

SHORT FORM ORDER

NEW YORK SUPREME COURT : QUEENS COUNTY

P R E S E N T : HON. JOSEPH P. DORSA
Justice

IAS PART 12

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BREEZY POINT COOPERATIVE, INC. and
STEVEN GREENBERG,

Plaintiffs,

- against -

THOMAS H. YOUNG,

Defendant.

- - - - - x

Index No.: 4204/07

Motion Date: 5/16/07

Motion No.: 4

Motion Seq. No. 2

The following papers numbered 1 to 10 on this motion:

	<u>Papers Numbered</u>
Plaintiffs' Notice of Motion-Affirmation- Affidavit(s)-Service-Exhibit(s)	1-4
Defendant's Affirmation in Opposition- Affidavit(s)-Exhibit(s)	5-8
Plaintiffs' Reply Affirmation-Exhibit(s)	9-10

By notice of motion, plaintiffs seek an order of the Court, granting them summary judgment and dismissing defendant's counterclaim.

Defendant opposes and cross-moves for an order to have the Queens Supreme Court Judges investigated; a change of venue; and, to find out how the plaintiffs contributed to New York City Judges' campaigns. Said cross-motion is denied as the relief sought is without legal or factual basis.

The Court also considers herein a previously submitted motion by plaintiffs, as well as a cross-motion by defendant in which plaintiffs sought injunctive relief and defendant, pro se, opposed and cross-claimed for affirmative relief. By short form order, dated April, 2, 2007, this Court directed a hearing on the issues raised. The parties appeared before the Court on May 16,

June 13, June 20, July 11 and August 1, 2007; testimony was taken and decision was reserved on August 1, 2007.

"...[I]t is well settled that, in deciding the propriety of a summary judgment motion, a Court (even an appellate court) may search the record and grant summary judgment to the non-moving party on any related claim. (AC Transp. v. Board of Educ. of the City of NY, 253 AD2d 330, 338 [1999], lv denied 93 NY2d 808 [1999])." Eighty Eight Bleeker Co., LLC v. 88 Bleeker St. Owners, Inc., 34 AD3d 244 (1st Dep't 2006). (See also, QDR Consultants & Dev. Corp. v. Colonia Ins. Co., 251 AD2d 641 (2d Dep't 1998)).

Accordingly, the Court will search the record herein and consider the viability of both the complaint and the defendant's counterclaims for purposes of summary judgment determination.

In the underlying complaint, plaintiffs seek both injunctive relief and damages. The first cause of action seeks to enjoin defendant Young from engaging in a series of activities as a tenant and shareholder in the Breezy Point Cooperative, such as "handing out flyers in the cooperative community" or "posting signs or flyers on the common elements of the cooperative." (See plaintiffs' Exh. A, Verified Complaint, para. 12). In the fifth cause of action, plaintiff, Steven Greenberg, seeks to enjoin defendant from parking his vehicle in front of Mr. Greenberg's office.

In the second cause of action, plaintiffs seek damages for plaintiff, Steven Greenberg, based on a claim that defendant committed a prima facie tort by interfering with Mr. Greenberg's ability to perform his job. In the third claim of tortious interference, plaintiff Greenberg seeks damages for defendant's alleged interference with Greenberg's relationship with his employer. And finally, in the fourth cause of action, plaintiff Greenberg seeks damages for the infliction by defendant of emotional distress. Plaintiff seeks a total of \$300,000 in damages; \$100,000 for each claim.

Defendant Young answers and "counterclaims" by submission of a copy of his summons and complaint under Index No. 3358/05 crossed out and relabeled "counterclaims." In these papers, defendant Young (therein plaintiff) seeks a permanent injunction preventing Breezy Point from evicting him; damages for his "wrongful eviction"; and, damages for Breezy Point's "misrepresentations" about him.

The Court notes that the action begun by Thomas Young as

plaintiff under Index Number 3358/05 was discontinued.

By order of the Hon. Margaret Parisi-McGowan, dated August 29, 2005, in a Civil Court proceeding, entitled Breezy Point v. Young, 80592/04, the Court granted plaintiff summary judgment terminating defendant Thomas H. Young's tenancy as a shareholder in the cooperative community known as Breezy Point and ordering his eviction. (See plaintiff's Exh. D).

In an eight page decision, Judge Parisi-McGowan, carefully outlined the history and background leading up to defendant's termination and eviction, the legal basis for plaintiff's action, and the reasons for denying each of defendant's counterclaims.

By virtue of his "counterclaims" to this action, as noted and described above, defendant now seeks to recover certain sums based upon the same claim of wrongful termination and eviction. Plaintiffs respond, in this summary judgment motion, that defendant's so-called counterclaims should be dismissed as a matter of law.

Plaintiffs maintain that defendant is "collaterally estopped" from bringing these claims as they were previously litigated by him, which litigation resulted in the dismissal of those claims. This Court agrees.

"The doctrine of collateral estoppel precludes a party from relitigating in a subsequent action or proceeding and decided against that party or those in privity (see, Ryan v. New York Tele. Co., 62 NY2d 494, 500)." QDR Consultants & Dev. Corp. v. Colonia Ins. Co., supra at 643. Accordingly, based on all of the foregoing, defendant's counterclaims are dismissed as ordered infra.

The defendant, Thomas Young, has in fact been evicted from the Breezy Point Cooperative premises by virtue of the unsuccessfully challenged order of the Hon. Margaret Parisi-McGowan, as noted above. Consequently, plaintiffs' first cause of action, which seeks to enjoin defendant Young as a tenant and shareholder from engaging in certain activities, such as handing out flyers, can no longer lie and must therefore be dismissed.

Plaintiffs' fifth cause of action, which seeks an order enjoining defendant from parking his vehicle in front of plaintiff Steven Greenberg's office, located at One New York Plaza, is likewise unsupportable and must be dismissed. Plaintiff Greenberg's request for relief exceeds the authority of this Court to prohibit a single individual from otherwise

lawfully parking a vehicle on a public highway.

In his second cause of action for prima facie tort, plaintiffs allege that defendant's actions of parking his vehicle in front of plaintiff's office, with signs about him on the vehicle damaged his reputation as a vice president at Smith Barney, and endangers his employment with the company. The Court finds plaintiff's claim of special damages, an element of prima facie tort, to be too speculative, therefore requiring dismissal. Freihofer v. Hearst Corp., 65 NY2d 135, 490 NYS2d 735 (1985).

Plaintiff's third cause of action for tortious inference with contractual relations with his employer likewise fails for failure to state special damages with the requisite particularity. Id.

Finally, plaintiff's fourth cause of action for severe emotional distress must likewise be dismissed as "mere insults, indignities, threats or annoyances" are not enough to constitute outrageous conduct, an element of this claim. 164 Mulberry St. Corp. v. Columbia University, 4 AD3d 49, 971 NYS2d 16 (1st Dep't 2004).

Accordingly, upon all of the foregoing, it is hereby

ORDERED, that the complaint and the counterclaims are dismissed without costs to either party; and, it is further

ORDERED, that the Clerk is directed to enter judgment accordingly.

Dated: Jamaica, New York
September 11, 2007

JOSEPH P. DORSA
J.S.C.