

Zi Chang Realty Corp. v Jing Zhao Chen

2023 NY Slip Op 33106(U)

September 8, 2023

Supreme Court, New York County

Docket Number: Index No. 156564/2019

Judge: Erika M. Edwards

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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. ERIKA M. EDWARDS

PART 10M

Justice

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ZI CHANG REALTY CORP.,

Plaintiff,

- v -

JING ZHAO CHEN, MEI CHANG SU,

Defendants.

-----X

INDEX NO. 156564/2019MOTION DATE 07/27/2023MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60 were read on this motion to/for DISMISSAL.

Upon the foregoing documents, the court grants Defendants Jing Zhao Chen's ("Chen") and Mei Chang Su's ("Su") (collectively, "Defendants") motion to dismiss Plaintiff Zi Chang Realty Corp.'s ("Plaintiff") complaint and the court dismisses the complaint against both Defendants.

Plaintiff is the landlord of an apartment building located at 299 Broome Street, New York, New York. Plaintiff brought this action against Defendants for a declaratory judgment seeking to reform the rent-stabilized lease for an apartment located in Plaintiff's building. The lease was initially entered into by Defendant Chen in 1985 and it was renewed throughout the years. Plaintiff seeks to remove Defendant Su's name from the lease renewal and to offer a lease renewal to Defendant Chen on the ground that the prior lease agreement and subsequent renewals including Defendant Su were made by unilateral mistake because of Defendants' fraud. Plaintiff further alleges in substance that Defendants represented to Plaintiff that they were married and entitled to include Defendant Su's name on the lease renewal when they were actually divorced.

Defendants move to dismiss Plaintiff's complaint for failure to state a claim, res judicata and collateral estoppel, pursuant to CPLR 3211(a)(7) and 3211(a)(5), respectively, and for an order scheduling a hearing on Defendants' reasonable attorney's fees, pursuant to Real Property Law ("RPL") §234. Defendants argue in substance that Plaintiff failed to state a cause of action because of insufficient allegations of the elements of reformation and fraud and failure to allege any injury. Defendants also assert defenses of res judicata because the New York City Housing Court has previously decided the relevant issues in Defendants' favor and collateral estoppel based on determinations made by the New York City Housing Court and the Division of Housing and Community Renewal ("DHCR").

Defendants allege in substance that Defendants were married in 1997 and they have a daughter who was born in 1999. Defendants further allege in substance that Defendant Su and Defendants' daughter moved into the apartment in 2002. Defendants allege in substance that they attempted to add Defendant Su's name to the lease. Defendants further allege that in 2004, they divorced, but they continued to reside together in the apartment until the present. Defendants allege that in 2007, Plaintiff added Defendant Su's name to the lease and the lease was subsequently renewed in both names until February 28, 2018. Defendants further allege that Plaintiff removed Defendant Su's name from the lease in November 2017, but Defendant Su commenced a DHCR proceeding to force Plaintiff to add her name to the lease and Plaintiff initiated a summary holdover proceeding in the New York City Housing Court.

Defendants argue that the parties litigated the issue of whether Plaintiff improperly unilaterally removed Defendant Su's name from the lease in violation of the rent-stabilization code because Plaintiff's offer of a renewal lease did not include the same terms and conditions as the expiring lease, pursuant to 9 NYCRR § 2522.5. In a decision and order, dated June 20, 2019,

the New York City Housing Court granted Defendants' motion for summary judgment and dismissed Plaintiff's petition. The court directed Plaintiff to offer Defendants a renewal lease on the same terms and conditions as the expiring lease, which must add Defendant Su's name to the lease as a tenant and remove a provision prohibiting sublets as being a breach of the lease and ground for eviction, unless such provision was supported by the original lease. Subsequently, on November 22, 2019, Plaintiff offered Defendants a renewal lease including Defendant Su as a co-tenant and the court awarded Defendants attorney's fees.

Similarly, in an order, dated September 17, 2019, in the DHCR proceeding, the DHCR Deputy Commissioner denied Plaintiff's Petition for Administrative Review (PAR) and affirmed the Rent Administrator's order, dated March 6, 2019, which granted Defendant Su's petition and directed Plaintiff to add Defendant Su's name to the renewal lease. Therefore, Defendants argue in substance that both collateral estoppel and res judicata preclude Plaintiff's from attempting to re-litigate this same issue in the instant action.

Plaintiff attempted to oppose Defendants' motion in the instant matter, but said opposition papers were untimely, as they were not filed until May 17, 2023, which was the return date of the motion. As Defendants argue in their reply, the court will not consider Plaintiff's opposition papers as they were due at least seven (7) days prior to the return date and Plaintiff failed to request an adjournment of the motion or an extension of time to file opposition papers (*see* CPLR 2214[b]). To be safe, Defendants moved for an adjournment to file reply papers in case the court considered the substance of Plaintiff's opposition. The court granted Defendants' request for the adjournment and Defendants subsequently filed reply papers. However, the court agrees with Defendants and finds that Plaintiff's opposition was untimely. Therefore, the court declines to consider the merits of Plaintiff's opposition papers.

In the alternative, if the court were to consider the merits of Plaintiff's opposition papers and Defendants' reply papers, then the court finds Plaintiff's arguments to be unpersuasive.

Here, the court finds that Defendants have demonstrated that Plaintiff failed to state a cause of action for reformation of the renewal lease agreement in that Plaintiff failed to sufficiently allege each element of a cause of action for reformation, failed to allege facts regarding the fraud allegation with sufficient specificity as required and failed to allege that it suffered an injury or harm. Additionally, the court finds that res judicata bars this action because the issues raised in this action were previously litigated in the New York City Housing Court. The Housing Court determined the issues in Defendants' favor and found that Plaintiff did not have the authority to unilaterally remove Defendant Su's name from the renewal lease and that Plaintiff was obligated to add Defendant Su's name to the renewal lease.

Additionally, the court determines that as per the provisions of the lease, RPL § 234 and the New York City Housing Court's order, as the prevailing party in this matter, Defendants are entitled to their reasonable attorney's fees. It should be noted that Plaintiff failed to oppose this portion of Defendants' motion in its opposition.

Therefore, the court grants Defendants' motion.

The court denies any additional requests for relief which were not specifically granted herein.

As such, it is hereby

ORDERED that the court grants Defendants Jing Zhao Chen's and Mei Chang Su's motion to dismiss Plaintiff Zi Chang Realty Corp.'s complaint, the court dismisses the complaint against both defendants and the court directs the Clerk of the Court to enter judgment in favor of

Defendants Jing Zhao Chen and Mei Chang Su as against Plaintiff Zi Chang Realty Corp.; and it is further

ORDERED that the court grants the portion of Defendants Jing Zhao Chen’s and Mei Chang Su’s motion seeking reasonable attorney’s fees; and it is further

ORDERED that the court directs Defendants to file and serve on Plaintiff their billing records or invoices detailing the amount of their reasonable attorney’s fees by on or before October 2, 2023, Plaintiff’s opposition, if any, is due by on or before October 16, 2023, and the parties are directed to appear for a hearing to determine the amount of Defendants’ reasonable attorney’s fees on October 19, 2023, at 10:00 a.m., in Part 10, located in room #412, at 60 Centre Street, New York, New York.

This constitutes the decision and order of the court.

Erika M. Edwards
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<u>9/8/2023</u>				<u>ERIKA M. EDWARDS, J.S.C.</u>
DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE