

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

RYAN FOURNIER,

Plaintiff,

v.

JOSEPH DEVITO,

Defendant.

Case No. 2021 CA 000758 B
Judge Robert R. Rigsby

OMNIBUS ORDER

Before the Court are two motions. First, *Raquel Martinez Sloan's Motion to Quash Plaintiff's Subpoena Duces Tecum*, filed June 9, 2022. Second, *Defendant City Lofts, a Condominium's Motion to Dismiss or, in the Alternative, for Summary Judgment*, filed June 22, 2022, opposed July 8, 2022, and replied on July 15, 2022. Upon consideration of the *motions*, the replies, and the entire record herein, the *motions* are **GRANTED** and **GRANTED**, respectively, for the reasons set forth below.

BACKGROUND

Both Plaintiff Ryan Fournier and Defendant Joseph DeVito are residents of City Lofts Condominium. *See generally* Am. Compl. Plaintiff alleges that Defendant's music is continually played at high volumes, interfering with Plaintiff's quiet enjoyment of his property. Am. Compl. ¶ 2-3. Plaintiff filed the instant action against Defendant DeVito for Count I: Negligence Per Se and Count II: Nuisance and against City Lofts for Count III: Breach of Contract and Count IV: Breach of Fiduciary Duty.

STANDARD OF REVIEW

A motion to dismiss pursuant to Rule 12(b)(6) challenges the legal sufficiency of a complaint. *See Luna v. A.E. Eng'g Servs., LLC*, 938 A.2d 744, 748 (D.C. 2007). A plaintiff's complaint must contain a short and plain statement of the claim for relief, such that the complaint "puts the defendant on notice of the claim against him." *Sarete, Inc. v. 1344 U St. Ltd. P'Ship*, 871 A.2d 480, 497 (D.C. 2005); *see generally* Super. Ct. R. Civ. P. 8(a). A complaint must, at a minimum, contain a short and plain statement of the claim showing that the plaintiff is entitled to relief. Super. Ct. Civ. R. 8(a)(2).

When considering a motion to dismiss, the Court must accept as true all of the allegations put forth in the complaint, and construe all facts and inferences in favor of the non-moving party. *See Murray v. Wells Fargo Home Mort.*, 953 A.2d 308, 316 (D.C. 2008). Dismissal for failure to state a claim upon which relief can be granted is warranted only when it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim. *See id.* However, the allegations in the complaint must be sufficient to "raise a right to relief above a speculative level." *Clampitt v. Am. Univ.*, 957 A.2d 23, 29 (D.C. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Additionally, the complaint must provide more than mere labels and legal conclusions couched as fact. *See Grayson v. AT&T Corp.*, 980 A.2d 1137, 1144 (D.C. 2009). The complaint need not include "detailed factual allegations," but must include "more than an unadorned, the defendant-unlawfully-harmed-me accusation." *Mazza v. House Craft, LLC*, 18 A.3d 786, 790 (D.C. 2011).

DISCUSSION

i. Raquel Martinez Sloan's Motion to Quash Plaintiff's Subpoena Duces Tecum

The Court may treat this motion as conceded as this *motion* is unopposed. Super. Ct. Civ. R. 12-I(e). However, even if Plaintiff had filed an opposition, the *Motion* would be granted for the following reasons.

This Court “must quash or modify a subpoena that fails to allow reasonable time to comply or subject a person to undue burden.” Super. Ct. Civ. R. 45(c)(3)(A). In Plaintiff’s subpoena of Sloan, Plaintiff requested over 18 months of text messages, emails, or other correspondence between Sloan and Joseph DeVito, Michael McHugh, Sarah Rackoff, Rebekah Sitter, Keesha Major, Mriam Epstein, and any Unit owner in her building or any renter in her building. Only Joseph DeVito is a party to this Complaint. Sloan was served with the subpoena on June 1, 2022 and Plaintiff requested that the documents be produced no later than June 13, 2022, just twelve days later although discovery in this matter was extended to August 22, 2022. The Court finds that Plaintiff’s request fails to allow for reasonable time to comply with the subpoena and the amount of documents requested (including the number of correspondents and a year and a half’s worth of documents) are an undue burden on Sloan. As such, the Court finds that Plaintiff’s subpoena must be quashed and this *motion* is **GRANTED**.

ii. Defendant City Loft's Motion to Dismiss

Here, accepting as true all of the allegations put forth in the complaint, and construing all facts and inferences in favor of the Plaintiff as the non-moving party, the Court finds that Plaintiff has not reached his burden of stating a claim upon which relief can be granted.

a. Count III: Breach of Contract

To prevail on a claim of breach of contract, Plaintiff must establish “(1) a valid contract between the parties, (2) an obligation or duty arising out of the contract, (3) a breach of that duty, and (4) damages caused by that breach.” *Tsintolas Realty Co. v. Mendez*, 984 A.2d 181, 187 (D.C. 2009).

Here, Plaintiff and Defendant City Lofts both agreed to be bound by the bylaws of the condominium association or, in other words, the parties have a contract. Compl. ¶ 96. Article XI, Section 5 of the bylaws give Defendant City Lofts the power to “enter the Unit in which or as to which such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Unit Owner, any structure or thing or condition that constitutes such violation”. *Id.* ¶ 102. Defendant asserts this provision of the bylaws gives Defendant City Loft a right but not a responsibility or obligation. The Court agrees. Although Plaintiff repeated several times that Defendant had the power to bring legal action against Defendant DeVito, Plaintiff has not provided any language from the bylaws that show Defendant City Loft has a duty or obligation to do so, particularly not simply at one condominium unit owner’s request. The Court finds that Plaintiff fails to state a claim against Defendant City Lofts upon which relief can be granted. Count III: Breach of Contract is therefore dismissed.

b. Count IV: Breach of Fiduciary Duty

To prevail on a claim of breach of fiduciary duty, a plaintiff “must allege facts sufficient to show (1) the existence of a fiduciary relationship, (2) a breach of the duties associated with the fiduciary relationship, and (3) injuries that were proximately caused by the breach of the fiduciary duties. *Armenion Genocide Museum & Memorial, Inc. v. Cafesjian Family Found., Inc.*, 607 F. Supp.2d 185, 190-191 (D.D.C. 2009) (citation omitted). Further, a cause of action,

independent of contract performance can be considered a viable claim, but only if it exists in “its own right independent of the contract, and any duty upon which the tort is based must flow from considerations other than the contractual relationship. The tort must stand as a tort even if the contractual relationship did not exist.” *Choharis v. State Farm Fire & Cas. Co.*, 961 A.2d 1080, 1089 (D.C. 2008).

In the Amended Complaint, Plaintiff failed to show the existence of a fiduciary relationship, a duty, or a breach of those duties outside of the contract. As such, Plaintiff fails to state a claim for breach of fiduciary duty and this claim is also dismissed.

CONCLUSION

In the instant action, Plaintiff has not plead allegations which are sufficient to raise a right to relief above a speculative level on Counts III and IV of the Amended Complaint and, therefore, the *motion* is **GRANTED**.

Accordingly, it is this 7th day of September, 2022, hereby

ORDERED that *Raquel Martinez Sloan’s Motion to Quash Plaintiff’s Subpoena Duces Tecum* is **GRANTED**; it is further

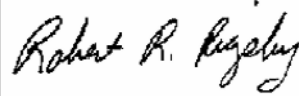
ORDERED that Plaintiff’s Subpoena of Raquel Martinez Sloan is **QUASHED**; it is further

ORDERED that *Defendant City Lofts, a Condominium’s Motion to Dismiss or, in the Alternative, for Summary Judgment* is **GRANTED**; it is further

ORDERED that Count III: Breach of Contract and Count IV: Breach of Fiduciary Duty by Defendant City Lofts are **DISMISSED**; it is further

ORDERED that Defendant City Lofts is **DISMISSED**.

SO ORDERED.

A handwritten signature in black ink, reading "Robert R. Rigsby". The signature is written in a cursive style with a distinct dot over the 'i' in "Rigsby".

Robert R. Rigsby, Associate Judge
Superior Court of the District of Columbia

Copies to *Counsel of Record* on Casefileexpress