

R&R Capital LLC v Merritt

2008 NY Slip Op 31352(U)

May 7, 2008

Supreme Court, New York County

Docket Number: 0604080/2005

Judge: Charles E. Ramos

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
Charles Edward Ramos 53

PRESENT: _____ PART _____

Index Number : 604080/2005
R&R CAPITAL LLC
vs
MERRITT, LINDA
Sequence Number : 013
OTHER RELIEFS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

_____ 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
accompanying memorandum decision and order.

FILED

MAY 13 2008

COURT

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

Dated: 5/7/08

CHARLES E. RAMOS

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:COMMERCIAL DIVISION

-----X
R&R Capital LLC and FTP Capital LLC,

Plaintiff,

Index No. 604080/05

-against-

LINDA MERRITT a.k.a. LYN MERRITT,

FILED

Defendants.

MAY 13 2009

-----X
Charles Edward Ramos, J.S.C.:

COUNTY CLERK

This Court is confronted in motion seq. no. 013 with a motion to recuse itself from this case.¹ This motion is supported and opposed by affidavits and affirmations that make it clear that someone is lying. The only bright spot in this affair, is that the allegations of improper conduct do not touch upon this Court's actions.

This Court is compelled to deny the motion. The allegation is that a non-party, an attorney, allegedly confessed that he engaged in improper communications with this Court regarding this case. In his sworn affirmation, that allegation is flatly denied by the attorney who allegedly made the statement. In addition, by this our decision, this Court also denies that the alleged communication took place. There have been no *ex parte* communications with this Court on any subject regarding this

¹ This action involves a number of Limited Liability Corporations whose members are the plaintiffs and the individual defendant. The plaintiffs intended that these LLC's were to be managed by the defendant acting on the instructions of her boyfriend, an acquaintance of the plaintiffs who was a convicted felon. When the Federal Courts directed the plaintiffs' acquaintance back to prison, the plaintiffs commenced this and other actions to wrest control of the LLC's from the defendant to themselves.

case.

The absence of any allegation that this Court actually said or did anything improper resolves the issue of recusal. No judge may recuse based upon wrongful acts allegedly committed by some other person. Because this Court holds no bias for or against any party to this dispute, but has expressed in our determination of the issues put before us who shall be the prevailing side, there is no basis upon which recusal may be granted. In any event, the substantive issues have already been decided in this case in favor of the defendant and against the plaintiffs who now seek this Court's recusal. All that remains is fixing reasonable attorney's fees.

The affidavits seeking recusal state that a neutral mediator (himself a prominent attorney) appointed by the parties (not one of the Court's own mediators), told the plaintiffs in a "moment of remorse," that he had been asked by the attorney for the defendant to attempt to, and actually did, "fix" this case against the interests of the plaintiffs. The details of this supposed confession are set forth in affidavits of members of the family which own the plaintiff entities and who seek this Court's recusal. They offer no other evidence on this issue other than their own claims of this remarkable confession. The plaintiffs assert that this Court's recusal is required because of their allegations. They cite no authority for the proposition that an unsubstantiated allegation of impropriety warrants recusal. The only authorities they do cite involve actions or statements of

actual bias made by the judge in question. Such allegations are totally absent here.

The allegations of a confession and the underlying facts "confessed" to, are not only denied by the attorney/mediator, but also by the attorney for the defendant who allegedly sought to influence this Court. Perhaps the most significant fact surrounding these allegations is the absence of any factual support from the plaintiffs' own attorneys, present or former.

The accusing affidavits state that three attorneys who at that time represented the plaintiffs in this litigation, were present at the "confession." Those attorneys, one a highly respected retired Judge and two of her colleagues from a prestigious New York law firm, do not now represent the plaintiffs and did not participate in or support this application. Of even greater significance, is that the facts set forth in the alleged confession would constitute admission of criminal activities and/or serious professional misconduct on the part of the attorney/mediator and the defendant's attorney, that would require the plaintiffs' attorneys to notify this Court and the appropriate authorities (the District Attorneys Office, The Commission on Judicial Conduct and the Disciplinary Committee) as required pursuant to Disciplinary Rule DR 1-103.

DR 1-103 provides:

DR 1-103 [1200.4] Disclosure of Information to Authorities.
A. A lawyer possessing knowledge, (1) not protected as a confidence or secret, or (2) not gained in the lawyer's capacity as a member of a bona fide lawyer assistance or similar program or committee, of a violation of DR 1-102 [1200.3] that raises a substantial question as to another

lawyer's honesty, trustworthiness or fitness as a lawyer shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

B. A lawyer possessing knowledge or evidence, not protected as a confidence or secret, concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.

This Court is unaware if the plaintiffs' former attorneys, in fact, notified any authorities. In any event, presumably the plaintiffs' former attorneys will be available to testify in an investigation as to what actually occurred at the mediation conference because the moving deponents have clearly waived any attorney-client privilege by submitting their affidavits in this matter.

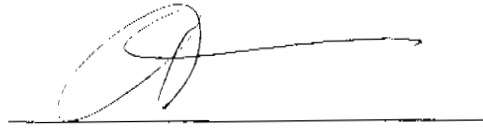
Although this Court certainly has an interest in determining if false affidavits have been submitted by the parties, or if professional misconduct has occurred, there is an overriding and compelling interest to prosecute any crimes that may have been committed and to alert the Commission on Judicial Conduct and the Disciplinary Committee of these serious allegations.

Accordingly, this Court is forwarding this file to the New York County District Attorneys Office on notice to the Administrative Judge of the New York County Supreme Court, Civil Branch, The Commission on Judicial Conduct, the Departmental Committee on Discipline and the Office of Court Administration, together with this Court's strongest possible recommendation that immediate investigations be conducted into the circumstances surrounding these remarkable allegations. In this regard, in

order to preserve the integrity of the impending investigations, this Court has refrained from any communication with the press (yes, they have inquired), any attorney, party or person regarding this motion and the circumstances raised in it, other than our court staff and the Administrative Judge.

This shall constitute the decision and order of this Court.

Dated: May 9, 2008



J.S.C.

CHARLES E. RAMOS

FILED

MAY 17 2008

COUNTY CLERK'S OFFICE
NEW YORK