

FAB Beauty LLCv 22 E 14 LLC

2025 NY Slip Op 33750(U)

October 3, 2025

Supreme Court, New York County

Docket Number: Index No. 659875/2024

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12M

Justice

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FAB BEAUTY LLC,

Plaintiff,

- v -

22 E 14 LLC, SUTTON GARRETT REALTY ASSOCIATES, LTD.

Defendant.

-----X

INDEX NO. 659875/2024
MOTION DATE 01/31/2025
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for DISMISSAL

Plaintiff commenced the instant action against 22 E 14 LLC ("Defendant 22") and Sutton Garrett Realty Associates, Ltd. ("Defendant Sutton") (collectively "Defendants") to recover damages resulting from Defendants' failure and inadequate performance of work that was agreed upon in a lease agreement between the parties.

Defendants now move to dismiss the complaint pursuant to CPLR 3211(a)(1) and (7). In support of their 3211(a)(1) motion, Defendants submit the lease agreement between Plaintiff and Defendant 22 (NYSCEF Doc. No. 6). Defendants assert that the complaint must be dismissed against Defendant Sutton because it is not a party to the lease. In opposition, Plaintiff does not dispute that Defendant Sutton did not sign the lease but rather asserts that Defendant Sutton was acting as an agent of Defendant 22.

Defendants further assert that the complaint should be dismissed against Defendant 22 because it seeks consequential damages and the recovery of rent abatements, both of which are

barred by the lease agreement. In response, Plaintiff asserts that the complaint only seeks actual damages.

Lastly, Defendants argue that Plaintiff waived the right to bring these breach of contract claims as they were previously settled by the parties. In support of this argument, Defendants attach an email exchange which purportedly shows the prior agreement reached by the parties (NYSCEF Doc. No. 7).

Legal Standard

A party seeking relief pursuant to CPLR 3211(a)(1) on the ground that its defense is founded upon documentary evidence “may be appropriately granted only where the documentary evidence utterly refutes plaintiff’s factual allegations, conclusively establishing a defense as a matter of law” (*see Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314 [2002], quoting *Leon v Martinez*, 84 NY2d 83, 88 [1994]). “A motion to dismiss pursuant to CPLR 3211(a)(1) will be granted only if the document evidence resolves all factual issues as a matter of law and conclusively disposes of the plaintiff’s claims” (*J.A. Lee Elec., Inc. v City of New York*, 119 AD3d 652, 653 [2d Dept 2014]; *Fortis Fin. Servs. V Fimat Futures USA*, 290 AD2d 383 [1st Dept 2002]).

On a motion to dismiss pursuant to CPLR 3211 (a)(7), the facts alleged in the complaint must be accepted as true, the plaintiff is accorded the benefit of every possible favorable inference, and the court’s function is to determine simply whether plaintiff’s facts fit within any cognizable legal theory (*see Leon*, 84 NY2d at 87-88; *Siegmund Straus, Inc. v. East 149th Realty Corp.*, 104 AD3d 401 [1st Dept 2013]). “Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss” (*Zurich Am. Ins. Co. v City of New York*, 176 AD3d 1145, 1147 [2d Dept 2019], quoting *EBC I, Inc. v Goldman Sacks & Co.*, 5 NY3d 11, 19 [2005]).

Discussion

It is well settled that the elements of a breach of contract claim are (1) the existence of a contract, (2) the performance of the party asserting the claim, (3) the breach by the party defending the claim, and (4) damages (*see Harris v Seward Park Housing Corp.*, 79 AD3d 425 [1st Dept 2010]).

Here, the complaint alleges that both Defendants entered into a lease agreement with Plaintiff. This is utterly refuted by lease agreement, which shows that Plaintiff and Defendant 22 were the sole signatories to the lease. Moreover, the complaint fails to allege an agency relationship between Defendants, as it merely stating that “Defendant Sutton upon information and belief is the Managing agent for defendant, 22 . . .” (NYSCEF Doc. No. 1). As Defendant Sutton is not a party to the lease and Plaintiff has not sufficiently alleged privity of contract with Defendant Sutton, the complaint against Defendant Sutton must be dismissed (*see Rodriguez-Nunci v Clinton Housing and Dev. Co., Inc.*, 241 AD3d 339 [1st Dept 1997]; *CDJ Bldrs. Corp. v Hudson Constr. Corp.*, 67 AD3d 720, 722 [2d Dept 2009] [“Liability for breach of contract does not lie absent proof of a contractual relationship or privity between the parties”] [internal quotations omitted]).

As to Defendant 22, the complaint sufficiently asserts a claim for breach of contract by alleging the existence of a lease between Plaintiff and Defendant 22, that Plaintiff paid rent, and that Plaintiff suffered damages because Defendant 22 failed to complete or inadequately completed the work contemplated in the lease. The lease agreement and email correspondence fail to utterly refute these allegations. Additionally, whether Plaintiff will ultimately prevail on these allegations is not relevant on this pre-answer motion to dismiss.

Accordingly, it is

ORDERED that Defendants' motion to dismiss is granted solely as to Defendant Sutton;
and it is further

ORDERED that Defendant's motion to dismiss is denied in all other respects.

This constitutes the decision and order of the Court.

10/3/2025
DATE

CHECK ONE: CASE DISPOSED DENIED

APPLICATION: GRANTED SETTLE ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN

Leslie A. Stroth
HON. LESLIE A. STROTH
J.S.C.

NON-FINAL DISPOSITION OTHER

GRANTED IN PART REFERENCE

SUBMIT ORDER

FIDUCIARY APPOINTMENT