

Ping Lee v City of New York
2007 NY Slip Op 32269(U)
July 17, 2007
Supreme Court, New York County
Docket Number: 0105228/2007
Judge: Karen Smith
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. KAREN SMITH

PART 62

Index Number : 105228/2007

LEE, PING

vs

CITY OF NEW YORK

Sequence Number : 001

DISMISS ACTION

INDEX NO. _____

MOTION DATE 7/19/07

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to 3 were read on this motion to ~~for~~ dismiss the complaint

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1

2

3

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is denied with leave to resubmit
in accordance with the attached memorandum decision and order

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

FILED
JUL 25 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 7/19/07

KSS
HON. KAREN SMITH J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 62

-----X

PING LEE,

Plaintiff,
-against-

Index no.: 105228/2007
Motion seq.: 001
Motion date: 07/19/2007

CITY OF NEW YORK (Water Board, Health Dept., Building Dept., Sanitation Dept. Etc.), JOSEPH WHALEY, FLORENCE WHALEY STACEY GUYS (WHALEY) and JONATHAN GUYS, GERMAN GUYS and JORDAN GUYS, AKIM WHALEY, THE STAPELS CORP., CHAMP WILLIAM and JOICE WHALEY,

Defendants.

DECISION AND ORDER

-----X

PRESENT: KAREN S. SMITH, J.S.C.:

Defendants', the City of New York, New York City Water Board, New York City Department of Health and Mental Hygiene, New York City Department of Buildings and New York City Department of Sanitation (hereafter collectively referred to as the "City Defendants") motion to dismiss the complaint herein as against them is denied with leave to resubmit upon proper papers.

Plaintiff (hereafter referred to as "Lee") brought this plenary action seeking damages for allegedly improperly issued and assessed water charges, health and safety violations, building violations and sanitation violations as well as various private complaints Lee alleges as against the individual defendants herein and Staples The Office Superstore East, Inc (sued here as "The Staples Corp").

The City Defendants now move, pursuant to CPLR §3211, to dismiss the complaint

herein as against them contending that the complaint fails to state a cause of action against them. Additionally, the City Defendants contend; 1) the allegations against them stem from various administrative actions, 2) judicial review of such actions must be in the form of CPLR Article 78 Proceedings, 3) the four month statute of limitations for such proceedings has expired with respect to each of the administrative actions Lee now seeks to challenge and 4) Lee has failed to exhaust his administrative remedies with respect to the administrative actions Lee now seeks to challenge. The City Defendants also argue: “[t]o the extent that plaintiff is alleging a “conspiracy” against him by City defendants, this allegation is absurd” (Affirmation in support of Motion to Dismiss, Paragraph 46). In their motion, the City Defendants also point out that Lee has previously engaged in what has been determined to be frivolous litigation resulting, *inter alia*, in an order of the New York State Supreme Court for the County of Queens which enjoined Lee; “...from commencing or continuing any litigation involving any of the parties and their respective counsel as to the claims herein” (Exhibit E to the moving paper, Order dated July 24, 2002). In the process of the prior litigation, Lee has also been sanctioned \$10,000.00 in addition to an award of legal fees to the other parties to that litigation.

Lee opposes the City Defendants’ motion but fails to rebut the points presented in the City Defendants’ motion papers.

The City Defendants appear to be correct in their contention that the bulk of Lee’s claims against them stem from administrative proceedings and that judicial review of these proceedings must be undertaken through CPLR Article 78 proceedings which must be commenced within four months of their accrual. The City Defendants, however, have failed to present any admissible evidence as to when Lee’s claims accrued. The City Defendants offer only; 1) an

affirmation of their counsel, 2) references to “records” in the various municipal agencies involved herein and 3) copies of computer print-outs without any explanation of their origin or any affidavit by an individual with any first hand knowledge of the authenticity of the “records”. In order to rely upon computer generated records, the City Defendants need to demonstrate that the records satisfy the requirements of CPLR § 4518 and §4539. Additionally, there has been no showing, by any individual with first hand knowledge, of when the administrative determinations became final and binding upon Lee, which would constitute the beginning of the four month statute of limitations. Finally, Corporation Counsel’s characterization of the Lee’s allegations with respect to a conspiracy by the City Defendants as “absurd” is not a sufficient basis to grant a § 3211 motion to dismiss. Corporation counsel does not specifically identify which of Lee’s allegations constitute attempts to state a claims against the City Defendants founded upon conspiracy. Instead, the City Defendants seek dismissal of such claims “[t]o the extent that ...” Lee asserts them¹.

It may also be that some or all of Lee’s current claims constitute an attempt to re-litigate claims which have already been decided against him in the Queens action. At this juncture, without further information, this court is unable to determine whether any of Lee’s current claims have or should have been considered in the Queens litigation, are thus *res judicata*, and whether Lee is subject to further sanctions for asserting them in spite of the order of the Supreme Court for Queens County directing that Lee not pursue any further litigation of those claims other than

¹ The Court also notes that Corporation Counsel did not submit a copy of Lee’s summons and complaint with its moving papers. But for the fact that one of the private defendants has made a motion similar to the City Defendants’ motion and included the pleading with its papers, it would have been necessary for the court to requisition the county clerk’s file to obtain and review the pleading.

appeal. Accordingly, it is;

ORDERED that the instant motion to dismiss this matter as against the City Defendants is denied with leave to resubmit upon proper papers within thirty days of the date hereof, and it is further;

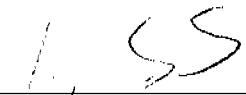
ORDERED that, in the event that the City Defendants fail to submit a new CPLR §3211 motion within said thirty day period and they have not already answered the complaint herein, they shall answer the complaint within the thirty day period, and it is further;

ORDERED that counsel for all parties shall appear for a discovery conference in this matter on September 13, 2007 at 2:00 PM in Room 103 at 80 Centre Street, New York, New York.

The foregoing constitutes the decision and order of this court.

Dated: July 17, 2007

ENTER:



Hon. Karen S. Smith, J.S.C.

FILED
JUL 25 2007
NEW YORK
COUNTY CLERK'S OFFICE