

Elango Med. PLLC v Trump Palace Condominium

2019 NY Slip Op 33727(U)

December 23, 2019

Supreme Court, New York County

Docket Number: 150019/2019

Judge: Paul A. Goetz

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. PAUL A. GOETZ PART IAS MOTION 47EFM

Justice

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INDEX NO. 150019/2019

ELANGO MEDICAL PLLC, PEGGY-ROSE ELANGO,

MOTION DATE 12/05/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

TRUMP PALACE CONDOMINIUM, BOARD OF MANAGERS OF TRUMP PALACE CONDOMINIUM, TRUMP CORPORATION, BASCOMBE HOLDINGS LIMITED, NORMAN SCHAUMBERGER, THE CORCORAN GROUP, DAVID GARLAND

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 73, 75, 76, 77, 78, 79, 80, 81

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

Plaintiff Elango Medical PLLC, and its sole proprietor, plaintiff Dr. Peggy-Rose Elango, commenced this action for fraud, false advertising, and discrimination after their application to lease a unit located at 120 East 61st Street, New York, NY for a medical office was rejected. Defendant Trump Corporation, the managing agent for defendant Board of Managers of Trump Palace Condominium, now moves pursuant to CPLR 3212 for summary judgment on its affirmative defenses and for an order dismissing the claims asserted against it.

Defendant Trump Corporation first argues that the complaint should be dismissed because it is insulated from all liability in this action as it was acting as an agent for a disclosed principal, namely defendant Board of Managers of Trump Palace Condominium. Defendant Trump Corporation's argument is misplaced. Although this principal is applicable in certain instances, such as breach of contract claims, it is well-established that acting for a disclosed principal does not insulate the agent for its own tortious conduct. *See Pelton v. 77 Park Ave.*

Condo., 38 A.D.3d 1, 11-12 (1st Dep't 2006) (overruled on other grounds by *Fletcher v. Dakota, Inc.*, 99 A.D.3d 43 (1st Dep't 2012)); *see also Bedesse Imports, Inc. v. Cook, Hall & Hyde, Inc.*, 45 A.D.3d 792, 794 (2d Dep't 2007); *Lax v. 29 Woodmere Blvd. Owners, Inc.*, 812 F.Supp.2d 228, 239-40 (E.D.N.Y. 2011). Here, the claims asserted against defendant Trump Corporation are for aiding and abetting fraud and for discrimination, based on *inter alia*, permitting the unit to be advertised for commercial use, rejecting plaintiffs' application, and permitting other similar units (including previously the subject unit) to be leased for commercial purposes. Verified Complaint, ¶¶ 83-90, 119-129, 155-176. Other than attempting to show that they were acting as an agent for a disclosed principal and pointing to plaintiffs' alleged lack of credible proof, defendant Trump Corporation has failed to submit any evidence to show that it did not participate in the alleged wrongdoing. Affidavit of Sonja Talesnik sworn to on July 19, 2019, ¶¶ 34, 38-39, 41-42. Moreover, even if the conclusory statements in Ms. Talesnik's affidavit were sufficient to meet this burden, summary judgment must still be denied as plaintiffs have not had an opportunity to conduct discovery in this case, particularly with respect to defendant Trump Corporation's role as managing agent for the board. Accordingly, defendant's motion for summary judgment on this basis is denied.

Defendant Trump Corporation also seeks summary judgment on the ground that the fourth and eighth causes of action for aiding and abetting fraud fail to state a cause of action or are contradicted by documentary evidence. Although defendant Trump Corporation moves under CPLR 3212, its motion is really directed at the sufficiency of plaintiffs' pleading and should thus be evaluated under the standard applicable to motions made under CPLR 3211(a)(1) and (7). In order to properly plead a claim for aiding and abetting fraud, the complaint must allege "(1) the existence of an underlying fraud; (2) knowledge of this fraud on the part of the aider and abettor;

and (3) substantial assistance by the aider and abettor in achievement of the fraud.” *Stanfield Offshore Leveraged Assets, Ltd. v. Metropolitan Life Ins. Co.*, 64 A.D.3d 472, 476 (1st Dep’t 2009). With respect to the third element, “[s]ubstantial assistance exists where (1) a defendant affirmatively assists, helps conceal, or by virtue of failing to act when required to do so enables the fraud to proceed, and (2) the actions of the aider/abettor proximately caused the harm on which the primary liability is predicated.” *Id.* (internal citations and quotations omitted). Here, plaintiffs allege that defendant Trump Corporation substantially assisted in the co-defendants’ fraud by, *inter alia*, previously permitting the leasing of this unit, and other similar units, for commercial purposes in contravention of the certificates of occupancy. Verified Complaint, ¶¶ 87-90, 125-27. However, plaintiffs fail to explain in the complaint or in their papers in opposition to the motion how, even if true, such actions, affirmatively assisted or helped conceal the co-defendants’ alleged misrepresentations regarding the use of the apartment. Based on the allegations of the complaint, defendant Trump Corporation’s actions, at most, amounted to knowingly permitting co-defendants to advertise the unit as a commercial space, which is insufficient to constitute substantial assistance in the absence of a fiduciary duty between the parties. *Id.* Accordingly, these claims must be dismissed.

With respect to the discrimination claims, a plaintiff states a claim for discrimination by alleging (1) that she is a member of a protected class; (2) that she sought and was qualified to lease the apartment; (3) that she was rejected; and (4) that the denial of her application occurred under circumstances giving rise to an inference of discrimination. *Sayeh v. 66 Madison Ave. Apt. Corp.*, 73 A.D.3d 459, 461 (1st Dep’t 2010). Here, plaintiffs have sufficiently alleged all of these elements. With respect to the last element, plaintiffs have sufficiently alleged, unlike in *Sayeh*, circumstances giving rise to an inference of discrimination as plaintiffs allege that the subject

unit was consistently used as a medical office since 1993 until mid-2017, and that other similar units in the condominium were used as medical offices, despite the certificate of occupancy prohibiting such use. Verified Complaint, ¶¶ 46, 48, 156, 159, 167-68. Finally, defendant Trump Corporation’s argument that individual plaintiff Dr. Elango lacks standing is meritless as the law provides a remedy “for any person adversely affected by reason of discrimination in the provision of [commercial space] in New York.” *Stalker v. Stewart Tenants Corp.*, 93 A.D.3d 550, 551 (1st Dep’t 2012) (citing relevant cases). Accordingly, it is

ORDERED that the motion is granted to the extent that the fourth and eighth causes of action against defendant Trump Corporation are dismissed, and is otherwise denied.

12/23/19
DATE


PAUL A. GOETZ, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
		<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	OTHER
		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: