

Pier 59 Studios L.P. v Betts

2006 NY Slip Op 30851(U)

January 27, 2006

Supreme Court, New York County

Docket Number: 109736/04

Judge: Shirley Werner Kornreich

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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PIER 59 STUDIOS L.P.,

Plaintiff,

Index No.: 109736/04

**DECISION AND
ORDER**

-against-

ROLAND BETTS, DAVID TEWKSBURY,
MICHAEL BRAITO and CHELSEA PIERS L.P.,

Defendants.

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KORNREICH, SHIRLEY WERNER, J.:

FILED
FEB 14 2006
NEW YORK
COUNTY CLERK'S OFFICE

This is a defamation action arising from a commercial landlord-tenant dispute, which is the subject of a separate action before the Court, styled *Pier 59 Studios L.P. v. Chelsea Piers L.P.*, Index No. 601211/04 (the "Underlying Action"). Pier 59 Studios L.P. ("Pier 59") commenced the Underlying Action against Chelsea Piers, L.P. ("Chelsea Piers"), in connection with alleged overcharges under a sublease between the parties,¹ executed on or about October 27, 1994 (the "Sublease"). The factual background of the Underlying Action has been described in the Court's numerous decisions therein, and need not be repeated here. In brief, Chelsea Piers asserted counterclaims alleging that Pier 59 was in breach of the Sublease due to its operation of a public night club on its premises, including an unapproved and dangerous "wooden roof deck." The instant complaint alleges that officers of Chelsea Piers made defamatory statements to municipal agencies and/or their officials or employees, as follows:

¹Chelsea Piers leases the Chelsea Piers complex located on the Hudson River from the State of New York, through its representative, the Hudson River Park Trust, which succeeded the State Department of Transportation as the agency designated Master Lessor by the State of New York. In turn, Chelsea Piers subleases portions of that space to its sublessees, one of whom is Pier 59.

(1) a letter dated June 8, 2004, sent by defendant Tewksbury to the Manhattan South Vice Squad of the New York City Police Department (“Vice Squad”), the Public Assembly Enforcement Unit of the New York City Fire Department (“FDNY”), and the Manhattan Borough Commissioner of the New York City Department of Buildings (“DOB”), “falsely accusing plaintiff of illegal alcohol sales, threatening the life and safety of the public, and operating illegally”;

(2) oral statements by defendant Braitto to unidentified individuals at the Fire Department and Mayor’s Office, accusing Pier 59’s CEO, Federico Pignatelli, of being “a ‘gangster,’ a ‘fucking Italian gangster,’ a ‘shady and dangerous character,’ of drugging young girls and getting them drunk, of selling alcohol to minors, of selling liquor without a license, of permitting the use of drugs at the premises, of operating ‘a dangerous and illegal place,’ and of using an illegal and unsafe deck that could kill hundreds of people”; and

(3) oral statements by defendants Betts and Tewksbury to the New York City Fire Commissioner’s Office and Mayor’s Office accusing Pier 59 and Mr. Pignatelli of “‘operating an illegal night club,’ illegally selling liquor to minors, being a ‘shady character,’ and permitting the use or presence of drugs at the premises.”

The complaint further alleges that the foregoing statements were made with malice, and that defendants either knew, or should have known, that the statements were false.

By order dated September 12, 2005, the Court denied defendants’ motion for summary judgment dismissing the complaint, finding questions of fact as to whether certain statements were made, and were defamatory. Although the defendants squarely denied making various alleged statements, the Court found that an affidavit submitted by non-party Julius Squillaro, an

FDNY inspector, contradicted defendants' denials, raising questions of fact. Further, the Court directed the parties to appear for a preliminary conference on October 14, 2005, to set a discovery schedule.

I. Motion for Contempt

Pier 59 now moves for an order holding defendant Chelsea Piers in contempt of Court, and directing defendants to produce certain discovery. Specifically, Pier 59 contends that defendants have improperly caused FDNY to put pressure on Mr. Squillaro to withdraw his affidavit, and to remove the Chelsea Piers area from his jurisdiction. The basis of Pier 59's claim is the affidavit of its CEO, Mr. Pignatelli, who states as follows:

Defendants have been exerting tremendous pressure on Inspector Squillaro for coming forward. ... Indeed, subsequent to submitting the Squillaro Affidavit, Inspector Squillaro told me that he was receiving pressure from the FDNY because he submitted the affidavit. Since the FDNY only could know about the affidavit from CP, it is obvious that CP caused the pressure. I had my counsel inform the Court of this pressure at oral argument on May 19th. I was gratified that the Court ordered that defendants should not engage in such behavior.

Subsequently, in the face of the Court's order, Inspector Squillaro told me that the pressure he was receiving from the FDNY was intensifying, that the FDNY had eliminated some of his job responsibilities and that Mr. Squillaro would no longer have under his jurisdiction the Chelsea Piers, of which Pier 59 Studios is part. Inspector Squillaro told me he was strongly and repeatedly pressured to withdraw the affidavit but he had refused to do so since he felt he was doing the right thing. Obviously, the source of this pressure was defendants.

Affidavit of F. Pignatelli, paras. 5-7.

In opposition, defendants submit affidavits stating that they "have never spoken or otherwise communicated with or about Julius Squillaro with anyone from, or purporting to

represent, the New York City Fire Department.” Affidavit of M. Braitto, para. 2; Affidavit of D. Tewksbury, para. 2; Affidavit of R. Betts, para. 2.

II. Conclusions of Law

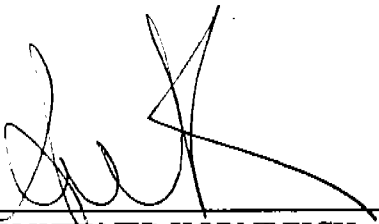
A. Contempt

“Civil contempt requires a showing of, among other things, disobedience of a lawful judicial order expressing an unequivocal mandate.” *Quick v. ABS Realty Corp.*, 13 A.D.3d 1021, 1022 (3d Dept. 2004) (citations omitted). Pier 59 argues that defendants disobeyed the Court’s oral directive that “the defendants must not cause adverse consequences to Mr. Squillaro as a result of his affidavit.” Affirmation of M. Hoffman, para. 5. Pier 59 submits no evidence that defendants have disobeyed this order. In his affidavit, Mr. Pignatelli speculates that defendants were the source of the pressure that FDNY purportedly exerted on Mr. Squillaro to withdraw his affidavit. No new affidavit was submitted by Mr. Squillaro. Without more, Mr. Pignatelli’s affidavit does not demonstrate that defendants have taken any action in contravention of the Court’s direction. Accordingly, it is

ORDERED that plaintiff’s motion for an order holding defendant Chelsea Piers, L.P. in contempt of Court, pursuant to CPLR 5104, is denied; and it is further

ORDERED that counsel for the parties are directed to appear before the Court for a discovery status conference on February 23rd, 9:30 a.m., at Part 54, 111 Centre Street, Room 1227, New York, New York 10013.

Date: January 27, 2006
New York, New York

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SHIRLEY WERNER KORNREICH