

Oma beg ho v Corcoran Group
2017 NY Slip Op 31434(U)
June 29, 2017
Supreme Court, New York County
Docket Number: 654413/2016
Judge: David B. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTYPRESENT: HON. DAVID BENJAMIN COHEN
*Justice*PART 58

RUTH OMABEGHO,

Plaintiff,

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- V -

THE CORCORAN GROUP, LAURA HILDRETH

Defendant.

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number 5, 6, 7, 8, 9, 10, 11, 14, 15, 16 were read on this application to/for Dismiss

Upon the foregoing documents, it is

The motion to dismiss is granted in part and denied in part. Plaintiff, Ruth Omabegho, filed a Complaint on August 22, 2016, alleging that on September 1, 2014, broker Laura Hildreth, an employee of The Corcoran Group (collectively “defendants”), contacted plaintiff, to see whether plaintiff was interested in leasing out her property located at 40 Towd Point Road, Southampton, New York 11968. Hildreth showed the apartment to non-party perspective tenants, Mr. and Mrs. Harte, whom subsequently entered into an 18-month lease agreement with plaintiff in the amount of \$2,400 per month. The Complaint alleges that defendant assured plaintiffs of the reputable nature of the potential occupants and that defendants had performed a background check. The Harte’s moved in on October 1, 2014, but plaintiff never received a single month’s rent. Plaintiff sought the eviction of the Harte’s and, in May 2015, received a judgment of eviction. Plaintiff learned of Mr. Harte’s criminal past and claims that defendants never informed

it of said history despite claiming to have performed a background check and vouching for their good reputation. Furthermore, plaintiff claims that defendants never relayed the city's requirement of a rental permit. Defendant has submitted a copy of the New York State Disclosure Form For Landlord and Tenant (Form DOS-1735-a) that shows that defendants held themselves out as acting in the interest of plaintiff. The Complaint lists five causes of action: (1) breach of fiduciary duty of due care, (2) breach of the fiduciary duty of undivided loyalty, (3) breach of fiduciary duty of full disclosure, (4) violation of a principal's rights under New York Property Law § 443, and (5) breach of an implied covenant of good faith and fair dealing. Plaintiff seeks damages for unpaid rent, fuel, electric, cable and internet bills as well as legal and assorted fees totaling over \$37,000.

“On a motion to dismiss pursuant to CPLR § 3211(a)(7), the court accepts as true the facts as alleged in the complaint and affidavits in opposition to the motion, accords the plaintiff the benefit of every possible favorable inference, and determines only whether the facts as alleged manifest any cognizable legal theory” (*Elmaliach v Bank of China Ltd.*, 110 AD3d 192, 199 [1st Dept 2013], quoting *Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]). If, however, the allegations and facts are “inherently incredible” or refuted by documentary evidence, the court may then reject the above assumption (*Biondi v Beekman Hill House Apt., Corp.*, 257 AD2d 76, 80 [1st Dept 1999]).

New York Real Property Law (NYRPL) § 443 *et. seq.* details a real estate broker's duties to a seller or landlord. It provides “a landlord's agent has, without limitation, the following fiduciary duties to the landlord: reasonable care, undivided loyalty, confidentiality, full disclosure, obedience and duty to account” (NYRPL § 443 *et. seq.*). “In New York, it is well settled that a real estate broker is a fiduciary with a duty of loyalty and an obligation to act in the

best interests of the principal” (*Dubbs v Stribling & Assocs.*, 96 NY2d 337, 340 [2001]). A real estate broker therefore has “an affirmative duty not to act for a party with adverse interests unless consent is obtained from the principal after being provided with full knowledge of the facts” (*P. Zaccaro, Co., Inc. v DHA Capital, LLC*, 2017 NY Slip Op 30640[U], *3 [Sup Ct, NY County 2017]). However, these duties are qualified and have limitations (*Reiser Inc. v Roberts Real Estate*, 292 A.D.2d 726, 729 [3rd Dept 2002], quoting *Sonnenschein v Douglas Elliman-Gibbons & Ives*, 96 NY2d 369, 375-376 [2001]). When analyzing the existence of a fiduciary’s duties and its relationship with the principal, courts must review the communications and agreements made between the parties (*see Sonnenschein*, 96 NY2d at 374).

The elements of breach of such a fiduciary duty between a real estate agent and landlord are: 1) the existence of a fiduciary duty; 2) breach of that duty through misconduct; and, 3) actual damages resulting (*NRT N.Y., LLC v Morin*, 147 AD3d 589 [1st Dept 2017]; *see also Stuart Silver Assocs. v Baco Dev. Corp.*, 245 AD2d 96 [1st Dept 1997]).

Plaintiff’s first cause of action alleges that defendants violated their fiduciary duty by failing to provide a thorough background check of the tenants. Defendants’ motion to dismiss this cause of action is granted. There is no specific contract between the parties detailing the duties and specifying an obligation to perform a background check. A real estate broker’s duties to its client are satisfied “when they produce[] ready, willing, and able tenants with whom the plaintiff executed a rental agreement” (*Donnelly v Margolis*, 265 AD2d 523 [2d Dept 1999]). It has a “duty not to conceal or misrepresent known facts, but [] it ha[s] no duty to investigate unknown facts” (*Gallagher v Ruzzine*, 147 AD3d 1456, 1459 [4th Dept 2017]; *see also Precision Glass Tinting v Long*, 293 AD2d 594 [2d Dept 2000] [motion to dismiss denied where plaintiff instructed a real estate broker to obtain landlord’s consent in order to sublease premises and

alleged that such consent was never obtained]). A real estate broker also has “no duty to investigate the prospective tenants to ascertain their suitability” under municipal codes (*Donnelly*, 265 AD2d at 524). Moreover, although plaintiff alleges that there is a duty for a real estate broker to perform a background check, plaintiff does not cite to any authority for this claim. Here, as there was no fiduciary duty for defendants to perform a background check, nor any contractual duty, the first cause of action is dismissed.

The defendants’ motion to dismiss the second cause of action for breach of fiduciary duty of undivided loyalty for failing to inform plaintiff of tenant’s criminal record, is denied. In the Complaint, plaintiff specifically alleged that defendants informed her that they had performed a background check on tenants and described them as reputable and reasonably relied upon that information for the transaction. If true, and the Court must take all allegations as such, defendants had a duty to inform plaintiff of the result of such background check and not hide any poor history. Although defendants had no duty to investigate the suitability of the perspective tenants or corresponding legal details, if they had knowledge materially affecting the transaction, in this case, such as the Harte’s criminal history, a duty to fully and truthfully disclose existed (*John J. Reynolds, Inc. v Snow*, 11 AD2d 653 [1st Dept 1960], quoting *Murray v Beard*, 102 NY 505 [1886]; see also *Precision Glass Tinting*, 293 AD2d at 595).

Defendants’ motion to dismiss the third cause of action alleging breach of fiduciary duty for failing to inform plaintiff of the town’s subleasing permit requirement is granted. A real estate broker is not under “any obligation to act as [the landlord’s] legal advisor regarding relevant provisions of the Town Code of the Town of Southampton governing house rentals” (*Donnelly*, 265 AD2d at 523). In *Ader v. Guzman* (135 AD3d 668 [2nd Dept 2016]) the Second Department held that “Real Estate Property Law § 443(4)(b) did not impose a duty upon the

Corcoran defendants, as a landlord's agent, to investigate whether the premises had a valid rental permit" (*id.* at 669). Similarly, a real estate broker has no legal duty to provide legal advice regarding the existence of municipal permit requirements. The motion to dismiss the third cause of action is granted.

The fourth and fifth causes of actions, for violation of the plaintiff's rights as a principal under NYRPL § 443 as well as negligence and violation of an implied covenant, are vague and arise out of the same facts as the first claim, and are therefore duplicative (*see Amcan Holdings, Inc. v Canadian Imperial Bank of Commerce*, 70 AD3d 423, 425 [1st Dept 2010] [dismissal of breach of good faith and fair dealing claim because of duplicative nature with other claims]). Therefore, the motion to dismiss the fourth and fifth claims is granted.

Defendants' argument that the lease contains a provision waiving general obligations concerning the property is without merit. Plaintiff's causes of action are not based on tenants' default, but rather on defendants' alleged wrongdoing. For the above reasons, it is therefore

ORDERED, that defendants', motion to dismiss for the first, third, fourth, and fifth causes of action is granted; and it is further

ORDERED, that defendants', motion to dismiss for the second causes of action is denied and it is further

ORDERED, that the parties appear for a preliminary conference on August 9, 2017 at 9:30 am in part 58, Room 1164A, in 111 Centre Street, New York, New York, 10013.

This constitutes the decision and order of the Court.

6/29/2017

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

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CASE DISPOSED
GRANTED
SETTLE ORDER
DO NOT POST

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DENIED

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NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

☐

OTHER

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REFERENCE

DAVID BENJAMIN COHEN, J.S.C.