

Nolles v Chester Shores Homewoners Assn.
2024 NY Slip Op 35017(U)
November 20, 2024
Supreme Court, Warren County
Docket Number: Index No. EF2024-72228
Judge: Amy N. Quinn
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Supreme Court of the State of New York

For the County of Warren

Decided November 18, 2024

Index No.: EF2024-72228

PATRICK NOLLES and JENNIFER NOLLES,

Plaintiff

- against -

CHESTER SHORES HOMEOWNERS ASSOCIATION,

Defendant.

Decision and Order

Bartlett, Pontiff, Stewart & Rhodes, PC (Jeffrey B. Shapiro, Esq.), Glens Falls, New York for Plaintiffs.

Gerber, Ciano, Kelly, Brady LLP (David P. Johnson, Esq.), Buffalo, New York, for the Defendants.

Motion by defendant seeking to dismiss the complaint for failure to state a cause of action.

The following papers have been considered: notice of motion dated July 20, 2024, with attorney affirmation of David P. Johnson, Esq. dated July 20, 2024, with exhibit A through B thereto, and memorandum of law dated July 20, 2024, as well as an affirmation in reply of David P. Johnson, Esq., dated August 5, 2024, all in support of the defendant's motion; and attorney affirmation of Joshua B. Shapiro, Esq. dated July 30, 2024 with exhibit 1 thereto, and affirmations of Patrick Nolles dated July 30, 2024, and August 5, 2024, and a memorandum of law dated October 2, 2024, all in opposition to said motion.

In September of 2020, plaintiffs Patrick Nolles and Jennifer Nolles purchased from Harry E. Stoops and Debra T. Stoops a certain piece of real property located at 252 Chester Shores Road, Chester, New York in the Chester Shores Development (hereinafter the property). The property is more particularly described as Lot No. 47 on a map of the Fourth Section of Chester Shores. The deed granting title to the plaintiffs included an easement for "the use in common with other owners of lots in the Chester Shores Development of the areas . . . known as the Community Beach, for purposes of swimming, boating, picnicking, and recreational purposes, but not for any commercial purposes." It is uncontroverted that shortly after their purchase of the property, the plaintiffs began to use the property, at least in part, as a short-term rental, using online vacation rental listing services which highlighted use of the beach area as one of the property's various amenities. At an unknown point last year, the defendant placed or caused to be placed certain signage indicating that renters were not permitted to enter or use the Community Beach area (hereinafter beach area).

Plaintiffs commenced this action with the filing of a summons and verified complaint on January 26, 2024, against defendant Chester Shores Homeowners

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Association (Chester Shores) and another¹ alleging, among other things, that defendant interfered with their quiet enjoyment of their property rights, caused a nuisance, and intentionally and improperly interfered with their contracts with renters. They additionally seek judgment declaring that Chester Shores lacks general authority over Nolles' property and the Beach Area of Chester Shores, as well as a specific declaration that Chester Shores lacks authority to prevent the Nolles' renters from using the beach area.

On March 29, 2024, defendant Chester Shores filed an answer denying the material allegations of the complaint and asserting numerous defenses and counterclaims seeking, in part, appropriate equitable relief enforcing that "deed restriction" which prevents the use of the beach area at Chester Shores for "any commercial purposes." Defendant also requests a judgment pursuant to CPLR 3001 (1) declaring the plaintiffs' use of the beach area for their short-term vacation rentals in violation of "applicable deed restrictions" and permanently enjoining plaintiffs from such continued violations; (2) declaring the "deed restrictions" for the Beach Area and other common areas to be valid and enforceable; (3) restraining and enjoining the plaintiffs from future short-term rentals of the property; and (4) declaring certain restrictive covenants in the chain of title "mistakenly" described as expiring in June of 1979 to be valid and enforceable, as well as claims for trespass, nuisance, and unjust enrichment. Plaintiffs replied to those counterclaims. Defendant now challenges the sufficiency of the complaint and moves for an order dismissing the complaint pursuant to CPLR 3211 (a) (7).²

The gravamen of the parties' dispute centers on whether plaintiffs' limited use easement permitting beach access extends to their renters. Plaintiffs assert that it does, and that such usage is not commercial in nature. Defendant opposes these arguments and, in doing so, relies on the language of the limited use of easement.

On a motion to dismiss a cause of action under CPLR 3211 (a) (7), the court must "accept the facts alleged as true . . . and determine simply whether the facts alleged fit within any cognizable legal theory (see *Rovello v Orofino Realty*, 40 NY2d 633 [1980])" (*Morone v. Morone*, 50 NY2d 481, 484 [1980]). In performing this analysis, "the pleading is to be afforded a liberal construction (see, CPLR 3026)" (*Leon v Martinez*, 84 NY2d 83, 87 [1994]) and the court is required to "accord plaintiffs the benefit of every possible favorable inference" (*id.*) no matter what "an ultimate trial may disclose as to the truth of [those] allegations" (*Sanders v Winship*, 57 NY2d 391,

¹ By stipulation of the parties on May 31, 2024, the action was discontinued as against defendant Jeffrey Detrick only.

