

**Jones v Kurnides**

2010 NY Slip Op 33263(U)

November 18, 2010

Supreme Court, New York County

Docket Number: 106819/10

Judge: Eileen A. Rakower

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

HON. EILEEN A. RAKOWER

PRESENT

PART 15

Index Number : 106819/2010

JONES, CHARLES

vs

KURNIDES, MICHAEL

Sequence Number : 001

SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

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

1

2

3

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

FILED

NOV 23 2010

DECIDED IN ACCORDANCE WITH NEW YORK COUNTY CLERK'S OFFICE  
ACCOMPANYING DOCUMENTS

Dated: 11/18/10

HON. EILEEN A. RAKOWER

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

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 5

-----X  
CHARLES JONES,

Plaintiffs,

- against -

MICHAEL KURNIDES  
d/b/a MARINE DESIGNS/SURVEYS,

Defendants.

-----X  
HON. EILEEN A. RAKOWER

Index No.  
106819/10

**DECISION  
and ORDER**

Mot. Seq.

**FILED**

NOV 23 2010

NEW YORK  
COUNTY CLERK'S OFFICE

*Pro se* plaintiff Charles Jones (“Plaintiff”) brings this action against Michael Kurnides d/b/a Marine Designs/Surveys (“Defendant”) alleging fraud and negligence in connection with Plaintiff’s purchase of a yacht from non-party United Yokefellow Ministry (“UYM”) for the sum of \$125,000. Plaintiff alleges in his Complaint that Defendant inspected the yacht for UYM on November 10, 2009 and thereafter completed a survey of the yacht dated November 24, 2009. In short, the survey found the yacht to be in good working condition, and free of any deficiencies requiring immediate correction. Plaintiff alleges that, relying on Defendant’s survey, he purchased the yacht from UYM. However, Plaintiff alleges that upon taking possession of the yacht, he discovered that “the yacht had no operating waste tank and suffered from a severe leak in the stuffing boxes for the rudders.” Plaintiff alleges that “an inspection by a competent marine surveyor” would have disclosed these deficiencies; and that Plaintiff would not have purchased the yacht if he had been aware of the actual condition of the yacht.

Defendant now moves for summary judgment. Defendant submits an affidavit and an attorney’s affirmation in support of his motion. Defendant claims that Plaintiff lacks privity of contract since, as Plaintiff states in his Complaint, Defendant was retained by UYM to perform the inspection, and not Plaintiff. In addition, Defendant argues that, even assuming that Plaintiff was in privity of contract with Defendant, his claim nevertheless fails due to the disclaimer in his survey, which provides that

This report is based upon visual inspection of the vessel and not rendered as a warranty, but an opinion of the above signed surveyor as to the vessel and its' [sic] equipment. Latent defects not found without opening or removing engines, tanks, plumbing or other parts of the vessel are not covered by this survey. Our liability for any loss or damage arising out of this inspection and report shall be limited to the fee paid for services rendered herein. This surveyor does not warrant or guarantee the performance of the vessel or its' [sic] machinery and accordingly shall suffer no liability for errors or omissions or for not being able to properly evaluate parts as stated above. Acceptance of this report shall constitute agreement of [sic] the above.

Plaintiff opposes Defendant's motion and cross-moves (1) to amend his complaint to add UYM as a defendant; and (2) for sanctions against Defendant. In opposition to Defendant's motion for summary judgment, Plaintiff claims that he is in privity with Defendant because he was billed by Defendant for the inspection, and did pay Defendant \$310 for said inspection. Plaintiff annexes an invoice dated November 30, 2009 from Defendant for "Inspection survey of a 1975 Pacemaker 62 Motoryacht." Plaintiff also annexes a letter dated August 24, 2010 from UYM to Plaintiff, stating that "John G. Hermiston ordered the survey from Michael Kurnides marine surveyor and the surveyor was paid by John G. Hermiston." Mr. Hermiston was the prior owner of the yacht who, according to Defendant's reply affirmation, donated the yacht to UYM.

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law. That party must produce sufficient evidence in admissible form to eliminate any material issue of fact from the case. Where the proponent makes such a showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains requiring the trier of fact to determine the issue. The affirmation of counsel alone is not sufficient to satisfy this requirement. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). In addition, bald, conclusory allegations, even if believable, are not enough. (*Ehrlich v. American Moninger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255 [1970]). (*Edison Stone Corp. v. 42nd Street Development Corp.*, 145 A.D.2d 249, 251-252 [1st Dept. 1989]).

Here, the Court finds that Defendant is entitled to summary judgment. Even assuming *arguendo* that Plaintiff was in privity of contract with Defendant, liability for the defects complained of by Plaintiff is expressly disclaimed by Defendant in his survey. Plaintiff states in his opposition that "gaining access to the rudder stuffing boxes would require removal of the two diesel fuel tanks that were located in front of the two stuffing boxes." The disclaimer similarly disclaims latent defects not found without accessing the yacht's plumbing.

Lastly, Plaintiff's cross-motion to amend his complaint to add a third cause of action against UYM is granted pursuant to CPLR §3025.

Wherefore it is hereby

ORDERED that defendant Michael Kurnides' motion for summary judgment is granted and the complaint is dismissed in its entirety as against said defendant; and it is further

ORDERED that Plaintiff's motion to amend is granted, and the Verified Complaint and the proposed amendments annexed to the cross-motion papers shall be deemed by the Court to constitute Plaintiff's Amended Complaint; and it is further

ORDERED that Plaintiff shall serve an Amended Summons and Complaint on defendant United Yokefellow Ministry within 20 days of service of a copy of this Order with notice of entry thereof; and it is further

ORDERED that the caption be amended to reflect the dismissal and amendment, and that all future papers filed with the court bear the following amended caption:

-----X

CHARLES JONES,

Plaintiff,

- against -

UNITED YOKEFELLOW MINISTRY,

Defendant.

-----X

and it is further

[\*5]  
ORDERED that Plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who is directed to mark the Court's records to reflect the change in the caption herein.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: November 18, 2010



EILEEN A. RAKOWER, J.S.C.

**FILED**  
NOV 23 2010  
NEW YORK  
COUNTY CLERK'S OFFICE