Goodling v Penna
2017 NY Slip Op 30235(U)
January 9, 2017
Supreme Court, Suffolk County
Docket Number: 20625/2015
Judge: Joseph Farneti

[* 1]

PUBLISH

SHORT FORM ORDER

INDEX NO. 20625/2015

SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART 37 - SUFFOLK COUNTY

PRESENT:

HON. JOSEPH FARNETI
Acting Justice Supreme Court

ANTHONY GOODLING and JACQUELINE FULOP-GOODLING,

Plaintiffs,

-against-

FRANK PENNA and MAUREEN PENNA,

Defendants.

ORIG. RETURN DATE: APRIL 22, 2016
FINAL SUBMISSION DATE: MAY 12, 2016
MTN. SEQ. #: 001
MOTION: MOT D

ORIG. RETURN DATE: APRIL 28, 2016
FINAL SUBMISSION DATE: MAY 26, 2016
MTN. SEQ. #: 002
CROSS-MOTION: XMD

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Upon the following papers numbered 1 to 8 read on this motion and cross-motion FOR SUMMARY JUDGMENT. Notice of Motion and supporting papers 1-3; Notice of Cross-motion and supporting papers 4-6; Affirmation in Opposition to Cross-motion and supporting papers 7, 8; it is,

ORDERED that this motion (seq. #001) by plaintiffs ANTHONY GOODLING and JACQUELINE FULOP-GOODLING for an Order granting a money judgment in favor of plaintiffs and against defendants FRANK PENNA and MAUREEN PENNA in the amount of $97,750.00, and other related relief, is hereby **GRANTED** solely to the extent set forth hereinafter; and it is further

ORDERED that this cross-motion (seq. #002) by defendants FRANK PENNA and MAUREEN PENNA for an Order, pursuant to CPLR 3212, granting summary judgment in favor of defendants dismissing plaintiffs' complaint in its entirety, is hereby **DENIED** for the reasons set forth hereinafter. The Court has received opposition to this cross-motion from plaintiffs.

Defendants are the owners of a single-family residence commonly known as 9 Trynz Lane, Hampton Bays, located in the Town of Southampton ("Premises"). On or about May 27, 2015, defendants, as landlords, entered into a written agreement wherein plaintiffs, as tenants, agreed to lease the Premises for the period from July 1, 2015 through September 15, 2015, for the sum of $82,500. The lease also required plaintiffs to pay defendants the sums of $8,250 as a security deposit, and $7,000 as a utilities deposit, for a grand total of $97,750, which plaintiffs paid prior to taking possession of the Premises. Plaintiffs allege that they discovered numerous deficiencies in the Premises prior to taking possession, which defendants allegedly failed to cure despite representations that they would do so. Plaintiffs contend that they found additional deficiencies in the Premises during the tenancy which were not timely rectified by defendants; however, plaintiffs occupied the Premises for the full term of the lease. Further, plaintiffs claim that defendants failed to obtain a rental permit for the Premises, in violation of the Southampton Town Code.

Based upon the foregoing, on or about December 1, 2015, plaintiffs commenced this action asserting three causes of action against defendants, to wit: (1) breach of the lease agreement; (2) fraud in the inducement; and (3) violation of Southampton Town Code § 270-3. Plaintiffs seek damages in the amount of $50,000 on the first cause of action, and $97,750 on the second and third causes of action.

Plaintiffs have now filed the instant application for summary judgment seeking the relief demanded in the complaint. Plaintiffs indicate, and defendants do not dispute, that defendants did not have a valid rental permit for the Premises from the Town of Southampton as required by Section 270-3 of the Code of the Town of Southampton (hereinafter "Town Code"). Plaintiffs further indicate that, as Section 270-13 of the Town Code provides a rental permit is a condition precedent to collecting rent, plaintiffs are entitled to the return of all of the money paid to defendants under the lease. Moreover, plaintiffs allege that defendants violated General Obligations Law § 7-103 by failing to place the security deposit in a separate trust account so as not to mingle the security deposit with defendants' personal moneys.

Defendants oppose plaintiffs' motion, and have filed the instant cross-motion to dismiss the complaint, arguing that the violation of Town Code § 270-3 does not render a lease unenforceable. Defendants assert that plaintiffs could have discovered with due diligence that a rental permit was lacking for the Premises, and that it would be inequitable at this juncture to excuse plaintiffs from their obligation to pay rent and security after they enjoyed the benefits of the

Premises for the full term. Further, defendants argue that the lease provided that plaintiffs accept the Premises "as is," and that any defects in the Premises were timely repaired after notice was given to defendants.

Summary judgment is a drastic remedy and should only be granted in the absence of any triable issues of fact (*see Rotuba Extruders v Ceppos*, 46 NY2d 223, 413 NYS2d 141 [1978]). The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a mater of law by tendering proof in admissible form sufficient to demonstrate the absence of any material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Zuckerman v City of New York*, 49 NY2d 557 [1986]; *Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065 [1979]). The movant's burden on a summary judgment motion is a heavy one, as a court must view the evidence in the light most favorable to the nonmoving party, and all inferences must be resolved in favor of the nonmoving party (*William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470 [2013]; *Vega v Restrani Constr. Corp.*, 18 NY3d 499 [2012]). If the initial burden is met, the party opposing summary judgment must produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*Vega*, 18 NY3d 499; *Alvarez*, 68 NY2d 320). However, if the movant fails to make a *prima facie* case, summary judgment must be denied, regardless of the sufficiency of the opposing papers (*Alvarez*, 68 NY2d 320).

An equitable remedy that rests on the principal that a person should not be allowed to enrich himself or herself unjustly at the expense of another (*see Rosenblum v Manufacturers Trust Co.*, 270 NY 79, 84-85 [1936]; *Lenel Sys. Intl., Inc. v Smith*, 106 AD3d 1536 [4th Dept 2013]), rescission should only be invoked "where the plaintiff has no adequate remedy at law and where the parties can be restored to their status quo ante positions" (*Habberstad Volkswagen, Inc. v GC Volkwagen, Inc.*, 127 AD3d 1019, 1020 [2d Dept 2015]; *see Rudman v Cowles Communication*, 30 NY2d 1 [1972]). To warrant the intervention of equity to rescind a contract, a party generally must show fraud in the inducement of the contract, a failure of consideration, an inability to perform the contract after it is made, a repudiation of the contract or of an essential term thereof, or a breach of the contract which substantially defeats its purpose (*Callanan v Keeseville, Ausable Chasm & Lake Champlain R.R. Co.*, 199 NY 268 [1910]; *Babylon Assoc. v County of Suffolk*, 101 AD2d 207 [2d Dept 1984]).

Moreover, illegal contracts generally are unenforceable. However, where a contract that violates a statutory provision is merely *malum prohibitum*, the right to recover under such contract will not be denied "[i]f the statute does not

provide expressly that its violation will deprive the parties of their right to sue on the contract, and the denial of relief is wholly out of proportion to the requirements of public policy" (*Lloyd Capital Corp. v Pat Henchar, Inc.*, 80 NY2d 124, 127 [1992], quoting *Rosasco Creameries, Inc. v Cohen*, 276 NY 274, 278 [1937]).

Here, the Court finds that plaintiffs have established *prima facie* entitlement to judgment in their favor, as it is undisputed that defendants failed to obtain a rental permit for the Premises from the Town of Southampton prior to renting the Premises to plaintiffs. The Appellate Division, Second Department, has held that a tenant may bring a private action based on a landlord's violation of Town Code § 270-3, and that, under the circumstances presented therein, it was against public policy to permit the landlord who violated such ordinance to retain rental payments when the tenant vacated shortly after the term of the lease commenced (*see Ader v Guzman*, 135 AD3d 671 [2d Dept 2016]; *see also Schwartz v Torrenzano*, 49 Misc 3d 943 [Sup Ct, Suffolk County 2015] [holding that a tenant may recoup rent paid even after remaining in the premises for four years based upon the implied private right of action which precludes a landlord from the collection of rent without a rental permit]). Nevertheless, in contrast to *Ader*, the Court finds that defendants have raised questions of fact herein as to whether forfeiture is warranted under these circumstances, arguing that plaintiffs "reaped the fruits" of the parties' agreement by occupying the Premises for the full lease term, and that plaintiffs waived the rental permit requirement (*see Charlebois v Weller Assoc.*, 72 NY2d 587, 595 [1988]; *Schwartz*, 49 Misc 3d 943; *Summer Fun Leasing v Bienen*, 2010 NY Slip Op 30836[U] [Sup Ct, Suffolk County 2010]). Forfeitures by operation of law are strongly disfavored as a matter of public policy, particularly where a party attempts to rely on a statute "as a sword for personal gain rather than a shield for public good" (*Charlebois*, 72 NY2d at 595; *see 1424 Millstone Rd., LLC v James B. Fairchild, LLC*, 136 AD3d 556 [1st Dept 2016]). Defendants have raised a further question of fact as to whether plaintiffs have now raised the argument of illegality for personal gain (*see* CPLR 3212 [b]; *see generally Alvarez*, 68 NY2d 320).

Notwithstanding the foregoing, plaintiffs have alleged that defendants violated General Obligations Law § 7-103 by failing to place the security deposit in a separate trust account. Improper commingling under General Obligations Law § 7-103 (1) provides a tenant with an immediate right to receive his deposit intact (*Milkie v Guzzone*, 143 AD3d 863 [2d Dept 2016]; *Tappan Golf Dr. Range, Inc. v Tappan Prop., Inc.*, 68 AD3d 440 [1st Dept 2009]). Moreover, a landlord forfeits any right it had to avail itself of the security deposit for any purpose (*Tappan Golf Dr. Range, Inc.*, 68 AD3d at 441; *see also Dan Klores Assocs. v Abramoff*, 288 AD2d 121 [1st Dept 2001]). In opposition, defendants do not

dispute that they violated General Obligations Law § 7-103, or that plaintiffs caused any damage to the Premises. As such, the Court finds that plaintiffs are entitled to a judgment in their favor for the amount of the security deposit paid to defendants.

Accordingly, defendants' cross-motion to dismiss the complaint is **DENIED**, and plaintiffs' motion is **GRANTED** solely to the extent that plaintiffs may enter judgment against defendants in the amount of $8,250 (*see Pezzo v 26 Seventh Ave. S., LLC*, 41 NYS3d 62 [2d Dept 2016]; *Jimenez v Henderson*, 144 AD3d 469 [1st Dept 2016]). Plaintiffs' remaining claims are hereby severed and continued.

The parties shall appear for a Preliminary Conference of this matter on **February 23, 2017, at 9:30 a.m., in Part 37, Hon. Alan D. Oshrin Supreme Court Building, 1 Court Street, Riverhead, New York**.

The foregoing constitutes the decision and Order of the Court.

Dated: January 9, 2017

HON. JOSEPH FARNETI
Acting Justice Supreme Court

____ FINAL DISPOSITION __X__ NON-FINAL DISPOSITION