

Kingdom Life Temple v Villa 204 Assoc. LLC

2019 NY Slip Op 34988(U)

May 14, 2019

Supreme Court, Bronx County

Docket Number: Index No. 31148/2017E

Judge: Norma Ruiz

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX – PART 22

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KINGDOM LIFE TEMPLE
Plaintiff,

Index No. 31148/2017E

- against -

DECISION/ ORDER
HON. NORMA RUIZ

VILLA 204 ASSOCIATES LLC, HP VILLA GARDENS
HOUSING DEVELOPMENT FUND COMPANY, INC.
and GALAXY GENERAL CONTRACTING CORP.,

Defendants.

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Hon. Norma Ruiz

Upon the foregoing papers defendant's motion to dismiss is granted.

This matter arises out of a dispute between neighbors, defendants and plaintiff, Kingdom Life Temple. On or around April 21, 2017, plaintiff alleges defendant commenced with construction and demolition work on the building adjacent to theirs, causing the building they were renting to suffer structural damage. The non-party landlord filed a lawsuit against defendants for the structural damage, and that matter resolved via settlement.

Plaintiff thereafter brought this separate action against defendants alleging negligence, violation of city code, nuisance, trespass, and wrongful ejection. Defendant now moves for dismissal, arguing that the relief sought by plaintiff is prohibited as a matter of law due to plaintiff's non-compliance with city ordinances, specifically the Fire Code. Based on this record, and with careful consideration, the Court agrees with defendant.

Plaintiff argues that the landlord granted them permission to conduct church services on site, however the landlord Ebed Realty's grant of permission simply does not and cannot waive the statutory obligation to provide a safe space for a gathering.

The City's Administrative Code § 28-102.4.4 states in no uncertain terms that it is "*unlawful* to occupy any building or space as a place of assembly unless and until a Certificate of Operation ... has been issued" (Emphasis added). All rights and privileges afforded under the Not-for-Profit Corporation Law turn on *lawful* activities. Open disregard for city fire codes effectively extinguish those rights and privileges. It then follows that suing for recovery of lost profits or opportunities which may have occurred in an unlawful manner is unenforceable as a matter of law (*Eastman Kodak Co. V. Blackmore*, 277 F. 694, 698 [2d Cir. 1921]).

Plaintiff, in their opposition, relies on self serving affidavits that are of scant probative value, particularly where they rely on hearsay for their support, as was the case with the affidavit of Ms. Greco. As defendants correctly point out in their reply papers, if the building was in fact up to code, then obtaining the Place of Assembly permit would not have been difficult to obtain.

Plaintiff's arguments concerning defendant's lack of standing are also misplaced. The cases involving standing cited by plaintiff all revolved around standing to sue, which is markedly different than here, where defendant is pointing to statutory violations in its defense of its interests. Were plaintiff being sued on these facts, some of that case law may well have been applicable, but is of no value here. Further, it is well-settled that a matter tending to mitigate or reduce damages is a valid partial defense that may be pleaded

There is no evidence provided in this record which indicates plaintiff ever actually obtained the required permit for public assembly. It seems, upon review of this record, that plaintiff was aware

the building was not up to code, but elected not to remedy the defect because doing so would be too expensive in excess of \$70,000, which flies in the face of plaintiff's assertions that the defect was easily curable. Based on the foregoing, there is no cognizable route to recovery where plaintiff was engaged in unlawful behavior, endangering its parishioners, and seeking damages that are purely speculative in nature (*Hoeffner v. Orrick, Herrington & Sutcliffe LLP.*, 61 A.D.3d 614 [1 st Dept. 2009]).

Plaintiff's remaining arguments are without merit. It is thereby

ORDERED plaintiff's cause of action sounding in negligence is dismissed; it is further

ORDERED plaintiff's cause of action sounding in negligence per se is dismissed; it is further

ORDERED plaintiff's cause of action sounding in nuisance is dismissed; it is further

ORDERED plaintiff's cause of action sounding in trespass is dismissed; and it is further

ORDERED plaintiff's cause of action sounding in wrongful ejection is dismissed.

This constitutes the decision and order of the court.

Date

5/14/19



Norma Ruiz, J.S.C.
HON. NORMA RUIZ