

**Ohuche v Gennari**

2015 NY Slip Op 32054(U)

October 16, 2015

Supreme Court, New York County

Docket Number: 101237/2014

Judge: Lucy Billings

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

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11/4/15  
E*

PRESENT: **LUCY BILLINGS**  
*J.S.C.* Justice

PART 46

*ELIZABETH OHUCHIE*

**FILED**

INDEX NO. 101237/2014

*REGINA GENNARI*

NOV 04 2015

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

COUNTY CLERK'S OFFICE

The following papers, numbered 1 to 3, were read on this motion to NEW YORK DISMISS THE COMPLAINT

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). <u>1-2</u>
Answering Affidavits — Exhibits _____	No(s). <u>3</u>
Replying Affidavits _____	No(s). _____

Upon the foregoing papers, it is ordered that this motion is *and adjudged that:*  
*The court grants defendant's motion to dismiss the complaint pursuant to the accompanying decision. C.P.L.R. § 3211(a)(7).*

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**FILED**

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COUNTY CLERK'S OFFICE  
NEW YORK

*Lucy Billings*, J.S.C.

Dated: 10/16/15

**LUCY BILLINGS**

1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 46  
-----x

ELIZABETH OHUCHE,

Index No. 101237/2014

Plaintiff

- against -

DECISION AND ORDER

REGINA GENNARI,

**FILED**

Defendant

NOV 04 2015

-----x

LUCY BILLINGS, J.S.C.:

COUNTY CLERK'S OFFICE  
NEW YORK

I. BACKGROUND

Plaintiff sues to recover damages for defendant attorney's deceitful conduct during a Housing Part proceeding in the New York County Civil Court. Defendant represented plaintiff's tenants in the Housing Part proceeding.

The complaint alleges that on August 7, 2014, during a Housing Part hearing before Judge Levy, defendant demanded that plaintiff pay \$500,000 to settle her clients' claims against plaintiff in that proceeding and threatened that the Judge would triple that amount or imprison plaintiff if she did not accept defendant's demand. The complaint also alleges that during the hearing August 7, 2014, defendant allowed her clients to lie to the Judge.

Finally, the complaint alleges that defendant orchestrated a sham burglary by instructing her clients' friend to break into the clients' apartment, ransack it, and steal their television. Plaintiff claims fraud, an attorney's deceit, extortion,

conspiracy, and intentional infliction of emotional distress against defendant. Defendant moves to dismiss the complaint under C.P.L.R. § 3211(a)(7).

## II. FAILURE TO STATE A CLAIM

In determining defendant's motion to dismiss the complaint under C.P.L.R. § 3211(a)(7), the court must accept plaintiff's allegations as true, liberally construe them, and draw all reasonable inferences in her favor. JF Capital Advisors, LLC v. Lightstone Grp., LLC, 25 N.Y.3d 759, 764 (2015); Miglino v. Bally Total Fitness of Greater N.Y., Inc., 20 N.Y.3d 342, 351 (2013); Nonnon v. City of New York, 9 N.Y.3d 825, 827 (2007); Drug Policy Alliance v. New York City Tax Comm'n, \_\_\_ A.D.3d \_\_\_, 15 N.Y.S.3d 784, 785 (1st Dep't 2015). The court may not rely on facts alleged by defendant unless the evidence demonstrates the absence of any significant dispute regarding those facts and completely negates the allegations against the defendant. Miglino v. Bally Total Fitness of Greater N.Y., Inc., 20 N.Y.3d at 351; Lawrence v. Graubard Miller, 11 N.Y.3d 588, 595 (2008).

## III. FRAUD

To state a claim for fraud, plaintiff must allege that defendant made a misrepresentation that was false, she knew this misrepresentation was false, plaintiff justifiably relied on this misrepresentation, and plaintiff suffered an injury as a result of that reliance Mandarin Trading Ltd. v. Wildenstein, 16 N.Y.3d 173, 178 (2011); Laduzinski v. Alvarez & Marsal Taxand LLC, \_\_\_ A.D.3d \_\_\_, 16 N.Y.S.3d 229, 231 (1st Dep't 2015); Gosmile, Inc.

v. Levine, 81 A.D.3d 77, 81 (1st Dep't 2011); Nicosia v. Board of Mgrs. of the Weber House Condominium, 77 A.D.3d 455, 456 (1st Dep't 2010). Plaintiff must specify the circumstances constituting the fraud in detail. C.P.L.R. § 3016(b).

Plaintiff's allegations regarding defendant's threat of treble damages if plaintiff did not settle the proceeding for \$500,000 does not state a claim for fraud, because the potential for defendant's tenant clients to collect treble damages from plaintiff landlord if she unlawfully evicted them was an accurate representation of the law. R.P.A.P.L § 853; Rostant v. Swersky, 79 A.D.3d 456, 457 (1st Dep't 2010). Even if defendant's prediction were false under the circumstances, plaintiff may not justifiably rely on the legal opinion or conclusions of her adversary's attorney in the Housing Part proceeding. Appel v. Giddins, 89 A.D.3d 543, 544 (1st Dep't 2011); Agkira v. Julien & Schlesinger, P.C., 214 A.D.2d 178, 185 (1st Dep't 1995); Gro-Wit Capital, Ltd. v. Obigor, LLC, 33 A.D.3d 859, 860 (2d Dep't 2006). See Bohn v. 176 W. 87th St. Owners Corp., 106 A.D.3d 598, 599 (1st Dep't 2013). In fact, plaintiff has not alleged that she did rely on defendant's misrepresentations or that she suffered any injury because she did so. Lama Holding Co. v. Smith Barney, 88 N.Y.2d 413, 421 (1996); Palisades Tickets, Inc. v. Daffner, 118 A.D.3d 619, 620 (1st Dep't 2014). See Northern Stamping, Inc. v. Monomoy Capital Partners, L.P., 107 A.D.3d 427, 428 (1st Dep't 2013); Bohn v. 176 W. 87th St. Owners Corp., 106 A.D.3d at

599. For all these reasons, plaintiff's claim for fraud fails.

#### IV. THE ATTORNEY'S DECEIT

New York Judiciary Law § 487(1) provides a civil remedy when an attorney is "guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party." To sustain a claim under Judiciary Law § 487(1), plaintiff must show a chronic and extreme pattern of delinquency, intent to deceive, and damages resulting from defendant's conduct. Seldon v. Lewis Brisbois Bisgaard & Smith LLP, 116 A.D.3d 490, 491 (1st Dep't 2014); Strumwasser v. Zeiderman, 102 A.D.3d 630, 631-32 (1st Dep't 2013); Maksimiak v. Schwartzapfel Novick Truhowsky Marcus, P.C., 82 A.D.3d 652 (1st Dep't 2011).

Plaintiff also must bring her Judiciary Law § 487 claim in the action where defendant allegedly deceived plaintiff or the court. Chibcha Rest., Inc. v. David A. Kaminsky & Assoc., P.C., 102 A.D.3d 544, 545 (1st Dep't 2013); Seldon v. Spinnell, 95 A.D.3d 779, 779 (1st Dep't 2012). Since plaintiff alleges that defendant's deceit occurred during the Civil Court Housing Part proceeding, plaintiff's remedy under Judiciary Law § 487 lies exclusively in that proceeding. Chibcha Rest., Inc. v. David A. Kaminsky & Assoc., P.C., 102 A.D.3d at 545. Even were her remedy not confined to that forum, plaintiff fails to state a claim under Judiciary Law § 487 because she alleges no damages resulting from defendant's alleged deceit. Chowaiki & Co. Fine Art v. Lacher, 115 A.D.3d 600, 601 (1st Dep't 2014); Kaminsky v. Herrick, Feinstein LLP, 59 A.D.3d at 13 (1st Dep't 2008).

V. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

To state a claim for intentional infliction of emotional distress, plaintiff must show (1) that defendant engaged in extreme and outrageous conduct, (2) with intent to cause or in disregard of a substantial probability that the conduct would cause severe emotional distress, (3) a causal connection between defendant's acts and plaintiff's injury, and (4) severe emotional distress. Howell v. New York Post Co., 81 N.Y.2d 115, 121 (1993); Suarez v. Bakalchuk, 66 A.D.3d 419 (1st Dep't 2009). These elements are "rigorous and difficult to satisfy." Howell v. New York Post Co., 81 N.Y.2d at 122. To support the element of extreme and outrageous conduct, plaintiff must show that defendant's conduct was "beyond all possible bounds of decency" and "utterly intolerable in a civilized community." Marmelstein v. Kehillat New Hempstead: The Rav Aron Jofen Community Synagogue, 11 N.Y.3d 15, 22-23 (2008); Howell v. New York Post Co., 81 N.Y.2d at 122.

Plaintiff fails to state a claim for intentional infliction of emotional distress due to defendant's alleged conduct during the Housing Part proceeding because statements and actions in adversarial litigation may not support an emotional distress claim. Kaye v. Trump, 58 A.D.3d 579, 579 (1st Dep't 2009); Yalkowsky v. Century Apartments Associates, 215 A.D.2d 214, 215 (1st Dep't 1995). Nor do plaintiff's allegations show that defendant's conduct, in the course of zealous advocacy on her clients' behalf, was "beyond all possible bounds of decency" and

"utterly intolerable in a civilized community." Marmelstein, 11 N.Y.3d at 22-23.

#### VI. PLAINTIFF'S REMAINING CLAIMS

The court dismisses plaintiff's claim for extortion, as extortion is only a criminal offense and not a civil claim. Minnelli v. Soumayah, 41 A.D.3d 388, 389 (1st Dep't 2007). New York also does not recognize conspiracy as a civil claim independent of another actionable wrong. Hoeffner v. Orrick, Herrington & Sutcliffe LLP, 85 A.D.3d 457, 458 (1st Dep't 2011). Since plaintiff fails to sustain any of her other claims, her claim for civil conspiracy fails, too.

#### VII. CONCLUSION

In sum, the only conceivable damages plaintiff claims is the monetary liability she may incur if the Civil Court determines that she unlawfully evicted her tenants, including the greater liability if the Civil Court determines the unlawful eviction was intentional. R.P.A.P.L § 853; Rostant v. Swersky, 79 A.D.3d at 457. Her remedy for such potential damages is to defend against them in the Civil Court or on appeal from the Civil Court. If defendant and her clients present false evidence to the Civil Court, plaintiff's remedy is to expose that falsity through contrary evidence and cross-examination of false testimony. If defendant or her clients violate an order of the Civil Court, plaintiff's remedy is to move for contempt penalties, including damages, fines, and imprisonment, against her adversaries there. N.Y. Jud. Law §§ 750(A)(3), 751(1), 753(A), 773.

For these and all the reasons explained above, the court grants defendant's motion to dismiss the complaint. C.P.L.R. § 3211(a)(7). This decision constitutes the court's order and judgment of dismissal.

DATED: October 16, 2015

*Lucy Billings*

\_\_\_\_\_  
LUCY BILLINGS, J.S.C.

**FILED**

NOV 04 2015

COUNTY CLERK'S OFFICE  
NEW YORK

**LUCY BILLINGS  
J.S.C.**