

Riskin v Karp

2010 NY Slip Op 33425(U)

December 9, 2010

Supreme Court, New York County

Docket Number: 401508/08

Judge: Martin Shulman

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

PRESENT: HON. MARTIN SHULMAN

PART 1

Justice

Rislin

INDEX NO.

401508/08

- v -

MOTION DATE

MOTION SEQ. NO.

002

Karp

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 ... A-G

Notice of Cross-Motion +
Answering Affidavits — Exhibits (see seq. DDL)

Replying Affidavits (see seq. DDL)

PAPERS NUMBERED

1,2

3

4,5

Cross-Motion: Yes No


Upon the foregoing papers, it is ordered that this motion is decided in
accordance with the attached decision and order.

FILED

DEC 14 2010

NEW YORK
COUNTY CLERK'S OFFICE

Dated: DEC 9 2010



Martin Shulman, J.S.C.

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 1

-----X
MARTIN RISKIN and GRACE RISKIN,

Plaintiffs,

-against-

HON. JEROME KARP, aka JERRY KARP,

Defendant.
-----X

Index No. 401508/08
Met. Seq. 002
FILED

DEC 14 2010

NEW YORK
COUNTY CLERK'S OFFICE

MARTIN J. SHULMAN, J.:

Defendant moves to dismiss the complaint pursuant to CPLR 3211 (a) (7) or for summary judgment pursuant to CPLR 3212. In the alternative, defendant moves pursuant to DR 5-102 (A) to disqualify plaintiffs' counsel, Ravi Batra, Esq., on the ground that he is a necessary witness. In addition, defendant moves for an award of costs and sanctions pursuant to 22 NYCRR 130-1.1. Plaintiffs cross-move pursuant to CPLR 3126 (3) for an order striking defendant's answer for failing to provide court-ordered discovery and, upon the striking of said answer, for a default judgment on liability and an inquest on damages.

The complaint's allegations arise from a long-term, on-going litigation battle between non-party Ted Singer and plaintiff Martin Riskin over various mortgaged parcels of real property located in Brooklyn. Defendant Karp is accused of acting as "illegal shadow counsel" (Complaint, ¶¶ 9, 14, 28) for Singer in his litigations with Riskin, at a time when Karp was conflicted from acting as attorney of record for Singer in a mortgage foreclosure action by Riskin, entitled *Martin Riskin v Bobby Belinda*, Kings County Index No. 48555/98, over which Kings County Supreme Court Justice

Larry D. Martin presided. The alleged conflict of interest stems from the fact that Karp defended Judge Martin in connection with misconduct charges by the New York State Commission on Judicial Conduct (“CJC”) brought in January of 2001 and concluded on June 6, 2002. Complaint, ¶¶ 15 and Ex. 1. Plaintiffs allege that “this representation of Justice Martin by Karp during 2000-2001 made Karp unable to serve as Singer’s ‘attorney of record’ or ‘shadow counsel’ from July 25, 2000¹ to the present time.” Complaint, ¶¶ 15.

Karp allegedly renders or rendered legal services to Singer and the payment for those services are or were “actively disguised”:

“as ‘rent’ to evade the ethical bar, pierce the requisite independence, impartiality and integrity of the judicial function, as well as impeding the self-policing function of the profession and its various organs charged with maintaining the high standard of integrity of the legal profession and public confidence in the Third Branch by cloaking [Karp’s] untenable misconduct as Singer’s illegal shadow counsel.”

Complaint, ¶¶ 14. Karp is accused of being “Singer’s illegal orchestra leader, finding, advising or supervising Singer’s 18 lawyers” (*id.*, ¶¶ 23), in connection with Singer’s “polygamous” and “harassing” lawsuits against the Riskins (*id.*, ¶¶ 50).

On July 25, 2000, Singer filed an order to show cause seeking to intervene in *Riskin v Belinda* based upon his alleged interest in the mortgage being foreclosed. Sol Mermelstein, Esq. represented Singer on this application. Shortly after filing the motion, by notice dated September 12, 2000, Singer withdrew the motion before Riskin responded. Complaint, Ex. 5. Batra, as Riskin’s attorney, contended that the

¹ This is the date on which Singer filed a motion by order to show cause seeking permission to intervene in *Riskin v Belinda*. Complaint, ¶¶ 4.

intervention motion was frivolous and filed a motion for sanctions against Mermelstein and Singer nine months later. Judge Martin heard oral argument on September 25, 2001 and reserved decision. *Id.* That motion remained pending for at least four years (*id.*), and was eventually denied.

The complaint in this action alleges that Karp called Batra in early 2001 and “falsely asserted” that Karp had been contacted by Singer, but that Karp had to decline the case due to a conflict of interest. Complaint, ¶ 11. This statement was allegedly false, because Karp was secretly representing Singer and accepting payment for his services in the form of rent. *Id.*, ¶ 14.

“Karp’s illegal shadow counsel status” was allegedly revealed in January of 2005, when another of “Singer’s legal ‘shadow counsel,’ attorney Robert Muir unwittingly ‘outed’ Hon. Jerome M. Karp as Singer’s ‘referring attorney,’ and hence memorialized Karp’s illegal shadow counsel status.” Complaint, ¶ 18. As support for this statement, the complaint references an affirmation from Robert Allan Muir, Jr., Esq. dated January 12, 2005 in the case *Singer v Riskin*, Kings County Index No. 15812/01 and filed in support of Muir’s motion to be relieved as Singer’s counsel. *Id.*, Ex. 3. Muir states that when he was hired in 2004, Singer had requested Muir to reduce his normal retainer by \$10,000 and this request “was repeated by the referring attorney, Jerome Karp, Esq.” *Id.*, Ex. 3; Muir Affirm., ¶ 6.

The complaint alleges that, within days of receiving the Muir affirmation, Karp contacted Batra and suggested a meeting to discuss if all of Singer’s lawsuits against Riskin could be settled. Complaint, ¶ 20. Karp allegedly faxed “a note of his intentions

and attorney-status for Singer, with a 2/2/05 letter of authority from Singer to Karp for such purpose, thereby documenting, and confirming his foul and tortious conduct.” *Id.*, ¶ 21. Riskin refused to participate in the meeting, and the complaint alleges that Karp was “very unhappy and tried, on more than one occasion [sic] via telephone calls, to cause a settlement-meeting.” *Id.*, ¶ 22.

On July 25, 2005, Batra wrote a letter to the Administrative Judge of Kings County, the Hon. Neil Firetog, regarding *Riskin v Belinda*, responding to a letter from Singer’s attorney complaining about Judge Martin’s conduct. Singer’s attorney had complained that Judge Martin was favoring Batra and/or his client, plaintiff Riskin. Complaint, Ex. 5. Batra’s responsive letter raises “the issue of ‘Karp-shadow counsel.’” *Id.*, Ex. 6. Judge Firetog responded to these letters on August 9, 2005, indicating that he would not interfere in a pending case. *Id.*, Ex. 9. The sanctions motion was argued again in mid-August 2005. At this time, counsel for Riskin orally moved for Judge Martin to recuse himself, but the application was denied. *Id.*, Ex. 10.

In terms of how the Riskins have been damaged by Karp’s actions, the complaint alleges that: (1) Judge Martin refused to adjourn oral argument on the motion for sanctions in order to permit Batra to appear (Complaint, ¶ 33); (2) Riskin’s August 2005 application to Judge Martin to recuse himself from presiding over *Riskin v Belinda* was denied (*id.*); and (3) Karp has been advising Singer since July 2000 to the present time, and “‘speaking Singer up’ in the legal community without disclosing [Karp’s] status as a paid illegal Shadow Counsel thereby creating an ethical minefield for any person having any dealings with the Singer-litigation onslaught directed at the Riskins” (*id.*, ¶ 37).

Plaintiffs also claim that Karp threw another client “under the bus” before the CJC “to gain an illegal advantage for Singer.” Complaint, ¶¶ 27-31. That other client is identified as former Kings County Supreme Court Justice Richard D. Huttner, who allegedly admitted an offense that the CJC was unable to prosecute, “but would help Karp’s other undisclosed client, Singer, in his multi-million dollar lawsuit by foisting professional embarrassment upon Riskins’ counsel Batra.” *Id.*, ¶ 28. In July 2005, the CJC censured Judge Huttner for not disclosing his social relationship with Batra, as well as fiduciary appointments of Batra, to the other attorneys in a case pending before Judge Huttner where Batra represented two of the three defendants. *Id.*, Ex. 7.

The complaint purports to state causes of action against Karp for violation of Judiciary Law § 487, fraud and deceit, and abuse of process. In support of his motion to dismiss, Karp submits an affidavit in which he avers that Singer was never his client and that he never served as Singer’s attorney, either as attorney-of-record or as a “shadow counsel.” Karp Aff., ¶ 3. He admits he knows Singer and that at some point, Singer sublet space in Karp’s Brooklyn office located at 26 Court Street. *Id.* Karp further admits that in 2001, Singer asked Karp to represent him in litigation with Riskin, but that Karp declined and communicated this to Batra, an attorney Karp has known for many years. Thereafter, Karp recommended that Singer contact Robert Allan Muir, Esq. Karp denies ever supervising or directing Muir’s representation of Singer or the work of any other counsel who represented Singer in his long-term litigation with Riskin. *Id.*

Karp avers that in 2005, Singer approached him again and, at this time, Karp agreed to reach out to Batra to see if the parties were amenable to settlement negotiations. Karp Aff., ¶ 4. Singer and Karp agreed that the latter would act as Singer's agent in attempting to negotiate a settlement. Singer was to pay him \$500 for this service or, in the event of a settlement, \$100,000. Singer and Karp memorialized this arrangement in a letter dated February 5, 2005, attached to the moving papers as Exhibit F. This letter explicitly states that Karp was not acting as Singer's attorney, merely his agent to effect a settlement. Karp contends that he contacted Batra and explained the situation, but Batra refused any attempt to negotiate a settlement. Karp states he earned the \$500 fee and all services on Singer's behalf ended. Karp Aff., ¶ 5.

In opposition to Karp's motion and in support of their cross motion, plaintiffs offer a 72-page affirmation from Batra and an affidavit from Martin Riskin. Batra offers no new insights to the complaint, except for the new allegation that three motions were pending before Judge Martin in July and August of 2001, at the time that Karp was conflicted from representing Singer in *Riskin v Belinda*. Batra contends that all three motions were buried for years and then ultimately denied in Singer's favor, allegedly due to Karp's corrupting influence over Judge Martin. Batra Affirm., ¶ 11. Notably, Batra does not identify these motions, but presumably one was the motion for sanctions against Singer and his counsel Mermelstein for seeking to intervene in that action.

Martin Riskin's affidavit merely repeats the allegations of the complaint, claiming that "Karp has appointed Singer's lawyers from the inception until recently, when he was caught and sued by me as the master manipulator and who has deceived me, and the system of justice with his shenanigans designed to miscarry justice and to torture

me, all to Singer's benefit and his continued receipt of legal fees, which he calls 'rent.'"

Riskin Aff., ¶ 3.

Plaintiffs' first cause of action is based on New York Judiciary Law § 487. The complaint alleges that "Karp is guilty of deceit by serving as Singer's illegal shadow counsel" (Complaint, ¶ 45), damaging the Riskins' due process rights. Karp also is alleged to have deceived the CJC in *Matter of Huttner* by "failing to disclose to his judge-client his conflict of interest a la Singer's civil case." *Id.*, ¶ 46. This cause of action, at paragraph 42, also refers to an award of costs the Hon. Ira Harkavy sua sponte imposed against Batra in July 2002 in the global case, which was affirmed on appeal by the Second Department. *Singer v Riskin*, 2 AD3d 516 (2d Dept 2003). Another sanctions order, this time against a lawyer representing Singer in an unidentified Kings County lawsuit is also referenced as part of this claim. The sanctioned lawyer, Liebie Sternberg, is alleged to be "a fellow occupant in Karp's Suite 1405." *Id.*, ¶ 43. The Riskins seek an award of \$5 million, trebled pursuant to Judiciary Law § 487, and attorneys' fees.

