

Haider v Jurman

2022 NY Slip Op 30086(U)

January 12, 2022

Supreme Court, New York County

Docket Number: Index No. 154043/2021

Judge: William Perry

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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. WILLIAM PERRY PART **23**

Justice

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INDEX NO. 154043/2021

SHABAB HAIDER, CUREXLAB, INC, TEACHERIX, INC,

MOTION DATE 07/21/2021

Plaintiffs,

MOTION SEQ. NO. 002

- v -

ASHLEY JURMAN, EDEN HOSPITALITY GROUP,
LLC, CITY OF NEW YORK POLICE DEPARTMENT,
MICHAEL TODD MUELLER, ESQ., MUELLER LAW FIRM,
P.C., JOHN DOE, JANE DOE, XYZ CORP.

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57

were read on this motion to/for DISMISS

Plaintiff Shabab Haider alleges that his neighbor, Defendant Ashley Jurman, illegally accessed and ransacked his apartment due to a typographical error made in an April 2, 2021 New York County Housing Court decision which incorrectly stated that Jurman was granted immediate possession of Plaintiff's apartment, in addition to her own unit within the same building which was the subject of the housing court proceeding.

In motion sequence 002, Jurman moves to dismiss. Plaintiff opposes and cross-moves for leave to amend the complaint by adding two additional Defendants, Police Officers William Sproat and John Doe, and by supplementing certain factual allegations. Jurman has failed to file a reply or opposition to the cross-motion.

Background

Plaintiff and Jurman both reside at 104 East 36th Street, New York, NY 10016, with Plaintiff being the tenant of Unit 4 and Jurman being the tenant of Unit 2. Plaintiff submits

documentation indicating that he signed an initial two-month lease for Unit 4 on February 7, 2021 and an additional two-and-a-half month extension on April 10, 2021, both of which were also signed by nonparty Patricia Taub as the unit's landlord. (NYSCEF Doc No. 51.)

Jurman and nonparty Geylin Diaz were involved in litigation before the New York County Housing Court under index number LT-300268-21/NY, *Eden Hospitality Group¹ and Ashley Jurman v Geylin Diaz*, regarding the allegedly illegal lockout of Jurman from Unit 2. On April 2, 2021, Housing Court issued a decision and order in Jurman's favor, but erroneously stated in the decretal that Jurman was to be awarded possession of "Unit 2 and Unit 4". (NYSCEF Doc No. 53, Decision, at 1.)² However, the text of the Decision itself clearly pertained only to Unit 2, as evidenced by the "Conclusion" section, which stated that "Petitioner shall be restored to possession of the subject premises, 104 East 36th Street, Unit 2, New York, New York." (*Id.* at 13.)

Plaintiff alleges that while he was out of town on or about April 7-9, his landlord notified him that the front door of his apartment was open and that the apartment appeared to have been ransacked and used as a location for a party, as evidenced by empty bottles of alcohol. (NYSCEF Doc No. 1, Complaint, at ¶¶ 18-21.) Upon returning to the apartment on April 10, Plaintiff alleges that the apartment was in a general state of disarray, his mail had been opened, and that certain documents and flash drives of co-Plaintiffs Curexlab and Teacherix, which contained sensitive intellectual property, trade secrets, and confidential health records of 600 individuals, had been stolen. (*Id.* at ¶¶ 21-25.) Plaintiff alleges that after calling NYPD, they informed him that they had assisted Jurman in drilling the locks to Unit 4 pursuant to the Decision which Jurman had

¹ Jurman is a principal of Eden Hospitality Group ("Eden") and allegedly used Unit 2 as its business address.

² The text of the Decision itself clearly pertained only to Unit 2, as evidenced by the "Conclusion" section, which stated that "Petitioner shall be restored to possession of the subject premises, 104 East 36th Street, Unit 2, New York, New York." (Decision at 13.) On April 14, 2021, Housing Court issued an amended decision and order clarifying that Jurman was only to be awarded possession of Unit 2." (NYSCEF Doc Nos. 55, 56.)

provided to them. (*Id.* at ¶¶ 26-27.) Plaintiff also alleges that he confronted Jurman, who stated that she had entered Unit 4 and removed certain items because she thought that Geylin Diaz had resided there. (*Id.* at ¶¶ 33-34.) Plaintiff set up cameras in his apartment and alleges that on April 17, 2021, Jurman “ordered” several individuals to enter Unit 4 “for the purpose of having sex” and submits screenshots of the surveillance video in support. (*Id.* at ¶¶ 35-37; NYSCEF Doc No. 8, Photos.)

On April 27, 2021, Plaintiff commenced this action against Defendants Jurman, Eden, and the New York Police Department,³ setting forth causes of action for trespassing, conversion, damage to property, fraud (Jurman), negligence (NYPD), intentional infliction of emotional distress, forcible/unlawful entry, injunctive relief, negligence, and attorneys’ fees.

Jurman and Eden move to dismiss the complaint as against them for failure to state a claim, essentially arguing that Jurman cannot be liable in tort because she had permission to enter Unit 4 from the Housing Court and the NYPD. (NYSCEF Doc No. 45, Defs.’ Memo, at 4.)

Plaintiff opposes the motion and cross-moves to add Police Officer William Sproat as a Defendant and to supplement certain factual allegations, namely, by alleging that Jurman “is engaging in or facilitating acts of human trafficking and prostitution in the Building,” that “the NYPD is aware ... and is permitting the same” because “Jurman has ‘boys’ in the [NYPD’s Seventeenth Precinct.” (NYSCEF Doc No. 57, Proposed Am. Complaint, at ¶¶ 45, 49, 51.) The cross-motion is unopposed.

Discussion

On a pre-answer motion to dismiss a complaint for failure to state a cause of action, pursuant to CPLR 3211 [a] [7], “the court should accept as true the facts alleged in the complaint,

³ Plaintiff discontinued the action as against Michael Todd Mueller, Esq., and Mueller Law Firm PC, which represented Jurman in the Housing Court action. (NYSCEF Doc No. 59.)

accord plaintiff the benefit of every possible inference, and only determine whether the facts, as alleged, fit within any cognizable legal theory.” (*Frank v DaimlerChrysler Corp.*, 292 AD2d 118, 121 [1st Dept 2002].) However, “factual allegations that do not state a viable cause of action, that consist of bare legal conclusions, or that are inherently incredible or clearly contradicted by documentary evidence are not entitled to such consideration.” (*Skillgames, LLC v Brody*, 1 AD3d 247, 250 [1st Dept 2003].)

Here, at this stage in the litigation, the complaint sufficiently sets forth allegations to withstand the motion to dismiss. Jurman’s central argument in support of dismissal is that she had legal permission to enter Unit 4 based on the language of the Decision and thus cannot be liable to Plaintiff in tort. (Def.’s Memo at 4, 5, 7.) However, Jurman’s argument strains credulity and is unavailing, as the subject of the underlying Housing Court litigation was the repossession of Unit 2, the apartment which Jurman claimed she had resided in. Additionally, the Housing Court made clear that “any action taken pursuant to the issuance of the mistaken judgment is a nullity[.]” (NYSCEF Doc No. 55.) As such, the motion is denied in its entirety.

Finally, Plaintiff’s unopposed cross-motion to amend the complaint is granted, as the amendment is not palpably insufficient or patently devoid of merit. (*McElroy v Mercer Health & Benefits LLC*, 2020 WL 2066336, at *1 [Sup Ct, NY County 2020].) As such, it is hereby

ORDERED that Defendants Ashley Jurman and Eden Hospitality Group’s motion sequence 002 to dismiss the complaint is denied, and it is further

ORDERED that Plaintiff’s motion for leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that Defendants shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service.

1/12/22
DATE


WILLIAM PERRY, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE