

Lyddon v American Contr. Bridge League

2007 NY Slip Op 30198(U)

February 22, 2007

Supreme Court, Queens County

Docket Number: 0014013

Judge: Patricia P. Satterfield

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Short Form Order

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: HONORABLE PATRICIA P. SATTERFIELD IAS Part 19

Justice

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JOHN LYDDON,

Index No: 14013/06

Motion Date: 11/15/06

Motion Cal. No: 14

Plaintiff,

-against-

AMERICAN CONTRACT BRIDGE LEAGUE,

Defendant.

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The following papers numbered 1 to 19 read on this motion by pro se plaintiff, for an order granting a preliminary injunction, and for costs, disbursements and attorney’s fees. Defendant cross- moves for an order granting summary judgment, pursuant to CPLR § 3212; prohibiting plaintiff from filing another lawsuit against it for any claim related to the claims that he brought on three separate occasions; and awarding defendant sanctions, including costs and reasonable counsel fees, pursuant to Part 130 of the Rules if the Chief Administrator.

	<u>PAPERS</u> <u>NUMBERED</u>
Notice of Motion-Affidavits-Exhibits.....	1 - 5
Notice of Cross-Motion-Affidavits-Exhibits-Memorandum....	6 - 14
Reply Affidavits-Exhibits-Memorandum.....	15 - 19

Upon the foregoing papers, it is ordered that the motion and cross-motion are disposed of as follows:

The purpose of a preliminary injunction is to preserve the status quo of an action pending trial. As such, the granting of the a preliminary injunction is a drastic remedy which is to be used sparingly, and such remedy will not be granted “unless a clear right thereto is established.” Doe v. Poe; 189 A.D.2d 132 (2nd Dept.1993). To prevail on a motion for preliminary injunction, the movant has the burden of demonstrating by clear and convincing evidence: (1) the likelihood of ultimate success on the merits; (2) irreparable injury absent the granting of a preliminary injunction; and (3) that a balancing of equities favors movant’s position. See, Ocean Club v Incorporated Vil. of Atlantic Beach, 6 A.D.3d 593 (2nd Dept. 2004); Price Paper and Twine Co. v. Miller, 182 A.D.2d 748 (2nd Dept.1992); Aetna Ins. Co. v Capasso, 75 N.Y.2d 860, 862 (1990).

Here, aside from conclusory statements, pro se plaintiff’s moving papers fail to demonstrate a clear right to injunctive relief, and a likelihood of success on the merits.

Moreover, plaintiff has not shown that he will sustain irreparable injury absent the granting of the preliminary injunction, which in this context means any injury for which money damages are insufficient. Klein, Wagner & Morris v. Lawrence A. Klein, P.C., 186 A.D.2d 631 (2nd Dept.1992). Lastly, it must be shown that the irreparable injury to be sustained is more burdensome to plaintiff than the harm caused to defendant through the imposition of the injunction (Klein, Wagner & Morris v. Lawrence A. Klein, P.C., *supra*), and such injury is imminent, not remote or speculative. *See, Village/Town of Mount Kisco v. Rene Dubos Center for Human Environments, Inc.*, 12 A.D.3d 501 (2nd Dept. 2004); Golden v. Steam Heat, Inc., 216 A.D.2d 440 (2nd Dept. 1995). A balancing of the equities militate in favor of defendant. Accordingly, despite the procedural infirmities inherent in plaintiff's request for injunctive relief, he has failed to demonstrate his entitlement to such relief, and therefore, plaintiff's motion for a preliminary injunction is denied.

With respect to defendant's cross-motion, summary judgment should be granted when there is no doubt as to the absence of triable issues. *See, Rotuba Extruders, Inc. v. Ceppos*, 46 N.Y.2d 223, 231 (1978); Andre v. Pomeroy, 35 N.Y.2d 361, 364 (1974); Taft v. New York City Tr. Auth., 193 A.D.2d 503, 505 (1st Dept. 1993). As such, the function of the court on the instant motion is issue finding and not issue determination. *See, D.B.D. Nominee, Inc., v. 814 10th Ave. Corp.*, 109 A.D.2d 668, 669 (2nd Dept. 1985). The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. *See, Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact by producing evidentiary proof in admissible form, in support of his position. *See, Zuckerman v. City of New York*, *supra*.

"It is well settled that under the transactional approach adopted by New York in res judicata jurisprudence, 'once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy' (citations omitted). Pursuant to this approach, the doctrine bars not only claims that were actually litigated but also claims that could have been litigated, if they arose from the same transaction or series of transactions." Marinelli Associates v. Helmsley-Noyes Co., Inc., 265 A.D.2d 1, 5 (1st Dept. 2000); *see, also, Fogel v. Oelmann*, 7 A.D.3d 485 (2 Dept. 2004); MacGregor-Phillips v. MacGregor, 273 A.D.2d 206 (2nd Dept. 2000).

Here, a review of the relevant record reveals that plaintiff commenced two previous actions in the Supreme Court, New York and Kings Counties, based upon the same claims and transactions allegedly arising from voting irregularities, and the practices and procedures of defendant, which were dismissed by orders of the Court dated May 4, 2005 [Cahn, J.] and December 5, 2005 [Bayne, J.], respectively. Likewise, this Court finds that dismissal of the instant action on res judicata grounds is warranted. Accordingly, as plaintiff is barred from bringing the instant action, that branch of the cross-motion by defendant for summary judgment is granted and the complaint hereby is dismissed.

Further, as this is the third complaint based upon the same transactions, asserting the same claims, those branches of the cross-motion prohibiting plaintiff from filing another lawsuit

against defendant for any claim related to the claims that he brought on three separate occasions, and awarding defendant sanctions are granted to the extent that plaintiff hereby is barred from commencing any additional actions against the herein defendant arising from or relating to the claims previously asserted and subsequently dismissed. Any further actions commenced upon the same transaction or series of transactions, through plaintiff or those in privity thereto, shall be deemed vexatious litigation and will merit appropriate sanctions by this Court.

Dated: February 22, 2007

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J.S.C.