

Lana LLC v Coffie

2022 NY Slip Op 34995(U)

December 21, 2022

Supreme Court, Kings County

Docket Number: Index No. 515532/2015

Judge: Devin P. Cohen

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Supreme Court of the State of New York
County of Kings

Index Number 515532/2015
Seq. 007, 009, 010, and 011

Part 91

LANA LLC,

Plaintiff,

against

LUCON COFFIE, CLAIRE ST. LOUIS, JOHN DOE AND
CAROL ST. LOUIS,

Defendants.

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Papers Numbered

Notice of Motion and Affidavits Annexed 4
Order to Show Cause and Affidavits Annexed
Answering Affidavits
Replying Affidavits
Exhibits
Other

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Upon the foregoing papers, plaintiff’s motion to dismiss the defendants’ counterclaims (Seq. 007) and cross-motion for sanctions and costs (Seq. 010) and defendants’ cross-motion for sanctions (Seq. 009) and motion to dismiss and to amend the answer (Seq. 011) are decided as follows:

Introduction

This action was commenced by the filing of a summons and complaint on December 23, 2015. The defendants interposed a verified answer with counterclaims on February 15, 2016. The plaintiff filed a response to the defendants’ counterclaims on February 26, 2016. Lana LLC (“Lana”) is the corporate owner of a residential building located at 1581 President Street, Brooklyn, NY. The gravamen of the plaintiff’s complaint is that Lucon Coffie, a rent stabilized tenant, entered into an unauthorized sub-lease and prevented Lana from entering the premises and making necessary repairs. Specifically, the plaintiff seeks a declaratory judgment that Mr. Coffie breached the lease; damages for unpaid rent, unauthorized subletting or assigning, and intentional infliction of emotional distress; and attorney’s fees. The defendants asserted counterclaims for breach of the warranty of habitability pursuant to RPL § 235-b and attorney’s

fees pursuant to RPL § 234 for various violations.

Approximately ten months before commencing the instant action, the plaintiff served defendants Lucon Coffie and Claire St. Louis with a notice of eviction, and thereafter commenced a holdover proceeding in Kings County Housing Court with the same caption as this action. That action bears the index number 63180/2015 and is herein referred to as “the Housing Court action.” On February 3, 2020, Judge Cheryl J. Gonzalez issued an order after trial which, *inter alia*, granted Lana LLC’s petition for eviction and denied the respondents’ counterclaims for attorney’s fees.

In December 2020, the plaintiff moved to preclude the defendants in this action for failure to provide various discovery disclosures. Justice Lawrence Knipel issued an order on January 13, 2021, directing the defendants to comply with the plaintiff’s discovery demands. That order clearly includes self-executing language that “failure to comply . . . will result in the non-complying party being precluded from offering evidence.” There is no evidence in the record that that order was appealed or that any motions to reargue that motion were made.

Analysis

Lana LLC’s Motion to Dismiss and the Competing Cross-Motions for Sanctions

The plaintiff moves to dismiss the defendants’ counterclaims pursuant to CPLR 3211 (a) (6),¹ which governs dismissal of “non-interposable” counterclaims. As the plaintiff has already filed a responsive pleading to the defendants’ counterclaims and did not preserve this argument, motions pursuant to this sub-section are untimely (CPLR 3211 [e]). The plaintiff’s motion also fails on the merits, as the plaintiff does not argue that the defendants’ counterclaims are non-

¹ The plaintiff’s notice of motion states that dismissal is pursuant to “CPLR § 3211 (6),” which does not exist. It can be inferred, however, based on the rule and the plaintiff’s arguments that subsection (a) of CPLR 3211 must have been intended.

interposable (*see Ehrlich v American Moninger Greenhouse Manufacutring Corp.*, 26 NY2d 255 [1970] [doctrine of non-interposition is limited to counterclaims against plaintiff in an improper capacity or claims precluded by contract]).

However, the defendants' opposition to the plaintiff's motion responds exclusively to the merits of the motion. Given the procedural posture of this case, the briefing which "[laid] bare the parties' proof," and the oral argument of these motions which addressed the merits and substance of the parties' arguments, the parties appear to have been "deliberately charting a summary judgment course" (*Hendrickson v Philbor Motors, Inc.*, 102 AD3d 251, 259 [2012]). On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

The plaintiff satisfies its burden to make a prima facie case by pointing to Justice Knipel's self-executing discovery order and arguing, in light of the defendants' admitted failure to comply with that order, they will be incapable of supporting their counterclaims at the time of trial. In response, the defendants argue that the plaintiff improperly sought discovery in this action because the Housing Court action has a claim preclusion effect on this action. Accordingly, defendants implore the court to deny the plaintiff's motion as, they contend, the discovery order issued by Justice Knipel was improperly obtained, and to impose sanctions on the plaintiff for its conduct.

Justice Knipel's order is the law of the case in this action and it became "absolute" when the defendant failed to comply with its requirements (*see Gibbs v St. Barnabas Hosp.*, 16 NY3d

74, 83 [2010]). That order was neither appealed nor reargued, and it is clear about the consequences of failure to comply with the discovery schedule provided. The defendants do not deny their failure to abide by Justice Knipel's order, instead arguing that the order was improperly issued. While that argument may have been properly made either to the Appellate Division or on a motion for re-argument, it is inapplicable here. The plaintiff has demonstrated as a matter of law that the defendants cannot provide evidence to establish their counterclaims, and the counterclaims are hereby dismissed. Both parties' cross-motions for monetary sanctions are denied as nothing in the record indicates sufficiently egregious conduct to warrant such a drastic remedy (*see Novick v DeRosa*, 51 AD3d 885 [2d Dept 2008]).

