

Mulley v Cohane

2007 NY Slip Op 33109(U)

October 2, 2007

Supreme Court, Greene County

Docket Number: 0020070/0761

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF GREENE

Roger Mulley,

Plaintiff,

-- against --

Kevin G. Cohane,

Defendant.

**Decision and
Order**

**Index No.: 07-0076
RJI No.: 19-07-3157**

Supreme Court, Greene County, All Purpose Term, September 7, 2007
Assigned to Justice Joseph C. Teresi

APPEARANCES:

KEVIN G. COHANE
Defendant Pro Se
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Windham, NY 12496

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Attorneys for Plaintiff
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TERESI, J.:

Plaintiff, Roger Mulley, has filed this Motion to Strike pursuant to CPLR § 3024(b) in response to Pro Se Defendant Kevin G. Cohane's Answer, dated July 17, 2007. Defendant opposes the motion.

Plaintiff initiated litigation against Defendant for rent he alleges the Defendant owes.

Defendant rented Plaintiff's private home at 50 Mill Street in Windham, New York. The exact amount of rent paid by Defendant is disputed by the parties. Plaintiff alleges that Defendant paid \$18,775 in rent and owes \$22,550, while Defendant alleges that he paid \$18,818 in rent and does not owe any more money because of an alleged agreement with the Plaintiff where the Defendant would pay rent, but would get that money back at the end of the year when he would buy the home from the Plaintiff.

Plaintiff filed a complaint on May 25, 2007. This motion arises from Defendant's Answer, filed on July 17, 2007. Plaintiff claims that numerous statements in Defendant's Answer are scandalous and prejudicial to Plaintiff's case and to Plaintiff personally and professionally, and argues that the Answer in its entirety should be stricken from the record.

CPLR § 3024(b) allows a party to strike from any pleading matter that is scandalous or prejudicial. Scandalous matter is "both immaterial and reproachful or capable of producing harm without justification." Dong Wook Park v. Michael Parke Dori Group, Inc., 12 Misc.3d 1182, 824 N.Y.S.2d 761, WL 1982595, 4 (N.Y. Sup. 2006). Prejudicial matter is that which "impairs a substantial right of a party or causes harm to the party and is not necessary to the parties pleading." Id., at 5. In determining whether matter is prejudicial, the phrase "not necessary to the parties pleading" has been construed by the courts as meaning irrelevant to the controversy. Wegman v. Dairylea Co-op, Inc., 50 A.D.2d 108, 111, 376 N.Y.S.2d 728, 728 (4th Dep't 1975). Matter that is unnecessary to the pleading, prejudicial, and irrelevant with no relation to the controversy, is unnecessarily inserted and should be stricken to preserve the other party's right to a fair trial. Schachter v. Massachusetts Protective Ass'n, 30 A.D.2d 540, 540, 291 N.Y.S.2d 128, 129 (2nd Dep't 1968).

Here, Defendant's Answer is a web of allegations and assertions containing both scandalous and prejudicial statements that are immaterial, unjustifiably harmful to the Plaintiff, and irrelevant to the controversy. The controversy here is regarding rent money for which Plaintiff is suing Defendant. Defendant's Answer, however, contains immaterial statements concerning topics that have no bearing on this case, such as the health and academic success of Defendant's children since their mother passed away, and Defendant's involvement with Little League, the Board of Education, and the Windham Mountain Adaptive Sports Center. This information does not relate in any way to the question of whether rent is owed to the Plaintiff and it is both immaterial and irrelevant to the controversy.

Defendant's Answer contains information that is unjustifiably harmful to the Plaintiff. Defendant describes Plaintiff as "a liar, a cheat" and "of dubious character." He also mentions that the Plaintiff is "strange" and "saw the golden goose...and greed took precedent over his honor and integrity." Defendant's Answer makes references to the Plaintiff's divorce and states that he "left his wife and family" and "unilaterally and unexpectedly" moved out of his family's home, all of which is wholly immaterial to this case. Defendant also suggests that Plaintiff was cheating on his taxes and "defrauding the IRS." This statement is not only irrelevant speculation, but it is unjustifiably harmful to the Plaintiff by insinuating he is involved in criminal activity.

These statements, in addition to being irrelevant to the controversy, are only included to place the Plaintiff in an unfavorable light, and their sole purpose is to unjustifiably attack the Plaintiff's character, which is not in question in the present controversy. Defendant's Answer is filled with prejudicial and scandalous opinions and unsubstantiated speculation that is both immaterial and irrelevant, whereas an answer should contain facts set out to prove a defense or to

deny facts alleged in the complaint. The purpose of an answer is to notify the complaining party of admissions, denials and defenses made in response to the complaint. Sullivan v. Sullivan, 180 Misc.2d 433, 436, 689 N.Y.S.2d 378, 380 (Suffolk Co. 1999).

Prior decisions have found that some prejudicial material can be admitted where the material is so “inextricably intertwined” with the allegations that they become a material part of the allegation. Hewitt v. Maass, 41 Misc.2d 894, 898, 246 N.Y.S.2d 670, 670 (Suffolk Co. 1964). In addition, CPLR § 3026 states that pleadings may be liberally construed and defects will be ignored as long as a substantial right of a party is not prejudiced. Id., at 897, 246 N.Y.S.2d at 672. Here, however, the prejudicial and scandalous matter in the Defendant’s Answer is immaterial to the controversy and not necessary for the Defendant’s claim. Furthermore, the scandalous statements, those asserting, for example, that Plaintiff is a cheat, of dubious character, and defrauding the IRS, are prejudicial to the Plaintiff and cannot be ignored. This material, which could unjustifiably harm the Plaintiff in this lawsuit and in his personal and professional life, must be stricken.

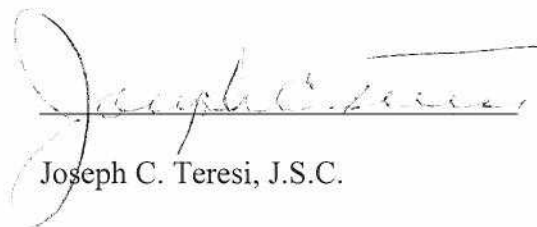
While CPLR § 3024(b) addresses striking only portions of a pleading, which contain prejudicial and/or scandalous matter, the Defendant’s Answer here has prejudicial and/or scandalous matter threaded throughout the entire Answer. It would be inefficient for this court to sift through and strike individual words, phrases, and sentences that are prejudicial or scandalous from the Defendant’s Answer. The prejudice, however, that these statements have the potential to create is too harmful to allow them to remain in the Answer. Therefore, the Plaintiff’s Motion to Strike the Answer in its entirety is granted.

Defendant is directed to file a new answer within 20 days of this decision.

All papers, including this Decision and Order, are being returned to the Plaintiff. The signing of the Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

SO ORDERED!

Dated: October 2, 2007
 Albany, New York



Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Defendant's Answer, dated July 17, 2007.
2. Notice of Motion of Roger Mulley, dated August 3, 2007 with Attached Exhibit D.
3. Defendant's Reply to Notice of Motion, dated August 30, 2007.
4. Plaintiff's Reply Affirmation, dated August 31, 2007.