

Corazzini v Chung

2020 NY Slip Op 32991(U)

September 11, 2020

Supreme Court, New York County

Docket Number: 160377/2016

Judge: Kathryn E. Freed

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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. KATHRYN E. FREED **PART** **IAS MOTION 2EFM**

Justice

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INDEX NO. 160377/2016

KIM CORAZZINI, Individually, and
as m/n/g of REED CORAZZINI, an Infant,

Plaintiff,

MOTION SEQ. NO. 002

- v -

MICHAEL CHUNG, HANNAH YANG, and HOULIHAN
LAWRENCE AFFILIATES, LLC,

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79

were read on this motion to/for

AMEND CAPTION/PLEADINGS

In this toxic tort action, plaintiff Kim Corazzini (“Ms. Corazzini”), individually and as mother and natural guardian of Reed Corazzini (collectively “plaintiffs”), move, pursuant to CPLR 3025(b), to amend the complaint against defendants Michael Chung, Hannah Yang, and Houlihan Lawrence, Inc. i/s/h/a Houlihan Lawrence Affiliates, LLC (“HLI”) (collectively “defendants”) to add causes of action for fraudulent inducement and gross negligence. HLI opposes the motion. After consideration of the parties’ contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs allege that they were residential tenants in a property owned by defendants/landlords Michael Chung and Hannah Yang located at 92 Valley Steam Road, Rhinebeck, NY, where they were injured due to a bacterial contamination of their drinking water

and to mold. They further assert that HLI acted as a broker for the owners and rented the premises to Ms. Corazzini's boyfriend despite having knowledge of, and actively concealing, an unabated toxic condition on the premises that rendered it unfit for human habitation.

This action was commenced by the filing of a summons with notice on December 9, 2016. Doc. 1. On February 24, 2017, plaintiff filed a complaint alleging claims of negligence and failure to warn against defendants. Doc. 8.

In April 2017, HLI moved to dismiss the complaint pursuant to CPLR 3211. By order entered March 29, 2018, this Court granted the motion in part, dismissing the claims against HLI "except to the extent it sounds in fraudulent misrepresentation or fraudulent concealment." Doc. 38 at 3. This Court stated in the order that plaintiffs' "allegations *may* form the basis of an action for fraudulent concealment (emphasis added)." Doc. 38 at 2. Neither party moved to reargue the motion.

Plaintiff now moves, pursuant to CPLR 3025(b), to amend the complaint to assert a fifth cause of action, for fraudulent concealment, and a sixth cause of action, for gross negligence. Docs. 62-64. In support of the motion, plaintiff submits an attorney affirmation, a memorandum of law, and a proposed amended complaint. Docs. 63-64. In his affirmation in support, plaintiffs' counsel argues that "the facts as adduced during discovery of this matter firmly support the causes of action proposed to be added to the claims of the [p]laintiffs herein, and [d]efendants will not be suffering any prejudice from the granting of this motion." Doc. 63 at par. 5. In their memorandum of law, plaintiffs argue, inter alia, that:

Written discovery has been exchanged. A deeper investigation regarding [p]laintiff's causes of action have [sic] only recently been discovered. Specifically, [p]laintiff believes that [d]efendants were grossly negligent, carelessness [sic], fraudulent, reckless and blatantly disregarded any safety issues

concerning the [p]laintiff's health and well-being. Furthermore, it appears [d]efendants' actions were with a conscious violation of [p]laintiff's rights to safety. Defendants were grossly negligent by their failure(s) to actively take the care one would of his/her own property under the same and/or similar circumstances. Moreover, [d]efendants made a concerted effort to fraudulently conceal these dangerous and hazardous conditions [at the premises]. In addition the acts alleged were in furtherance of both [d]efendants' pecuniary interests in motivation, in utter and complete disregard for the health and well-being of [plaintiffs].

Doc. 64 at 4.

In opposition to the motion, defendants argue that the claims plaintiffs seek to add are without merit.

In reply, plaintiffs argue, inter alia, that defendants Chung and HLI's agent had actual knowledge of the defects in the premises.

