

Underwood v Urban Homesteading Assistance

2019 NY Slip Op 33490(U)

November 22, 2019

Supreme Court, New York County

Docket Number: 161908/18

Judge: Lynn R. Kotler

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYNN R. KOTLER, J.S.C.

PART 8

JEFFREY UNDERWOOD et al.

INDEX NO. 161908/18

MOT. DATE

- v -

MOT. SEQ. NO. 001

URBAN HOMESTEADING ASSISTANCE et al.

The following papers were read on this motion to/for <u>default judgment (004) and dismiss (002+003)</u>	
Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits	NYSCEF DOC No(s). _____
Notice of Cross-Motion/Answering Affidavits — Exhibits	NYSCEF DOC No(s). _____
Replying Affidavits	NYSCEF DOC No(s). _____

Previously, the court denied plaintiffs' motion for a default judgment against defendant 544 East 13th Street Housing Development Fund Corp ("544 East") in a decision/order dated July 10, 2019. Now there are three motions pending before the court. In motion sequence 002, defendant B&N Housing LLC ("B&N") moves to dismiss the complaint and for sanctions and attorneys fees. In motion sequence 003, defendants Urban Homesteading Assistance (U-HAB), Inc. d/b/a Uhab d/b/a Urban Homesteading Assistance Board and Uhab Housing Development Fund Corporation d/b/a Uhab HDFC (collectively "UHAB") move on behalf of themselves as well as for 544 East to dismiss the complaint. Plaintiffs oppose both motions.

Finally, in motion sequence 004, plaintiff moves to renew its prior motion for a default judgment. These motions are herein consolidated for the court's consideration and disposition in this single decision/order. The court's decision follows.

According to their complaint, plaintiffs seek title to real property or money damages because they were allegedly defrauded into leaving an apartment while the building was under renovations under the assumption that they would be allowed to return. The subject building is located at 544 East 13th Street in Manhattan (the "building"). Plaintiffs allege in pertinent part the following. In or about 2002, New York City sold the building to UHAB for one dollar. UHAB, acting as a monitor, was tasked "to assist the occupants/tenants for a loan to complete the construction work needed to meet city codes and develop a low income HDFC cooperative with the right for tenants of the [b]uilding to purchase their units within the cooperative or remain as renters under rent stabilization law."

Plaintiffs moved into apartment 4AB of the building in or around December 2013. In or around the summer of 2014, plaintiffs moved from apartment 4AB to apartment 1A, where they resided until they left the building in or around October 2015.

Dated: 11/27/19


HON. LYNN R. KOTLER, J.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

Plaintiffs claim that “[i]n or around 2014 UHAB, arbitrarily without (sic) notice and without consultation with the Membership Agreement holders, changed the longstanding eligibility criteria for participation in the HDFC conversion. UHAB suddenly recognized all residents as occupants and eligible participants in the cooperative conversion, therefore the Plaintiffs should have received a Relocation Agreement assuring their right to return to their Apt. 1A.” Plaintiffs claim that they left the building to allow for renovations. It was their understanding, from October 2015 until or about September 28, 2018, that “they would be given an opportunity to purchase their apartment from UHAB for \$2,500 or remain as rent stabilized tenants in their apartment 1A or another substantially similar apartment.”

After plaintiffs moved out of the building, “almost immediately... the Dawsons and UHAB allegedly prepared a list of ‘residents’ in the building” who were eligible to purchase their apartments for \$2,500. Plaintiffs were not on that list. Plaintiffs further allege that:

Upon information and belief, with the exception of Plaintiffs, all people who resided in the Building between August 2015 and the end of October 2015 received a document called a “TEMPORARY APARTMENT RELOCATION AGREEMENT”

Plaintiffs claim that in or around September 2018, they learned that apartment 1A was going to be sold to the general public at a market price.

Otherwise, plaintiffs allege that UHAB pressured them to leave the apartment, that defendant Greg Dawson told plaintiffs “if they were to resist moving out for the renovations, it would ‘mess up [UHAB’s] deal’ with the construction company and if ‘they had to deal with [UNDERWOOD]’ it would affect the ability of everyone in the Building to ultimately their apartments...” Dawson allegedly assured plaintiffs that they were “first on the list” and “their moving out would be temporary.” Defendant Nicky Scott allegedly offered to rent his apartment 5C to plaintiffs “since he lived in Texas, until a renovated apartment was ready for plaintiffs to move into.”

Plaintiffs further assert that Greg and Isabella Dawson kept a \$3,000 per month stipend that should have been “allocated at least in part to the living expenses/rent incurred by plaintiffs during renovations.”

In their original complaint, plaintiffs have asserted the following causes of action: [1] tortious interference with contract/economic advantage; [2] fraudulent inducement; and [3] unjust enrichment

The court will first consider the motions to dismiss. B&N, which purchased the building from UHAB after plaintiffs moved out, argues that it has no relationship with plaintiffs and should not be named as a defendant in this action. Otherwise, both B&N and UHAB argue that the complaint fails to state a cause of action.

On a motion to dismiss pursuant to CPLR § 3211, the pleading is to be afforded a liberal construction (*Leon v. Martinez*, 84 NY2d 83, 87-88 [1994]). The court must accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*id.* citing *Morone v. Morone*, 50 NY2d 481 [1980]; *Rovello v. Orofino Realty Co.*, 40 NY2d 633 [1976]).

Under CPLR § 3211(a)(1), “dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law” (*Leon v. Martinez, supra* at 88).

To state a claim for tortious interference with contract or prospective economic advantage, the plaintiff must allege that (1) he had a contract or business relationship with a third party; (2) the defendant knew of that contract or relationship and intentionally interfered with it; (3) the defendant acted solely out of malice or used improper or illegal means that amounted to a crime or independent tort; and (4)

the defendant's interference caused injury to the contract or relationship with the third party (*Amaranth LLC v. J.P. Morgan Chase & Co.*, 71 AD3d 40 [1st Dept 2009]; *see also Carvel Corp. v. Noonan*, 3 NY3d 182 [2004]).

The state a claim for fraudulent inducement, plaintiffs must allege "a false representation, made for the purpose of inducing another to act on it, and that the party to whom the representation was made justifiably relied on it and was damaged" *Perrotti v. Becker, Glynn, Melamed & Muffly LLP*, 82 AD3d 495, 498 [1st Dept 2011]).

An unjust enrichment claim is a quasi-contract arising when a defendant was enriched at plaintiff's expense and it is against equity and good conscience that defendant retain what is sought to be recovered (*Travelsavers Enterprises, Inc. v. Analog Analytics, Inc.*, 149 AD3d 1003 [2d Dept 2017]).

Here, the court finds that plaintiffs have failed to allege any viable cause of action. At the outset, the complaint is devoid of any actionable allegations against B&N. Indeed, documentary evidence establishes that B&N did not purchase the building until after plaintiffs moved out. Since there are no actionable claims against B&N, its motion to dismiss must be granted.

Further, plaintiffs have failed to allege that either B&N or UHAB engaged in conduct sufficient to support their cause of action for tortious interference against them (*see i.e. Moses v. Brown Harris Stevens Residential Management, LLC*, 279 AD2d 257 [1st Dept 2001]).

Plaintiffs' fraud claim lacks the requisite specificity (CPLR § 3016[b]); *see i.e. Dumas v. Fiorito*, 13 AD3d 332 [2d Dept 2004]). As to UHAB, plaintiffs' allegation that Greg Dawson or the Dawson acted on behalf of UHAB in scheming to get plaintiffs out of the building before the apartments would be sold for \$2,500 is conclusory to the extent that it fails to establish liability on UHAB. There are no facts to support plaintiffs' claim that Greg Dawson or the Dawsons acted on behalf of UHAB in any capacity and/or as its agent.

Finally, the complaint is devoid of any facts to support the necessary allegation of an unjust enrichment claim that UHAB was enriched at plaintiff's expense.

However, UHAB lacks standing to request relief on behalf of 544 East. Therefore, that portion of UHAB's motion is denied. As for B&N's request for sanctions, while plaintiffs have not prevailed in this action, the court cannot say that plaintiffs' conduct in filing the complaint is frivolous within the meaning of 22 NYCRR 130-1.1. Therefore, B&N's cross-motion to that extent is denied.

Accordingly, plaintiffs' claims against B&N and UHAB are dismissed.

Plaintiffs' motion to renew its prior motion for a default judgment against 544 East is also denied. For the same reasons already identified herein, plaintiffs have again wholly failed to demonstrate a *prima facie* cause of action against 544 East.

Plaintiffs have failed to file affidavits of service on any of the other defendants and it otherwise appears according to the court's file that no other defendant was served. Since plaintiffs' complaint fails to state any *prima facie* cause of action, it is dismissed in its entirety.

CONCLUSION


In accordance herewith, it is hereby

ORDERED that defendants' motions to dismiss (motion sequence 002 and 003) are granted and plaintiffs' motion to renew its prior motion for a default judgment is denied; and it is further

ORDERED that plaintiffs' complaint is dismissed and the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly denied and this constitutes the Decision and Order of the court.

Dated: 11/22/19
New York, New York

So Ordered: 

Hon. Lynn R. Kotler, J.S.C.