

Rodriguez v New York City Hous. Auth.

2023 NY Slip Op 33864(U)

October 30, 2023

Supreme Court, New York County

Docket Number: Index No. 100403/2023

Judge: Lisa S. Headley

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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. LISA S. HEADLEY **PART** **28M**

Justice

-----X

LUIS ALEXIS RODRIGUEZ,

Plaintiff,

- v -

NEW YORK CITY HOUSING AUTHORITY,

Defendant.

-----X

INDEX NO. 100403/2023

MOTION DATE N/A

MOTION SEQ. NO. 001, 003

**DECISION + ORDER ON
MOTION**

The paper filed documents, subsequently converted to e-filing (Motion 001) were read on this motion to/for **DISMISS**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 4, 5, 6, 7, 8, 9, 10 were read on this motion to/for SEAL.

This Court scheduled a conference on the motion to dismiss to be held on October 10, 2023, via Microsoft Teams. The *pro se* plaintiff failed to appear, and informed the Court that he would prefer the Court to determine the issues based on the written submission. It should be noted that counsel for defendant was present. Accordingly, the motion by defendant to dismiss (motion seq. no. 001), and the motion by the plaintiff to seal the proceeding (motion seq. no. 003) shall be decided as stated herein.

In this case, *pro se* plaintiff Luis Alexis Rodriguez (hereinafter “plaintiff”) commenced the within action against defendant, New York City Housing Authority (hereinafter “NYCHA” or “defendant”) on the basis of discrimination disparate treatment. Based on the complaint, the relief sought by plaintiff is pursuant to “§5.105(a)(1) CFR 24, § 1437 (a)(1)(C)(2)(3)(4) U.S.C. 42, § 1437m U.S.C. 42, § 8.26 CFR 24, § 1437w(h)(1)(C) U.S.C. 42, § 960.603 (a)(3) CFR 24, § 794(b)(1)(2)(3)(4) U.S.C. 29, § 5309 (a) U.S.C., New York City Housing Authority Tenant Selection & Assignment Plan (February 12, 2020), Alternative Dispute Resolution, injunctive relief, declaratory relief, and \$1,000,000,000,000,000.00, etc.” (*See, Defendant’s Motion, Exhibit 1 at page 2*).

In this action, plaintiff alleges he was qualified and applied for a NYCHA apartment, his application was rejected and the dwelling remained available thereafter. Plaintiff claims he is a member of a protected class and NYCHA knew or suspected this. Specifically, plaintiff alleges that when he submitted forms for an individual apartment transfer at LaGuardia Houses located at 250 Madison Street, New York, New York, those forms were not accepted by the manager and assistant manager, and he was harassed by them.

I. Defendant's MOTION to DISMISS (Motion Seq. 001)

On July 5, 2023, defendant filed the instant motion to dismiss plaintiff's complaint via a paper file and, pursuant to *CPLR §§ 3013, 3014 and 3211(a)(7)*, on the basis that: 1) the plaintiff failed to serve Notice of Claim upon NYCHA; 2) the Complaint fails to comply with basic pleading obligations; 3) the plaintiff lacks standing; and 4) the plaintiff fails to state a claim.

In the motion, NYCHA argues that plaintiff is not a NYCHA tenant or an authorized occupant. NYCHA asserts that the incident that led to this action was when the plaintiff visited a NYCHA management office, requested certain forms from the employees, asked questions about various NYCHA manuals, and plaintiff was unsatisfied with the response of the employees.

In support of the motion, NYCHA first argues that the plaintiff's action should be dismissed because the plaintiff failed to allege that he served a Notice of Claim and failed to serve a Notice of Claim, pursuant to *Public Housing Law §157(1)*.

Second, NYCHA argues that plaintiff failed to adhere to the pleading requirements of *CPLR §§3013 and 3014*, which requires the pleading to give the parties notice of the occurrences intended to be proved, as well as the elements of each cause of action alleged, and each pleading should consist of statements in enumerated paragraphs. *See, CPLR §§3013 and 3014*. The defendant asserts that the complaint is not possible to understand and plaintiff has failed to establish facts that fit within a cognizable legal theory. Thus, NYCHA argues that the plaintiff's complaint does not meet the requirements of *CPLR §§3013 and 3014*, and the complaint should be dismissed.

Third, NYCHA argues that it is unclear from the plaintiff's complaint who he is or why he visited the LaGuardia Houses' management office. Further, NYCHA argues that the plaintiff lacks standing because he failed to show that he suffered an "injury in fact" that is distinct from the general public, and the plaintiff failed to demonstrate that the injury claimed, "falls within the zone of interests to be protected by the statute challenged." Specifically, NYCHA contends that the plaintiff failed to identify a statute or law under which he is suing NYCHA.

Fourth, NYCHA argues that the plaintiff has failed to state a claim pursuant to *CPLR § 3211*. In the complaint, plaintiff alleges that he was harassed by NYCHA employees when they asked him questions about his birth place and income source, however, NYCHA contends that this type of information requested is required by regulation for public housing applicants.

Plaintiff's Opposition to the Motion

In opposition, the *pro se* plaintiff e-filed an Order to Show Cause (Motion seq. no. 002) on July 23, 2023, which this Court, at the time, declined to sign however, upon review of same, the *pro se* plaintiff's arguments in the Order to Show Cause were addressing the instant motion, and is deemed to be submitted in opposition to the instant motion to dismiss. (*See, NYSCEF Doc. No. 3*). Plaintiff argues, *inter alia*, that the Court should grant plaintiff's motion and dismiss defendant's proposal with prejudice and award costs, fees and disbursements.

DISCUSSION

On a motion brought under *CPLR §3211(a)(7)*, the court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and

determine only whether the complaint as alleged fit within any cognizable legal theory.” *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994). In deciding a motion to dismiss on the ground that the action is barred by documentary evidence, the motion may be appropriately granted only when the evidence entirely rejects plaintiff’s factual allegations and conclusively establishes a defense as a matter of fact. *See, Goshen v. Mutual Life Ins. Co. of N.Y.*, 98 N.Y.2d 314, 324 (2002). “Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery.” *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 142 (2017).

CPLR §3013 states: “statements in a pleading shall 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.” *CPLR §3013*.

CPLR §3014 states: “every pleading shall consist of plain and concise statements in consecutively numbered paragraphs. Each paragraph shall contain, as far as practicable, a single allegation.” *CPLR §3014*.

On a motion brought under *CPLR §§ 3013 and 3014*, dismissal is warranted when pleadings are not particular enough to provide the court and the parties with notice of the transaction or occurrences to be proved must be dismissed. *See, Travelers Ins. Co. v. Ferco, Inc.*, 122 AD2d 718, 719 (1st Dep’t 1986). “Pleadings which are so devoid of factual substance require dismissal pursuant to *CPLR §3211(a)(7)*. Their factual inadequacy is not excused by the statutory policy allowing liberal amendment. Rather, deficient pleadings must be dismissed if only to prevent their reassertion should amendment be granted.” *Id. citing to Walter & Rosen, Inc. v. Pollack*, 101 A.D.2d 734, 735, 475 N.Y.S.2d 49 (1st Dep’t 1984); *see also CPLR §3211(e)*.

Here, this Court finds, after a thorough review of all the documents, first that the plaintiff failed to serve the defendant with a notice of claim, pursuant to *PHL §157*, as the plaintiff fails to address the issue in its opposition, and the record is devoid of such notice on defendant NYCHA. Second, the plaintiff failed to establish that he has standing to file this action, and has failed to set forth any cause of action as plead in the complaint. The Court has been unable to decipher from the plaintiff’s complaint and his arguments in opposition a clear and articulate position as to the relief sought. Particularly, the complaint fails to offer allegations to support the elements of the causes of actions asserted in this case. Lastly, the Court finds that the plaintiff failed to set forth any causes of action which can be sustained sufficiently with any proof. Accordingly, the Court finds that the defendant’s motion to dismiss the complaint in its entirety is granted, and the action is hereby dismissed.

II. Plaintiff’s ORDER TO SHOW CAUSE (Motion Seq. No. 003)

Before the Court is also plaintiff’s Order to Show Cause seeking an Order to seal the entire case, and to amend the plaintiff’s name in the caption to EL CANTANTE, which is denied as moot, as this instant action is dismissed.

Accordingly, it is hereby

ORDERED that the defendant’s motion (motion seq. no. 001) to dismiss this action is GRANTED in its entirety; and it is further

ORDERED that the plaintiff’s complaint is DISMISSED with prejudice; and it is further

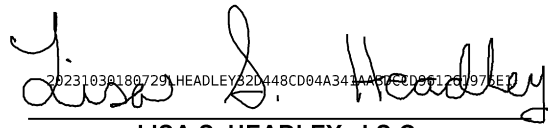
ORDERED that the plaintiff’s Order to Show Cause (motion seq. no. 003) to amend the caption is DENIED as moot as the instant case is dismissed; and it is further

ORDERED that within 30 days of entry, defendant shall serve a copy of this Decision/Order upon the plaintiff with notice of entry; and it is further

ORDERED that any requested relief sought not expressly addressed herein has nonetheless been considered.

This constitutes the Decision and Order of the Court.

10/30/2023
DATE


LISA S. HEADLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE