 2) pursuant to CPLR 602 (b), removing the summary proceeding from Civil Court and consolidating the proceeding with the instant action.

Defendants Angela Chang Wong and Obese Wong LLC cross-move for an order dismissing the complaint pursuant to CPLR 3016 (a). Plaintiff cross-moves for an order, pursuant to CPLR 3025 (b), granting leave to amend the complaint.

Plaintiff commenced this action seeking 1) a declaration that the unit he occupies in the premises at 1769 81st Street in Brooklyn is rent stabilized, 2) a declaration that defendants engaged in tenant harassment in violation of Administrative Code of the City of New York §§ 27-2004 and 27-2005, and 3) damages for slander. According to the complaint, in or around February 2015, plaintiff moved into the subject premises, a “de facto multiple dwelling/single room occupancy housing accommodation” containing seven separate rooms serving as living quarters. Plaintiff further alleges, upon information and belief: that on or about July 14, 2017, defendant Angela Chang Wong filed a false police report with the New York Police Department (NYPD) stating that plaintiff was not a resident of the subject premises but a trespasser and, upon the false police report of Ms. Wong, the NYPD (without a warrant) broke into plaintiff’s apartment; that plaintiff returned to the subject premises to find that his room had been broken into by the NYPD; that immediately thereafter, plaintiff contacted the NYPD complaining of the illegal breaking/entering without a warrant; that the NYPD was dispatched to the subject premises whereupon plaintiff reported to the NYPD that \$7,000.00 was missing from his room; and that on or about July 15, 2017, upon the false police reports of defendant(s) that plaintiff was a trespasser, plaintiff was falsely arrested and imprisoned by a police officer. Plaintiff also alleges that upon his release, he filed a petition

with the Civil Court seeking to be restored back into possession of the subject premises and, pursuant to a Civil Court order, plaintiff was placed back into possession of the subject premises as the lawful tenant. Plaintiff additionally alleges, upon information and belief, that due to defendants' false police report plaintiff was charged with criminal trespass in the second degree (Penal Law § 140.15) and trespass (Penal Law § 140.05) in the Criminal Court of the City of New York, County of Kings and that the criminal proceeding was subsequently "dismissed and sealed."

Plaintiff's motion to consolidate the Civil Court proceeding with the instant action and for a preliminary injunction is denied. "The Civil Court is the preferred forum for resolving landlord-tenant issues. Indeed, '[o]nly where Civil Court is without authority to grant the relief sought should the prosecution of a summary proceeding be stayed'" (*44-46 W. 65th Apt. Corp. v Stvan*, 3 AD3d 440 [citations omitted]). Further, "given the strong preference for resolving landlord-tenant disputes in Civil Court due to its unique ability to resolve such issues," there is no reason to remove the summary proceeding from Civil Court, where the issues regarding rent stabilization status and tenant harassment may be raised (*id.*, see *Gogarnow v Silvia*, 60 Misc 3d 337 [Civ Ct, Queens County 2018; *Leprovo v Pitts*, 46 Misc 3d 1216[A], 2015 NY Slip Op 50102 [U] [Civ Ct, NY County 2015]).

Defendants' cross motion for dismissal pursuant to CPLR 3016 (a) is granted to the extent that the third cause of action for slander is dismissed. CPLR 3016 (a) requires that "[i]n an action for libel or slander, the particular words complained of shall be set forth in

the complaint” (CPLR 3016 [a]). “Compliance with CPLR 3016 (a) is strictly enforced” (*Horbul v Mercury Ins. Group*, 64 AD3d 682, 683 [2d Dept 2009]). Therefore, “[a] cause of action sounding in defamation which fails to comply with these special pleading requirements must be dismissed” (*Fusco v Fusco*, 36 AD3d 589, 590 [2d Dept 2007]). Here, the cause of action alleging slander does not set forth the particular words complained of and alleges only that defendants “made false statements that Plaintiff had, *inter alia*, trespassed [upon] the Subject Premises in violation of [the] New York Penal Law.”

Turning to plaintiff’s cross motion for leave to amend his complaint, it is well-settled that leave to amend a pleading shall be freely given provided that the proposed amendment is not palpably insufficient or patently devoid of merit, and there is no evidence that it would prejudice or surprise the opposing party (*see* CPLR 3025 [b]; *Hothan v Mercy Med. Ctr.*, 105 AD3d 905, 906 [2d Dept 2013]; *Blue Diamond Fuel Oil Corp. v Lev Mgt. Corp.*, 103 AD3d 675, 676 [2d Dept 2013]; *Maldonado v Newport Gardens, Inc.*, 91 AD3d 731, 731-732 [2d Dept 2012]).

In its proposed amended complaint, plaintiff re-pleads his slander cause of action to particularize the alleged defamatory statements made by defendants. However, “[s]lander as a rule is not actionable unless the plaintiff suffers special damage. Special damages contemplate the loss of something having economic or pecuniary value” (*Lieberman v Gelstein*, 80 NY2d 429, 434-435 [1992] [internal quotation marks and citations omitted]). “In pleading special damages, actual losses must be identified and causally related to the

alleged tortious act” (*L.W.C. Agency, Inc. v St. Paul Fire & Marine Ins. Co.*, 125 AD2d 371, 373 [2d Dept 1986]). “[T]hey must be fully and accurately identified ‘with sufficient particularity to identify actual losses’” (*Matherson v Marchello*, 100 AD2d 233, 235 [2d Dept 1984] [internal citation omitted]). In the proposed amended complaint, plaintiff merely states in broad and unspecified terms that plaintiff “was arrested and falsely imprisoned and has had to expend monies to be made whole.”

“The four established exceptions [to the requirement of special damages] (collectively ‘slander per se’) consist of statements (i) charging plaintiff with a serious crime; (ii) that tend to injure another in his or her trade, business or profession; (iii) that plaintiff has a loathsome disease; or (iv) imputing unchastity to a woman” (*Lieberman v Gelstein*, 80 NY2d at 435). Plaintiff alleges in the proposed amended complaint that defendants’ statements were slanderous per se “as they contained allegations that the Plaintiff committed a crime.” However, “[n]ot every imputation of unlawful behavior . . . is slanderous per se.” (*Lieberman v Gelstein*, 80 NY2d at 435). “[T]he law distinguishes between serious and relatively minor offenses, and only statements regarding the former are actionable without proof of damage” (*id.*, citing Restatement § 571, comment g [list of crimes actionable as per se slander includes murder, burglary, larceny, arson, rape, kidnaping]). Plaintiff alleges that defendants “made false statements that [plaintiff] trespassed the Subject Property in violation of [the Penal Law].” However, defendants’ statements amounted only to a charge of Criminal Trespass in the Second Degree, a misdemeanor which this court finds does not constitute a “serious

crime” and thus cannot form the basis of a claim for slander per se (*see Carter v Waks*, 57 Misc 3d 1208[A], 2017 NY Slip Op 51339[U] [Sup. Ct, Queens County 2017]).

Plaintiff’s proposed causes of action for false imprisonment and malicious prosecution are patently without merit. In *Mesiti v Wegman* (307 AD2d 339 [2d Dept 2003]), the Appellate Division, Second Department stated the following:

“[A] civilian complainant, by merely seeking police assistance or furnishing information to law enforcement authorities who are then free to exercise their own judgment as to whether an arrest should be made and criminal charges filed, will not be held liable for false arrest or malicious prosecution. A plaintiff must demonstrate that the defendant played an active role in the prosecution, such as giving advice and encouragement or importuning the authorities to act. The defendant must have affirmatively induced the officer to act, such as taking an active part in the arrest and procuring it to be made or showing active, officious and undue zeal, to the point where the officer is not acting of his own volition” (*Mesiti v Wegman*, 307 AD2d at 340 [citations and internal quotations omitted]).

In the proposed amended complaint, there is no allegation that defendants, who sought police assistance and furnished information, played such an active part in the arrest and prosecution of plaintiff as to expose them to liability for false arrest and/or malicious prosecution (see *Slatkin v Lancer Litho Packaging Corp.*, 33 AD3d 421, 422 [1st Dept 2006]; *Du Chateau v Metro-North Commuter R.R. Co.*, 253 AD2d 128, 132-133 [1st Dept 1999]).

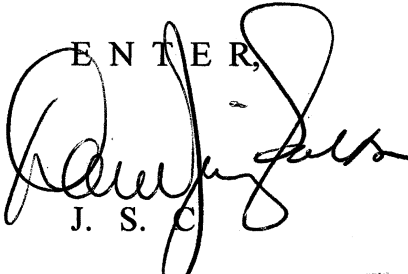
The proposed causes of action for prima facie tort and abuse of process are similarly insufficient. “An element of a prima facie tort cause of action is that the complaining party

suffered specific and measurable loss, which requires an allegation of special damages” (*Goldman v Citicore I, LLC*, 149 AD3d 1042, 1045 [2d Dept 2017], quoting *Diorio v Ossining Union Free School Dist.*, 96 AD3d 710, 712 [2d Dept 2012]). Plaintiff has not adequately pleaded that he sustained special damages, stating in broad and unspecified terms that he “had to expend monies. . .to be made whole.” “Abuse of process has three essential elements: (1) regularly issued process, either civil or criminal, (2) an intent to do harm without excuse or justification, and (3) use of the process in a perverted manner to obtain a collateral objective” (*Greco v Christoffersen*, 70 AD3d 769, 770 [2d Dept 2010], quoting *Curiano v Suozzi*, 63 NY2d 113, 116 [1984]). In the proposed amended complaint, plaintiff simply concludes that defendants sought to use the criminal proceeding in “a perverted manner to obtain a collateral objective (i.e. unlawfully evict Plaintiff from the subject premises)” without setting forth factual allegations to support such a conclusion.

Finally, plaintiff’s allegation that defendants made false statements to the police, causing his arrest and incarceration, is insufficient as a matter of law to constitute extreme and outrageous behavior which is necessary to sustain the proposed cause of action for intentional infliction of emotional distress (see *Matthaus v Hadjedj*, 148 AD3d 425, 425-426 [1st Dept 2017]; *Slatkin v Lancer Litho Packaging Corp.*, 33 AD3d at 422).

As a result, plaintiff's cross motion for leave to amend the complaint is denied.

The foregoing constitutes the decision and order of the court.

ENTER,

J. S. C.

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