Jonas v City of New York
2014 NY Slip Op 32091(U)
July 23, 2014
Sup Ct, Bronx County
Docket Number: 301113/14
Judge: Mitchell J. Danziger
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
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GORDON JONAS,

DECISION AND ORDER

Plaintiff(s), Index No: 301113/14

- against -

THE CITY OF NEW YORK, 340 EAST 93RD STREET CORPORATION, DOUGLAS ELLIMAN PROPERTY MANAGEMENT, DOUGLAS ELLIMAN LLC, 3755 OWNERS LTD., GOODMAN MANAGEMENT CO., THE CITY OF NEW YORK, NYC DEPT. OF FINANCE, NYC-HRA DEPT. OF SOCIAL SVCES, NYC POLICE DEPT., NYC HOUSING AUTHORITY, BUREAU OF CITY MARSHALS,

Defendant(s).

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In this action for alleged personal injuries, *pro se* plaintiff moves seeking an order (1) transferring the venue of this action to Albany, New York on grounds that such venue offers a more neutral location; (2) allowing him to sell shares of stock allocated to two cooperative apartments within defendant 340 EAST 93RD STREET CORPORATION (340) and defendant 3755 OWNERS LTD. (3755), without approval from 340 and 3755; (3) ordering 340 and 3755 to buy back the stock allocated to the respective cooperative apartments at present value; and (4) assigning a court-appointed lawyer to represent him in this action. 3755, 340, defendant CITY OF NEW YORK (the City), and defendant DOUGLAS ELLIMAN, LLC (Douglas) oppose the portion of plaintiff's motion seeking a discretionary

change in venue pursuant to CPLR § 510(2) on grounds that he fails to establish entitlement to such relief. 340 and 3755 also oppose the portion of plaintiff's motion seeking relief with respect to the shares of stock he owns within their respective cooperatives insofar as such relief is either not authorized by the proprietary lease governing the relationship between the parties or expressly barred by it.

For the reasons that follow hereinafter, plaintiff's motion is denied.

This is an action for alleged personal and pecuniary injury sustained by plaintiff as a result of tortious conduct perpetrated by the defendants. The complaint[1] alleges that "this action is about discrimination, assault upon plaintiff's person to cause plaintiff injury and financial burden." Plaintiff alleges that defendants subjected him to "fear of imminent harmful or offensive conduct," that "[p]olice officers moonlighting and acting under the color of law stopped and frisked him in the lobby of the building where he worked," and that he was denied certain property tax exemptions credits.

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[1] Plaintiff's complaint is 32 pages and to the extent it fails to specify and identify his causes of action, is difficult to follow. In summarizing plaintiff's causes of action, the Court has endeavored to distill the discernible causes of action from the voluminous complaint. Thus, if the Court's summary of plaintiff's causes of action is vague or disjointed, it is merely a reflection of the contents of plaintiff's complaint.

Preliminarily, the Court notes that plaintiff is proceeding *pro se*. While courts will generally accord "pro se litigants some leeway in the presentation of their case, pro se litigants must still abide by court procedures and calendars" (*Stoves & Stones, Ltd. v Rubens*, 237 AD2d 280, 280 [2d Dept 1997]). This, of course, is because it is well settled that "[a] litigant appearing pro se acquires no greater right than any other litigant and such appearance may not be used to deprive defendants of the same rights enjoyed by other defendants" (*Roundtree v Singh*, 143 A.D.2d 995, 996 [2d Dept 1998]). Accordingly, this Court cannot and will not accord him any special treatment and will hold him to the same standards of practice that it holds lawyers appearing before it.

Plaintiff's Motion to Change Venue

Plaintiff's motion seeking to change the venue of this action to Albany, New York, on grounds that such venue offers a more neutral venue for all parties concerned is denied.

While CPLR § 510(2) authorizes a court, to change the venue of an action when "there is reason to believe that an impartial trial cannot be had in the proper county," such relief should only be granted if "sufficient facts to support such belief appear in the motion papers" (*DeBolt v Barbosa*, 280 AD2d 821, 822 [3d Dept 2001]). Specifically, before such relief can be granted the proponent of such relief must proffer facts which demonstrate a

strong possibility that an impartial trial cannot be obtained in the venue where the action was brought (*Jablonski v Trost*, 245 AD2d 338, 339 [2d Dept 1997]; *Krupka v County of Westchester*, 160 AD2d 681, 681 [2d Dept 1990]). Accordingly, "[m]ere belief, suspicion or feeling are not sufficient grounds for the granting of the motion [to change the venue of an action on grounds of impartiality]" (*Jablonski* at 341; *Krupka* at 681).

Here, beyond the claim that Albany would be a more neutral venue for this action, plaintiff's papers are bereft of facts demonstrating that Bronx County - notably, the venue he himself chose - would not accord him complete fairness. Accordingly, his motion to change the venue of this action is denied.

Plaintiff's Motion for Orders Affecting his Shares at 340 and 3755

Plaintiff's motion seeking an order allowing him to sell the shares allocated to apartments within 340 and 3755 without the approval of 340 and 3755 is denied as is his motion seeking an order compelling the aforementioned defendants to buy back his shares at present value.

"A lease, like any other contract, is to be interpreted in light of the purposes sought to be attained by the parties" (*Farrell Lines, Inc. v City of New York*, 30 NY2d 76, 82 [1972]). It has long been held that absent a violation of law or some

transgression of public policy, people are free to enter into contracts, making whatever agreement they wish, no matter how unwise they may seem to others (*Rowe v Great Atlantic & Pacific Tea Company, Inc.*, 46 NY2d 62, 67-68 [1978]). Consequently, when a contract dispute arises, it is the court's role to enforce the agreement rather than reform it (*Grace v Nappa*, 46 NY2d 560, 565 [1979]). In order to enforce the agreement, the court must construe it in accordance with the intent of the parties, the best evidence of which being the very contract itself and the terms contained therein (*Greenfield v Philles Records, Inc.*, 98 NY2d 562, 569 [2002]). It is well settled that "when the parties set down their agreement in a clear, complete document, their writing should be enforced according to its terms" (*Vermont Teddy Bear Co., Inc. v 583 Madison Realty Company*, 1 NY3d 470, 475 [2004] [internal quotation marks omitted]) Moreover, "a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms" (*Greenfield* at 569). Accordingly, courts should refrain from interpreting agreements in a manner which implies something not specifically included by the parties, and courts may not by construction add or excise terms, nor distort the meaning of those used and thereby make a new contract for the parties under the guise of interpreting the writing (*Vermont Teddy Bear Co., Inc.* at 475). This approach serves to preserve "stability to commercial transactions by safeguarding

against fraudulent claims, perjury, death of witnesses [and] infirmity of memory" (*Wallace v 600 Partners Co.*, 86 NY2d 543, 548 [1995] [internal quotation marks omitted]).

The proscription against judicial rewriting of contracts is particularly important in real property transactions, where commercial certainty is paramount, and where he agreement was negotiated at arm's length between sophisticated, counseled business people (*Vermont Teddy Bear Co., Inc.* At 475). Specifically, in real estate transactions, parties to the sale of real property, like signatories of any agreement are free to tailor their contract to meet their particular needs and to include or exclude those provisions which they choose. Absent some indicia of fraud or other circumstances warranting equitable intervention, it is the duty of a court to enforce rather than reform the bargain struck(*Grace v Nappa*, 46 NY2d 560, 565 [1979]).

Here, plaintiff completely fails to apprise the Court why he should be accorded such extraordinary relief. Not only are his affidavits in support of his motions devoid of facts demonstrating that he cannot be accorded fairness in Bronx County, but so are his documentary submissions. Thus, his motion fails for this reason alone. Additionally, however, his motion must be denied insofar as 340 and 3755 establish that the relief sought by plaintiff either violates the express terms of the proprietary leases to which

plaintiff became bound upon the purchase of the shares to the apartments within defendants' cooperatives (*Bryant v One Beekman Place, Inc.*, 73 AD3d 616, 616 [1st Dept 2010] ["Plaintiffs, upon purchasing their cooperative apartment, voluntarily subjected themselves to the rules, by-laws and policies of defendant cooperative corporation."]), or is not authorized by those leases.

Specifically, with its opposition, 3755 asserts that paragraph 16 of the proprietary lease to which plaintiff is a party requires consent of 3755 before the sale of plaintiff's shares for the apartments within its cooperative inasmuch as paragraph 16 states that plaintiff "shall not assign this lease or transfer shares to which it is appurtenant . . . until . . . consent to such assignments shall have been authorized." 3755 also states that the proprietary lease contains no provision requiring 3755 to buy back plaintiff's shares, let alone at present value. With its submissions, 340 similarly establishes that the proprietary lease to which plaintiff became a party upon the purchase of shares allocated to the apartment within its cooperative similarly bars the sale of stock shares absent consent by 340 and that the lease contains no provision whereby 340 can be forced to buy plaintiff's shares.

Accordingly, because when parties set down their agreement in a clear, complete document, it should be enforced according to its

terms (*Vermont Teddy Bear Co.* at 475), and, here, the relief sought by plaintiff would violate the clear and unambiguous language of the respective proprietary leases, plaintiff is not entitled to sell his shares absent approval by 340 or 3755. Similarly, inasmuch as courts should refrain from interpreting agreements in a manner which implies something not specifically included by the parties, and courts may not by construction add or excise terms, nor distort the meaning of those used and thereby make a new contract for the parties under the guise of interpreting the writing (*Vermont Teddy Bear Co., Inc.* at 475), here, in the absence of a provision in the relevant proprietary leases requiring that 340 or 3755 buy back any of plaintiff's shares, plaintiff is not entitled to, nor can the Court compel that 340 or 3755 buy back his shares.

Plaintiff's Motion Seeking Court-Appointed Counsel

Plaintiff's motion seeking to have the Court appoint counsel to represent him in this action is denied inasmuch as he is not entitled to such counsel in a civil action such as this one.

It is well settled that the Sixth Amendment's right to counsel is not implicated in civil proceedings (*Watson v Fiala*,101 AD3d 1649, 1649 [4th Dept 2012]; *Baywood Elec. Corp. v New York State Dept. of Labor*, 232 AD2d 553, 554 [2d Dept 1996).

Accordingly, while plaintiff is free to retain counsel to represent him in this action, the Court need not, and will not appoint counsel to represent him. It is hereby

ORDERED that 340 serve a copy of this Order with Notice of Entry upon all parties within thirty (30) days hereof.

This constitutes this Court's decision and Order.

Dated : July 23, 2014

Bronx, New York

Hon. MITCHELL J. DANZIGER, J.S.C.