

Kasachkoff v Sujnow
2016 NY Slip Op 30049(U)
January 11, 2016
Supreme Court, New York County
Docket Number: 651502/15
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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ALISA KASACHKOFF,

Plaintiff,

Index No. 651502/15

-against-

DECISION/ORDER

ARON SUJNOW a/k/a AHARON SUYUNOW,

Defendant.
-----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>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Plaintiff Alisa Kasachkoff commenced the instant action against defendant Aron Sujnow a/k/a Aharon Suyunow to recover on an alleged loan plaintiff made to defendant. Plaintiff now moves for an Order pursuant to (1) CPLR § 3024 striking certain allegations from defendant's answer; and (2) 22 NYCRR 130-1.1(c)(1) and (2) awarding plaintiff the costs and fees incurred in connection with the instant motion. Defendant opposes the motion and cross-moves for an Order pursuant to 22 NYCRR Rule 130-1.1(c)(1) and (2) awarding him the costs and fees incurred in connection with opposing plaintiff's motion. The motions are resolved as set forth below.

The relevant facts are as follows. Plaintiff alleges that in or around August 2011, she loaned defendant \$901,400.64 which was to be repayable on demand within a few months. She further alleges that defendant refused to repay the loan after receiving due demand from plaintiff. Additionally, plaintiff alleges that in or around August 2014, she loaned defendant \$47,000 but

defendant has also refused to return that sum. On or about May 4, 2015, plaintiff commenced the instant action seeking to recover those amounts. On or about July 13, 2015, defendant filed his answer in which he denied all of plaintiff's substantive allegations and asserted affirmative defenses and counterclaims. According to defendant's answer, in or around 2011, plaintiff asked defendant to help her enter the diamond trade business and that thereafter, in August 2011, €732,635.11 was wired from plaintiff's bank account to an account in the name of Eldan Investments PTE, Ltd. ("Eldan"), a corporation established by defendant in Singapore. Defendant alleges that the funds were not a gift but rather that Eldan was set up at plaintiff's direction and for her benefit and that the funds were intended to be used to purchase diamonds on plaintiff's behalf. Defendant further alleges that he held the funds in the Eldan account until December 2014 when he tried to return the funds to plaintiff but that plaintiff refused to accept the funds and instead directed defendant to use the money to purchase diamonds for her at a Hong Kong trade show and arranged his travel to Hong Kong. Thereafter, defendant alleges that he purchased diamonds, shipped them back to the United States and that plaintiff refused to accept them.

Additionally, the answer made certain allegations about plaintiff, which are at issue in the instant motion and are set forth, *inter alia*, as follows. Plaintiff, a long-time family friend of defendant, was a licensed psychologist and in or around 2011, the State of New York Attorney General, Medicaid Fraud Control Unit investigated plaintiff regarding fraudulent claims plaintiff submitted to Medicaid from October 2004 through March 2010. The investigation revealed that plaintiff intentionally and knowingly defrauded the State of New York in the sum of \$546,912.49 and as a result, plaintiff was charged with Medicaid fraud and with professional misconduct by the New York State Department of Education, Office of Professional Discipline State Board for Psychology. In order to avoid criminal and civil prosecution, on or about June 28, 2011, plaintiff

entered into a settlement agreement with the State of New York pursuant to which she, *inter alia*, admitted the fraud, agreed to make a total restitution to the State of New York in the sum of \$1,281,498.93 and agreed to surrender her license to practice psychology and/or psychotherapy in New York State. During the pendency of the charges, plaintiff asked defendant for emotional support, for assistance in obtaining criminal defense counsel and for assistance in her transition into a new business so that she could earn a living now that she could no longer practice her profession. Specifically, plaintiff requested that defendant teach her the diamond business and assist her in working in the diamond industry and thereafter, plaintiff and defendant entered into the deal that is the subject of this lawsuit.

After service of defendant's answer, plaintiff amended her complaint to assert causes of action based on theories of agency and breach of fiduciary duty. Additionally, on or about July 31, 2015, counsel for plaintiff wrote to defendant's counsel directing defendant's counsel's attention to the law with respect to scandalous and irrelevant pleading and placed counsel on notice that, were the allegations repeated in defendant's answer to the amended complaint, plaintiff would move to strike and for sanctions. On or about August 18, 2015, defendant's counsel responded that the allegations were proper in order to attack plaintiff's credibility and to provide context for plaintiff's alleged request for defendant's help in entering the diamond business. On or about August 19, 2015, defendant filed an answer to the amended complaint in which he again denied plaintiff's substantive allegations and asserted affirmative defenses and counterclaims. In addition, the answer repeated the allegations at issue in the instant motion.

As an initial matter, defendant's assertion that plaintiff's motion should be denied on the ground that it is time-barred is without merit. Pursuant to CPLR § 3024(b), "[a] party may move to strike any scandalous or prejudicial matter unnecessarily inserted in a pleading." Pursuant to

CPLR § 3024(c), “[a] notice of motion under this rule shall be served within twenty days after service of the challenged pleading....” It is undisputed that the answer to the amended complaint was served on August 19, 2015 and that plaintiff’s motion to strike was not filed until September 30, 2015, twenty-two days after plaintiff’s time to do so had already expired. However, it is well-settled that

[f]lexibility on the time question is especially appropriate for the motion to strike under CPLR 3024(b). If the matter in the pleading is prejudicial or scandalous and irrelevant, it is as much so later in the case as it is at the outset. It would be preferable for the objectant to make the CPLR 3024(b) motion early, but if there is really substance to the objection and it is made after the expiration of the 20-day period, it can still be entertained by the court.

Connors, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C3024:5. *See also Szolosi v. Long Island R. Co.*, 52 Misc.2d 1081, 1082 (Sup. Ct. Suffolk County 1967). Thus, as plaintiff has moved to strike the allegations on the ground that they are scandalous, prejudicial and unnecessary pursuant to CPLR § 3024(b), the court finds that the motion is timely.

Defendant’s assertion that plaintiff’s motion to strike should be denied on the ground that plaintiff waived her right to bring said motion when she answered defendant’s counterclaims is also without merit. Indeed, it is well-settled that “the service of a responsive pleading will not necessarily waive the right to move to strike scandalous or prejudicial matter unnecessarily inserted in the pleading responded to.” Connors, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C3024:6.

The court next turns to plaintiff’s motion for an Order pursuant to CPLR § 3024(b) striking certain allegations in defendant’s answer. It is well-settled that “[t]he showing required under CPLR 3024(b) is not merely that the matter objected to is ‘scandalous’ or ‘prejudicial,’ but that it is ‘unnecessarily’ inserted in the pleading. The ‘unnecessarily’ is the key word.” Connors, Practice

Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3024:4. "In general, we may conclude that 'unnecessarily' means 'irrelevant.' We should test this by the rules of evidence and draw the rule accordingly. Generally speaking, if the item would be admissible at the trial under the evidentiary rules of relevancy, its inclusion in the pleading, whether or not it constitutes ideal pleading, should not ordinarily justify a motion to strike under CPLR 3024(b)." *Id.*; *see also New York City Health & Hosps. Corp. v. St. Barnabas Community Health Plan*, 22 A.D.3d 391 (1st Dept 2005); *see also Soumayah v. Minnelli*, 41 A.D.3d 390, 392 (1st Dept 2007) ("In reviewing a motion pursuant to CPLR 3024(b) the inquiry is whether the purportedly scandalous or prejudicial allegations are relevant to a cause of action.") However, "[i]f there is significant doubt at the pleading stage as to whether or not certain pleaded allegations are relevant enough to the controversy to be admissible, and their inclusion in the case is prejudicial without the reasonable likelihood that they are properly in the case at all, the motion to strike may be justified." Connors, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3024:4; *see also Soumayah*, 41 A.D.3d at 393.

Here, the court finds that all of the allegations at issue must be stricken except for those allegations that provide context to defendant's claim that plaintiff requested defendant's help in entering the diamond business and that plaintiff gave defendant the money to buy diamonds on her behalf. Specifically, the relevant allegations that should remain in defendant's answer consist solely of bare assertions that plaintiff was the subject of an investigation by the New York State Attorney General, that pursuant to that investigation, plaintiff surrendered her license to practice psychology and that based on the surrender of her license, she had no way of making a living because she could no longer practice her profession. Aside from those bare allegations, no other allegations about the investigation and subsequent settlement are relevant to any of defendant's

claims and are merely scandalous, prejudicial and unnecessarily inserted in defendant's pleading. However, this court makes no determination as to the relevancy of such allegations at trial or that the stricken allegations, should they become relevant at the trial, cannot be proved without being specifically averred in the answer, which may be decided by the trial judge. *See Soumayah*, 41 A.D.3d at 393; *see also Schachter v. Massachusetts Protective Assn.*, 30 A.D.2d 540 (4th Dept 1968).

Finally, this court finds that neither plaintiff nor defendant is entitled to an Order awarding them costs and fees incurred in connection with the motion as neither party has put forth a sufficient basis for such relief.

Accordingly, the motion and the cross-motion are resolved to the extent set forth herein. It is hereby

ORDERED that defendant shall file and serve, within twenty days of the date of this decision, an amended answer in conformity with this court's decision. This constitutes the decision and order of the court.

Date:

1/11/16

Enter:



J.S.C.

CYNTHIA S. KERN
J.S.C.