Judiciary Law § 487 provides, in pertinent part, that an attorney who:

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; . . .

* * *

Is guilty of a misdemeanor, and in addition to the punishment prescribed therefor by the penal law, he forfeits to the party injured treble damages, to be recovered in a civil action.

While this statute supports a civil action by a party to a litigation against an attorney appearing in that litigation for any deceit or collusion practiced on either the court or any

party (*Fields v Turner*, 1 Misc 2d 679, 681 [Sup Ct, NY County 1955]; *see also Amalfitano v Rosenberg*, 533 F3d 117, 123 [2d Cir 2008]), there is no precedent for a civil suit against a lawyer who was never attorney of record in any litigation with the plaintiff.

In addition, a claim for treble damages under Judiciary Law § 487 requires allegations that the defendant attorney communicated with and acted to deceive the court in a prior, pending or proposed litigation (*Singer v Whitman & Ransom*, 83 AD2d 862, 863 [2d Dept 1981]), or that the attorney engaged in a chronic and extreme pattern of legal delinquency that proximately caused a party to a pending litigation pecuniary damages (*Kaminsky v Herrick, Feinstein LLP*, 59 AD3d 1, 13 [1st Dept 2008]; *Jaroslawicz v Cohen*, 12 AD3d 160, 160-61 [1st Dept 2004]; *Havell v Islam*, 292 AD2d 210 [1st Dept 2002]; *Hansen v Caffry*, 280 AD2d 704, 705 [3d Dept], *lv denied* 97 NY2d 603 [2001]).

The complaint fails to explain how Karp, who was only conflicted from representing Singer in *Riskin v Belinda* from January 2001 through June of 2002 due to his defense of Judge Martin before the CJC,² deceived the court or Martin Riskin in that litigation or how plaintiffs might have been damaged by Karp's alleged influence over Judge Martin during that time period. The only specific acts of misconduct are related to an order assessing sanctions directly against Batra issued sua sponte by another judge in a different lawsuit, and a \$250 sanction against one of Singer's attorneys of

² In his affirmation in opposition to the motion, Batra admits that the conflict created by Karp's defense of Judge Martin before the CJC only existed "during the time period that [Karp] represented Judge Martin's legal interests." Batra Affirm., ¶ 8.

record in yet another litigation. How the Riskins were damaged by these two orders is not explained. The allegations regarding *Matter of Huttner* and the CJC have nothing to do with the Riskins or the Riskin-Singer litigations, and the suggestion that Karp somehow sought revenge against Batra by failing to adequately represent Justice Huttner are wholly unfounded and irrelevant to this case. Equally unsupported is the claim that Karp intended to deceive "Kings County Supreme Court as a whole, . . ." *Batra Affirm.*, ¶ 63 (c).

Indeed, the complaint's entire factual premise -- that Karp acted behind the scenes as "illegal shadow counsel" to somehow profit from the ongoing Riskin-Singer litigations -- is both factually and legally meritless. Factually, plaintiffs fail to raise a triable issue of fact in response to this summary judgment motion that Karp ever represented Singer with respect to his legal dispute with the Riskins, other than to refer Singer to Muir and Karp's concededly unsuccessful attempt to settle the dispute in 2005. Legally, even if Karp did act as a behind-the-scenes advisor or "shadow counsel" to Singer, there is nothing illegal or even improper about doing so, absent some claim that Judge Martin knew of or acted upon Karp's silent involvement in *Riskin v Belinda* in such a way as to prejudice Riskin's claims. See *People v Stewart*, 230 AD2d 116, 125 (1st Dept 1997) ("the dissent conveniently does not cite to *one* case which makes the use of 'shadow counsel' illegal or a breach of ethics"), *appeal dismissed* 91 NY2d 900 (1998). There are no allegations of improper *ex parte* communications between Karp and Judge Martin regarding *Riskin v Belinda*. The fact that, years after Karp concluded his defense of the judge before the CJC, Judge Martin denied a request for sanctions

against Singer and his attorney of record, Mermelstein, for filing a motion that was voluntarily withdrawn before opposition papers were due, is not evidence of Karp's deceit or collusion.

The second cause of action is for fraud and deceit. It is based on the conversation that both sides agree occurred in early 2001 "when Karp told Batra that he, Karp, was not accepting the case due to his then-undisclosed conflict of interest. . ." Complaint, ¶ 53. The complaint alleges that "Karp, knew this to be false, when he said [sic], and intended to deceive Riskins' counsel, which he did all to Riskins' detriment, for it removed from Batra's consideration Karp's corrupting influence while being the recipient of anti-gravitational decisions at times." *Id.* Again, the Riskins seeks \$5 million in compensatory damages plus punitive damages.

A cause of action for fraud requires plaintiffs to plead "a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages." *Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559 (2009). The claim must also satisfy the CPLR 3016 (b) requirement that the facts constituting the fraud "be stated in detail." The Riskins' complaint fails to allege any affirmative misrepresentation of a material fact by Karp. All plaintiffs allege is that Karp told Batra that he was conflicted from acting as Singer's attorney in *Riskin v Belinda* in early 2001, a statement which both sides agree is a true statement. In addition, assuming that Karp was, in fact, acting as a secret legal advisor to Singer, the complaint fails to allege how the Riskins were actually damaged by Karp's concealment of his alleged role as shadow counsel. The vague and conclusory

allegation that Karp was a corrupting influence on the Riskin-Singer litigation and responsible for “anti-gravitational decisions at times” (Complaint, ¶ 53) does not suffice to plead proximate cause and damages. See also, *Pludeman v. Northern Leasing Systems, Inc.*, 10 N.Y.3d 486 (2008).

The third and final cause of action is for abuse of process. Karp is accused of having “willfully and purposefully abused the judicial function and process, the court’s process and need for truthful answers to the Related Case Question in Request for Judicial Intervention as well as truthful ‘no prior relief has been requested’ when seeking a TRO, and the CJC’s process all to gain an improper advantage against Riskins.” Complaint, ¶ 56. In addition, the complaint alleges that Karp has assisted Singer in submitting perjured documents to the court. *Id.*, ¶ 57.

“Abuse of process has three essential elements: (1) regularly issued process, either civil or criminal, (2) an intent to do harm without excuse or justification, and (3) use of the process in a perverted manner to obtain a collateral objective.” *Curiano v Suozzi*, 63 NY2d 113, 116 (1984), citing *Board of Educ. v Farmingdale Classroom Teachers Assn.*, 38 NY2d 397, 403 (1975). “Process is a ‘direction or demand that the person to whom it is directed shall perform or refrain from the doing of some described act.’ It follows that there must be an unlawful interference with one’s person or property under color of process in order that action for abuse of process may lie.” (*Williams v Williams*, 23 NY2d 592, 596 (1969) (internal citations omitted)). The complaint fails to identify any particular process that Karp caused to be issued, like a subpoena or court order, as a basis for this claim. The vague and unidentified references to: (1) a

Request for Judicial Intervention; (2) the CPLR 2217 (b) statement in an order to show cause application; and (3) “perjured documents,” all of which were presumably signed and filed by other lawyers representing Singer,³ do not suffice to state a valid cause of action for abuse of process by Karp.

For these reasons, defendant’s motion to dismiss the complaint is granted, mooted defendant’s request to disqualify Batra and plaintiffs’ cross motion for discovery sanctions. Parenthetically, even if the complaint were not being dismissed, there would have been no basis to strike defendant’s answer or enter a default judgment against defendant. Defendant did not violate the court’s Compliance Conference Order of October 6, 2009, which directed defendant to “comply” with plaintiffs’ discovery demands by a date certain, by serving discovery responses that contained objections to certain palpably improper demands, such as the name, date of birth and relationship of all persons residing with the defendant for the past 7 years and information concerning Karp’s representation of Judge Martin or Judge Huttner. See *Ledy Gurren Aff.*, Ex. C, at ¶¶ 8, 10, 46, 49-51.

The portion of Karp’s motion for sanctions pursuant to 22 NYCRR 130-1.1 is denied. The court cannot conclude that the complaint is utterly frivolous. For the foregoing reasons, it is hereby

ORDERED that the portion of defendant’s motion to dismiss the complaint and/or for summary judgment is granted and the complaint is dismissed with costs and

³ These allegedly objectionable documents appear to have been filed by Singer’s lawyers in the global case, *Singer v Riskin*, presided over by the Hon. Ira. Harkavy. See *Batra Affirm.*, ¶ 89; *Singer v Riskin*, 304 AD2d 554 (2d Dept 2003).

disbursements to defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the portion of defendant's motion seeking the disqualification of Ravi Batra, Esq. as counsel for the plaintiffs, is denied as moot; and it is further

ORDERED that the portion of defendant's motion seeking an award of sanctions pursuant to 22 NYCRR 130-1.1 is denied; and it is further

ORDERED that plaintiffs' cross motion is denied.

The foregoing is this court's decision and order. Courtesy copies of same have been sent to counsel for the parties.

Dated: New York, New York
December 9, 2010


HON. MARTIN SHULMAN, J.S.C.

FILED

DEC 14 2010

NEW YORK
COUNTY CLERK'S OFFICE

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

PRESENT: HON. PAUL WOOTEN

Justice

PART 7

CHINA BUDDHIST ASSOCIATION

Plaintiff,

INDEX NO. 115804/10

MOTION DATE _____

- v -

MOTION SEQ. NO. 001

XIAO DAN WU

Defendant.

MOTION CAL. NO. _____

PAPERS NUMBERED

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

1

Answering Affidavits — Exhibits (Memo) _____

Replying Affidavits (Reply Memo) _____

Cross-Motion: Yes No

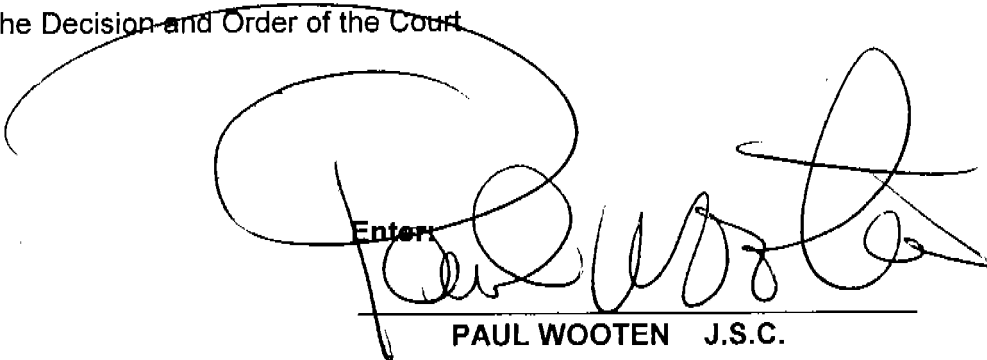
Upon the foregoing, it is

ORDERED that the venue of the above-captioned action is changed from this Court to the Supreme Court, County of Queens, to be heard before Judge Rosengarden where a related case is pending under Index No. 24899-2010; and it is further

ORDERED that the Clerk of this Court is directed to transfer the papers on file in this action to the Clerk of the Supreme Court, County of Queens, upon service of a copy of this order with notice of entry and payment of appropriate fees, if any.

This constitutes the Decision and Order of the Court

Dated: 12-13-10

Enter

PAUL WOOTEN J.S.C.

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