Board of Mgrs. of Five John Lofts v Yates
2019 NY Slip Op 31669(U)
June 10, 2019
Supreme Court, New York County
Docket Number: 160689/2016
Judge: Robert R. Reed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ROBERT R. REED** **PART 43**

Justice

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THE BOARD OF MANAGERS OF FIVE JOHN LOFTS

Plaintiff,

- v -

DIN YATES,

Defendant.

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INDEX NO. 160689/2016

MOTION DATE 12/04/2017

MOTION SEQ. NO. 001

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 31, 34, 35, 37, 38

were read on this motion to DISMISS DEFENSE.

Upon the foregoing documents, it is ordered that this motion is granted in part and denied in part.

Plaintiff moves for an order: (a) dismissing defendant's first, second, third and fourth counterclaims, pursuant to CPLR 3211 (a) (7), and (b) dismissing defendant's second and third affirmative defenses, pursuant to CPLR 3211 (b).

Defendant's first counterclaim alleges interference by the plaintiff with defendant's efforts to market and sell his condominium unit, arguing that plaintiff's conduct constituted tortious interference with prospective economic or contractual relations. In moving to dismiss this counterclaim, plaintiff argues that defendant has not alleged that he had an existing contract with which plaintiff interfered, and that no crime or independent tort has been committed on the part of plaintiff with respect to any prospective relationship. Defendant opposes, arguing that, in a chain of emails, defendant's agent makes clear that there are serious buyers interested in purchasing defendant's apartment unit, and that plaintiff's president, Todd Matras, raises concerns about defendant's mortgage and makes disparaging comments regarding defendant's

financial status. "In order to prevail on a cause of action for tortious interference with prospective economic or contractual relations, a plaintiff must establish the existence of a valid contract between the plaintiff and a third party, the defendant's intentional and unjustified procurement of the third party's breach of the contract, the actual breach of the contract, and the resulting damages" (*Jim Ball Chrysler, LLC, v. Marong Chrysler-Plymouth, Inc.*, 19 A.D.3d 1094, 1095). Thus, defendant, as counterclaimant here, must show that he had a business relationship with a third party, that plaintiff knew of that relationship and intentionally interfered with it, that plaintiff acted solely out of malice or used improper or illegal means that amounted to a crime or independent tort, and that plaintiff's interference caused injury to the relationship with the third party (*see Amaranth, LLC. V. J. P. Morgan Chase & Co.*, 71 A.D.3d 40, 47). Defendant does not offer factual allegations supporting the argument that plaintiff in this case acted solely with a malicious purpose. Giving accurate information of defendant's financial condition in response to reasonable inquiries would not constitute malice. The email chain provided by defendant merely reflects plaintiff's response to an inquiry. Finding malice in such circumstances would stifle the ability of individuals to give fair responses to fair inquiries. Plaintiff's motion to dismiss defendant's first counterclaim is granted.

Defendant's second counterclaim alleges that plaintiff's acts have impacted defendant's good will as a professional model and substantially interfered with defendant's ability to earn a living. To the extent that defendant's counterclaim is premised on the efforts of plaintiff to enforce a judgment obtained by plaintiff, in the form of an income execution on defendant's employer, defendant's counterclaim is without merit. Plaintiff is lawfully entitled to enforce its judgment through means such as an income execution on defendant's employer, as long as plaintiff has complied with the statutory requirements of undertaking such an action. If

defendant's counterclaim is premised on something different, defendant must state with specificity what those acts are that have impacted his goodwill. Plaintiff's motion to dismiss defendant's second counterclaim is granted.

Defendant's third counterclaim alleges a willful campaign of harassment by plaintiff and its president, Todd Matras. Plaintiff argues, in moving to dismiss, that defendant has failed to specify what was allegedly done to defendant that constitutes harassment. Defendant opposes, arguing that plaintiff failed to deliver water to defendant, failed to perform contractual renovations, installed surveillance cameras only in the front of defendant's apartment unit, and disparaged defendant to brokers and potential buyers. It is well settled that New York does not recognize a common law cause of action to recover damages for harassment (*Wells v. Town of Lenox*, 110 A.D.3d 1192). This court, moreover, is not the appropriate forum for defendant to seek relief based upon purported violations of the New York Penal Law. Defendant, finally, has not asserted entitlement to relief pursuant to recently instituted civil statutory provisions relating to landlord-tenant involved harassment. Plaintiff's motion to dismiss defendant's third counterclaim is granted.

Defendant's fourth counterclaim alleges illegal discrimination by plaintiff, asserting substantial disparate treatment compared to similarly situated fellow unit owners. Plaintiff argues that defendant has provided no factual specificity as to how he has been allegedly subject to disparate treatment. Defendant opposes, arguing that he was singled out for disparate treatment ranging from denial of water delivery, surveillance camera monitoring of defendant's apartment unit, which was not done to any other unit, and a targeted campaign to inhibit defendant's sale of his unit. On a motion to dismiss pursuant to CPLR 3211 (a) (7), "the pleading is to be afforded a liberal construction (*see* CPLR 3026). The court accepts the facts as alleged in the pleading as

true, accords defendant the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v. Martinez*, 84 N.Y.2d 83, 87-88). Additionally, "in assessing a motion under CPLR 3211 (a) (7) ... the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one" (*id.*). Under this standard, if those specified steps described by defendant were taken by plaintiff towards defendant and not taken against other unit owners, and defendant's assertion is that these actions were taken based on his race as an African-American, this court cannot at this early stage dismiss defendant's counterclaim. Plaintiff's motion to dismiss defendant's fourth counterclaim is denied.

Plaintiff also moves to dismiss defendant's second affirmative defense, which is that all or portions of the sums demanded to the extent any such were due have already been paid, and defendant's third affirmative defense, which is that plaintiff has interfered with defendant's ability to pay sums due. As stated above, on a motion to dismiss, "the pleading is to be afforded a liberal construction (*see* CPLR 3026). The court accepts the facts as alleged in the pleading as true, accords defendant the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v. Martinez supra*). Thus, discovery must be afforded to enable a fair assessment of defendant's second and third affirmative defenses. Plaintiff's motion to dismiss defendant's second and third affirmative defenses is denied.

Accordingly, it is

ORDERED that plaintiff's motion to dismiss defendant's first counterclaim is granted; and it is further

ORDERED that plaintiff's motion to dismiss defendant's second counterclaim is granted; and it is further

ORDERED that plaintiff's motion to dismiss defendant's third counterclaim is granted; and it is further

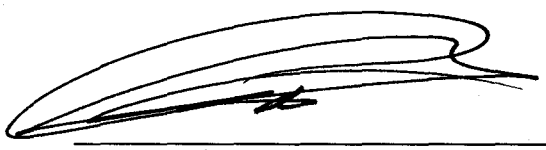
ORDERED that plaintiff's motion to dismiss defendant's fourth counterclaim is denied; and it is further

ORDERED that plaintiff's motion to dismiss defendant's second affirmative defense is denied; and it is further

ORDERED that plaintiff's motion to dismiss defendant's third affirmative defense is denied; and it is further

ORDERED that counsel are directed to appear for a status conference in Part 43, located at 60 Centre Street, Room 412, on August 1, 2019 at 11:00 a.m.

This constitutes the decision and order of the court.



6/10/2019
DATE

ROBERT R. REED, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE