Dahl v Prince Holdings 2012, LLC
2016 NY Slip Op 32922(U)
March 8, 2016
Supreme Court, New York County
Docket Number: 157743/14
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: CYNTHIA S. KERN J.S.C
Justice

PART 55

Index Number : 157743/2014
DAHL, SHAWN
vs.
PRINCE HOLDINGS 2012, LLC
SEQUENCE NUMBER : 004
DISMISS DEFENSE

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). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

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

is decided in accordance with the annexed decision.

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

Dated: 3/8/16

CK
_____, J.S.C.
CYNTHIA S. KERN

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
COUNTY OF NEW YORK: Part 55

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SHAWN DAHL and JAMES PETERSON,

Plaintiffs,

Index No. 157743/14

-against-

DECISION/ORDER

PRINCE HOLDINGS 2012, LLC, STEVEN CROMAN, HARRIET CROMAN a/k/a HARRIET KAHAN CROMAN, HARRIET KAHAN, ANTHONY FALCONITE, OREN GOLDSTEIN and JANETH DONOVAN,

Defendants.

----------x

HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Answering Affidavits.....	2
Replying Affidavits.....	
Exhibits.....	3

Plaintiffs Shawn Dahl and James Peterson commenced the instant action seeking to recover damages arising out of a lease agreement they maintain with defendants. Plaintiffs now move for an Order pursuant to CPLR §§ 3211(a) and (b) dismissing defendants' affirmative defenses and counterclaims. Plaintiffs' motion is resolved as set forth below.

The relevant facts are as follows. Plaintiffs are tenants in the building located at 309 East 8th Street, New York, NY (the "building"), a property owned and operated by defendants Prince Holdings 2012, LLC ("Prince"), Steven Croman, Harriet Croman a/k/a Harriet Kahan Croman, Harriet Kahan, Anthony Falconite, Oren Goldstein and Janeth Donovan. In or around August 2014, plaintiffs commenced the instant action alleging that since defendants took possession of the building in December 2012, they have conducted a pattern of harassment, abuse and neglect in an

attempt to drive plaintiffs and other tenants in the building from their rent stabilized apartments. Thereafter, plaintiffs amended the complaint asserting a total of eleven causes of action for, *inter alia,* breach of the warranty of habitability, trespass, a violation of Real Property Law § 234, constructive and actual eviction and a violation of New York City Consumer Protection Law § 20-700.

Thereafter, defendants moved to dismiss the amended complaint as against the individual defendants and plaintiffs cross-moved to consolidate this action with another action. In a decision dated May 12, 2015, this court granted in part and denied in part defendants' motion to dismiss and granted plaintiffs' motion to consolidate. Based on this court's decision, defendants answered the amended complaint and set forth twenty-five affirmative defenses and three counterclaims. Plaintiffs now move to dismiss defendants' affirmative defenses and counterclaims.

As an initial matter, plaintiffs' motion for an Order pursuant to CPLR § 3211(a) dismissing defendant Prince's counterclaims is denied. The first counterclaim asserts that plaintiff Dahl has unlawfully deprived defendant Prince access to the boiler room in the building by maintaining a locked door therein and seeks an injunction compelling Dahl to remove said door or otherwise provide defendant Prince with access; the second counterclaim seeks a declaratory judgment that defendant Prince has rightful access to the boiler room in the building, that the "foyer" in the building is an area common to both Prince and Dahl and that neither has the right to exclude the other; and the third counterclaim asserts a claim for trespass against Dahl and seeks an injunction enjoining plaintiff Dahl from committing any further trespass and damages. Plaintiffs assert that defendant Prince's counterclaims should be dismissed on the ground that defendants have already elected a remedy for those claims when they commenced a holdover proceeding in Housing Court against Dahl, which they assert is "still pending but off calendar." However, plaintiffs have not

established that the holdover proceeding pending in Housing Court against Dahl seeks relief identical to the relief sought in defendant Prince's counterclaims. The fact that Prince commenced a holdover proceeding against Dahl in Housing Court has no bearing on whether Prince may bring claims in this action, commenced by plaintiffs.

The court next turns to plaintiff's motion for an Order pursuant to CPLR § 3211(b) dismissing defendants' affirmative defenses. Pursuant to CPLR § 3211(b), "[a] party may move for judgement dismissing one or more defenses, on the ground that a defense is not stated or has no merit." On such a motion, defenses that consist of bare legal conclusions without supporting facts will be stricken. *See Robbins v. Growney*, 229 A.D.2d 356, 358 (1st Dept 1996). However, the First Department has made clear that the assertion of the defense of failure to state a cause of action in an answer, while surplusage as it may be asserted at any time even if not pleaded, "should not be subject to a motion to strike." *Riland v. Todman & Co.*, 56 A.D.2d 350, 353 (1977).

As an initial matter, the court notes that the affirmative defenses asserted by defendants in their answer are not numbered correctly but that there are twenty-five of said defenses. Thus, the court will refer to each defense as if they were properly numbered from one to twenty-five. Plaintiffs' motion to dismiss defendants' nineteenth affirmative defense, which alleges that the complaint must be dismissed because it fails to state a cause of action upon which relief may be sought, is denied as such affirmative defense is not subject to a motion to strike as a matter of law. *See Riland*, 56 A.D.2d at 353.

However, plaintiffs' motion to dismiss defendants' first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, and twelfth affirmative defenses is granted on the ground that said defenses are inapplicable to the instant action as they all apply to negligence claims and it is undisputed that plaintiffs have not asserted any negligence claim against defendants. Defendants'

assertion that said affirmative defenses apply to the instant action on the ground that there are two tort claims asserted against them, one for trespass and one for nuisance, is without merit as neither of those claims are claims for negligence.

Additionally, plaintiffs' motion to dismiss defendants' thirteenth affirmative defense, which sets forth a defense to piercing the corporate veil, is granted on the ground that such a defense need not be pleaded as an affirmative defense.

Finally, plaintiffs' motion to dismiss defendants' fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth and twenty-fifth affirmative defenses is granted as they each consist of nothing more than a one sentence legal conclusion. Such bare legal conclusions are insufficient to make out an affirmative defense as a matter of law and as such they should be dismissed. *See Robbins*, 229 A.D.2d at 358.

Accordingly, plaintiffs' motion to dismiss defendants' affirmative defenses and counterclaims is resolved to the extent set forth herein. This constitutes the decision and order of the court.

Date: 3/8/16

Enter: _____
J.S.C.
CYNTHIA S. KERN
J.S.C.