The Defendants' Cross-Motion to Dismiss

“Under res judicata, or claim preclusion, a valid final judgment bars future actions between the same parties on the same cause of action. . . . As a general rule, once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy” (*Parker v Blauvelt Volunteer Fire Co., Inc.*, 93 NY2d 343 [1999]). “The doctrine of res judicata does not apply where the remedy that the plaintiff seeks in the subsequent proceeding was unavailable to the litigant in the prior proceeding” (*Singh v New York State Division of Human Rights*, 186 AD3d 1694, 1695 [2d Dept 2020]). Kings County Civil Court, Housing Division, is a court of limited jurisdiction with authority “over summary proceedings to recover possession of real property located within the city of New York, to remove tenants therefrom, and to render judgment for rent due without regard to amount” (NY City Civil Court Act § 204).

Arguing that the plaintiff's claims are precluded by the final determination issued in the Housing Court action, the defendants seek dismissal of each of the plaintiff's causes of action: (i)

a declaratory judgment that the named respondents failed to provide the landlord access to the rented premises in violation of the Rent Stabilization Code; (ii) breach of the lease agreement due to unauthorized subletting; (iii) attorney's fees against Lucon Coffie based on the breach of the lease agreement; (iv) rent and occupancy against Mr. Coffie for breach of the lease agreement; and (v) damages for "infliction of emotional distress" against all respondents predicated on the criminal charges filed against the plaintiff. Upon review of Judge Gonzalez's trial decision, the Housing Court either actually addressed or had the authority to address the plaintiff's first, second, third, and fourth causes of action. However, the plaintiff's cause of action for intentional infliction of emotion distress would have been improperly raised in the Housing Court action. Moreover, contrary to the defendants' arguments, a claim for intentional infliction of emotion distress can be predicated upon false legal claims (*Spallone v Spallone*, 171 AD3d 527, 528 [1st Dept 2019] [false murder charge]; *Klinge v Ithaca Coll.*, 167 Misc 2d 458, 467 [Sup Ct 1995], *aff'd as mod.*, 235 AD 2d 724 [3d Dept 1997] [false plagiarism charge]).

In opposition to defendant's cross-motion, the plaintiff submits the affidavit of Yaakov Blachman, the managing agent for the plaintiff, and numerous exhibits.² Notably, the plaintiff does not submit an attorney's affirmation in conjunction with Mr. Blachman's affidavit, and there is no citation to caselaw in this submission. As to the first four causes of action, Mr. Blachman contends that as a court of limited jurisdiction, the Housing Court could not provide the monetary relief that Lana LLC was seeking. However, if the plaintiff was seeking damages that exceeded the jurisdictional limit of the Civil Court, it had the option to bring an action in Supreme Court. The election not to do so does not abrogate the effect of the doctrine of res

² This submission satisfies CPLR 2101 (d) as they were e-filed on NYSCEF by an attorney, which constitutes a signature pursuant to Uniform Rule 202.5-b (e) (iii).

judicata (see *Merrimack Mut. Fire Ins. Co. v Alan Feldman Plumbing & Heating Corp.*, 102 AD3d 754 [2d Dept 2013]). Mr. Blachman also seems to claim that because Mr. Coffie defaulted in the Housing Court action, the court was restricted from awarding money damages (Blachman’s Aff. at ¶ 45). However, Judge Gonzales’ order clearly states that Mr. Coffie testified and was present at the trial (see e.g. February 3, 2020 Order at 11). Furthermore, the plaintiff provides no legal authority to support this contention that a default would have deprived the Housing Court of authority to issue money damages.

Accordingly, the plaintiff’s First, Second, Third, and Fourth causes of action are dismissed, as they either were or could have been properly considered by the Housing Court and have therefore been fully adjudicated. The defendant’s motion to dismiss is denied as to the plaintiff’s claim for the intentional infliction of emotional distress.

Conclusion

Plaintiff’s motion to dismiss defendants’ counterclaims (Seq. 007) is granted.

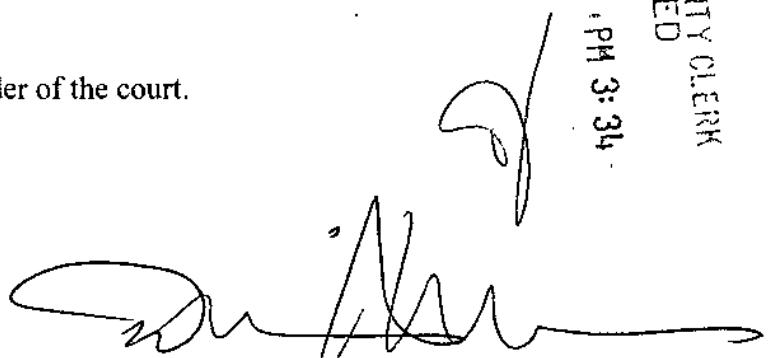
Defendants’ cross-motion for sanctions (Seq. 009) and plaintiff’s cross-motion for sanctions (Seq. 010) are denied.

Defendants’ motion to dismiss the plaintiff’s complaint (Seq. 011) is granted to the extent of dismissing the plaintiff’s First, Second, Third, and Fourth causes of action. The motion is otherwise denied.

This constitutes the decision and order of the court.

December 21, 2022

DATE



DEVIN P. COHEN
Justice of the Supreme Court

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