

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 37

-----X
JENNIFER ANDERSON, and JENNIFER ANDERSON
o/b/o CHARLES COLONY,

Index Number: 151834/2012

Plaintiffs,

Motion. Seq. No.: 002

- against -

Decision and Order

OLIVER CROMWELL OWNERS INC. and
TUDOR REALTY SERVICES, CORP.,

Defendants.
-----X

Arthur F. Engoron, Justice

In compliance with CPLR 2219(a), this Court states that the following papers, numbered 1 to 3, were used on defendants' motion for partial summary judgment:

Papers Numbered:

Notice of Motion – Affirmation – Affirmation – Exhibits	1
Affirmation in Opposition	2
Reply Affirmation – Exhibits	3

Upon the foregoing papers, defendants' motion is granted.

Plaintiffs Jennifer Anderson, individually and on behalf of her disabled son, Charles Colony ("plaintiffs"), commenced this action to recover damages allegedly caused by mold infestation in the co-op apartment in which they lived (and which Jennifer Anderson owned) in the residential building located at 12 West 72nd Street in Manhattan ("the Building"). At all relevant times herein pertinent, defendant Oliver Cromwell Owners Inc. ("Cromwell") owned, and defendant Tudor Realty Services Corp. ("Tudor") (collectively, "defendants") managed, the Building. On April 13, 2012, plaintiffs filed a summons with notice, and on June 8, 2012 they filed a complaint asserting causes of action for personal injury damages (first), breach of the warranty of habitability (second), and breach of the warranty of quiet enjoyment (third). Plaintiffs served a verified bill of particulars alleging property damages (not alleged in the complaint); the parties engaged in discovery proceedings; and plaintiff filed a note of issue on September 7, 2016.

Defendants now move for partial summary dismissing plaintiffs personal injury claims: (1) pursuant to CPLR 3211 and 3212(e), upon the ground that plaintiffs cannot establish general or specific causation between the alleged mold condition and their alleged personal injuries (this request is supported by the medical affirmation of Stuart H. Young, MD); or, alternatively, (2) pursuant to CPLR 214-c, 3211(a)(5), and 3212, upon the ground that plaintiffs' personal injuries claims are barred by the Statute of Limitations. Plaintiffs oppose the motion solely by way of seven-paragraph attorney affirmation.

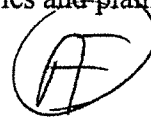
Plaintiffs personal injury and property damage claims are barred by the Statute of Limitations set forth in CPLR 214-c(2), which requires a plaintiff to commence an “action to recover damages for personal injury or injury to property caused by the latent effects of exposure to any substance or combination of substances, in any form” within three-years “from the date of discovery of the injury.” See also Matter of New York Cty. DES Litig., 89 NY2d 506, 509 (1997) (“time for bringing the action begins to run under the statute when the injured party discovers the primary condition on which the claim is based”). Here, the undisputed evidence establishes that plaintiffs discovered their injuries (in the nature of skin rashes, eye irritation, and asthma symptoms) allegedly caused by exposure to indoor mold well over three-years prior to April 13, 2012. At the earliest (according to plaintiff Jennifer Anderson’s deposition testimony), plaintiffs discovered their injuries sometime in 2005/2006 at or right after they discovered the mold condition. At the latest, plaintiffs discovered their injuries on or just prior to October 30, 2008, the date on which they sought treatment therefor at NYU/Bellevue Occupational & Environmental Health Clinic (“Bellevue”). Indeed, in the Bellevue Patient Intake Information Sheet of same date, plaintiff Jennifer Anderson stated that she and her sons had already seen “Dr. Kadet & allergist Dr. Gary Stadtmauer” for their injuries “before infrastructure mold was confirmed by AB Environmental.” Plaintiffs’s attempt to avoid the Statute of Limitations by claiming that their conditions were “aggravated” by the delayed and unsuccessful mold “remediation” in August of 2009, is unavailing. See Chavious v Tritec Asset Mgmt., Inc., 284 AD2d 362, 363 (2d Dept 2001) (complaint time barred under CPLR 214-c(2) because plaintiffs “discovered ‘the primary condition on which the claim is based’ more than three years prior to the commencement”; “fact that their symptoms may have worsened did not extend the Statute of Limitations”).

In view of the foregoing, the Court need not address defendants’ request to dismiss the complaint for lack of general or specific causation between the mold and plaintiffs’ alleged injuries, or for a Frye hearing on that issue. However, given plaintiffs’ failure to oppose, on the merits by way of their own medical expert affidavit, defendants’ showing that there is no causation between the mold and the injuries, the Court would be constrained to dismiss the complaint upon that ground as well. See generally Zuckerman v City of New York, 49 NY2d 557, 562 (1980) (opposition to summary judgment motion must be supported by “evidentiary proof in admissible form sufficient to require a trial of material questions of fact ...; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient”).

Conclusion

Defendants’ motion for partial summary judgment is granted. The Clerk is hereby directed to enter judgment dismissing the first cause of action for personal injuries and plaintiffs’ claims for property damage, *only*.

Dated: December 6, 2017



Arthur F. Engoron, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: Engoron Justice

PART 37

Index Number : 151834/2012
ANDERSON, JENNIFER
vs.
OLIVER CROMWELL OWNERS
SEQUENCE NUMBER : 002
MOTION FOR PARTIAL SUMMARY JUDGMENT

INDEX NO. 151834/2012
MOTION DATE 5/26/2017
MOTION SEQ. NO. 002

The following papers, numbered 1 to 3, were read on this motion to/for for Partial Summary Judgment

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1
Answering Affidavits — Exhibits _____ | No(s). 2
Replying Affidavits _____ | No(s). 3

Upon the foregoing papers, it is ordered that this motion is Decided in Accordance

with the accompanying memorandum decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 12/6/2017

HON. ARTHUR F. ENGORON, J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE