

<b>Waterside Plaza, LLC v Beckom</b>
2012 NY Slip Op 32065(U)
July 30, 2012
Supreme Court, New York County
Docket Number: 113068/11
Judge: Donna M. Mills
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SUPREME COURT OF THE STATE OF NEW YORK—NEW YORK COUNTY

PRESENT : DONNA M. MILLS

PART 58

*Justice*

WATERSIDE PLAZA, LLC,

**FILED**

INDEX No. 113068/11

Plaintiff,

**AUG - 6 2012**

MOTION DATE \_\_\_\_\_

-v-

**COUNTY CLERK'S OFFICE  
NEW YORK**

MOTION SEQ. No. 001

NORA BECKOM, et al.,

Defendants.

MOTION CAL No. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits.... 1

Answering Affidavits- Exhibits \_\_\_\_\_ 2

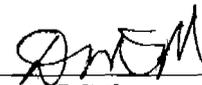
Replying Affidavits \_\_\_\_\_ 3

CROSS-MOTION:  YES  NO

Upon the foregoing papers, it is ordered that this motion is:

DECIDED IN ACCORDANCE WITH THE ATTACHED ORDER.

Dated: 7/30/12

  
**DONNA M. MILLS, J.S.C.**

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : IAS PART 58

-----X  
WATERSIDE PLAZA, LLC,

Plaintiff,

-against-

NORA BECKOM, et al.,

Defendants.  
-----X

**Donna M. Mills, J.:**

Index Number:

**FILED**  
113018/211

AUG - 6 2012

COURT CLERK  
NEW YORK

Waterside Plaza LLC, ("Plaintiff") brings this action against Nora Beckom and her son Kevin Beckom to terminate the residential apartment lease for the subject premises located at 40 Waterside Plaza, #20C, New York, N.Y. Plaintiff claims that Nora Beckom, is not residing at the subject premises.

Defendants filed their Answer, Affirmative Defenses and Counterclaim, denying the nonprimary residence claim, and asserting a succession rights claim for defendant Kevin Beckom. Defendants now move to amend their answer to include an affirmative defense of estoppel/fraud and a counterclaim for reformation/fraud. Plaintiff opposes the motion on the grounds that the proposed amended pleading fails to ( i) plead all the elements of fraud and/or (ii) plead the claim of fraud with sufficient particularity and detail to conform to CPLR 3016(b) and (iii) conform to the requirements under CPLR 3025(b) and (b) the claim of fraud us barred by the statute of limitations.

Pursuant to CPLR 3025(b), a party may amend its pleading at any time by leave of the court, which is "freely given upon such terms as may be just including the granting of costs and continuances." ( Murray v. City of New York, 43 N.Y.2d 400, 404-405, 401 N.Y.S.2d 773, 372 N.E.2d 560 [1977]; Lanpont v. Savvas Cab Corp.,

Inc., 244 A.D.2d 208, 209, 664 N.Y.S.2d 285 [1st Dept. 1997] ). The factors the court must consider in exercising its discretion are whether the proposed amendment would "surprise or prejudice" the opposing party ( Murray, 43 N.Y.2d at 405, 401 N.Y.S.2d 773, 372 N.E.2d 560; Lanpont, 244 A.D.2d at 209, 211, 664 N.Y.S.2d 285; Norwood v. City of New York, 203 A.D.2d 147, 148, 610 N.Y.S.2d 249 [1st Dept. 1994], lv. dismissed 84 N.Y.2d 849, 617 N.Y.S.2d 139, 641 N.E.2d 160), and whether such amendment is meritorious ( Thomas Crimmins Contracting Co., Inc. v. City of New York, 74 N.Y.2d 166, 170, 544 N.Y.S.2d 580, 542 N.E.2d 1097 [1989] ["Where a proposed defense plainly lacks merit, however, amendment of a pleading would serve no purpose but needlessly to complicate discovery and trial, and the motion to amend is therefore properly denied."]; Ancrum v. St. Barnabas Hosp., 301 A.D.2d 474, 475, 755 N.Y.S.2d 28 [1st Dept. 2003] [same] ).

