

Ferrara v Mercer Sq. Owners Corp.

2025 NY Slip Op 34946(U)

December 18, 2025

Supreme Court, New York County

Docket Number: Index No. 655185/2023

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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NICHOLAS C. FERRARA,

Plaintiff,

- v -

MERCER SQUARE OWNERS CORP.,

Defendant.

-----X

INDEX NO. 655185/2023

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion to/for SUMMARY JUDGMENT.

Defendant’s motion for summary judgment is granted in part and denied in part.

Background

Plaintiff, the owner of certain shares in a cooperative (defendant), brings this case about his ownership and use of two basement storage units. He contends that the board of defendant offered these units in 1999 and that he began storing items these units (which were provided at no cost). At some point, defendant began charging shareholders for the storage space but nothing produced in this motion shows that defendant ever charged plaintiff for utilizing his units.

Plaintiff stored his belongings in these units for decades. To his horror, in 2022, he learned that his property was missing and that his locks were cut.

He contends he was provided with no notice and alleges that defendant cut the locks and removed all of his personal property in these units. Plaintiff maintains that he demanded

compensation for the loss of his belongings, but that defendant refused. He claims that he eventually found some of the items but that much of it was apparently thrown out.

Defendant now moves for summary judgment and characterizes the storage units as a revocable license for storing nonvaluable and nonperishable items. It insists that plaintiff's bailment cause of action fails because the proprietary lease provided that the storage units were gratuitous and could be revoked at any time. Defendant emphasizes that plaintiff provided his own locks and did not provide a list of the items he stored in these spaces to defendant. It argues that plaintiff also cannot establish a negligence claim because plaintiff had exclusive possession and control over the property and that defendant never had a duty to safeguard the property.

Defendant argues that plaintiff did not adequately prove defendant's connection to the lost property and that he did not include enough documentation to prove what he lost, such as receipts, photos or invoices.

In opposition, plaintiff emphasizes that he lawfully maintained two basement storage units provided to him free of charge. He claims that the boxes in which his items were stored contained his contact information and that no one reached out to him prior to destroying his personal property. Plaintiff points out that after raising the issue of his missing items to defendant, defendant eventually (after months of communication) raised the possibility that a flood in the basement had destroyed certain belongings. He claims he was never told about a flood and there is no evidence one actually occurred.

In reply, defendant contends that plaintiff's causes of action fail as he could not show that there was a bailment or that defendant was negligent. It argues that there is no presumption of negligence because of the lack of a bailment relationship regarding the storage units.

Discussion

The first issue for the Court is whether or not the storage of property in these basement units constituted a bailment.

“A bailment does not necessarily and always, though generally, depend upon a contractual relation. It is the element of lawful possession, however created, and duty to account for the thing as the property of another that creates the bailment, regardless of whether such possession is based on contract in the ordinary sense or not. . . It is the element of lawful possession, and the duty to account for the thing as the property of another, that creates the bailment, whether such possession results from contract or is otherwise lawfully obtained” (*Martin v Briggs*, 235 AD2d 192, 197, 663 NYS2d 184 [1st Dept 1997] [internal quotations and citations omitted]).

The Court severs and dismisses this cause of action because defendant never obtained lawful possession over plaintiff’s items. It is undisputed that plaintiff never relinquished exclusive control over his property as he utilized his own locks for the storage units. “The determination as to whether the relationship is one of bailor and bailee turns on whether there is a relinquishment of exclusive possession, control and dominion over the property (*Hutton v Pub. Stor. Mgt., Inc.*, 177 Misc 2d 540, 541, 676 NYS2d 886 [App Term, 2d Dept 1998] [finding that there was no bailment where a plaintiff used his own locks for a storage space]).

However, the Court finds that there are material issues of fact regarding the negligence cause of action even though the absence of a bailment claim removes the presumption of negligence (*see Elish v Airport Parking Co. of Am., Inc.*, 42 AD2d 174, 176 [2d Dept 1973], *affd* 34 NY2d 882 [1974]). There are simply too many unresolved issues for the Court to grant summary judgment. As with any summary judgment motion, each party’s burden is a critical

factor. Here, defendant did not meet its burden to show as a matter of law that it had nothing to do with the loss of plaintiff's property. In fact, a review of the relevant timeline makes it clear that summary judgment is not appropriate here.

As best this Court can tell, plaintiff reached out to defendant in April 2022 for the first time about his missing property. Defendant, through its managing agent, responded that a worker for defendant speculated that plaintiff's wife "stated that the people that sublet the apartment or bought your other apartments may have tossed it" (NYSCEF Doc. No. 38 at 5 of 95). Plaintiff vehemently disagreed with that assessment.

In May 2023, after plaintiff visited the property (his email signature suggests he was living in Tennessee), he stressed that he found some of his files but that his "personal stuff and golf clubs do not appear to be in the space" (*id.* at 11 of 95). In July 2023, defendant sent along a storage lease agreement and plaintiff insisted he never signed anything like that (*id.* at 27 of 95). No signed copy of that agreement was included in this record. As part of these submissions to defendant back in 2023, plaintiff included a list of the items he claims were destroyed, including specific descriptions for the contents of all 126 of his boxes (*id.* at 38 of 95).

Plaintiff also alleges that in June 2023, defendant told him that his property was destroyed by a flood and so he demanded proof (such as an insurance claim). He claims defendant did not provide any proof. At defendant's deposition, its witness (Ms. Moretti, the managing agent) claimed that there was a leak sometime in 2020 that affected "almost all" of the storage units in the basement (NYSCEF Doc. No. 36 at 35). However, Ms. Moretti did not know how many items were damaged by this leak and insisted that the shareholders themselves moved items (*id.* at 36-38). She did not know if defendant ever broke any locks to address items

damaged by the flood (*id.* at 38). Ms. Moretti also did not know what happened to Mr. Ferrara's items as a result of the flood (*id.* at 42).

There were other confusing parts of this testimony that require the Court to deny the motion. Ms. Moretti claimed that if people stopped paying their fees for the storage units, she would contact them (*id.* at 53). Of course, plaintiff claims he never paid any fees. And when asked how someone could have storage units without a signed storage locker agreement, she claimed that "They snuck it in, they paid somebody off, or they were on the board" (*id.* at 31-32). Because there is no evidence on this record that plaintiff ever had such an agreement, it raises questions about whether the locks were cut, possibly inadvertently, because of a lack of payment or signed agreement.

The Court must also address defendant's insistence that the case should be dismissed because the proprietary lease regards the storage space as a revocable license. Without a doubt, the proprietary lease states that any storage space "shall be deemed to have been furnished gratuitously by the Lessor under revocable license" (NYSCEF Doc. No. 37, § 29[b]). Any rational interpretation of that provision suggests it permitted the building to revoke the storage spaces. It did not permit, as defendant seems to claim, that it could just break the locks and get rid of a shareholder's property without notice. Moreover, defendant's emphasis on another portion of that paragraph informing a shareholder to "not use such storage space for the storage of valuables or perishable property" (*id.*) does not require the Court to grant the motion. That vague phrase, again, did not permit defendant to remove plaintiff's property without notice. Defendant could have put a specific limit on a shareholder's recovery if items in storage were damaged or lost, but it did not (*c.f. Ross v Tuck-It-Away, Inc.*, 180 AD2d 428, 429, 579 NYS2d

92 [1st Dept 1992] [finding that a plaintiff was only entitled to recover \$1,000 for lost items where the storage agreement limited recover to \$1,000]).

Summary

On this record, the Court has no idea what happened as a matter of law to plaintiff's items and therefore, the Court must deny the motion. There are certainly some plausible scenarios in which defendant is liable under a theory of negligence for the loss of plaintiff's items. Maybe defendant tossed some damaged items because of an alleged leak/flood or maybe items were thrown out because plaintiff was not paying storage fees, even though there is no showing that defendant ever billed plaintiff for use of the units. How exactly plaintiff avoided being charged for the storage units once the building began charging and its impact, if any, on the status of his property remains entirely unclear on this record. Or it could be that defendant is entirely free of negligence because the people subletting the apartment broke the locks and destroyed the property. But it would be pure speculation for this Court to reach any conclusion.

Contrary to defendant's argument, it was not plaintiff's burden to affirmatively prove who was responsible for destroying his items in order to defeat defendant's motion. He only had to raise an issue of fact that defendant was responsible, and he did that here. The fact is that plaintiff had a storage space in defendant's building for decades and he claims that he is missing about two-thirds of those items. That raises a clear negligence claim for a fact finder to assess.

Defendant's insistence that plaintiff needs to show receipts and invoices is also without merit. Plaintiff was entitled to rely upon a list he provided to defendant back in 2023 of the items he claims he lost in opposition to the motion. Of course, at trial, it will be plaintiff's burden

to prove his damages and persuade a fact finder that he stored those items and what value should be assigned.

Accordingly, it is hereby

ORDERED that defendant’s motion for summary judgment is granted only to the extent that plaintiff’s cause of action for a bailment is severed and dismissed and denied with respect to the negligence claim.

12/18/2025
DATE


ARLENE P. BLUTH, 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