

Friend v 333 Tenants Corp

2025 NY Slip Op 33792(U)

October 6, 2025

Supreme Court, New York County

Docket Number: Index No. 161778/2024

Judge: Leslie A. Stroth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

-----X

SARAH FRIEND,

Plaintiff,

- v -

333 TENANTS CORP, BRUCE GREENBERG, AKAM ASSOCIATES, INC.,

Defendant.

-----X

333 TENANTS CORP, BRUCE GREENBERG, AKAM ASSOCIATES, INC.

Plaintiff,

-against-

SUNSHINE RENOVATIONS MANAGEMENT, INC.

Defendant.

-----X

INDEX NO. 161778/2024
MOTION DATE 01/13/2025
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

Third-Party
Index No. 595192/2025

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 15, 16, 17, 18, 22

were read on this motion to/for DISMISS

FACTUAL BACKGROUND

This action arises out of alleged failures by Defendants 333 Tenants Corp., its President Bruce Greenberg, and managing agent AKAM Associates, Inc. (collectively "Defendants"), to properly maintain and repair building systems and conditions within Plaintiff Sarah Friend's apartment at 333 East 69th Street, New York, New York.

Plaintiff asserts four causes of action: (1) breach of the Proprietary Lease; (2) violation of New York General Business Law ("GBL") § 349; (3) negligence; and (4) declaratory judgment. Plaintiff alleges that mold contamination developed in her apartment due to building conditions

and Defendants' failure to remediate, resulting in relocation and remediation expenses. Plaintiff further alleges that Defendants improperly charged her for legal fees by including them in her maintenance bills.

Defendants, in Motion Sequence 001 move pursuant to CPLR 3211(a)(7) to dismiss the Second, Third, and Fourth Causes of Action, contending that Plaintiff has not alleged consumer-oriented conduct under GBL § 349, that her negligence claim is duplicative of her contract claim, and that her declaratory judgment request is unnecessary given the breach of contract cause of action

LEGAL STANDARD

Pursuant to CPLR 3211 (a)(7), a party may move to dismiss a claim on the ground that the pleading fails to state a cause of action. Upon such a motion, the Court must accept the facts alleged as true and determine simply whether plaintiff's facts fit within any cognizable legal theory. (See CPLR 3026; *Morone v Morone*, 50 NY2d 481 (1980)). The complaint shall be liberally construed, and the allegations are given the benefit of every possible favorable inference. (See *Leon v Martinez*, 84 NY2d 83, 87 (1994)).

DISCUSSION

Second Cause of Action – GBL § 349

Plaintiff alleges that Defendants engaged in deceptive practices by improperly assessing attorneys' fees against her through her maintenance bills. However, the conduct alleged concerns a private proprietary lease dispute between a cooperative corporation and a shareholder. Courts have consistently held that private contract disputes, unique to the parties, do not fall within the scope of GBL § 349, which requires consumer-oriented conduct with a broad impact on the

public and that such is directed to consumers write large. (see *Oswego Laborers' Local 214 Pension Fund v Mar. Midland Bank, N.A.*, 85 NY2d 20, 25 [1995]).

Here, Plaintiff's allegations, even if accepted as true, concern only her own billing dispute with the cooperative and do not allege deceptive practices directed at the public at large. Accordingly, the Second Cause of Action fails to state a claim under GBL § 349 and must be dismissed.

Remaining Causes of Action

Defendants also seek dismissal of Plaintiff's negligence and declaratory judgment causes of action. However, at the pleading stage, the Court must give Plaintiff the benefit of every favorable inference. Plaintiff alleges an independent duty of reasonable care owed by Defendants in maintaining the building's HVAC system in preventing unsafe conditions, which may support a negligence claim distinct from contractual obligations. (see *Reade v Reva Holding Corp.*, 30 AD3d 229, 236 [1st Dept 2006]).

Plaintiff also seeks declaratory relief regarding Defendants' continued imposition of attorneys' fees on her maintenance bills. While Defendants argue that such relief is duplicative of a contract claim, CPLR 3001 permits declaratory relief where ongoing legal relations are in dispute. As Plaintiff seeks declaratory relief related to future bills, the court finds that Plaintiff has sufficiently plead that contractual remedies, standing alone, may not adequately resolve the legal contentions of the parties going forward. As such, the Court finds that Plaintiff has sufficiently pleaded this cause of action at this juncture.

Accordingly, dismissal of the Third and Fourth Causes of Action is denied.

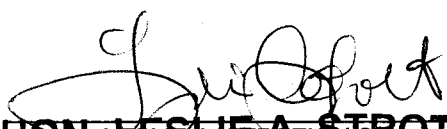
The court has considered the remaining arguments of the parties and finds such unavailing.

For the foregoing reasons, it is hereby

ORDERED that Defendants' motion is granted in part, to the extent of dismissing the Second Cause of Action (GBL § 349 claim), and is otherwise denied; and it is further

ORDERED that the First, Third, and Fourth Causes of Action shall proceed.

10/6/2025
DATE


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

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE