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[*1]

123 Linden LLC v Cuscuna
2022 NY Slip Op 51314(U)
Decided on August 18, 2022
Civil Court Of The City Of New York, Kings County
Lugo, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on August 18, 2022

Civil Court of the City of New York, Kings County

<p>123 Linden LLC, Plaintiff(s)</p> <p>against</p> <p>Lauren Cuscuna, Defendant(s)</p>

Index No. CV-025172-21/KI

Counsel for the Plaintiff: Gutman, Mintz, Baker & Sonnenfeldt

Betty Lugo, J.

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

Papers Numbered
Order to show Cause/ Notice of Motion and
Affidavits /Affirmations annexed 1
Answering Affidavits/ Affirmations 2
Reply Affidavits/ Affirmations 3
Exhibits/Other 4

Upon the foregoing cited papers, the Decision and Order on Defendant's motion to

dismiss and plaintiff's opposition, after oral argument held on August 5, 2022, is decided as follows:

Plaintiff appeared by counsel. Defendant appeared Pro Se. Defendant moves to dismiss plaintiff's complaint for 1) lack of standing alleging that plaintiff's attorney Gutman, Mintz, Baker & Sonnenfeldt ("GMBS") does not have a license to collect debt as is required by Administrative Code Section 20-490 citing CPLR 3015 (e) and; 2) that the underlying claim was made in bad faith, as the plaintiff and GMBS knew they could not go to trial without a license.

Plaintiff argues in opposition that plaintiff's complaint states a cause of action and defendant mistakenly relies on CPLR 3015(e) for the instant motion.

Plaintiff 123 Linden LLC brings this action against defendant, Lauren Cuscuna, for nonpayment of rent concerning a residential lease agreement signed by the parties for the subject premises 123 Linden Blvd., Apt. 6N, Brooklyn, NY 11226. The defendant law firm GMBS represents the plaintiff and alleges in its complaint, in sum and substance that defendant "defaulted on its obligations under the lease by failing to pay the rental arrears "

Defendant asserts that plaintiff lacks standing since GMBS does not have a license to collect debt pursuant to CPLR 3015 (e). However, noncompliance with CPLR Section 3015 (e) does not result in lack of standing, but rather, permits defendant to move to dismiss under CPLR [*2]3211 (a)(7). Hence, the court interprets defendant's motion as one to dismiss the complaint for failure to state a cause of action pursuant to CPLR 3211(a)(7).

In considering a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211(a)(7), the court must accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. *See* CPLR 3211(a)(7), *Leon v. Martinez*, 84 NY2d 83, 614 N.Y.S.2d 972, 638 N.E.2d 511 (1994); [Jiminez v. Shahid](#), 83 AD3d 900, 922 N.Y.S.2d 123 (2nd Dept. 2011). If the factual allegations set forth in the pleading state any cause of action, a motion for dismissal will fail. *See Guggenheimer v. Ginzburg*, 43 NY2d 268, 401 N.Y.S.2d 182, 372 N.E.2d 17 (1977); [Kopelowitz & Co., Inc. v. Mann](#), 83 AD3d 793, 921 N.Y.S.2d 108 (2nd Dept. 2011).

Applying these principles to the facts in the instant matter, the Court finds that the plaintiff's complaint pleads that it is the owner of the building of the subject premises and sets forth a cause of action for non payment of rent and attorneys fees. Accordingly,

plaintiff's complaint states a cause of action against the defendant.

Since plaintiff's law firm, GMBS is not the plaintiff in this action, the arguments made by defendant do not apply to the actual plaintiff in this action, 123 Linden LLC. The cases cited by defendant involve law firms that are named parties to the action and hence are distinguishable and not applicable to the instant case. Moreover, Plaintiff's complaint, as a formal pleading made in a connection with a legal action is exempt from the FDCPA. See *Romea v. Heiberger & Associates*, 163 F. 3d 111 (2d Cir. 1998). The remainder of defendant's arguments may be considered as defenses to this action, provided they are properly plead.

Defendant refers to an Amended Answer attached to her motion where she asserts additional defenses and a counterclaim. However, the Amended Answer is not considered by this Court since defendant has not moved to amend her answer and there is no Court order or Stipulation permitting the amendment of the answer. As stated in CPLR 3025 (b) ... A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading."

Accordingly, it is hereby

ORDERED, Defendant's motion to dismiss the complaint for lack of standing and for failure to state a cause of action is Denied, and it is further

ORDERED, defendant must seek leave to file her Amended Answer expeditiously prior to the trial of this matter, and it is further

ORDERED, that defendant's motion is denied in all other respects, and it is further

ORDERED, that the parties shall appear for trial as previously scheduled on November 18, 2022, at 9:30 a.m. in Part 11, Room 1102.

This constitutes the Decision and Order of the Court.

Date: August 18, 2022
Brooklyn, NY

Judge Betty Lugo
Judge of the Civil Court

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