

Gindi v Dermot Realty Mgt. Co., LP

2019 NY Slip Op 35222(U)

August 22, 2019

Supreme Court, Queens County

Docket Number: Index No. 716810/2018

Judge: Leslie J. Purificacion

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE LESLIE J. PURIFICACION IA Part 39
Justice

LISI GINDI, x
Plaintiff,

Index
Number 716810 2018

-against-

Motion
Date March 28, 2019

DERMOT REALTY MANAGEMENT CO.,
LP AND THE BODY OF DERMOT REALTY
MANAGEMENT CO., LP. and A&E REAL
ESTATE HOLDINGS, LLC ALSO NAMED AS
75-25 153RD STREET, LLC and THE BODY OF
(A&E REAL ESTATE HOLDINGS, LLC., ALSO
NAMES AS 75-25 153RD STREET, LLC.,)

Motion Seq. Nos. 1, 3, 4, & 5

Defendants.

Respondents: Mr. Andrew Levinson and
Mr. Michael Rowan and/or
Attorney from A&E

_____ x

The following numbered papers read on this motion by defendants Dermot Realty Management Co., Inc. i/s/h/a Dermot Realty Management Co. LP and respondent Andrew Levison i/s/h/a Andrew Levinson (hereinafter collectively referred to as Dermot Realty) to dismiss the complaint against them pursuant to CPLR 3211(a)(1), (a)(5), and (a)(7); and on this motion by defendant A&E Real Estate Holdings, LLC (A&E) to dismiss the complaint against it pursuant to CPLR 3211(a)(1), (a)(5), and (a)(7) and to stay discovery pending determination of the motion; and on this motion by plaintiff for summary judgment by default in her favor; and on this separate motion by plaintiff to supplement her opposition papers to defendants' motions to dismiss.

FILED
SEP 10 2019
COUNTY CLERK
QUEENS COUNTY

	<u>Papers Numbered</u>
Order to Show Cause	EF 24 - 31
Notices of Motion - Affidavits - Exhibits	EF 8 - 19
	EF 36
	EF 55
Answering Affidavits - Exhibits	EF 33 - 35
	EF 43 - 44
	EF 56
	EF 57
Reply Affidavits	EF 50
	EF 51
	EF 52
	EF 54

Upon the foregoing papers it is ordered that the motions are determined as follows:

On November 2, 2018, plaintiff commenced the within action against defendants alleging causes of action which appear to sound in fraud, retaliation, harassment, discrimination, and wrongful eviction.

Plaintiff’s motion for summary judgment by default is denied. There has been no default in the action by Dermot Realty and A&E. Dermot Realty filed a notice of appearance on December 6, 2018 and served a motion to dismiss in lieu of an answer on January 7, 2019. On January 22, 2019, A&E filed a notice of appearance and served an order to show cause seeking dismissal of the complaint.

Turning to the separate motions by Dermot Realty and A&E, on a motion to dismiss pursuant to CPLR 3211(a)(7), the court must accept the facts alleged by the plaintiff as true and liberally construe the complaint, according it the benefit of every possible favorable inference (*see Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 406, 414 [2001]). It is well-established that on a motion to dismiss pursuant to CPLR 3211(a)(7), the inquiry is limited to whether, looking at the four corners of the complaint, it states a cause of action cognizable at law (*see Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]).

Applying these principles to the case at bar, this court finds that those branches of the separate motions by Dermot Realty and A&E to dismiss the complaint pursuant to CPLR 3211(a)(7) are granted. To make out a cause of action for fraud, the plaintiff must prove “a

misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury” (*see Lama Holding Co. v Smith Barney Inc.*, 88 NY2d 413, 421 [1996]). Where a cause of action or defense is based upon misrepresentation or fraud, “the circumstances constituting the wrong shall be stated in detail” (CPLR 3016[b]). Here, based on a review of the allegations in the complaint, there are no specific facts sufficient to support a cause of action for fraud against Dermot Realty or A&E.

Plaintiff’s claims of harassment and retaliation must also be dismissed. It appears that these claims are premised on the prior nonpayment proceeding brought against plaintiff in Civil Court of the City of New York, Queens County in 2016. That proceeding ended in an order by Justice Joel R. Kullas dated June 13, 2016, in which the court awarded final judgment of possession in favor of the property manager in the amount of \$16,000.00, representing the rent arrears due and owing through June 30, 2016. Plaintiff now alleges in this action that A&E “blacklisted her as a non payment” so that she would never be leased another apartment and that A&E took a second security deposit from her as retaliation for making claims against it in the prior housing court proceeding. However, the nonpayment proceeding was not devoid of merit, as evidenced by the housing court decision in favor of the property manager. Moreover, plaintiff’s bare, conclusory allegations of harassment and retaliation are without any factual support (*see generally Roberts v Pollack*, 92 AD2d 440 [1st Dept 1983]).

Likewise, plaintiff’s discrimination claim is dismissed. In the complaint, plaintiff, who suffers from a disability, alleges that defendants discriminated against her by increasing her rent and bringing eviction proceedings against her in 2015 and 2016. Notably, plaintiff made similar arguments in the prior housing court proceeding, which were found to be without merit. In addition, none of the allegations in the complaint are sufficient to allege a discrimination claim against Dermot Realty and A&E.

Furthermore, the complaint failed to state a cause of action for wrongful eviction in violation of RPAPL 853. Plaintiff failed to allege that she was a tenant entitled to possession of the premises at issue (*see Dinger v Cefola*, 133 AD3d 816 [2d Dept 2015]) and, in fact, the June 13, 2016 housing court order granted final judgment of possession to the property owner based on her admitted failure to pay rent. As such, the wrongful eviction cause of action must be dismissed.

Finally, based on a careful review of the remainder of the complaint, this court finds that there are no factual allegations which sufficiently state any other cognizable cause of action against defendants.

Given the above determination, the court need not address defendants' remaining contentions.

In view of the foregoing, plaintiff's separate motion to add paperwork to supplement her opposition to defendants' motions is denied as moot.

Accordingly, the motions by Dermot Realty and A&E to dismiss the complaint are granted. Plaintiff's motion for summary judgment by default is denied. Plaintiff's motion to add paperwork is also denied.

Dated:

AUG 22 2019



Hon. Leslie J. Purificacion, J.S.C.

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QUEENS COUNTY