

Legall v WE 2299 ACP LLC

2020 NY Slip Op 31840(U)

June 12, 2020

Supreme Court, New York County

Docket Number: 652330/2019

Judge: W. Franc Perry

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

-----X

ANCIL LEGALL,

Plaintiff,

- v -

WE 2299 ACP LLC, WEISSMAN EQUITIES, LLC

Defendants.

-----X

INDEX NO. 652330/2019

MOTION DATE 11/07/2019

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 9, 10 were read on this motion to/for DISMISSAL.

In this action plaintiff, Ancil Legall, a former tenant and single room occupant of an apartment in a building owned by defendant, WE 2299 ACP, LLC, seeks to set aside the terms of a court ordered stipulation of settlement entered into on May 1, 2014. In motion sequence number 001, defendants, WE 2299 ACP, LLC, and Weissman Equities, LLC (“defendants”), seek to dismiss the complaint, pursuant to CPLR § 3211 (a) (1) (5) and (7), and CPLR § 3016 (b), based upon the documentary evidence, *res judicata* and collateral estoppel grounds, and for failure to state a cause of action and fraud with particularity. Defendants also seek monetary sanctions against plaintiff and his counsel, Ambrose W, Wotorson, Esq., pursuant to 22 NYCRR 130- 1.1(a), for filing and then continuing a frivolous action. Plaintiff opposes the motion.

BACKGROUND

Plaintiff alleges that he became a tenant in 2005, in a building owned and operated by defendants’ predecessor owners which was designated as a “single-occupancy building with rent-stabilized apartments” and that he resided there for nine years without incident and “without

ever having to pay more than \$450 a month.” (NYSCEF Doc. No. 1, ¶¶ 8-11). Plaintiff further alleges that in late 2013, “defendants took over ownership and operation of the building” intending “to convert the building from single SRO and/or rent stabilization to luxury apartments and condominiums” and that starting in 2013, defendants “mounted efforts to get plaintiff and others out of the building.” (*Id.*, ¶¶ 13-17).

Plaintiff alleges that in early 2013, “defendants’ representatives orally offered Plaintiff between \$10,000 and \$50,000 in ‘moving expenses’” but plaintiff refused to accept any sum in moving expenses. (*Id.*, ¶¶ 18-19). Plaintiff alleges that thereafter defendants pursued a “willfully fraudulent scheme to get plaintiff to move out” so that defendants could pursue its plans to convert the building into luxury condominiums, and that on November 22, 2013 defendants, “with willfully fraudulent intent, falsely claimed that Plaintiff became irate, abusive and threatening to a female property manager when he requested repairs to his SRO and rent-stabilized apartment”, allegations which plaintiff denied. (*Id.*, ¶¶ 20-22).

Plaintiff alleges that defendants continued their fraudulent scheme to remove plaintiff from his rent stabilized apartment and on March 10, 2014, defendants filed a petition in Housing Court to evict plaintiff on “utterly false grounds”. (*Id.*, ¶¶ 31-33). Plaintiff further alleges that while the eviction proceeding was pending in Housing Court, defendants “caused criminal charges to be brought against Plaintiff for the same alleged tumultuous and assaultive behavior alleged against Plaintiff in Housing Court” which action plaintiff alleges was pursued by defendants solely to gain leverage against plaintiff in the eviction proceeding. (*Id.*, ¶¶ 34-37). Plaintiff alleges that defendants’ actions forced him to surrender his rent-stabilized apartment, “due the extreme stress of facing simultaneous criminal proceedings and eviction proceedings.” (*Id.*, ¶ 38).

Plaintiff alleges that the Housing Court proceeding and the criminal proceedings were withdrawn with prejudice and otherwise dismissed and further alleges that he “never signed any stipulation or settlement waiving his right to bring the instant action as a result of defendants' fraud or breach of the its lease agreement with plaintiff.” (*Id.*, ¶¶ 39-41).

Defendants urge this court to dismiss the action and impose sanctions, as plaintiff voluntarily agreed to vacate the premises on or before July 31, 2014, in consideration of his being paid \$8,000 and a waiver of \$2,000 in back rent. (NYSCEF Doc. No. 5). Defendants contend that plaintiff is unable to meet the legal burden required to set aside the stipulation of settlement and that the complaint must be dismissed based on documentary evidence and failure to state a cause of action.

Plaintiff claims that he did not sign the stipulation; that the stipulation does not contain a release; and that resolution of the underlying holdover proceeding by way of stipulation, amounted to fraud and a breach of the warranty of quiet use and enjoyment, and constituted a constructive eviction as he was forced to vacate the premises due to the stress of facing simultaneous criminal proceedings and eviction proceedings. (NYSCEF Doc. 1, ¶¶ 57, 58).

DISCUSSION

It is well established that “[s]tipulations of settlement are favored by the courts and not lightly cast aside (citation omitted).” (*Hallock v. State of New York*, 64 N.Y.2d 224, 485 N.Y.S.2d [1984]; see also, *Nigro v. Nigro*, 44 A.D.3d 831, 843 N.Y.S.2d 664 [2nd Dept. 2007]; *Balkin v. Balkin*, 43 A.D.3d 967, 842 N.Y.S.2d 523 [2nd Dept. 2007]). Moreover, “once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy” (*O'Brien v City of Syracuse*, 54 NY2d 353, 357, 429 NE2d 1158, 445 NYS2d 687 [1981]).

Because a stipulation of settlement is a binding contract, a party seeking to set it aside must make the same showing necessary to invalidate a contract, such as the presence of fraud, collusion, mistake or accident, overreaching, or that its terms are unconscionable (see *McCoy v Feinman*, 99 NY2d 295, 302, 785 NE2d 714, 755 NYS2d 693 [2002]; *Rogers v Malik*, 126 AD3d 874, 875, 5 NYS3d 525 [2d Dept 2015]). This is especially true when the parties have been represented by counsel (see *Rogers v Malik*, 126 AD3d at 875).

Pursuant to CPLR 3211(a)(1), to prevail on a motion to dismiss based on documentary evidence, “the documents relied upon must definitively dispose of plaintiff’s claim” (*Bronxville Knolls v Webster Town Ctr. Partnership*, 221 AD2d 248, 248 [1st Dept 1995]; *Demas v 325 W. End Ave. Corp.*, 127 AD2d 476 [1st Dept 1986]). The court is “not required to accept at face value every conclusory, patently unsupportable assertion of fact found in the complaint” and can “consider documentary evidence proved or conceded to be authentic” (*West 64th Street, LLC v Axis U.S. Ins.*, 63 AD3d 471, 471, 882 NYS2d 22 [1st Dept 2009], quoting *Four Seasons Hotels v Vinnik*, 127 AD2d 310, 318, 515 NYS2d 1 [1st Dept 1987] [internal quotation marks omitted]).

It is undisputed that both parties in the holdover proceeding were represented by counsel and the stipulation of settlement was signed by the parties, their respective counsel and was approved by the court. (NYSCEF Doc. No. 5). Additionally, plaintiff expressly acknowledged that he willingly entered into the agreement, “without duress or coercion” and with advice of counsel (*Id.*). To the extent that plaintiff is alleging that the stipulation of settlement should be ignored on the basis of fraud and for breach of the warranty of quiet use and enjoyment, plaintiff’s complaint simply fails to state a claim.

Plaintiff’s general allegations that defendants conduct in pursuing its rights in the summary holdover proceeding demonstrate “fraudulent eviction” are both insufficient to allege

fraud and ignore the binding terms of the court-ordered stipulation of settlement. The stipulation conclusively demonstrates that in exchange for monetary consideration, plaintiff agreed to vacate and voluntarily surrender possession of the premises. (NYSCEF Doc. No. 5, ¶¶ 2, 4); (see, generally, *Kaufman v Cohen*, 307 AD2d 113, 119, 760 NYS2d 157 [1st Dept 2003]; *Callas v Eisenberg*, 192 AD2d 349, 350, 595 NYS2d 775 [1st Dept. 1993] [allegations of fraud should be dismissed as insufficient where the claim is unsupported by specific and detailed allegations of fact in the pleadings]).

Likewise, plaintiff cannot avoid the stipulation on the basis that he has a cause of action for breach of the warranty of quiet use and enjoyment, related to defendants allegedly depriving him of \$50,000 for moving expenses which he claims defendants orally promised to him, prior to the commencement of the underlying proceeding. (NYSCEF Doc. No. 1, ¶55). Plaintiff has offered no valid legal ground to set aside the stipulation.

Defendants have established, with documentary proof, that plaintiff agreed to settle the underlying claims without duress or coercion, with the advice of counsel, and in open court. Plaintiff has not sufficiently alleged the presence of fraud or overreaching, or any facts sufficient to set aside the stipulation as unconscionable. Rather, plaintiff submits an unsworn affidavit wherein he claims that he was forced to vacate his rent controlled apartment so that defendants could convert the premises into luxury condominiums. (NYSCEF Doc. No. 1, ¶¶ 20-22). Moreover, plaintiff does not allege that he was evicted from the premises, instead claiming that he was forced to “surrender [his] rent-stabilized apartment to defendants due the extreme stress of facing simultaneous criminal court proceedings and eviction court proceedings.” (*Id.*, ¶ 28).

Notwithstanding the documentary evidence, plaintiff continues to maintain that he did not sign the stipulation which is a patently unsupportable claim as the stipulation plainly contains his

signature. (NYSCEF Doc. No. 5). As noted, stipulations of settlement between parties to litigation are binding contracts and are judicially favored, and courts will not lightly set them aside (see *Hallock v State of New York*, supra; *HSBC Bank USA, N.A. v Wielgus*, 131 AD3d 510, 510, 15 NYS3d 170 [2d Dept 2015]).

Plaintiff has failed to demonstrate the existence of any valid basis for setting aside the stipulation of settlement which bars the claims alleged in the complaint. "More than mere or conclusory allegations are required, . . . since stipulations of settlement serve the interests of efficient dispute resolution, the proper management of court calendars and the integrity of the litigation process" (*Rogers v Malik*, 126 AD3d at 875; citing *Hallock v State of New York*, 64 NY2d at 230).

Defendants' motion insofar as it seeks sanctions against plaintiff is denied. A court has the discretion to "award ... costs in the form of reimbursement for actual expenses" and/or impose financial sanctions for frivolous conduct. (*Ortega v. Rockefeller Ctr. N. Inc.*, 2014 N.Y. Misc. LEXIS 6079 at *4 [Sup. Ct. N.Y. Cnty. Oct. 3, 2014]). Conduct is frivolous if: "(1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) it asserts material factual statements that are false." *Id.* This determination is discretionary and the court denies defendants' motion seeking to impose sanctions against plaintiff as there is no basis to conclude that the commencement of this action was undertaken primarily to delay the resolution of litigation, or to harass or injure defendants. Accordingly, it is hereby

ORDERED that the motion (motion sequence number 001) of defendants, WE 2299 ACP, LLC, and Weissman Equities, LLC, to dismiss the complaint is granted and the complaint is dismissed in its entirety; and it is further

ORDERED that the clerk enter judgment accordingly dismissing the complaint, with prejudice, with costs and disbursements to defendants, as taxed by the clerk, upon submission by defendants of an appropriate bill of costs.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

6/12/2020
DATE


W. FRANC PERRY, 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