131 Perry St. Apt. Corp. v Clauser

2022 NY Slip Op 33018(U)

September 8, 2022

Supreme Court, New York County

Docket Number: Index No. 155397/2022

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

---X

131 PERRY STREET APARTMENT CORPORATION

Plaintiff,

- v -

ROBERT CLAUSER,

Defendant.

---X

INDEX NO. 155397/2022

MOTION DATE 08/31/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28

were read on this motion to/for DISMISS.

The motion by defendant to dismiss is granted.

Background

Plaintiff, a co-op, brings this case concerning responsibility for the repair/maintenance of custom-made French doors located in defendant's apartment. The problem with the doors caused a leak to the apartment below.

In 1998, a previous owner of the subject apartment (Kim Dempster) entered into an agreement with plaintiff in which she was permitted to install the doors ("Atrium Doors") but was required to provide for their long-term maintenance.

The agreement provided that "your acceptance of responsibility for this alteration is binding on all future purchasers of the shares allocated to your apartment. No transfer or cancellation of your proprietary lease shall be permitted unless you are in full compliance with this consent" (NYSCEF Doc. No. 9, ¶ 7).

Plaintiff contends that defendant purchased the shares of stock and entered into the relevant proprietary lease for this apartment in 2003. It argues that he assumed all responsibility for the long-term maintenance and integrity of the Atrium Doors under the terms of the agreement with Ms. Dempster. Plaintiff maintains that in September 2021, heavy rainfall penetrated the Atrium Doors and caused substantial flooding in the building, including the unit directly below defendant's apartment.

Plaintiff contends that its architect looked at the Atrium Doors and found that they needed extensive repairs in order to prevent future flooding issues. It claims that defendant has refused to perform the required maintenance and repairs and is therefore violating the terms of the agreement signed by Ms. Dempster.

Defendant moves to dismiss and asserts that the Atrium Doors were installed by a previous unit owner and he did not sign any agreement with plaintiff that requires him to fix the doors. He complains that plaintiff has charged him over $13,000 in additional rent and threatened his leasehold. Defendant argues that plaintiff has suggested defendant will be responsible for additional repairs that could exceed $80,000.

Defendant insists that he never signed the agreement to maintain the Atrium Doors and that his proprietary lease requires plaintiff to maintain the windows. He questions how he can assume liability pursuant to an agreement to which he did not sign.

In opposition, plaintiff claims that defendant was aware of the agreement with Dempster as far back as 2004 and purportedly acknowledged his obligation under the agreement. It claims that defendant only recently started claiming that he did not have to fix the problem. Plaintiff argues that the proprietary lease does not require plaintiff to fix equipment or fixtures installed by the lessee or a predecessor and that plaintiff must only fix *standard* windows and doors.

Plaintiff maintains that the $13,000 it charged to defendant was for hiring a contractor to install an exterior tarp over the doors after defendant refused to fix the issue.

In reply, defendant admits that there were certain window repairs done in 2004 and that he asked plaintiff to do the repairs and plaintiff refused. He insists that he just paid for it because it was only a few hundred dollars. Defendant emphasizes that he does not recall receiving the agreement between Dempster and plaintiff in 2004.

Discussion

"On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We accept the facts as alleged in the [pleading] as true, accord [the proponent of the pleading] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88, 614 NYS2d 972 [1994] [citations omitted]). "At the same time, however, allegations consisting of bare legal conclusions . . . are not entitled to any such consideration" (*Connaughton v Chipotle Mexican Grill*, *Inc*., 29 NY3d 137, 141, 75 NE3d 1159 [2017] [citation and internal quotations omitted]).

On a "motion to dismiss on the ground that the action is barred by documentary evidence, such motion may be appropriately granted only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law"(*Goshen v Mut. Life Ins. Co. of New York*, 98 NY2d 314, 326, 746 NYS2d 858 [2002]).

Plaintiff brings four causes of action: for declaratory relief that the terms of the agreement between Dempster and plaintiff are binding on defendant, injunctive relief that defendant take all actions to maintain the doors in the future, breach of contract under the terms of the Dempster agreement, and legal fees under the terms of the proprietary lease.

The Court dismisses this action. "[G]enerally only parties in privity of contract may enforce terms of the contract" (*Freeford Ltd. v Pendleton*, 53 AD3d 32, 38, 857 NYS2d 62 [1st Dept 2008] [citation omitted]). There is no dispute that defendant never signed the agreement between Dempster and plaintiff. Plaintiff's claim, that somehow a party who did not sign an agreement containing express maintenance obligations is bound by such an agreement indefinitely is without merit.

The Court questions why plaintiff did not make defendant sign the agreement when he took ownership of the shares for the subject unit (If plaintiff did, then no proof whatsoever was submitted to the Court). Clearly, plaintiff thought the agreement was necessary; that is why it made Dempster enter into the agreement and it should have made sure that defendant acknowledged the obligations that plaintiff now seeks to make defendant follow. In fact, the Dempster agreement notes that she could not transfer or cancel the proprietary lease "unless you are in compliance with this consent" (NYSCEF Doc. No. 9, ¶ 7). That suggests that plaintiff could have stopped transfer of the apartment until a purchaser acknowledged that he or she was responsible for maintaining the Atrium Doors.

Plaintiff's reliance on casual references to the agreement is not enough, in this Court's view, to bind defendant to a substantial financial obligation. That defendant apparently received the agreement (although he does not recall) in 2004 makes no difference because plaintiff, once again, did not make defendant sign this agreement. And under the terms of the proprietary lease, plaintiff is responsible to repair and maintain "windows, window panes, window frames, sashes, sills, entrance and terrace doors, frames and saddles" (NYSCEF Doc. No. 6, ¶ 18). The Atrium Doors in question clearly fall under that definition, as something that plaintiff has to repair.

Plaintiff's reliance on paragraphs four and twenty-one of the proprietary lease does not change the Court's conclusion because it misses the point. Paragraph four deals with damage to the apartment while paragraph twenty-one concerns alterations and removal of fixtures. The Court recognizes that paragraph four does assert that plaintiff is not responsible to repair any fixtures installed by a lessee or any of the lessee's predecessors. The issue for this Court is that the instant complaint alleges causes of action solely based on the Dempster agreement- this complaint does not seek relief under paragraph four of the proprietary lease. The complaint wants a declaration that defendant is bound by the Dempster agreement, injunctive relief going forward based on the Dempster agreement and breach of that Dempster agreement. The only reference to the proprietary lease is plaintiff's claim for legal fees. And this Court is unable to find that plaintiff is bound by an agreement he never signed.

Defendant's decision to just pay for some window repairs in 2004 does not foreclose his ability to assert here that plaintiff must cover these expenses. A single event does not modify the proprietary lease or bind him to the Dempster agreement.

Summary

The central issue in this case, as framed by the instant complaint, is whether defendant is bound to follow the obligations of an agreement he did not sign. While the Dempster agreement clearly tried to impose obligations on subsequent purchasers of the apartment, this Court cannot enforce an agreement on someone who is not a party to it. As stated above, plaintiff should have clearly made defendant sign the agreement when he acquired the shares or include a provision in all proprietary leases that purchasers are bound by all agreements signed by previous owners. That would, at the very least, encourage both plaintiff and buyers to investigate these types of

agreements. Instead, plaintiff is attempting to make defendant expend significant resources to repair the issue based on an agreement he was not aware of when he acquired the apartment.

The implications of binding a non-party, such as plaintiff, are obvious. What if the agreement required defendant to make substantial payments to plaintiff? How could the Court bind plaintiff to such a bargain where he didn't sign the agreement? That is exactly what is happening here. Plaintiff is attempting to pass the costs of repairs onto defendant based on an agreement he never signed.

Typically, non-signatories to contracts attempt to enforce agreements as third-party beneficiaries (*see e.g., Marino v Dwyer-Berry Const. Corp.,* 193 AD2d 654, 597 NYS2d 466 [2d Dept 1993]). In such instances, the plaintiff is the non-signatory and seeks relief under a contract signed by the defendant. Here, the situation is different. Plaintiff, a signatory, tries to bind defendant to an agreement he never signed and make him pay for the associated repair costs. That situation cannot withstand principles of contract. Plaintiff cannot breach or be bound by a contract he never signed, had knowledge of, benefitted from or ratified.

Because the proprietary lease has a provision requiring that a lessee pay legal fees, defendant is also entitled to legal fees under the Real Property Law. Defendant shall make a separate motion for legal fees on or before September 23, 2022.

Nothing in this decision precludes plaintiff from bringing another action based on the proprietary lease; this decision granting the motion to dismiss is based on the instant complaint which limits itself to the agreement with Dempster. Plaintiff did not cross-move to amend the complaint to include a claim under the applicable provision of the proprietary lease.

Accordingly, it is hereby

ORDERED that the motion by defendant to dismiss the instant complaint is granted, the complaint is dismissed and the Clerk is directed to enter judgment in favor of defendant and against plaintiff along with costs and disbursements upon presentation of proper papers therefor; and it is further

ORDERED that defendant is entitled to reasonable legal fees and that issue is severed and defendant must make a motion for legal fees on or before September 23, 2022.

9/8/2022		
DATE		**ARLENE P. BLUTH, J.S.C.**

CHECK ONE:	X	**CASE DISPOSED**			**NON-FINAL DISPOSITION**	
	X	**GRANTED**	☐	**DENIED**	☐ **GRANTED IN PART**	☐ **OTHER**
APPLICATION:	☐	**SETTLE ORDER**			☐ **SUBMIT ORDER**	
CHECK IF APPROPRIATE:	☐	**INCLUDES TRANSFER/REASSIGN**			☐ **FIDUCIARY APPOINTMENT**	☐ **REFERENCE**