

Figueroa v DeStefano

2023 NY Slip Op 32763(U)

August 9, 2023

Supreme Court, New York County

Docket Number: Index No. 160354/2021

Judge: Paul A. Goetz

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. PAUL A. GOETZ **PART** **47**

Justice

-----X

REINALDO FIGUEROA

Plaintiff,

- v -

HEATHER DESTEFANO,

Defendant.

-----X

INDEX NO. 160354/2021

MOTION DATE 06/22/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

were read on this motion to/for DISMISS.

This action for breach of contract, unjust enrichment, malicious prosecution, defamation, and abuse of process arises out of the circumstances surrounding a previous living arrangement between plaintiff Reinaldo Figueroa and defendant Heather DeStefano at 14 East 105th Street, Apartment #14E, New York, New York 10029 (the premises). Defendant moves to dismiss the amended verified complaint in its entirety pursuant to CPLR § 3211 (a) (7) for failure to state a cause of action and seeks sanctions against plaintiff and his attorney pursuant to 22 NYCRR § 130.1-1 for frivolous and harassing litigation (mot seq no 002).

BACKGROUND

For a disputed amount of time, defendant occupied the premises with her son and boyfriend as well as plaintiff (DeStefano Aff, ¶¶ 3-5, NYSCEF Doc No 19; Figueroa Aff, ¶ 12, NYSCEF Doc No 27). James Richardson was named as tenant on an August 18, 2020 lease for the premises, though without signatures of the landlord or tenant (2020 Lease, NYSCEF Doc No 20). On the lease renewal form dated August 31, 2022, Richardson and plaintiff are listed and signed as tenants (2022 Lease, NYSCEF Doc No 34).

By affidavit submitted on April 25, 2023, defendant states that she moved out of the premises “[d]uring the criminal court proceedings” she initiated against plaintiff that was eventually dismissed for failure to prosecute (NYSCEF Doc No 19, at ¶ 8).¹ Defendant also claims she never received an invoice for the time she stayed at the premises nor did plaintiff loan her money for rent, as stated on the invoice proffered by plaintiff (*id.* at ¶ 14; *see* Invoice, NYSCEF Doc No 32).

By affidavit dated May 24, 2023, plaintiff states that the parties moved into the premises in December 2014 (NYSCEF Doc No 27, ¶ 11). He alleges that defendant paid him rent in the amount of \$680 per month for two years but that “[t]he payment of the full rent and cost sharing was ultimately [his] responsibility” (*id.* at ¶¶ 11-12). Richardson also states by affidavit dated May 24, 2023 that he agreed to sign a lease for plaintiff and defendant because they were unable to have a lease in their name due to legal issues (Richardson Aff, ¶ 3, NYSCEF Doc No 28). Richardson alleges plaintiff, defendant, and defendant’s boyfriend each agreed to pay him rent in the amount of \$680 per month, though plaintiff was responsible if there was ever any shortfall (*id.* at ¶¶ 5-6).

Plaintiff submitted an alleged invoice, annexed to the amended verified complaint, for all rent owed by defendant (NYSCEF Doc No 32). It shows that defendant paid \$600 each month between March 2016 and March 2017, \$300 for April 2017, and \$300 for November 2021 (*id.*). The rest of the entries state that defendant’s portion of the rent was paid by a loan from plaintiff (*id.*). Plaintiff also submitted documentary evidence such as text messages, emails, and a handwritten note allegedly by defendant that plaintiff claims shows defendant admitting to owing rent for certain months (*see* Communications, NYSCEF Doc No 31). Finally, plaintiff submitted

¹ Defendant filed a police report and applied for a protective order against plaintiff after an alleged violent altercation (*id.* at ¶¶ 5-6).

a grid of statements made by defendant that he claims are defamatory (Statement Grid, NYSCEF Doc No 29).

DISCUSSION

When determining if a complaint may be dismissed for failing to state a cause of action pursuant to CPLR § 3211 (a) (7), “the complaint must be liberally construed, the allegations therein taken as true, and all reasonable inferences must be resolved in plaintiff’s favor” (*Gorelik v Mount Sinai Hosp. Ctr.*, 19 AD3d 319, 319 [1st Dept 2006]). The motion “must be denied if from the pleading’s four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law” (*id.* [internal quotations omitted]). However, “factual allegations that do not state a viable cause of action, that consist of bare legal conclusions, or that are inherently or clearly contradicted by documentary evidence are not entitled to such consideration” (*Skillgames, LLC v Brody*, 1 AD3d 247, 250 [1st Dept 2003]).

Breach of Contract and Unjust Enrichment

Defendant moves to dismiss plaintiff’s first cause of action for breach of contract for failing to pay rent, arguing that there was no contract between the parties, only Richardson was named on the lease as tenant, and the statute of frauds bars the enforcement of any oral contract that may have existed between plaintiff and defendant since its duration was greater than one year. Defendant supports her claim by relying on various provisions of her affidavit; however, it is improper to consider affidavits from a defendant on a motion to dismiss pursuant to CPLR § 3211 (a) (7) (*see Valentino v County of Tompkins*, 284 AD2d 898, 899 [3d Dept 2001] [“on a motion to dismiss for failure to state a cause of action, [a court] must accept the allegations of the complaint as true and ignore the affidavits submitted by defendants.”])). However, plaintiff is permitted to supplement his amended complaint by affidavit in opposition to defendant’s motion

(*Chapman, Spira & Carson, LLC v Helix BioPharma Corp.*, 115 AD3d 526, 527 [1st Dept 2014] [holding “[t]he complaint, as supplemented by the affidavit [of] plaintiff submitted in opposition to [defendant’s motion to dismiss] . . . contains sufficient allegations to state a cause of action for *quantum meruit*”] [citations omitted]; *see also Benjamin v Yeroushalmi*, 212 AD3d 758, 760 [2nd Dept Jan 25, 2023]).

In order to plead a claim for breach of contract there must be an existing contract, evidence of plaintiff’s performance thereunder, defendant’s breach, and resulting damages (*Valenti v Going Grain, Inc.*, 159 AD3d 645, 645 [1st Dept 2018]; *Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]). Here, the amended verified complaint alleges a contract existed between plaintiff and defendant to split the rent for the apartment, plaintiff performed his end of the bargain by permitting defendant to continue living in the apartment, defendant failed to pay her portion of the rent, and this resulted in monetary damages to plaintiff (*see Amended Verified Complaint*, ¶¶ 4-9, 24, NYSCEF Doc No 9). Therefore, plaintiff sufficiently states a cause of action for breach of contract.

Alternatively, plaintiff sets out a cause of action for promissory estoppel (*see Amaro ex rel. Almazan v Gani Realty Corp.*, 60 AD3d 491, 492 [1st Dept 2009], citing *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977] [when considering a motion to dismiss for failure to state a cause of action, the court must determine whether the facts as alleged fit within any cognizable legal theory]). “The elements of a promissory estoppel claim are: (i) a sufficiently clear and unambiguous promise; (ii) reasonable reliance on the promise; and (iii) injury caused by the reliance” (*Castellotti v Free*, 138 AD3d 198, 204 [1st Dept 2016]). The purpose and effect of promissory estoppel is to prevent “a party from denying the effect of his statements or admissions designed to influence, and which have influenced, the conduct of another” (*Nissen v*

McCafferty, 202 AD528, 533 [2d Dept 1922]). In its application, this principle can create a real property contract or conveyance just as legally binding as a written instrument conveying or granting an interest in land would be from the party estopped (*id.*).

Here, plaintiff's amended verified complaint sufficiently sets out the elements of a cause of action for promissory estoppel by stating that defendant made an unambiguous promise to split the rent three ways with plaintiff and Richardson in exchange for plaintiff allowing defendant (and her son and boyfriend) to live in the apartment, plaintiff reasonably relied on the promise that defendant would reimburse plaintiff for her share of the rent, and plaintiff's reliance on defendant's promise injured him monetarily (NYSCEF Doc No 9, ¶¶ 5-9, 24). Therefore, plaintiff sufficiently states a cause of action for promissory estoppel.

Defendant argues that the statute of frauds proscribes "[a] contract for the leasing for a longer period than one year . . . unless the contract or some note or memorandum thereof, expressing the consideration, is in writing, subscribed by the party to be charged" (General Obligations Law [GOL] § 5-703 [2]). To the extent that plaintiff's amended complaint and supplemental affidavit suggest a contract existed between defendant and plaintiff for a period longer than one year (*see* NYSCEF Doc No 32), the statute of frauds does not necessarily apply considering the amended complaint alternatively describes plaintiff's relationship with defendant as one of roommates rather than landlord/tenant (NYSCEF Doc No 9, ¶ 4; *see* Real Property Law [RPL] § 235-f). Even if defendant is considered a subtenant, "equity will not countenance a ritualistic invocation of the Statute of Frauds, especially where the party claiming its protection has acquiesced in and profited from the very agreement it now seeks to abjure" (*Brockport Developers, Inc. v 47 Ely Corp.*, 82 Misc 2d 310, 315 [Sup Ct, NY County 1975]).

The second cause of action for unjust enrichment will not be dismissed because the complaint alleges defendant was enriched at plaintiff's expense and "that it is against equity and good conscience to permit" defendant to retain the amounts sought by plaintiff (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011]).

