

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Wachtel v. Park Ave & 84th St., Inc.

2020 NY Slip Op 1242 (App. Div. 2020) · No. 11063 · Decided February 20, 2020

SUMMARY

The Appellate Division, First Department affirmed dismissal of claims seeking declaratory and injunctive relief and damages for alleged breach of a proprietary lease. The court held that the plaintiffs lacked standing to enforce Department of Buildings violations or assert an ADA claim, and that the lease unambiguously placed responsibility for the apartment's interior and compliance on the plaintiffs. The court also found no justiciable controversy, irreparable harm, or non-hypothetical damages.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Gische, J.P.; Webber, J.; Oing, J.; Singh, J.
JURISDICTION	New York
DECIDED	February 20, 2020
DOCKET	11063
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from an order of Supreme Court, New York County, granting defendants' motion to dismiss causes of action for declaratory judgment, injunctive relief, and breach of contract.
STANDARD OF REVIEW	The Appellate Division reviewed the dismissal of the causes of action and determined that the complaint failed to allege a justiciable controversy, standing, irreparable harm, or redressable damages, and that the unambiguous proprietary lease defeated the contract claims.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Anna Wachtel, et al. v. Park Ave & 84th St., Inc., et al.

TOPICS

- contract interpretation
- breach of contract
- declaratory judgment
- equitable relief
- ada standing

PRACTICE AREAS

contract law

real estate law

civil procedure

equitable remedies

disability law

QUESTIONS PRESENTED

1. Whether plaintiffs stated a justiciable controversy supporting a declaration that alterations to the apartment were unlawful and that the cooperative was obligated to cure Department of Buildings violations.
2. Whether plaintiffs had standing under the Americans with Disabilities Act to seek a declaration requiring restoration of an ADA-compliant entrance.
3. Whether the proprietary lease required the cooperative to cure the alleged violations or instead placed responsibility on plaintiffs.
4. Whether plaintiffs were entitled to preliminary or permanent injunctive relief absent allegations of irreparable harm.
5. Whether plaintiffs stated a breach-of-contract claim by alleging hypothetical future liability and expenses without concrete damages.

HOLDINGS

1. Plaintiffs were not entitled to a declaration that the apartment alterations were unlawful or that the cooperative was obligated to cure the violations because the claim presented no justiciable controversy and plaintiffs were not obligated to respond to notices issued against the cooperative.
2. Plaintiffs lacked standing under the Americans with Disabilities Act to seek a declaration requiring restoration of an ADA-compliant entrance.
3. The proprietary lease unambiguously assigned plaintiffs responsibility for work performed by predecessors, the apartment interior, and compliance with the Building Code and other applicable laws, and therefore had to be enforced according to its plain terms.
4. Plaintiffs were not entitled to preliminary or permanent injunctive relief requiring the cooperative to cure the violations or restore the entrance because they failed to allege irreparable harm.
5. Plaintiffs failed to state a breach-of-contract claim because the unambiguous lease refuted their allegations and they failed to allege redressable injury or damages beyond hypothetical future liability and expenses.

KEY QUOTATIONS

*“As the New York City Department of Buildings' (DOB) notices of violation were issued against the Co-op, plaintiffs are under no obligation to respond to them, and, as private litigants, they lack standing to enforce the DOB's order to correct the violations” (*1)*

*“The lease is unambiguous on this point and must be enforced according to its plain terms” (*1)*

“Plaintiffs' allegations are conclusively refuted by the unambiguous language of the lease and plaintiffs' failure to allege any redressable injury or damages beyond the hypothetical assertion that they might be sued

*and/or forced to incur expense curing the violations.” (*2)*

FACTUAL BACKGROUND

Plaintiffs alleged that alterations made to their cooperative apartment in 1974 were unlawful and sought to require the cooperative to cure building-code violations and restore an ADA-compliant entrance. Notices of violation issued by the New York City Department of Buildings were directed against the cooperative, not plaintiffs. The proprietary lease assigned plaintiffs responsibility for work performed by predecessors, the apartment interior, and compliance with the Building Code and other applicable laws and regulations. Plaintiffs did not allege concrete damages or nonhypothetical injury beyond the possibility that they might be sued or incur expenses to cure violations.

PROCEDURAL HISTORY

Supreme Court, New York County, entered an order on February 5, 2019 dismissing the challenged causes of action. The Appellate Division, First Department, unanimously affirmed the order insofar as appealed from, with costs.

DISPOSITION

affirmed

CASES CITED

- Long Is. Light. Co. v Allianz Underwriter Ins. Co., 35 AD3d 253 (1st Dept 2006), appeal dismissed 9 NY3d 1003 (2007)
- Board of Educ. of Freeport Union Free School Dist. v Nyquist, 50 NY2d 889, 891 (1980)
- Matter of Durst Partners L.L.C. v New York City Env'tl. Control Bd., 33 AD3d 405 (1st Dept 2006)
- Lee v Sutton Garage, LLC, 2017 US Dist LEXIS 174358, *8-9 (SD NY Oct. 19, 2017)
- Greenfield v Philles Records, 98 NY2d 562, 569-570 (2002)
- SportsChannel Am. Assoc. v National Hockey League, 186 AD2d 417, 418 (1st Dept 1992)