LEGAL CONCLUSIONS:

It is well settled that Pursuant to CPLR 3025(b), a party may amend its pleading at any time by leave of court, and leave shall be freely given upon such terms as may be just. It is within the court's discretion whether to permit a party to amend its complaint. *See Peach Parking Corp. v 345 W. 40th Street, LLC*, 43 AD3d 82 (1st Dept 2007). “[L]eave will be denied where the proposed amendment lacks merit or would serve no purpose other than to ‘needlessly complicate and/or delay discovery and trial.’ *Verizon N.Y. Inc. v Consolidated Edison, Inc.*, 38 AD3d 391, 391 (1st Dept 2007).” *Cafe Lughnasa Inc. v A&R Kalimian LLC*, 176 AD3d 523, 523 [1st Dept 2019].

Plaintiffs' motion must be denied, since it is supported only by conclusory allegations contained in their attorney's affidavit. *See Marks v Radmin*, 163 AD2d 368, 369 (2d Dept 1990) (citations omitted). Despite the representation by plaintiffs' counsel that “a deeper

investigation” uncovered facts supporting the causes of action plaintiffs seek to add to the complaint, there is absolutely no discussion of the nature of the investigation or what facts it revealed. Thus, this Court, in its discretion, finds the proposed amendment to be without merit.

The ostensible fraudulent concealment claim set forth in the proposed amended complaint is also deficiently pleaded.¹ "A cause of action for fraudulent concealment requires, in addition to the four . . . elements (of fraud, i.e., material misrepresentation of fact, scienter, reasonable reliance, and damages), an allegation that the defendant had a duty to disclose material information and that it failed to do so". *P.T. Bank Cent. Asia, N.Y. Branch v ABN AMRO Bank N.V.*, 301 AD2d 373, 376 (1st Dept 2003). Here, plaintiffs merely allege, in two cursory paragraphs, that defendants knew about and concealed the defects in the premises, thereby causing them damages. Doc. 64 at pars. 28-29.

Nor has plaintiff properly pleaded a claim of gross negligence, which "is conduct that evinces a reckless disregard for the rights of others or 'smacks' of intentional wrongdoing." *Morgan Stanley Mtge. Loan Trust 2006-13ARX v Morgan Stanley Mtge. Capital Holdings LLC*, 143 AD3d 1, 8 (1st Dept 2016) (citations omitted). Although plaintiffs allege a “conscious disregard of [their] safety and rights” (Doc. 64 at par. 31), this is clearly not the same as reckless disregard.

The branch of the motion seeking to add a claim for gross negligence must be denied on another ground as well. Since it is proper to deny a plaintiff leave to amend his or her complaint to re-assert a cause of action which was previously dismissed (see *Dialcom, LLC v A T & T Corp.*, 50 AD3d 727, 728 [2d Dept 2008] [citation omitted]), it would clearly be improper to

¹ Plaintiffs represent that they filed the instant motion, inter alia, to “formalize” this cause of action. Doc. 70 at par. 2.

allow plaintiffs to assert a claim of gross negligence herein after their negligence claim was dismissed.

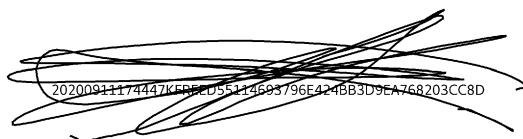
Therefore, in light of the foregoing, it is hereby:

ORDERED that the motion is denied in all respects: and it is further

ORDERED that the parties shall participate in a telephonic compliance conference on October 8, 2020 at 10:30 a.m., unless the parties, prior to that day, provide the court with a discovery stipulation by emailing it to jjudd@nycourts.gov to be so-ordered, leaving blank spaces for the compliance conference date and note of issue filing deadline; and it is further

ORDERED that if the parties cannot so stipulate, then they are to provide the court with a dial-in number and access code or must have all parties on the line and then patch the court in at (646) 386-5655; and it is further

ORDERED that this constitutes the decision and order of the court.

<u>9/11/2020</u> DATE	 KATHRYN E. FREED, J.S.C.			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE