

Hurbs v Metropolitan Transp. Auth.

2025 NY Slip Op 34534(U)

November 24, 2025

Supreme Court, New York County

Docket Number: Index No. 652250/2025

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

-----X

HILARY HURBS

Plaintiff,

- v -

METROPOLITAN TRANSPORTATION AUTHORITY AND
METRO-NORTH COMMUTER RAILROAD COMPANY,

Defendant.

-----X

INDEX NO. 652250/2025
MOTION DATE 07/14/2025
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, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for DISMISSAL.

This is the second action commenced by plaintiff seeking damages resulting from her alleged improvement of the subject premises and defendants’ failure to provide plaintiff with a lease for the premises¹. Defendants now move, pursuant to CPLR § 3211 (a)(1) and (7), to dismiss the complaint. Plaintiff opposes the motion. For the reasons set forth below, the motion to dismiss is granted².

Background

Plaintiff was a franchisee of company Golden Krust Franchising, Inc. (“Golden Krust”). Defendants, owners of the space, #K-05 Grand Central Terminal Building, signed a lease agreement with non-party Lowell Hawthorne (“Hawthorne”), the president of the company Golden Krust Franchising. *See* NYSCEF Doc. 21. The lease agreement was signed on January 31, 2011, with an expiration date of November 30, 2020.

¹ Plaintiff’s first action was filed under index number 451932/2024 and has since been dismissed.

² The Court would like to thank Noah Lowen and Cole Dorsey for their assistance in this matter.

Plaintiff alleges that she was promised a lease agreement, intended to continue operating her business there and suffered damages when the lease was not renewed.

Standard of Review

On a motion to dismiss the court “merely examines the adequacy of the pleadings”, the court “accept as true each and every allegation made by plaintiff and limit our inquiry to the legal sufficiency of plaintiff’s claim.” *Davis v Boehem*, 24 NY3d 262, 268 [2014] (internal citations omitted).

Notwithstanding the broad pleading standard, a plaintiff’s bald legal conclusions, unsupported by factual specificity, will not withstand a motion to dismiss. *See Godfrey v Spano*, 13 NY3d 358, 373, 920 NE2d 328, 892 NYS2d 272 [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 NY3d 137, 142, 53 NYS3d 598, 75 NE3d 1159 [2017]).

“In a motion to dismiss pursuant to CPLR 3211 (a) (1), the defendant has the burden of showing that the relied-upon documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff’s claim” (*Fortis Fin. Servs., LLC v Fimat Futures USA, Inc.*, 290 AD2d 383, 383 [1st Dept 2002] internal quotations and citations omitted). Further, dismissal pursuant to CPLR § 3211(a)(1) is warranted where documentary evidence “conclusively establishes a defense to the asserted claims as a matter of law.” *Gottesman Co. v A.E.W, Inc.*, 190 AD3d 522, 24 [1st Dept 2021].

Discussion

Plaintiff asserts three causes of action, account stated, promissory estoppel and unjust enrichment. The Court will address each in turn

Account Stated

In support of its account stated claim, plaintiff relies on a demand letter sent by plaintiff on May 18, 2022, NYSCEF Doc. No. 24, and asserts that it was not objected to by defendants.

“To state a claim for an account stated, the plaintiff must plead that: ‘(1) an account was presented; (2) it was accepted as correct; and (3) debtor promised to pay the amount stated.’” *Nat'l Econ. Research Assocs. v Purolite "C" Corp.*, 2011 U.S. Dist. LEXIS 24458, *6-7. The second and third elements “may be implied if ‘a party receiving a statement of account keeps it without objecting to it within a reasonable time.’” *Id.*

Even if defendant did not object to the demand letter, the Court finds that the letter is insufficient to provide a basis for an account stated claim. The demand letter does not provide the requisite information, specifically “an agreement to the amount due” (*Digital Ctr., S.L. v Apple Indus., Inc.*, 94 AD3d 571, 573 [1st Dept 2012]). Accordingly, plaintiff’s cause of action for an account stated is dismissed.

Promissory Estoppel

“The elements of promissory estoppel are a clear and unambiguous promise, reasonable and foreseeable reliance by the party to whom the promise is made, and an injury sustained in reliance on that promise.” *Odonata Ltd. v Baja 137 LLC*, 206 AD3d 567, 569 [1st Dept 2022].

In support of this cause of action, plaintiff alleges that defendant promised her a new lease on August 30, 2021, however the emails submitted by plaintiff in opposition to the motion establish that no lease was promised. Moreover, plaintiff does not allege the terms of the alleged

promise, nor the injury sustained because of the reliance on the promise. Accordingly, plaintiff's cause of action for promissory estoppel is dismissed.

Unjust Enrichment

The essential inquiry in an action for unjust enrichment is whether it is against equity and good conscience to permit the defendant to retain what is sought to be recovered." *Mandarin Trading Ltd. v. Wildenstein*, 16 NY3d 173, 182 [2011]. To prevail, "[a] plaintiff must show "that (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered." *Id.*

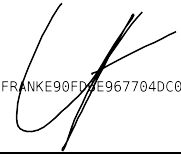
It is well-settled that an unjust enrichment claim can only be sustained if the services were performed at the defendant's behest. *Georgia Malone & Co., Inc. v Rieder*, 86 AD3d 406, 408 [1st Dept 2011] Further, "a plaintiff must demonstrate that services were performed *for the defendant* resulting in its unjust enrichment...[i]t is not enough that the defendant received a benefit from the activities of the plaintiff..." *Heller v Kurz*, 228 AD2d 263, 264 [1st Dept 1996].

In support of its unjust enrichment cause of action, plaintiff claims that she installed a new fire extinguisher, emergency lights, inspection of sprinkler system, new appliances, mounted security cameras, cabinet locks, stainless steel tables, portable sink, 4 refrigerators, and coolers at her expense and to defendants' benefit. Plaintiff does not allege that the improvements were made at the defendants' request, thus the complaint fails to state a cause of action. The Court has reviewed plaintiff's remaining contentions and finds them unavailing. Accordingly, it is hereby

ADJUDGED that defendants' motion to dismiss is granted in its entirety; and it is further

ORDERED that the complaint is dismissed in its entirety, and the Clerk of the Court shall enter judgment accordingly.

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11/24/2025

DATE

LYLE E. FRANK, 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