

Ganpat v Terence Christian Scheurer, P.C.
2008 NY Slip Op 31447(U)
May 20, 2008
Supreme Court, New York County
Docket Number: 0111958/2006
Judge: Barbara Kapnick
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. BARBARA R. KAPNICK

PART 12

Index Number : 111958/2006

GANPAT, PETER

vs

TERENCE CHRISTIAN SCHEURER PC

Sequence Number : 002

DISMISS COMPLAINT

INDEX NO. 111958/06

MOTION DATE _____

MOTION SEQ. NO. 002

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ 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

and cross-motion are decided in accordance with the accompanying memorandum decision.

FILED
MAY 27 2008
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 5/20/08


BARBARA R. KAPNICK^{SC.}

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 12

-----X

PETER GANPAT,

Plaintiff,

-against-

TERENCE CHRISTIAN SCHEURER, P.C.,
TERENCE CHRISTIAN SCHEURER, ESQ.,
and ALISIA RAMLOCHAN,

Defendants.

-----X

DECISION/ORDER
Index No. 111958/06
Motion Seq. No. 002

Defendants Terence Christian Scheurer, P.C. and Terence Christian Scheurer, Esq. (the "Scheurer defendants") formerly employed defendant Ramlochan as a secretary and later as a legal assistant.

Ramlochan and her then-boyfriend, plaintiff Peter Ganpat, purchased a timeshare in Orlando, Florida which they held jointly. Sometime thereafter, Ramlochan prepared a Quitclaim Deed transferring the property into her sole ownership. Defendant Scheurer denies any involvement in drafting the document.¹

Defendant Scheurer notarized the document, which contained the signatures of both plaintiff and defendant Ramlochan, on May 10, 2005, even though plaintiff was not physically present.

Plaintiff subsequently filed an order of protection against defendant Ramlochan. Plaintiff also filed a complaint against

¹ Defendant Scheurer did, however, provide legal counsel to plaintiff and his father regarding a personal injury matter in 2001.

defendant Scheurer with the Department of State, claiming that the deed was prepared and filed without his knowledge or consent. Defendant Scheurer admitted wrongdoing and his notary public commission was suspended for a six-month period.

Plaintiff thereafter commenced the instant action, asserting claims (i) against the Scheurer defendants for alleged legal malpractice in preparing and filing the deed, for breach of fiduciary duty, and for personal injuries, shock, pain and mental anguish he sustained as a result of defendant Scheurer's professional malpractice; (ii) against all the defendants for negligent infliction of mental and emotional distress, conspiracy and fraud; and (iii) against the Scheurer defendants for personal injuries, shock, pain and mental anguish he sustained as a result of defendant Scheurer's professional malpractice in notarizing his signature and as a result of defendant's conspiracy to commit fraud.

Plaintiff Peter Ganpat originally moved (under motion sequence number 001) for a default judgment against all the defendants. He eventually withdrew the motion as against the Scheurer defendants and then as against defendant Ramlochan.

The Scheurer defendants cross-moved to dismiss plaintiff's causes of action as against them, but while the motions were pending, the plaintiff served an Amended Complaint.

After consultation with all counsel, the defendants agreed to accept service of the Amended Complaint and by Decision/Order dated September 5, 2007, this Court denied the cross-motion with leave to all the defendants to answer or otherwise move as to the Amended Complaint within 20 days.

The Amended Complaint seeks to recover damages against the Scheurer defendants for alleged legal malpractice in preparing and filing the deed (first cause of action); for breach of fiduciary duty (second cause of action); for personal injuries, shock, pain and mental anguish he sustained as a result of defendant Scheurer's alleged negligence (third cause of action); for violation of Executive Law § 130 ("Appointments of notaries public") (sixth cause of action); for negligence in notarizing a forged signature (ninth cause of action) and violation of Judiciary Law § 487 (tenth cause of action).

In addition, plaintiff seeks to recover damages against all the defendants for conspiracy to convert his property for their own use (fourth cause of action), fraud (fifth cause of action), conspiracy to commit fraud (seventh cause of action), and negligent infliction of mental and emotional distress (eighth cause of action).

The Scheurer defendants now move for an order pursuant to CPLR § 3211 dismissing plaintiff's causes of action against them.

Plaintiff opposes the motion and cross-moves for partial summary judgment on the issue of liability against the Scheurer defendants on the ground that Scheurer's notarization of a signature outside of plaintiff's presence constituted notary public misconduct. See, Executive Law § 135 which provides, in relevant part, that "[f]or any misconduct by a notary public in the performance of any of his powers such notary public shall be liable to the parties injured for all damages sustained by them."

Based on the papers submitted and the oral argument held on the record on March 26, 2008, this Court finds that there was no attorney-client relationship between plaintiff and Scheurer.

Accordingly, plaintiff's first cause of action sounding in legal malpractice and second cause of action for breach of fiduciary duty are hereby dismissed.

That portion of the motion seeking to dismiss the third cause of action which seeks to recover for personal injuries, shock, pain and mental anguish allegedly sustained as a result of Scheurer's purported negligence is denied, as this Court finds that there are triable issues of fact as to whether said damages arise out of this incident. Likewise, those portions of the motion seeking to dismiss the eighth and ninth causes of action sounding in negligence are denied.

The fourth cause of action which seeks to recover damages for conspiracy to commit conversion of plaintiff's property is dismissed against the Scheurer defendants on the grounds that (i) at no time has plaintiff's property been in the possession of Scheurer, nor has Scheurer ever exercised or attempted to exercise a right of ownership over the property; and (ii) plaintiff has failed to establish any common scheme or plan between Scheurer and defendant Ramlochan to deprive plaintiff of his property.

In addition, the fifth cause of action for fraud and the seventh cause of action for conspiracy to commit fraud must be dismissed against them on the ground that there is no allegation Scheurer knowingly misrepresented a material fact for the purpose of inducing plaintiff to rely upon it or that plaintiff relied upon such a misrepresentation to his detriment.


That portion of the motion seeking to dismiss the tenth cause of action based on an alleged violation of Judiciary Law § 487 is dismissed since: (i) the statute applies only to actions taken by an attorney in his capacity as an attorney, and, in the instant case, Scheurer was acting solely in his capacity as a notary; and (ii) Scheurer's notarization of the Quitclaim deed was not directed at the court or performed in the course of a pending judicial proceeding.

The cross-motion by plaintiff for partial summary judgment is granted with respect to the sixth cause of action since there is no dispute that Scheurer violated the Executive Law by notarizing the document outside of plaintiff's presence. Accordingly, plaintiff is entitled pursuant to Executive Law § 135 to recover against the Scheurer defendants for any damages he can prove he sustained as a result of defendant Scheurer's actions.

This action is removed to the Civil Court, New York County, pursuant to CPLR § 325(d) by separate Order issued simultaneously herewith.

This constitutes the decision and order of this Court.

Dated: May 20, 2008


Barbara R. Kapnick
J.S.C.

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NEW YORK

**BARBARA R. KAPNICK
J.S.C.**