

Genao v New York City Hous. Auth.

2025 NY Slip Op 32520(U)

July 14, 2025

Supreme Court, New York County

Docket Number: Index No. 450112/2025

Judge: Carol Sharpe

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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. CAROL SHARPE PART 52M

Justice

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ANTONIO GENAO,

Plaintiff,

- v -

NEW YORK CITY HOUSING AUTHORITY., CITY OF NEW
YORK., VANESSA MAXINE DELGADO, ISIDRO
DELGADO, MELANIE DELGADO SARUBBI, VANESSA M
DELGADO, OISIDRO DELGADO PAYAMPS,

Defendant.

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INDEX NO. 450112/2025

MOTION DATE 01/07/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, the motion is granted.

Defendant New York City Housing Authority (“NYCHA”) filed a motion seeking an order dismissing the plaintiff’s complaint with prejudice as plaintiff failed to state a cognizable cause of action against NYCHA pursuant to CPLR 3211(a)(7); failed to serve the summons and complaint upon defendant thus the court has no jurisdiction over the defendant pursuant to CPLR 3211(a)(8); failed to comply with the pleading requirements of Public Housing Law §157. No opposition was filed by self-represented plaintiff who did not appear for oral arguments on April 2, 2025, although he did e-mail the Clerk of the Part on several occasions between March 19, 2025, and April 2, 2025, with words put together in the same manner as in the complaint and amended complaint, and was told that everyone should be on the email and that he could reach out to the Help Desk for assistance.

Plaintiff commenced an action by filing the summons and complaint in Albany County, Index No. 907365/2024, in which he alleged that in violation of N.Y. Civ. Rights Law § 79N, the defendants caused bias and intimidation, bodily harm, emotional harm, mental anguish, damage to reputation, loss of income, loss of enjoyment of life, and property damages/ An amended summons with notice was filed to NYSCEF on August 13, 2024, and the amended complaint on August 14, 2024. Upon the application of NYCHA, the case was transferred to New York County Supreme Court by Order dated December 18, 2024, on the grounds that NYCHA has its principal office in New York County and plaintiff resides in New York County.

In support of its pre-answer motion, NYCHA provided among other things, the New York State Courts Electronic Filing (“NYSCEF”) Document List which included the Transfer Order from Albany; a Transfer Order dated August 13, 2024, granting a Change of Venue from Westchester County to New York County under Index No. 64715/2024.

NYCHA seeks dismissal on the grounds that plaintiff has not served them with the amended summons and complaint and more than 120 days have passed since the commencement of the action on July 31, 2024, as required under CPLR §306-b; plaintiff failed to give notice of the claim to NYCHA; the complaint failed to state a cognizable claim; and it failed to give notice of how the claims occurred or who is responsible pursuant to CPLR § 3013.

CPLR 3211(a)(8) provides that “[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that ... (8) the court has not jurisdiction of the person of the defendant.” CPLR §306-b provides that “[s]ervice of the summons and complaint, summons with notice, third-party summons and complaint, or petition with a notice of petition or order to show cause shall be made within one hundred twenty days after the commencement of the action or proceeding,...If service is not made upon a defendant within the time provided in this

section, the court, upon motion, shall dismiss the action without prejudice as to that defendant...” Failure to submit proof of service or to request an extension of time will result in the dismissal of the action. *Morini v. Thurman*, 220 A.D.3d 421, 422, 196 N.Y.S.3d 12, 12 (1st Dept. 2023). Plaintiff failed to serve NYCHA.

CPLR §3013 provides that “[s]tatements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.” CPLR §3014 provides that “[e]very pleading shall consist of plain and concise statements in consecutively numbered paragraphs. Each paragraph shall contain, as far as practicable, a single allegation...” “Although on a motion to dismiss plaintiffs’ allegations are presumed to be true and accorded every favorable inference, conclusory allegations--claims consisting of bare legal conclusions with no factual specificity--are insufficient to survive a motion to dismiss (*Caniglia v Chicago Tribune-N.Y. News Syndicate*, 204 AD2d 233, 233-234, 612 NYS2d 146 [1st Dept 1994])” *Godfrey v. Spano*, 13 N.Y.3d 358, 373, 892 N.Y.S.2d 272, 920 N.E.2d 328 (2009). “Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery.” *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 142, 53 N.Y.S.3d 598, 75 N.E.3d 1159 (2017). Plaintiff failed comply with the CPLR requirements.

CPLR 3211(a)(7) provides that “[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that ... (7) the pleading fails to state a cause of action.” Pleadings which are the subject of a CPLR 3211 motion to dismiss are liberally construed, the court is to accept the facts as alleged in the complaint to be true, accord plaintiff “the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within

any cognizable legal theory.” *Leon v. Martinez*, 84 N.Y.2d 83, 87-88, 614 N.Y.S.2d 972, 638 N.E.2d 511 (1994). “While on a motion to dismiss, the facts pleaded are presumed to be true and given every favorable inference, bare legal conclusions and factual claims that are either inherently incredible or flatly contradicted by documentary evidence are not entitled to such consideration.” *Yovich v. Montefiore Nyack Hosp.*, 212 A.D.3d 425, 426, 181 N.Y.S.3d 241, 242 (1st Dept. 2023). “When evidentiary material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one, and, unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, again dismissal should not eventuate.” *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275, 401 N.Y.S.2d 182, 185, 372 N.E.2d 17, 20-21 (1977). *See also, Rovello v. Orofino Realty Co.*, 40 NY2d 633, 636, 389 N.Y.S.2d 314, 316, 357 N.E.2d 970, 972 (1976). Here, plaintiff has failed to state a cause of action, the complaint does not comply with the requirements of the CPLR, and the court does not have jurisdiction over NYCHA as they were not served.

Accordingly, it is hereby:

ORDERED, that New York City Housing Authority’s motion to dismiss is granted; it is further

ORDERED, that the complaint and any crossclaim asserted against New York City Housing Authority are dismissed with prejudice; it is further

ORDERED, that the action is severed and continued against the remaining Defendants; it is further

ORDERED, that the caption in this matter is amended to reflect the dismissal Defendant New York City Housing Authority, and that all future papers filed with the court shall bear the below amended caption:

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ANTONIO GENAO,

Plaintiff,

-v-

CITY OF NEW YORK., VANESSA MAXINE DELGADO,
ISIDRO DELGADO, MELANIE DELGADO SARUBBI,
VANESSA M DELGADO, OISIDRO DELGADO
PAYAMPS,

Defendants.
-----X

; it is further

ORDERED, that the movant shall serve all parties within ten (10) days of the date of this Order and shall file proof of service; it is further

ORDERED, that the movant, within twenty (20) days of the date of this Order, shall serve this Order with Notice of Entry, and shall file proof of such service within ten (10) days after such service, upon the Clerk of the Court, who is directed to update the Court's records to reflect the amended caption herein; and it is further

ORDERED, that service of this Order upon the Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter or if it is an e-file case, 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).

This constitutes the Decision and Order of the Court.

ENTER:

July 14, 2025
DATE


HON. CAROL SHARPE, U.S.C.
HON. CAROL SHARPE
J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: