

Brown v New York City Hous. Auth.

2025 NY Slip Op 32410(U)

June 26, 2025

Supreme Court, Kings County

Docket Number: Index No. 526530/2024

Judge: Anne J. Swern

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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 26th day of June 2025

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

PATRICIA BROWN,

Plaintiff,

-against-

NEW YORK CITY HOUSING AUTHORITY,

Defendant.

DECISION & ORDER

Index No.: 526530/2024

Calendar No.: 13

Motion Seq.: 001

Return Date: 4/24/2024

Recitation of the following papers as required by CPLR 2219(a):

	Papers Numbered
Notice of Motion, Affirmation, Affidavits and Exhibits (NYSCEF 5-11)	1, 2
Affirmation in Opposition (NYSCEF 14-15)	3
Reply Affirmation and Exhibits (NYSCEF 16)	4

Upon the foregoing papers, the decision and order of the Court is as follows:

PROCEDURAL HISTORY

This action seeks damages arising out the New York City Housing Authority’s (hereinafter “NYCHA” or “defendant”) alleged malicious prosecution with the commencement of an administrative termination-of-tenancy proceeding in Housing Court that was ultimately withdrawn and dismissed with prejudice.

Defendant now moves this Court for an order pursuant to CPLR § 3211 [a] [1] and [7], because (1) the documentary evidence establishes that defendant had probable cause to initiate the termination proceeding, and (2) plaintiff fails to state any cognizable cause of action to redress the alleged emotional distress incurred before the proceeding was withdrawn.

FACTS

Plaintiff, Patricia Brown, resides in Apartment #2B in a NYCHA development located at 50-15 Broadway, Queens, New York 11377. Defendant NYCHA learned that a person named Timothy Brown, was arrested for possession, sale or intent to sell crack cocaine that was recovered during the execution of a search warrant (NYSCEF DOC. 1, ¶3; and DOC. 9). During the criminal proceedings, Timothy Brown listed his residence as 50-15 Broadway, Apartment #2B, Queens, New York 11377 (NYSCEF 9). Before commencing the tenancy termination proceeding to evict plaintiff, defendant sought to verify that a person named Timothy Brown resided in plaintiff's apartment by searching the Department of Motor Vehicles and Public Assistance records (NYSCEF 9). The criminal charges against Timothy Brown were ultimately dismissed in Supreme Court, Queens County. Thereafter, NYCHA withdrew the charges, and the tenancy termination proceeding was dismissed with prejudice (NYSCEF 1, ¶¶7 and 9). Plaintiff denied in the complaint that Timothy Brown is her son, but she did not deny that a person by that name resided in her apartment (*see* NYSCEF 1, complaint). The foregoing facts are not in dispute.

APPLICABLE LAW & ANALYSIS**A) CPLR § 3211 [a] [1]**

"A motion pursuant to CPLR § 3211 [a] [1] to dismiss the complaint on the ground that the action is barred by documentary evidence may be [appropriately] granted only where the documentary evidence utterly refutes the plaintiff's factual allegations, thereby conclusively establishing a defense, as a matter of law" (*Karpovich v City of New York*, 162 AD3d 996, 997 [2d Dept 2018] *citing Mawere v Landau*, 130 AD3d 986, 987 [2d Dept 2015]; *see also Beal Sav. Bank v Sommer*, 8 NY3d 318, 324 [2007] [The construction of an unambiguous contract is a

matter of law.] and *Goshen v Mutual Life Insurance Co. of N.Y.*, 98 NY2d 314, 326 [2002]). “To constitute ‘documentary’ evidence, the evidence must be unambiguous, authentic, and undeniable, such as judicial records and documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and other papers, the contents of which are essentially undeniable” (*Karpovich v City of New York*, 162 AD3d at 997-998; see *Prott v Lewin & Baglio*, 150 AD3d 908, 909 [2d Dept 2017]). Affidavits submitted in support of such motion do not qualify as documentary evidence because their “contents can be controverted by other evidence, such as another affidavit” (*Phillips v Taco Bell Corp.*, 152 AD3d 806, 807 [2d Dept 2017]; *Prott v Lewin & Baglio*, 150 AD3d at 909). However, emails can be documentary evidence when considered as part of the totality of the documentary evidence, they support a favorable inference in a plaintiff’s favor and a denial of defendant’s motion to dismiss (see *Kolchins v Evolution Markets, Inc.*, 31 NY3d 100, 105 [2018]).

B) CPLR § 3211 [a] [7]

Plaintiffs may submit affidavits in opposition to a motion to dismiss pursuant to CPLR § 3211 [a] [7] but the statute does not obligate them to do so to avoid a dismissal (See *Rovello v Orofino Realty Co.*, 40 NY2d 633, 635 [1976]). Therefore, plaintiff may stand on the pleadings alone, “confident that its allegations are sufficient to state all of the necessary elements of a cognizable cause of action” to survive a motion to dismiss under CPLR § 3211 [a] [7] (*id.*). When determining a CPLR § 3211 [a] [7] motion, the Court must accept the factual allegations in the complaint as true and “accord plaintiffs the benefit of every possible favorable inference and determine only whether the facts as alleged fit into any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 88 [1994]). However, “bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to such consideration...nor are legal conclusions

or factual claims which are inherently incredible” (*Strunk v NY State Bd. of Elections*, 126 AD3d 777, 778 [2d Dept 2015]).

