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70 Request # : **ELW167928**

Index # : **28624/2009**

eLAW, LLC
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Plaintiff : LLOYD, KEITH GEORGE ANO

Defendant : FONT, ANTHONY ETAL

Instructions :

Tracking #: ELW167928

03/12/2018 - SUMMARY JUDGEMENT (FOR DEFT) (2)
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OS

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DAVID ELLIOT
Justice

IAS Part 14

KEITH GEORGE LLOYD, et ano.,
Plaintiff(s),

- against -

ANTHONY FONT, et al.,
Defendant(s).

Index
No. 28624 2009

Motion
Date February 13, 2018

Motion
Cal. No. 105

Motion
Seq. No. 2

The following papers numbered 1 to 19 read on this motion by defendants Hilltop Village Cooperative #4, Inc. (Hilltop), Akam Associates, Inc. (Akam), and Jay Strobing (Strobing) (collectively co-op defendants), for an order granting them summary judgment dismissing plaintiffs' claims against them.

	Papers Numbered
Notice of Motion - Affirmation - Exhibits	1-7
Answering Affirmation - Exhibits	8-14
Reply	15-18
Stipulation	19[1]

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

1. The parties stipulated that the court consider Font's opposition papers, received post-submission, which was not part of the papers submitted in the Centralized Motion Part. As such, the court has included Font's opposition papers as part of the papers numbered.

Plaintiff Keith George Lloyd (Keith) resides in a certain residential real estate cooperative apartment building located at 86-70 Francis Lewis Boulevard, Queens Village, New York, Apartment A61, in a building known as "Ivy Ridge." Plaintiff Valrie Lloyd (Valrie) married Keith on August 16, 2008, and, thereafter, the two resided in the unit together. Defendant Anthony Font (Font), resides in Apartment A71 of the Ivy Ridge, which is located directly above plaintiffs' apartment. Ivy Ridge is part of a cooperative apartment complex owned by Hilltop and managed by Akam. Strobing is an employee of the latter.

Plaintiffs allege that, on December 22, 2008, in the lobby of Ivy Ridge, Keith was "brutally ambushed, attacked, assaulted and battered" by Font, thereby resulting in, among other injuries, multiple fractures of Keith's right ankle and leg. As a result of the attack, Font pleaded guilty to assault in the third degree, a Class A misdemeanor, and was subject to a five-year order of protection in favor of Keith. Plaintiffs claim that, by the acts and omissions of the co-op defendants prior to the date of the attack, said defendants failed to protect plaintiffs' contractual and common law rights to security and the quiet enjoyment of their apartment – by failing to give warnings to Font and/or commencing legal action to terminate Font's right to reside in the apartment – despite actual and constructive notice of Font's ongoing threatening and harassing behavior, thereby emboldening Font to continuously engage in such behavior, all of which culminated in the December 22, 2008 attack.

Plaintiffs initially commenced their action against Font and Hilltop on October 23, 2009. Plaintiffs have alleged, in that verified complaint, that Hilltop had a direct and fiduciary duty to, inter alia, act reasonably and appropriately to protect plaintiffs' safety and right to the quiet enjoyment of their apartment, as members and residents of the cooperative. This included the obligation to enforce and implement the terms and provisions of its bylaws and its occupancy agreements with its respective members and shareholders, which include plaintiffs and Font. Plaintiffs then go on to detail a series of events that took place prior to the attack whereby it is alleged that the co-op defendants failed to act, thereby rendering them liable to plaintiffs for their injuries. Those events are alleged as follows:

Commencing on or about March 1, 2000, Keith's bathroom ceiling collapsed as a result of Font having allowed his bathtub to overflow on several occasions. Hilltop was unable to immediately repair Keith's ceiling since Font denied access to his apartment until a week after the incident. Thereafter, and continuing to the present, Font "began a pattern and practice . . . of intentionally, wrongfully, unlawfully and regularly harassing, alarming and disturbing plaintiffs . . . by banging and stomping on all of the floors of Font's apartment and of alarming, shouting, cursing and specifically threatening Keith George Lloyd." Keith regularly complained of this behavior, both orally and in writing, to the co-op defendants and, despite their assurances to the contrary, they took no or insufficient action to correct the situation, thereby permitting Font's misconduct to continue unabated and to escalate.

On or about February 27, 2005, Font went to Keith's front door and threatened to kill him. Consequently, a complaint was filed with the New York City Police Department (NYPD), though no other criminal action was taken. Hilltop was advised of the incident, but took no or insufficient action to address the situation.

On or about January 20, 2008, at approximately 11:00 p.m., Font began intentionally and forcefully banging on his apartment floor, prompting Keith to call the NYPD. He was advised to cease and desist, but no arrest was made. Hilltop was notified of the incident, but took no or insufficient action to address it. At approximately 4:00 a.m. the following morning, Font came to Keith's apartment door and repeatedly banged on same with a hammer or similar object, cursing and threatening to kill him in retaliation to Keith having called the NYPD. Keith personally complained to Strobing and was told to write to Hilltop about same and to contact the NYPD for future occurrences. Despite following that instruction – which included again calling the NYPD, resulting in Font's arrest, charge, guilty plea, and order of protection – the co-op defendants took no official action against Font.

Just 13 days after the expiration of the order of protection, the attack against Keith took place. No action was taken by the co-op defendants as a result of the attack, or Font's subsequent conviction, despite continued harassment and annoyance from Font.

Plaintiffs' causes of action against Hilltop are as follows: (1) third cause of action by Keith for breach the express and implied terms of Hilltop's occupancy agreements with Keith and Font, respectively (the latter of which Keith alleges he is a third-party beneficiary), by failing to take appropriate action against Font, including the termination of his occupancy; (2) fourth cause of action by Keith for negligence; (3) seventh cause of action by Valrie for breach of the occupancy agreements, of which she is a third-party beneficiary; and (4) eighth cause of action by Valrie for negligence. Font and Hilltop served their respective answers to the complaint, Hilltop also having interposed a cross-claim against Font for, inter alia, indemnification.

Plaintiffs commenced a separate action against Akam and Strobing on December 13, 2011. The allegations against these defendants are essentially the same as the first action filed. It includes the allegation that, inter alia, Akam is responsible for the day-to-day management, operation, and control of Ivy Ridge, including enforcing the aforementioned occupancy agreements, as well as the management agreement between Akam and Hilltop, of which plaintiffs allege they are third-party beneficiaries. It also includes the claim that the prior owner of Keith's apartment, Harriet Marolin (Marolin), made no less than 191 separate complaints against Font to the co-op defendants over his years of similar disturbances perpetrated against her; that at no time was Keith informed of same prior to his purchase of

Marolin's shares; and that Akam and Strobing had actual and constructive notice that Font was a "dangerous and unstable individual" for years, including those years prior to Keith's occupancy.

Plaintiffs' causes of action against Akam and Strobing are as follows: (1) first cause of action by Keith against Akam for negligence and breach of the respective occupancy agreements and management agreement; (2) second cause of action by Keith against Akam based upon the doctrine of respondeat superior; (3) third cause of action by Keith against Akam for failure to properly train/supervise Strobing; (4) fourth cause of action by Keith against both defendants for breach of the respective occupancy agreements and the management agreement; (5) fifth cause of action by Keith against both defendants for breach of the implied warranty of habitability; (6) sixth cause of action by Valrie against both defendants for breach of the same warranty; (7) seventh cause of action by Valrie against Akam for loss of her husband's services; (8) eighth cause action by Valrie against both defendants for failure to train/supervise Strobing; (9) ninth cause of action by Valrie against both defendants for breach of the occupancy agreements and management agreement; and (10) tenth cause of action by Valrie for emotional distress. Akam and Strobing served their answer to the complaint.

Thereafter, by order dated May 22, 2012 (Butler, J.), the two actions were consolidated for all purposes under this Index No. The matter was stayed per so-ordered stipulation dated July 30, 2012 (Ritholtz, J., now retired), and discovery ensued. The stay was lifted by so-ordered stipulation dated July 31, 2017 (Esposito, J.), and an expiration date for submitting substantive motions was set. The instant motion by the co-op defendants followed.

I. Negligence

The co-op defendants first allege that they are entitled to dismissal of plaintiffs' negligence claims since they owed them no duty. As a general proposition, they assert that landlords lack control of the activities of tenants as a matter of law. Specifically, they contend that they owe no duty to protect against Font's "intentional and unexpected assault," over which they had no control. Rather, plaintiffs' complaint concern the "personal and private dispute" between them and Font. They further argue that they have no duty as a matter of law to evict Font.

In opposition to the motion, plaintiffs appear to make a distinction between case law cited by the co-op defendants and this case to the extent that the case at bar involves a residential cooperative building where a fiduciary duty is owed to shareholders. Plaintiffs

point out that the co-op defendants were on notice for nearly a decade that Font was engaged in an ongoing pattern of criminal activity directed at plaintiffs and, as such, they should not be shielded from liability on account of their alleged statement that they cannot ever, as a matter of law, control an abusive tenant.

Font also submits opposition to the motion, and states that summary judgment is not warranted since Hilltop failed to take minimal precautions to prevent a foreseeable attack of which they had ample notice, and Akam failed to address its failure to carry out its duties pursuant to the Management Agreement between itself and Hilltop. The co-op defendants argue, in reply, among other things, that Font has no standing to submit opposition to a motion that seeks dismissal of plaintiffs' complaint.

Generally, a landowner and its managing agent have a duty to take minimal precautions to protect their tenants from foreseeable harm, including harm caused by the foreseeable criminal conduct of a third party occurring on the premises (*see Golub v Louris*, 153 AD3d 903 [2d Dept 2017]; *Diaz v Sea Gate Assn., Inc.*, 98 AD3d 1075 [2d Dept 2012]; *Ishmail v ATM Three, LLC*, 77 AD3d 790 [2d Dept 2010]), usually committed by intruders (*see e.g. Johnson by Johnson v Slocum Realty Corp.*, 191 AD2d 613 [2d Dept 1993]). The law also states, however, that "[a] landlord has no duty to prevent one tenant from attacking another tenant unless it has the authority, ability, and opportunity to control the actions of the assailant" (*Britt v New York City Hous. Auth.*, 3 AD3d 514 [2d Dept 2004]; *see Mills v Gardner*, 106 AD2d 885 [2d Dept 2013]; *Johnson*, 191 AD2d at 614). The power to evict a tenant does not provide an opportunity to prevent such conduct (*see Britt*, 3 AD3d at 514; *Siino v Reices*, 216 AD2d 552 [2d Dept 1995]). This standard is derived from the general principle that it would result in an unreasonable burden to impose such a duty to guard against the wanton acts of a third party over whom a landlord exerts no control (*see Blatt v New York City Hous. Auth.*, 123 AD2d 591 [2d Dept 1986], citing *Pulka v Edelman*, 40 NY2d 781, 784 [1976]).

Here, the co-op defendants established their prima facie entitlement to judgment dismissing plaintiffs' claims of negligence based upon an absence of duty owed to them. Specifically, Font was a fellow tenant of Ivy Ridge, and the co-op defendants did not have the authority, ability, and opportunity to control his actions, particularly since the "pattern of harassment" as alleged by plaintiffs arose from a personal dispute between the tenants (*Blatt*, 123 AD2d at 593; *see Britt*, 3 AD3d at 514; *Siino*, 216 AD2d at 553).

Plaintiffs' contention in opposition that Font's status as a tenant is essentially irrelevant is without merit. The case of *Gibbs v Diamond* (256 AD2d 266 [1 Dept 1998]) is illustrative. There, the plaintiff – who was a guest in the defendants' building – was attacked by a building tenant. The plaintiff was initially attacked in the hallway, and then the tenant

dragged her to an unlocked, vacant apartment where he completed the attack. Significantly, the Court pointed out that plaintiff conceded that, had the attack simply taken place in the hallway or stairwell, she would not have been entitled to seek redress from the defendants even though the defendants may have been aware of the tenant's criminal history, since a landlord does not have the ability to control its tenant. The case turned, however, on the fact that the defendants' failure to employ an available lock on the vacant apartment could have contributed to the tenant's ability to carry out the crime. Inasmuch as a similar circumstance does not exist here – i.e., the attack was perpetrated in a location to which Font was entitled to access – plaintiffs cannot establish a failure to take certain minimum security precautions. Other cases illustrate that landowners are not liable for injuries caused by those assailants who otherwise have access to the premises (*see e.g. Lester v New York City Hous. Auth.*, 292 AD2d 510 [2d Dept 2002] [plaintiff failed to raise a triable issue of fact as to how attacker gained entry or that he was not another tenant's invitee "or otherwise permitted to be in the building"]).

Plaintiffs' reliance upon, inter alia, *Neil v New York City Hous. Auth.* (48 AD3d 767 [2d Dept 2008]) is misplaced. Though the plaintiff's assailant in that case was also alleged to be a tenant of the premises, the plaintiff's theory of liability was premised upon Real Property Law § 231 (2), which involves a landlord who knowingly leases or gives possession of property "for any unlawful trade, manufacture or business," i.e., drug dealing, and injuries which relate to such activity.

Further, plaintiffs' attempt to distinguish this case from all other cases on the ground that this was a cooperative apartment is without merit (*see Adelstein v Waterview Towers*, 250 AD2d 790 [2d Dept 1998] [defendants had no duty to protect decedent from criminal acts of another resident of cooperative apartment building since they had no ability or authority to control his actions]; *Provenzano v Roslyn Gardens Tenants Corp.*, 190 AD2d 718 [2d Dept 1993] [cooperative corporation not liable to plaintiff for assault upon plaintiff-tenant since assailant was a guest of someone living in cooperative apartment development and, as such, would have had access]; *cf. Fowler v Yonkers Gospel Mission*, 67 AD3d 635 [2d Dept 2009] [summary judgment in favor of landlord was error since, unlike typical landlord, this landlord exercised control over residents' daily lives such as enforcing curfew, conducting inspections, requiring attendance at religious activities, and scheduling meal times]).[2]

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2. It is also noted that plaintiffs' reliance on the case of *Daly v City of New York* (164 Misc 2d 861 [Sup Ct, Kings County 1995]), in which the trial court appeared to extend a landlord's duty to protect a passerby from a tenant's known and foreseeable criminal activity, which was submitted in support of plaintiffs' position that a duty to them should be extended to a shareholder-tenant of a residential real estate cooperative building, will not be followed by this court. That holding was

Finally, while the court notes that Font's opposition to the motion is substantively similar to plaintiffs' opposition and, thus, also fails to raise a triable issue of fact, Font – who has not asserted any cross-claims against the co-op defendants – has no standing to oppose the motion since he would not be aggrieved by a dismissal of plaintiffs' complaint (*see Mixon v TBV, Inc.*, 76 AD3d 144 [2d Dept 2010]).

While plaintiffs have failed to raise a triable issue of fact of establishing a general duty of care otherwise owed to them, plaintiffs do raise the issue of an assumption of duty. The doctrine requires evidence of the following: (1) the defendant's voluntary affirmative undertaking; (2) the defendant's affirmative act which adversely affects the plaintiff, to the extent that the act placed that plaintiff in a worse position than he or she would have been had the defendant failed to act at all; and (3) that the defendant failed to act reasonably (*see* 14 NY Prac, New York Law of Torts § 6:14; *see also Nallan v Helmsley-Spear, Inc.*, 50 NY2d 507 [1980]; *Gordon v Muchnick*, 180 AD2d 715 [2d Dept 1992]).

Plaintiffs essentially argue that the co-op defendants' failure to follow through on their efforts (which include their instructions to submit letters detailing plaintiffs' complaints regarding Font, to call the NYPD, to invite the tenants to appear before the Board to discuss Font's conduct), thereby emboldening Font by being "conditioned . . . to believe that he would not suffer the consequences" of his behavior.

This argument is without merit. The co-op defendants never affirmatively promised protection to plaintiff, nor the eviction of Font (the latter of which plaintiffs' urge the co-op defendants should have done). There is no indication in this record that plaintiffs were "lulled into a false sense of security" (*Nallan*, 50 NY2d at 522) based upon any act or inaction of the co-op defendants. The contention that Font was emboldened by the co-op defendants' inaction is speculative, as it is just as likely that Font would have committed the attack.[3] Stated another way, it cannot be said that plaintiffs were placed in a worse position than they would have been had the co-op defendants failed to act at all.

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reversed by order of the Appellate Division, Second Department (227 AD2d 432 [1996]), on the ground that the landlord had no opportunity or ability to control the perpetrators' conduct.

3. The statement of Font's attorney to the contrary is without probative value.

II. Breach of the Occupancy and Management Agreements

Plaintiffs rely upon various provisions of both Keith's and Font's respective Occupancy Agreements, which provisions are similar in sum and substance. Paragraph 5 states:

> "The member shall not permit or suffer anything to be done or kept upon said premises . . . which will obstruct or interfere with the rights of other occupants, or annoy them by unreasonable noises or otherwise, or which will commit or permit any nuisance on the premises or commit or suffer any immoral or illegal act to be committed thereon."

Paragraph 10 states, in relevant part, that Hilltop:

> "shall provide necessary management, operation and administration of the project . . . . The member agrees to . . . make all repairs and replace any and all equipment damaged or destroyed through member's own fault or negligence. In case the member shall fail to make the said repairs and to pay for same, the corporation may do so and the cost thereof to the member's next month's operating payments hereunder. Any failure hereunder by the member to repay said cost when due shall be a default hereunder, whereby this agreement may[4] be terminated as provided in paragraph 13 hereof."

Paragraph 13 states:

> "It is hereby mutually agreed as follows: if upon, or at any time after, the happening or any of the events mentioned in subdivisions (A) to (K), inclusive of this paragraph, the corporation shall give to the member a notice that this agreement will expire at a date not less than thirty (30) days thereafter, this agreement shall expire on the date so fixed in such notice, it being the intention of the parties hereto to create hereby conditional limitations, and it shall thereupon be lawful for the corporation to re-enter the dwelling unit and to remove all persons and personal property therefrom, either by summary dispossess proceedings or by suitable action or proceeding at law or in equity or by force or otherwise, and to repossess the dwelling unit in its former state as if this agreement had not been made: . . .

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4. Plaintiffs incorrectly quote said portion of the Occupancy Agreements by substituting the word "may" with "shall."

"(i) in case the member shall default in the performance of any covenant or provisions hereof, other than the covenant to pay any sum due hereunder after written notice of such default shall have been given by the corporation . . .

"(k) in case of any default under paragraph 5 hereof.

"A member shall forfeit his right to occupancy of a dwelling unit in the project and all his rights under this agreement shall cease and terminate, after notice of termination as prescribed above."

Paragraph 15 states that:

"The member covenants that he will preserve and promote the mutual ownership principles on which the corporation has been founded, abide by the charter, by-laws, rules and regulations of the corporation, and by his acts of cooperation with its other members bring about for himself and his co-members a high standard in home and community conditions."

Plaintiffs also rely upon certain provisions of the Management Agreement between Hilltop and Akam. Paragraph Fourth states, at subparagraph (d) thereof, that Akam shall

"[m]aintain businesslike relations with Members whose service requests shall be received, considered and recorded in a systematic fashion in order to show the action taken with respect to each. Complaints of a serious nature shall, after thorough investigation, be reported to [Hilltop] with appropriate recommendations. As part of the continuing program to secure full performance by the Members of all items and maintenance for which they are responsible, [Akam] shall make an annual inspection of all dwelling units and report its findings to the owner."

The paragraph continues at subparagraph (q):

"It shall be the duty of [Akam] at all times during the term of this Agreement to operate and maintain the Project according to the highest standards achievable consistent with the overall plan of [Hilltop]. Full compliance by the Members with the terms and conditions of their respective Occupancy Agreements shall be secured, and to this end [Akam] shall see that all Members are informed with respect to such rules."

In support of dismissal, the co-op defendants assert that there is no provision in the Occupancy Agreements that guarantees plaintiffs' safety against Font's acts. Furthermore, to the extent plaintiffs argue that a general duty of safety is implied, the co-op defendants do not owe plaintiffs a duty, as established above. Similarly, there cannot be a breach of the Occupancy Agreements, since there is no duty to evict a tenant as a matter of law. Finally, the co-op defendants argue that plaintiffs are not third-party beneficiaries to Font's Occupancy Agreement with Hilltop nor to the Management Agreement between Hilltop and Akam.

In opposition, plaintiffs assert that Hilltop had control over Font and it had various remedies at its disposal, including the threat of termination of Font's occupancy pursuant to the aforementioned provisions of the Occupancy Agreements, and that the Agreements were breached for Hilltop's failure to exercise those rights despite actually being aware of Font's conduct. Plaintiffs also argue that they are intended beneficiaries of Font's Occupancy Agreement "upon information and belief," as well as beneficiaries of the Management Agreement, the latter of which plaintiffs state was also breached since there is no evidence that Akam independently investigated plaintiffs' repeated complaints or reported those occurrences to Hilltop.

First, plaintiffs' claims against Akam and Strobing for breach of the Occupancy Agreements must be dismissed inasmuch as neither Akam nor Strobing were signatories to those Agreements. In any event, dismissal is warranted based upon the reasons indicated, *infra*.