In the case at bar, defendants filed their Answer, Affirmative Defenses and Counterclaim denying the nonprimary residence claim, and asserting a succession rights claim for defendant Kevin Beckom. At the time of filing their Answer, defendants claim to have been unaware of what they believe to be the co-tenancy status of Kevin Beckom and the additional affirmative defense of estoppel/fraud and counterclaim for reformation/fraud, until their February 2012 discovery of a 1995 renewal lease, and now wish to add this defense as well as counterclaim.

A cause of action to recover damages for fraud accrues on the date of the commission of the purported fraud ( see, 509 Sixth Ave. Corp. v. New York City Tr. Auth., 15 N.Y.2d 48, 255 N.Y.S.2d 89, 203 N.E.2d 486; Wall Street Assocs. v. Brodsky, 257 A.D.2d 526, 684 N.Y.S.2d 244; Monaco v. New York Univ. Med. Ctr., 213 A.D.2d

167, 623 N.Y.S.2d 566; *Starkey v. Starkey*, 192 A.D.2d 844, 846, 596 N.Y.S.2d 517; *Rattner v. York*, 174 A.D.2d 718, 571 N.Y.S.2d 762; *Brown v. Tonawanda Hous.*, 123 A.D.2d 493, 507 N.Y.S.2d 92). Defendant Nora Beckom is now alleging that she was induced to execute the November 1, 2001 lease without her son's signature based on a misrepresentation that he was not qualified to sign. Therefore, the period of limitations for purposes of the cause of action based on fraud began to run in 2001 when the Defendant, Nora Beckom signed the lease. As such, this Court finds that the Statute of Limitations for fraud expired in 2007, which was six years from the date the agreements was executed ( see, CPLR 213 [8] ).

Likewise an action to reform a lease based upon a mistake must generally be commenced within six years after the mistake is committed ( see CPLR 213[6] ).

Defendants claim that plaintiff should be estopped from evicting them. Equitable estoppel is an extraordinary remedy which applies " 'where [a party] is prevented from filing an action within the applicable statute of limitations due to his or her reasonable reliance on deception, fraud or misrepresentations by the [other]' " ( *Marincovich v. Dunes Hotels & Casinos, Inc.*, 41 A.D.3d 1006, 1010, 839 N.Y.S.2d 553 [2007], quoting *Putter v. North Shore Univ. Hosp.*, 7 N.Y.3d 548, 552–553, 825 N.Y.S.2d 435, 858 N.E.2d 1140 [2006]; see *Simcuski v. Saeli*, 44 N.Y.2d 442, 448–449, 406 N.Y.S.2d 259, 377 N.E.2d 713 [1978] ). "It is therefore fundamental to the application of equitable estoppel for plaintiffs to establish that subsequent and specific actions by defendants somehow kept them from timely bringing suit" ( *Zumpano v. Quinn*, 6 N.Y.3d 666, 674, 816 N.Y.S.2d 703, 849 N.E.2d 926 [2006] [citation omitted]; see *Cellupica v. Bruce*, 48 A.D.3d 1020, 1021, 853 N.Y.S.2d 190 [2008] ). Further, the

party seeking the application of equitable estoppel must demonstrate a lack of knowledge of the true facts ( see Rancich v. Cortland Co-Op. Ins. Co., 204 A.D.2d 839, 840, 611 N.Y.S.2d 956 [1994]; Won's Cards v. Samsondale/ Haverstraw Equities, 165 A.D.2d 157, 164, 566 N.Y.S.2d 412 [1991]; Matter of Walls v. Levin, 150 A.D.2d 873, 874, 540 N.Y.S.2d 623 [1989]).

In the instant action, defendants have not set forth any additional or subsequent transactions or occurrences in their moving papers that were not already known to them eleven years ago when the lease was signed. As such, the proposed amended answer asserting additional affirmative defenses and a counterclaim lack merit. Defendants' remaining arguments are unavailing.

Accordingly, it is

ORDERED that defendants' motion to amend is denied.

Dated: 7/30/2012

ENTER:

*[Handwritten Signature]*  
J.S.C.

DEBORAH M. MILLS, J.S.C.

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A.D.  
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CC