560-568 Audubon Tenants Assoc. v 560-568 Audubon Realty, LLC
2017 NY Slip Op 31739(U)
August 15, 2017
Supreme Court, New York County
Docket Number: 154661/16
Judge: Barbara Jaffe

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

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560-568 AUDUBON TENANTS ASSOCIATION, *et al.*,

Plaintiffs,

-against-

560-568 AUDUBON REALTY, LLC, *et al.*,

Defendants.

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Index no. 154661/16

Mot. seq. no. 002

DECISION AND ORDER

BARBARA JAFFE, J.

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Plaintiffs-tenants seek various damages and relief against defendants-landlords. By pre-answer notice of motion, defendants move to dismiss the complaint on several grounds. Plaintiffs oppose.

Defendants' assertion that plaintiffs' complaint is defectively drafted is denied. While the complaint contains many pages and paragraphs, as there are approximately 30 individual plaintiffs with different kinds of claims, some of which require lengthy historical descriptions, it is not unduly prolix. (*See eg, Acker v Hanioti*, 276 AD 78 [1st Dept 1949] [in action involving 310 plaintiffs, while complaint had numerous causes of action and may have been more

concisely stated, to require each cause of action to be separately stated and numbered would result in lengthy and elaborate complaint and would not necessarily render allegations more clear than could be done later by bill of particulars; thus, motion for separate statement and numbering properly denied]; *see also Forty Cent. Park S., Inc. v Anza*, 117 AD3d 523 [1st Dept 2014] [although plaintiff did not limit each paragraph in complaint to single allegation, dismissal not required as meaning of complaint obvious and defendant would have no difficulty answering allegations]; *Stempler v Stempler*, 88 AD3d 574 [1st Dept 2011] [while complaint could have been more plain and concise, claims were properly asserted in consecutively numbered paragraphs and were clear, and defendants' ability to answer not prejudiced]).

As the allegations in the complaint must be given a liberal construction, accepted as true, and accorded every favorable inference (*Chanko v Am. Broadcasting Cos. Inc.*, 27 NY3d 46 [2016]), defendants are not entitled to a dismissal on the ground that the claims are time-barred (*see Bogatin v Windermere Owners LLC*, 98 AD3d 896 [1st Dept 2012] [defendants' pre-answer motion to dismiss complaint properly denied as sufficient evidence presented that defendants had engaged in fraudulent scheme to remove apartment from rent regulation and thus court properly looked beyond four-year period set forth in CPLR 213-a for rent overcharge complaints]). Nor do they demonstrate entitlement to dismissal as time-barred of plaintiffs' claims for fraud and violations of the General Business Law. (*See Ferdico v Pabone,* 125 AD3d 718 [2d Dept 2015] [amended complaint set forth date of discovery of fraud, and defendant did not establish that fraud could have been discovered earlier, and thus motion to dismiss fraud claim as time-barred properly denied]; *Lavin v Kaufman, Greenhut, et al.*, 226 AD2d 107 [1st Dept 1996] [fraud claim should not be dismissed as time-barred unless it "conclusively appears" that plaintiff had

knowledge of facts from which alleged fraud might be reasonably inferred]). Defendants also cite no authority to support their argument that these claims are fatally duplicative of plaintiffs' rent overcharge claims.

The commencement or pendency of "HP" proceedings in the Civil Court against defendants does not preclude plaintiffs' claims for breach of the warranty of habitability or breach of the lease based on violations of the New York City Housing Maintenance Code and Building Code, as the relief sought in the HP proceedings and that sought here differ. An HP proceeding addresses more than an individual landlord-tenant dispute. Rather, it is "part of a broad statutory mechanism where both the Housing Part of the Civil Court . . . and the New York City Department of Housing Preservation and Development (HPD). . . are charged with the responsibility of enforcing the broad public interest in maintaining housing standards." HPD investigates building conditions, issues violations, and levies civil penalties, and thus the tenant's relief in an HP proceeding is limited to the correction of violations. (*D'Agostino v Forty-Three E. Equities Corp.*, 16 Misc 3d 59 [App Term, 1st Dept 2007]). In contrast, a tenant asserting a breach of warranty of habitability claim in a civil proceeding against a landlord is entitled to damages in the form of the difference between the fair market value of the premises if they had been as warranted and the value of the premises during the breach, along with punitive damages in appropriate cases. (*Dominguez v Ilan*, 31 Misc 3d 1219[A], 2011 NY Slip Op 50735[U] [Sup Ct, New York County 2011]). Thus, an HP proceeding and a plaintiff's claim for the breach of the warranty of habitability seek different types of relief for which different remedies are available. (*Dominguez v Zinnar*, 2009 WL 3813771, 2009 NY Slip Op 32621[U] [Sup Ct, New York County] [breach of warranty of habitability claim not barred by prior HP proceedings]).

Defendants also failed to establish, through submission of work orders, that they corrected all of the violations at issue here.

The individual defendants may be held personally liable for tortious conduct as they are employees or officers of the corporate defendant. (*See Maheras v Awan,* 151 AD3d 643 [1st Dept 2017] [corporate officer who participates in committing tort may be held individually liable]). Similarly, the Rent Stabilization Code provides that an agent of an owner or other person or entity receiving or entitled to receive rent may be liable for a rent overcharge. (*Matter of Elm Realty, Inc. v Off. of Rent Control*, 54 NY2d 650 [1981] [corporate principal and manager of premises personally liable for rent overcharge]).

Defendants also fail to demonstrate that plaintiff Tenants Association has no standing to sue, as it is undisputed that it is comprised of tenants in the premises who have standing and who have sued individually here, and plaintiffs provide proof that the Association membership authorizes them to commence the action. (*See Leo v Genl. Elec Co.*, 145 AD2d 291 [2d Dept 1989] [trade associations had standing to sue as relief requested would inure to members' benefit, members would have standing to sue individually, interests sought to be protected germane to associations' purposes, and individual participation of each member not indispensable]). Defendants do not offer admissible proof establishing that certain plaintiffs no longer wish to be parties to the action.

There is no basis for sanctioning plaintiffs pursuant to 22 NYCRR 130-1.1.

Accordingly, it is hereby

ORDERED, that defendants' motion to dismiss is denied in its entirety; it is further

ORDERED, that defendants are directed to file and serve their answer within 20 days of

the date of this order; and it is further

ORDERED, that upon the filing of the answer, the parties are directed to appear for a preliminary conference on September 13, 2017 at 2:15 pm at 60 Centre Street, Room 341, New York, New York.

ENTER:

Barbara Jaffe, JSC

DATED: August 15, 2017
New York, New York