

Tcharnyi v Mendez

2021 NY Slip Op 34061(U)

November 12, 2021

Supreme Court, Westchester County

Docket Number: Index No. 55599/2021

Judge: Terry Jane Ruderman

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
ILIA TCHARNYI,

Plaintiff,

DECISION AND ORDER

-against-

Index No. 55599/2021
Motion Sequence No. 2

ZUJEILY M. MENDEZ, CHRISTINA N. MENDEZ, and
MICHAEL J. KOPCHO,

Defendants.
-----X

RUDERMAN, J.

The following papers were considered in connection with the motion by defendants Zujeily Mendez, Christina N. Mendez, and Michael J. Kopcho, for an order dismissing the complaint pursuant to CPLR 3211 (a) (7):

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Affirmation	1
"Response," Affirmation in Opposition, Exhibits 1 - 4	2
Reply Affirmation	3
Sur-Reply Affidavit ¹	4

The complaint in this action alleges that plaintiff Ilia Tcharnyi is a landlord of the premises know as 22 Alder Street, in Yonkers, New York, and that apartment 1S was rented to defendant, Zujeily M. Mendez; defendant Michael Kopcho was allegedly a guarantor for Zujeily M. Mendez. It is alleged in the complaint that defendants made false statements to other tenants and to

¹ Because sur-replies are not permitted without permission and without basis, this submission is relied on only to the extent that it serves to retroactively swear to the unsworn assertions in the Affirmation in Opposition.

the public about conditions in the building, advised other tenants not to pay rent, and posted signs on the windows of their apartment so that they could be seen by the public, which signs read, "Stop! If looking to rent!!! Speak to tenants about current situation!!!" The complaint's causes of action sound in defamation and libel.

In moving to dismiss the complaint, defendants contend that plaintiff's action amounts to a strategic lawsuit against public participation (a "SLAPP suit") which must be dismissed pursuant to Civil Rights Law §§ 70-a, 76-a and CPLR 3211 (a) (7). They further maintain that the complaint fails to specify any misconduct by defendants Christina Mendez or Michael Kopcho.

In opposition, plaintiff-landlord describes his experience of defendant Mendez repeatedly making unfounded complaints about water leaks in her apartment, and convincing other tenants to stop paying rent and to falsely complain about non-existent leaks and toxic mold. Plaintiff emphasizes a lack of any findings in support of Mendez's claims, as well as a determination by the New York State Division of Housing and Community Renewal's Office of Rent Administration, denying Mendez's rent reduction application upon an inspection and findings of, inter alia, "no evidence of cascading water" in the kitchen and bathroom. Plaintiff also claims that defendant Mendez and the tenant coalition she formed "vandalized backstairs walls; threw garbage all over the backyard; and broke household equipment," and that when he listed the building for sale, they vandalized vacant units and ruined the locks with Crazy Glue, and made false accusations to prospective buyers of the building to sabotage the possibility of any reasonable offers.

Discussion

"Civil Rights Law § 76-a was enacted to provide special protection for defendants in actions arising from the exercise of their rights of public petition and participation by deterring SLAPP actions" (*International Shoppes, Inc. v At the Airport, LLC*, 131 AD3d 926, 928-929 [2d

Dept 2015]). Civil Rights Law § 76-a, as amended effective November 10, 2020, applies to “action[s] involving public petition and participation,” defined as legal claims based on “(1) any communication in a place open to the public or a public forum in connection with an issue of public interest; or (2) any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, or in furtherance of the exercise of the constitutional right of petition.” It defines “an issue of public interest” broadly, as “any subject other than a purely private matter” (§ 76-a 1] [d]). Defendants argue that the communication that plaintiff complains of in this action, which was posted in connection with a landlord-tenant dispute, is not a “purely private” matter, since allegations of landlord wrongdoing would be of legitimate interest to a potential renter.

Section 76-a heightens the standards by which to judge a complaint that falls within the statute’s broad parameters, by specifying that in such an action, “damages may only be recovered if the plaintiff, in addition to all other necessary elements, shall have established by clear and convincing evidence that any communication which gives rise to the action was made with knowledge of its falsity or with reckless disregard of whether it was false, where the truth or falsity of such communication is material to the cause of action at issue” (Civil Rights Law § 76-a [2]). Additionally, in an action to which the anti-SLAPP law applies, “the party responding to the motion [must] demonstrate[] that the cause of action has a substantial basis in law” (CPLR 3211 [g]).

While the affirmation of defendants’ attorney makes the case for this action being treated as a SLAPP suit brought by a landlord unhappy that tenants are making their complaints public, plaintiff paints an entirely different picture. He portrays a tenant making repeated and ongoing false claims regarding the condition of her rented premises, and affirmatively causing damage, while convincing other tenants to join her, thereby avoiding the obligation to pay rent while

eventually convincing the landlord to pay an extortionate cash settlement in exchange for their vacating the premises. Unlike defendants' contentions, plaintiff's claims find some support in the evidentiary materials submitted as exhibits to his opposition papers.

While some actions can clearly be determined, from their essential nature, to be SLAPP suits (see e.g. *National Fuel Gas Distrib. Corp. v PUSH Buffalo [People United for Sustainable Hous.]* 104 AD3d 1307 [4th Dept 2013]), here, plaintiff's submissions call into doubt defendants' characterization, precluding such a determination at this juncture (see e.g. *International Shoppes v At the Airport*, 131 AD3d at 928). Rather than a lawsuit brought in order to cow a tenant group that is expressing legitimate concerns, plaintiff's submissions describe a basis for a valid action by an individual building owner, for damages and injunctive relief, based on malicious falsehoods and targeted sabotage orchestrated against plaintiff personally, by defendant Mendez.

In any event, dismissal is not warranted because plaintiff has provided a sufficiently clear and convincing evidentiary basis supporting a finding that the complained-of communication was made with knowledge of its falsity or with reckless disregard of whether it was false" (see Civil Rights Law § 76-a [2]), and that plaintiff's causes of action have a substantial basis in law and fact (see CPLR 3211 [g]; see generally *National Fuel Gas Distrib. v PUSH Buffalo*, 104 AD3d at 1309). This Court rejects defendants' argument that the content of the tenants' signs is not defamatory as a matter of law; a reasonable reader could infer that the person who prepared and posted the sign has knowledge of facts, not disclosed to the audience, which support the inference that conditions in the building violate the tenants' rights (see *Gross v New York Times Co.*, 82 NY2d 146, 153-154 [1993], citing *Steinhilber v Alphonse*, 68 NY2d 283, 290 [1986]). Assertions to others that water was cascading into her apartment, and that there was toxic mold in the apartment, are not expressions of opinion, but statements of fact, and if they are entirely unfounded and caused injury

to plaintiff, they may be actionable.

Finally, since the complaint employs the plural in its allegation that “defendants” made the subject verbal and/or written false statements, the failure to name each individual defendant in these allegations does not in itself present grounds to dismiss the complaint as against any of the defendants.

Accordingly, it is hereby

ORDERED that defendants’ motion for an order dismissing the complaint is denied, and it is further

ORDERED that the parties are directed to appear in the Compliance Conference Part on a date and in a manner of which they will be notified by that Part.

This constitutes the Decision and Order of the Court.

Dated: White Plains, New York
November 12, 2021


HON. TERRY JANE RUDERMAN, J.S.C.