

Yuchen Huang v Hart Street 255, LLC

2022 NY Slip Op 33201(U)

September 2, 2022

Supreme Court, Kings County

Docket Number: Index No. 509752/2021

Judge: Carl J. Landicino

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At an IAS Term, Part 81 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, N.Y. on the 2nd day of September 2022.

PRESENT:

HON. CARL J. LANDICINO,

Justice.

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YUCHEN HUANG,

Plaintiff,

Index No. 509752/2021

- against -

DECISION AND ORDER

HART STREET 255, LLC,

Defendant,

Motion Sequence # 1

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Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

	<u>Papers Numbered (e-file)</u>
Notice of Motion and Affidavits (Affirmations) Annexed	4-6, _____
Opposing Affidavits (Affirmations)	8-9, _____
Reply Affidavits (Affirmations)	10 _____

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

The Plaintiff, Yuchen Huang (hereinafter the "Plaintiff") has commenced an action against Defendant Hart Street 225, LLC (hereinafter the "Defendant") reflecting two causes of action, 1) breach of warranty of habitability, and 2) property damage and emotional distress. The Plaintiff alleges in his complaint that the Defendant "failed to safeguard Plaintiff's home from continuous and unabated water penetration resulting in constant leaks and mold infestation."

The Defendant now moves (motion sequence #1) to dismiss the complaint for failure to state a cause of action pursuant to 3211(a)(5) and (7). The Defendant contends that as to the Plaintiff's first cause of action, a claimant cannot recover damages to personal property resulting from a breach of warranty of habitability under Real Property Law § 235-b. The Defendant also contends that the Plaintiff's second cause of action relating to property damage and emotional distress are time barred by a three-year statute

of limitations pursuant to CPLR 214. The Defendant points to the complaint that alleges that the incidents allegedly occurred between the period of December 1, 2015 through May 31, 2017. The Defendant contends that since the proceeding was commenced on April 27, 2021, almost four years after the end date of the alleged occurrence period, the Plaintiff's second cause of action is untimely.

The Plaintiff opposes the motion. The Plaintiff contends that it is appropriate to award monetary damages for a breach of the warranty of habitability. The Plaintiff also contends that the second cause of action is timely. Plaintiff argues that a prior proceeding alleging property damage and emotional distress was initially commenced by the Plaintiff on May 7, 2018. The Plaintiff contends that the matter was dismissed on April 26, 2021, based upon the Plaintiff's failure to timely move for default judgment. The Plaintiff contends that pursuant to CPLR 205(a) and CPLR 3215(c) the Plaintiff may initiate a subsequent action within six months of the dismissal despite the expiration of the statute of limitations.

CPLR 3211

On a CPLR 3211 motion to dismiss, the court will accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove his or her claims, of course, plays no part in the determination of a pre-discovery CPLR 3211 motion to dismiss.

Kinnear v. Cefoli, 184 AD3d 628, 123 N.Y.S.3d 509, 510 [2d Dept 2020].

1st Cause of Action

Pursuant to CPLR §3013, “[s]tatements in a pleading should be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense” Furthermore, “[a]lthough on a motion to dismiss plaintiff's allegations are presumed to be true and accorded every favorable inference,

conclusory allegations - claims consisting of bare legal conclusions with no factual specificity - are insufficient to survive a motion to dismiss.” *Godfrey v. Spano*, 13 N.Y. 3d 358, 373, 892 N.Y.S.2d 272, 278 [2009].

“[W]here evidentiary material is adduced in support of the motion, the court must determine whether the proponent of the pleading has a cause of action, not whether the proponent has stated one” (*Peter F. Gaito Architecture, LLC v. Simone Dev. Corp.*, 46 AD3d 530, 530 [2007]; see *Meyer v. Guinta*, 262 AD2d 463, 464 [1999]). A motion to dismiss based on documentary evidence 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. Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]; see *Leon v. Martinez*, 84 NY2d at 88, *Lucia v. Goldman*, 68 AD3d 1064, 1065 [2009]; *Mazur Bros. Realty, LLC v. State of New York*, 59 AD3d 401, 402 [2009]).

Feggins v. Marks, 171 AD3d 1014, 1015-6, 99 N.Y.S.3d 45, 47 [2d Dept 2019].

The Court finds that the Defendant has not established that the Plaintiff has failed to properly plead a cause of action for breach of warranty of habitability under Real Property Law § 235-b. Defendant is correct in that “Real Property Law § 235-b does not permit a tenant to recover [for] damage to personal property resulting from a breach of the warranty of habitability.” *Concetto v. Pedalino*, 308 AD2d 470, 471, 764 N.Y.S.2d 638 [2d Dept 2003], quoting *Couri v. Westchester Country Club, Inc.*, 186 AD2d 712, 589 N.Y.S.2d 491 [2d Dept 1992]. However, as part of his first cause of action for Breach of Warranty of Habitability pursuant to Real Property Law § 235-b, the Plaintiff states that “Defendant’s failure to provide basic services including but not limited to proper safeguards against flooding, water penetration and mold entitles Plaintiff to monetary damages including attorneys’ fees.” A landlord has a duty to maintain the premises coextensive with a tenant’s duty to pay rent.

