

**P+M Design Consultants, Inc. v Hudson-Spring
Partnership, L.P.**

2014 NY Slip Op 30028(U)

January 6, 2014

Supreme Court, New York County

Docket Number: 652799/2013

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. EILEEN A. RAKOWER

PRESENT: _____
Justice

PART 15

Index Number : 652799/2013
P M DESIGN CONSULTANTS, INC.
vs
HUDSON-SPRING PARTNERSHIP,
Sequence Number : 003
DISMISS

INDEX NO. 15

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). 1, 2

Answering Affidavits — Exhibits _____ | No(s). 3, 4

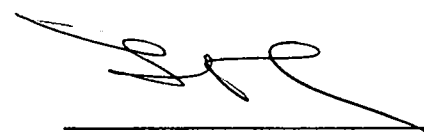
Replying Affidavits _____ | No(s). 5

Upon the foregoing papers, it is ordered that this motion is

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

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

Dated: 1/6/14


_____, J.S.C.

HON. EILEEN A. RAKOWER

- 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 15

-----X
P+M DESIGN CONSULTANTS, INC.,

Plaintiff and Counterclaim
Defendant,

Index No. 652799/2013

- against -

DECISION/ORDER

Mot. Seq. 01, 2, 3

HUDSON-SPRING PARTNERSHIP, L.P.,
CONNECTION PARTNERS, LLC, HARRY
CHERNOFF, MINDY GOODFRIEND, MICHAEL
BUTLER and JERRY ATKINS,

Defendants and Counterclaim
Plaintiffs,

-against-

POULIN + MORRIS, INC.,

Counterclaim Defendant.

-----X

Plaintiff P+M Design Consultants, Inc. (“Plaintiff” or “P +M”), a former tenant of 286 Spring Street, New York, New York (the “Premises”) commenced this action against defendants Hudson-Spring Partnership, L.P. (“Hudson-Spring”), Connection Partners, LLC, Harry Chernoff, Mindy Goodfriend, Michael Butler and Jerry Atkins, alleging conversion, unjust enrichment, and violation of New York’s General Business Law §349, and fraud. In this action, Plaintiff seeks the return of the security deposit that it made under a lease executed between P+M, as tenant, and Hudson-Spring. Plaintiff alleges that conversion of the rental deposit occurred “sometime in 2012 or 2013.”

Currently pending before Judge Madden is another related action entitled *Hudson-Spring Partnership, L.P., v. P.M. Design Consultants, Poulin + Morris, Inc., John Does and John Doe Companies*, Index No. 65229/10 (“Prior Pending Action”), in which Hudson-Spring seeks to recover rent due from P+M and Poulin & Morris, Inc. after P+M vacated the Premises on or about November 1, 2010. P+M and Poulin & Morris interposed an Answer, raising affirmative defenses and a Counterclaim that Hudson-Spring breached the parties’ lease by failing to make certain repairs and maintaining the Premises in suitable condition.

Plaintiff P+M filed an Amended Complaint on October 11, 2013, which omitted the former claims asserted against defendants Hudson-Spring, Mindy Goodfriend, Michael Butler and Jerry Atkins. However, prior to filing the Amended Complaint, defendant Hudson Spring interposed an Answer and a Counterclaim and third-party Complaint against P+M and Poulin + Morris, Inc. The Counterclaim seeks attorneys’ fees if successful in defending this action. The Counterclaim avers that Plaintiff was “formed as a dummy corporation ...” for “the sole purpose ... [of] shield[ing] liability for the lease obligations to plaintiff by the true occupants of the defendant’s space,” and that both Plaintiff and Poulin + Morris, Inc., are liable for legal fees incurred by Hudson-Spring if Hudson-Spring prevails in this action under the terms of the lease.

In Motion Seq. 1, Plaintiff moves for an Order, (a) pursuant to CPLR § 3211(a)(4), striking and dismissing the counterclaim or third-party complaint asserted by Hudson-Spring, as duplicative of the Prior Pending Action commenced by Hudson-Spring, (b) pursuant to CPLR § 3211(a)(1) and (7) on the additional ground that there is no such entity as “Hudson-Spring Partnership, L.P.”; (c) striking and dismissing the counterclaim as procedurally defective in that it does not arise out of the same facts as pled in the main action, and (d) awarding costs and fees incurred in making this motion.

Defendant Hudson-Spring cross moves for an order, pursuant to CPLR § 3211(a)(4), dismissing Plaintiff’s Complaint. Hudson Spring contends that although the Amended Complaint omits claims as against Hudson Spring, Plaintiff did not have the right to voluntarily and unilaterally discontinue the action against

Hudson Spring as Hudson Spring had already answered the Complaint. Hudson-Spring states that to date, Plaintiff has never filed a notice of discontinuance as against Hudson Spring or the other defendants.

In Motion Seq. 2, Plaintiff moved for an Order to dismiss Hudson-Spring's counterclaim against Poulin + Morris, a different party. In Motion Seq. 3, third party defendant Poulin + Morris, Inc., filed an Amended Notice of Motion to Dismiss to dismiss the counterclaim against Hudson-Spring. Hudson-Spring and Connection Partners, LLC, oppose.

CPLR §3211(a)(4) provides, "A party may move for judgment dismissing one or more causes of action asserted against him on the ground that: *** there is another action pending between the same parties for the same cause of action in a court of any state or the United States . . ."

As Plaintiff P+M's claims as against Hudson-Spring asserted in the Complaint and Hudson Spring's Counterclaims against P+M and Poulin + Morris are based on the lease that is already at issue in the Prior Pending Action, Plaintiff's action as against Hudson-Spring and Hudson-Spring's counterclaims against P+M and Poulin + Morris are dismissed.

Wherefore it is hereby

ORDERED that defendant Hudson-Spring Partnership, L.P.'s motion to dismiss the Complaint is granted, and the Complaint is dismissed as against defendant Hudson-Spring Partnership, L.P., and the Clerk shall enter judgment accordingly; and it is further

ORDERED that plaintiff's motion to dismiss defendant Hudson-Spring Partnership, L.P.'s counterclaim is granted and said counterclaim is dismissed; and it is further

ORDERED that third party defendant Poulin + Morris, Inc.'s motion to

dismiss defendant Hudson-Spring Partnership, L.P.'s counterclaim is granted and said counterclaim is dismissed.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: JANUARY 6, 2014



Eileen A. Rakover, J.S.C.