² On July 23, 2024, defendant filed an order to show cause seeking a preliminary injunction to prohibit the plaintiffs from advertising access to the area known as the beach area at Chester Shores in any rental advertisement for the property and enjoining the plaintiffs from permitting any paying guests from to access or use that area. Following oral argument on the issue via Microsoft Teams on August 6, 2024, the court granted the requested relief.

394 [1982]) and “without expressing any opinion as to the plaintiff’s ability ultimately to establish the truth of these averments before the trier of the facts” (*219 Broadway Corp. v. Alexander’s, Inc.*, 46 NY2d 506, 509 [1979]). Such “favorable treatment is not limitless, however, and ‘allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration” (*Gertler v Goodgold*, 107 AD2d 481, 485 [1st Dept 1985], *affd for reasons stated below* 66 NY2d 946 [1985]; *see Brumaghim v Eckel*, 94 AD3d 1391, 1393 n 1 [3d Dept 2012])” (*Tenney v Hodgson Russ, LLP*, 97 AD3d 1089, 1090 [3d Dept 2012]).

“[T]he sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail (*see Foley v D’Agostino*, 21 AD2d 60, 64-65 [1st Dept 1964]; Siegel, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR 3211:24, p 31; 4 Weinstein-Korn-Miller, NY Civ Prac, par 3211.36)” (*Guggenheimer v. Ginzburg*, 43 NY2d 268, 275 [1977]).

A prima facie case for interference with covenant of quiet enjoyment exists when unlawful actual or constructive eviction resulting in a substantial or material deprivation of the property’s beneficial use are demonstrated by a plaintiff (*Pari v Phelps Corp.*, 61 AD2d 1072, 1072 [3d Dept 1978]). Here, the sole factual allegations by the plaintiff are that the “defendants or their agents have placed signs in the Beach Area purporting to prohibit all ‘renters’ from using the Beach Area.” This bare claim fails to establish an eviction of any sort, and further, lacks even a basic assertion as to how the sign may have in fact caused the plaintiffs to suffer damages. It is noted that there is no information contained in the complaint as to the language used on the signs in the beach area “purporting” to exclude renters. The court grants the motion to dismiss the claim for interference with quiet enjoyment.

Turning to plaintiffs’ next cause of action, it is recognized that a claim for private nuisance requires proof of intentional interference with one’s use and enjoyment of their property that is both “substantial in nature’ and ‘unreasonable in character’ (*Copart Indus. v Consolidated Edison Co. of N.Y.*, 41 NY2d 564, 570 [1977]; *see LaJoy v Luck Bros., Inc.*, 34 AD3d 1015, 1016 [3d Dept 2006]; *Dugway, Ltd. v. Fizzinoglia*, 166 AD2d 836, 837 [3d Dept 1990])” (*Balubas v Town of Owego*, 56 AD3d 1097 [3rd Dept 2008]). Here, proof of interference—let alone substantial interference—cannot be made out from the four corners of the pleadings, which do not allege whether that any renters at all were in fact dissuaded from using the beach area as the result of the sign placement by the defendant. Accordingly, this cause of action is also dismissed.

Finally, a claim for “[t]ortious interference with contract requires the existence of a valid contract between the plaintiff and a third party, defendant’s knowledge of that contract, defendant’s intentional procurement of the third-party’s breach of

the contract without justification, actual breach of the contract, and damages resulting therefrom” (*Lama Holding Co. v Smith Barney*, 88 NY2d 413, 424 [1996]; *see also Israel v Wood Dolson Co.*, 1 NY2d 116, 120 [1956]; *NBT Bancorp v Fleet/Norstar Fin. Group*, 87 NY2d 614, 620-625 [1996] [discussing the elements of tortious interference with prospective business relations]. The complaint here contains no reference to any particular contract and lacks specificity as to the details of any alleged contract(s). Additionally, the pleadings fail to include any facts surrounding the defendant’s alleged interference with such contracts as well as any mention of a breach of contract resulting from the defendant’s actions. Such bare legal allegations, without factual assertions, do not necessarily demonstrate that defendant Chester Shores interfered with the plaintiffs’ alleged contracts. The cause of action for tortious interference with contract must be dismissed.

Based on the above dismissals, the Court need not address the merits of the affirmative defenses asserted by the defendants.

The plaintiffs’ third and fifth causes of action seeking declaratory relief are severed because the motion to dismiss those causes of action is denied.

The above constitutes the *Decision and Order* of the court. The signing of this *Decision and Order* shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provision of that section with respect to filing, entry and notice of entry.

It is so ordered.

Decision and order signed November 18, 2024, at Saratoga Springs, New York.

ENTER

*Hon. Amy N. Quinn, A.J.S.C.
Judge of the Court of Claims*

11/20/2024

