

Polly N. Passonneau, P.C. v Cassens

2007 NY Slip Op 31480(U)

June 1, 2007

Supreme Court, New York County

Docket Number: 0600583/2005

Judge: Barbara R. Kapnick

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

PRESENT: KAPNICK
Justice

PART 12

POLLY N. PASSOUENEAU, P.C.

INDEX NO. 600583/05

MOTION DATE _____

- v -
ROBERT CASSENS

MOTION SEQ. NO. 06

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 is decided in accordance with the accompanying memorandum decision.

FILED
JUN 06 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 6/1/07

[Signature]
BARBARA R. KAPNICK

Check one: FINAL DISPOSITION NON FINAL DISPOSITION

JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 12

-----X
POLLY N. PASSONNEAU, P.C.,

Plaintiff,

-against-

ROBERT CASSENS and ALEXANDRA CASSENS,

Defendants.

-----X
BARBARA R. KAPNICK, J.:

DECISION/ORDER
Index No. 600583/05
Motion Seq. No. 006

FILED
JUN 26 2007
NEW YORK
CLERK'S OFFICE

This action arises out of an agreement between the plaintiff law firm and a former client to transfer ownership of a vehicle.

Plaintiff now moves for an order permitting her to amend the Verified Complaint to: (i) eliminate the first and second causes of action seeking specific performance and a declaratory judgment, as moot; and (ii) grant plaintiff the right to add two additional causes of action alleging fraud in the inducement and the remedy of punitive damages, based on plaintiff's claim that defendants never intended to comply with their agreement and wrongfully induced plaintiff to offer services and make repairs to the car at plaintiff's expense.

Defendants argue in opposition that plaintiff should not be granted leave to amend the Complaint because they contend that the proposed Amended Verified Complaint contains "false allegations with no substance".

It is well settled that

[l]eave to amend a pleading is freely granted absent prejudice or surprise resulting directly from any delay in asserting the proffered claim (CPLR § 3025(b); additional citations omitted).

The party opposing a motion to amend a pleading must overcome a presumption of validity in the moving party's favor, and demonstrate that the facts alleged and relied upon in the moving papers are obviously unreliable or insufficient to support the amendment (citation omitted). The determination of whether to allow the amendment is committed to the court's discretion, and the exercise of that discretion will not be overturned absent a showing that the facts supporting the amendment do not support the purported claim or claims (citations omitted). However, where a court concludes that an application for leave to amend a pleading clearly lacks merit, leave is properly denied (citation omitted).

Peach Parking Corp. v. 346 West 40th Street, LLC, __ A.D.3d __, 2007 WL 1289420 (1st Dep't).

In the instant case, defendants cannot demonstrate any undue prejudice or surprise resulting directly from plaintiff's delay in asserting the additional causes of action.¹

In addition, while defendants dispute the factual allegations contained in the proposed Amended Verified Complaint and specifically deny making any false representations to plaintiff in connection with the agreement, defendants have failed to overcome the presumption of validity in plaintiff's favor.

¹ Polly N. Passonneau, Esq., the president and sole shareholder of plaintiff, claims to have only recently learned many of the facts on which the new causes of action are based.

Accordingly, based on the papers submitted and the oral argument held on the record on April 25, 2007, plaintiff is granted leave to amend her Complaint in order to assert the additional causes of action.

However, punitive damages are generally "not recoverable for an ordinary breach of contract as their purpose is not to remedy private wrongs but to vindicate public rights". Rocanova v. Equitable Life Assurance Society of The United States, 83 N.Y.2d 603, 613 (1994).

In the instant case, the proposed Amended Complaint fails to allege that the wrong to plaintiff "not only rose to the level of 'such wanton dishonesty as to imply a criminal indifference to civil obligations' (citation omitted), but was also part of a pattern of similar, publicly directed misconduct." Rocanova v. Equitable Life Assurance Society of The United States, supra at 614. See also, Rivas v. Amerimed USA, Inc., 34 A.D.3d 250 (1st Dep't 2006), lv. to app. denied in part, disp'd in part, 8 N.Y.3d 908 (2007).

Therefore, that portion of plaintiff's motion seeking to assert a claim for punitive damages against the defendants is denied.

Plaintiff shall serve the Amended Verified Complaint, in accordance with this decision, upon the defendants within 30 days of entry of this Order.

Defendants shall then serve an Answer or otherwise move with respect to the Amended Verified Complaint within 20 days of said service.

A status conference shall be held in IA Part 12, 60 Centre Street, Room 341 on September 12, 2007 at 11:00 a.m.

This constitutes the decision and order of this Court.

Date: June /, 2007



Barbara R. Kapnick
J.S.C.

BARBARA R. KAPNICK
J.S.C.

FILED
JUN 06 2007
NEW YORK
COUNTY CLERK'S OFFICE