

Anderson v Akam Assoc., Inc.
2022 NY Slip Op 32304(U)
July 14, 2022
Supreme Court, New York County
Docket Number: Index No. 159765/2021
Judge: Lyle E. Frank
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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CHARLOTTE ANDERSON,
Plaintiff,

INDEX NO. 159765/2021

MOTION DATE 03/10/2022

MOTION SEQ. NO. 001

- v -

AKAM ASSOCIATES, INC., SUTTON APARTMENTS CORPORATION, THE BOARD OF MANAGERS OF THE SUTTON CONDOMINIUM, BRADHURST 100 DEVELOPMENT LLC, DUVERNAY & BROOKS LLC, DUVERNAY SUTTON LLC, JONI BROOKS, PENNROSE PROPERTIES, LLC, RICHARD BARNHART, MARK DAMBLY, MAGNUSSON ARCHITECTURE & PLANNING, PC, WEST MANOR CONSTRUCTION CORP.

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49 were read on this motion to/for DISMISS.

Upon the foregoing documents, Defendants' Bradurst 100 Development LLC, Duvernay + Brooks LLC, Duvernay Sutton LLC and Pennrose Properties, LLC (collectively, the "Sponsor Defendants") motion to dismiss plaintiff's complaint and for sanctions is granted in part¹. Plaintiff's cross-motion for a leave to amend pleadings to include new claims against all defendants pursuant to CPLR §3025(b) is denied².

Statute of Limitations

The statute of limitations for claims alleging breach of contract and breach of the warranty of habitability is six years. See CPLR § 213(2); See Witherbee Court Assoc. v Greene,

¹ The Court would like to thank Olivia McCann for her assistance in this matter.

² The plaintiff's claim alleging breach of the covenant of quiet enjoyment against the sponsor defendants has been discontinued.

7 AD3d 699, 700-701 (2d Dep't 2004). It is well-settled that claims arising from defective construction or breach of a construction related contract accrue upon completion of the services or the completion of the actual physical work. See *Cabrini Medical Center v Desina*, 64 NY2d 1059, 1061 (1985); *Bayridge Air Rights Inc. v Blitman Construction Corp.*, 160 AD2d 589 (1st Dep't 1990); *Forest Medical Professional Condominium v Tiburzi*, 214 A.D.2d 962 (4th Dep't 1995).

Here, a temporary Certificate of Occupancy was issued on May 31, 2007. The Court finds that the statute of limitations on any claims alleging breach of contract or breach of the warranty of habitability began to accrue in 2007, thus had expired prior to the action being filed. Therefore, the plaintiff's claims against the sponsor defendants are time-barred.

The Court does not find any merit to invoking the Continuing Wrong Doctrine. The Continuing Wrong Doctrine is an exception to the general rule that the statute of limitations runs "from the time of the breach though no damage occurs until later" and "is usually employed where there is a series of continuing wrongs and serves to toll the running of a period of limitations to the date of the commission of the last wrongful act." *Henry v Bank of Am.*, 147 AD3d 599, 601 (1st Dep't 2017) (internal citation and citation omitted) (quotation marks omitted). The doctrine "may only be predicated on continuing unlawful acts and not on the continuing effects of earlier unlawful conduct. *Id.*

Here, Plaintiff's claims are predicated upon a breach of an offering plan between the sponsors of the offering and the unit purchasers that has purportedly had "continuing effects". The Court also finds that no privity of contract exists between the Sponsor Defendants and plaintiff that would serve as the necessary foundation for many of the plaintiff's claims against the sponsor defendants.

Similarly, the Court does not find any merit to the plaintiff's argument that a three-year statute of limitations should apply to provide for a remedy in torts. Case law indicates that such an argument is concerned with negligence claims against the contractor defendant and not claims against the sponsor defendants. See *Gordon v Bd. of Mgrs. of 18 E. 12th St. Condominium*, 35 Misc.3d 1241(A), aff'd, 102 AD3d 521 (1st Dep't 2013); *Pub. Svc. Mut. Ins. Co. v 341-347 Broadway LLC*, 96 AD3d 473 (1st Dep't 2012); *IFD Constr. Corp. v. Corddry Carpenter Dietz & Zack*, 253 AD2d 89 (1st Dep't 1996); *Ellington Owners Corp. v. 200 Bradhurst Developers, LLC*, No. 155143/2018, 2019 WL 5150275 (Sup. Ct., N.Y. Cnty. Oct. 9, 2019), aff'd, 190 AD3d 550 (1st Dep't 2021). Furthermore, the Court notes that in the Ellington case, the New York Supreme Court Commercial Division Justice O. Peter Sherwood dismissed many similar claims asserted against the sponsor defendants as untimely. Accordingly, the Court is inclined to follow the traditional six-year statute of limitations for claims arising breach of contract or breach of the warranty of habitability.

Sanctions

Moving defendants seek sanctions against the plaintiff on the grounds that the initiation of this action was frivolous.

22 N.Y.C.R.R. § 130-1.1(a) states in part that "the court, in its discretion, may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct as defined in this Part, which shall be payable as provided in section 130-1.3 of this Subpart." The Court declines to impose sanctions in this matter against plaintiff as the Court does not find that plaintiff acted with malice or with the intent to harass the defendants. The Court recognizes that plaintiff is an unrepresented litigant and declines to punish plaintiff for her interpretation of the applicable law.

Plaintiff's Cross Motion

The Court denies the plaintiff's motion to amend because the proposed amendments will not cure the defects in the complaint relating to the statute of limitations. Thus, the proposed amendment would be futile against all defendants.

Condo Defendant's Opposition

The Court declines to make any findings as to the merits of defendants', Akam Associates, Inc., Sutton Apartments Corporation a/k/a The Sutton Apartments Corporation, and The Board of Managers of the Sutton Condominium (collectively, the "Condo Defendants"), crossclaims against the sponsor defendants at this time. The sponsor defendants' motion was filed prior to the condo defendants' filing its answer and appearing in this matter. The condo defendants' answer contains crossclaims against the sponsor defendants for common law indemnity, contribution, contractual indemnity, and breach of contract. Such claims are not the subject of the current motion, thus will not be addressed. As such, although plaintiff's direct claims against the sponsor defendants are dismissed the crossclaims asserted by the Condo defendants remain. Accordingly, it is hereby

ORDERED that Defendant's motion to dismiss is granted as to Plaintiff's claims against the sponsor defendants and denied as to Defendants' motion for sanctions; and it is further

ORDERED that Plaintiff's cross motion to amend is denied.


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LYLE E. FRANK, J.S.C.

7/14/2022

DATE

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