

Chekowsky v Windermere Owners LLC
2013 NY Slip Op 31653(U)
June 27, 2013
Supreme Court, New York County
Docket Number: 106532/2011
Judge: Milton A. Tingling
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: Milton A. Tingling
Justice

PART 44

Index Number : 106532/2011
CHEKOWSKY, LUISSA
vs.
WINDERMERE OWNERS, LLC
SEQUENCE NUMBER : 005
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE 4/30/13
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 amended decision*

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

FILED
JUL 24 2013
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 6/27/13

mat, 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
NEW YORK COUNTY

PRESENT: HON. MILTON A. TINGLING

PART 44

LUISSA CHEKOWSKY,
PLAINTIFF,
-v-
WINDERMERE OWNERS LLC and WINDEMERE
CHATEAU, INC.,
DEFENDANTS.

INDEX NO. 106532/11
MOTION DATE 4/29/13

FILED

JUL 24 2013

NEW YORK

COUNTY CLERKS OFFICE

Upon the foregoing papers, it is ordered that

Defendants move this court to disqualify Marc Bogatin from representing Plaintiff in this action pursuant to DR4.2 (a); to dismiss the instant action in its entirety or to preclude the Plaintiff from introducing any evidence improperly obtained; awarding sanctions and attorney fees to the Defendants and referring this matter to the Disciplinary Committee of the Appellate Division, First Department. Plaintiff opposes this motion.

Defendants are the prior and current owners of the apartment building located at 666 West End Avenue. In June 2009 Plaintiff entered into a lease with defendant, Windermere Chateau, Inc. for the rental of apartment 11K at the premises. The lease represents apartment 11K was not subject to rent stabilization. Apartment 11K had previously been rent stabilized and was removed by landlord in June 2003. Landlord removed apartment 11K from rent stabilization after alleging \$45, 232 in improvements to the apartment, thereby raising the lawful rent to over \$2,000 and lawfully allowing it to be removed form rent stabilization. Plaintiff contends that landlord did not make \$45, 232 in renovations and therefore the apartment was illegally and fraudulently removed from stabilization. In this action Plaintiff is represented by Marc Bogatin, Mr. Bogatin has six other actions pending against the same defendants in which he represents the Plaintiffs and at the same time Mr. Bogatin is the Plaintiff in his own action against the same defendants.

In light of the importance of a party's right to counsel of their choice, the Court of Appeals has held that an application to disqualify opposing counsel must be strictly scrutinized and the proponent of such a motion bears a heavy burden in advancing such a motion. The Court of Appeals made clear that in an ongoing lawsuit that disqualifying a plaintiff's counsel could stall and derail the proceedings giving a strategic advantage to one party over another and doing so must be carefully scrutinized. *S&S Hotel Ventures Limited Partnership v. 777 S.H. Corp.*, 69 NY2d 437, 443 (1987). In the instant case, Defendants allege that Mr. Bogatin communicated with an employee of Defendants regarding the facts of this and other related actions without the knowledge or consent of Defendants counsel. Defendants claim that on or around June 1, 2012 Defendant's managing agent for 666 West End Avenue had a notice delivered to Bogatin, in his capacity as a tenant of the premises, advising Mr. Bogatin that the landlord needed access to his apartment to "change a water riser." Mr. Bogatin responded directly to the managing agent asking why the risers need to be replaced since he was under the impression they had already been done in December of 2002 from apartments 2K through 5K including his apartment 3K. Plaintiff claims that the letter responding to the property manager's request for access to the apartment was not an improper discovery device and was in no way improper. Plaintiff's counsel alleges the letter was written not as Plaintiff's counsel but as a tenant of the same premises. The apartment in this case, *Chekowsky v. Windermere Owners LLC and Windemere Chateau, Inc.*, is apartment 11K. Disqualifying counsel must be done under careful scrutiny and the court should only disqualify a Plaintiff's counsel when the opposing party has shown it is necessary. Defendants fail to show that the actions by Plaintiff's counsel were improper, in this case. Plaintiff's counsel did not inquiry as to any work done on apartment 11K. Defendants fail to meet the burden of strict scrutiny to override Plaintiff's right to a counsel of her choice.

The court orders that any further communications by Plaintiff's counsel and any of the Defendants, their employees or agents must be in writing and a copy must be

sent to Defendants counsel. The defendant's motion to disqualify Plaintiff's counsel is denied.

Dated: June 27 2013



Milton A. Tingling, J.S.C.

FILED
JUL 24 2013
NEW YORK
COUNTY CLERK'S OFFICE