

Figueroa v Iannucci

2023 NY Slip Op 32667(U)

August 2, 2023

Supreme Court, New York County

Docket Number: Index No. 159574/2022

Judge: Lyle E. Frank

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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. LYLE E. FRANK **PART** **11M**

Justice

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REINALDO FIGUEROA

Plaintiff,

- v -

JOSEPH R IANNUCCI,

Defendant.

-----X

INDEX NO. 159574/2022

MOTION DATE 08/02/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion to/for DISMISS.

This action arises out of an alleged breach of contract. Defendant, Joseph Iannucci, moves to dismiss the complaint in its entirety, pursuant to CPLR §3211 (a)(7), (a)(8), and CPLR § 308(2).¹ Defendant also moves for the plaintiff and his attorney to be sanctioned under NYCRR 130.1-1(a). Plaintiff opposes the instant motion. For the reasons set forth below, the defendant’s motion to dismiss the complaint is granted in part, and the request for sanctions is denied.

Factual Background

Plaintiff Reinaldo Figueroa brought this instant action in relation to the defendant’s alleged failure to pay rent for six years to the plaintiff, who claims to be the primary tenant and lessee of the premises where plaintiff and defendant resided. According to the plaintiff, the defendant and subtenant, Joseph Iannucci, had agreed to pay 1/3 of the rent when he moved into

¹ The Court would like to thank Bani Bedi for her assistance in this matter.

the premises. However, he stopped paying rent in 2017 and the plaintiff has allegedly been paying on his behalf. The defendant's name is not on the lease, and there is no written agreement between the plaintiff and defendant. Plaintiff claims there was an oral contract between them.

Plaintiff's first cause of action is breach of contract, wherein he claims damages of \$46,824 in unpaid rent. The second cause of action is unjust enrichment. The third and final cause of action is for the account stated, allegedly presented to the defendant through the plaintiff's invoice in the amount of \$46,824.

Motion to Dismiss Legal Standard

It is well-settled that on a motion to dismiss for failure to state a cause of action pursuant to CPLR § 3211(a)(7), the pleading is to be liberally construed, accepting all the facts as alleged in the pleading to be true and giving the plaintiff the benefit of every possible inference. See *Avgush v Town of Yorktown*, 303 AD2d 340 [2d Dept 2003]; *Bernberg v Health Mgmt. Sys.*, 303 AD2d 348 [2d Dept 2003]. Moreover, the Court must determine whether a cognizable cause of action can be discerned from the complaint rather than properly stated. *Matlin Patterson ATA Holdings LLC v Fed. Express Corp.*, 87 AD3d 836, 839 [1st Dept 2011]. "The complaint must contain allegations concerning each of the material elements necessary to sustain recovery under a viable legal theory." *Id.*

Discussion

The Court finds that the plaintiff has not sufficiently pled a breach of contract, unjust enrichment, or account stated claim and thus has failed to state a claim upon which relief can be granted. Defendant has also moved to dismiss based on improper service under CPLR § 308(2)

and CPLR § 3211(a)(8); the Court is not addressing the service issue at this time because the motion to dismiss is granted on other grounds.

Breach of Contract Claim

To plead breach of contract, the proponent must allege the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages.

Second Source Funding, LLC v Yellowstone Cap. LLC, 144 AD3d 445, 446 [1st Dept 2016]; *Harris v. Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010].

The Court finds that the plaintiff has insufficiently pled a cause of action for breach of contract as against defendant Joseph Iannucci. Defendant points out that there was no lease agreement or any other agreement between the plaintiff and defendant for the payment of rent, a loan, or any other payments. When the defendant lived on the premises, the only name on the lease was that of a third party. The plaintiff argues in opposition that there was an oral agreement for payment of rent which was partly performed by the defendant through earlier payments to the plaintiff.

The Court believes that none of the submitted documents exhibit the existence of an agreement between the plaintiff and defendant. Under the Statute of Frauds any lease for a period longer than a year must be in writing and "subscribed by the party to be charged..." General Obligations Law § 5-703, subd. 2; *Geraci v. Jenrette*, 41 N.Y.2d 660 (1977). The plaintiff has argued that the defendant's part performance of the oral agreement shows that it is exempt from the Statute of Frauds. To prove part performance, the plaintiff has submitted a series of correspondence between the plaintiff and two non-parties. These do not present any proof of an

agreement between the plaintiff and the defendant Iannucci. The only mention of the defendant is in reference to an electricity Con Ed bill paid by the plaintiff.

The Court finds that the plaintiff has failed to sufficiently allege a valid oral agreement between the plaintiff and defendant. Thus, there is no viable breach of contract claim for which relief may be granted and the defendant's motion to dismiss is granted for the first cause of action.

Unjust Enrichment Claim

Plaintiff's unjust enrichment claim is sufficiently pled. To prevail on an unjust enrichment claim, the plaintiff must show: (1) the other party was enriched, (2) at that party's expense, and that "it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered." *Mandarin Trading Ltd. v. Wildenstein*, 16 N.Y.3d 173, 182 (2011). The plaintiff has argued in opposition that the defendant's residency in the premises and previous payment of rent shows that plaintiff was able to live in the subject apartment without paying rent to the plaintiff. Viewing in the evidence in the light most favorable to the non-moving party, the cause of action for unjust enrichment, is made out, as the plaintiff sufficiently alleges that the plaintiff lived in his apartment and the defendant received insufficient monetary benefit.

Account Stated Claim

The Court finds that the plaintiff has not sufficiently pled a cause of action for account stated. An account stated claim "exists where a party to a contract receives bills or invoices and does not protest within a reasonable time." *Bartning v. Bartning*, 16 A.D.3d 249, 250 (1st Dept.

2005); *Russo v. Heller*, 80 A.D.3d 531, 532 (1st Dept. 2011). A claim for account stated must establish through sufficient evidence that the plaintiff “generated account statements for the defendant in the regular course of business, that it mailed those statements to the defendant on a monthly basis, and that the defendant accepted and retained these statements for a reasonable period of time without objection, and made partial payments thereon.” *Citibank (South Dakota), N.A. v. Keskin*, 121 A.D.3d 635, 636 (2d Dept. 2014).

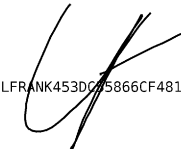
The Court agrees with the defendant’s stance that the elements of an account stated claim are absent. There was no valid agreement between the plaintiff and defendant for payment of rent, and Iannucci did not receive monthly invoices from the plaintiff which were then accepted and retained. The plaintiff argues that there is an invoice enumerating the owed payments, yet the invoice submitted to the Court seeks six years of rental arrears. Another invoice from November 2021 is addressed to the defendant’s girlfriend. There is no evidence that there was an agreement between the plaintiff and defendant for the payment of rent, whereby the plaintiff sent the defendant regular invoices that the latter accepted. Thus, the Court grants the defendant’s motion to dismiss the third cause of action for account stated.

Motion for Sanctions

The defendant has moved for the Court to sanction the plaintiff and his attorney for bringing a frivolous lawsuit. The Court does not accept the defendant’s argument that they should be sanctioned under NYCRR 130.1-1(a), especially where as here one of the causes of action remains. Thus, the defendant’s request to sanction the plaintiff and his attorney is denied. Accordingly, it is hereby

ORDERED and ADJUDGED that the first and third causes of action in plaintiff's complaint are hereby dismissed, and the motion is otherwise denied.

8/2/2023
DATE

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LYLE E. FRANK, J.S.C.

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	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
			<input type="checkbox"/>	DENIED	OTHER
					REFERENCE