

St. Anthony Hall of N.Y. Inc. v Barnard Coll.
2022 NY Slip Op 33732(U)
October 31, 2022
Supreme Court, New York County
Docket Number: Index No. 153016/2022
Judge: Lori S. Sattler
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 02TR

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ST. ANTHONY HALL OF NEW YORK INC.

INDEX NO. 153016/2022

Plaintiff,

MOTION DATE 08/19/2022

- v -

BARNARD COLLEGE,

MOTION SEQ. NO. 002

Defendant.

**DECISION + ORDER ON
MOTION**

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HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23

were read on this motion to/for DISMISSAL.

In this action for trespass and nuisance, defendant Barnard College (“Defendant”) moves to dismiss the Complaint as time-barred pursuant to CPLR 3211(a)(5) and § 214. Plaintiff St. Anthony Hall of New York Inc. (“Plaintiff”) opposes the motion.

This action arises out of alleged water infiltration onto Plaintiff’s property from Defendant’s property. According to the Complaint, Plaintiff owns the parcel at 434 Riverside Drive, New York, New York (“the St. Anthony Parcel”) and the building located thereon (“the St. Anthony Building”). Defendant owns an abutting parcel located at 620 West 116th Street (“the Barnard Parcel”) and the building located thereon (“the Barnard Building”). Plaintiff alleges that the two parcels abutted each other at all relevant times, with the easterly property line of the St. Anthony Parcel adjoining the southerly portion of the Barnard Parcel’s westerly property line. The ground level of the St. Anthony Parcel is lower than that of the Barnard Parcel.

According to the Complaint, the Barnard Building was constructed in or around 1920 and was subsequently used as a dormitory. Plaintiff alleges that the Barnard Building has had a concrete deck at its rear such that it abutted the St. Anthony Parcel at an elevation above the St. Anthony Parcel's ground level. Furthermore, Plaintiff maintains that the Barnard Building has had a water drainpipe system since the time of its construction and that the system evacuated water from the roof and concrete deck of the Barnard Building, "away from the St. Anthony Parcel" (NYSCEF Doc. No. 14, Complaint ¶ 11). However, the concrete deck has "deteriorated, developed major cracks, and buckled" due to Defendant's alleged failure to maintain the water drainpipe system in the Barnard Building such that there is now a "several-inch-wide channel" on the southerly border of the concrete deck (*id.* ¶¶ 13-14). The flow of the water from the Barnard Parcel has allegedly deviated from its original course as a result and now flows onto the St. Anthony Parcel and into the St. Anthony Building (*id.* ¶ 14-15). Plaintiff specifically alleges that water from the Barnard Parcel has been "funneled and forced against the exterior, westerly foundation wall of the St. Anthony Building" and caused to enter and damage the St. Anthony Building (*id.* ¶ 17).

As a consequence of the alleged water damage to the St. Anthony Building, Plaintiff notified Defendant about the water infiltration and provided Defendant with an engineer's report dated December 26, 2019 detailing the alleged source and damage of the infiltration. According to Plaintiff, Defendant "has done nothing to eliminate the condition." Finally, Plaintiff alleges that this condition is continuing and that rainwater and snowmelt continue to drain onto the St. Anthony Parcel from the Barnard Parcel.

Plaintiff commenced this action on April 7, 2022 by filing the Summons and Complaint. The Complaint asserts four causes of action. In the first three causes of action, Plaintiff seeks

damages in excess of \$2.6 million for negligence, nuisance, and trespass, respectively. In its fourth cause of action, Plaintiff seeks an injunction to compel Defendant to stop the infiltration of water onto the St. Anthony Parcel.

In support of its motion to dismiss, Defendant argues that the allegations in the Complaint are time-barred because the alleged damage to Plaintiff's property became apparent more than three years before the action was commenced. Defendant asserts that the statute of limitations for a property damage claim accrues when the damage becomes apparent, even in cases where the damage gets progressively worse. In opposition, Plaintiff argues that the Complaint was timely filed because each separate instance of water infiltration gives rise to a separate cause of action for damages and that the three-year limitation period for damages does not apply to a claim for injunctive relief for the abatement of a continuing tort.

“On a motion to dismiss a cause of action pursuant to CPLR 3211(a)(5) on the ground that it is barred by the statute of limitations, the defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired” (*Benn v Benn*, 82 AD3d 548 [1st Dept 2011], quoting *Island v ADC, Inc. v Baldassano Architectural Group, P.C.*, 49 AD3d 815, 816 [2d Dept 2008] [internal quotation marks omitted]). Furthermore, the “court must take the allegations in the complaint as true and resolve all inferences in favor of the plaintiff” when considering a motion to dismiss pursuant to CPLR 3211(a)(5) (*id.*). The statute of limitations for an action to recover damages for property damage is three years and begins to run at the time the damage becomes apparent (CPLR § 214[4]; *see, e.g., Americon Constr., Inc. v Cirocco & Ozzimo, inc.*, 205 AD3d 568, 569 [1st Dept 2022]; *Pub Serv. Mut. Ins. Co. v 341-347 Broadway, LLC*, 96 AD3d 473, 474 [1st Dept 2012]).

Defendant’s motion is denied. It is well-established that recurring instances of property damage give rise to successive causes of action for trespass, negligence, and private nuisance (see *Bloomingtons, Inc. v New York City Tr. Auth.*, 13 NY3d 61, 66 [2009], citing *509 Sixth Ave. Corp. v New York City Tr. Auth.*, 15 NY2d 48 [1964]). Here, Plaintiff alleges that the water infiltration onto its property is “continuing” with “rainwater and snow melt [continuing] to drain from the Barnard Parcel onto and into the lowest level of the St. Anthony Building” and that Defendant has failed to remediate this condition (Complaint ¶¶ 18-19). The alleged recurrence of water infiltration from the Barnard Parcel onto the St. Anthony Parcel gives rise to successive causes of action for damages at the time each of infiltration allegedly became apparent. Plaintiff therefore timely commenced this action.

Accordingly, it is hereby:

ORDERED that the motion to dismiss is denied; and it is further

ORDERED that Defendant is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a preliminary conference via Microsoft Teams on January 24, 2023 at 10:00 AM.

10/31/2022
DATE



LORI S. SATTLER, 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"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE