

Lockwood v Mehmet

2007 NY Slip Op 30397(U)

March 20, 2007

Supreme Court, Suffolk County

Docket Number: 0017698

Judge: Paul J. Baisley

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SUPREME COURT - STATE OF NEW YORK
DCM-J - SUFFOLK COUNTY

PRESENT:

Hon. Paul J. Baisley, Jr.

SCOTT LOCKWOOD, ESQ., EMB SERVICES,
INC. and VALERIE THOMPSON,

Plaintiffs,

-against-

BADISSE DAVID MEHMET and MBK
COMPANY, INC.,

Defendants,

ORIG. RETURN DATE: February 21, 2007

FINAL RETURN DATE: March 5, 2007

MTN. SEQ. #: 001 -MG, 002 - XMD

PLTF'S ATTORNEY:

Beth A. Rosenthal, Esq.
1600 Deer Park Avenue
Deer Park, New York 11729

PRO SE:

Badisse David Mehmet
424 Park Avenue, South Suite 117
New York, New York 10016

Upon the following papers numbered 1 to 16 read on this motion and cross motion: Notice of Motion and supporting papers 1 - 7; Notice of Cross Motion and supporting papers 8 - 13; Affidavit in Further Support of Motion and supporting papers 14 - 16; it is,

ORDERED that this motion (001) by the defendant Badisse David Mehmet to dismiss the complaint pursuant to CPLR 3211 and CPLR 3016(a) is granted and the complaint is dismissed in its entirety; and it is further

ORDERED that this cross motion (002) by the attorney for the plaintiffs¹ for a default judgment against the corporate defendant, MBK Company, Inc., is denied as moot in view of the dismissal of the complaint in its entirety; and it is further

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¹ It is not clear exactly whom the attorney for the plaintiffs, Beth A. Rosenthal, Esq., represents. In the cross motion the attorney brought (002), she makes no reference to which of the three plaintiffs she represents and, indeed, the only reference she makes in her affirmation is that she represents the "interests of the defendant" which is obviously in error. While it appears that she initially held herself out as representing all three plaintiffs, this is called into question by the affidavit submitted herein from the plaintiff Valerie Thompson on behalf of herself and her company, the plaintiff EMB Services, Inc., in which Ms. Thompson states that neither the attorney Ms. Rosenthal nor the plaintiff Scott Lockwood is acting on her or EMB Services, Inc.'s behalf. It appears, at least, that the attorney Ms. Rosenthal represents the plaintiff Scott Lockwood, Esq., who verified the complaint and whose professional address is the same as Ms. Rosenthal's.

ORDERED that the pending counterclaims in this action (which are only asserted on behalf of the defendant Badisse David Mehmet) are hereby severed and this action shall continue with regard to said counterclaims and that the verified answer containing the counterclaims shall be deemed the complaint and the unverified reply to the counterclaims shall be deemed the unverified answer; and it is further

ORDERED that all the remaining parties, individually or by their attorneys, if any, shall appear for the preliminary conference in this action scheduled for April 2, 2007; and it is further

ORDERED that the movant, Badisse David Mehmet, is directed to serve copies of this Order with Notice of Entry upon the original plaintiffs pursuant to CPLR 2103(b)(1), (2) or (3) within 20 days of the date hereof and thereafter file the affidavits of service with the Clerk of the Court.

This action arises out of a dispute between a brother and sister (Mr. Mehmet and Ms. Thompson), their respective companies and Mr. Mehmet's former attorney, Scott Lockwood.

The complaint which is reputedly brought on behalf of Scott Lockwood, Esq., Valerie Thompson and EMB Services, Inc. (hereinafter EMB), alleges 12 causes of action against Mr. Mehmet and the MBK Company, Inc. (hereinafter MBK). The first nine causes of action are all asserted on behalf of only Ms. Thompson and "her" company, EMB, and contain allegations ranging from harassment to tortious interference.

The remaining three causes of action are allegations of slander and defamation only on behalf of Mr. Lockwood and only against Mr. Mehmet.

Mr. Mehmet submits an affidavit from his sister, the plaintiff Valerie Thompson, in which she unequivocally states that she does not know and is not represented by the plaintiffs' attorney and, moreover, never gave said counsel, Beth A. Rosenthal, or Mr. Lockwood permission to bring this action on behalf of her or her company, EMB. The substance of this affidavit is not refuted by counsel for the plaintiff. Accordingly, the first nine causes of action reputedly brought on behalf of her and/or EMB are all dismissed pursuant to CPLR 3211.

The remaining three causes of action all allege slander and defamation but not one of them contains "the particular words" (see CPLR 3016[a]) alleged to have been uttered by Mr. Mehmet. Such allegations must quote the defamatory words verbatim (see Siegel, NY Prac §216, at 355 [4th ed]) and this requirement is strictly enforced (see *Erlitz v Segal, Liling & Erlitz*, 142 AD2d 710, 530 NYS2d 848 [2d Dept 1988]). Moreover, the failure to comply with this requirement mandates the dismissal of such causes of action (see *Simpson v Cook Pony Farm Realty Estate, Inc.*, 12 AD3d 496, 784 NYS2d 633 [2d Dept 2004]). Accordingly, in view of the lack of specificity contained in these causes of action (numbered 10 through 12), they must also be dismissed.

In view of this dismissal of the complaint in its entirety, the cross motion on behalf of the plaintiffs for a default judgment against the defendant MBK is dismissed as moot.

With these dismissals, there are no causes of action left in the complaint. There are, however, counterclaims alleged by Mr. Mehmet against all the plaintiffs remaining in the verified answer. Therefore, this action continues but only with regard to the now severed counterclaims. Accordingly, the already scheduled preliminary conference shall take place but only with regard to discovery relative to the counterclaims. Moreover, since the counterclaims apply to all the original plaintiffs, all of those plaintiffs remain as parties unless and until a discontinuance pursuant to CPLR 3117(a)(2) or (b) becomes effective.

Lastly, the court is concerned about the apparent lack of authority of counsel Beth A. Rosenthal to have brought this action on behalf of Valerie Thompson and EMB Services, Inc. (see *Matter of Cooperative Law Co.*, 198 NY 479, 483-484, 92 NE 15, 16 [1910]). Ms. Thompson's affidavit clearly states - and is not disputed - that Ms. Rosenthal had no such authority. Under these circumstances, the court feels the prudent course of action to take (see 22 NYCRR 1200.4[a][DR 1-103[a]) is to refer this matter to the Grievance Committee for the Tenth Judicial District. Accordingly, a copy of this decision will be forwarded to the Grievance Committee for the Tenth Judicial District to take whatever action it deems appropriate.

This decision constitutes the decision of the court.

Dated: *March 20, 2007*

HON. PAUL J. BAISLEY, JR.

HON. PAUL J. BAISLEY, JR. J.S.C.