

NAR Apts. LLC v Ippolito
2013 NY Slip Op 33397(U)
December 5, 2013
Supreme Court, New York County
Docket Number: 107866/2010
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. EILEEN A. RAKOWER

PRESENT: _____
Justice

PART 15

Index Number : 107866/2010
NAR APARTMENTS LLC
vs.
PATRICIA IPPOLITO
SEQUENCE NUMBER : 005
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). <u>1, 2</u>
Answering Affidavits — Exhibits _____	No(s). <u>3</u>
Replying Affidavits _____	No(s). <u>4</u>

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

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


**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

FILED

DEC 09 2013

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 12/5/2013


HON. EILEEN A. RAKOWER S.C.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: Hon. EILEEN A. RAKOWER PART 15

Justice

NAR APARTMENTS LLC AND
DOUGLAS WITTER, ET AL,

Plaintiffs, **FILED**

- v -

PATRICIA IPPOLITO,

DEC 09 2013

Defendant. COUNTY CLERK'S OFFICE
NEW YORK

INDEX NO. 107866/2010

MOTION DATE _____

MOTION SEQ. NO. 5

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion for/to

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1, 2</u>
Answer — Affidavits — Exhibits _____	<u>3</u>
Replying Affidavits _____	<u>4</u>

Cross-Motion: Yes No

Plaintiff NAR Apartments LLC (“NAR”) is the owner of the 25-unit apartment building located at 517 East 13th Street in New York County (the “Building”). NAR commenced this action on June 15, 2010 against defendant Patricia Ippolito (“Defendant”), a tenant in the Building, seeking a judgment declaring as valid and enforceable a letter agreement dated March 3, 2010 signed by both parties (the “Letter Agreement”), wherein Defendant represented and agreed that she would not keep a dog in her apartment.

NAR now brings this motion for summary judgment pursuant to CPLR §3212. Defendant cross-moves for summary judgment pursuant to CPLR §3212, and to strike the verified complaint pursuant to CPLR §3126.

Defendant has lived in the Building and has resided in her apartment (Apartment 3B) pursuant to a lease since 1998 which contained a no-pet clause.

It is undisputed that in January 2010, Defendant adopted a four year old

Yorkie and brought it into her apartment without informing NAR or seeking its permission. NAR commenced an eviction proceeding immediately thereafter. By March 1, 2010, Defendant advised NAR that the dog had been removed from the apartment, and offered to let a representative from NAR inspect the apartment to confirm same. After inspection of the apartment, NAR provided Defendant with a Letter Agreement dated March 3, 2010. The Letter Agreement provided that:

You hereby represent and warrant to us and hereby agree as follows: (i) you will not hereafter permit the dog to be present in your apartment under any circumstances, and (ii) neither you, nor any person whom you permit to reside with you in your apartment, will maintain or permit to maintain, or allow any dog to visit or to reside in your apartment at any time for any purpose whatsoever.

Defendant claims that she signed the Letter Agreement under duress. By letter dated June 8, 2010, Defendant's attorney claimed that the Letter Agreement, and NAR's alleged coercion of Defendant into signing the letter constituted unlawful discrimination against a disabled person. The letter claimed that Defendant suffers from depression and is disabled as defined under relevant federal, state, and city anti-discrimination laws. Further, the letter claims that Defendant's dog is a medically necessary source of emotional support for Defendant.

In October 2010, Defendant moved for summary judgment, or alternatively, for an order staying the action during the pendency of the Defendant's State Division of Human Rights ("DHR") proceeding concerning her request for a reasonable accommodation; and for her order quashing subpoenas served on Dr. Goff seeking his deposition and pertinent medical records. NAR cross-moved for an order compelling the deposition of Dr. Goff and alternatively, sought summary judgment on the issue of the enforceability of the Letter Agreement.

By Order dated November 16, 2010, the court denied the parties' motions for summary judgment as an issue of fact remained as to whether Defendant was in fact disabled, and whether she required the presence of her dog in the apartment as a reasonable accommodation for her claimed disability.

Defendant thereafter moved to amend her answer to assert an additional cross-claim seeking compensatory and punitive damages, as well as costs and attorney's fees based upon NAR's failure to grant her a reasonable accommodation by allowing her to harbor her dog "in violation of Section 804, 42 U.S.C. 3604 of the Fair Housing Act, as well as other applicable federal, state and city disability laws."

Defendant's second counter-claim sought damages for NAR's commencement and prosecution of this action in retaliation for Defendant's assertion of her right to a reasonable accommodation under the Fair Housing Act, and other state and local claims. By Order dated November 21, 2011, the Court granted Defendant leave to amend her answer to add her first counterclaim seeking damages and costs but granted Plaintiff's cross motion to dismiss Defendant's counterclaim for retaliation.

NAR now moves again for summary judgment pursuant to CPLR §3212, and alternatively, seeks additional relief, including to "modify this Court's preliminary conference dated January 22, 2013" to allow for certain additional discovery, including a mental examination of Plaintiff, inspection of Plaintiff's apartment, and access to Defendant's facebook and AOL accounts.

Defendant cross-moves for summary judgment pursuant to CPLR §3212, and to strike the verified complaint pursuant to CPLR §3126 based on Plaintiff's failure to submit to depositions as ordered by the Court in its Compliance Conference Order dated April 30, 2013. Defendant responds that the delay in the taking of depositions was caused by Plaintiff's failure to provide proper HIPPA authorizations. The parties have now entered into a Compliance Order dated September 10, 2013 setting forth a deposition schedule.

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law. That party must produce sufficient evidence in admissible form to eliminate any material issue of fact from the case. Where the proponent makes such a showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains requiring the trier of fact to determine the issue. The affirmation of counsel alone is not sufficient to satisfy this requirement. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). In addition, bald, conclusory allegations, even

if believable, are not enough. (*Ehrlich v. American Moninger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255 [1970], *Edison Stone Corp. v. 42nd Street Development Corp.*, 145 A.D.2d 249, 251-252 [1st Dept. 1989]).

Successive motions for summary judgment are not permitted in the absence of showing newly discovered evidence or other sufficient cause. *Marine Midland Bank v. Fisher*, 85 A.D. 2d 905, 906 [4th Dept. 1981].

NAR contends its second motion for summary judgment is warranted based on the following reasons: (1) "the passage of more than three-and-one-half years without a dog raises the issue whether defendant can . . . prove that she requires a dog to use and enjoy her apartment," (2) Defendant's cat serves as her emotional support; and (3) Defendant has failed to provide discovery. However, the Court finds these arguments to be unavailing. NAR has failed to demonstrate newly discovered evidence or other sufficient cause to warrant its successive motion for summary judgment.

Wherefore, it is hereby,

ORDERED that Plaintiff's motion is denied; and it is further

ORDERED that Defendant's cross motion is denied; and it is further

ORDERED that all parties are reminded that they must appear for their scheduled conference at 80 Centre Street, Room 327, on February 11, 2014 at 9:30 a.m.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: DECEMBER 5, 2013



HON. EILEEN A. RAKOWER
J.S.C.

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

FILED

DEC 09 2013

COUNTY CLERK'S OFFICE
NEW YORK