

Rokhsar v East Coast Appraisal Serv.

2015 NY Slip Op 30528(U)

April 10, 2015

Supreme Court, New York County

Docket Number: 151490/2013

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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CAMERON K. ROKHSAR,

Plaintiff,

Index No. 151490/2013

-against-

DECISION/ORDER

EAST COAST APPRAISAL SERVICE, ALEXANDER
ANDRADE and MICHAEL PAVLAKOS,

Defendants.

-----X
HON. CYNTHIA 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.....	<u>1</u>
Notice of Cross-Motion and Affidavits Annexed	<u> </u>
Answering Affidavits.....	<u>2</u>
Replying Affidavits.....	<u>3</u>

This is an action for appraiser malpractice arising out of an appraisal report that defendant East Coast Appraisal Service (“ECAS”) issued in the context of an underlying matrimonial action in which plaintiff was a party. Defendants now move for summary judgment dismissing plaintiff’s complaint in its entirety. For the reasons set forth below, defendant’s motion is granted.

The relevant facts are as follows. Plaintiff was a party in an underlying divorce proceeding. In that proceeding, ECAS conducted an appraisal of the parties’ marital residence for the purpose of dividing the marital assets between them. ECAS’s initial report valued the

premises somewhere between \$700,000 and \$800,000. Plaintiff's attorney voiced concern about this appraisal to the matrimonial court, which then directed ECAS to re-evaluate its initial appraisal. The divorce proceeding was ultimately referred to Special Referee Luis Crespo ("Special Referee Crespo") to hear and report on the issues of equitable distribution, maintenance, child support, and reallocation of expert fees and award of counsel fees. Special Referee Crespo's report indicates that "[i]n lieu of testimony, the parties agreed to the submission of the appraisal report for the marital residence, prepared by the Court appointed appraiser, East Coast Appraisal Service." In light of the parties' agreement to use ECAS's appraisal report, the Special Referee's report accepted as uncontested ECAS's appraisal value for the premises of \$815,000 as of October 10, 2010 and recommended that plaintiff and his ex-wife each receive half of the value of the premises.

A Judgment of Divorce was entered on August 24, 2011 (the "Judgment"). The Judgment provided, among other things, that Special Referee Crespo's "April 8, 2011, Report & Recommendations is incorporated by reference herein and the parties are directed to comply with every legally enforceable term and provision of the April 8, 2011, Report & Recommendations as if such terms or provisions were set forth in their entirety herein. . . ." Hence, the value of the premises was divided equally by the parties in the manner recommended by Special Referee Crespo. Plaintiff did not appeal or reargue the judgment.

Plaintiff now brings the instant action alleging that the appraisal report prepared by defendants valued the matrimonial residence substantially lower than it should have been and asserts three causes of action against defendants for negligence/malpractice, breach of contract and negligent misrepresentation. Defendants move for summary judgment dismissing the claims

on the grounds that the claims are barred pursuant to the judicial immunity doctrine, no privity exists between the parties and plaintiff's allegations pertaining to defendant Alexander Andrade's licensure and his compliance with continuing education requirements are immaterial.

On a motion for summary judgment, the movant bears the burden of presenting sufficient evidence to demonstrate the absence of any material issues of fact. *See Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). Once the movant establishes a *prima facie* right to judgment as a matter of law, the burden shifts to the party opposing the motion to "produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim." *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). However, "mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" to defeat summary judgment. *Id.* Moreover, "judgment may be summarily granted where compelling documentary evidence clearly demonstrates that factual issues raised in opposition to the motion 'are not genuine, but feigned.'" *Alvarez v. New York City Housing Auth.*, 295 A.D.2d 225, 226 (1st Dept 2002) (quoting *Glick & Dolleck v. Tri-Pac Export Corp.*, 22 N.Y.2d 439, 441 (1968)); *see also Bank of N.Y. v. 125-127 Allen St. Assoc.*, 59 A.D.3d 220 (1st Dept 2009).

