

Sibersky v Winters

2005 NY Slip Op 30215(U)

August 19, 2005

Supreme Court, New York County

Docket Number: 0600367/2003

Judge: Louis B. York

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

PRESENT: YORK
Justice

PART 2

SIBENSKY, Alex and Anita

INDEX NO. 600367/03

- v -

PHILIP WINTERS

MOTION DATE _____

MOTION SEQ. NO. 13

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this 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

MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM DECISION.

FILED
AUG 26 2005
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 8/19/05

Luy
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2

-----X
Alan and Anita Sibersky,

Plaintiffs,

Index No. 600367/03

-against-

Philip Winters,

Defendant.

-----X
York, J.S.C.:

In this action, plaintiff seeks various injunctive and declaratory relief against defendant, who is a tenant in a building owned by plaintiff. Currently before the court are motion 12, commenced by Order to Show Cause, in which defendant seeks to reargue a prior court decision; and a cross-motion, by plaintiffs, for (1) sanctions against defendant, (2) severance of the issue of monetary damages, orders of preclusion (which plaintiffs call a request "in limine"); (3) summary judgment. In addition, the court has before it motion 13, also by plaintiff, which seeks (1) sanctions for his initiation of motion sequence 12, for purported discovery failures, and for defendant's failure to obey the court's order in its decision in response to motion sequence 8, (2) an order compelling defendant to pay use and occupancy in compliance with that same order, (3) an order compelling defendant to allow plaintiff access to the apartment, and (4) an order dismissing the counterclaims in the Answer and granting judgment on the Complaint. The court consolidates these motions for resolution.

Initially, the court denies defendant's Order to Show Cause. As plaintiff points out, in Winters v. Gould, 143 Misc. 2d 44, 539 N.Y.S.2d 686 (Sup. Ct. N.Y. County

1989), another action involving this defendant, Justice Harold Tompkins held:

Mr. Winters [defendant] is enjoined from commencing any further action or making any further motions unless he is represented by an attorney at law admitted to practice in the State of New York without prior approval of the Administrative Judge of the Court in which he seeks to bring a further motion or future action . . .” Id. at 48, 539 N.Y.S.2d at 689.

There is no evidence that this order has ever been vacated. Moreover, defendant – who is not represented by counsel – has not submitted proof of prior written approval by the Administrative Judge. Therefore, defendant is in violation of this earlier Supreme Court order and the court cannot consider the Order to Show Cause.

Plaintiffs seek sanctions against defendant for bringing the Order to Show Cause. Initially, they sought this relief in their cross-motion to sequence number 12, but commenced motion sequence number 13 for the same relief due to procedural defects in the earlier application. Therefore, the cross-motion is superceded by motion sequence number 13 on this issue.

The court declines to sanction defendant at this time. “The ‘frivolous sanction’ rules, like any . . . penalty provision, must be strictly and narrowly construed . . .” Steiner v. Bonhamer, 146 Misc.2d 10, 13, 549 N.Y.S.2d 340, 342 (Sup. Ct. Alleghany County 1989). Here, plaintiffs have brought a total of 12 motions in this lawsuit and have cross-moved in response to defendant’s Order to Show Cause; defendant, on the other hand, has brought only one Order to Show Cause. If anything, it is plaintiffs who are engaged in protracted, motion heavy litigation – conduct which this court urges plaintiffs to moderate. Moreover, it is unclear whether defendant understood that the prohibition in the earlier litigation was still in effect and applied here. In light of the

above and of the reluctance of courts to sanction parties lightly, the court declines to award sanctions at this juncture. However, it admonishes defendant to comply with Winters v. Gould, or sanctions shall be directed in the future.

Next, the court turns to the Order to Show Cause by which plaintiffs initiated motion sequence number 13. In addition to their request for sanctions against defendant, which the court has addressed above, plaintiffs seek relief as to their claims and in opposition to defendant's Answer. However, these matters deal with the ultimate relief sought in the case – and, to some extent, appear to duplicate earlier requests which this court has addressed in an earlier decision. These issues are best left for resolution at trial; and, accordingly, the court denies this part of the order to show cause. Moreover, as the court has already addressed many of these issues, there is no point to further motions on them. Therefore, the court directs plaintiffs to stop making duplicative motions for summary judgment, dismissal of the Answer, and/or ultimate relief.

The one other matter the court does address in motion sequence 13 is plaintiffs' demand to obtain access to the apartment for mandatory inspection and replacement of the sprinkler system by plumbers and electricians. The court grants this aspect of the motion. Defendant shall provide access to the apartment for this purpose within 30 days of service of this order with notice of entry upon him.

The court notes that the order directing defendant to pay use and occupancy of \$1600 a month, and for plaintiff to secure a bond remain in effect. In the earlier order and by inadvertence, the amount of the bond was left blank. Here, therefore, the court amends that order to the extent of directing plaintiff to secure a \$25,000 bond and to send a copy of the bond to defendant. Moreover, the court notes that defendant has failed to

make any payments into escrow pending his application for reargument, which this court has denied. Therefore, he now owes use and occupancy dating back to November 2004. Rather than require defendant to pay the overdue amount immediately, the court shall increase defendant's use and occupancy from \$1600 to \$2000 per month until defendant has made up the deficiency.

To the extent that plaintiffs continue to seek relief against continuing harassment by defendant, the court notes that this relates to the ultimate issues in dispute. Defendant denies that he is harassing plaintiffs and/or their tenants. Plaintiff should file his Note of Issue and proceed to a trial - which can resolve these matters – rather than continuing to make motions which cannot resolve them and which only slow down the litigation. Once plaintiffs and defendant proceed to trial, the issues in question can finally be litigated. Moreover, they can only be litigated and resolved once the matter proceeds to trial. The facts are too hotly disputed for motion practice to be of any benefit. As for plaintiffs' applications for rulings in limine, these also should be made closer to trial.

Plaintiffs have asserted that defendant's conduct have upset co-plaintiff Ms. Sibersky, who allegedly is in ill health. In the meantime, if plaintiffs feel that Ms. Sibersky is being endangered or unduly aggravated by defendant's conduct, plaintiffs have remedies outside of the scope of this lawsuit which would not interfere with the progress of this case and would be better suited to the sort of relief plaintiffs request. In particular, plaintiffs can contact the police for immediate assistance with their alleged problems; and, they can file a complaint in Criminal Court. However, plaintiffs are warned not to call the police or file criminal charges without a valid basis. An abuse of the criminal court system could result in adverse consequences.

Finally, the court notes that in an earlier order it urged plaintiffs not to make so many motions. However, plaintiffs have completely disregarded the court's request. Before the court could decide the first of these current motions, plaintiffs commenced a new motion which in large part superceded the first and which rendered much of the court's original work moot. Now, while the court has been working on these two motions, plaintiffs have brought yet another application, by order to show cause. That too seems to repeat many of the requests sought here.

It appears that plaintiffs do not understand the purpose of a court proceeding; or, at any rate, they are litigating in an extremely inefficient fashion. They have overloaded the court with motions which largely overlap in their requests. Before the court can resolve one motion, they bring another which supercedes it. Plaintiffs are impeding the progress of their own lawsuit by their heavy motion practice and voluminous motions – many of which raise issues better left for trial. The court warns plaintiffs not to make further duplicative motions – and, in general, to refrain from excessive motion practice. Any failure to comply with this directive may well result in the imposition of sanctions.

Accordingly, it is

ORDERED that the Order to Show Cause of defendant, submitted as motion sequence number 12, is denied; and, it is further

ORDERED that the Cross-Motion submitted in opposition to motion sequence number 12 is denied as moot, as plaintiff submitted a subsequent motion that supercedes it; and it is further

ORDERED that motion sequence number 13 is denied except to the extent of directing defendant to give plaintiffs access to the apartment for purposes of inspection

and replacement of the sprinkler system by plumbers and electricians, and that he shall do so within 30 days of service of this order with notice of entry upon him; and it is further

ORDERED that the remainder of motion sequence number 13 is denied; and it is further

ORDERED that the decision in motion sequence number 8 is modified to the extent of adding the requirement that plaintiffs post an undertaking of \$25,000 pending the resolution of this litigation or modification or vacatur; and, if they fail to do so within 45 days of the date of entry of this order, the injunction shall expire; and it is further

ORDERED that defendant is directed to pay use and occupancy of \$1600 for the Clerk of the Court to hold in escrow, back-dated from November 1, 2004, and to the present, until this matter is resolved. Rather than require defendant to pay the entire amount overdue at one time, the court increases defendant's use and occupation from \$1600 to \$2000 per month until defendant has made up the deficiency.

The court has considered and denies all other applications here. Either they lack merit or duplicate earlier requests; and, in some instances, the allegations in the prolix affidavit of plaintiffs are not presented clearly enough for the court to determine whether and/or what relief plaintiff seeks.

ENTER:

Dated: 8/19/05

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Hon. Louis B. York, J.S.C.

FILED

AUG 26 2005

**NEW YORK
COUNTY CLERK'S OFFICE**