

**Manhattan Telecom. Corp. v Jackson**

2014 NY Slip Op 32053(U)

February 24, 2014

Sup Ct, New York County

Docket Number: 111319-2010

Judge: Milton A. Tingling

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3/19/14  
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# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: Milton A. Tingling  
Justice

PART 44

Manhattan Telecommunications Corp  
-v-  
Rachel Jackson, Esq

INDEX NO. 111319/16  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 008

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_  
Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ No(s) \_\_\_\_\_  
Answering Affidavits — Exhibits \_\_\_\_\_ No(s) \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_ No(s) \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is decided in accordance  
with attached memorandum of decision.

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

Dated: 2/24/14 \_\_\_\_\_ mqf, 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

S/D

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

PRESENT: Honorable Milton A. Tingling

PART 44

-----X  
Manhattan Telecommunications Corporation,

Index No.: 111319-2010

Plaintiff,

-against-

DECISION

Rachel Jackson, Esq.,

Defendant.

-----X

The plaintiff moves for an Order seeking the recusal of this Court from the action, and pursuant to CPLR 2221 leave to renew and reargue a prior motion by movant and upon such renewal and/or reargument granting the relief sought and granting such other further and different relief as to this Court may seem just.

This Court has made errors in this case. One was being led to believe, after an on off the record conversation with plaintiffs' counsel in open court that this matter was over. Second, the defendants motion to dismiss the first amended complaint filed in July 2011 should have been granted.

As previously stated, this entire matter stems from plaintiffs' counsel's fixation on the alleged perjury by defendant in connection with a motion to change venue in a prior action. That action was Manhattan Telecommunications Corp. v Beauty Pools, Inc. 116386-2008 in which Rachel Jackson was counsel for defendant.

Plaintiffs counsel alleged she perjured herself in bringing the motion pursuant to CPLR 511. The word has consumed this litigation ever since. Perjury, perjury, perjury, Special Affirmation by (Mr. Bachrach) as to perjury by Defendants and Affirmation entitled

Perjury or Betrayal.

Although the Motion was DENIED, Mr. Bachrach was incensed. He brought an action against Jackson individually alleging a violation of Judiciary Law 487.

Although the underlying case was settled for less than the minimum monetary jurisdiction of this court, Mr. Bachrach has pursued this action like Sherman marching to the sea.

Ignoring the diatribes, monologues, accusations and verbal attacks, the rub here is that there is no action to go forward.

Although couched in the language of a Judiciary Law 487 action, this case is about alleged perjury. As a general rule, there is no civil cause of action for perjury in the State of New York. See Newin Corp. v Hartford Accident and Indemnification Co. 37 N.Y.S.2d 211 and Aufrichtig etc v Lowell 85 N.Y.S.2d 540.

The amended complaint alleges a violation of Judiciary Law sect 487 in that based upon the prior change of venue motion, Defendant was guilty of deceit and consented to deceit or collusion with intent to deceive the Court and Plaintiff. Judiciary Law sect 487 states a cause of action against an attorney who is guilty of any deceit or collusion, or consents to any deceit or collusion with intent to deceive the court or any party.

The application of 487 is constricted to cases where the defendant is found to have intentionally engaged in a chronic, extreme pattern of delinquency. See Havell v Islam et al A.D.2d 210 and Jaroslawicz v Cohen 12A.D.3d 160, 161. Here, assuming the allegations of the complaint to be true, the Court finds as a matter of law the complaint does not establish a chronic extreme pattern of delinquency.

This is the standard set precisely for cases such as this.

The first cause of action in the amended complaint alleges no injury to the plaintiff and therefore fails to state a claim upon which relief can be granted under sect 487. See Rozen v Russ and Ross P.C. 76 A.D.3d 965.

The second cause of action states as a consequence of defendant's deception the motion was heavily litigated over a period of months. Plaintiff incurred substantial legal fees and disbursements.

A party's legal expenses may be treated as the proximate result of a misrepresentation only if the lawsuit could not have gone forward in the absence of the alleged perjury. Even assuming the allegations of deception or misrepresentation were true, Bachrach cannot rationally argue the law suit could not have proceeded. As the motion was made pursuant to CPLR 511 and CPLR 510 grounds, even the motion could have proceeded on 510 grounds. Therefore, pursuant to Amalfitano v Rosenberg, 12 N.Y.S.3d 8 no action for legal fees is available.

The motion for change of venue was denied. The majority of any judicial resources expended were on Bachrach's perjury fixation.

This is a court of law and equity. Equity and justice demand this travesty come to an end. Should Appellate Division find this Court has abused its discretion, I would urge that honorable tribunal to exercise its jurisdiction to bring about an equitable conclusion.

The motion to renew is denied.

The motion to reargue is granted only to the extent of amending the prior decision to grant dismissal of defendant's counterclaims.

[\* 5]  
The motion to recuse is denied.

Settle order on notice.

Dated: February 24, 2014

  
\_\_\_\_\_  
J. S. C.  
Judge Clinton A. Tinsley