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Ali v. Bay 22nd Street Group LLC

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART

-----X

CHAUDARY R. ALI, ET AL.,

Index No. 006366/23

Petitioner,

DECISION/ORDER

-against-

Mot. seq. nos. 1 & 2

BAY 22ND STREET GROUP LLC,
DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT OF THE CITY OF NEW
YORK,

Respondents.

-----X

WEISBERG, J.:

The following e-filed documents, listed by NYSCEF document number 7-23; 25-30 (motion nos. 1 & 2) were read on these motions to dismiss defenses.

The subject six-unit building was vacated by an order of the Department of Buildings on November 10, 2023. The “disposition” connected with the vacate order, available on the website of the DOB, states “Failure to maintain. Building in state of disrepair. The wood frame load bearing exterior walls are leaning, bulging, rotting. Structure out of plumb. As per FEU recommendation vacate entire building.” Petitioners, initially proceeding pro se, commenced this “HP action/proceeding” soon after. Respondent Bay 22nd Street Group LLC answered the petition. Petitioners retained counsel and, along with Respondent HPD,¹ have moved to “strike” (read: dismiss) Bay 22nd’s affirmative defenses pursuant to CPLR 3211(b).

As a threshold matter, Bay 22nd has voluntarily withdrawn its affirmative defenses one through three. The remaining affirmative defenses are: that the proceeding is barred by the “doctrine of impossibility;” that the proceeding is barred by the doctrine of “structural infeasibility;” and that the proceeding is barred by the doctrine of “economic infeasibility.”

The “doctrine of impossibility” is not applicable herein. “Impossibility excuses a party's performance only when the destruction of the subject matter of the contract or the means of

¹ The court has questioned whether HPD, as a respondent that has not cross-claimed against Bay 22nd, has standing to move to dismiss a co-respondent’s defenses. However, as Petitioner’s have moved for the same relief, HPD’s motion is at worst surplusage.

performance makes performance objectively impossible” (*Kel Kim Corp. v Central Markets, Inc.*, 70 NY2d 900, 902 [1987]). Petitioners are asserting a statutory cause of action out of the New York City Housing Maintenance Code, not a cause of action for breach of contract. The defense is not available here and is dismissed.

Bay 22nd also asserts an affirmative defense invoking the “doctrine of structural infeasibility.” Black’s Law Dictionary defines “doctrine” as “a principle, especially a legal principle, that is widely adhered to” (Black’s Law Dictionary [12 ed 2024]). A search for decisions in Westlaw using the term “structural infeasibility” yields only two results, one an HP action in Housing Court, the other an appeal to the Court of Appeals concerning an NYC Commission on Human Rights decision regarding installation of a ramp outside an apartment building. The landlord claimed that installing the ramp would cause an “undue hardship in the conduct of their business because it would be structurally infeasible” (*Marine Holdings, LLC v New York City Commn. on Human Rights*, 31 NY3d 1045, 1047 [2018]). In other words, there is no “doctrine of structural infeasibility.”

However, however termed, the substance of Bay 22nd’s “structural infeasibility” defense is that “it may be determined that the subject building cannot be repaired or reconstructed as a result of structural conditions that render repair or reconstruction infeasible.” In moving to dismiss defenses pursuant to CPLR 3211(b), the moving party “bears the burden of demonstrating that the affirmative defenses are without merit as a matter of law because they either do not apply under the factual circumstances of the case, or fail to state a defense” (*Lewis v U.S. Bank N.A.*, 186 AD3d 694, 697 [2d Dept 2020] [internal citations and quotations omitted]). Movants have failed to meet their burden with respect to this defense, as well the final affirmative defense of “economic infeasibility.” It goes without saying that Bay 22nd still has the burden to prove those defenses at trial.

Accordingly, it is ORDERED motion seq. no. 2 is granted insofar as Bay 22nd’s first through third affirmative defenses are withdrawn and its fourth defense is dismissed, and otherwise denied; and it is further

ORDERED that motion seq. no. 2 is denied as academic and therefore moot; and it is further

ORDERED that the parties shall appear in Part B/Room 409 for a conference on November 26, 2024, at 9:30 AM.

This is the court's decision and order.

Dated: October 20, 2024



Michael L. Weisberg, JHC