

Clement-Davies v Abrams

2013 NY Slip Op 33559(U)

April 10, 2013

Sup Ct, New York County

Docket Number: 158548/2012

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

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

PART 55

Index Number : 158548/2012
CLEMENT-DAVIES, DAVID
vs.
HARRY N. ABRAMS INCORPORATED
SEQUENCE NUMBER : 001
DISMISS ACTION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 001

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: 4/10/13

CK, 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
DAVID CLEMENT- DAVIES,
Plaintiff,

Index No. 158548/2012

-against-

DECISION/ORDER

HARRY N. ABRAMS, INCORPORATED, ET AL.,
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.....	1
Answering Affidavits.....	2
Cross-Motion and Affidavits Annexed.....	_____
Answering Affidavits to Cross-Motion.....	_____
Replying Affidavits.....	3
Exhibits.....	_____

Defendants have brought the present motion to dismiss the complaint pursuant to CPLR sections 3013 and 3014 as well as a number of other grounds. Plaintiff David Clement-Davies has brought a separate motion for summary judgment. Both of the motions are consolidated for disposition. For the reasons stated below, the motion to dismiss is granted and the motion by plaintiff for summary judgment is denied.

The plaintiff, an author of fantasy fiction, has brought this lawsuit against a woman who ended a romantic relationship with him. He has also sued her employer who is his former publisher and the current employer of the woman whom he had a romantic relationship with, as

well as two employees of the publishing company. His complaint is 100 pages long and consists of 724 rambling and convoluted paragraphs, many of which are highly personal in nature, many of which involve philosophical musings and many of which have absolutely nothing to do with any cognizable legal claim. Many, if not most of the 360 factual allegations, concern plaintiff's anguish and nervous breakdown which resulted from his former girlfriend terminating the relationship with him. He then attempts to assert thirteen causes of action.

Plaintiff's rambling and often incomprehensible complaint fails to satisfy the pleading requirements of CPLR sections 3013 and 3014. Section 3013 of the CPLR provides that "statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense." CPLR 3014 requires that "every pleading shall consist of plain and concise statements in consecutively numbered paragraphs" with each paragraph containing, as far as practicable, a single allegation. The First Department has specifically held that a complaint which fails to follow the dictates of CPLR 3013 and 3014 should be dismissed. *See Sibersky v. New York City*, 270 A.D.2d 209 (1st Dept 2000). *See also Earl-Strunk v. New York State Board of Education*, 2012 WL 1205117 (Sup. Ct. Kings Cty. April 11, 2012) (*pro se* complaint dismissed for failure to comply with CPLR 3013 and 3014 where complaint is "prolix, confusing, and difficult to answer and the complaint contains a confusing succession of discrete facts, conclusions, comments ... and considerable other subsidiary evidentiary matter whose relevance to a particular cause of action is frequently obscure..."). In *Sibersky*, the petition which was dismissed consisted of seven pages of single spaced, unnumbered paragraphs, "the import of which is unascertainable." The court stated that

pleadings “that are not particular enough to provide the court and the parties with notice of the transaction or occurrences to be proved must be dismissed.” *Id.* Moreover, the courts have also 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 present case, plaintiff’s amended complaint fails to satisfy the pleading requirements of CPLR sections 3013 and 3014. The allegations are prolix, confusing and difficult to answer. The complaint is 100 pages long, the pages are not numbered, the numbering starts anew at the beginning of each cause of action and many of the allegations have no relevance whatsoever to any legally cognizable cause of action. For example, in the seventh cause of action, paragraph 22, plaintiff alleges: “An ex’s negative, fears and secrets there was the fulcrum of real “pressure” but also out of such hostile arguments with Susan Van Metre, who then fully pressurized and humiliated the plaintiff in a rise to Vice President, or out of a feeling of betrayal and dislike.” In paragraph 11, final cause of action, plaintiff alleges “It involved love, friendship and betrayal, to someone who ‘felt more’ than anyone an ex had met, locked alone in his apartment, specifically because of kinds of labels inflicted in love too, and being denied any protection, hearing or ending to the labels, into an unlimited future, dreadfully.” In his cause of action for constitutional protections, he alleges in paragraph 9 that “The plaintiff asserts the attack on the plaintiff’s right to happiness in an ex’s brutal absolutes and negligence, as was most certainly her ‘right’ in a split up, but negligent in terms of things done, said and

labels left to any contracted author, specifically in terms of Fell, a story all about their happiness for a time, though later denied by an ex as she refused to read it, when happiness in its publication was stripped away too." The complaint is also filled with statements about plaintiff's personal life, which have no relevance whatsoever to any legal claims such as plaintiff's speculation that he might have suffered abuse as a child, his physic hell and terrible darkness and his addiction to bad things on the internet. Reviewing the complaint as a whole, the court finds that it should be dismissed as neither defendants nor the court should be subject to the difficulty of attempting to ascertain whether plaintiff has spelled out the shadow of a cause of action. See *Kent*, 9 A.D. 2d at 649. Based on this court's finding that the amended complaint should be dismissed, there is no need for the court to address the remaining arguments made by defendants.

Based on the foregoing, the amended complaint is hereby dismissed. The motion by plaintiff for summary judgment is denied as moot and as premature since issue has not yet been joined. This constitutes the decision and order of the court.

Dated: 4/10/13



J.S.C.

CYNTHIA S. KERN
J.S.C.