

**Board of Mgrs. of Cherry Lane Owners Corp. v Nin
Li**

2019 NY Slip Op 30482(U)

January 2, 2019

Supreme Court, Queens County

Docket Number: 706251/18

Judge: Allan B. Weiss

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, ALLAN B. WEISS IAS PART 2
Justice

The Board of Managers of Cherry Lane
Owners Corp. Located at 42-95 Main
Street, Flushing, NY 11355

Index No.: 706251/18

Motion Date: 7/18/18

Motion Seq. No.:

FILED
JAN 10 2018
COUNTY CLERK
QUEENS COUNTY

Plaintiff,

-against-

NIN Li, Unit Owner
ZHI JIAN DAI and CHUN LI, Occupants,

Defendants.

The following numbered papers read on this motion by defendants to dismiss the complaint on the grounds that a defense is founded on documentary evidence and the applicable statute of limitations has expired, and for failure to state a cause of action.

Papers
Numbered

Notice of Motion - Affidavits - Exhibits.....	EF 28-40
Answering Affidavits - Exhibits.....	EF 41-42
Reply Affidavits.....	EF 43-50

Upon the foregoing papers it is ordered that the motion is determined as follows:

Plaintiff is the Board of Mangers for Cherry Lane Owners Corp., a cooperative corporation (Coop) which owns an apartment building located at 42-95 Main Street, Flushing, New York. Defendant Ning Li is an owner of the shares in the Coop allocated to apartment 5L and a lessee under a proprietary lease appurtenant to the shares.¹

¹
Although it does not affect the outcome here, the court notes that the stock certificate and proprietary lease connected to apartment 5L reflect that a nonparty, Ka Li, was co-owner/co-lessee with defendant Ning Li. Defendant Chun Li states in her reply affidavit that Ka Li, her brother, passed away in December 2016: Plaintiff did not name the estate of Ka Li as a party herein or

In this action seeking money damages as well as declaratory and injunctive relief, plaintiff alleges that defendant Ning Li breached various terms of the proprietary lease, the Coop's house rules, and an affidavit executed upon the purchase of the shares by (1) failing to use the apartment as his principle residence for two years starting from the date of the transfer of title to the apartment before subletting the apartment, (2) subletting the apartment twice without obtaining plaintiff's consent, and (3) failing to pay fees and penalties relating to the sublets.

The alleged sublets which are the basis of plaintiff's causes of action involve the occupancy of the apartment by defendant Zhi Jian Dai, Ning Li's mother, since 2008, and by defendant Chun Li, Ning Li's sister, who allegedly moved into the apartment in January 2012. The documentary evidence submitted by movants, however, refutes the factual allegations concerning a sublet to Zhi Jian Dai, by demonstrating that, at the time of the purchase of apartment 5L in 2008, she was identified as a coapplicant and named as a person who would be moving into the apartment and making it her principal residence. This evidence establishing that Zhi Jian Dai is an authorized resident of the apartment definitively disposes of those parts of plaintiff's claims which are based on an illegal sublet to Zhi Jian Dai and seek fees and penalties relating thereto as well as a declaration that Zhi Jean Dai must vacate the premises. (CPLR 3211[1]; see *Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]; *Flushing Exp., Inc. v New World Mall, LLC*, 116 AD3d 826 [2d Dept 2014].) Accordingly, those parts of the first through sixth causes of action are dismissed. (*Id.*)

The seventh cause of action does not allege any basis to justify the recovery of attorney's fees incurred in the prosecution of this action. Attorney's fees are available only when authorized by agreement between the parties or by statute or court rule. (See *Congel v Malfitano*, 31 NY3d 272, 290-291 [2018]; *A.G. Ship Maint. Corp. v Lezak*, 69 NY2d 1, 5 [1986].) Accordingly, the seventh cause of action is dismissed for failure to state a cause of action.

The remaining portions of the complaint seek relief based upon the bare allegation of Ning Li's unauthorized sublet of the apartment to Chun Li in 2012. It is undisputed that Zhi Jian Dai, an authorized resident, continued to occupy the apartment in 2012 and to date. The documentary evidence proffered by defendants further establishes that Mingwei Li, the husband of Zhi Jian Dai

address Ka Li's interest in the apartment and the disposition of that interest upon his death.

and father of Ning and Chun Li, was also authorized to move into the apartment and make it his principal residence at the time of its purchase in 2008, but that he died on March 5, 2011. Chun Li thus moved into the apartment with her mother following the death of her father. There are no factual allegations to support a claim that Chun Li's occupancy of the apartment with her mother was a sublet entitling plaintiff to sublet fees and/or penalties for subletting without the coop's consent. (See *445/86 Owners Corp. v Haydon*, 300 AD2d 87 [1st Dept 2002]; *888 E. 96th St., LLC v Hargrove*, 61 Misc 3d 137[A], 2018 NY Slip Op 51558[U] [App Term, 2d Dept 2018]; *Skyline Terrace Coop., Inc. v Ortiz-Robles*, 45 Misc 3d 129[A], 2104 NY Slip Op 51527[U] [App Term, 2d Dept 2014]; *155 W. 81st St. Assoc. v Paredes*, 26 Misc 3d 145[A], 2012 NY Slip Op 50472[U] [App Term, 1st Dept 2010].) Accordingly, the causes of action in the complaint are insufficient to support any claim for relief based upon the alleged sublet to Chun Li.

The motion, therefore, is granted to the extent that the complaint is dismissed for the reasons stated herein. In light of the foregoing, it is not necessary to reach defendants' contentions regarding the statute of limitations.

Dated: January 2, 2019



 J.S.C.

FILED
 JAN 10 2019
 COUNTY CLERK
 QUEENS COUNTY