

Tsabbar v 17 E. 89th St. Tenants, Inc.
2008 NY Slip Op 30716(U)
March 10, 2008
Supreme Court, New York County
Docket Number: 0108901/2005
Judge: Joan Madden
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. JOAN A. MADDEN PART 11
Justice

ZION TSABBAR,

Petitioner,

- v -

**17 EAST 89th STREET TENANTS, INC.,
et al,**

Respondents.

INDEX NO. : 108901/05

MOTION DATE:

MOTION SEQ. NO.: 007

MOTION CAL. NO.:

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits --- Exhibits _____

Replying Affidavits _____

FILED
MAR 13 2008
NEW YORK COUNTY CLERK'S OFFICE

Cross-Motion: [] Yes [x] No

Petitioner Zion Tsabbar ("Tsabbar"), who is pro se, moves for an order (1) granting this court's recusal, (2) dismissing, annulling and/or vacating judgments of the court, (3) ordering a new hearing and a trial for wrongful eviction, and (4) staying an further executions of the orders of this court pending a decision on this motion and appeals.

Tsabbar is a dentist, who, beginning in November 3, 1995, held a proprietary lease for apartment 1D ("the Apartment") at a cooperative apartment building located at 17 East 89th Street, New York, NY ("the co-op") out of which he operated a private dental practice. A

dispute between Tsabbar and the co-op arose concerning Tsabbar's subletting of his Apartment without the co-op's written approval in violation of the parties' lease ("the Lease"). After approximately six years of litigation, which included multiple actions filed by Tsabbar in an attempt to relitigate issues decided against him, on April 8, 2003, the co-op obtained an order restoring it to possession of the Apartment occupied by Tsabbar, and finding Tsabbar liable for use and occupancy (i.e. maintenance charges), attorney's fees, and rent arrears.¹ Tsabbar subsequently moved to "vacate" the court's decision and order dated April 8, 2003. By decision and order dated April 14, 2004, the court denied the motion and wrote that "as it appears that Tsabbar has exhausted all viable avenues of litigation concerning this matter, he shall be required to obtain permission from the court before bringing any further litigation related to this matter in this court."

Tsabbar's appeal of the April 8, 2003 decision and order was denied by the Appellate Division, First Department. See 17 East 89th Street Tenants, Inc. v. Tsabbar, 6 AD3D 309 (1st Dept 2004). In addition, by decision and order dated February 16, 2006, the Appellate Division, First Department denied Tsabbar's motion to vacate certain prior orders which dismissed his claims as barred by the doctrines of res judicata and collateral estoppel. Tsabbar v. Auld, 26 AD2d 233 (1st Dept 2006). The court described Tsabbar's motion to vacate as "the most recent installment in his protracted, highly litigious and uniformly unsuccessful quest to sublet his professional cooperative apartment without board approval" and imposed sanctions against Tsabbar in the amount of \$5,000 for frivolous conduct, together with costs for attorneys' fees and

¹The full history of the litigation is set forth in this court's decision and order in this proceeding dated June 2, 2006, and it will not be repeated here.

reasonable expenses as were reasonably incurred by respondents in responding to the motion.

Id., at 234.

Tsabbar sought relief in federal court and also moved to vacate the order and appealed it, but was unsuccessful. He was subsequently ejected from the Apartment, which was sold at auction to a third party on December 22, 2005, and a new proprietary lease and shares of stock in the Apartment were issued. The net proceeds of the sale totaled \$690,000, and the money placed in escrow, and the funds were subsequently distributed to Tsabbar and to the co-op for attorney's fees, outstanding maintenance and other expenses, in accordance with this court's decisions and orders dated June 2, 2006 and October 2, 2007. The issue as to the amount of reasonable attorney's fees was referred to Special Referee Leslie Lowenstein to hear and report with recommendations.

On December 1, 2007, this court signed Tsabbar's order to show cause seeking an order (1) directing that Special Referee Lowenstein recuse himself from a hearing regarding the amount of reasonable attorneys' fee owed by petitioner to the respondent cooperative apartment, (2) annulling a prior judgment against him, and (3) granting the recusal of this court from this matter.

On the December 4, 2007, petitioner faxed a letter to the court stating that he would not appear at the December 5, 2007 return date of his order to show cause or at the attorneys' fees hearing scheduled for later that day since "the court has abrogated my right and basically denied the order to show cause to recuse Referee Lowenstein from the hearing," and that he was moving by order to show cause in the Federal Court for Eastern District of New York "to stop the state proceedings."

On December 5, 2007, the federal action referred to in Tsabbar's December 4, 2007 fax, was dismissed by order of Federal District Court Judge Dora L. Irizarry for lack of subject matter jurisdiction. Judge Irizarry also wrote that "it appears that [Tsabbar] seeks to raise the very issues he previously raised before the United States District Court, Southern District of New York, which is turn, raise issues already decided by the state courts. [Tsabbar] is advised that, even if this Court had subject matter jurisdiction over this action, such litigation evidently aimed at vexing the defendants would be dismissed under res judicata principles."

The attorney for co-op appeared on the December 5, 2007 return date for Tsabbar's order to show cause, and this court noted on the record that Tsabbar did not appear and was technically in default, and the order to show cause should be denied on this ground. By decision and order dated December 7, 2007, the court found not only that the order to show cause should be denied based Tsabbar's non-appearance, but also considered and rejected the relief sought in the order to show cause on its merits.

On December 12, 2007, Tsabbar served the instant motion which, like the order to show cause, seeks this court's recusal and an order vacating and annulling the prior judgments of this court. Upon receiving service of the motion, the co-op wrote a letter to Tsabbar requesting that he withdraw the motion, asserting that the motion seeks the same relief as that denied by the court in its December 7, 2007 decision and order, and provides no additional law or facts upon which the court might reconsider its earlier denial of the motion, and that failure to withdraw the motion would result in the co-op seeking sanctions. Tsabbar refused to withdraw the motion, and the co-op, in addition to opposing the motion, cross moves for sanctions.

At oral argument of the motion and cross motion, this court stated on the record that all

[*5] further motions by either party in connection with this proceeding or other matter related to the dispute between the co-op or Tsabbar must be made by order to show cause.²

Tsabbar's motion is completely without merit, and represents another attempt to relitigate matters that have been previously determined against him. First, as this court wrote in its December 7, 2007 decision, since there is no basis for this court's recusal on the ground of Judiciary Law § 14 by reason of interest or consanguinity, the court is the sole arbiter of whether recusal is warranted. Schwartz v Schwartz & Schlacter, 188 AD2d 285 (1st Dept 1992); see also, EECP Centers of America, Inc. v Vasomedical Inc., 277 AD2d 349 (2d Dept 2000). In this case, recusal is not appropriately granted based on the unsupported allegations of prejudice and bias and other purported conduct described in Tsabbar's papers on this motion. Moreover, Tsabbar's remaining requests for relief, which relate to matters that have been previously litigated and decided against Tsabbar, are denied as without any basis in law or fact and as barred by the doctrines of res judicata and collateral estoppel.

Next, given the frivolous nature of Tsabbar's motion, particularly in light of the court's recent denial of similar relief, and the multiple decisions rejecting Tsabbar's efforts to relitigate these matters previously been decided against him, including the Appellate Division decision imposing sanctions against him, the cross motion should be granted to the extent of imposing "costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees." See NYCRR §130.1.1 (a). Here, based on the affirmation of the co-op's counsel, Steven N. Bliviss, Esq., the court finds that \$510.00 is an appropriate amount to

²On the return date of the motion, Tsabbar served this court with papers in a federal action in which this court has been named as a defendant, and the court accepted service outside the courtroom.

reimburse the co-op for reasonable attorney's fees and expenses incurred in opposing the Tsabbar's motion, and writing the letter to Tsabbar seeking to have him withdraw the motion. This amount is based on the statements in the affirmation of the co-op's counsel, Steven N. Bliviss, Esq that his billing rate is \$255 per hour which the court finds reasonable and the finding by the court that two hours is a reasonable amount of time for the work performed. In addition, pursuant to CPLR 8202 this court awards motion costs of \$100 for a total amount of \$610.00.

Accordingly, it is

ORDERED that Tsabbar's motion is denied; and it is further

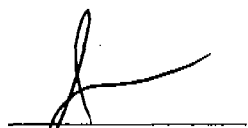
ORDERED that the co-op's cross motion for costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorneys' fees resulting from conduct determined to be frivolous is granted to the extent of directing that Tsabbar pay the sum of \$610 to the co-op's counsel ; and it is further

ORDERED that written proof of such payment shall be provided to the Clerk of Part 11 within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that upon Tsabbar's failure to make such payment, the co-op may apply to the court ex parte for the entry of a money judgment in said amount.

ORDERED that all further motions by either party in connection with this proceeding or other matter related to the dispute between the co-op or Tsabbar must be made by order to show cause.

DATED: March 10, 2008



J.S.C.

FILED
MAR 13 2008
NEW YORK
COUNTY CLERK'S OFFICE

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION