

Schmucker v Angrist

2025 NY Slip Op 32466(U)

July 11, 2025

Supreme Court, New York County

Docket Number: Index No. 161456/2024

Judge: Paul A. Goetz

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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. PAUL A. GOETZ PART 47

Justice

-----X

WHITNEY SCHMUCKER,

Plaintiff,

- v -

GREG ANGRIST, SARA ANGRIST, CHARLES ASCH,
LAURA BRIGHTSEN, VIVIAN OLIVER, JASON ROBERTS,
NORMAN STEINER

Defendants.

-----X

INDEX NO. 161456/2024

MOTION DATE 04/30/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 14, 15, 16, 17, 18, 19, 23, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 45, 46, 48, 49

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

ORDERED that plaintiff’s cross-motion to amend the complaint is granted and 136 East 56th Street Owners, Inc is substituted in place of the Individual Officers sued in their capacity as officers of 136 East 56th Street Owners, Inc; and it is further

ORDERED that plaintiff’s cross-motion to amend the complaint to add causes of action for breach of the proprietary lease and a breach of the warranty of habitability is granted because “leave to amend a pleading pursuant to CPLR 3025(b) should be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit” and here plaintiff has adequately alleged that defendant breached the Proprietary Lease by allegedly failing to repair the leak in plaintiff’s apartment (*Seidman v Indus. Recycling Properties, Inc.*, 83 AD3d 1040, 1040-41 [2d Dept 2011]); and it is further

ORDERED that the amended complaint, in the form annexed to the motion papers, shall be deemed served upon service of a copy of this order with notice of entry upon all parties who have appeared in the action; and it is further

ORDERED that a supplemental summons and amended complaint, in the form annexed to the motion papers, shall be served, in accordance with the Civil Practice Law and Rules, upon the additional parties in this action within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that the action shall bear the following caption:

WHITNEY SCHMUCKER,

Plaintiff,

-v-

136 East 56th Street Owners, Inc

Defendant

And it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the parties being added pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website]; and it is further

ORDERED that the portion of defendant's motion to dismiss the complaint as asserted against the individual defendants is denied as moot; and it is further


ORDERED that the portion of defendants' motion seeking to dismiss the first cause of action seeking an injunction directing defendants to make necessary repairs to remedy the alleged leaks in her apartment is denied as plaintiff has properly plead this cause of action (*see McMahon v Cobblestone Lofts Condominium*, 161 AD3d 536 [1st Dept 2018]); and it is further

ORDERED that the portion of defendants' motion seeking to dismiss the second cause of action seeking a declaratory judgment is granted because a "cause of action for declaratory judgment is unnecessary and inappropriate when the plaintiff has an adequate, alternative remedy in another form of action, such as breach of contract or injunctive relief (*Ithilien Realty Corp. v 180 Ludlow Dev. LLC*, 140 AD3d 621, 622 [1st Dept 2016]); and it is further

ORDERED that the portion of the defendants' motion seeking to dismiss the third cause of action for constructive eviction is denied because plaintiff has properly alleged "wrongful acts by the [board] that substantially and materially deprive the tenant of the beneficial use and enjoyment of the premises" (*Pac. Coast Silks, LLC v 247 Realty, LLC*, 76 AD3d 167, 172 [1st Dept 2010]), in that she plead that an unrepaired persistent leak caused mold damage necessitating her moving out of her unit; and it is further

ORDERED that the portion of defendants' motion seeking to dismiss the fourth and fifth causes of action for property damage and attorney's fees is denied because attorneys' fees may be recoverable under RPL § 234 and the proprietary lease; and it is further

ORDERED that the parties are directed to attend a preliminary discovery conference on October 9, 2025 at 9:30 AM.


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7/11/2025
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
			DENIED		OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					REFERENCE