

Manhattan Telecom. Corp. v Jackson

2013 NY Slip Op 31085(U)

April 26, 2013

Sup Ct, New York County

Docket Number: 111319-2010

Judge: Milton A. Tingling

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

EA
5/20/13
E

Milton A. Tingling

PRESENT:

Justice

PART 44

Manhattan Telecommunications Corp

-v-

Rachel Jackson, Esq

INDEX NO. 11319/16

MOTION DATE _____

MOTION SEQ. NO. 02

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~~ are decided in accordance with the attached memorandum of decision

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

Dated: 4/26/13

Ma, 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

S/O

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

PRESENT: Honorable Milton A. Tingling

PART 44

-----X
Manhattan Telecommunications Corp.

Index No.: 111319-2010

Plaintiff,

-against-

Decision and Judgment

Rachel Jackson, Esq.

Defendant.

-----X

The Court's decision and order of April 10, 2012 to the extent which it denied plaintiff's motion for summary judgment without prejudice to renew after further discovery is hereby vacated and decided in accordance with the attached memorandum of decision.

This Court previously presided over an action entitled Manhattan Telecommunications Corp. vs. Beauty Pools, Inc. and Deborah A. Hunt, Individually. Index No. 116386-2008.

On or about April 17, 2009, Beauty Pools, Inc. then counsel, defendant herein Jackson caused to be served a CPLR sect 511 motion to Change Venue which was dated April 17, 2009.

On or about June 24, 2009, defendant Jackson in that action in an affirmation swore that the motion had been filed on April 30, 2009 within the 15 day requirement of CPLR sect 511. The motion to change venue was date stamped May 6, 2009.

It was after the affirmation dated June 24, 2009 stating that the motion was filed on April 30, 2009 that this odyssey began.

Counsel for plaintiff, Jonathan Bachrach, came forth with allegations of perjury against Jackson in the prior action. The same allegations of perjury which form the claim against

Jackson in the instant action.

The perjury allegations in the prior action were answered and explanations offered.

Mr. Bachrach has apparently designated himself the sole avenger of what he has determined and concluded was absolute perjury and will accept only a complete unconditional admission of guilt. (The Court notes only Mr. Bachrach's signature on all documents in this litigation.)

The Court ultimately ruled the motion to change venue untimely. However, by then, the only issue consuming counsel Bachrach was his determination of perjury by Jackson.

Defendant Jackson, filed a substitution of counsel and withdrew from the case. This was unsatisfactory to plaintiff counsel. The present action was commenced against Jackson during the pendency of the prior action seeking damages under Judiciary Law 487 based on what?

The same allegations of perjury as alleged in the prior action. Defendant Jackson answered and counterclaimed. She is represented by the Office of Ronald L. Kuby. (Mr. Bachrach has reserved a separate vial of oral venom for Mr. Kuby.)

Mr. Bachrach was counsel for the plaintiff in the prior action, Manhattan Telecommunications Corp. vs. Beauty Pools, Inc. Index No. 116386-2008.

A Stipulation of Settlement dated November 18, 2011 and notarized on behalf of plaintiff by Mr. Bachrach on November 29, 2011 was executed in that matter. A Stipulation of Discontinuance dated November 21, 2011 was executed on behalf of plaintiff by Mr. Bachrach.

Paragraph 3 of the stipulation of settlement "Mutual Release, states in relevant part that

"the parties release and discharge each other and each others' respective officers, shareholders agents, servants, and employees from all actions, causes of action suits controversies, damages claims and demands whatsoever in law or equity which either party against the other or

against the other's respective agents, servants or employees ever had, now has, or hereafter can, shall, may, have for upon or by reason of any matter, cause or thing whatsoever set forth, arising in out of any way related to or caused by the litigation Manhattan Telecommunications vs. Beauty Pools, Inc. Index No. 116308-2008

Therefore, presently before the Court for decision are plaintiff's amended cross motion for an order granting summary judgment pursuant to CPLR 3212; plaintiff's motion for an order pursuant to CPLR 3211(a)(1)(3)(5)(6)(7) and CPLR 3013, 3024(a) and 3024, laches and privilege; and plaintiff's motion for sanctions.

The defendant Jackson was an agent or servant of Beauty Pools, Inc., who is being sued herein by reason of a matter or thing arising out of related to the litigation. Since there is no allegation that Jackson was not in the position of a servant or agent of Beauty Pools, Inc. at the time of the act complained of or that the cause of action against her was not related to the prior litigation; the law suit here must fall. Due to the fact that Mr. Bachrach vehemently stressed and argued the allegations of perjury, and filed this law suit prior to the release and discontinuance with prejudice, he cannot be heard to say the release does not apply here. The failure to include Beauty Pools, Inc. as a party in the present litigation does not mean the release is inapplicable. The plaintiff is collaterally estopped from litigating issues and causes of action here which were present and known and part of the prior litigation. Guardianship of Janet "L." 200 A.D.2d 801.

Mr. Bachrach asserts that defendant counterclaims must fall because she was not a party to the Beauty Pools action and therefore; has no standing to raise any counterclaims. See plaintiffs memo of law pg. 18. Yet on the very same page, Bachrach asserts that the counterclaims may not be maintained because of the release.

“The release is a general release of all claims which either party had against the other party **and its agents** for any matter in any way related to the Manhattan vs. Beauty Pools litigation.” “Thus, Jackson’s efforts to create a counterclaim out of the litigation between Manhattan vs. Beauty Pools go beyond frivolous and are plainly fraudulent.” Plaintiff’s memo of law pg. 18.

Mr. Bachrach admits defendant Jackson was an agent of Beauty Pools but appears to believe that releases only apply to the counterclaims of defendant Jackson. The Court disagrees.

On a CPLR 3212 motion, Courts have the inherent jurisdiction to search the record and pursuant to CPLR 3212(b) if upon all the papers and proof submitted the cause of action or defense shall be established sufficiently to warrant the Court as a matter of law in directing judgment in favor of any party. If it shall appear that any party other than the moving party is entitled to summary judgment, the Court may grant such judgment without the necessity of a cross motion.

Based upon all of Mr. Bachrach’s papers, and the opposition papers submitted, summary judgment is granted in favor of defendant Jackson.

The sole remaining issue in this case is whether or not Jackson’s counterclaims survive. An argument could be made that the continued prosecution by Mr. Bachrach, on behalf of his client, after having signed the release were an abuse of process. It could be argued that the release does not apply to counterclaims by Jackson because the plaintiff’s personal attack on her have gone beyond the prior litigation.

However, equity demands that the release should equally apply to bar her counterclaims as they have their roots in her role as an agent for Beauty Pools and arose of the litigation there.

The plaintiff’s motion for sanctions is denied.


The plaintiff's motion to dismiss defendant's counterclaims is granted without prejudice to defendant's as prosecuting same in a plenary action.

Summary judgment pursuant to CPLR 3212(b) is granted in favor of defendant.

Case dismissed.

Settle judgment on notice.

Dated: April 26, 2013



J. S. C.