Michaels v Paolino
2006 NY Slip Op 30738(U)
January 12, 2006
Supreme Court, New York County
Docket Number: 113279/06
Judge: Louis B. York

[*,1]

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 2

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HOWARD MICHAELS AND JENNIFER MICHAELS,

Index No. ~~113844/2005~~ 113279/06

Plaintiffs,

- against -

LOUIS PAOLINO,

Defendant.

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FILED
JAN 23 2007
COUNTY CLERK'S OFFICE
NEW YORK

Louis B. York, J.:

This action is based primarily upon defendant's alleged failure, in the summer of 2005, to deliver a summer rental home in Water Mill, New York, to plaintiffs in "deliverable condition." Plaintiffs rented the house for $130,000 for a period of 101 days, commencing May 28, 2005 and ending September 5, 2005. In addition, they paid a $13,000 security deposit, to which they were entitled upon surrender of the property in good condition.

Under an explicit addendum to their lease, the parties agreed that if the house was not in deliverable condition when plaintiffs took possession, they would be entitled to a refund of $500 a day for six days, from May 29, 2005 to June 3, 2005, for a total of $3000; and to $750 a day for 28 days, from June 4, 2005 to July 1, 2005, for a total of $21,000. Moreover, plaintiffs had until July 1 to terminate the lease and obtain a full refund of their $130,000 rental payment. The lease also states that if either party had to go to court to obtain relief under its terms, the prevailing party was entitled to attorney's fees.

Plaintiffs arrived at the property on May 28, and immediately had problems with the conditions there. Among other things, as outlined in their June 14, 2005 e-mail to defendant, (1)

work in the basement was not complete, and it lacked promised bedrooms, theater, and sauna; (2) the guest pool house was unusable, (3); there was inadequate landscaping, which affected their privacy in the backyard; (4) the front walkway and entry were dusty and had other problems; (5) there were no screens on the doors or windows; and (6) the exterior decking was unfinished and there was little lawn furniture. They also complained about the quality of the bedroom blinds, the lack of a VCR in the house or a barbeque in the yard; and, they asked that certain bathrooms be repainted. Plaintiffs continued to complain to defendant about these problems. Defendant reminded them of their ability, under the addendum, to cancel the lease and obtain a full refund. In addition, after corresponding and talking on the phone, defendant said that he would refund "the $27,000" they'd agreed to, less the amount he had already returned to them; and, that he would split certain bills with them. Plaintiffs do not explain whether this amount includes the security deposit and/or any portion of the $24,000 described in the addendum to the contract.

Plaintiffs did not cancel the lease by the July 1 deadline, instead remaining throughout the summer. Now, in this lawsuit, they seek multiple and overlapping damages. In their first, sixth, seventh, eighth, twelfth, and thirteenth causes of action, they seek the full $130,000 they paid to rent the house for the summer. In their first, second, tenth and eleventh causes of action, they seek the return of their $13,000 security deposit. In their the fourth cause of action, they seek the $24,000 they'd contractually agreed to receive as damages, covering the period between May 28 and July 1. In their fifth cause of action, they seek in addition to the $24,000, the"pro rata" value of the lease for this same time period – at a rate of $1287.13 per day – for a total of $43,762. In their third, tenth and eleventh causes of action, they seek $27,000 based on defendant's e-mail, but they do not clarify whether this amount duplicates any portion of the

$13,000, the $24,000 or any other sum mentioned above. Finally, in their ninth cause of action, they seek $19,500 "or greater" in attorney's fees.

Defendant is in default in this action, and therefore has not challenged the basic truth of the allegations. Now, plaintiffs move for default judgment and an inquest. Defendant has defaulted on the current motion as well.

Plaintiffs have shown their entitlement to some of their relief and their right to an inquest. However, many of their arguments lack sound legal basis; many of the facts and claims seem to relate to duplicative relief and/or relief contrary to that to which they are entitled under their own negotiated contract; their asserted attorney's fees are exorbitant and disproportionate; and, some of the conditions which allegedly rendered the premises unsatisfactory – including the lack of a VCR and a barbeque, and thin blinds in the bedroom – could have been remedied easily by plaintiffs and also are too trivial to constitute a material breach of the lease by defendant.

First, plaintiffs assert – and defendant does not contest – that they paid a $13,000 security deposit, which defendant was to return to them if they vacated the house in good condition. They further state that they returned the house in good condition. Thus, they are entitled to the return of their $13,000 security deposit, less any portion of this amount they have received already.

Second, for the period from May 28 to July 1, plaintiffs negotiated a remedy for any problems with the premises. Under this portion of the contract, the total to which plaintiffs are entitled for May 28 to July 1 is $24,000. Presumably, they seek the "pro rata" sum instead of, rather than in addition to, the sum to which they are actually entitled – and which they seek in the fourth cause of action. At any rate, their attempt to avoid the terms of the lease and obtain

the "pro rata" sum of $43,762 has no legal or equitable basis. Thus, plaintiffs prevail on the fourth cause of action, while the fifth cause of action is severed and dismissed.

Third, under the lease plaintiffs had until July 1 to cancel the lease and receive a full refund. Plaintiffs chose not to do this. Moreover, they continued to use the house throughout the summer. Even though there were numerous inconveniences and problems during their stay, they cannot argue that although they did not cancel the lease they are entitled to a full refund. An argument can be made that, having failed to cancel the contract, plaintiffs are not entitled to any remuneration from July 1 through September 5. However, defendant has defaulted on the action and the motion.

Therefore, based on their arguments here, plaintiffs are entitled to a partial refund based on the extent to which they were deprived of the use of the house and grounds. That is, from July 2 to September 5 only, they may recover a proportionate share of the $1287.13 per day value of the lease. Moreover, they may recover only to the extent that certain sections of the house and yard were unusable or that workers took over portions of the property. They are not entitled to a credit for the lack of a VCR, barbeque, and the like; for the failure to repaint the bathrooms; for the thin blinds; and for other similar complaints. Finally, the extent of the deprivation must be determined at a hearing. At this hearing, plaintiffs must establish the days/parts of days from July 2 to September 5 when they did not have use of certain parts of the property or when ongoing work effectively evicted them from portions of the property. They will be credited a proportionate share, per day, based on the amount of space and the number of hours involved each day. The maximum amount recoverable will be $1287.13 per day, from July 2 through September 5. Based on the allegations, it is likely that on most days the recovery will be between $250 and $500.

Fourth, plaintiffs are entitled to reasonable attorney's fees. However, over $19,000 in attorney's fees is not "reasonable" and is disproportionate to the sum at issue. Therefore, at the hearing, the referee will also determine the reasonable amount due in attorney's fees, using the lodestar method and assessing a lower rate for clerical and paralegal services.

Fifth, plaintiffs only would be entitled to the $27,000 to which defendant's e-mail refers if he agreed to pay this in addition to the return of the security deposit, the $24,000 to which the addendum refers, and the return of rent. It appears that defendant intended this to be a full settlement of plaintiffs' claim, however; and, it also appears that he had returned money to plaintiffs which was to be deducted from this sum. Therefore, for judicial economy, the court severs and dismisses the claim for $27,000, but allows plaintiffs to restore it, through motion, if they can clearly establish that defendant agreed to pay this sum (less any money he previously returned to them) on top of the return of the security deposit and of a portion of the rent.

As noted above, the e-mail in which defendant refers to "the $27,000" also indicates that defendant already had refunded some money to plaintiffs and that, in their conversation, plaintiffs had acknowledged as much. At the hearing, plaintiffs must indicate, honestly and completely, how much money they have received back from defendant. This sum will be deducted from their eventual recovery.

Accordingly, it is

ORDERED that default judgment is granted; and it is further

ORDERED that as to the portion of the first, second, tenth and eleventh causes of action seeking recovery of the security deposit, plaintiffs are awarded judgment in the amount of $13,000, and the Clerk is directed to enter judgment in this amount; and it is further

ORDERED that plaintiffs are granted judgment as to the fourth cause of action, seeking $24,000, and the Clerk is directed to enter judgment in this amount; and it is further

ORDERED that their fifth cause of action is severed and dismissed; and it is further

ORDERED that the portion of the third, tenth and eleventh causes of action are severed and dismissed to the extent that plaintiffs seek $27,000, with leave to renew if plaintiffs can show that defendant agreed to pay this sum on top of the other money due rather than as a settlement of their dispute; and it is further

ORDERED that, as to the first, sixth, seventh, eighth, twelfth, and thirteenth causes of action, they seek the full $130,000 they paid to rent the house for the summer, judgment is granted to the extent of directing a hearing to determine the proportionate amount of $1287.13 per day, from July 2 to September 5, only, to which plaintiffs are entitled; and, that in determining the proportionate amount, the Referee shall determine what portion of the house was completely unusable for all, or any, portion of each day in question; and it is further

ORDERED that plaintiff is awarded judgment on the ninth cause of action to the extent of directing a hearing to determine reasonable attorney's fees more appropriate to the extent and nature of the dispute at issue; and it is further

ORDERED that this matter is referred to the Referee's Clerk, who is directed upon filing of a copy of this Order to place this action on the appropriate referee's calendar to hear and decide the amount to which plaintiffs are entitled on the first, sixth, seventh, eighth, ninth twelfth, and thirteenth causes of action, to the extent that these claims relate to rent from July 2 to September 5, 2005 and to attorney's fees, and to enter a Judgment thereon – making sure not to duplicate in the award any sums which plaintiffs have already received from defendant from May 28, 2005 until the date of the hearing, including the $24,000 and $13,000 awarded in this

Order. After the Referee makes his or her determination, plaintiffs shall move to confirm or set aside the report, and at that time the Court shall issue an order directing the Clerk to enter judgment on those claims.

ORDERED:

Dated: Jan. 12, 2006

Louis B. York, J.S.C.