“[T]he proper measure of damages for breach of warranty is the difference between the fair market value of the premises if they had been as warranted, as measured by the rent reserved under the lease, and the value of the premises during the period of the breach. The award may take the form of a sum of money awarded the tenant in a plenary action or a percentage reduction of the contracted-for rent as a setoff in summary nonpayment proceeding in which the tenant counterclaims or pleads as a defense breach by the landlord of his duty to maintain the premises in habitable condition.”

Goethals Mobile Park, Inc. v. Staten Island Meadowbrook Park Civic Ass'n, Inc., 208 AD2d 896, 618 N.Y.S.2d 409 [2d Dept 1994], quoting *Park W. Mgmt. Corp. v. Mitchell*, 47 N.Y.2d 316, 391 N.E.2d 1288 [1979], see also *Nostrand Gardens Co-Op v. Howard*, 221 AD2d 637, 638, 634 N.Y.S.2d 505 [2d Dept 1995] and *Frankel v. Vernon & Ginsburg, LLP*, 160 A.D.3d 528, 529, 75 N.Y.S.3d 158 [1st Dept 2018]. Additionally, movant failed to provide a basis to dismiss the application for attorneys fees. See *Casamento v. Juaregui*, 88 AD3d 345, 348, 929 N.Y.S.2d 286 [2d Dept 2011]. Accordingly, the Defendant's application to dismiss the first cause of action pursuant to CPLR 3211(a)(7) is denied.

2nd Cause of Action

“On a motion to dismiss a complaint pursuant to CPLR 3211(a)(5) on statute of limitations grounds, the moving defendant must establish, *prima facie*, that the time in which to commence the action has expired.” See *Yang v. Oceanside Union Free Sch. Dist.*, 90 A.D.3d 649, 649, 933 N.Y.S.2d 905 [2d Dept 2011]. “As a general principle, the statute of limitations begins to run when a cause of action accrues (see CPLR 203 [a]), that is, ‘when all of the facts necessary to the cause of action have occurred so that the party would be entitled to obtain relief in court.’” *Hahn Auto. Warehouse, Inc. v. Am. Zurich Ins. Co.*, 18 N.Y.3d 765, 770, 967 N.E.2d 1187 [2012], quoting *Aetna Life & Cas. Co. v. Nelson*, 67 N.Y.2d 169, 175, 492 N.E.2d 386 [1986].

In the instant proceeding, the Defendant seeks to dismiss the second cause of action as time barred. The Plaintiff argues that the second cause of action is not time barred by the statute of limitations as a prior proceeding had been commenced timely and as a result the second cause of action is timely. Specifically, the Plaintiff relies on CPLR 205(a), which provides in pertinent part that:

“[i]f an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff ... may commence a new action upon the same transaction or occurrence ... within six months after the termination provided that the new action would have been timely commenced at the time of commencement of the prior action and that service upon defendant is effected within such six-month period.”

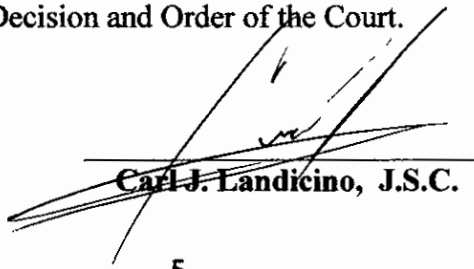
The second cause of action, related to property damage and emotional distress caused by a purported water leak, concerns an occurrence that allegedly lasted from December 1, 2015 to May 31, 2017. The facts herein meet the requirements of CPLR 205(a) in that the prior proceeding was timely commenced in April of 2018 and dismissed on April 26, 2021. The current action was commenced within six months thereafter (April 27, 2021) and the Defendant was served with the instant complaint within 120 days of commencement (May 6, 2021). Although the previous matter was dismissed, the fact that it was dismissed for failing to take the proceedings for entry of judgment within one (1) year after Defendant’s default does not bar the application of CPLR 205(a). “The order did not include any findings of specific conduct demonstrating ‘a general pattern of delay in proceeding with the litigation.’” *Wells Fargo Bank, N.A. v. Eitani*, 148 AD3d 193, 198, 47 N.Y.S.3d 80, 84 [2d Dept 2017] referencing CPLR 205(a); *see also Goldstein v. New York State Urb. Dev. Corp.*, 64 A.D.3d 168, 177, 879 N.Y.S.2d 524, 531, *aff’d*, 13 N.Y.3d 511, 921 N.E.2d 164 [2009]. Accordingly, the Defendant’s application to dismiss the second cause of action pursuant to CPLR 3211(a)(5) is denied.

Based on the foregoing, it is hereby ORDERED as follows:

The Defendant’s motion (motion sequence #1) is denied.

The foregoing constitutes the Decision and Order of the Court.

ENTER:


Carl J. Landicino, J.S.C.

2022 SEP 21 AM 9:15
KINGS COUNTY CLERK
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