

Chaplin v Daten Group LLC
2016 NY Slip Op 31401(U)
July 22, 2016
Supreme Court, New York County
Docket Number: 158954/2015
Judge: Manuel J. Mendez
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The specific material Moving Defendants request be stricken from the Complaint are paragraphs 14-27, which said allegations are asserted as contributing to the negligence and gross negligence claims, are as follows:

14. Beginning in March 2011, Ms. Chaplin, along with other residents residing at the Premises, had become subjected to increasingly deplorable living conditions, harassment, and retaliation by Defendants in an effort to force such tenants - most, if not all, of whom lived in rent-controlled apartments within the Premises - to vacate the Premises.

15. Ms. Chaplin and the other tenants of the Premises became the victims of a persistent and long-term pattern of negligent and increasingly egregious treatment by Defendants.

16. On or about July 20, 2011, Ms. Chaplin received a phone call from a woman identifying herself as Christina, who wrongly accused Ms. Chaplin of living in Massachusetts, claiming that the Premises was not Ms. Chaplin's primary residence, and threatening that she would be evicted if she did not vacate the Premises voluntarily.

17. Ms. Chaplin's desire to stay in her rent-controlled apartment was met with continued, abhorrent conduct by Defendants and/or their agents.

18. On or about December 16, 2011, Defendants notified Ms. Chaplin that her cable connection would have to be rewired through the back wall of the building or it would be cut off.

19. On or about January 21, 2012, Defendants began renovations of the Premises, which took place at all hours of the night, including weekends, emitting loud noise from constant hammering, drilling, sawing, and general construction sounds, and blocking common access areas for extended periods of time.

20. In or about March 2012, Defendants disabled the plumbing to Ms. Chaplin's kitchen such that her only source of water in the apartment was her bathtub. For a period of fourteen (14) months, Ms. Chaplin was forced to carry pots and buckets filled with water to her kitchen area for cooking and cleaning, as well as clean dishes and perform all household cleaning from her bathtub.

21. One day, while Ms. Chaplin was away from the Premises, Defendants' laborers constructed a wall, sealing off access to the Apartment, forcing Ms. Chaplin to call the police. Defendants were forced to remove the wall to allow Ms. Chaplin entry into the apartment.

22. Beginning in early 2011, rodent corpses began to accumulate in the common area of the Premises and were left to decay for weeks at a time, creating a rotten and disruptive odor through the Premises.

23. Following Defendants' claimed extermination efforts the Premises remained infested with live rodents to the extent that tenants would feel rodents crawling on their feet while bringing down their trash.

24. Defendants made no efforts to clean or remove unidentified debris and particulate matter created by the renovation process, which was allowed to accumulate throughout common areas of the Premises for many months and caused Ms. Chaplin and other tenants of the Premises to suffer chronic respiratory disease, stinging eyes, and sore throat.

25. Ms. Chaplin and other tenants were subjected to persistent long term

interruptions to water, heat, telephone, and electricity, without notice, and the locks on outside doors to the Premises would not function for extended periods of time.

26. Ms. Chaplin's front door intercom and 'buzz-in' system was disabled, requiring Ms. Chaplin to walk down five stories in order to let her guests into the building.

27. Ms. Chaplin and other tenants of the Premises were subjected to the above described conditions and conduct in increasing manner in order to escalate the necessity for such tenants, including Ms. Chaplin, to vacate the Premises voluntarily.

Moving Defendants also contend that paragraph 4 of the Amended Bill of Particulars must be stricken. Paragraph 4 states:

"Defendants' conduct in the months leading up to the incident at issue created a series of dangerous and defective conditions throughout the Premises, including but not limited to, turning off Plaintiff's heat and water, erecting barriers that prevents Plaintiff from accessing her apartment, conducting loud and disruptive renovations throughout the Premises at all hours of the day and night, without regard for Plaintiff's or other tenants' well-being." (Mot. Exh. D).

CPLR §3024(b) provides that, "[a] party may move to strike any scandalous or prejudicial matter unnecessarily inserted in a pleading." "In reviewing a motion pursuant to CPLR 3024(b) the inquiry is whether the purportedly scandalous or prejudicial allegations are relevant to a cause of action." (Soumayah v. Minelli, 41 A.D.3d 390, 839 N.Y.S.2d 79 [1st Dept. 2007], New York City Health & Hosps. Corp. v. St. Barnabas Community Health Pan, 22 AD 3d 391, 802 N.Y.S.2d 363 [1st Dept. 2005]). "[I]t is generally held that the test...is whether the allegation is relevant, in an evidentiary sense, to the controversy, and therefore, admissible at trial." (Wegman v. Dairylea Coop., 50 A.D.2d 108, 376 N.Y.S.2d 728 [4th Dept. 1975], citing Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR 3024:4, p 407).

Plaintiff asserts two causes of action:

(1) Negligence for Defendants' and/or Defendants' agents' negligent failure to (i) account for the surroundings in which they were performing the renovations; (ii) ensure that the wall they were performing work on was thick enough and sturdy enough to prevent damage to Ms. Chaplin's apartment; and (iii) notify Ms. Chaplin of the hazardous work being performed in the adjacent apartment, directly and solely caused the heavy painting to become dislodged from the wall in Ms. Chaplin's apartment and fall directly onto Ms. Chaplin; and

(2) Gross Negligence in performing renovations to the adjacent apartment while "wantonly, willfully, and recklessly (i) failing to account for the surroundings in which they were performing the renovations; (ii) failing to ensure that the wall they were performing work on was thick enough and sturdy enough to prevent damage to Ms. Chaplin's apartment; (iii) failing to notify Ms. Chaplin of the hazardous work being performed...; (iv) directly and solely causing the heavy painting to become dislodged from the wall...; and (v) failing to observe, remedy, or

assist with the consequences of Defendants' grossly negligent performance while knowing that such performance had caused, at least, internal injury to the apartment and potentially substantial injury to its occupant, namely Ms. Chaplin."

Moving Defendants argue that paragraphs 14-27, and the response in paragraph 4 of the Amended Bill of Particulars, are in no way relevant to establishing causes of action for Negligence or Gross Negligence in regards to construction in an adjacent apartment. These allegations are more relevant to causes of action for constructive eviction. Such causes of action were settled pursuant to a Surrender and Release Agreement signed by the Plaintiff and Defendant 1462, as owner of the building, prior to commencement of this action for personal injuries. (Mot. Exh. E). The Surrender and Release Agreement clearly releases and discharges Defendant 1462, its agents, employees, assigns, etc., from legal claims regarding such matters as breach of warranty of habitability, nuisance, constructive eviction, etc. (Id.)

Plaintiff opposes the motion arguing that the allegations in paragraph 14-27 are relevant to her causes of action, and are required in order to assert the Defendants' "reckless disregard for Chaplin's rights and the type of conduct that smacks of intentional wrongdoing that must be present in a claim for gross negligence." Plaintiff's argument, however, is unavailing.

The allegations contained in paragraphs 14-27 are irrelevant and unnecessary to claims for Negligence and Gross Negligence regarding injuries sustained as a result of construction in an adjacent apartment. Further, the allegations in paragraphs 17-27 are in no way related to a construction accident resulting from drilling through a shared wall between two apartments. Therefore, the allegations contained in paragraphs 14-27 of the Complaint should be stricken. Hence, paragraph 4 contained in the Plaintiff's Amended Bill of Particulars must also be stricken.

Accordingly, it is ORDERED, that Defendants' The Daten Group LLC, 1462 2nd Avenue Realty LLC, and David Ennis' motion to strike the prejudicial, scandalous and irrelevant allegations set forth in paragraphs 14-27 of the Complaint, and paragraph 4 of the Amended Bill of Particulars, is granted, and it is further,

ORDERED, that the allegations set forth in paragraphs 14-27 of the Complaint, and paragraph 4 of the Amended Bill of Particulars, are stricken.

ENTER:

Dated: July 22, 2016


MANUEL J. MENDEZ

J.S.C. MANUEL J. MENDEZ
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE