Pavia v Couri
2008 NY Slip Op 30726(U)
March 11, 2008
Supreme Court, New York County
Docket Number: 0124625/2002
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.

SCANNED ON 3/13/2008
[* 1]

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

PRESENT: Madden
Justice

PART 1(

Pavia, George

INDEX NO. 124625/02

MOTION DATE 11-29-07

- v -

MOTION SEQ. NO. 017

Cavi, James + Marlene

MOTION CAL. NO.

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

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: Yes No ✓

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum Decision + order.

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

FILED
MAR 13 2008
NEW YORK
COUNTY CLERK'S OFFICE

Dated: March 11, 2008

J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

---X

GEORGE PAVIA and ANTONIA PAVIA,

DECISION AND ORDER

Plaintiffs,

-against-

INDEX NO. 124625/02

JAMES COURI and MARLENE COURI,

Defendants.

---X

JAMES COURI,

Plaintiffs,

-against-

INDEX NO. 101709/03

18 EAST 73RD STREET CORP., 18 EAST 73RD STREET CO., GEORGE PAVIA, ANTONIA PAVIA, JULIAN PAVIA , PHILLIPA PAVIA, JAY ITKOWITZ, SHARI LASKOWITZ and ITKOWITZ & HARWOOD,

Defendants.

FILED
MAR 13 2008
COUNTY CLERK'S OFFICE
NEW YORK

---X

JOAN A. MADDEN, J.:

Defendant James Couri ("Couri"), who is pro se,[1] moves by order to show cause for an order (1) permitting him to bring an Article 78 proceeding and three plenary actions containing allegations relating to the above captioned consolidated actions (hereinafter the prior Pavia/Couri litigation), (2) clarifying or modifying this court's order entered on October 12, 2004 ("the October 2004 order") to allow Couri to proceed with claims alleged to have occurred after the October 2004 order; and (3) clarifying or modifying this court's October 2004 order so as not to include any claim that was precluded from being litigated by court orders dated January 30,2007[2]

---

[1]Although he is pro se, Couri has extensive litigation experience representing himself and has been involved in multiple law suits. His experience is evident from the manner in which he has conducted this litigation, including the numerous motions he has made in these actions. Couri's wife, defendant Marlene Couri, has an attorney, Jon Paul Robbins, Esq. of McLaughlin & Stern, LLP.

[2]While Couri refers to a February 23, 2007 decision and order, that is the date the January 30, 2007 decision and order was entered.

and April 12, 2007. The City of New York, Department of Buildings, and individual employees of the Department of Buildings ("together "the City defendants"), George Pavia and Antonia Pavia (together "the Pavias") and Kenneth Gomez, Esq. ("Gomez") who are variously named as respondents and/or defendants in the proceeding and/or the three actions oppose the motion.

Background

The Pavias own a brownstone at 18 East 73rd Street, New York, NY (the "Building") , and reside there. Several small apartments in the brownstone are leased to non-family members, including Apartment 3B ("the Apartment") which the Pavias leased to Couri pursuant to two-year lease dated September 27, 1996.

These consolidated actions arise out of a dispute in which the Pavias sued, inter alia, to eject defendants Couri and his wife, Marlene Couri (together "the Couris") on the grounds that Couri engaged in conduct constituting a nuisance.[3] The Pavias alleged, inter alia, as detailed below, that Couri sent over 200 faxes to George Pavia's office falsely accusing him of immoral and unethical behavior, sent about 40-50 similar types of faxes directed at a tenant who lived above Couri to the tenant's various workplaces, and sent unfounded complaints and disparaging letters to professional organizations about George Pavia and various attorneys involved in the litigation.

Couri countered that the Pavias initiated the ejectment action as retaliation for his commencement of proceedings before New York State Division of Housing and Community Renewal ("DHCR") and sued the Pavias for claims based on breach of the warranty of habitability, fraud in the inducement, and malicious prosecution. Specifically, Couri alleged,

---

[3]The Pavias also sued for breach of the lease alleging that Couri failed to comply with lease provisions requiring him to give the Pavias access to the Apartments for repairs (here in connection with a water leak) and to provide a set of keys and the access code to the Apartment.

inter alia, that the Pavias breached the warranty of habitability in connection with a glass enclosed area (hereinafter "the glass enclosure") which he claimed constituted a dangerous condition; that the Pavias fraudulently induced him to enter into the lease based on misrepresentations regarding the use of the glass enclosed area; and that George Pavia maliciously prosecuted him when he had Couri arrested for aggravated harassment and harassment in connection with numerous faxes and telephone calls.

After a three week trial, on May 9, 2007, the jury rendered a verdict in favor of the Pavias and against Couri. The jury found that Couri's conduct constituted a nuisance, rejecting Couri's claim that the Pavias brought the action in retaliation for Couri's initiation of the DHCR proceeding. The jury also found that Couri breached the lease in not providing the Pavias access to the Apartment to repair a water leak and in not providing the Pavias with a set of keys and the access code to the Apartment. As to Couri's claims, the jury found against Couri and for the Pavias, determining that the Pavias did not breach the warranty of habitability, nor did the Pavias commit fraud in the inducement in connection with the lease, nor did George Pavia maliciously prosecute Couri in connection with Couri's arrest for sending numerous harassing letters by fax to George Pavia and others and for making numerous harassing telephone calls to the Pavias.

At trial, in support of their claims for nuisance, the Pavias presented evidence of conduct directed at the Pavias and at a tenant who leased the apartment above the Couris. This evidence indicated that sometime during 2000, the Pavias' relationship with the Couris deteriorated,[4] and that Couri began a course of conduct which resulted in the commencement of this action seeking his ejectment.

---

[4]George Pavia claimed that the relationship deteriorated after he refused to sell Couri the Apartment or the Building, while Couri claimed it resulted from the DHCR proceedings he initiated.

The Pavias testified that Couri made repeated and numerous telephone calls to them of a harassing nature, frequently as early as 6:00 am, made repeated and groundless complaints regarding the Apartment, and engaged in conduct which interfered with their quiet enjoyment of their apartment. Most significantly, the Pavias presented evidence that Couri, in connection with their landlord tenant dispute, faxed about two hundred letters in which he described George Pavia in demeaning and derogatory language, accusing him, without substantiation, of illegal and unauthorized acts and threatened to, and did, complain to agencies and/or investigative bodies about the unsubstantiated allegations. Couri faxed these letters to George Pavia, who is an attorney, at his law firm, as well as faxing certain letters to the *New York Times*, *The New York Law Journal*, the Disciplinary Committee of the Appellate Division, First Department, the State Inspector General, and the Internal Revenue Service.

Evidence was also introduced regarding similar conduct by Couri directed at the tenant in the apartment above the Couris. There was evidence that Couri made numerous telephone calls to the tenant complaining about activities in his apartment and evidence that he faxed 40-50 letters to the tenant's various workplaces containing unsubstantiated allegations and derogatory language.[5]

Additionally, evidence was introduced that Couri faxed a similar type of letter containing derogatory and demeaning language and unsubstantiated allegations about Antonia Pavia to a well-known New York hospital where Couri mistakenly believed she was employed.

The Pavias argued that not only were the number and content of the faxes outrageous, but that by sending the faxes to George Pavia's law firm and to the tenant's places of business, Couri

---

[5]Evidence was also introduced that Couri sent harassing letters to the tenant's lawyers, and made unsubstantiated complaints about the tenant's lawyers to the First Department disciplinary committee.

intended to harass, threaten and intimidate the Pavias and the tenant to accede to Couri's demands regarding his complaints about his tenancy.

Based on the jury's verdict in the Pavias' favor, on May 23, 2007, an order and judgment was entered (i) awarding possession of the Apartment to the Pavias within 10 days of entry, (ii) directing Couri to deliver a full and complete set of keys to the Apartment and the access code for an alarm system installed for the Apartment to Pavias' attorney, (iii) vacating an interim partial abatement of rent granted to Couri before trial [6] and awarding the Pavias the sum of $16,659.06, which includes interest as calculated by the Clerk from September 1, 2006, (iv) directing Couri to pay rent or use and occupancy for the months of March, April and May 2007, in the sum of $4,320.76[7] , which includes interest as computed by the Clerk from April 1, 2007,and (v) directing Couri to pay use and occupancy in the amount of $1,820 per month beginning on June 1, 2007. The total amount of the judgment, including costs and disbursements, is $22,259.89.

Couri appealed the verdict. By order dated August 9, 2007, the Appellate Division, First Department denied Couri's motion for a stay of the judgment and order of eviction, and shortly thereafter, Couri was evicted from the Apartment. Subsequently, by order dated January 2, 2008, the First Department dismissed Couri's appeal after Couri failed to pay the necessary charges and

---

[6]Before trial, the court held two extensive hearings regarding certain violations issued by the Department of Building involving the glass enclosed area. After the first of these hearings, the court in its decision dated March 8, 2006, found that even if Couri succeeded at trial, he would only be entitled to a partial rent abatement, and granted an interim rent abatement until the issues regarding the enclosed glass area were determined at trial. The abatement was in the amount of $400.40 per month beginning in February 2004.

[7]This sum represents rent or use and occupancy at a rate of $1,419.60 per month, excluding the $400.40 abatement awarded in the proceeding paragraph of the order and judgment.

expenses for the trial transcript. Based on the record before this court it appears that to date Couri has not paid any part of the judgment.

Couri's course of conduct in litigating the prior Pavia/Couri litigation mirrored the course of conduct underlying the nuisance. Specifically, Couri repeatedly made unsubstantiated allegations regarding those involved in the litigation, including the court, the attorneys representing the Pavias, and employees of the Department of Buildings. Furthermore, like his campaign of sending harassing faxes, during the litigation Couri sent numerous faxes and letters and made numerous ex parte telephone calls to the court,[8] opposing counsel, employees of the Department of Buildings and others.

Moreover, Couri violated orders of this court requiring him to pay use and occupancy or rent. Specifically, Couri failed to pay use and occupancy from November 2002 until 2006, despite a court order directing him to deposit the money with the clerk of the court.[9] It was only after this court directed that Couri pay directly to the Pavias' attorney past and future use and occupancy based on a partial interim abatement, and then only after he was threatened with eviction, that Couri complied with the court's order. In addition, throughout the course of the prior Pavia/Couri litigation, Couri made numerous and repetitive motions in attempt to relitigate the issues already decided by this court.

---

[8]The number and content of these communications was such that it was necessary to issue several orders barring Couri from ex parte communications and requiring that, with the exception of telephone calls to the Clerk of Part 11 regarding scheduling matters, that all applications and communications were to be made by motion.

[9]Significantly, pursuant to a motion by the Pavias, the court found that Couri wilfully and intentionally disobeyed a court order to pay use and occupancy and ordered a hearing to determine whether he was financially able to make the payments. In opposition papers, Couri alleged that he was unable to pay, and at the hearing Couri alleged he could not go forward due to his health.

During the litigation after Couri commenced two additional actions involving overlapping allegations, to prevent Couri from engaging in abusive and wasteful litigation tactics, the court directed in the October 2004 order, that "Couri shall not bring any further actions arising out of or in anyway related to this dispute, including actions against any new defendants, without seeking permission from this court by way of order to show cause."

Despite the October 2004 order, following the jury verdict, and without seeking court permission, Couri commenced an Article 78 proceeding (Couri v. City of New York, et al; Index No. 108558/07) and three plenary actions (Couri v. City of New York; Index No. 106513/07; Couri v. Gomez; Index No. 108133/07, Couri v. Pavia: Index No. 113568/07) which contained allegations related to the prior Pavia/Couri litigation.

Couri v. City of New York, et al; Index No. 108558/07, challenges actions of Department of Buildings as to notices of violations issued in connection with the glass enclosure which were the basis for Couri's claims in the prior Pavia/Couri litigation that the Pavias breached the warranty of habitability and fraudulently induced him to enter into the lease. Couri v. City of New York; Index No. 106513/07, is an action against the City defendants, including Department of Building employees who testified in connection with the prior Pavia/Couri litigation, and the Pavias. The complaint seeks damages from defendants based on allegations of fraud, negligence and reckless acts in connection with DOB's actions involving granting of a permit to the Pavias to legalize the glass enclosure, the issuance of violations to the Pavias and the interpretation of the Zoning Resolution as it relates to the structure. With respect to the Pavias, the complaint alleges, *inter alia*, that the Pavias conspired with their architect to interfere with the Department of Buildings' investigation, to circumvent the rules and procedures of the relevant agencies, and failed to cure the hazardous and defective condition of the Apartment, including mold. Notably,

before trial, the court held two extensive hearings regarding certain violations issued by the Department of Buildings regarding the glass enclosed area, and issued two detailed decisions dated March 8, 2006 and April 12, 2007.

Justice Karen Smith dismissed both Couri v. City of New York, et al; Index No. 108558/07 and Couri v. City of New York; Index No. 106513/07, based on Couri's failure to obtain this court's permission before bringing the proceeding and action as required by this court's October 2004 order.[10]

Couri v. Gomez ; Index No. 108133/07 is an action against the Pavias and their lawyer, Kenneth Gomez and various unnamed defendants based on an allegedly fraudulent scheme to, inter alia, remove Couri from the Apartment, and cover-up various hazardous conditions in the Apartment.[11] In her decision and order dated November 9, 2007, Justice Smith found that the allegations against the Pavias "relate to or arise out of the landlord tenant dispute between Pavia and Couri which has already been litigated before Justice Madden [and that] [n]ot only does Justice Madden's prior order preclude the institution of this action without her permission, all issues involved in the landlord tenant relationship between Pavia and Couri which could or should have been raised in prior litigation are res judicata." Accordingly, Justice Smith dismissed the complaint in its entirety against the Pavias. Justice Smith also dismissed the complaint against Gomez to the extent its allegations related to or arose out of the prior Pavia/Couri litigation, but permitted the action to proceed against Gomez as to those allegations

---

[10]Justice Smith dismissed the Article 78 proceeding and action by orders dated October 11, 2007 for the reasons stated on the record. These orders were subsequently amended in light of the court reporter's failure to transcribe the oral argument or the court's decision and to indicate that dismissal was warranted based on Couri's failure to obtain this court's permission before bringing the proceeding and action in accordance with the court's October 2004 order.

[11]The complaint also alleged that the 79-year old George Pavia assaulted Couri.

completely unrelated to the prior Pavia/Couri litigation, conditioned upon Couri amending his complaint within 30 days of entry of the decision and order to assert only those claims which related to Gomez which are completely unrelated to the prior Pavia/Couri litigation and to serve an amended pleading on Gomez.[12]

Couri commenced Couri v. Pavia: Index No. 113568/07 by Summons with Notice indicating that "[t]he nature of the action is: violations of RPAPL Article 8 Section 853[13], Fraud, Tort, unlawful ejectment, witness tampering, perjury, doctoring of evidence, bribery, malicious prosecution, breach of warranty of habitability, libel, slander, and intentional infliction of emotional distress."

Discussion

"[P]ublic policy mandates free access to the courts...[however] a litigious plaintiff pressing a frivolous claim can be extremely costly to the defendant and can waste an inordinate amount of court time...." Sassower v. Signorelli, 99 AD2d 358, 359 (2d Dept 1984). Thus, the courts have limited pro se litigants access to the courts when those litigants are found to abuse judicial process. See Spremo v. Babchik, 155 Misc2d 796, 803 (Sup Ct, Queens Co. 1992), aff'd as modified, 216 AD2d 382 (2d Dept), lv denied, 86 NY2d 709 (1995), cert denied, 516 U.S. 1161 (1996). Under such circumstances, injunctive relief prohibiting a pro se plaintiff from commencing any further actions or proceedings without prior judicial approval is appropriately directed. Spremo v. Babchik, 216 AD2d at 168; see also, Muka v. New York State Bar Association, 120 Misc2d 897 (Sup Ct Tompkins Co. 1983)(while the right to represent oneself

[12]Couri has filed a complaint against Gomez based on Justice Smith's order.

[13]Section 853 of the RPAPL provides for treble damages in the event someone is removed from real property in forcible manner.

"is basic to our system of justice" such right is not unlimited); Kane v. City of New York, 468 FSupp 586, 590 (SD NY 1979)(noting that "[w]hen it becomes clear that the courts are being used as a vehicle of harassment by a 'knowledgeable and articulate experienced pro se litigant' ...the issuance of an injunction is warranted.").

In this case, given Couri's repetitive and harassing litigation tactics as described above, the October 2004 order properly enjoined Couri from commencing any action arising out of, or in anyway related to, his dispute with the Pavias, including actions against any new defendants without court permission. Moreover, the Appellate Division, in an unrelated case, found that Couri engaged in a similar course of harassing conduct and struck Couri's complaint based on his failure to comply with discovery orders. It wrote that:

> Plaintiff pro se has engaged in frivolous, defamatory and prejudicial conduct that includes multiple actions against [defendant] and his counsel, ex parte communications with the court and the Special Referee, voluminous and unnecessary motion practice, unresponsive papers disparaging the Special Referee, defendants, their attorney and their accountant, and invidious attacks on [defendant's] professional standing by way of communications with his colleagues and other third parties.

3-3-08, NYLJ, p. 27, co.4, ___ AD2d ___ (1st Dept 2008).

In addition, contrary to Couri's argument, the October 2004 order is not subject to any time or other limitations based on the court's subsequent decisions, including those dated January 30, 2007 and April 12, 2007, and this court declines Couri's request to impose any such limitations.

It must also be noted that Justice Smith's November 9, 2007 decision and order dismissing the complaint in Couri v. Gomez; Index No. 108133/07, against the Pavias and in part against Gomez on the grounds of res judicata, and permitting certain allegations against Gomez

which are completely unrelated to the prior litigation to go forward constitutes the law of the case. As a decision issued by a court of concurrent jurisdiction, the decision dismissing the causes of action in the complaint on res judicata grounds is not subject to this court's review. Thus, as to these causes of action, the issue regarding permission to commence new litigation is moot.

Remaining at issue is whether Couri should be given permission to bring the Article 78 proceeding and the other two plenary actions identified in Couri's order to show cause. A review of the allegations in the Article 78 proceeding entitled Couri v. City of New York, et al; Index No. 108558/07, reveals that it challenges the actions of Department of Buildings regarding the glass enclosure which, as indicated above, were the subject of two extensive hearings and resulted in the issuance of two detailed decisions dated March 8, 2006 and April 12, 2007. In an apparent effort to circumvent the fact that the issues regarding the glass enclosure have been already litigated and decided, Couri focuses the allegations in the proceeding on the latest notice of violation regarding the glass enclosure, which was issued by the Department of Buildings on March 30, 2007, NOV 34572037Z, after the second hearing was held, but prior to trial.

However, the NOV is for "work without a permit" in connection with the glass enclosure. This court has already determined that this type of violation does not provide a basis for relief. Specifically, in its detailed decision and order dated April 12, 2007, the court declined to stay the trial of these consolidated actions based on the issuance of this NOV on the grounds that like the earlier violations issued regarding the glass enclosure, the March 2007 violation did not impact on the Couris' health, safety and welfare, and thus was not material and relevant to the Couri's use and occupancy of the Apartment and/or to the issue of an alleged breach of the warranty of habitability. See Park West Management Corp. v. Mitchell, 47 NY2d 316, 327 (1979). In any

event, as the Couris are no longer tenants in the Apartment, they lack standing to pursue issues as to violations in the Apartment. Accordingly, the Article 78 proceeding is without merit as the issues underlying it have been previously determined, and the proceeding is therefore dismissed.

Next, the events described in the complaint filed in Couri v. City of New York, George Pavia and Antonio Pavia, Index No. 106513/07 occurred before the jury verdict against Couri and arise out of or relate to issues that have been extensively litigated in this court, and are therefore barred by the doctrine of res judicata. In addition, to the extent that the action contains allegations against the City defendants based on the March 30, 2007 NOV, as indicated above in connection with dismissal of the Article 78 proceeding, such allegations do not provide a ground for relief.

Moreover, insofar as Couri seeks to assert a claim for damages caused by mold in the glass enclosed area, such claim is without merit. As support for his right to pursue such a claim, Couri relies on this court's decision and order dated January 30, 2007, in which court denied Couri request for discovery on the eve of trial regarding allegations of mold in the Apartment, but stated in a footnote that such denial was without prejudice to Couri's right to commence a new action based on these allegations. The court notes, however, that since the issuance of that decision and order, Couri has been evicted from the Apartment. It must also be emphasized that Couri's complaint in that litigation contained a single sentence alleging that there was mold in the basement, not in the Apartment. Moreover, in its decision and order dated June 22, 2007, in rejecting Couri's post-verdict request for, *inter alia*, a hearing regarding the existence of mold in the Apartment, the court wrote that:

> Couri submits no expert affidavit or other proof to substantiate his allegations related to the mold and provides no basis for attributing the mold to acts or omissions of [the Pavias]. It thus would appear

> that the allegations relating to the mold are consistent with a pattern of abusive litigation tactics employed by Couri to intimidate his adversaries and potential witnesses, through the repetitive assertion of unsubstantiated accusations and claims.

Here, as substantiation for his claims, Couri submits an uncertified inspection report from the DHCR based on inspections of the glass enclosure which apparently were made in June and July 2007, and which indicates that there is water damage to the walls and "a black substance on the window frames." Even assuming arguendo that these reports were accurate and could provide a basis for finding that there was mold in the glass enclosure that was due to the actions or omissions of the Pavias, the Couris do not have a claim for damages based on the mold since they alleged in their complaint and have maintained throughout the prior Pavia/Couri litigation and testified that they abandoned the glass enclosure in February 2004.

Accordingly, Couri's request for permission to commence Couri v. City of New York, George Pavia and Antonio Pavia, Index No. 106513/07 is denied, and the complaint is dismissed as without merit and/or barred by the doctrine of res judicta.

Likewise, Couri v. Pavia: Index No. 113568/07, which was commenced by Summons with Notice, must be dismissed as it appears from the notice that the claims sought to be litigated are related to or arise out of the same allegations which provided the basis for the prior Pavia/Couri litigation. Moreover, in view of the October 2004 order, Couri cannot seek to commence an action by Summons with Notice, as this procedure does not afford the court with a sufficient basis for evaluating the proposed claims.

Finally, the court admonishes Couri that if he commences any further actions without first seeking permission from this court, or seeks permission to commence actions which are substantially similar to the proceeding and actions considered on this motion, or otherwise

frivolous, he will be sanctioned.

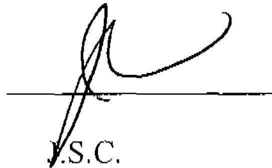
Conclusion

In view of the above, it is

ORDERED that Couri's motion is granted only to the extent of permitting Couri to pursue the claims in Couri v. Gomez; Index No. 108133/07, against Gomez consistent with the Justice Karen Smith's November 9, 2007 decision and order; and it is further

ORDERED that Couri v. City of New York, George Pavia and Antonio Pavia, Index No. 106513/07; Couri v. City of New York, et al; Index No. 108558/07 and Couri v. Pavia; Index No. 113568/07 are dismissed.

DATED: March 11, 2008



J.S.C.

FILED
MAR 13 2008
NEW YORK
COUNTY CLERKS OFFICE