

Maskakanian v Golan
2011 NY Slip Op 33099(U)
November 23, 2011
Sup Ct, NY County
Docket Number: 116451/10
Judge: Joan A. Madden
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: Hon Joan A. Mader.
Justice

PART 11

— Index Number : 116451/2010
MASKAKANIAN, BAHRAM
vs.
GOLAN, EYAL ALLEN
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT

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

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the
attached Memorandum Decision + Order.

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

FILED

NOV 30 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: November 23, 2011

[Signature], J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

-----X
BAHRAM MASKAKANIAN,

Plaintiff,

-against-

EYAL ALLEN GOLAN,
SHLEPPERS MOVING & STORAGE, INC.,
Defendants.

-----X
JOAN A. MADDEN, J.:

Index No. 116451/10

FILED

NOV 30 2011

NEW YORK
COUNTY CLERK'S OFFICE

Plaintiff Bahram Maskakanian, appearing *pro se*, moves for an order pursuant to CPLR 3116(e) striking his deposition testimony, and for summary judgment. Defendants oppose the motion.

In this action, plaintiff seeks damages for the loss of property following the removal of his belongings by defendants after he was evicted from his residence by the Marshal in connection with a landlord-tenant action in the Civil Court of the City of New York. Plaintiff's deposition was taken on June 8, 2011. In the complaint, plaintiff alleges that defendants lost and/or stole certain items of plaintiff's property and that he incurred various expenses when retrieving his belongings from defendants' storage facility.

Plaintiff first seeks an order striking his deposition testimony on the grounds that certain of his answers as reflected in the deposition transcript were altered or mistyped. In particular, plaintiff asserts that the transcript inaccurately reflects his responses to a question regarding his reasons for refusing to provide the address where he was staying with friend, and to a question as to how much he spent on updates to certain software that was in the apartment when he was evicted.

Under CPLR 3116(e), "[e]rrors and irregularities of the officer or the person transcribing

the deposition are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained." Here, even assuming *arguendo*, that this motion was made with "reasonable promptness," it must be denied as the plaintiff has not shown that the irregularities or errors were of a kind that required the entire deposition transcript to be suppressed. See e.g., Principale v. Lewner, 187 Misc2d 878, 881 (Sup Ct, Kings Co. 2001)(denying motion to suppress deposition testimony "despite the numerous transcription errors" when movant failed to show that "the entire deposition transcript is so permeated with error that suppression of the entire transcript is warranted").

Instead, the proper remedy for the errors like those allegedly in plaintiff's deposition transcript is for plaintiff to make corrections to the deposition transcript by furnishing an errata sheet within 60 days of his receipt of the transcript. See CPLR 3116(a); Rivera v. the City of New York, 6 Misc3d 829 (Sup Ct Bronx County). The 60-day period provided under CPLR 3116(a) may be extended by the court upon good cause. Binh v Bagland USA, Inc., 286 AD2d 613, 614 (1st Dept 2001). Here, as the court finds that the plaintiff should be given an opportunity to correct the errors that are the subject of this motion, the court will grant him 60 days from the date of this decision to provide corrected testimony, together with the reasons for the corrections. Marine Trust Co. of Western N.Y. v. Collins, 19 AD2d 857 (4th Dept 1963); Principale v. Lewner, 187 Misc2d at 881.

Plaintiff also moves for summary judgment on his claims which seek compensatory and punitive damages. On a motion for summary judgment, the proponent "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case..." Winegrad v. New York Univ. Med. Center, 64

[* 4]

N.Y.2d 851, 852 (1985). Once the proponent has made this showing, the burden of proof shifts to the party opposing the motion to produce evidentiary proof in admissible form to establish that material issues of fact exist which require a trial. Alvarez v. Prospect Hospital, 68 N.Y.2d 320, 324 (1986).

Here, plaintiff has made a prima facie showing based on his deposition testimony that certain items removed from his apartment by defendants were not returned to him, and that he incurred various expenses as a result of errors made by defendants. Moreover, contrary to defendants' position, verified answer containing certain defense is insufficient to raise a triable issue of fact. To withstand a motion for summary judgment and to qualify as affidavit of merit under CPLR 105(u), a verified pleading must contain sufficient evidentiary facts. Riverhead Building Supply, Corp. v. Regine Starr, Inc., 249 AD2d 532, 532 (2d Dept 1998); County of Nassau v. Cedric Construction Corp., 100 AD2d 890 (2d Dept 1984). Here, the verified answer contains only conclusory assertions and defenses and is thus insufficient to raise an issue of fact. Furthermore, the documentary evidence submitted by defendants, which does not include any explanation as to its meaning or significance, is insufficient to raise an issue of fact. At the same time, while, in reply, plaintiff asserts that certain documentary evidence submitted by defendants is false and fraudulent, the accuracy of plaintiff's position cannot be determined as a matter of law based on this record.

Moreover, plaintiff has failed to establish the amount of damages to which he is entitled in connection with the lost items, or his entitlement to punitive damages. In addition, plaintiff has failed to demonstrate as a matter of law that Mr. Golan participated in the commission of a tort such that he can be held individually liable. See e.g., Worthy v. New York City Housing Authority, 21 AD3d 284 (1st Dept 2005)(proof of more than status as a corporate officer is

needed before individual liability can attach); American Exp. Travel Related Services, Inc. v. North Atlantic Resources, Inc., 261 AD2d 310 (1st Dept 1999)(complaint stated a cause of action against individual defendants based on allegations that corporate officers made affirmative misrepresentations).

In view of the above, it is

ORDERED that plaintiff's motion to suppress his deposition testimony is denied; and it is further

ORDERED that plaintiff may correct the errors that are the subject of this motion, by providing counsel for the defendants with a corrected copy of the testimony, together with the reasons for the corrections, within 60 days of this decision and order; and it is further

ORDERED that plaintiff's motion for summary judgment is granted only to the extent of finding Shleppers Moving and Storage Inc. liable for any damages incurred for missing items from plaintiffs' boxes stored by it, and for the incurred various expenses incurred by plaintiff as a result of errors made by defendants when returning his items, with the Mr. Golan's liability for these acts and the amount of damages to be determined at trial; and it is further

ORDERED that a pre-trial conference shall be held in Part 11, room 351, 60 Centre Street, on January 12, 2012 at 9:30 am.

Dated: November 23, 2011

FILED



J.S.C.

NOV 30 2011

**NEW YORK
COUNTY CLERK'S OFFICE**