When the parties submit evidentiary material outside the pleadings for the Court’s consideration and the motion is not converted to one for summary judgment, “the question becomes whether the pleader has a cause of action, not whether the pleader has stated one and, unless it has been shown that a material fact as claimed by the pleader is not a fact at all, and unless it can be said that no significant dispute exists regarding it, [a] dismissal should not [be granted]” (*Board of Mgrs. of 100 Congress Condominium v SDS Congress, LLC*, 152 AD3d 478, 480 [2d Dept 2017]).

C) Malicious Prosecution

The elements of malicious prosecution are (1) the commencement or continuation of a proceeding; (2) a favorable determination of the proceeding; (3) the absence of probable cause for the proceeding; and (4) the proceeding was brought with actual malice. The presence of probable cause is an absolute defense which is not vitiated by the presence of actual malice. Plaintiff must plead and prove all four elements to prevail. (*see Broughton v State of New York*, 37 NY2d 451, 457-459[1971]; *Tueme v Lezama*, 217 AD3d 715, 717 [2d Dept 2023]).

A cause of action for malicious prosecution ordinarily involves criminal charges. Therefore, probable cause has been defined in that context as follows:

Probable cause consists of such facts and circumstances as would lead a reasonably prudent person in like circumstances to believe [a person] is guilty. A party may act with probable cause even though mistaken, for a mistake of fact as to the identity of a criminal may be consistent with probable cause if the party acted reasonably under the circumstances in good faith. Conversely, the failure to make a further inquiry when a reasonable person would have done so may be evidence of lack of probable cause. (*Colon v City of New York*, 60 NY2d 78, 82 [1983] [internal citations omitted]).

D) Analysis

Defendant has the right to terminate plaintiff's tenancy under the lease if either plaintiff, members of her household or other persons under her control engage in: (1) criminal activity that threatens the health, safety, or right to peaceful enjoyment of the Development by other residents; (2) any violent or drug-related criminal activity on or off the Leased Premises or the Development; or (3) activity that results in a felony conviction (NYSCEF 8, ¶¶12 [r][i]-[iii]).

In the instant matter NYCHA learned that a person named Timothy Brown, who was arrested and later indicted, listed his address in a NYCHA Housing Development at 50-15 Broadway, Apartment #2B, Queens, New York 11377 (NYSCEF 9). Those premises are leased to the Plaintiff, Patricia Brown with the same surname, Brown. Defendant verified the information pertaining to Timothy Brown by a name and address check of government records from the Department of Motor Vehicles and Public Assistance. Thus, the Court finds that NYCHA had probable cause to commence the tenancy termination proceedings (*Colon v City of New York*, 60 NY2d 82).

Even if the above facts do not establish probable cause and affording plaintiff the benefit of every possible favorable inference, NYCHA's commencement of the tenancy termination proceeding and its denial of requests for adjournments to investigate based on alleged misinformation do not constitute actual malice (*Colon v City of New York*, 60 NY2d 82). After the felony proceedings against Timothy Brown were dismissed, the defendant discontinued the termination of tenancy proceedings against Plaintiff. This does not demonstrate that Timothy Brown did not live in the apartment, only that the basis for the proceedings no longer existed. Therefore, the facts as alleged by plaintiff in the complaint do not constitute a cognizable cause of action for malicious prosecution since she failed to plead two of the four elements of a

malicious prosecution claim, *to wit*: the lack of probable cause and the presence of actual malice (*Broughton v State of New York*, 37 NY2d 457; *Leon v Martinez*, 84 NY2d 88; CPLR 3211 [a] [7]).

Defendant has established that (1) defendant had probable cause to commence the tenancy termination proceedings based on the lease, and the records from the Department of Motor Vehicles and Public Assistance (CPLR § 3211 [a] [1]) and (2) in the presence of probable cause and lack of actual malice, the complaint fails to state a cause of action for malicious prosecution (*Broughton v State of New York*, 37 NY2d 457; CPLR § 3211 [a] [7]).

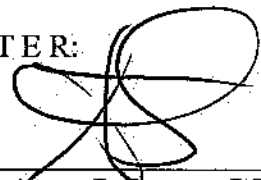
The Court has considered the parties' remaining arguments and finds same to be without merit.

Based on the foregoing, it is hereby

ORDERED that defendant's motion to dismiss the complaint per CPLR § 3211 [a] [1] and [7] is granted and this action is dismissed in its entirety.

This constitutes the decision and order of the Court.

ENTER:



Hon. Anne J. Swern, J.S.C.
Dated: 6/26/2025

For Clerks use only:
MG _____
MD _____
Motion seq. # _____