In the instant action, defendants' are entitled to summary judgment dismissing plaintiff's claims as the evidentiary material submitted by defendants in support of their motion establishes conclusively that plaintiff's action is barred by the doctrine of judicial immunity and plaintiff has failed to present evidence in opposition raising a genuine factual issue. It is well settled that individuals serving in judicial capacities as well as those who are delegated judicial or "quasi-judicial" functions are absolutely immune from civil suits based on any actions taken in their official capacities. *See Mosher-Simmons v. County of Allegany*, 99 N.Y.2d 214, 220 (2002).

This judicial immunity privilege is regularly applied to expert witnesses when such witnesses are appointed by the court. *See Bridget M. v. Billick*, 36 A.D.3d 489, 490 (1st Dept 2007) (holding that “a psychiatrist appointed by the court as a neutral forensic evaluator with the consent of the parties’ attorneys and the children’s Law Guardian in an underlying custody proceeding in Family Court has judicial immunity from suit for malpractice regarding the work he performed”); *Finkelstein v. Bodek*, 131 A.D.2d 337 (1st Dept 1987) (“Included within those groups of persons who enjoy immunity for statements uttered in a judicial proceeding are court-appointed experts who are ordered to conduct psychiatric examinations.”); *Young v. Campbell*, 87 A.D.3d 692 (2nd Dept 2011) (dismissing a negligence/malpractice action against psychologists and social workers who had been appointed to aid courts in divorce and neglect proceedings because “judicial immunity preclude the plaintiff from recovering damages for negligence or malpractice against them”); *Colombo v. Schwartz*, 15 A.D.3d 522 (2nd Dept 2005) (finding that psychiatric expert “has judicial immunity from suit regarding the work he performed as a court-appointed psychiatric expert in connection with the plaintiff’s spousal support litigation”).

Here, defendants have made a prima facie showing of their right to judicial immunity in this suit by establishing that the appraisal work they performed in connection with plaintiff’s divorce proceedings was done in their role as a court appointed appraiser and plaintiff’s claims all arise from this work. In support of their motion, defendants present the court with the appraisal report they submitted in the underlying matrimonial action as well as the Special Referee’s report. The appraisal report clearly indicates that it was prepared for “Special Referee, Luis Crespo” and not for any particular party. Further, Special Referee Crespo notes in his report that “in lieu of testimony, the parties agreed to the submission of appraisal report for the marital

residence, *prepared by the Court appointed appraiser, East Coast Appraisal Service.*”

(Emphasis added). These reports clearly identify ECAS as a court-appointed appraiser in the divorce proceedings. Thus, as plaintiff’s claims in this action arise from defendants appraisal work in the divorce proceedings, defendants are entitled to judicial immunity in this action.

In opposition, plaintiff has failed to present sufficient evidence raising an issue of fact. Plaintiff contends that defendants are not entitled to judicial immunity as they were hired directly by plaintiff and not by the court. Specifically, in his affirmation submitted in opposition to the present motion, plaintiff attests that “[ECAS] was not appointed by the Court. Rather, I chose [ECAS] to perform the appraisal.” This conclusory assertion is insufficient to raise a genuine issue of fact as to whether defendants were appointed by the court in the underlying action as it is directly contradicted by both ECAS’s and the Special Referee’s report. Indeed, plaintiff offers no explanation as to why the appraisal and special referee report would characterize defendants as “court appointed” if indeed they had been hired privately by plaintiff. Moreover, even assuming, *arguendo*, that plaintiff did initially hire ECAS to appraise the marital residence, such fact would not change ECAS’s entitlement to judicial immunity in this action. No matter who initially chose ECAS as an appraiser, it is clear that ECAS acted as a neutral appraiser on behalf of the court and plaintiff himself agreed to this as evidenced by the Special Referee’s report noting that the parties had agreed that in lieu of testimony they would both rely on ECAS’s appraisal. Thus, plaintiff has failed to raise an issue of fact and defendants are entitled to summary judgment dismissing this action.

Based on the foregoing, defendants’ motion for summary judgment dismissing plaintiff’s complaint in its entirety is granted and it is hereby

ORDERED that this action is dismissed. This constitutes the decision and order of the

