

Garendean Realty Owner, LLC v Lang
2018 NY Slip Op 33636(U)
January 26, 2018
Supreme Court, Kings County
Docket Number: 506571/2017
Judge: Richard Velasquez
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At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 26th day of January, 2018.

P R E S E N T:
HON. RICHARD VELASQUEZ
Justice.

-----X
GARENDEAN REALTY OWNER, LLC,

Plaintiff,

Index No.: 506571/2017

-against-

Decision and Order

JAMES LANG and ELECTRA WEEKS,

Defendants.

-----X

The following papers numbered 1 to 2 read on this motion:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed _____	1
Opposing Affidavits (Affirmations) _____	2
Reply Affidavits (Affirmations) _____	3
Memorandum(a) of Law _____	5-6

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After oral argument and a review of the submissions herein, the Court finds as follows:

Defendant moves to (1) dismiss the complaint in its entirety pursuant to CPLR 3211(a)(1) and (a)(7) for failure to state a cause of action based upon documentary evidence; and (2) pursuant to 3211(a)(5) as to second cause of action as it is barred by

the statute of limitations; and (3) for sanctions pursuant to Rule 130. Plaintiff opposes the same.

Analysis

Pursuant to CPLR 3211, the pleading is to be afforded a liberal construction (see, CPLR 3026). We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (Morone v. Morone, 50 N.Y.2d 481, 484, 429 N.Y.S.2d 592, 413 N.E.2d 1154; Rovello v. Orofino Realty Co., 40 N.Y.2d 633, 634, 389 N.Y.S.2d 314, 357 N.E.2d 970). Under CPLR 3211(a)(1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law (see, e.g., Heaney v. Purdy, 29 N.Y.2d 157, 324 N.Y.S.2d 47, 272 N.E.2d 550). In assessing a motion under CPLR 3211(a)(7), however, a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint (Rovello v. Orofino Realty Co., supra, 40 N.Y.2d at 635, 389 N.Y.S.2d 314, 357 N.E.2d 970) and “the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one” (Guggenheimer v. Ginzburg, 43 N.Y.2d 268, 275, 401 N.Y.S.2d 182, 372 N.E.2d 17; Rovello v. Orofino Realty Co., supra, 40 N.Y.2d at 636, 389 N.Y.S.2d 314, 357 N.E.2d 970). “[B]are legal conclusions and factual claims which are flatly contradicted by the evidence are not presumed to be true on such a motion” (Palazzolo v. Herrick, Feinstein, LLP, 298 A.D.2d 372, 751 N.Y.S.2d 401). If the documentary proof disproves an essential allegation of the complaint, dismissal pursuant to CPLR 3211(a)(7) is warranted even if the allegations, standing alone, could withstand

a motion to dismiss for failure to state a cause of action (see *McGuire v. Sterling Doubleday Enters., LP*, 19 A.D.3d 660, 661, 799 N.Y.S.2d 65).

In the present case, Defendant contends that plaintiff fails to state a cause of action for fraud. The elements of a cause of action for fraud are as follows: (a) a misrepresentation of a material fact; (b) falsity; (c) scienter; (d) reliance; and (e) injury. In the case at hand, accepting the allegations of the complaint as true and affording the plaintiff the benefit of every favorable inference the complaint does not satisfy a single element of a cause of action for fraud.

Specifically, first, plaintiff fails to allege defendant made any representation of material fact. Second, plaintiff fails to allege the defendants made any representation that was false. Contrary to plaintiff contentions all leases correctly state that the apartment is subject to rent stabilization, which is established by documentary evidence. Third, plaintiff does not allege defendants knowingly made any statement that was false. Fourth, plaintiff does not allege that they relied upon any representation made by the defendants regarding the purchasing or selling of the property, in fact, plaintiff acknowledges the defendants had absolutely no role in the sale and purchase of the property. Finally, plaintiffs do not allege they incurred injury or any specific damages.

Moreover, the alleged fraudulent leases were signed after the plaintiff entered into the contract of sale to purchase the property with seller. It unreasonable for a purchaser of any property to rely on the representations of the tenants as to whether or not their tenancies were protected by rent stabilization; rather, a building purchaser would rely upon the advice of counsel after reviewing all relevant records, as all buyers have a duty to do. *Norcase S.ar.l. v. Castle Harlan, Inc.*, 147 A.D.3d 666, 677 (1st Dept 2017). Further, plaintiff

may not attempt to hold defendants liable for an alleged breach of contract that the defendants were not a party to, which is established by the documentary evidence of the contract for sale itself. As such, this court is unable to find a cognizable claim raised by the Plaintiff.

Accordingly, Defendants motion to dismiss is hereby Granted and plaintiff's complaint is hereby dismissed, for the reason stated above. Defendant's request for sanctions is hereby denied.

This constitutes the Decision/Order of the Court.

Date: January 26, 2018



RICHARD VELASQUEZ, J.S.C.

So Ordered
Hon. Richard Velasquez

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