2020-07-31

Quinn v. Parkoff Operating Corp.

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Quinn v Parkoff Operating Corp.
2020 NY Slip Op 50880(U) [68 Misc 3d 1207(A)]
Decided on July 31, 2020
Supreme Court, New York County
Reed, J.
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Decided on July 31, 2020

Supreme Court, New York County

Courtney Quinn, Jeanne Shotzbarger, James Edwards, Claire Shriver, Anum Shah, James Ramsay, Miriam Ramsay, Lora Seo, Adam Heltzer, Christine Yi, Richard Borovoy, Idalmis Borovoy, Graham Ciraulo, Thomas Pierce, April Townes, Judith Trezza, Antonio Vazquez, Jennifer Duprey, Juliette Vaiman, Lisavetta Reyes, Andom Ghebreghiogis, Doug Bender, Sara Bender, Charles Goldman, Christopher Ford, Steven Katchen, Ron Yosipovich, R.S. Salamon, S.E. Falk, Plaintiff,

against

Parkoff Operating Corporation, Gramercy Park Estates LLC, Seadyck Realty Co., LLC,19 Seaman LLC, Elbridge Realty Corporation, Defendant.

155195/2017

Plaintiffs:
Newman Ferrara LLP
1250 Broadway, 27th Floor, New York, NY 10001
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By: Peter George Safirstein

Defendants:
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By: Elan R. Dobbs Esq., Adrienne B. Koch Esq., Mark Walfish Esq., and Liza Merzel Esq.

Robert R. Reed, J.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, [*2]132, 133, 134, 135, 136, 137, 138, 139, 140, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151 were read on this motion for DISMISSAL.

In this proposed class action, which seeks damages for alleged rent overcharges, defendants Parkoff Operating Corporation, Gramercy Park Estates LLC, Seadyck Realty Co., LLC, 19 Seamain LLC, and Elbridge Realty Corporation (defendants) move to dismiss the amended complaint pursuant to various provisions of CPLR 3211 (motion sequence number 003). For the following reasons, this motion is denied.

BACKGROUND

The individually named plaintiffs herein are all tenants of record in four residential apartment buildings located at: 1) 144 East 22nd St. in New York County; 2) 1-9 Seaman Ave. in New York County; 3) 11-19 Seaman Ave. in New York County; and 4) 500 West 235th St. in the County of the Bronx (plaintiffs). *See* amended class action complaint, ¶¶ 1, 36-181. Plaintiffs allege that four of the named defendants are "single purpose entities," whose sole function is to act as the corporate owner of one each of the subject buildings, and that defendant Parkoff Operating Corporation (Parkoff) controls the other four defendants. *Id*., ¶¶ 2, 182-196. As a result, plaintiffs refer to the four buildings as the "Parkoff buildings." *Id*.

Plaintiffs allege that all of the Parkoff buildings were registered with the New York City Department of Housing Preservation and Development (HPD) in the "J-51" real estate tax abatement program, the rules of which required that all of the buildings' apartments be registered as rent stabilized units with the New York State Division of Housing and

Community Renewal (DHCR) for the duration of the buildings' enrollment. *See* amended class action complaint, ¶¶ 3-35. Plaintiffs further allege that Parkoff illicitly removed a number of Parkoff building apartments from rent stabilization while the buildings were enrolled in the "J-51" program, and began to collect inflated "market rate rents" and other improper charges from the tenants of those apartments. *Id*., ¶¶ 197-225. As a result, plaintiffs seek to assert rent overcharge claims against Parkoff and its subsidiary defendants both on behalf of themselves, whom they refer to as "the class," and on behalf of other similarly situated tenants in the Parkoff buildings who have not yet been named as plaintiffs, whom they refer to as the "sub-class." *Id*., ¶¶ 226-240.

To that end, plaintiffs originally commenced this proposed class action by filing a summons and complaint on June 7, 2017. Defendants moved to dismiss that complaint, and the court granted defendants' motion in a decision dated March 16, 2018 (motion sequence number 001). Plaintiffs appealed, and the Appellate Division, First Department, reversed and remanded the court's earlier decision in an opinion dated December 3, 2019. *Quinn v Parkoff Operating Corp.*, 178 AD3d 450 (1st Dept 2019). The relevant portion of the First Department's opinion found as follows:

> "Initially, we reject defendants' argument that the complaint fails to state a cause of action for rent overcharge claims under the Rent Stabilization Law on behalf of the named plaintiffs and that therefore none of the named plaintiffs could be 'typical' representatives of the putative class asserting rent overcharge claims (*see* CPLR 901[a][3]).
>
> "In light of the Court of Appeals' decision in *Maddicks v Big City Props., LLC*, 34 NY3d 116 (2019), we find that it was premature to dismiss the class action allegations on the ground that the complaint does not adequately plead the class action prerequisites of typicality and commonality (CPLR 901 [a] [3], [2]). '[A] motion to dismiss should not be equated to a motion for class certification' (*Maddicks*, 34 NY3d at 119). Thus, it is [*3]'premature' to dismiss "class claims based on allegations of a methodical attempt to illegally inflate rents' (*id*. at 123).
>
> "Like the instant plaintiffs, the tenants in *Maddicks* resided in several buildings owned by entities under common control, and asserted class action claims similar to the instant claims, alleging that the defendant building owners engaged in a common scheme to evade rent regulations by failing to follow the rent requirements for landlords participating in the J—51 tax incentive programs and by claiming rent increases based on individual apartment improvements that were not actually performed (*id*. at 121-22). Accordingly, as in *Maddicks*, defendants' motion was premature."

178 AD3d at 450.

Immediately after remand, plaintiffs filed the instant amended class action complaint on December 17, 2019, which sets forth causes of action for: 1) rent overcharge (on behalf of the class); 2) rent overcharge (on behalf of the sub-class); 3) a declaratory judgment (on behalf of the sub-class); and 4) attorney's fees (on behalf of the class). *See* amended class action complaint. Rather than file an answer, defendants submitted this new motion to dismiss on January 31, 2020. *See* notice of motion (motion sequence number 003). The parties filed opposition and reply papers in February 2020; however, the Covid-19 national pandemic forced the court to suspend its operations indefinitely in mid-March, 2020. During that period, the parties nevertheless submitted a quantity of correspondence to the court concerning certain supervening changes to New York's Rent Stabilization Law (RSL). Notably, however, plaintiffs have not yet filed a motion for class certification pursuant to CPLR 901, as the First Department indicated they should. In any case, sufficient court operations have now been restored to permit defendants' dismissal motion to be addressed (motion sequence number 003).

DISCUSSION

Normally, when evaluating a defendant's motion to dismiss, pursuant to CPLR 3211 (a), the court "must give the pleadings a liberal construction, accept the allegations as true and accord the plaintiffs every possible favorable inference." *See Chanko v American Broadcasting Cos. Inc.*, 27 NY3d 46, 52 (2016); *citing Goshen v Mutual Life Ins. Co. of NY*, 98 NY2d 314, 326 (2002). Nevertheless, where the documentary evidence submitted flatly contradicts the plaintiff's factual claims, the entitlement to the presumption of truth and the favorable inferences are both rebutted. *Scott v Bell Atl. Corp.*, 282 AD2d 180, 183 (1st Dept 2001), *affd as mod Goshen v Mutual Life Ins. Co. of NY*, 98 NY2d 314 (2002), *citing Ullmann v Norma Kamali, Inc.*, 207 AD2d 691, 692 (1st Dept 1994). In this class action case, however, the court cannot yet perform a normal CPLR 3211 analysis of plaintiffs' claims.

As the First Department made clear in its December 3, 2019 opinion, it is improper to subject class action plaintiffs' pleadings to scrutiny under CPLR 3211 until a court has first determined whether plaintiffs' are entitled to pursue those claims as a class, pursuant to CPLR 901, *et seq*. *See Quinn v Parkoff Operating Corp.*, 178 AD3d at 450. The First Department specifically cited *Maddicks v Big City Props., LLC*, in which the Court of Appeals held that:

> "Nothing in the CPLR prevents a defendant from moving to dismiss a class action claim pursuant to CPLR 3211. However, a motion to dismiss should not be equated to a motion for class certification. Nothing in the record supports the conclusion of the trial court that the claims for class relief should have been dismissed short of a judicial determination as to whether the prerequisites of CPLR 902 have been satisfied."

34 NY3d at 119.

Here, the memorandum of law supporting defendants' dismissal motion specifically declines to address the issue of class certification, although counsel avers that "we submit that the Amended Complaint makes clear on its face that the claims of those individuals (collectively, 'plaintiffs') do not have enough in common with one another (let alone with absent putative class members) to warrant class treatment." *See* defendants' mem of law at 1-2. Plaintiffs' opposition papers are similarly devoid of any class status arguments (apart from a minor point that they made in relation to the proposed "sub-class"). *See* plaintiffs' mem of law at 21-22. Instead, the parties focus solely on their respective arguments pursuant to CPLR 3211. For the rationales expressed by the First Department and the Court of Appeals in the cases mentioned above, however, the court concludes that it would be premature to address the parties' dismissal arguments at this juncture of the litigation. Instead, the court believes that the appropriate course is to deny defendants' motion without prejudice to renewal after plaintiffs have filed a motion for class certification pursuant to CPLR 901 and 902, as the First Department indicated they should. *Quinn v Parkoff Operating Corp.*, 178 AD3d at 450.

DECISION

ACCORDINGLY, for the foregoing reasons, it is hereby

ORDERED that the motion of defendants Parkoff Operating Corporation, Gramercy Park Estates LLC, Seadyck Realty Co., LLC, 19 Seamain LLC, and Elbridge Realty Corporation to dismiss the complaint pursuant to CPLR 3211 (motion sequence number 003) is denied without prejudice; and it is further

ORDERED that plaintiffs are directed to serve and file a motion for class certification pursuant to CPLR 901 and 902 within 60 days of the date of this decision and order.

Dated: July 31, 2020
Robert R. Reed, J.S.C.

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