

Levy v Baricevic

2020 NY Slip Op 33253(U)

August 4, 2020

Supreme Court, Queens County

Docket Number: 704115/2018

Judge: Pam Jackman Brown

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

NEW YORK SUPREME COURT - COUNTY OF QUEENS

FILED

**8/5/2020
8:52 AM**

IAS PART 19

Short Form Order

**COUNTY CLERK
QUEENS COUNTY**

Present: Hon. Pam Jackman Brown, JSC

----- X
STEVEN LEVY,

Index No.: 704115/2018

Plaintiff,

Motion Date: 8/3/2020

-against-

Cal No.: 36 and 37

**STIPE BARICEVIC, JENNIFER BARICEVIC, LOVETT
REALTY, INC and BAY TERRACE COOPERATIVE
SECTION XII, INC.,**

Mot. Seq. No.: 006 and 007

Defendants.

----- X

Recitation, as required by CPLR § 2219(a), of the following papers e-filed numbered 117 – 127 and 140 read on this motion sequence #6 by Defendants, Lovett Realty, Inc and Bay Terrace Cooperative Section XII, Inc. for an Order: (1) pursuant to CPLR § 3211(a)(1), 3211(a)(7) and 3212 dismissing the third and fourth causes of action, and granting summary judgment in favor of Defendants Bay Terrace and Lovett Realty dismissing all claims and cross-claims as against those moving defendants, (a) on the ground that Plaintiff has withdrawn his fourth cause of action, (b) on the ground that the two causes of action against moving defendants do not state cognizable cause of action, and (c) on the ground that there exist; and the e-filed numbered papers 128 – 136 and 141 – 144 on motion sequence #7 filed by Plaintiff seeking (a) and Order pursuant to CPLR 3126(3) striking Defendants’ Lovett Realty, Inc and Bay Terrace Cooperative Section XII, Inc answer in the action for failure to produce witnesses for EBT’s in this case required by two certain Order(s) and for failing and refusing to serve Good and Effective, complete substantive responses to Plaintiff’s demand dated 10/4/2019 as required by a 2/4/2020 Order and that Plaintiff Steven Levy have such other and further relief as to the Court may seem Just and Proper.

	E-FILED PAPERS NUMBERED	
	Papers	Exhibits
Notice of Motion sequence #6 – Affirmation(s), Affidavit(s), and Exhibit(s) Annexed; memorandum of law in support of motion	117 - 118	119 - 127
Affirmation in Opposition of the Motion sequence #6 on behalf of Defendants Stipe Baricevic and Jennifer Baricevic on the cross claim	140	
Notice of Motion sequence #7 – Affirmation(s), Affidavit(s), and Exhibit(s) Annexed; Proposed Order	128 - 129	130 - 136
Affirmation in Opposition on behalf of Defendants Lovett Realty, Inc and Bay Terrace Cooperative Section XII, Inc.	141	142 - 144

Upon the papers listed above, these Notices of Motion, sequence # 6 and #7, are hereby decided in accordance with this Decision/Order.

This is an action by Plaintiff, owner and shareholder of Unit 5K located at 212-30 23rd Avenue, Bayside, New York (hereinafter referred to as “subject premises”). In the complaint, Plaintiff alleges in the Third Cause of Action that Defendant Lovett Realty, Inc (hereinafter referred to as “Defendant Lovett”) and Defendant Bay Terrace Cooperative Section XII, Inc (hereinafter referred to as “Defendant Bay Terrace”) breached a Fiduciary Duty to Plaintiff as a shareholder in the building of the subject premises. Plaintiff pled in the complaint in the Fourth Cause of Action Intentional Infliction of Emotional Distress As and Against All Defendants. Defendants Stife Baricevic and Yvonne Baricevic (hereinafter referred to as “Defendant Baricevic”) interposed an Answer that includes cross claims for indemnification and apportionment of responsibility against Defendants Lovett and Bay Terrace.

Defendants Lovett and Bay Terrace now move under motion sequence #6 for dismissal of the Plaintiff’s Third and Fourth Causes of Action and Co-Defendants Baricevic’s Cross Claims. Plaintiff did not oppose the motion. Defendant Baricevic opposes in part to the extent that the motion did not seek to dismiss the cross claims. Upon review of the papers and after oral argument with the Court, the motion is granted. The Court adopts Defendants Lovett and Bay Terrace argument and cases cited therein the memorandum of law that there is no fiduciary duty to a shareholder (Plaintiff). With respect to the Fourth Cause of Action, Plaintiff withdrew that claim during the Examination Before Trial. Upon review of the motion for summary judgment, Defendants Lovett and Bay Terrace did not propose any evidence for the dismissal of the cross claims interposed by Defendants Baricevic.

Accordingly, motion sequence #6 seeking summary judgment is granted to the extent that Plaintiff's Third and Fourth Causes of Action against Defendants Lovett and Bay Terrace are dismissed. The cross claims interposed by Defendant Baricevic against Defendants Lovett and Bay Terrace remain. The caption of this case is amended to include a Third-Party Action on the cross claims.

ORDERED that the caption of this case is hereby amended as follows:

-----X

Index No.: 704115/2018

STEVEN LEVY

Plaintiff,

-against-

STIPE BARICEVIC, and JENNIFER BARICEVIC

Defendants.

-----X

STIPE BARICEVIC and JENNIFER BARICEVIC

Third-Party Plaintiffs,

-against-

**LOVETT REALTY, INC and BAY TERRACE
COOPERATIVE SECTION XII, INC**

Third-Party Defendants

-----X

Now, upon motion sequence #7, Plaintiff seeks to strike Defendants Lovett and Bay Terrace Answer. Based on the ruling under motion sequence #6, the motion is denied as moot.

However, after oral argument, there are discovery issues related to the cross claims. The Court recognizes that Defendants Baricevic has not made a motion for

outstanding discovery. To the extent that there may be discovery issues regarding compliance with the Orders for Discovery, those issues shall be addressed in the Compliance Conference Part.

IT IS HEREBY ORDERED that a copy of this Order with Notice of Entry must be served by Defendants Lovett and Bay Terrace on Counsels for Plaintiff and Defendants Baricevic and the Clerk's Office within 10 days of Entry of this Order.

The foregoing constitutes the Decision and Order of this Court resolving motions sequence #6 and #7.



Dated: August 4, 2020
Jamaica, NY

HON. PAM JACKMAN BROWN, JSC

FILED

8/5/2020

8:52 AM

**COUNTY CLERK
QUEENS COUNTY**