Second, plaintiffs' claim against Hilltop for breach of Font's Occupancy Agreement must also be dismissed. A party claiming to be a third-party beneficiary to a contract must establish: (1) the existence of a valid and binding contract between the other parties; (2) that the contract was intended for the party's benefit; and (3) that the benefit to the party is sufficiently immediate, rather than incidental, to indicate the assumption by the contracting parties of a duty to compensate that party if the benefit is lost (*see Mendel v Henry Phipps Plaza West, Inc.*, 6 NY3d 783 [2006]). One is an intended beneficiary when: (1) performance of the underlying promise will satisfy an obligation of the promisee to pay money to the beneficiary; or (2) circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance (*see* 22 NY Jur 2d Contracts § 305). There is simply no indication here that the contracting parties intended their contract to benefit a third party, such as Keith or Valrie (*see Perez v Hunts Point I Assoc., Inc.*, 129 AD3d 498 [1st Dept 2015]); rather, any benefit which would have derived from Hilltop's enforcement of the Agreement against Font would have been incidental. The same reasoning applies to plaintiffs' claims against Akam and Strobing for breach of the Management Agreement (*see id.*; *Anchumdia v Tahl Propp Equities, LLC*, 123 AD3d 505 [1st Dept 2014]).

Third, plaintiffs' claim against Hilltop for breach of Keith's Occupancy Agreement must also be dismissed, since plaintiffs point to no particular provision that obligates Hilltop to evict or take other specific action with respect to Font. It is noted that breach of the covenant of quiet enjoyment requires actual or constructive eviction (*see Marchese v Great Neck Terrace Assoc., L.P.*, 138 AD3d 698 [2d Dept 2016]; *Grammer v Turtis*, 271 AD2d 644 [2d Dept 2000]).

III. Liability Founded Upon Respondeat Superior and Negligent Training/Supervision

In support of dismissal, the co-op defendants argue that plaintiffs are unable to establish that Strobing engaged in tortious conduct for which Akam should be held responsible. They also state that such failure negates plaintiffs' claim of negligent training/supervision. In opposition to this argument, plaintiffs contend that Strobing's failure to act reasonably to deal with Font's criminal conduct forms the basis for Akam's liability.

"Under the doctrine of respondeat superior, an employer may be vicariously liable for the tortious acts of its employees only if those acts were committed in furtherance of the employer's business and within the scope of employment" (*N.X. v Cabrini Med. Ctr.*, 97 NY2d 247, 251 [2002]; *see Beres v Terranera*, 153 AD3d 483 [2d Dept 2017]; *Weiss v Hager*, 151 AD3d 906 [2d Dept 2017]).

Because plaintiffs cannot establish the existence of a duty (*see Mills*, 106 AD3d at 886; *Britt*, 3 AD3d at 514; *Siino*, 216 AD2d at 553; *Johnson*, 191 AD2d at 614), these claims must fail. It is noted that plaintiffs provide no case law in support of their position and in opposition to defendants' prima facie showing regarding these issues.

IV. Breach of Implied Warranty of Habitability

The co-op defendants argue that they are entitled to dismissal of this claim since the case law on the subject centers on whether landlords provide adequate security devices for their tenants. Here, however, since plaintiffs injuries were sustained as a result of an intentional assault by Font, who was otherwise lawfully on the premises, there is no breach of the warranty of habitability.

In opposition to that branch of the motion, plaintiffs' assert that the implied warranty was indeed breached when the co-op defendants permitted Font's activity in the building for more than eight years, rendering plaintiffs' unit uninhabitable.

In reply, the co-op defendants point out that, to the extent plaintiffs make reference to having been deprived of the quiet enjoyment of their apartment, plaintiffs have not alleged that they were evicted from their apartment and have not vacated their apartment, thereby rendering them unable to establish breach of the covenant of quiet enjoyment.

Every written or oral lease or rental agreement for residential premises contains an implied warranty of habitability (Real Property Law § 235-b [1]). The statute applies to cooperative apartments (*see Suarez v Rivercross Tenants' Corp.*, 107 Misc 2d 135 [App Term, 1st Dept 1981]; *see also Goldhirsch v St. George Tower*, 142 AD3d 1044 [2d Dept 2016]).

Here, plaintiffs interposed their breach of the warranty of habitability claim against Akam and Strobing, but not Hilltop. Akam and Strobing are not signatories to the occupancy agreements; thus, plaintiffs fail to articulate how liability under this theory of recovery applies to those defendants.

V. Loss of Services

As no action in negligence lies, Valrie's loss of services claim must be dismissed.

VI. Conclusion

Accordingly, the motion by the co-op defendants for an order granting them summary judgment dismissing the complaint against them is granted.

Dated: March 12, 2018

J.S.C.