Accordingly, plaintiff's first cause of action for breach of contract and second cause of action for unjust enrichment will not be dismissed.

Malicious Prosecution, Abuse of Process and Defamation

Defendant next moves to dismiss plaintiff's third cause of action for malicious prosecution, fourth cause of action for defamation, and fifth cause of action for abuse of process, arguing that the statements she made to law enforcement regarding plaintiff do not rise to the level of malice or harmful intent and furthermore, are qualifiedly privileged since they were made to law enforcement. Plaintiff responds that defendant acted with malice and used false and misleading statements in pursuing her criminal complaint.

Under New York law, "[t]he elements of an action for malicious prosecution are (1) the initiation of a proceeding, (2) its termination favorably to plaintiff, (3) lack of probable cause, and (4) malice." (*Morant v City of New York*, 95 AD3d 612, 612 [1st Dept 2012] [internal citation omitted]). Here, plaintiff's amended verified complaint states that on October 31, 2021, "[d]efendant initiated a criminal complaint against the [p]laintiff under false pretenses and using false and misleading statements and other wholly concocted evidence," plaintiff was subject to a protective order as a result, (NYSCEF Doc No 9, ¶¶ 30-38). These allegations go beyond showing that defendant merely provided information to law enforcement authorities who then exercised their own judgement whether to initiate criminal charges. (*compare Holmes v NYC*, 178 AD3d 496 [1st Dept 2019]). By alleging that defendant lied to the authorities about plaintiff,

plaintiff sufficiently infers actual malice on the part of defendant, a necessary element to a malicious prosecution claim (*see Pellegrinin v Duane Reade Inc.*, 137 AD3d 651, 652 [1st Dept 2016] [defendant sufficiently inferred actual malice on the part of plaintiff by alleging that plaintiff lied to the authorities about defendant]).

“A claim for abuse of process has three essential elements: (1) regularly issued process, either civil or criminal, (2) an intent to do harm without excuse or justification, and (3) use of the process in a perverted manner to obtain a collateral objective” (*Matthews v NYC Dept. of Social Servs., Child Welfare Admin.*, 217 Ad2d 413, 415 [1st Dept 1995] ; *Goldman v Citicore I, LLC*, 149 AD3d 1042, 1044 [2nd Dept 2017]). Here, plaintiff’s amended verified complaint alleges that defendant caused a criminal case to be initiated against him in which an order of protection was issued against plaintiff by making false statements about him with the intent “to harm [p]laintiff financially, emotionally, psychologically and in his personal life and his professional endeavors,” and this was done by plaintiff with the objective of “weaponiz[ing]” the protective order to punish defendant (NYSCEF Doc No 9, ¶¶ 50-56). These allegations suggest an improper use of the criminal process on defendant’s part for the collateral purpose doing plaintiff harm. (*compare Shilt v Matherson*, 104 AD3d 668, 669 [2nd Dept 2013]). These same allegations and the inferences that may be drawn from them are sufficient to establish plaintiff’s claim for defamation since they include a false statement published to another without privilege or authorization that caused plaintiff harm (*3P-733, LLC v Davis*, 187 AD3d 626, 628 [1st Dept 2020]). Damages are “presumed for statements that charge a person with committing a serious crime . . .” (*Geraci v. Probst*, 15 N.Y.3d 336, 344 [2010]; *see also Pezhman v. City of New York*, 29 A.D.3d 164, 167 [1st Dep’t 2006]). Accordingly, plaintiff’s third cause of action for

malicious prosecution, fifth cause of action for abuse of process and fourth cause of action for defamation will not be dismissed.

Sanctions

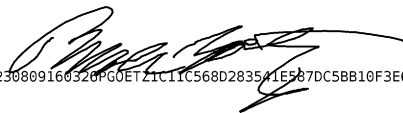
Defendant seeks sanctions pursuant to 22 NYCRR § 130.1-1 against plaintiff and plaintiff’s counsel. Defendant argues that this action is harassing since it is based on a contrived invoice for rent and that plaintiff’s counsel has harassed defendant by communicating with her directly as well as emailing her employer. Plaintiff’s counsel responds that he reached out to defendant personally after he believed that defendant was unrepresented as her previous attorney, who happens to be her employer, withdrew from the representation. These actions do not rise to the level of harassing behavior meriting sanctions. Accordingly, defendant’s request for sanctions will be denied.

CONCLUSION

Accordingly, it is

ORDERED that defendant’s motion to dismiss plaintiff’s amended verified complaint is denied; and it is further

ORDERED that defendant’s request for sanctions is denied.


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8/9/2023
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED
<input type="checkbox"/>	SETTLE ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: