SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYNN R. KOTLER** **PART** **08**

Justice

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TIMOTHY C. CASTER,

Plaintiff,

- v -

CHELSEA HOTEL OWNER, LLC,

Defendant.

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INDEX NO. 651793/2022

MOTION DATE 04/22/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 114, 115, 123, 124, 125, 126, 127, 128, 130, 131, 132, 133, 134, 135, 138, 140, 143, 144

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

INTRODUCTION

Defendant-landlord Chelsea Hotel Owner, LLC ("CHO") moves pursuant to CPLR 3212 for summary judgment dismissing plaintiff's complaint. Plaintiff-tenant Timothy Caster opposes the motion. Issue has been joined, and the motion is timely brought after note of issue was filed. Therefore, summary judgment relief is available. For the reasons that follow, the motion is granted.

BACKGROUND

Caster resides in Unit 127 at the Chelsea Hotel. He moved into Unit 127 in the early 1990s. Prior to moving in, he conducted a walkthrough of the unit with Stanley Bard, the owner of the Chelsea Hotel at the time, and verbally agreed to rent the unit for $500 per month. The layout of Unit 127 has remained unchanged and is the same today as at the time of the walkthrough. When Caster moved into Unit 127, Bard informed him that the neighboring apartment, Unit 129, was a hotel room. In 1996, as part of the resolution of a non-payment action, Caster's lease was reduced to writing. Under the written lease, the monthly rent remained at $500. Caster's lease was thereafter renewed every year through 2023.

In 2011, new owners purchased the hotel and began building-wide construction, as the building was in a state of disrepair. CHO purchased the Chelsea Hotel in 2016 and continued the ongoing renovation of the premises, which it completed in 2022. Caster continued to reside in Unit 127 throughout the construction period, including during the gut renovation of the neighboring Unit 129. During this period, Caster raised claims about the condition of his unit and the building.

In June 2020, Caster began to withhold his monthly rent payments and, in September 2022, CHO commenced a non-payment action against Caster in Housing Court, New York County, entitled *Chelsea Hotel Owner, LLC, v. Timothy Caster*, Index No. LT-313696-22/NY (the "Non-Payment Action"). Caster, through counsel, interposed an answer in the Non-Payment Action raising warranty of habitability defenses. The Non-Payment Action was tried across two days in March and June 2023. By decision and order dated July 18, 2023, the Honorable Jack Stoller, J.H.C., found, *inter alia*, that CHO breached the warranty of habitability and awarded Caster a rent abatement for the period of November 2016 through March 2023 equal to approximately 90% of Caster's rent arrears.

In April 2022, Caster commenced the instant action asserting a cause of action for tenant harassment and seeking a declaratory judgment awarding him a leasehold in the neighboring Unit 129 based on CHO's alleged breach of the lease and breach of the covenant of good faith and fair dealing.

DISCUSSION

On a motion for summary judgment, the proponent bears the initial burden of making a prima facie showing that it is entitled to summary judgment as a matter of law, providing sufficient evidence that no material issues of triable fact exist (*Trustees of Columbia Univ. in the City of N.Y. v D'Agostino Supermarkets, Inc.*, 36 NY3d 69, 74 [2020]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once met, the burden shifts to the opposing party to "produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact . . . mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *see also De Lourdes Torres v Jones*, 26 NY3d 742, 763 [2016]). However, if the proponent fails to make out its

prima facie case for summary judgment, its motion must be denied regardless of the sufficiency of the opposing papers (*Alvarez*, 68 NY2d at 324; *Ayotte v Gervasio*, 81 NY2d 1062 [1993]).

Breach of Contract

To sustain a breach of contract claim, a plaintiff must show that: "(1) a contract exists; (2) plaintiff performed in accordance with the contract; (3) defendant breached its contractual obligations; and (4) defendant's breach resulted in damages" (*34-06 73, LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022] [internal citations omitted]). Here, Caster contends CHO breached the lease by failing to convey Unit 127 to him in its entirety, alleging the unit has been unlawfully subdivided and partitioned, and should rightfully include the neighboring Unit 129 as well.

In support of its motion, CHO submits Caster's deposition transcript, wherein Caster testified regarding his walk-through of Unit 127 with Stanley Bard in the early 1990s and their oral agreement at that time for Caster to rent that unit; that Caster received Unit 127, as was promised to him under the oral agreement, which was subsequently memorialized in a written rent-stabilized lease; that, from Caster's initial walk-through in the early 1990s to the present, the unit configuration for his apartment has not changed; and that Caster continued to renew his lease through 2023. CHO further submits the certificates of occupancy ("CO") issued to the Chelsea Hotel in 1952 and 2003, the 1977 floor-plan for the hotel's second floor, which includes Units 127 and 129, and certified construction plans for the recent construction begun in 2011, all of which demonstrate that the Chelsea Hotel has remained unchanged for decades and that the unit Caster received is in its legal configuration, as Units 127 and 129 are separate apartments, consistent with the units' configuration for approximately 30 years. CHO thus demonstrates, prima facie, that it did not breach the lease by failing to convey to Caster Unit 127 in its entirety.

Caster, in opposition, fails to raise a triable issue of fact. A party opposing a motion for summary judgment must present evidentiary facts sufficient to raise a triable issue of fact and may not rely upon conclusory and unsubstantiated allegations or assertions (*see Zuckerman*, 49 NY2d at 562; *Mallad Construction Corp. v County Federal Savings & Loan Assoc.*, 32 NY2d 285, 290-92 [1973]; *Tobron Office Furniture Corp. v King World Productions*, 161 AD2d 355, 357 [1st Dept. 1990] [opponent of summary judgment motion must "assemble, lay bare and reveal his proofs . . . and it is insufficient to merely set forth averments of factual or legal

conclusions"]; *Polanco v City of New York*, 244 AD2d 322, 322 [2nd Dept. 1997] ["a shadowy semblance of an issue or bald conclusory allegations, even if believable, are insufficient to defeat a motion for summary judgment"]). Here, Caster submits no evidence other than the self-serving and conclusory statements in his own affidavit to substantiate his breach of contract claim. Indeed, at his deposition, Caster admitted he has no evidence to support his assumption that his apartment is in an illegal configuration.

Covenant of Good Fair and Fair Dealing

CHO is likewise entitled to summary judgment with respect to the claim for breach of the implied covenant of good faith and fair dealing. The implied covenant of good faith and fair dealing is breached "when a party to a contract acts in a manner that, although not expressly forbidden by any contractual provision, would deprive the other party of the right to receive the benefits under their agreement" by "[seeking] to prevent performance of the contract or to withhold its benefits" from the other contracting party (*Aventine Inv. Mgmt., Inc. v Canadian Imperial Bank of Com.*, 265 AD2d 513, 514 [1st Dept. 1999]). Here, Caster admits CHO took no action to withhold information from him or to hinder him from obtaining the benefit of his lease. Indeed, Caster has resided in Unit 127 pursuant to the lease for approximately 30 years.

Moreover, where, as here, "a good faith claim arises from the same facts and seeks the same damages as a breach of contract claim, it should be dismissed" (*Mill Fin., LLC v Gillett*, 122 AD3d 98,104 [1st Dept. 2014]). That is because "a breach of the covenant of good faith and fair dealing is a breach of the contract itself" (*Parlux v Carter Enterp., LLC*, 204 AD3d 72, 92 [1st Dept. 2022]), such that a claim for breach of the implied covenant of good faith and fair dealing must be dismissed as duplicative if it arises out of the same facts as a breach of contract claim (*see MDRN Intelligence Living Wolfhome v Hartford Fin. Servs. Group, Inc.*, 216 AD3d 409, 409-10 [1st Dept. 2023]; *Ahsanuddin v Addo*, 175 AD3d 1213, 1213 [1st Dept. 2019]).

Harassment

Harassment is defined as any act or omission by a landlord that causes or is intended to cause a tenant to vacate their apartment or surrender any rights in relation to its occupancy (N.Y.C. Admin. Code § 27-2004[a][48]). This definition encompasses, as relevant here, "repeated interruptions or discontinuances of essential services, or an interruption or

discontinuance of an essential service for an extended duration or of such significance as to substantially impair the habitability of [the tenant's] dwelling unit" (*id.* § 27-2004[a][48][ii][b]).

Caster's harassment claim is based on CHO's alleged failure to repair defective conditions in his apartment and alleged disruptions of essential services. However, the repairs and disruption of services alleged are exactly the same as those that Caster previously litigated to a final judgment in the Non-Payment Action in the Housing Court proceeding, and which served as the basis, in the decision and order resolving that prior proceeding, for Judge Stoller's finding that Caster was entitled to a rent abatement for the time period of 2016 through 2023. In fact, when asked at his deposition in the present action to outline the repair issues supporting his harassment claim, Caster stated, "[a]ll of these things were covered in great detail with photographic evidence in the Court Decision of July 2023. Exhaustive. The Judge listed them all. It's all in print" (NYSCEF Doc. No. 103 at 139:10-14). Indeed, when asked if he "ever raise[d] the issue of tenant harassment" in the Non-Payment Action, Caster confirmed that he did, stating that he told the judge in the prior proceeding that he was harassed by "the owner's disregard for my living conditions" (*id.* at 143:5-16).

"Under res judicata, or claim preclusion, a valid final judgment bars future actions between the same parties on the same cause of action" (*Parker v Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 347 [1999]; *see Matter of Reilly v Reid*, 45 NY2d 24 [1978]). New York applies a "transactional approach" to the doctrine of res judicata, so that "once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy" (*O'Brien v Syracuse*, 54 NY2d 353, 357 [1981]; *see Matter of Hunter*, 4 NY3d 260 [2005]). As such, "claim preclusion may foreclose litigation of a matter that never has been litigated, because of a determination that it should have been advanced in an earlier suit" (*Paramount Pictures Corporation v Allianz Risk Transfer AG*, 31 NY3d 64, 73 [2018] [internal quotation marks omitted]). Similarly, the related but narrower doctrine of collateral estoppel, or issue preclusion, "bars the relitigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to [a] prior judgment" (*id.* at 72; *see Conason v Megan Holding, LLC*, 25 NY3d 1, 17 [2015]).

Because Caster's allegations that CHO failed to provide repairs and services were previously raised and fully litigated in the Non-Payment Action, his present harassment claim is barred by res judicata and collateral estoppel (*see Munroe v Park Ave South Management*, 99 AD3d 426, 427 [1st Dept. 2012]). Caster's attempt to distinguish *Munroe* from the present case because, unlike the plaintiff in *Munroe*, he did not bring a counterclaim in the Non-Payment Action, is rejected. Caster raised the warranty of habitability as an affirmative defense in the Non-Payment Action based on the identical non-provision of repairs and services alleged as the basis for his present harassment claim. That these issues were raised in support of an affirmative defense rather than a counterclaim in the prior housing court proceeding is of no matter.

Further, CHO demonstrates entitlement to summary judgment dismissing the harassment claim on the merits as well. "[C]laims arising from conditions in the building, that is, under subparagraph[ ] b . . . of Administrative Code § 27-2004 (a) (48) (ii), require the existence of a predicate violation to state a claim for harassment" (*Berg v Chelsea Hotel Owner, LLC*, 203 AD3d 484, 485-86 [1st Dept. 2022]; *see* N.Y.C. Admin. Code § 27- 2115[h][2][i]). The two HPD violations cited by Caster as the predicates for his harassment claim are dated November 1, 1996, and March 22, 2013, almost 30 years and 13 years ago, respectively, both of which predate CHO's ownership of the Chelsea Hotel. Thus, on the record before the court, there are no multiple instances of CHO failing to correct class B and/or class C violations. Caster's reliance on a page from the HPD website is insufficient to create an issue of fact.

Moreover, Caster's own testimony belies the allegation that CHO's conduct was intended to cause him to vacate his apartment or surrender his rights (*see* N.Y.C. Admin. Code § 27-2004[a][48]). Caster admitted that "[t]hey didn't punch me, they didn't yell at me, they just made life as uncomfortable as possible, maybe not intentionally, but it was a disregard" (NYSCEF Doc. No. 103 at 153:2-5). While the construction undertaken by CHO may have made life inconvenient and difficult, there is no credible evidence before the court sufficient to allow an inference that these rose to the level of tenant harassment, such as to warrant the denial of the present motion.

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Based on the foregoing, CHO's motion for summary judgment is granted and the complaint is dismissed.

CHO's request, in the alternative, to vacate the note of issue, is denied as moot. In light of the foregoing, the court declines to address CHO's remaining arguments.

CONCLUSION

Accordingly, it is

ORDERED that defendant Chelsea Hotel Owner, LLC's motion for summary judgment dismissing the complaint is granted, and the complaint is hereby dismissed in its entirety; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied. This constitutes the Decision and Order of the court.

12/29/2025
DATE

LYNN R. KOTLER, J.S.C.

CHECK ONE:	X	CASE DISPOSED			☐	NON-FINAL DISPOSITION	
	X	GRANTED	☐	DENIED	☐	GRANTED IN PART	☐ OTHER
APPLICATION:	☐	SETTLE ORDER			☐	SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN			☐	FIDUCIARY APPOINTMENT	☐ REFERENCE