

74 Eldert, LLC v Sharp
2014 NY Slip Op 31053(U)
April 22, 2014
Supreme Court, Kings County
Docket Number: 503266/2013
Judge: Ann T. Pfau
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At an IAS Term, Commercial Part 5 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 22nd day of April, 2014

P R E S E N T:

HON. ANN T. PFAU,

Justice.

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74 ELDERT, LLC,

Plaintiff,

Index No. 503266/2013

- against -

DECISION AND ORDER

LINDA SHARP, CIE SHARP, MICHAEL SHARP,
SHARP REALTY LLC, and SHARP FAMILY
REALTY LLC,

Defendants.

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LINDA SHARP, CIE SHARP, MICHAEL SHARP,

Third-Party Plaintiffs,

- against -

KALMAN SINAY, MORRELL I. BERKOWITZ, ESQ.,
MARK B. BRENNER, ESQ., GALLET DREYER &
BERKEY, LLP, MOSES BERKOWITZ, PROSPECT
MANAGEMENT INC., and JOHN DOES 1 - 25,

Third-Party Plaintiffs,

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The following papers numbered were read on motion sequence 04:

All documents electronically filed with the New York State Courts Electronic Filing (NYSCEF) system in connection with this motion, documents numbered 250 - 278.

The corporate defendants, Sharp Realty LLC and Sharp Family Realty LLC, move to renew motion sequence numbers 01 and 02, which were decided by a decision and ordered dated January 17, 2014 (January 2014 Order). In the January 2014 Order, Sharp Realty LLC and Sharp Family Realty LLC were declared in default in answering the complaint and plaintiff's motion for default judgment against the corporate defendants was granted. The January 2014 Order also struck the counterclaims and affirmative defenses raised by the individual defendants, dismissed the third-party complaint and prohibited the individually named defendants from filing any further motions or cross-motions in this proceeding without prior court approval.

In this motion, the corporate defendants seek to renew in order "to correct assertions therein as to ownership of Sharp Realty LLC" (Notice of Motion, NYCSEF document number 250). In support of that motion, the individual defendants Michael and Cie Sharp submit affidavits in which they continue to assert, as they have on multiple occasions throughout this proceeding, their dissatisfaction with the court's rulings and their version of the facts, including issues related to attorneys' fees not addressed in the January 2014 Order that underlie this action and a related foreclosure proceeding (Affidavit in Support of Motion by Michael Sharp, NYSCEF doc. no. 251; Affidavit in Support of Motion by Cie Sharp, NYSCEF doc. no. 253).

In opposition to this motion, plaintiff alleges that defendants have “repeatedly, intentionally, and willfully filed one frivolous motion, affidavit, action, proceeding, or claim, after another since October, 2012, with impunity, unnecessarily and unjustifiably taking up the time of this Court, and unnecessarily and unjustifiably requiring Plaintiff to incur literally hundreds of thousands of dollars in attorneys’ fees in opposing same and simply seeking to enforce the settlement agreement Defendants agreed to” (Affirmation of Morrell I. Berkowitz in Opposition to the Motion, NYSCEF doc. no. 264, ¶8). Plaintiffs seek the imposition upon defendants of sanctions in the amount of \$2500, together with the attorneys’ fees, costs and expenses incurred in responding to this motion and an order precluding any further filings by any of the defendants against plaintiff or any of the third party defendants without the prior explicit authorization of the court (*id.*, ¶¶9, 10).

A motion for leave to renew, as movant describes the instant motion, according to CPLR 2221(e) shall be based on new facts not offered on the prior motion that would change the prior determination and shall contain reasonable justification for the failure to present such facts on the prior motion. No element of CPLR 2221(e) has been met. The corporate defendants have defaulted in this matter, having filed no answer to the complaint and having not sought additional time in which to answer. The instant motion by the corporate defendants is entirely void of merit, and has been mis-used by the individual defendants to sidestep that part of the January 2014 Order that prohibits them from filing additional motions without prior court approval. Oddly, Michael Sharp’s affidavit is directed primarily at what he identifies as factual errors in a decision and

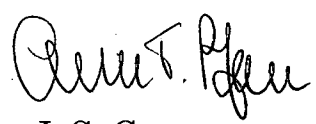
order dated May 9, 2013, issued in a related action. Cie Sharp's affidavit is primarily aimed against claims for payment by defendants' former attorneys for services rendered before this action was commenced, having nothing to do with the corporate defendant's motion to renew. In short, this motion is frivolous within the definition of section 130-1.1c of the Rules of the Chief Administrator, that is (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law, and (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another. (*See Ram v Torto*, 111 AD3d 814 [2nd Dept 2013], *lv to appeal denied*, 22 NY3d 860 [2014]).

Accordingly, plaintiff's application for the imposition of costs and reasonable attorneys fees and expenses incurred in responding to this order are granted in the amount of \$500. Further, all defendants in this proceeding—individual and corporate—are prohibited from any further filings in connection with this matter without the prior written permission of the court. Plaintiff's request for additional sanctions is denied, although defendants are strongly cautioned that any further frivolous filings will result in the imposition of greater sanctions.

ORDERED that the motion by the corporate defendants to renew is denied; and it further is

ORDERED that plaintiff's application for the imposition of costs and reasonable attorney's fees on defendants is granted in the amount of \$500, payable to plaintiff's counsel within 30 days of service of a copy hereof with notice of entry.

ENTER,



J. S. C.

HON. AN T. PFAF