

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DARRELL MAYS and TARA MAYS,

Index No. 152230/2019

Plaintiffs,

- against -

JOHN ROBERTSHAW, individually and as Trustee of
the ROBERTSHAW CHARITABLE REMAINDER
TRUST, dated June 22, 2016, and ELIZABETH
ROBERTSHAW,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES 1

PRELIMINARY STATEMENT 2

STATEMENT OF FACTS 2

Standard on Motion to Dismiss 7

ARGUMENT..... 8

I. Plaintiff’s Claims Fail Because They Took the Properties “As Is” in the Leases 8

II. Plaintiffs’ Claims Fail Because There Is No Infestation of the Premises 9

III. Plaintiffs’ Claims for Breach of Warranty of Habitability and Quiet Enjoyment
Fail to State a Claim Upon Which Relief Can Be Granted 10

IV. The Court Should Award Defendants Attorneys’ Fees Incurred in Connection
with Defendants’ Response to Plaintiffs’ Complaint 12

CONCLUSION..... 12

TABLE OF AUTHORITIES

Cases

<i>Bd. of Managers of Saratoga Condo. v. Shuminer</i> , 148 A.D.3d 609, 51 N.Y.S.3d 34 (1st Dep't 2017).....	9
<i>Dave Herstein Co. v. Columbia Pictures Corp.</i> , 4 N.Y.2d 117, 149 N.E.2d 328 (1958)	10
<i>Dolansky v. Frisillo</i> , 92 A.D.3d 1286, 939 N.Y.S.2d 210 (2012).....	6, 7
<i>Goshen v. Mutual Life Insurance Company of New York</i> , 98 N.Y.2d 314, 746 N.Y.S.2d 858 (2002).....	5, 8
<i>Leon v. Martinez</i> , 84 N.Y.2d 83, 638 N.E.2d 511 (1994)	5
<i>Morning Light Realty, LLC v. Brown</i> , 62 Misc. 3d 274, 87 N.Y.S.3d 450 (City Ct. Albany County 2018)	7
<i>Park W. Mgmt. Corp. v. Mitchell</i> , 47 N.Y.2d 316, 391 N.E.2d 1288 (1979), <i>cert denied</i> 444 U.S. 992 (1979)	7
<i>Schwartz v. Hotel Carlyle Owners Corp.</i> , 132 A.D.3d 541, 20 N.Y.S.3d 341 (1st Dep't 2015).....	9
<i>Solow v. Wellner</i> , 86 N.Y.2d 582 (1995)	7
<i>S.R. Leon Co., Inc. v. Towers</i> , 599 N.Y.S.2d 53, 194 A.D.2d 600 (2d Dep't 1993).....	7
<i>Tarantul v. Cherkassky</i> , 84 A.D.3d 933, 923 N.Y.S.2d 133 (2d Dep't 2011).....	7
<i>Travelsavers Enterprises, Inc. v. Analog Analytics, Inc.</i> , 149 A.D.3d 1003, 53 N.Y.S.3d 99 (2d Dep't 2017)	7

Rules

CPLR 3211	1, 5, 13
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Defendants John Robertshaw, individually and as Trustee of the Robertshaw Charitable Remainder Trust, dated June 22, 2016, and Elizabeth Robertshaw (“Defendants” or the “Robertshaws”) by and through their undersigned attorneys, hereby respectfully submit this memorandum of law in support of their motion to dismiss Plaintiffs’ complaint pursuant to CPLR 3211(a)(1) and 3211(a)(7).

PRELIMINARY STATEMENT

Defendants made the mistake of renting their family home to Plaintiffs, a rich couple from Atlanta who apparently couldn’t deal with living in New York City. Instead of coming to terms with the realities of living in Manhattan, Plaintiffs manufactured a mouse infestation, threatened Defendants, and ultimately filed a false and defamatory complaint in this Court, designed to both destroy the value of Defendants’ home and damage Defendants’ reputation. But Plaintiffs will not and cannot succeed: the very leases that Plaintiffs signed and on which they sue bar their claims here. Even if the false and defamatory statements in the Complaint were true (they are not), Plaintiffs rented Defendants’ home after inspecting it over several days, confirming everything was in “good order,” and taking Defendants’ home “as is.” These representations and statements bar Plaintiffs’ fraud- and contract-based claims. The Court should immediately dismiss Plaintiffs’ complaint and award Defendants attorneys’ fees incurred in responding to the baseless Complaint.

STATEMENT OF FACTS

Defendants, the Robertshaws, are the owners and landlords of 166 East 81st Street (“166”) and 179 East 80th Street (“179” and together with 166, the “Premises”). Complaint at ¶¶ 17-19, *Mays v. Robertshaw*, Index No. 152230/2019, NYSCEF Doc. No. 1 (Sup. Ct. New York County March 1, 2019).¹ The Premises is a truly rare and unique property, comprised of two 1860s

¹ A full and complete copy of the Complaint, including exhibits (NYSCEF Doc Nos. 2-11) is appended to the

townhouses connected by a garden and a pool. *Id.* Defendants lived there for almost twenty years and raised their four children in the Premises without any mouse or other pest infestations. *Id.*; Affidavit of John Robertshaw, sworn to March 26, 2019, at ¶ 5 (“Robertshaw Aff.”). The Robertshaws have a lifetime of good memories there, which are being ruined by Plaintiffs, who have maliciously lied and caused damage to both the Premises and the Robertshaws. Robertshaw Aff. at ¶¶ 4, 5.

In 2018, after John Robertshaw retired from his 30-year employment in Manhattan, the Robertshaws moved out of New York City, and looked to rent the Premises to tenants who could and would appreciate the Premises for the wonderful home and rare New York City property that it is. *Id.* at ¶¶ 5, 6, 7. The Premises has a tremendous amount of character and style – far different than the cookie cutter “McMansions” that are popular in other parts of the country, such as Atlanta. *Id.* at ¶ 7. Defendants engaged the Corcoran Group, a major New York City real estate brokerage company, to inspect, assess, and market the Premises and locate suitable tenants. *Id.*; Compl. at ¶ 35. Over the course of many months, Corcoran never observed any mice or other pest issue at the Premises. Robertshaw Aff. at ¶ 8.

The Corcoran Group ultimately found Plaintiffs Darrell and Tara Mays (“Plaintiffs”), who were longtime residents of Atlanta, Georgia. *Id.* at ¶ 9; Compl. at ¶ 33. Darrell Mays holds himself out as a wealthy businessman and his wife Tara Mays advertises herself as a socialite. Robertshaw Aff. at ¶ 9. Plaintiffs viewed and inspected the Premises several times before they decided to rent the Premises. *Id.* at ¶ 10; Compl. at ¶ 37. They signed two-year “as-is” leases for each of the townhouses that comprise the Premises (together, the “Leases”).² Robertshaw Aff. at ¶ 11; Compl. at ¶¶ 5, 42. Plaintiffs agreed to pay the total monthly rent of \$43,000 for the Premises. Robertshaw

Affirmation of Alan R. Arkin, dated March 26, 2019 (the “Arkin Aff.”), as **Exhibit 1** (the “Complaint” or “Compl.”).

² The Leases are attached as Exhibit A to Plaintiffs’ Complaint, found at Exhibit 1 to the Arkin Affirmation.

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