

**Avalon, LLC v Coronet Properties Co.**

2004 NY Slip Op 30125(U)

May 11, 2004

Supreme Court, New York County

Docket Number: 0060255/2001

Judge: Charles E. Ramos

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY  
**Charles Edward Ramos** PART 53

PRESENT: \_\_\_\_\_  
*Justice*

0602554/2001

AVALON LLC.  
vs  
CORONET PROPERTIES COMPANY

SEQ C 07

INDEX NO. \_\_\_\_\_

FILED DATE \_\_\_\_\_

FILED SEQ. NO. \_\_\_\_\_

FILED CAL. NO. \_\_\_\_\_

The following papers are filed in support of the motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

Is decided in accordance with  
accompanying memorandum decision and order.

**FILED**

MAY 18 2004

NEW YORK  
COUNTY CLERK'S OFFICE

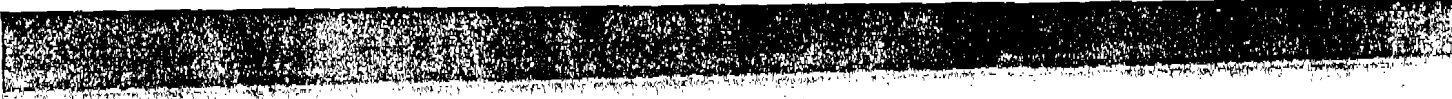
*D*

Dated: 5/14/04

**CHARLES E. RAMOS** J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

MOTION/CASE IS RESPECTFULLY REFERRED TO  
JUSTICE



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK:COMMERCIAL DIVISION

-X

AVALON, LLC,

Plaintiff,

INDEX NO.  
602554/01

-against-

CORONET PROPERTIES COMPANY, 46 WEST  
73<sup>RD</sup> STREET ASSOCIATES, 48 WEST 73<sup>RD</sup> STREET  
**ASSOCIATES**, MIDLAND AVENUE ASSOCIATES,  
GSR ASSOCIATES, GSR CORP., DERFNER AND  
MAHLER, LLP, DONALD DERFNER, PETER  
MAHLER, MITCHELL H. GORDON, MICHAEL  
E. DOYLE, P.C., MICHAEL B. DOYLE, FRIEDMAN  
ALPREN AND GREEN, LLP, WELLINGTON SALES  
CORP., NORMAN DANSKER, GLORIA DANSKER,  
ROBERT DANSKER, SUSAN BOGADY and JOHN  
and JANE DOES ("1 through 20"),

Defendants.

-----X

**Charles Edward Ramos, J.S.C.:**

Motion sequence numbers 006 and 007 are consolidated herein  
for disposition.

In motion sequence number 006 defendants Derfner & Mahler,  
LLP, Donald A. Derfner, and Peter A. Mahler (collectively  
"Derfner") move for an order dismissing all remaining claims  
against them, consistent with the June 10, 2003 decision and  
order of the Appellate Division, First Department, which  
dismissed this action against two co-defendants. Derfner also  
requests that sanctions be imposed against plaintiff, its  
principal, and its counsel pursuant to 22 NYCRR § 130-1 for  
frivolous conduct

In motion sequence number 007, defendants Michael B. Doyle,  
P.C. and Michael B. Doyle (collectively "Doyle") move for an  
order dismissing all remaining claims against them consistent



with the June 10, 2003 decision and order of the Appellate Division, First Department, which dismissed this action against two co-defendants.

The underlying facts are fully set forth in this court's decision and order entered on April 22, 2002 (the "April 22 order") and this court's decision and order entered on August 9, 2002 (the "August 9 order") and will be referred to herein only if necessary.

In the April 22 order, this court, *inter alia*, granted **Derfner's** motion (motion sequence number 001) to dismiss (pursuant to CPLR 3211 and 3016) to the extent of dismissing plaintiff's sixth and thirty sixth causes of action against Derfner (see Derfner's exhibit C). In the August 9 order, this court, *inter alia*, granted Doyle's motion (motion sequence number 002) to dismiss (pursuant to CPLR 3211 and 3016), to the extent that Derfner's prior motion had been granted, under the doctrine of "law of the case" (see Derfner's exhibit D, p 3). A motion for summary judgment (motion sequence number 003) by defendants Mitchell Gordon ("Gordon") and Wellington Sales Corp.

("Wellington") **was** also before the court. The court granted their motion to the extent of dismissing plaintiff's restraining notice claims against them, but kept plaintiff's fraud claims, finding that a factual issue existed with respect to the statute of limitations (see Derfner's exhibit D). Gordon and Wellington appealed to the Appellate Division. By order dated June 10, 2003 (the "Appellate Division order"), the First Department modified

the August 9 order, to the extent that plaintiff's fraud claims against Gordon and Wellington accrued on April 14, 1994 and should have been dismissed as barred by the statute of limitations (see 306 AD2d 62, lv den 100 NY2d 513 [2003]).

Derfner did not appeal from the April 22 order and Doyle did not appeal from the August 9 order. Instead, Derfner and Doyle made these motions (006 and 007), arguing that the Appellate Division's dismissal of plaintiff's Debtor and Creditor claims against Gordon and Wellington mandates dismissal of plaintiff's similar claims against Derfner and Doyle under the doctrine of "law of the case" relying on Holloway v Cha Cha Laundry, Inc. 97 AD2d 385 [1<sup>st</sup> Dept 1983].

The court disagrees. According to the Appellate Division, plaintiff's claims against Gordon and Wellington accrued on April 14, 1994 pursuant to a certain agreement. Derfner and Doyle, who were not signatories to that agreement, have failed to show how plaintiff's judgment debtor, Coronet Properties Company, or Wellington or plaintiff could have asserted a claim against Derfner or Doyle, based on the underlying facts of this case, as early as April 14, 1994.

Plaintiff's claims against Derfner and Doyle appear to be of questionable merit, but those claims were not dismissed by the April 22 and August 9 orders because Derfner and Doyle had moved pursuant to CPLR 3211 and 3016, not CPLR 3212 and the claims were facially sufficient.

They have repeated that failure with these motions 006 and

007.

Donald A. Derfner, who is an attorney representing himself as a "pro se" defendant, has requested that sanctions be imposed upon plaintiff, its principal and its counsel for frivolous conduct. By letter dated June 18, 2003 to plaintiff's attorney, Derfner requested that plaintiff discontinue this action (see Derfner's exhibit F). Undaunted, plaintiff's attorney responded by letter dated June 19 stating that he had been instructed by his client to pursue a motion for leave to appeal from the Appellate Division order to the Court of Appeals and that Derfner was not in the same position as Gordon and Wellington (see Derfner's exhibit G). By Letter dated June 23, Derfner repeated the request and stated that the issue of sanctions will be addressed by the court (see Derfner's exhibit H).

The court finds Derfner's request for sanctions itself to be bordering on "frivolous conduct" within the meaning of 22 NYCRR § 130-1.1 *et. seq.*

Accordingly, Derfner's motion *is* denied.

Doyle's motion is denied.

This constitutes the decision and order of the court.

Dated: May 11, 2004

  
\_\_\_\_\_  
J.S.C.

**CHARLES E. RAMOS**

**FILED**

**MAY 18 2004**

**NEW YORK  
COUNTY CLERK'S OFFICE**