

Landmark Ventures, Inc. v Gallucci

2016 NY Slip Op 32457(U)

December 14, 2016

Supreme Court, New York County

Docket Number: 651618/2011

Judge: Jeffrey K. Oing

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 48

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LANDMARK VENTURES, INC.,

Plaintiff,

-against-

LOUIS ROBERT GALLUCCI A/K/A ROBERT
GALLUCCI,

Defendant.

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Mtn Seq. No. 005

DECISION AND ORDER

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JEFFREY K. OING, J.:

Plaintiff Landmark Ventures, Inc. ("Landmark") moves for an order (1) confirming that part of the report of JHO Ira Gammerman that recommended this Court dismiss defendant's counterclaim and (2) rejecting that part of the report that recommended this Court dismiss plaintiff's complaint.

Defendant Louis Robert Gallucci a/k/a Robert Gallucci cross-moves for an order (1) confirming JHO Gammerman's recommendation that plaintiff's complaint be dismissed and (2) rejecting that portion of his report that recommended that Gallucci's counterclaims be dismissed as well.

Familiarity with the underlying facts is presumed. As relevant to this motion, by order dated November 19, 2013, this matter was referred to "a JHO or Special Referee for purposes of overseeing all discovery with respect" to the Court's conditional grant of defendant's motion to strike plaintiff's pleadings pursuant to CPLR 3126 (NYSCEF Doc No. 104). To avoid dismissal,

plaintiff had been ordered to produce certain documents, information, and affidavits as outlined in the Court's conditional order dated September 3, 2013 (NYSCEF Doc. 089). Plaintiff had only partially complied and defendant maintained that such compliance was insufficient. The above-mentioned order of reference followed.

Following a number of appearances for conference, JHO Gammerman conducted a hearing and issued a report dated February 10, 2014 (Flynn Affirm., Exs. B-C). At the hearing, JHO Gammerman recommended that both the complaint and the counterclaims be dismissed for failure by both plaintiff and defendant to comply with "appropriate discovery" (Id., Ex. C, p. 12). In making this recommendation, JHO Gammerman noted that he advised the parties on December 5, 2014 that if they failed to comply with their respective discovery obligations, he would recommend this matter be dismissed (Id., p. 13). He found "no reason" why the information that was ordered to be produced was not provided during the course of more than two months in which the parties had the opportunity to do so (Id.).

Prior to this matter being referred to JHO Gammerman, plaintiff had failed to comply with four separate court orders, apart from any additional directive issued by the JHO (see Orders dated 2/8/12; 6/19/12; 7/19/12; 9/3/13). This matter is now nearly five years old and the majority of document production is

nowhere near completed. Having reviewed the report and the underlying papers, the Court finds JHO Gammerman's determination and findings are amply supported by the record and should not be disturbed (Yahudaii v Baroukhian, 89 AD3d 557 [1st Dept 2011]). Both sides' dilatory tactics will be tolerated no longer. The parties failed by their respective motions to raise any mitigating circumstance as to why the Court should not confirm JHO Gammerman's report and recommendation dismissing their respective claims. In this respect, the Court notes that the parties failed to obtain a so-ordered transcript from JHO Gammerman as directed by him following the February 10th hearing and waited ten months before making any motion with respect to his report (Notice of Mtn, Seq. 005, dated 12/10/15 [NYSCEF Doc. No. 108]), which was itself nearly two months after JHO Gammerman had to sua sponte file the report as a result of the parties' failure to do as directed.

Accordingly, it is

ORDERED that both plaintiff's motion and defendant's cross-motion are granted in part and denied in part, and the report of JHO Ira Gammerman dated February 10, 2014 and entered on October 14, 2015 is hereby confirmed in its entirety; and it is further

ORDERED that plaintiff's complaint is hereby dismissed; and it is further

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ORDERED that defendant's counterclaims are hereby dismissed;
and it is further

ORDERED that the County Clerk enter judgment accordingly.

This memorandum opinion constitutes the decision and order
of the Court.

Dated: 12/14/16



HON. JEFFREY K. ONG, J.S.C.
JEFFREY K. ONG
J.S.C.