

Catlin v Nick & Duke, LLC

2023 NY Slip Op 34048(U)

November 16, 2023

Supreme Court, New York County

Docket Number: Index No. 101126/2022

Judge: Frank P. Nervo

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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. FRANK P. NERVO **PART** **04**

Justice

-----X

ROBIN CATLIN

Plaintiff,

- v -

NICK & DUKE, LLC,

Defendant.

-----X

INDEX NO. 101126/2022

MOTION DATE 03/08/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 9, 10, 11, 21

were read on this motion to/for DISMISSAL.

This matter was transferred to Part IV. Defendant moves to dismiss the complaint against it. Pro-se plaintiff opposes.

A brief recitation of the factual allegations set forth in the complaint is necessary. As relevant here, plaintiff became a rent-stabilized tenant of the Chelsea Inn. Thereafter, non-party Audthan, LLC (hereinafter “Audthan”) became the leaseholder of an 89-year ground lease for land upon which the Chelsea Inn was situated for the purposes of constructing a new building thereupon. As part of that construction plan, plaintiff alleges she, along with other tenants, were offered relocation to another building managed by Audthan and, upon completion of the new building, an affordable studio apartment for nominal monthly rent of \$1. It is this agreement with Audthan providing for

temporary relocation and return to a newly constructed affordable apartment, which plaintiff alleges was caused to be breached by defendant.

The Court takes judicial notice, as it is entitled to, of the related matter *Audthan LLC v. Nick & Duke, LLC*, under New York Index. No. 652050/2015, and the orders of the Court in that matter.

As with all motions to dismiss, the complaint is afforded the benefits of liberal construction, a presumption of truth, and any favorable inference (*id.*; *Anderson v. Edmiston & Co.*, 131 AD3d 416, 417 [1st Dept 2015]; *Askin v. Department of Educ. of City of N.Y.*, 110 AD3d 621, 622 [1st Dept 2013]). The motion must be denied if from the four corners of the pleadings “factual allegations are discerned which taken together manifest any cause of action cognizable at law” (*Polonetsky v. Better Homes Depot*, 97 NY2d 46, 54 [2001]). A complaint should not be dismissed so long as, “when the plaintiff’s allegations are given the benefit of every possible inference, a cause of action exists,” and a plaintiff may cure potential deficiencies in its pleading through affidavits and other evidence (*R.H. Sanbar Proj., Inc. v. Gruzen Partnership*, 148 AD2d 316, 318 [1st Dept 1989]). However, bare legal conclusions and factual allegations which are inherently

incredible or contradicted by documentary evidence are not presumed to be true (*Mark Hampton, Inc. v. Bergreen*, 173 AD2d 220 [1st Dept 1991]).

As relevant to this action alleging tortious interference with a contract, “[t]he elements of a tortious interference with contract claim are well established—the existence of a valid contract, the tortfeasor's knowledge of the contract and intentional interference with it, the resulting breach and damages” (*Hoag v. Chancellor, Inc.*, 246 AD2d 224 [1st Dept 1998]; see also *Loftus, Inc. v. White*, 150 AD2d 857 [3d Dept 1989]).

Here, providing plaintiff with every favorable inference, as required, the four corners of the complaint set forth a cause of action. Plaintiff alleges that defendant successfully prevented Audthan from constructing a new building, forcing Audthan to surrender its ground lease, thus depriving plaintiff of the contracted-for affordable apartment in this new building. Plaintiff alleges that defendant's actions interfering with the contract included issuing baseless notices of default/termination and allegations of fraud by Audthan to Housing Preservation & Development (HPD). Plaintiff further alleges defendant refused to execute a Proposed Cured Agreement (PCA), necessary for HPD to grant Audthan requisite approval to construct the building, and that defendant

wrote to HPD, including Audthan on the correspondence, that “Owner will not, and will never approve any version of a PCA”. Simply put, plaintiff has sufficiently pled a claim for tortious interference of a contract.


Accordingly, it is

ORDERED that the motion is denied; and it is further

ORDERED that pro-se plaintiff and counsel for defendant shall appear in Part IV (80 Centre Street Courtroom 327 New York, NY 10013) for a preliminary conference on **December 04, 2023 at 12:00pm**; and it is further

ORDERED that pro-se plaintiff is advised of the Court’s Help Center, located at 60 Centre Street Room 116 New York, NY 10007 and available online at: www.nycourthelp.gov; by email at: SFC-HelpCenterNY@nycourts.gov; or by telephone at 646-386-3120

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT

<p>11/16/2023 DATE</p>			 _____ HON. FRANK P. NERVO
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> J.S.C.
			<input type="checkbox"/> OTHER
			<input type="checkbox"/> REFERENCE