

**Clarke v Beninati**

2019 NY Slip Op 30926(U)

April 2, 2019

Supreme Court, New York County

Docket Number: 152891/2018

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LOUIS L. NOCK PART IAS MOTION 38EFM**

*Justice*

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**INDEX NO. 152891/2018**

CHRISTOPHER CLARKE, ASHLEE WILSON

**MOTION DATE 10/18/2018**

Plaintiffs,

**MOTION SEQ. NO. 001 & 002**

- v -

RHONDA BENINATI,

**DECISION AND ORDER**

Defendant.

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LOUIS L. NOCK, J.

Upon e-filed documents numbered 20, 41-69, defendant’s motions to dismiss (seq. no. 001), and for summary judgment dismissing the complaint (seq. no. 002), are denied in accord with the following memorandum. A cross-motion by plaintiffs to remove confidential information from the record (interposed within seq. no. 001), is denied as moot, as clarified in the following memorandum.

BACKGROUND

The complaint alleges that defendant, a former Connecticut domiciliary and present Texas domiciliary, and owner of a Connecticut home, entered into a written lease agreement, dated July 12, 2017, for plaintiffs to rent that home (the “Lease”). The gravamen of the complaint is that plaintiffs, after taking up residence in the home, were subjected to hazardous conditions within the home, giving rise to physical injuries, and that said conditions were known to defendant from the outset and never abated. The complaint seeks damages in an as-yet undetermined amount.

By notice of motion filed August 3, 2018, defendant moved to dismiss on the ground of improper service of process (seq. no. 001). That motion was withdrawn by notice filed January 3, 2019 (NYSCEF Doc. No. 41). That motion, therefore, is denied as withdrawn.

By notice of motion dated January 3, 2019, defendant moved for summary judgment dismissing the complaint on the ground of lack of personal jurisdiction over her, unrelated to service of process. The reasoning that follows addresses that motion.

### DISCUSSION

Although aspects regarding the out-of-state physical location of the defendant and of the home complained of are, no doubt, relevant to jurisdictional analysis:<sup>1</sup> those aspects can only go so far when we take into dispositive consideration the undeniable fact that defendant entered into, and executed, the Lease as negotiated by her real estate broker with a New York domiciliary; to wit, “PureGrowth, 680 Fifth Ave., 8<sup>th</sup> Floor, New York New York 10019,” as expressly set forth in the Lease, and which was submitted by all parties (NYSCEF Doc. No. 20 [submitted by defense counsel]; NYSCEF Doc. No. 46 [submitted by plaintiffs’ counsel]).<sup>2</sup>

New York’s long-arm jurisdictional statute – CPLR 302 (a) (1) – provides:

#### **§ 302. Personal jurisdiction by acts of non-domiciliaries.**

(a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary . . . who in person or through an agent:

1. transacts any business within the state or contracts anywhere to supply goods or services in the state[.]

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<sup>1</sup> And certainly relevant, as well, to venue analysis.

<sup>2</sup> Defendant has raised no issue as to the nature of the relationship between plaintiffs and the literal tenant under the Lease – PureGrowth. Instead, the parties have proceeded under what seems to be a shared understanding that said entity is one and the same with plaintiffs. (*See, for example*, Affidavit of Merit of Plaintiff Christopher Clarke, sworn to September 26, 2018 [NYSCEF Doc. No. 32], at 1 [attesting: “I entered into a lease on behalf of Pure Growth Consulting, LLC,” and further attesting that he and his family, including co-plaintiff Ashlee Wilson, “moved into the property”].)

As the Court of Appeals has clearly declared in a case where it reversed an intermediate affirmance of dismissal in a long-arm case:

The CPLR 302 (a) (1) jurisdictional inquiry is twofold: under the first prong the defendant must have conducted sufficient activities to have transacted business in the state, and under the second prong, the claims must arise from the transactions. Thus, “jurisdiction is proper even though the defendant never enters New York, so long as the defendant’s activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted.”

(*Rushaid v Pictet & Cie*, 28 NY3d 316, 329 [2016] [citation omitted], *rearg denied* 28 NY3d 1161 [2017]. *See also*, *World-Wide Volkswagen Corp. v Woodson*, 444 US 286 [1980]; *Hanson v Denckla*, 357 US 235, *rehearing denied* 358 US 858 [1958].)

It is indisputable that defendant willingly and knowingly executed the Lease with a tenant known to her to be a New York domiciliary – “PureGrowth, 680 Fifth Ave., 8<sup>th</sup> Floor, New York New York 10019.” As plaintiff Christopher Clarke reports: he learned about the subject matter rental through a New York advertisement; discussed the rental with defendant’s realtor and advertiser – Houlihan Lawrence – from New York; reviewed the Lease and negotiated it from New York; executed the Lease in New York; and doing so as a party domiciled at “680 Fifth Ave., 8<sup>th</sup> Floor, New York New York 10019” (*see*, Affidavit of Christopher Clarke, sworn to September 26, 2018 [NYSCEF Doc. No. 31]).

In an attempt to project an air of jurisdictional distance from the State of New York, defendant proffers the disingenuous statement in her affidavit that: “It was not my intention or decision for anything related to the lease of the premises to be conducted in New York and I had no involvement with that process.” (Affidavit of Defendant, sworn to October 11, 2018 [NYSCEF Doc. No. 36], ¶ 7 [emphasis added].) She repeats that notion a second time, stating: “I have no relationship with the State of New York in any way and did not at the time that the lease was signed. (*Id.* [emphasis added].) Those statements are simply incredulous in the face of

defendant's very own signature on the Lease, which identifies the tenant as a New York domiciliary – "PureGrowth, 680 Fifth Ave., 8<sup>th</sup> Floor, New York New York 10019." There is no issue of fact, whatsoever, as to that.

It is elementary that CPLR 302 (a) (1) is a "single act statute," invocable even where the defendant has never entered New York (*see, Deutsche Bank Securities, Inc. v Montana Bd. of Investments*, 7 NY3d 65, *cert denied* 549 US 1095 [2006]). In the instant case, the single act is defendant's willing and knowing execution of the Lease with the New York domiciliary, who was to be the tenant of the home involved in this lawsuit. In addition, the claims of failure to abate hazardous conditions at that home obviously arise directly from the Lease transaction, which, naturally, facilitated the entire factual backdrop of this entire lawsuit (*see, e.g., Rashaid, supra*). Defendant benefitted from that Lease and was fully aware that her real estate broker – Houlihan Lawrence – found the New York tenant on her behalf and in her interests. For defendant to disavow those realities now so as to try to gain the time-protracting advantage of a meritless procedural dismissal, would be unjust. The entering into the Lease with the New York domiciliary – who was advertised to in New York – satisfies our long-arm jurisdictional dictate that "proof of one transaction in New York is sufficient to invoke jurisdiction, even though the defendant never enters New York, so long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted" (*Kreutter v McFadden Oil Corp.*, 71 NY2d 460, 467 [1988]). Here, it is indisputable that defendant willingly went along with her broker's newfound tenant – a New York domiciliary, solicited through advertisements available and viewed in New York. It is similarly indisputable that there is a substantial relationship between the Lease – i.e., the home that was rented through the Lease – and plaintiffs' claims of failure to abate known hazardous conditions thereat. The motion for

summary judgment dismissing the complaint for lack of personal jurisdiction (seq. no. 002) is denied.

Plaintiff made a cross-motion (interposed within defendant's motion seq. no. 001) for an order removing confidential information from the record. The material referred to was a social security number of the plaintiff-signatory of the Lease, as submitted by defendant (NYSCEF Doc. No. 20). The court certainly does have the authority to grant such relief (*see*, 22 NYCRR 202.5 [e]). However, the court presently takes notice of the fact that the social security number referred to by cross-movant is already completely redacted in the record of this case (*see*, NYSCEF Doc. No. 20). Therefore, the motion for such redaction is denied as moot.

Accordingly, it is

ORDERED that defendant's motion to dismiss (seq. no. 001) is denied, as withdrawn; and it is further

ORDERED that plaintiffs' cross-motion to redact confidential material (within seq. no. 001) is denied, as moot; and it is further

ORDERED that defendant's motion for summary judgment dismissing the complaint (seq. no. 002) is denied, for the reasons set forth hereinabove; and it is further

ORDERED that the parties will appear for a preliminary conference in this matter on May 2, 2019, at 9:30 a.m., at Part 38 of this court, located at 111 Centre Street, Room 1166, New York, New York.

This shall constitute the decision and order of the court.

ENTER:

*Louis L. Nock*

4/2/2019

DATE

LOUIS L. NOCK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE