

W7879, LLC v Roberts
2017 NY Slip Op 30486(U)
March 17, 2017
Supreme Court, New York County
Docket Number: 155290/16
Judge: Manuel J. Mendez
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ
Justice

PART 13

W7879, LLC,

INDEX NO. 155290 /16

Plaintiff

MOTION DATE 01-18-2017

- Against-

IANTO ROBERTS,

MOTION SEQ. NO 001
MOTION CAL. NO

Defendant.

The following papers, numbered 1 to 5 were read on this motion to compel defendant to provide a Verified Bill of Particulars or alternatively to strike his answer and cross-motion to Dismiss the complaint against defendant for failure to state a cause of action pursuant to CPLR 3211(a)(7).

	<u>PAPERS NUMBER</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1-2</u>
Answering Affidavits — Exhibits _____	<u>3-4</u>
Replying Affidavits _____	<u>5</u>

Cross-Motion: X Yes No

Upon a reading of the foregoing cited papers, it is ordered that this motion to compel defendant to provide a Verified Bill of Particulars or alternatively to strike the answer is denied. The cross-motion to dismiss the complaint for failure to state a cause of action is granted, the complaint is dismissed.

Plaintiff brings this action to recover against the defendant for unjust enrichment and for the value of use and occupancy of premises that defendant occupied with his wife Judith Cohen Roberts, the tenant of record, at premises located at 230 West 79th Street, Apartment 104N, New York, N.Y. (hereinafter “premises”). The premises were rented by defendant’s wife Judith Cohen Roberts, pursuant to a lease agreement dated April 10, 2003, expiring April 30, 2005. The lease was renewed, by lease extension agreement, for an additional two years on March 3, 2005, for an additional year on February 16, 2007, February 14, 2008, March 9, 2009 and February 8, 2010. The lease expired on April 30, 2011 without any further renewals. The lease and lease extensions were only signed by defendant’s wife Judith Cohen Roberts. None of the leases or lease extensions name the defendant as a tenant.

In August 2010 Ms. Roberts commenced an action against the plaintiff in this county, under index number 110213/2010, for a judgment declaring the apartment Unit as Rent Stabilized, for a money judgment for rent overcharge and for attorneys fees. After joinder of issue that matter was referred to the Hon. Joan M. Kenney, who on July 17, 2013 granted Ms. Cohen’s motion for a declaratory judgment, declared the apartment to be rent stabilized and ordered a reference to determine the legal rent and

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

rent overcharges.

The matter was referred to Special Referee Jeffrey A. Helewitz who took testimony of witness, and after a thorough review of all the documentary and testimonial evidence, determined that Ms. Roberts owed \$113,045.64 for the total unpaid rent through June 2015; that she was entitled to a refund for rent overcharges prior to May 2010 in the amount of \$7,353.48, leaving a total due and owing for unpaid rent in the amount of \$105,692.16.

Justice Kenney confirmed the Referee's report and defendants entered judgment against Judith Cohen Roberts on April 6, 2016 in the sum of \$112,754.71, such sum including pre-judgment interest on the judgment amount from July 10, 2015. On August 1, 2016 Ms. Roberts filed for Chapter 7 Bankruptcy in the Bankruptcy Court for the Southern District of New York. On June 23, 2016 Plaintiff commenced this action against defendant Ianto Roberts to recover the sum of \$138,886.62 for Unjust Enrichment and for Use and Occupancy. Defendant answered and asserted ten affirmative defenses.

Plaintiff now moves to compel the defendant to provide a Verified Bill of Particulars or alternatively to strike the answer. Defendant cross-moves to dismiss the complaint for failure to state a cause of action. Defendant argues that it is not a tenant but an occupant of the apartment as an immediate family member (spouse) of the tenant and that under the leases only the tenant (Judith Cohen Roberts) is liable for rent. Defendant further argues that he is not liable for rent unless and until he exercises his succession rights, which have not been exercised here. Finally he argues that plaintiff cannot sue for unjust Enrichment when there was a written contract between Plaintiff and the tenant Judith Cohen Roberts.

Under CPLR §3211(a)(7) a court may dismiss a complaint for failure to state a cause of action. The court's role on this motion is to determine when a cause of action is stated within the four corners of the complaint (Frank v. Daimler Chrysler Corp., 292 A.D. 2d 118, 741 N.Y.S. 2d 9 [1st. Dept. 2012]); Sokoloff v. Harriman Estates Development Corp., 96 N.Y. 2d 409, 754 N.E. 2d 184, 729 N.Y.S. 2d 425 [2001] a court must search the complaint for a cognizable legal theory). Although on a motion to dismiss plaintiff's allegations are presumed to be true and accorded every favorable inference, conclusory allegations - claims consisting of bare legal conclusions with no factual specificity - are insufficient to survive a motion to dismiss (Godfrey v. Spano, 13 N.Y. 2d 358, 920 N.E. 2d 328, 892 N.Y.S. 2d 272 [2009]).

A Tenant is defined as "any person or persons named on a lease or lessee or lessees, or who is or are a party or parties to a rental agreement and obligated to pay rent for the use or occupancy of a housing accommodation." An Occupant is defined as "any person occupying a housing accommodation as defined in and pursuant to section 235-f of the Real property law. Such person shall not be construed a tenant for the purpose of this code." A Family Member is defined as "(1) A spouse, son, daughter... of the tenant or permanent tenant." (See Rent Stabilization Code Section 2520.6(d),(l) and (o)). In accordance with these definitions the tenant is Judith Cohen Roberts and defendant is an occupant and family member of the tenant.

“Any lease or rental agreement for residential premises entered into by one tenant shall be construed to permit occupancy by the tenant, immediate family of the tenant, one additional occupant, and dependent children of the occupant provided that the tenant or the tenant’s spouse occupies the premises as his primary residence.” (Real Property Law Section 235-f(2)). As an occupant and family member of a Rent Stabilized tenant, who has resided with the tenant in the apartment as their primary residence, defendant has a right to succeed to the premises if the tenant dies or vacates (Rent Stabilization Code Section 2523.5(b)(1)). However, until a lease is entered into, the successor in interest to the original tenant is not yet a tenant (245 Realty Associates v. Sussis, 243 A.D.2d 29, 673 N.Y.S.2d 635 [1st. Dept. 1998]).

Defendant Ianto Roberts resided at the premises with the Tenant, his spouse, Judith Cohen Roberts. He was entitled to reside therein as an immediate family member of the tenant and had a right to exercise succession rights when the tenant died or vacated the premises. However, he left the premises at the same time as the tenant when she vacated the premises. He was never a party to the lease or any of the lease extension agreements.

“The Landlord may recover a reasonable compensation for the Use and Occupation of real property, by any person, under an agreement, not made by deed; and a parol lease or other agreement may be used as evidence of the amount to which he is entitled.”(Real Property Law Section 220). “An action to recover for the use and occupation of premises cannot be maintained without proof of an agreement, express or implied, to pay rent. (see Lamb v. Lamb, 101 Sickels 317, 146 N.Y. 317, 41 N.E. 26 [1895]; Deickler v. Abrams, 159 N.Y.S.2d 449 [1956]). There is no agreement expressed or implied that would subject the defendant Ianto Roberts to pay rent to the plaintiff. All agreements and all liability for the payment of rent and/or use and occupancy are the responsibility of the tenant, Judith Cohen Roberts, his wife.

“ While a plaintiff seeking the equitable remedy of unjust enrichment is not required to allege privity, the pleadings must assert some relationship between the parties that could have caused reliance or inducement, and that relationship cannot be too attenuated. A plaintiff must plead some relationship with the defendant sufficient to give rise to a finding that retention of the benefits is unjust. A plaintiff pleads a sufficient relationship with the defendant, as required to state a claim for unjust enrichment, by alleging that the benefit was conferred at the behest of the defendant.” Such relationship with the defendant causing reliance or inducement has not been alleged.

Plaintiff’s complaint fails to state a cause of action against the defendant to recover on either the First cause of action for Unjust Enrichment, or its Second cause of action for Use and Occupancy. What plaintiff seeks to do is collect from the defendant a judgment it obtained against the tenant Judith Cohen Roberts.

The remainder of defendant’s motion is denied as sanctions is not warranted.

Accordingly, it is ORDERED that the motion to compel discovery or alternatively to strike the answer is denied, and it is further

ORDERED that the cross-motion to dismiss the complaint for failure to state a cause of action is granted, and it is further

ORDERED, that the complaint is dismissed as against the defendant for failure to state a cause of action, and it is further

ORDERED that the clerk of the court enter judgment in favor of the defendant dismissing the complaint in its entirety.

ENTER:

Dated: March 17, 2017

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



**Manuel J. Mendez
J.S.C.**

Check one: X FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE