

Syllman v Kew Gardens Hills, LLC

2024 NY Slip Op 32967(U)

August 19, 2024

Supreme Court, New York County

Docket Number: Index No. 157630/2023

Judge: Dakota D. Ramseur

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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. DAKOTA D. RAMSEUR PART 34M

Justice

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JONATHAN SYLLMAN,

Plaintiff,

- v -

KEW GARDENS HILLS, LLC, A&E REAL ESTATE
MANAGEMENT, LLC

Defendant.

-----X

INDEX NO. 157630/2023

MOTION DATE 01/02/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 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

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

In August 2023, plaintiff Jonathan Syllman commenced this disability discrimination action pursuant § 8-107 of the New York City Administrative Code (also known as the New York City Human Rights Law, or NYCHRL) against landlord-defendants Kew Gardens Hills, LLC and A&E Real Estate Management, LLC. In this motion sequence (001), plaintiff moves for summary judgment pursuant to his CPLR 3212 on his §8-107 (28) claim, which is premised on defendants’ failure to engage in a “cooperative dialogue” regarding requested housing modifications plaintiff made to accommodate his physical disabilities. Defendants oppose the motion in its entirety. For the following reasons, plaintiff’s motion is denied.

BACKGROUND

Syllman is the tenant of unit 3C in a residential apartment building located at 72-45 153rd Street in Flushing, Queens, New York (hereinafter, “the building”). (See NYSCEF doc. no. 15, request for modification). Defendants Kew Gardens Hills, LLC and A&E Estate Management, LLC are the building’s owner and managing agent, respectively. (*Id.*; NYSCEF doc. no. 2 at ¶ 1, complaint.)

In his complaint, Syllman alleges that he has multiple physical disabilities, including chronic back pain, arthritis, and leg cramps, that limits his mobility. (NYSCEF doc. no. 2 at ¶¶ 5-10.) As evidentiary support, plaintiff submitted an unsworn-to letter from doctor David Inslicht, MD, who attests to plaintiff’s medical problems. (NYSCEF doc. no. 14, Inslicht letter.) Syllman further alleges that on September 23, 2022, he requested defendants perform several “reasonable accommodations”/modifications with respect to apartment 3C’s bathroom and

kitchen, but that defendants denied his request and/or failed to act upon it as a result of bad faith. (NYSCEF doc. no. 2 at ¶¶ 11-18; NYSCEF doc. no. 15.)

Thereafter, in 2023, Syllman commenced a proceeding in the District Court for the Eastern District of New York to enforce his request (Case No. 23cv00750-ENV; the federal case), though he entered a voluntary stipulation of discontinuance. (*Id.* at ¶¶ 19-21.) The stipulation contained the following provisions:

“(1) the parties will engage in a cooperative dialogue regarding Plaintiff’s request for a reasonable accommodation in his housing pursuant to New York City Administrative Code Section 8-107 (28) within 30 days of the entry of an order dismissing this action; (2) if, after the cooperative dialogue, no agreement is reached between the parties, Plaintiff may bring an action pursuant to the New York City Administrative Code Section 8-107 in the New York State Supreme Court in New York County; (3) this Agreement does not preclude Plaintiff from proceeding again under the Federal Fair Housing Act and the New York State Executive Law if his physical and/or mental condition changes; (4) each party will abide their own attorney’s fees and costs.” (NYSCEF doc. no. 47, stip of discontinuance.)

Syllman subsequently commenced this action on August 7, 2023. Though unspecified in his complaint, Syllman asserts causes of action under § 8-107 of the NYCHRL relating to disability discrimination in housing accommodations. More specifically, Syllman alleges that defendants violated § 8-107 (28), which, as recognized in the stipulation of discontinuance, requires residential owners to engage in the “cooperative dialogue” with respect to any request by a disabled person for a reasonable accommodation in their apartment unit. (NYSCEF doc. no. 2 at ¶¶ 22-24.) In their answer and on this motion, defendants contend that they did engage in the requisite cooperative dialogue and have presented a quantity of correspondence and other documentation to support their assertion. In their view, it was Syllman who became uncooperative and broke off negotiations. (NYSCEF doc. no. 19 at ¶¶ 6-10, Varvaro affidavit; NYSCEF doc. no. 42 at 6-7, def. memo of law; *see also* NYSCEF doc. no. 20-41, supporting documents.) No discovery has yet taken place in this action and court records indicate that the Note of Issue is not due to be filed until January 1, 2025.

DISCUSSION

Under CPLR § 3212, a proponent moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any triable issue of fact. (*Junger v. John V. Dinan Assocs., Inc.*, NY Slip Op 06232, 2 [2nd Dept 2018]); *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324, 501 NE2d 572, 508 NYS2d 923 [1986]. Once the moving party establishes their entitlement for a summary judgment motion, the burden shifts to the opposing party to raise a triable issue of fact. (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980].) Since summary judgment is an extreme remedy, the Court must draw all reasonable inferences in favor of the non-moving party. (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012].) Where there is doubt as to the existence of material facts or where different conclusions can reasonably be drawn from the

evidence, summary judgment should be denied. (*Santos v Temco Serv. Indus.*, 295 AD2d 218, 218-219 [1st Dept 2002].)

NYC Admin Code § 8-107 (28), entitled “Reasonable accommodation; cooperative dialogue,” makes it an unlawful discriminatory practice for any owner or managing agent “having the right to sell, rent or lease” a housing accommodation to “refuse or otherwise fail to engage in a cooperative dialogue within a reasonable time with a person who requested an accommodation.” In turn, the First Department has interpreted the term “cooperative dialogue” to mean:

“the process by which a covered entity and a person entitled to an accommodation, or who may be entitled to an accommodation under the law, engage in good faith in a written or oral dialogue concern the person’s accommodations needs, potential accommodations that may address the person’s accommodation needs, including alternatives...and the difficulties that such potential accommodations may pose for the covered entity.” (*See Hosking v Memorial Sloan-Kettering Cancer Ctr.*, 126 NYS3d 92, 103 [1st Dept 2020].)

Here, even assuming that Syllman has established that he has disability and falls within ambit of § 8-107’s protections,¹ his moving papers do not demonstrate, prima facie, that defendants failed to engage in a good faith dialogue regarding his allegedly reasonable accommodation requests. Plaintiff’s affidavit avers that “defendant’s merely took some pictures (instead of taking measurements which are essential, the building’s superintendent said nothing, and the representatives of defendants...said that any work could not be done.” (NYSCEF doc. no. 13 at ¶ 8, Syllman’s affidavit.) However, plaintiff’s averment understates the extent of the parties’ dialogue. It appears that defendants have made at least two visits to the apartment—one on April 13, 2023, and the other on November 21, 2023—at which defendants communicated that the proposed modifications were quite significant/impossible. Defendants’ counsel cites a report from the April 13th inspection that concluded,

“It seems that plaintiff more or less wants to remove structural walls which is not possible. He wants more counter space, which defendants do not consider to be a reasonable accommodation. Defendants are unclear as to why he is requesting demolition and construction of walls except for aesthetic reasons...Plaintiff is asking for structural changes that will require not only custom appliances, bathtub, and kitchen cabinets, but an architect and permits.” (NYSCEF doc. no. 43 at ¶ 8; NYSCEF doc. no. 45, email exchanges based on report.)

In addition, defendants have submitted an affidavit from Andrew Varvaro, an employee of the defendants’ law firm Gordon Rees Scully Mansukhani, LLP, who avers that he attended a meeting and site inspection at Syllman’s apartment on November 21, 2023, to assess the requested accommodations. (NYSCEF doc. no. 19 at ¶ 5.) He described the modifications plaintiff requested to be in fact significant, requiring moving one major wall and at least two

¹ As described above, the only evidence plaintiff has provided for his alleged disabilities is his own averments in his affidavit. His treating doctor’s letter is not sworn to and no medical records have been disclosed to defendants or this Court that shows plaintiff has the complained-of disabilities.

doorways in the apartment, which he communicated to plaintiff and his counsel. (*Id.* at ¶¶ 10-11.) As such, at the very least, issues of fact remain outstanding as to whether defendants engaged in a good-faith dialogue as required by § 8-107 (28) (c).


Accordingly, for the foregoing reasons, it is hereby

ORDERED that plaintiff’s motion for summary judgment as to his New York City Admin Code 8-107 cause of action is denied; and it is further

ORDERED that parties shall appear for a preliminary conference with the Court at 60 Centre Street, Courtroom 341 at 9:30 a.m. on September 19, 2024; and it is further

ORDERED that counsel for defendants shall serve a copy of this order, along with notice of entry, on all parties within ten (10) days of entry.

This constitutes the Decision and Order of the Court.

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DAKOTA D. RAMSEUR, J.S.C.

8/19/2024
DATE

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION

GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE