

**17 West 127th St. Partners LLC v Baruch Realty,
LLC**

2013 NY Slip Op 32950(U)

November 18, 2013

Supreme Court, New York County

Docket Number: 158807/2012

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: _____ CYNTHIA S. KERN
Justice
J.S.C.

PART _____

Index Number : 158807/2012
17 WEST 127TH STREET
vs
BARUCH REALTY, LLC
Sequence Number : 003
DISMISS ACTION

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

is decided in accordance with the annexed decision.

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

Dated: 11/18/13

PK
_____, J.S.C.
CYNTHIA S. KERN
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 55

-----X
17 WEST 127th STREET PARTNERS LLC,

Plaintiff,

-against-

BARUCH REALTY, LLC, MOSHE NIR,
17 W 127th STREET, LLC, ADAM DRESSLER, ESQ.,
DRESSLER LAW, LLP, DUSTIN BOWMAN, ESQ.,
A.M. TITLE INC. and SANDRA M. SALMON PINK,

Defendants.
-----X

HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affidavits in Opposition.....	<u>2</u>
Affidavits in Reply.....	<u>3</u>
Exhibits.....	<u>4</u>

This action arises from defendant Baruch Realty, LLC’s alleged breach of a contract for sale with plaintiff. Defendants Adam Dressler and Dressler Law, LLP (collectively referred to herein as “moving defendants”) now move for an Order pursuant to CPLR §§ 3211(a)(1), (a)(4), (a)(7) and (a)(8) dismissing plaintiff’s complaint and for an order imposing sanctions on plaintiff and an award of attorney’s fees. For the reasons set forth below, moving defendants’ motion is granted in part and denied in part.

The relevant facts are as follows. On or about August 3, 2012, plaintiff entered into a written contract with defendant Baruch Realty, LLC (“Baruch”) for the purchase of the property

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DECISION/ORDER

located at 17 West 127th Street, New York, New York (the “Premises”), which called for title closing on October 2, 2012 (the “Contract”). However, closing did not occur on October 2, 2012 and by letter dated November 28, 2012, Baruch’s attorney, the moving defendants, notified plaintiff that Baruch was cancelling the Contract.

On November 29, 2012, Baruch allegedly sold and transferred the property to defendant 17 W 127th Street, LLC. On that same day, plaintiff wrote to Baruch to notify it that it was rejecting its cancellation and scheduling the closing date for December 10, 2012. Baruch did not appear on December 10, 2012.

On or about December 12, 2012, plaintiff commenced the instant action. Initially, plaintiff only named Baruch as a defendant and sought specific performance of the Contract. Thereafter, plaintiff moved to amend its complaint to assert additional claims against Baruch and to add Moshe Nir, 17 W 127th Street, LLC, Adam Dressler, Esq., Dressler Law, LLP, Dustin Bowman, Esq., A.M. Title Inc. and Sandra M. Salmon Pink as additional defendants. By Decision/Order dated July 25, 2013, this court granted plaintiff’s motion without opposition. Thereafter, plaintiff served defendants with an amended complaint asserting seven unlabeled causes of action. Moving defendants now move to dismiss plaintiff’s complaint and for an award of sanctions and attorney’s fees on the ground that this action is frivolous.

On a motion addressed to the sufficiency of the complaint pursuant to CPLR § 3211 (a)(7), the facts pleaded are assumed to be true and accorded every favorable inference. *See Morone v. Morone*, 50 N.Y.2d 481 (1980). Moreover, “a complaint should not be dismissed on a pleading motion so long as, when plaintiff’s allegations are given the benefit of every possible inference, a cause of action exists.” *Rosen v. Raum*, 164 A.D.2d 809 (1st Dept 1990). “Where a

pleading is attacked for alleged inadequacy in its statements, [the] inquiry should be limited to whether it states in some recognizable form any cause of action known to our law.” *Foley v. D’Agostino*, 21 A.D.2d 60, 64-65 (1st Dept 1977), citing *Dulberg v. Mock*, 1 N.Y.2d 54, 56 (1956). However, the courts have made clear that a court is not required to attempt to save a complaint which is totally confusing and where the court would have to struggle simply to determine whether a cause of action might possibly be stated. *See Kent v. Truman*, 9 A.D.2d 649 (1st Dept 1959). Even where a “a refined and attenuated analysis might arguably spell out a shadow of a cause of action, neither the defendants nor the trial court should be subject to the difficulties.” *Id.*

In the instant action, moving defendants’ motion to dismiss plaintiff’s complaint for the failure to state a cause of action is granted on the ground that this court cannot discern any stated cause of action asserted against the moving defendants from the face of plaintiff’s complaint. As an initial matter, the court notes that as plaintiff fails to label its causes of action or delineate which one applies to which defendant, it is difficult for the court to even know what cause of action is asserted against the moving defendants directly. In any event, the only allegation contained in plaintiff’s complaint relating to the moving defendants is under the sixth cause of action wherein plaintiff alleges: “On or about November 28, 2012 Defendant, Adam Dressler, Esq., Dressler Law, LLP, Dustin Bowman, Esq., A.M. Title Inc., and Sandra Salomon (collectively referred to as the “Accomplice Defendants”), knew that Defendant, Baruch, was in contract to sell and convey the Premises to a party other than Defendant, 17 W 127th Street, LLC” and that “[t]he Accomplice Defendants aided and abetted Baruch and 17 W 127th Street, LLC’s plan to cheat Plaintiff out of Plaintiff’s interest and/or right to ownership in the Premises.” The

