

Bridgers v West 82nd St. Owners Corp.
2012 NY Slip Op 32123(U)
July 27, 2012
Supreme Court, New York County
Docket Number: 112204/07
Judge: Joan A. Madden
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. Joan A. Middle
Justice

PART 11

Index Number : 112204/2007
BRIDGERS, DARREL
VS.
WEST 82ND STREET OWNERS
SEQUENCE NUMBER : 010
OTHER RELIEFS

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

AUG 10 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: July 27, 2012

[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

[* 2]
SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY - - PART 11

DARRELL BRIDGERS and
FRANCA FERRARI-BRIDGERS,

Plaintiffs,

- against -

WEST 82ND STREET OWNERS CORP.,
GREGORY PINKUS, RALPH PREISS,
JENNIFER WAGNER, and
CAROLE FERRARA ASSOCIATES INC.,

Defendants.

Index No.: 112204/07

DECISION/ORDER

FILED

AUG 10 2012

MADDEN, JOAN A., J.:

NEW YORK
COUNTY CLERK'S OFFICE

Plaintiffs move (seq. no. 10) for the recusal of the Honorable Richard F. Braun from presiding over this action, and for sanctions against defendants' counsel for alleged perjury.

The branch of the motion seeking recusal is denied as moot. By order dated October 11, 2011, Judge Braun recused himself and the case was reassigned.

The branch of the motion seeking sanctions is also denied, on the merits. Plaintiffs seek sanctions based on alleged perjurious statements made by defendants' attorney, Diane Del Sordo, in her affirmation submitted in another pending motion in this case, as well as in her affirmation submitted in opposition to the instant motion. Plaintiffs also claim that Brendan Fitzpatrick, another attorney for defendants, made perjurious statements in an affirmation submitted to the court during appellate proceedings in the related matter, *Bridgers v Wagner*

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(Index No.114416/08); that non-party Christofer Wagner perjured himself when he stated under oath that he did not do unauthorized work in his apartment; and that defendant Jennifer Wagner committed perjury in her affidavit submitted in another pending motion, when she stated that, based on information received by the Board, it logically concluded that plaintiffs' alterations were in violation of the lease.

Under New York law, a person is guilty of perjury ... when he "swears falsely." Penal § 210.05. Perjury in the second degree, which plaintiffs allege here, occurs when a person "swears falsely and when his false statement is (a) made in a subscribed written instrument for which an oath is required by law, and (b) made with intent to mislead a public servant in the performance of his official functions, and (c) material to the action, proceeding or matter involved." Penal Law § 210.10. As defined by the Penal Law, "[a] person 'swears falsely' when he intentionally makes a false statement which he does not believe to be true (a) while giving testimony, or (b) under oath in a subscribed written instrument." Penal Law § 210.00.

At the outset, the court notes that perjury is a criminal offense, and there is no record of any such charges being pursued against defendants or their counsel. Nor could there be, as none of the alleged perjurious statements are, contrary to plaintiffs' argument, demonstrably false, intentionally made to be false, or

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believed to be false, or, for the most part, material to the claims in this action. That plaintiffs disagree with the statements, and believe that evidence shows them to be untrue, does not demonstrate that the statements are false, much less that they constitute criminal perjury.

As an example of the alleged perjury of defendants' counsel, plaintiffs cite to an affirmation of Del Sordo, in which she asserts that plaintiffs admit not obtaining Board approval and admit to refusing an inspection of their apartment. As evidence of the falsity of these statements, plaintiffs submit a copy of a letter they sent to the Coop's attorney, dated November 23, 2006, in which they offer access to their apartment on the conditions that no pictures be taken, that the managing agent not be present, and that the Board "reconfirm ... that they authorized our work." Under the circumstances of this case, in which the issue of whether the work done by plaintiffs was authorized was in dispute, and which dispute was the reason defendants sought an inspection, the conditions imposed by plaintiffs were tantamount to a refusal.

Similarly, plaintiffs argue that Del Sordo's statement, in her affirmation in opposition to the instant motion, that "access came with the condition that before the inspection is conducted the Board authorize the work performed in their apartment," amounted to criminal perjury because the letter actually stated

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that the condition was that the Board "reconfirm its prior statements" that the work was authorized. Plaintiffs' assertion that they received prior approval is belied by the evidence in this case, but even if a dispute about that remained, plaintiffs' argument that Del Sordo's statement amounts to criminal perjury strains credulity.

Without needing to further address each instance of alleged perjury, the court finds that there is no basis for imposing sanctions on defendants or their attorneys.

Accordingly, it is

ORDERED that plaintiffs' motion for recusal and sanctions is denied.

Dated:

July 27, 2012

ENTER:

FILED

AUG 10 2012

NEW YORK
COUNTY CLERK'S OFFICE

[Signature]
HON. JOAN A. MADDEN, J.S.C.