

**Battle v 22 St. Nicholas, LLC**

2023 NY Slip Op 30564(U)

February 27, 2023

Supreme Court, New York County

Docket Number: Index No. 100305/2022

Judge: Eric Schumacher

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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**

<b>PRESENT:</b>	<u><b>HON. ERIC SCHUMACHER</b></u>	<b>PART</b>	<b>23</b>
	<i>Justice</i>		
-----X		<b>INDEX NO.</b>	<u>100305/2022</u>
ALAN BATTLE,		<b>MOTION DATE</b>	<u>1/31/2023</u>
	Plaintiff,		
	- v -	<b>MOTION SEQ. NO.</b>	<u>001, 004, 005, 015, 019, 021</u>
22 ST. NICHOLAS, LLC, LARRY JEREMIAS, NECHAMA BERGER, ELIEZER JEREMIAS, and ESTI KALISCH,			
	Defendants.		
-----X			

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50, 52, 53, 54, 55, 56, 57, 59, 60, 61, 62, 72, 190  
were read on this motion to/for MISCELLANEOUS.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 63, 64, 65, 66, 67, 70, 71, 171  
were read on this motion to/for REARGUMENT/RECONSIDERATION.

The following e-filed documents, listed by NYSCEF document number (Motion 015) 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 139, 140, 141, 142, 143, 144, 145, 146, 152, 156, 160, 161, 167, 168, 169, 179, 206  
were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 019) 184, 185, 186, 187, 188, 189  
were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 021) 223  
were read on this motion to/for HEARING.

Motion seq. no. 019 by defendants 22 St. Nicholas, LLC, Larry Jeremias, Nechama Berger, Eliezer Jeremias, and Esti Kalisch pursuant to CPLR 3212 for summary judgment dismissing the complaint, pursuant to CPLR 8101 and 8301 for costs and disbursements, and pursuant to 22 NYCRR § 130-1.1 for sanctions and reasonable attorney’s fees is granted to the extent that the complaint is dismissed, with costs and disbursements. Motion seq. nos. 001, 004, 005, 015, and 021 are or have previously been resolved as addressed herein.

## BACKGROUND

Plaintiff alleges in the five causes of action within the complaint that defendant 22 St. Nicholas, LLC (hereinafter landlord) “violated [his] rights” under (1) “the Americans with Disabilities Act”; (2) “the federal Fair Housing Act”; (3) “section 504 of the Rehabilitation Act”; (4) “NYS Human Rights Law 296, Section 5(A)[2]”; and (5) “NY City Admin Code 8-107” by means of a “scheme to initiate a fraudulent summary proceeding against [him] pursuant to the Real Property Actions & Proceedings Law Article 7” (NYSCEF doc no. 126 at 7-9).

As is relevant here, on January 5, 2023, defendants filed motion seq. no. 019 pursuant to CPLR 3212 to dismiss the complaint and for attorney’s fees, costs, and disbursements (NYSCEF doc nos. 184-187). Defendants argue, as to the individually named defendants, that there is no cause of action stated as against them. Defendants further argue that, as to landlord, the complaint “is devoid of any allegations supporting the ‘illegal scheme’ and whatever that ‘scheme’ is” (defendants’ memorandum of law in support at 5). Defendants further argue that, to the extent there is an argument that there is any issue with accepting a section 8 voucher from plaintiff, defendants “have no problem accepting anyone’s Section 8 voucher or any other sort of assistance” but that plaintiff has failed to submit his section 8 voucher properly for consideration (affirmation of Larry Jeremias ¶ 3).

The same day, January 5, 2023, plaintiff filed opposition papers pro se (NYSCEF doc no. 188). Plaintiff’s papers do not contain any argument regarding the specific language of the causes of action. Plaintiff argues, in sum and substance, that defendants photoshopped his lease to make his rent appear higher than it should have been and have refused to accept his section 8 voucher, which he argues he submitted to NYCHA.

On January 6, 2023, defendants filed reply papers (NYSCEF doc no. 189). Defendants argue, in sum and substance, that they have demonstrated plaintiff’s causes of action are without merit, and in opposition, plaintiff has failed to raise a genuine issue of material fact.

To the extent plaintiff filed other or further documents under motion seq. no. 19 after defendants filed their reply papers, in what is, in effect, surreply, those papers are not properly before the court and have not been read.

## DISCUSSION

“To obtain summary judgment it is necessary that the movant establish his cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in his favor, and he must do so by tender of evidentiary proof in admissible form.” (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980] [internal quotation marks and citation omitted].) “The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case.” (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985].) “Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers.” (*Id.*) “Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of

material issues of fact that require a trial for resolution.” (*Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003].) “On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party.” (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] [internal quotation marks and citation omitted].) In the presence of a genuine issue of material fact, a motion for summary judgment must be denied. (*See Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]; *Grossman v Amalgamated Hous. Corp.*, 298 AD2d 224, 226 [1st Dept 2002].)

Here, the court finds that defendants have shown prima facie that plaintiff has no causes of action as against the individually named defendants based upon the complaint. The court finds further that defendants have shown prima facie that plaintiff has not asserted cognizable causes of action upon which relief could be granted as against landlord based upon the complaint and the affirmation of Larry Jeremias submitted. Plaintiff alleges no elements of fraud and, at best, on a fair reading of the complaint, there is no viable controversy presented. The burden having shifted to plaintiff, the court finds that the opposition submitted fails to raise a genuine issue of material fact. As such, the court finds that defendants are entitled to an order dismissing the complaint in its entirety.

Moreover, raised as purported issues on a reading of the papers are allegations from plaintiff that, grievances against defendants aside, do not synthesize to substantiate a justiciable claim based upon the causes of action presented in the complaint. There is no dispute that defendants have never initiated a summary proceeding against plaintiff. To the extent that landlord may have, for the sake of argument, contemplated bringing such an action under the lease, such as for nonpayment of rent, that has not been done, and no evidence has been submitted in support of such an allegation aside from plaintiff’s self-serving statements in the papers submitted pro se.

As to the other open motions in this case, motion seq. no. 001 appears to have been a prior motion by defendants to dismiss before this case was converted to e-filing. The motion is listed as open, yet no decision appears on NYSCEF, and as such the motion is resolved as moot.

Motion seq. nos. 004 and 015 were, in effect, denied pursuant to the December 22, 2022 oral directive of Hon. W. Franc Perry, J.S.C., from whom this case has been reassigned to this court (NYSCEF doc no. 206 [oral argument tr]). Justice Perry also indicated that any temporary restraining order in this action was lifted (*id.* at 34, lines 9-10). Motion seq. no. 004 was for leave to amend the complaint. Justice Perry did not permit any amendment, and all parties treated the subject complaint at NYSCEF doc no. 126 as operative at the December 22, 2022 oral argument on motion seq. no. 015, which was defendant’s motion to dismiss the complaint.

Upon denial of the motion to dismiss, Justice Perry then directed defendants to file the instant motion in seq. no. 019 for summary judgment dismissing the complaint (*id.* at 34, line 25; at 35, line 1). Plaintiff raises no issue in opposition to the instant motion for summary judgment as to any purported amendment. Having charted their own summary judgment course, this court treats the complaint originally filed in this action as operative based upon the papers submitted and the law of the case. In any event, even if the motion for leave to amend remained sub judice, which it does not, the court observes that the proposed amendments are palpably improper.

Motion seq. no. 005 is resolved as academic pursuant to NYSCEF doc no. 171, plaintiff's notice of withdrawal.

Motion seq. no. 021 is resolved as academic; the court declines to sign the proposed order to show cause.

To the extent that defendants seek costs and disbursements as described in CPLR 8101 and 8301, such an award is customarily provided for upon the entry of a favorable judgment, and nothing in this order should be construed as a bar to such an award. As to defendants' application for sanctions and reasonable attorney's fees pursuant to 22 NYCRR § 130-1.1, that is denied, in the court's discretion, as entitlement is not adequately established in the papers submitted.

**CONCLUSION**

Accordingly, it is

ORDERED that motion seq. no. 019 by defendants 22 St. Nicholas, LLC, Larry Jeremias, Nechama Berger, Eliezer Jeremias, and Esti Kalisch pursuant to CPLR 3212 for summary judgment dismissing the complaint and for attorney's fees, costs, and disbursements is granted to the extent that it is

ORDERED that the complaint is dismissed; and it is further

ORDERED that the open motions at seq. nos. 001, 004, 005, 015, and 021 are or have previously been resolved as addressed herein, and the clerk of the part shall mark them closed; and it is further

ORDERED that defendants shall, within five days of the date of the decision and order on this motion, serve a copy of this order with notice of entry on plaintiff and on the clerk, who is directed to enter judgment accordingly.

The foregoing constitutes the decision and order of the court.

2/27/2023  
DATE

  
ERIC SCHUMACHER, J.S.C.

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