

**Bartlett v California Leasing, LLC**

2020 NY Slip Op 33658(U)

September 25, 2020

Supreme Court, Queens County

Docket Number: 720609/2019

Judge: Leslie J. Purificacion

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9/28/2020  
10:50 AM

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

Part 39

COUNTY CLERK  
QUEENS COUNTY

-----X  
PATRICK BARTLETT,

Index No. 720609/2019

Plaintiff,

-against-

DECISION/ORDER

CALIFORNIA LEASING, LLC,

Motion Seq. # 1

Defendant.  
-----X

The following papers numbered 1-4 read on this motion by Defendant CALIFORNIA LEASING, LLC, to dismiss the complaint pursuant to CPLR§ 3211(a)(1) and (2) and (7).

N.M., Affs., Exhibits and Service.....

PAPERS  
NUMBERED  
1-4

Upon the foregoing papers it is ordered that this motion submitted without opposition is decided as follows:

Plaintiff commenced this action for "on going robbery of my document change paperwork for court & money \$300 to \$500 break stereo system Inadequate heat" (see Complaint at paragraph 2, eFiled document number 1) against Defendant by the filing of a summons and verified complaint on December 10, 2019. In his complaint Plaintiff further states that he "fill out an application regarding apartment for rent at broker's office. I ask for apartment for \$1,500 to \$1,600. The broker said I have one for \$1,800. I told the broker I would take it utility included. So I fill out application without checking utility. I wait one month for lease form C/O. After receive the lease Superintenden (sic) give me number call Conedison (sic) for service. So I return the lease to broker for changes."

Defendant California now moves to dismiss the complaint.

"A motion to dismiss pursuant to CPLR §3211(a)(1) will be granted only if the 'documentary' evidence resolves all factual issues as a matter of law, and conclusively disposes of the plaintiffs claim". The evidence submitted in support of such motion must be "documentary" or the motion must be denied.(Fontanetta v. John Doe 1, 73 A.D.3d 78, 83, 898 N.Y.S.2d 569; see Reid v. Gateway Sherman, Inc., 60 A.D.3d 836, 837, 875 N.Y.S.2d 254, 569).

It is well settled that the Supreme Court of the State of New York is the trial court of unlimited original jurisdiction; but generally hears cases that are outside the jurisdiction of other trial courts of more limited jurisdiction. As a court of original, unlimited, and unqualified jurisdiction, the New York State Supreme Court is vested with general original jurisdiction and is competent to entertain almost all causes of action. N.Y. Const. art. 6, § 7. There are two categories of original jurisdiction the New York State Supreme Court lacks; 1) cases in which the federal constitution or an act of Congress confers exclusive jurisdiction on the federal courts and 2) actions against the State of New York where jurisdiction is conferred exclusively on the Court of Claims. U.S. Const. art. VI; N.Y. Const. art. 6, § 7; 28 U.S.C.A. §§ 1334, 1338(a). Contrary to Defendant's assertion that the Court lacks subject matter jurisdiction pursuant to CPLR §3211(a)(2) based on the amount Plaintiff seeks, the Court has subject matter jurisdiction over the amounts in question in the instant matter.

In determining whether a complaint is sufficient to withstand a motion to dismiss pursuant to CPLR §3211(a)(7), the sole criterion is whether the pleading states a cause of action (*Cooper v 620 Prop. Assoc.*, 242 AD2d 359, citing *Weiss v Cuddy & Feder*, 200

AD2d 665). If from the four corners of the complaint factual allegations are discerned which, taken together, manifest any cause of action cognizable at law, a motion to dismiss will fail (*511 West 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, *Cooper, supra*, 242 A.D.2d). The court's function is to "accept ... each and every allegation forwarded by the plaintiff without expressing any opinion as to the plaintiff's ability ultimately to establish the truth of these averments before the trier of the facts" (*Cooper*, 242 AD2d, *quoting 219 Broadway Corp. v Alexander's, Inc.*, 46 NY2d 506). Furthermore, the pleading is to be liberally construed and the pleader afforded the benefit of every possible favorable inference (*511 West 232nd Owners Corp.*, *supra*).

In the instant matter, the court has reviewed the verified complaint and finds that it fails to set forth a cause of action against California.

Plaintiff's conclusory statement "\$300-\$500 break stereo system" is insufficient to support an allegation against Defendant and is not cognizable by the Court.

Plaintiff's conclusory statement of "insufficient heat" is not enough to support an allegation against Defendant and is not cognizable by the Court.

In addition, California presents as part of its motion, the Lease, signed on each page by Plaintiff. The Lease states in Article 3, entitled "Rent", "Your monthly rent for the apartment is 1,835.90 until adjusted pursuant to Article 4 below." The Lease states in Article 4, entitled "Rent Adjustments": "The rent herein shall be adjusted up or down during the Lease term, including retroactively, to conform to the Rent Guidelines." The Lease states in Article 13, entitled "Services and Facilities" in section B: "The following utilities are included in the rent None".

The Plaintiff in his complaint confirms that he was told by the broker that the apartment was \$1,800, that Plaintiff signed the lease and Plaintiff did so "without checking utility".

Plaintiff's admitted knowledge of the amount of the rent and his admitted failure to read the Lease provisions do not form a basis for an "on going robbery" of the Lease so as to reconstruct the Lease and is not cognizable by the Court.

Accordingly, the motion is granted and the complaint is dismissed.

This is the decision and order of the court.

Date:

9/25/20



Hon. Leslie J. Purificacion, J.S.C.

**FILED**

**9/28/2020  
10:50 AM**

**COUNTY CLERK  
QUEENS COUNTY**