Metro Sixteen Hotel, LLC v Davis
2014 NY Slip Op 32425(U)
September 15, 2014
Supreme Court, New York County
Docket Number: 159720/13
Judge: Anil C. Singh

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

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METRO SIXTEEN HOTEL, LLC, HIREN SHAH a/k/a HARRY SHAH, MEYER MUSCHEL, SAM CHANG, MANDA ASSOCIATES, LLC, and GAMAL WILLIS,

Plaintiffs,

-against-

ROLAND DAVIS,

Defendant.

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DECISION AND ORDER

Index No. 159720/13

HON. ANIL C. SINGH, J.:

Plaintiffs move by order to show cause: 1) pursuant to CPLR §6301 for a preliminary injunction enjoining the defendant, who is pro se, from commencing any action or proceeding against any of the plaintiffs relating to the property owned by plaintiff Metro Sixteen Hotel, LLC ("Metro"), without prior approval of the Administrative Judge of the Court, unless defendant is represented by an attorney; and 2) pursuant to 22 NYCRR Part 130-1.1, for an order assessing sanctions against defendant for alleged frivolous conduct. Defendant opposes the motion.

Plaintiffs commenced the instant action by filing a summons and complaint on October 22, 2013. The complaint asserts two causes of action: 1) malicious prosecution; and 2) abuse of process.

It is undisputed that defendant Roland Davis ("Davis") is one of nine long-term residents in the building owned by plaintiff Metro. The building located at 338-340 Bowery, New York, New York (the "property" or "building") is operated as an inexpensive hotel/hostel for young travelers and as a single room occupancy building for permanent residents.

In plaintiffs' complaint they describe this action as one for injunctive relief against defendant Davis enjoining him from commencing serial frivolous lawsuits against plaintiffs

concerning their ownership and management of the property. Davis has commenced twenty-three actions ("the actions") since 2009 in various Parts of the New York City Civil Court ("Civil Court") against one or more of the plaintiffs, whereby he has either withdrawn the case, failed to appear (and, as a result, the case was dismissed upon his default), or the case was dismissed on the merits by motion or after trial.

Plaintiff contends they have spent over $200,000 defending themselves in these actions initiated by Davis who commenced them purely out of spite, ill will, and in bad faith. Moreover, plaintiffs assert the actions have resulted in harassment against them and an abuse of the judicial process.

Discussion

In order to be entitled to a preliminary injunction, plaintiff must show make a prima facie showing of "a probability of success, danger of irreparable injury in the absence of an injunction, and a balance of the equities in their favor." (Aetna Ins. Co. v Capasso, 75 NY2d 860, 862 [1990]). The issue the Court must decide at this stage, then, is whether plaintiffs are likely to succeed on their causes of action for malicious prosecution or abuse of process.

Malicious Prosecution

It is well settled that in order to recover for malicious prosecution, a plaintiff must establish: (1) the commencement or continuance of a proceeding by the defendant against the plaintiff; (2) the termination of that proceeding in favor of the plaintiff; (3) the absence of probable cause for the proceeding; and (4) actual malice" (Cantalino v Danner, 96 NY2d 391, 394 [2001]). In addition, if the proceeding of which the plaintiff complains was a civil action, there must have been some provisional remedy or "some interference with the person or property

of the defendant in connection with the bringing of the civil action (Chappelle v Gross, 26 AD2d 340, 342 [1st Dept 1966]).

Plaintiffs' have proffered the affidavit of Meyer Muschel which delineates the salient facts of twenty-three different cases initiated by Davis against plaintiffs regarding the ownership and management of the property which have ultimately resulted in dismissal (see Muschel Aff.). Annexed to the affidavit as exhibits are the coordinating court documents, which support plaintiffs' assertions that all twenty three cases have resulted in Davis either withdrawing the case, failing to appear (and, as a result, the case was dismissed upon his default), or the case was being dismissed on the merits by motion or after trial. As such, plaintiffs have established the first two prongs of malicious prosecution including the commencement or continuance of a proceeding by the defendant against the plaintiff and the termination of that proceeding in favor of the plaintiff.

However, plaintiffs failed to establish the absence of probable cause for the proceedings. In his opposition, Davis points out that as an indirect result of litigation initiated by Davis in 2009, the City Council made a general inspection of the premises as did the Fire Department and other Housing Authorities, resulting in a nineteen month vacate order which cites improper housing conditions. Although, Davis concedes that the vacate order was rescinded and Davis discontinued the cases, the issuance of the vacate order implies that Davis' 2009 suits were initiated with probable cause.

Davis contends that plaintiffs' have an "overall strategy to motivate me and other permanent residents to move out, the owners willfully ignore complaints that chronically affect warranty of habitability and will take no action unless someone initiates litigation" (Answer, ¶ 41). In a landlord-tenant dispute, it is not uncommon for parties to return to the courthouse many

times (see Green v. Fischbein Olivieri Rozenholc & Badillo, 119 A.D.2d 345 [1st Dept., 1986])). Moreover, plaintiffs' have failed to allege the existence of a provisional remedy in the underlying actions. Thus, plaintiffs have failed to establish a cause of action for malicious prosecution.

Abuse of Process

Now turning to plaintiffs' cause of action for abuse of process. A cause of action for abuse of process has three essential elements: (1) regularly issued civil or criminal process; (2) an intent to do harm without excuse or justification; and (3) use of the process in a perverted manner to obtain a collateral objective (Fisk Bldg. Associates LLC v. Shimazaki II, Inc., 76 AD3d 468, 469 [1st Dept 2010]).

Here, plaintiff has sufficiently pled facts to maintain a cause of action for abuse of process. As previously discussed, Davis has initiated twenty three different civil cases against plaintiffs since 2009, all of which resulted in dismissal (see Muschel Aff.). Plaintiffs contend Davis initiated litigation for a collateral purpose insofar as Davis has attempted to extort plaintiff metro for employment in exchange for agreeing not to commence frivolous litigation and invoicing plaintiff metro for work performed by Davis to which he was not hired to perform. Davis on the other hand characterizes the employment as being offered by plaintiff. On issues of fact, "[p]rovided that the elements required for the issuance of a preliminary injunction are demonstrated in the plaintiff's papers, the presentation by the defendant of evidence sufficient to raise an issue of fact as to any of such elements shall not in itself be grounds for denial of the motion". (CPLR 6312(c)).

Therefore, plaintiff has sufficiently pled the elements for abuse of process (see Banushi v. Law Office of Scott W. Epstein, 110 AD2d 198 [1st Dept 2013] (finding injunction was justified

by defendant's continuous and vexatious litigation against plaintiffs where defendant initiated only five cases)). Plaintiffs have also stated that they have spent over $200,000 in legal fees and made over one hundred court appearances defending themselves in actions initiated by Davis which have ultimately all resulted in dismissal (see Muschel Aff.). Plaintiffs' argue that without an injunction this abuse of process will not abate. Thus, plaintiffs have shown probability of success on their claim, a danger of irreparable injury in the absence of an injunction and a balance of the equities in their favor which is required for a preliminary injunction pending ultimate determination of the claims at trial.

This court does not find that Davis' conduct rises to the level of frivolous in order to warrant the imposition of sanctions.

Accordingly, it is

ORDERED that plaintiffs' motion for a preliminary injunction to enjoin defendant Roland Davis from commencing any action against plaintiffs relating to the property at 338-340 Bowery, New York, New York without prior approval of the Administrative Judge of the Court, the commissioner of the agency, commission, or tribunal, unless defendant Roland Davis is represented by an attorney is granted; and it is further

ORDERED that plaintiffs' motion for sanctions is denied.

Date: September 15, 2014
New York, New York

Anil C. Singh
HON. ANIL C. SINGH
SUPREME COURT JUSTICE