

Khazanov v 2800 Coyle St. Owners Corp.

2015 NY Slip Op 31438(U)

July 16, 2015

Supreme Court, Kings County

Docket Number: 5407/14

Judge: Wavny Toussaint

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 70 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 16th day of July, 2015.

P R E S E N T:

HON. WAVNY TOUSSAINT,
Justice.

-----X

MARK KHAZANOV,
Plaintiff,

- against -

Index No. 5407/14

2800 COYLE STREET OWNERS
CORPORATION,
Defendants.

-----X

The following papers numbered 1 to 2 read herein:

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed_____	1
Opposing Affidavits (Affirmations)_____	2
Reply Affidavits (Affirmations)_____	_____
_____Affidavit (Affirmation)_____	_____
Other Papers_____	_____

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Upon the foregoing papers, plaintiff Mark Khazanov moves for an order dismissing the counterclaims and sanctioning defendant 2800 Coyle Street Owners Corporation (hereinafter 2800 Coyle) for fraud and frivolous conduct pursuant to 22 NYCRR 130-1.1 and CPLR 5015 (a) (3). Plaintiff's motion is denied.

Plaintiff is a shareholder of 2800 Coyle, the owner of a cooperative apartment

Plaintiff is a shareholder of 2800 Coyle, the owner of a cooperative apartment building, and a lessee of an apartment unit in 2800 Coyle's building pursuant to a proprietary lease. Beginning in or around 2011, plaintiff commenced several small claims actions against defendant and defendant, relying on a provision contained in the parties' proprietary lease allowing it to recover its costs and legal fees with respect to actions or proceedings commenced against it,¹ proceeded to charge plaintiff for such legal fees as part of his maintenance/rent owed. In this action, plaintiff primarily seeks cancellation and/or recovery of the legal fees imposed on his account. Plaintiff asserts that defendant improperly charged him for these legal fees as, despite the fee provision contained in the proprietary lease, defendant was not the prevailing party in the prior actions, and was thus not entitled to charge plaintiff for its legal fees.

Defendants have answered and pled counterclaims for: (1) breach of contract on the ground plaintiff has breached the proprietary lease by failing to pay the fees required under the proprietary lease; (2) account stated, on the ground that plaintiff has failed to pay the amounts due in numerous accounts and invoices sent to him; (3) prima facie tort, based on plaintiff's filing of numerous vicious and baseless lawsuits against defendant; (4) abuse of process, based on the filing of lawsuits and administrative proceedings against defendant;

¹ Paragraph 28 of the proprietary lease provides that, "[i]f the Lessee shall at any time be in default hereunder and the Lessor shall incur any expense (whether paid or not) in performing acts which the Lessee is required to perform, or in instituting any action or proceeding based on such default, or defending or asserting a counterclaim in, any action or proceeding brought by the Lessee, the expense thereof to the Lessor, including reasonable attorneys' fees and disbursements, shall be paid by the Lessee to the Lessor, on demand, as additional rent."

and (5) a declaratory judgment declaring the rights of the parties under the proprietary lease. Plaintiff has responded to the counterclaims, and now makes the instant motion to dismiss them and for sanctions against defendant.

Plaintiff, who is proceeding pro se, has failed to identify the procedural basis for his motion to dismiss. With respect to each cause of action pled in the counterclaim, plaintiff argues that defendant “submitted these allegations in general words without any documentary evidence.” As a pleading, however, a counterclaim, like any other pleading, need not contain evidentiary facts or be supported by documentary evidence. Therefore, to the extent that plaintiff’s motion may be deemed a motion to dismiss for failing to state a cause of under CPLR 3211 (a) (7), plaintiff is not entitled to dismissal of the counterclaims on that ground (*see Components Direct v European Am. Bank & Trust Co.*, 175 AD2d 227, 231-232 [2d Dept 1991]; *Foley v D’Agostino*, 21 AD2d 60, 62-66 [1st Dept 1964]).

To the extent that plaintiff’s motion may be deemed one for summary judgment, the motion must be denied because plaintiff has failed to submit evidentiary proof demonstrating, prima facie, the absence of material issues of fact with respect to the counterclaims (*see Voss v Netherland*, 22 NY3d 728, 734 [2014]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). By pointing to gaps in defendant’s proof (*see Griffith v JK Chopra Holding, LLC*, 111 AD3d 666, 666-667 [2d Dept 2013]) and conclusory assertions that defendant’s claims are false and the result of perjury (*see Prakhin v Fulton Towers Realty Corp.*, 122 AD3d 601, 602-603 [2d Dept 2014]), plaintiff fails to

make out his initial burden. Accordingly, plaintiff's motion, if deemed one for summary judgment, must be denied regardless of the sufficiency of defendant's opposition papers (*see Voss*, 22 NY3d at 734; *Winegrad*, 64 NY2d at 853).

To the extent that plaintiff's motion may be deemed a motion, pursuant to CPLR 3126, for an order striking defendant's answer for failing to comply with plaintiff's document demand dated February 5, 2015, the court notes that defendant has submitted a response to plaintiff's demands, dated April 8, 2015, which is attached as an exhibit to defendant's affirmation in opposition. The court declines plaintiff's request to find defendant's in default based on defendant's relatively short delay in responding to the request (*see Korchak v Santana*, 102 AD3d 928 [2d Dept 2013]; *Cambry v Lincoln Gardens*, 50 AD3d 1081, 1082-1083 [2d Dept 2008]). Plaintiff can address the adequacy of defendant's response to the demands at the compliance conference, which is scheduled for 9:30 A.M. on July 9, 2015, in the Compliance Conference Part, Room 282, Supreme Court, Kings County, 360 Adams St., Brooklyn N.Y.

Finally, with respect to plaintiff's request that defendant be sanctioned pursuant to 22 NYCRR 130-1.1, the court finds that plaintiff has failed to demonstrate that counterclaims, in and of themselves, warrant the imposition of sanctions against defendant (*see Global Events LLC v Manhattan Ctr. Studios, Inc.*, 123 AD3d 449, 450 [1st Dept 2014]; *Stone Mtn. Holdings, LLC v Spitzer*, 119 AD3d 548, 550-551 [2d Dept 2014]). Plaintiff's reliance on CPLR 5015 (a) (3) is misplaced, as that section allows a party to seek vacatur of

an order or a judgment based on fraud, and does not contemplate it as a basis for imposing sanctions.

This constitutes the decision and order of the court.

E N T E R,

A handwritten signature consisting of stylized, overlapping letters, likely 'J.S.C.', written in black ink. The signature is positioned below the word 'ENTER,' and above the text 'J. S. C.'.

J. S. C.

HON. WAVNY TOUSSAINT

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