

Pu v Bruni

2010 NY Slip Op 33984(U)

September 16, 2010

Supreme Court, New York County

Docket Number: 113247/06

Judge: Paul Wooten

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. PAUL WOOTEN
Justice

PART 7

RICARD PU,
Plaintiff,

INDEX NO. 113247/06

-against-

MOTION DATE _____

FRANCESCO BRUNI and EVELYN BRUNI,
Defendants.

MOTION SEQ. NO. 005, 006

MOTION CAL. NO. _____

The following papers, numbered 1 to 2 were read on this Motion by plaintiff(s) for an order and Judgment Pursuant to consolidate per CPLR 602 and 3126.

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

Answering Affidavits — Exhibits (Memo) _____

Replying Affidavits (Reply Memo) _____

Cross-Motion: Yes No

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SEP 27 2010
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PAPERS NUMBERED

1

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Motion sequence numbers 005 and 006 are consolidated for disposition.

In motion sequence number 005, the plaintiff Richard Pu (plaintiff) moves, pursuant to CPLR 602 and 3126, for an order consolidating actions number one and two, striking the defendants' pleading in action number one, or, in the alternative, compelling the defendants to provide medical authorizations for their infant son. The defendants Francesco Bruni and Evelyn Bruni cross-move, pursuant to CPLR 3124 and 3126, for an order compelling disclosure of the plaintiff's sleeping disorder, precluding the plaintiff from reasserting a claim for pain and mental suffering and/or intentional infliction of emotional distress, and compelling the plaintiff to appear for a deposition and file a note of issue.

In motion sequence number 006, the plaintiff moves, pursuant to GPLR 3025, for an order granting leave to amend the complaint to assert claims for private nuisance, and for the

breach of two additional by-laws.

The plaintiff is a suspended lawyer (*Matter of Pu*, 37 AD3d 56 [1st Dept], *lv dismissed in part, denied in part* 8 NY3d 877 [2006]). The defendants live in the condominium directly above the plaintiff's apartment. This is action to recover damages for the defendants' alleged failure to comply with a condominium rule requiring that at least 80% of the floor area in the unit be carpeted.

The plaintiff's motion (005) to consolidate is denied. The plaintiff Pu fails to inform the court that a prior motion to consolidate was denied on September 2, 2008 by Justice Stallman (Exhibit B to opposition, and Exhibit M to cross motion).

The plaintiff's motion (005) to dismiss, or for authorizations is also denied. The plaintiff Pu fails to inform the court that his prior motion for authorizations for the medical treatment of the defendants' infant son was also denied by Justice Stallman.

The plaintiff's motion (006) for leave to serve an amended complaint is denied for failure to attach a copy of the proposed second amended complaint (*Goldner Trucking Corp. v Stoll Packing Corp.*, 12 AD2d 639 [2d Dept 1960]). Moreover, the proposed amendment would result in prejudice and surprise, and is palpably insufficient as a matter of law, as there is no claim of intentional conduct by defendants, or of any abnormally dangerous activities (*Copart Indus. v Consolidated Edison Co. of N.Y.*, 41 NY2d 564, 569, *rearg denied* 42 NY2d 1102 [1977]).

Turning to the defendants' cross motion (005), having failed to comply with the properly served discovery demands, and having withdrawn his emotional distress claims, the plaintiff Pu is precluded from reasserting a claim for pain and mental suffering and/or intentional infliction of emotional distress or from offering any evidence of his alleged sleeping disorder. In addition, the plaintiff must appear for his deposition.

Finally, the plaintiff Pu has a long record of abusing the litigation process. In *Pu v*

Charles H. Greenthal Management Corp. (2010 WL 774335, 2010 US Dist LEXIS 21875 [SD NY, 2010]), Pu was found to be frivolous and obstructive by bringing RICO claims for what was "essentially a landlord/tenant dispute." In *Pu v Mitsopoulos* (67 AD3d 561 [1st Dept 2009]), the Court dismissed all claims asserted against the lawyer defendants, who were never plaintiff's clients and were not obligated to him for any legal fees. In *Pu v Bruni* (24 Misc3d 1245[A], 2009 NY Sup Op 51885 [u] [Sup Ct, NY County 2009]) the court found that the plaintiff Pu's behavior was questionable. In *Pu v Greenthal Management Corp.* (2009 WL 648898, 2009 US Dist LEXIS 19554 [SD NY 2009]), the court found that Pu's motion to disqualify was based almost exclusively on prediction and speculation, and that Pu's attempts to present any harm or prejudice were unavailing. Absent any facts, evidence, or argument substantiating prejudice, the court questioned whether the motion was anything more than a litigation strategy. In *Pu v Shahzad* (21 Misc3d 129[A], 2008 NY Sup Op 51997[u], App Term 1st Dept [2008]), the court found no abuse of discretion in the imposition of sanctions under 22 NYCRR 130-1.1 (a) against Pu based upon his frivolous and vexatious litigation practices in the action, including his repeated conduct in seeking affirmative relief without informing the court about the prior unappealed order dismissing the underlying action on the merits and his application for legal fees for a time period during which he was suspended from the practice of law. In *Matter of Food Management Group, LLC* (2008 WL 2788738 Bankr SD NY [2008]), the court wrote of Pu's assertion that it was frivolous, not grounded in fact or law and must be rejected out of hand. In *Matter of Pu* (37 AD3d 56, *supra*) the Supreme Court, Appellate Division, held that Pu's admitted actions of making false representations to the federal district court, and his knowing pursuit of a frivolous litigation theory, clearly constituted intentional misconduct and Pu's suspension of his attorney's license to practice law for one year was warranted.

In view of the foregoing, the defendants are encouraged, in the future, to seek sanctions.

Accordingly, it is

ORDERED that the plaintiff Pu's motions (sequence number 005 and 006) are denied; and it is further

ORDERED that the defendants' cross motion (005) is granted and the plaintiff Pu is precluded from reasserting claims for sleeping disorder, pain and mental suffering and/or intentional infliction of emotional distress; and it is further

ORDERED that the plaintiff Pu appear for his deposition on September 7, 2010 at 9:30 A.M., in the Ex Parte Support Office, Room 315 at 60 Centre St., New York, N.Y., or at such other time and place as counsel shall in writing agree; and it is further

ORDERED that the plaintiff Pu serve and file a note of issue and statement of readiness on September 28, 2010; and it is further

ORDERED that upon Pu's failure to appear for his deposition or file the note of issue, the defendants may settle an order directly to chambers dismissing the complaint. Include a copy of this order and an attorney's affirmation detailing the default; and it is further

ORDERED that the plaintiff Pu may not make any more motions in this case without seeking permission from chambers.

This constitutes the Decision and Order of the Court.

Dated: Sept. 16, 2010

Enter:

Paul Wooten
PAUL WOOTEN J.S.C.
Paul Wooten
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

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